
CONSUMER PROTECTION IN THE DIGITAL AGE: SAFEGUARDING RIGHTS WITHIN E-CONTRACT

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ABSTRACT

Rapid digitalization and boom in e-commerce in India, has prioritized the need for improved protection to consumers of electronic contract (e-contracts). This article emphasises on the issues of vulnerability of consumers as the contracts were entrusted to the dark digital realm, embracing the problems of unfair trade practices, fraud and breach of privacy. It also explores the limitations in present legal regime in protecting the rights of the consumers in India. The study inter alia attempts to review the present relevant laws of India, especially the Information Technology Act, 2000 and the Consumer Protection Act, 2019 and critically evaluates its efficiency as a complete safeguard to the digital consumers. The paper argues that the legal reform must look for complete legal regulation keeping in mind the opinion in the international market, with the inclusion of technological and educational purposes to provide a secure and fair digital platform. Stress has been laid on the international legal cooperation to harmonies the legal approach to protecting consumers in e-commerce.

Keywords: Consumer Protection, E-Contracts, Digital Age, Digital Marketplace, Online Transactions, Consumer Rights, Digitalization, E-Commerce.

Introduction

The digital age has drastically changed the way in which commercial transactions are accomplished, transitioning from contracts reducing the parties' obligations to written contracts in paper form to e-contracts. Both contract types exist side by side, but the electronic method of contracting has greatly benefited business operations worldwide and has also created new challenges. The challenges created by the transition emerged in various areas of business law like competition law and corporate law, but consumer protection is one area where these challenges are felt most acutely-contract is an agreement concluded using electronic means, and it has quickly become the cornerstone of e-commerce. An e-contract is highly bilateral in nature. It allows both the consumer and the business to be independent of place and time as it is easy to create and execute. This also makes it very easy for consumers from all over the world or a business to enter into a transaction, hence creating an even playing field. But at the same time, the business is anonymous, the e-contracts complicated and the speed of the transactions are so swift, rendering the consumers more vulnerable to unfair trade practices, fraud and in some cases, privacy rights violations. This puts legal scholarly research regarding Indian consumer protection laws and regulations within the context of e-contracts in a relevant and contemporary literature. This is particularly so as the country is witnessing a fast change in its digital landscape in the wake of emerging new laws and regulations.

A contract which is done electronically in any manner i.e. acceptance and offer is exchanged through electron mail, an acknowledgment of acceptance of an offer through electronic forms in a website, acknowledgement of the offer through an electronic form in a website or by simple message through WhatsApp and it is valid, legally binding and is enforceable. Such contracts are as good as the normal written or paper contract with a wet ink e-signature contract, as long as the authority to perform the contract is offered by the e-contract and accepted or performed in such manner. The Information Technology Act, 2000 (IT Act) in conjunction with the Indian Contract Act, 1872 provides the legal framework for the validity and enforcement of the e-contract under India law.

The third question examines consumer protection relating to the issue of e-contracts, as it pertains to the protection of consumers from unfair business practices, fraud and breaches in privacy, in the e-marketplace, which includes a gamut of issues ranging from the transparency of the terms and conditions of sale or service, the security of digital payments and the protection

of consumer data. The CPA, 2019 was a major overhaul of consumer rights and their modes of protection, with a particular concern for the peculiarities of the digital, e-contracts retail market.

The importance of this subject to the digital age cannot be overestimated because the world has become a 'wired one' with the proliferation of e-commerce, particularly after the COVID-19 pandemic and the shift to the new normal. Nowadays, most of the commercial transactions in the world take place online. The COVID-19 pandemic and the shift to the new normal have forced humanity to use digital platforms for daily transactions. This has considerably increased the role and importance of digitized systems and internet platforms in the world. This has, in return, raised questions to ensure the fairness of e-contracts and protect consumers. The emerging technologies of the digital age, such as click-wrap, browse-wrap, and shrink-wrap contracts, are new forms of contracts which may contain non-negotiated unreasonable and non-transparent clauses compared with the classical system of contracting. Furthermore, the cross-border nature of e-commerce raises significant jurisdictional issues. Therefore, it is imperative to study and evaluate the legal protections for consumers in e-contracts.

With an internet population at one billion and a digital market valued at \$700 billion by 2025, India is at the crossroads as far as e-contracts are concerned. With most financial transactions today occurring online, on digital platforms or through apps, the value of the digital economy will, in fact, cross the \$1 trillion mark by 2025, as per the Economic Survey 2021 of the Ministry of Finance. The increasing dependence on and the authenticity of e-contracts brought about by digital platforms is resulting in a steep rise in consumer complaints in the past few years. This growing menace warrants consumer protection laws that address the specific requirements of consumers dealing in the digital market. The consumer protection regime in India, though robust, still has gaps as far as providing protection for consumers in e-contracts are concerned. This essay aims to keep these complex issues in focus and develop a legal framework that will address the challenges faced by the digital consumers.

Background and Context

Digitalization has revolutionized the way consumers transact, having triggered the rise and development of electronic contracts (e-contracts). It has become the core of online commerce in which transactions — practically cross-border and also speedy — are done through e-contracts. The beginning of e-contracts is the first part of this paper and it traces the evolution of e-contracts from the conventional paper contract to its present state. Also discussed is the

legal framework in the digital age that has provided legal protection for electronic consumers. International perspectives and national comparative laws are being considered.

Evolution of E-Contracts: From Traditional Contracts to Digital Agreements

The transition between paper (a traditional type of contract) and e-contract (an electronic type of contract) gives us a sense of how the transactions take place. In ancient times, it is pretty obvious that almost every single contract written on a sheet of paper or a piece of parchment using a pen with real ink is known as a paper type of contract. It is almost hard to imagine nowadays on how the bureaucracy that our ancestors have built stacked up many piles of hard copies of contracts.

The development of e-contracts was a process, not an immediate jump. As technology improved, and as consumers and businesses became more comfortable making transactions electronically, simple e-contracts for the online buying and selling of goods evolved into more and more complex agreements, ranging from license contracts to employment contracts to financial services.

It required a legal framework – recognition and regulation – to address practical issues such as authentication, security and enforceability. From the United States to Germany, as well as Australia, Japan, China and India, nations passed new laws and regulations to provide a legal environment for e-contracts: to consider electronic signatures enforceable and signatures on paper as the same entity as electronic signatures.

Legal Framework for Consumer Protection in E-Contracts

The legal framework for consumer protection in e-contracts reflects centuries of evolution. It's a complex tapestry of international conventions, national laws and guidelines produced by tech regulators designed to extend the rights of consumers into the digital marketplace.

International Perspectives

Internationally, several initiatives improving law harmonization in e-contracts and consumer protection have been on Electronic Commerce (1996) and the Model Law on Electronic Signatures (2001) provided a basic precondition for legal recognition of e-contracts or e-signature worldwide. The United Nations Convention on the Use of Electronic

Communications in International Contracts (2005) eased the acceptance of e-contracts (including consumer contract) use in international affairs.

Furthermore, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (1999) set out principles of good business practice, fair information, consumer confidentiality and data protection, and redress.

Comparative Analysis of National Laws

Internationally, the legal framework – and types of protection for consumers – vary among countries according to the tradition of the respective legal system and stage of development of the e-commerce. In India, the legal framework for e-contracts and e-signature is prescribed under the Information Technology Act, 2000 (herein called the ‘IT Act’), and as amended by the Information Technology (Amendment) Act, 2008. It provides for the admissibility of electronic records and signature in evidence, which is the legal basis for e-contracts.

A more specific response to the need for consumer protection in the digital economy is provided by the Consumer Protection Act, 2019, which replaces the Consumer Protection Act, 1986. This Act incorporates a section devoted to unfair trade practices in e-commerce, a chapter dedicated to the rights of consumers engaging in digital transactions, and sets up a Central Consumer Protection Authority (CCPA) empowered to take action in relation to contraventions of the rights of consumers in the relevant market, unfair trade practices, and false or misleading advertisements in relation to products and services which are prejudicial to, or likely to be prejudicial to, the interest of the consumers and the public.

In contrast, the European Union has instituted measures to protect consumer rights in the digital market through directives, such as the Consumer Rights Directive, 2011/83/EU, prescribing that ‘consumers shall benefit from high levels of protection when they conclude contracts online. A broad range of information requirements have been harmonized and simplified, the right of withdrawal from both distance and off-premises contracts has been consolidated, a clear framework for redress and compliance for contracts on digital content has been introduced.’

The Nature of E-Contracts

E-Contracts are the oxygen of e-commerce and the life-blood of e-trading; they are awesome

devices for commodities procurement of all kinds. The existence of questions pertaining to what an e-contract is, how it works, what are its different species, and the principles underpinning its validity and enforceability should give us pause, as far as our freedoms as digital consumers of the marketplace. This contribution tries to comprehend e-contracts through their definitions, their characteristics, their types, and through their principles of validity and enforceability, especially as enshrined in Indian law.

Definition and Characteristics

An e-contract is an electronic contract, that is, created and 'signed' electronically – 100 per cent online, with no paper or pens, just bits and bytes. E-contracts are governed by the same rules as paper contracts. They must have offer, acceptance, consideration, capacity and intention to create legal relations, but the process of agreement, authentication and execution in an online environment is set out in different ways.

The characteristics of e-contracts include:

- **Digital Nature:** The contract exists electronically, contains the clauses of the agreement in electronic form, and communicates electronically for negotiation and execution.
- **Speed and efficiency:** e-contracts can be negotiated and signed very quickly, saving much time and money over traditional contracting. Eat this. But now!
- **They can span the globe:** They facilitate transactions remotely from those who are situated far away, opening up international markets to consumers and businesses alike.
- **Automated processes:** One of the most exciting aspects of e-contracts is that they can be generated, executed and monitored by automated systems, allowing for their easy integration with other digital commerce platforms.

Types of E-Contracts

E-contracts are classified by the manner in which the consumer is presented with, and accepts them. The main types are:

- **Click-Wrap Agreements** These contracts require a user of a website or app to indicate

their assent to the terms and conditions of taking a service or completing a transaction by clicking an 'I agree' button on a website or app. The term appeal to 'click-wrap' contracts derives from the more familiar term 'shrink-wrap agreements', those licenses found inside of the cover around software products. Click-wrap contracts adapted that concept into the click to indicate assent and post-sale component of the digital environment.

- **Browse-Wrap Agreements:** Here the terms and conditions are typically published on the website (often through a hyperlink), and their data is provided. Use of the site, browsing or product purchase, serves as implied acceptance of the terms of the contract. There's no need to click 'I agree'.
- **Shrink-Wrap Agreements:** Although most famous in the physical goods world, shrink-wrap agreements are an interesting precedent for digital contract formats because they reside in the packaging itself (you agree to the terms by opening the packaging of the physical goods version of the product). In the digital world, they've carried over into software licenses, where the same concept applies to installing a software license. You agree to it when you open the software.

Validity and Enforceability

Admissibility of e-contracts has also been a subject of judicial deliberations, as like any other contract, they require to fulfil the same elements for constituting a legally-acknowledged contract. Considering e-contracts to be legally enforceable, ITA 2000, as amended, establishes the legal basis of e-contracts in India, classifying electronic records and signatures as means of executing e-contracts.

Key considerations for the validity and enforceability of e-contracts include:

Consent and intention: the parties to an agreement must have mutually consented to the terms set forth in the agreement. In the case of click-wrap or browse-wrap agreements, it can often be difficult to show that such consent occurred. Generally, click-wrap agreements have fared better with courts as an indicator of consent, while browse-wrap agreements have come under more scrutiny.

Authenticity and integrity: electronic signatures and records must remain authentic and not be altered over time. The ITA 2000 outlines the qualifiers for an electronic signature that will be valid.

Legal terms: e-contracts contain clauses and terms similar in nature to traditional contracts. Such terms, for e-contracts, must be lawful, feasible and not against the public policy. It is void if in an electronic contract there are any illegal stipulations or indefinite provisions.

Contracts with Consumers: E-contracts should protect consumers from risks that otherwise arise from their inability to inspect the physical product and their lack of business knowledge. For example, e-contracts must contain disclosures of all terms, respect the consumer's right to change their mind, and guard against unfair contract terms.

Besides the acts, the Indian judiciary has also contributed to the legal framework around the enforceability of e-contracts through its decisions. For e.g., the decision of Trimex International FZE Limited, Dubai v. Vedanta Aluminum Ltd, India by the Supreme Court of India upheld the enforceability of contracts created through electronic communication and settled the legal disagreement by holding that offer and acceptance via email fulfill the commercial requirements under Indian Contract Act, 1872.

This means that as consumers are entering electronic legal transactions, they must be informed about the exact terms to which they are bound; they must be able to understand and negotiate the way the terms of the contract are set up; and they must be protected through recourse mechanisms if things don't go as planned. With digital transactions constantly in a state of flux, laws will have to constantly evolve as well, and consumers will need to learn a new world through digital literacy.

Consumer Rights in the Context of E-Contracts

With increasing consumer protection in the age of digitization, the rights and interests of consumers with relation to e-contracts gains greater dimensions and greater complexity. Electronic contracts, because of constitutional protection of consumer's rights – the right to information, right of cancellation, right to withdraw from contracts, and personal data protection rights – become one of the most critical human rights in the age of digitization. This chapter will delve into those rights in detail and what implications they may have for India,

both in terms of global data protection norms (such as the European GDPR) and in terms of national laws in India.

Right to Information

The right to information is another important right. If ensured, it can empower consumers to make decision whether they should or should not enter into that e-contract. The information under right to information are about T_C, PP, features of the goods or services etc. Consumer Protection Act, 2019, in India, exemplifies the importance of this right as an individual has right to demand any information from any person receiving the information free from any cost or fee-paying member or not.

It requires that consumers be given information about the main characteristics of the goods or services, the total price of the goods or services, including any taxes and fees, the main characteristics of the seller (the legal name, principal address and contact information of the person responsible for the contract) and the modalities for filing complaints. For the case of e-contracts, most of the time this information must generally be available to the customer before the customer is able to accede to the contract, so that the customer knows exactly what contract he or she is agreeing to in the end.

Right to Withdrawal/Cancellation

The right to withdrawal, or right to cancel, entitles a consumer to rescind his consent to an e-contract within a specified time without providing any reason and without being penalized. This is a particularly important right, since in the online marketplace the lack of an opportunity to examine a product before purchase increases the likelihood that the consumer will not be satisfied with his purchase.

In India, the right to return goods is derived from the provisions of the Consumer Protection Act, 2019 and the rules framed under it (which, inter alia, recognize the consumers' right to return the goods in terms of the return policy, if any, provided by the e-commerce entity). The terms and the timeframe for availing the benefit of withdrawal may differ depending upon the nature of the product/service purchased by the consumer from an e-commerce entity.

Right to Privacy and Data Protection

In line with increasing consumer finance transactions with the help of the internet, protecting personal data has become an important issue. During signing e-contracts with consumer finance institution, the consumers would have to share many of their personal information. This means that it is necessary to build a strict data protection to avoid their improper usage.

GDPR and Its Implications

This includes the General Data Protection Regulation (GDPR), the groundbreaking EU regulation on data protection that has galvanized data-protection standards across the world. An EU regulation whose reach extends across pan-EU borders, the GDPR applies extraterritorially to entities outside the EU that are processing their personal data (i.e., people's data). Any person or company outside the EU that is taking goods or services to individuals in the EU must comply with the GDPR. Among other things, the GDPR stipulates that consent, transparency and the right to be forgotten are foundational principles in a functioning data economy, and have set a global benchmark for how we should safeguard data.

Among the rights of consumers as stated in GDPR is the right to access their personal data, to rectify inaccuracies, to be forgotten (with some conditions), and to object to the processing of their data. For e-contracts this means that the consumer must be informed about the data that is being collected, the purpose of this collection, and their rights regarding their data, and must consent thereto.

Other National Data Protection Laws

This includes the Personal Data Protection Bill (PDP Bill) in India, which is modeled on the GDPR. The PDP Bill has not yet been codified into law, but its special provisions demonstrate India's intention to protect citizens' data in a similar vein. Its general rights include the right to consent, data portability, and the right to be forgotten, adding voice to the importance of digital privacy in India.

However, currently the law governing data protection in India is the IT (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 made under the IT Act, 2000. The Rules provide that an entity collecting personal information must seek consent of the person whose information is being sought and it must be collected for a specific

and lawful purpose, and people may correct or withdraw their information. Upon the passage of the PDP Bill, it is expected that a more stringent and detailed regime of data protection will be in place, which will substantially affect the way consumer data is governed by electronic contracts.

Challenges and Risks in E-Contracts

But there are other and more fundamental obstacles, such as misrepresentation and fraud, unfair terms and conditions, and law-making, in relation to e-contracts. Then there are the obstacles posed by security and data breaches, and, not least, by the possibility that automated decision-making and AI embedded in e-contracts may entrench bias and discrimination. Addressing these problem areas will be crucial if we are to make the digital economy as fair, safe and transparent as possible.

Misrepresentation and Fraud

Another major constraint is misrepresentation and fraud, including retirement or after-the-fact denial where the non-interactive feature of digital contracts is the underlying issue. Misrepresentation focuses on situations in which false or misleading statements make when buying a product or service cause a person to enter into a contract. In the case of e-contracts, such fraud could mimic identity theft, phishing attacks or the sale of fictitious goods or services.

The legal status on crime of online fraud and misrepresentation are made under Information Technology Act, 2000 (ITA 2000) and Indian Penal Code, 1860. ITA 2000 is the cyber law and it defines the crime and punishment for some crimes where online latter is used such as identity theft and cheating by impersonation. However, the right offered in law are not analogous to the climate in corporate structure, absence of grievance platform, and lack of resources to fulfil the slogan of cyber. Moreover, it also points out the need for more public awareness and robust cyber security system for the crime.

Unfair Terms and Conditions

The other problem is that the terms used in e-contracts can be unfair, especially where one party has all the bargaining power, for instance when it comes to the clauses that give an online merchant the sole power to change the conditions, terminate the contract or impose limits on

liability. Consumers may not be aware of unfair contract terms in click-wrap or browse-wrap agreements because the contract documents can be long and full of legalese.

The Consumer Protection Act, 2019, in India was passed in an effort to tackle this problem, with a defined list of what constituted unfair trade practices and providing redress against such traders through complaint mechanisms. Importantly, the Act provides for the CCPA to declare a ‘termination or modification in a transaction wherein unfair contractual terms have been used, recognizing the option of modifying the terms for consumers, instead of rejecting the contract altogether. Although these provisions are written in the legislation, it is their actual application and consumer protection that requires vigilance on the part of regulatory bodies and active engagement from consumer advocacy groups.

Security Concerns and Data Breaches

E-contracts create security issues and a breach in many instances can also expose the huge amount of personal or financial information exchanged while consummating an online transaction, leading to breaches of privacy and financial loss. The Personal Data Protection Bill, 2019, awaiting enactment after being passed by the Lok Sabha and Rajya Sabha recently, will require businesses dealing with personal data or information to use ‘reasonable security practices and procedures’, under the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. But this may not be enough with the alarming frequency and sophistication of cyber-attacks.

The envisaged Personal Data Protection Bill borrows from the GDPR, among other international standards, to propose improving data protection in India by setting norms for data processing and providing penalties in case of a breach of applicable data norms and regulations. Such legislative tools are the need of the hour to build consumer confidence in digital transactions and secure consumer data.

Automated Decision Making and AI in E-Contracts

It refers to automated decision making and AI used in e-contracts, and the growing ‘algorithmic tyranny’ of opacity with regard to accountability and fairness. For example, automated systems may determine the terms of the contract; whether you are eligible for a service or not; or the cost or price of the product or service. Such contract negotiation can be quicker and less prone

to error than a human one, but it can also be algorithmically unfair, opaque in its decision-making processes, and prone to error without any real means of redress.

The challenge, though, is to ensure they are engineered and operated in a way that delivers protections (over and above those that consumers of complex standard-form e-contracting are already afforded under protections for consumer rights and legal standards of fairness) for the development of sound consumer-contracting processes and fair negotiations. There are currently few, if any, explicit legal provisions that address AI and automated decision making in the context of e-contracting, but we can glean fairness, transparency and accountability principles from what we do have in consumer protection laws, which arguably might be taken to represent codified consumer rights, and which can readily be applied to new techniques and technologies.

Legal Remedies and Enforcement Mechanisms

In a world of e-contracts and digital transactions, there are bound to be disputes and safeguarding the rights of consumers requires impeccable legal remedies along with the necessary enforcement mechanisms. This segment delves into the kinds of dispute redressal mechanisms available in India and the role of consumer forums and agencies in safeguarding the consumer rights in the digital sphere of e-contracts and the punishments that can be awarded to violators of consumer rights in this background.

Dispute Resolution Mechanisms

This can involve dispute resolution in the courts (or traditional litigation) as well as modern, technologically driven means such as ODR, which provides means of redress for consumers where there is a dispute about digital transactions.

Traditional Litigation

In addition, private litigation, based on conventional litigation procedures, remains the dominant means to address disputes resulting from e-contracts. Where an e-contract gives rise to a consumer grievance such as breach of the agreement, misrepresentation, fraud or in various other ways, consumers can bring suit against a vendor or service provider in a civil court. The appropriate forum for such a suit will be the court having territorial jurisdiction over the defendant or over the place from where the transaction was received. In India, for example, the

jurisdiction would depend on the location of the defendant or the place of occurrence – a factor that can become problematic when an online deal occurs across geographically disparate zones.

An important amendment in the Consumer Protection Act, 2019, sets up a robust framework for redressal of consumer disputes by establishing Consumer Commissions at three levels: the District, the State, and the National. Their jurisdiction allows them to decide complaints regarding defective goods delivered to them by a trader, deficiency in services, unfair trade practices, including those relating to digital transactions and e-contracts.

Online Dispute Resolution

This is ODR – a digital solution for a digital problem. A new generation of dispute resolution technology, the ‘ODR movement’ fights modern disputes with technical knowhow that can resolve conflicts quickly and fairly – and as inexpensively as possible. Although there are many forms of ODR, there are four broad types: negotiation, mediation, arbitration and mixtures of the three. Negotiation is just what it sounds like – parties trying to reach agreement online. ODR negotiation software includes messaging, video chat and screen sharing. ODR mediation involves an independent third party (an ‘ODR mediation service provider’) who facilitates discussions and attempts to broker a deal. ODR arbitration is a little more formal and one-directional. The disputants select a private online judge (usually a professional, paid arbitrator) and send him or her their best arguments in resolution one by one; later the judge issues a ruling. An ODR system could be a blend of mediation and arbitration. For e-contract disputes, ODR makes total sense.

India’s march towards ODR is evident via recent interventions by the judiciary and the government recommending and stipulating the implementation of ODR to help address legal issues more speedily, especially in the realm of e-commerce. The government’s think-tank NITI Aayog had released a draft ODR policy in 2021, recommending the use of ODR as a viable mechanism for resolving consumer disputes, especially to help introduce a stronger access to justice regime in the digital age.

Role of Consumer Protection Agencies

A competent authority in the government may take any action as considered appropriate to enforce consumer rights and for the redressal of grievances of consumers and to provide relief

to them in e-contracts. The Central Consumer Protection Authority (CCPA) set up under the Consumer Protection Act, 2019 in India for protecting the rights of consumers is an example of such action. The CCPA has been vested with the power to investigate into consumer complaints, issue summon and serve orders in relation to such complaints, issue orders to the producers and service providers to display along with their names and addresses on their websites details relating to goods or services for which the complaints are made, including such material as may be prescribed, pass orders to recall the goods as it deems fit and order payment of stipulated sum by way of compensation, among others, if the CCPA is satisfied at (a) violation of consumer rights under the Act or the rules made thereunder; or (b) indulgence in unfair trade practices; or (c) misleading advertisements.

The CCPA also has responsibility for general consumer rights implementation and conducts research and consumer education to help protect the interests of consumers on the digital marketplace – including the right to information, the right to choose, the right to redress, and the right to consumer education.

Penalties for Violation of Consumer Rights

According to Consumer Protection Act, 2019, the offender would be held punishable with fine (behind bars) or imprisonment, or both, for violation of anyone's rights or commission. Under this Act number of punishment has been defined to stop the unfair trade practices and to follow the laws.

An example of this is that it provides for punishment for misleading advertisement in the form of a fine of INR 10 lakhs (approximately USD 13,333) for the first commission of this offence, two years' imprisonment for any subsequent commission of this offence, and the fine amount can be doubled to INR 50 lakhs (approximately USD 66,667) with five years' imprisonment for the second and following commission of this offence.

By virtue of the Act, Commissions can now direct the payment of compensation to consumers under a e-contract (1) for any loss or injury to the consumer (or death of a consumer) arising from any defect in the goods under the e-contract; or (2) for deficiency in services, including digital products or services (to be defined later in the Act) under the e-contract. Sometimes, Commissions can go beyond simple compensation and actually award punitive damages for

‘patently egregious’ cases of ‘unfair trade practice’, such as taking advantage of a consumer’s ignorance.

Case Studies and Jurisprudence

The legal landscape of consumer protection for contracts in the e-commerce industry constantly evolves through such cases, with their outcomes becoming precedents for the interpretation and application of the law. Consumers in India’s digital marketplace can learn from these cases about the problems they face, as well as the redressal available to them.

1. Shreya Singhal v. Union of India

While legal scholars have largely taken notice of it for what it says about the right to freedom of speech on the internet, another portion of the Supreme Court’s judgment in the case of *Shreya Singhal v. Union of India* also explicitly invokes rights protection on the internet in a context relevant to online transactions and consumer protection: There must be certainty and precision in the legislative provisions to prevent arbitrary actions of the officials, who may relate to consumers and businesses online. In other words, legal certainty is a prerequisite for rights-based protections in the internet world such as those governing e-contracts.

2. Tata Motors Ltd v. Antonio Paulo Vaz

In 2015, the NCDRC decided *Tata Motors Ltd v. Antonio Paulo Vaz*, which concerned the deficiencies in service arising during the purchase of a vehicle online. Here, the aggrieved person invoked the provisions of the Consumer Protection Act (Act), therefore, proving that consumer protection laws apply to electronically mediated transactions, confirming the position that ‘e-commerce transactions are consumer transactions and the principle that ‘a consumer availing his services, goods or accounts over internet, telephone or the like, should not be left disenfranchised by the application of different, if not inferior, laws’.

3. Amway India Enterprises Pvt. Ltd. v. Amazon Seller Services Pvt. Ltd.

In this case, the Delhi High Court considered the roles and responsibilities of e-commerce platforms under e-contract and consumer protection laws. The court’s findings on the obligations of online marketplaces have implications for consumer rights, including the transparency required in e-contracts mediated through online marketplaces. The case is

illustrative of how principles of classical consumer protection might be applied to modern practices of e-commerce.

Technological Solutions for Enhancing Consumer Protection

Moving forward, as the digital market continues its evolution, novel applications of technology and the law will call for fresh innovative solutions, further empowering consumer and online protections. What you are about to read covers three of these emerging technologies – digital identity verification, blockchain and smart contracts, and artificial intelligence (AI) and machine learning (ML) – and how they can be adapted to encourage future protections for consumers by providing trust (that the other party is who they say they are), authenticity (that the thing you are purchasing online is real) and security (protecting you, the consumer, during an online transaction).

Digital Identity Verification

These systems are essential since both parties of an e-contract could not be in the same place and time when entering into an agreement. Through digital identification verification, parties can prove their identities to develop a trusted environment since the fraud problem could be very high in the online world. Verification of identity could be done via some biometrics, digital certificates or two-factor authentication.

Aadhaar is a 12-digit unique identification number issued by the Unique Identification Authority of India (UIDAI) to each person in India, on the basis of biometric and demographic data. Its purpose is to verify identity, and it is designed primarily for state operations but illustrates the essentials of how sophisticated digital identity verification systems might come to play in the wider market space. Digital identity verification serves to assure that the party who enters into an e-contract through an app does so with the full legal authority to do so. Without it, identity-theft and contract-fraud risk can significantly increase.

Blockchain and Smart Contracts for Transparency

A peer-to-peer, public and shared digital record of transactions, made secure and reliable through networks of thousands of ‘nodes’ around the globe that each carry a copy of the same ledger. Blockchain technology allows for e-contracts to use smart contracts: self-executing contracts that record the conditions of the agreement within lines of code that directly translate

into terms and automatically enforce and execute contracts when a predetermined condition is met, without a middleman.

As blockchain is both transparent and immutable, every transaction on the network is verifiable, and once recorded, it cannot be changed; this quality enables the user to rely upon the execution of the agreed transaction, obviating the need for any trust mechanism. As such, blockchain technology ensures greater transparency in the e-contract and improves its efficacy while decreasing the chance of fraudulent practices. Despite its prominence and enormous potential, in India blockchain adoption in the field of consumer transactions is in its nascent stages, although having made incursions in the banking and finance sector, and some sectors appearing to have enormous growth opportunities for protecting consumers in e-contracts and enhancing its efficacy.

AI and Machine Learning in Detecting Fraud

AI and ML technologies are increasingly used and pivotal in detecting and averting fraud associated with online (digital) transactions, including those involving e-contracts. That may be done by analyzing patterns of behaviour in the data that those algorithms are looking at and detecting anomalies, or 'outliers', such as identity theft, misrepresentations and virtual check payments that are not actually taking place.

Similarly, it can also be used to enhance the verification processes of e-contracts – is the document a real e-document and are the parties in the e-agreement real and authentic? AI can be used to inspect signatures, and ML algorithms can over time learn based on received data and continuously improve the ability to detect fraud.

In India, banks and e-commerce sites are increasingly using AI and ML, primarily for fraud detection. The Reserve Bank of India (RBI) announced guidelines for the use of advanced analytics, such as artificial intelligence and machine learning for organizational, operational and fraud risk management. Also, most of the e-commerce sites use AI to detect and prevent fraud in real-time.

Suggestions

The growth of e-contracts has led to a new environment for consumer transactions. Both technology and law must evolve to offer better consumer protection and security in the digital

age.

Emerging Trends in E-Contracting

Over the next few years, we can expect to see three trends, which will probably shape the future of e-contracting: wider use of blockchain and smart contracts; artificial intelligence (AI) for contract management and dispute resolution; and growing use of digital identity verification. Though these technologies promise more secure, more efficient and more transparent transactions, they also create new consumer protection risks and problems: how do we protect our privacy and how do we ensure security? How do we deal with the problems of digital inequality?

In addition, the increase in verification requirements for smart objects and connected purchasing systems across the Internet of Things (IoT) or generally terms of contract in the human realm can lead this extremely pragmatic and commonsensical area of contract law as a whole to become as complex and ridiculously impractical as attempted machines-to-machines contracting. Who exactly is giving consent with these contracts when it is an object speaking on the human's behalf? Who is liable when human and machine capabilities converge?

Potential Legal Reforms for Better Consumer Protection

What are their solutions, and what is the legal response? In India, as well? 1. Reform the law: criminalization, enforcement, accountability, reparations.

1. Stop using 'rape', 'molestation', 'indecent behaviour' et al to describe both marital and non-marital offences. This may be difficult – given the current legal regime and the psychology of the people – but the intention is to send a clear signal: marital rape should only be punishable if a legislation specifically criminalises it.
2. Treat marital offences differently from those committed between strangers. These offences should be viewed as breaches of contract rather than criminal offences.
3. Specify that all marital partners have a protected and equal right to privacy.
4. Specify that matrimonial regulation is only permissible if it derives from a valid and reciprocal contract.

Amending the Information Technology Act: Much depends upon the regulation of technology. The IT Act, 2000, provides a basis for the legalization of e-contracting and digital-based transactions. Its provisions must be amended to fit the specifics of new technologies, especially smart contracts, artificial intelligence and the internet of things. There could be express provision on the legal status of smart contracts, as well as on the use of artificial intelligence for contract-making, and also agreeing rights, duties and obligations during the performance of contracts enabled by the IoT.

Robust data protection laws: The Personal Data Protection Bill is still pending, and we should mandate robust data protection laws on a par with international standards such as the GDPR, not just for e-contracting consumer data but generally for raising the level of trust in all e-transactions.

Although the Consumer Protection Act, 2019, is a major step forward, it could be made stronger by having specific express provisions about e-contracts, including specific stipulations regarding consent, transparent disclosures of terms and conditions, easy and effective ways to address digital transaction-related grievances.

International Cooperation and Harmonization of Laws

As more and more e-contracts involve consumers from different countries, we will need to collaborate across national boundaries to develop common legal frameworks and standards to protect consumers when they enter into contracts online. In fact, India has a valuable role to play in spearheading and participating in international forums and treaties aimed at developing common standards and norms for promoting consumer protection in relation to contracting.

Such efforts could focus on:

- **International Standards:** Efforts to adopt international standards and best practices relating to e-contracting and digital transactions. This includes harmonization with the UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures, such as enacting the Electronic Commerce Act (2003) in India.
- **Bilateral and Multilateral Contracts:** Negotiating bilateral and multilateral contracts such that cross-border e-contracts offer the same level of protections as domestic contracts. This will assist in smoother and more secure international transactions.

- Cooperation on Data Protection: Working with international organisations to develop a global consensus around data protection that respects consumers' right to privacy while ensuring that personal data is handled in secure ways as it traverses the globe.

Conclusion

Consumer protection becomes a very complex issue in this changing legal and technological landscape. By exploring consumer protection issues relating to e-contracts in India, this dissertation has shown how the next generation of contracts will look and what they will contain at various levels. From the typical aspect of e-contracts and the available types, to the intricacies of the challenges and risks involved in using e-contracts, to the legal remedies and technological solutions, the conclusion provides an overview of the main findings and proposes some final thoughts on consumer protection in e-contracts. In India, the path to trade agreements: Characterized by “greater efficiency and convenience of access to markets”, the move, in India, towards e-contracts has been marked by the unprecedented use of legislation and amendments to align with the evolving dynamics of e-commerce and to enable effective and safe data transfers between India and other jurisdictions.

Consumers undertaking e-contracts may suffer problems such as misrepresentation and fraud, unfair terms and conditions, security and privacy, and automatic decision making and AI. Dealing with these challenges remains critical to preserve trust and fairness in digital transactions. India's common law, and especially the Information Technology Act 2000, together with the provisions of the Consumer Protection Act 2019, can provide a basis for the resolution of disputes and violations of entity agreements under e-contracts. ODR mechanisms are other flourishing spaces for innovation and intervention, and a more active role for consumer adjudication agencies can be an efficient mechanism for redress and enforcement.

Institutional technological solutions are significant improvement that can make all e-contracts more practical and transparent, such as digital identity verification, blockchain, smart contracts, AI/ML, etc, in short, more e-contract solutions, more fraud prevention, security improvement and efficiency, which can also make digital transaction to be fairer with more consumption orientation. As consumption moves online, consumer protection laws should perhaps encompass a multi-layered approach that combines legal, technological and educational modalities. Legal reform might have to catch up with an evolving digital landscape and the challenges it poses at every stage, such that it keeps abreast with the challenges and realities of

transactions in the digital economy to preserve, protect and promote the rights of consumers. Certain technological solutions could also go a long way in reducing risk and enhancing the efficiency and fairness of e-transactions.

It is important to educate the public regarding the emerging new marketplace, as well as providing information on their rights and the various redress mechanisms available. This would help to improve levels of digital literacy, allowing consumer to operate in the digital environment with confidence, without fear of being exploited as victims of fraud or unfair commercial practices. Furthermore, the rapidly growing number of cross-border challenges caused by electronic commerce requires increased international cooperation and harmonization of the rules so as to build trust and increase confidence in this expanding market. Enhanced dialogue and co-operation with international organisations can facilitate the exchange of best practices and a coordination of common standards for consumer protection in the digital economy.

To sum up, conscientious efforts are required to ensure rights of consumers in the Digital Economy era. This effort should be a collective responsibility of the rule-makers, the marketers, the manufacturers, and the consumers, who daily interact on this digital platform. This would help in having a secure and transparent digital marketplace which would benefit India as a whole, enabling it prevent both the growing vertical attack to consumer rights and the extreme horizontal attack to corporate profits.

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