

**Discloser of Information by E-Commerce Traders and Consumer Protection:
A Critical Appraisal of Consumer Protection Laws in India**

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Abstract:

In e-commerce, information is vital. A true, reliable and authentic information can build consumer trust which enables him to make a better choice. This research paper identifies that e-commerce has brought forward a new challenge in the form of inadequate disclosure of information about: the identity of e-trader; goods or services, including its quality, quantity and fitness; total price of goods or service including all the charges; terms and conditions of transactions; fair, timely and affordable dispute resolution; procedure of filling a complaint; procedures, conditions, and time duration for cancellation of contract, return of goods or services and claim for repair, replacement, refund and damages; and so on. Further, the time, manner and the language of providing the above information is also crucial in e-commerce. The paper has made an honest attempt to critically analyse the recently enacted Consumer Protection Act, 2019 from the perspective of testing legal sufficiency to ensure adequate disclosure of information by e-commerce traders in their platforms for effective consumer protection in e-commerce.

Introduction

Information is vital in any contractual transaction to make choices, decisions, or developing trust, or protecting rights and interest of any individual. In e-commerce, a consumer's decision to buy, or make choices, or developing trust, or protecting rights and interest depends on the information available to him on the device through which he orders goods or services. In India,

the principal law for recognising consumers' right to be informed is the Consumer Protection Act, 2019 (hereinafter referred to as "the CP Act 2019"). In a traditional commerce, a consumer visits the physical store and can get adequate information about the goods or services and its performance. A consumer may feel or touch and see the goods or services, and may also take a demonstration of goods or services; where sellers also test goods in front of consumers. Finally, once satisfied with goods or services after going through the entire process, a consumer may decide to buy the goods or service. Yet, things may go wrong for a consumer in spite of all the attention. The chances of going wrong multiply many times in an e-commerce.¹ In such a situation, to maintain a level playing field between e-commerce and traditional commerce, law has to ensure adequate and effective information for consumers in e-commerce platforms.

Information in E-Commerce and Consumer Protection: Issues and Challenges

In e-commerce, the general concern of consumers is that they do not know whom they are dealing with. In physical commerce, a consumer may go and see the physical shop, its name, location, address and the person to whom to contact in case of any dispute. However, in online shopping, information can be obtained in a different way.² In e-commerce, obtaining information depends on the information displayed by e-commerce platform, where a consumer has less control.

One of the essential characteristics of an effective market is provisions for full and accurate information for consumers, where consumers may make a rational decision about what to buy, how to buy and from whom to buy. Moreover, in e-commerce, often a consumer has to pay before the delivery of goods or services; hence, the growing concerns of consumers are: what would be the quality of goods; whether they would be delivered on time; what is the procedure for replacement or refunds and complaint and how to contact the e-merchant; etc. These concerns of consumers get multiplied when an e-trader is in another jurisdiction.³

¹Akhileshwar Pathak, 'E-Retailing and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directive' Indian Institute of Management Ahmedabad Working Paper 2015-10-02, 4<<http://vsir.iima.ac.in:8080/jspui/bitstream/11718/17055/1/WP2015-10-02.pdf>> accessed 20 December 2017.

² Masood Ahmed, Mohd Imran, An Analysis of E-Commerce, its impact issues concerning the rights of E-consumers, Indian Bar Review, Vol. 45(1) 2018, Bar Council of India Trust, New Delhi, 120-121.

³ Masood Ahmed, Mohd Imran, An Analysis of E-Commerce, its impact issues concerning the rights of E-consumers, Indian Bar Review, Vol. 45(1) 2018, Bar Council of India Trust, New Delhi, 120-121.

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In e-commerce, consumers often incur cost which they were not expecting. Consumers have experienced that they have been misled by e-traders when they receive higher bills than expected. Very often, e-traders do not disclose the information regarding the total cost, and this has become a serious issue for consumers. The total cost of a product or service may include delivery cost, handling cost, broker fee, taxes, custom duties, etc. When e-traders do not display the total cost on the website at the time of ordering, consumers get confused when they receive higher bills.⁴

In e-commerce, lack of credible information also leads to creating confusion and difficulties in e-shopping. E-market is flooded with fake e-commerce sites. These fake sites bring newer offers to catch the fancies of consumers. Consumers find it difficult to check the validity and credibility of those e-commerce sites and their offers.⁵ The internet facilitates creation of a new web sites within a couple of hours, which can be run at any place without limitation and can be moved as well as removed easily at the disposal of fraudsters.⁶

Consumers often face a lack opportunity to get sufficient information about e-traders. In e-commerce, even top level domain name .com fails to identify the place where the business is located. There is no guarantee that an e-commerce company is established in that country even if it uses a country code, such as, .uk or .de. In addition, it has been a common practice to maintain web server geographically detached from the physical location of a business.⁷

Consumers in e-commerce also experience a lack of opportunity to obtain information about the terms and conditions of any transaction, details of delivery cost, quality of the goods or services and a fair, timely and affordable dispute resolution. If the transaction is small, there may

⁴ Masood Ahmed, Mohd. Imran, 'An Analysis of E-Commerce, its impact issues concerning the rights of E-consumers' Indian Bar Review, Vol. 45(1) 2018, Bar Council of India Trust, New Delhi 122.

⁵ Masood Ahmed, Mohd. Imran, 'An Analysis of E-Commerce, its impact issues concerning the rights of E-consumers' Indian Bar Review, Vol. 45(1) 2018, Bar Council of India Trust, New Delhi, 122.

⁶Shashi Nath Mandal, 'E-Consumer's Protection in India' (Global Journal of Management and Business Research: E-Marketing, Global Journal Inc.)
<<https://journalofbusiness.org/index.php/GJMbr/article/download/2142/2044>> accessed 12 July 2018.

⁷ Ian J Lloyd, *Information Technology Law* (7th edn, Oxford University Press 2014)470.

be denial to redress by e-traders in the event of a dispute. It has been observed that transparency is visible in price and brand, but largely missing in quality of products and services.⁸

Consumer Right to Information and the Consumer Protection Act, 2019

The Consumer Protection Bill 2015, which is the backbone of the CP Act 2019, has broadened the term “deficiency” in service. Any conscious withholding of relevant information by traders resulting in damage to a consumer has been termed as deficiency in service.⁹ However, this provision has been revised by the CP Act 2019. As per the provision of the CP Act 2019 any “deliberate withholding of relevant information by any person to the consumer” is sufficient to constitute “deficiency in service”.¹⁰ Hence, under the CP Act 2019, it is not necessary to establish any damage caused to the consumer due to the withholding the relevant information. However, the CP Act 2019 fails to define the term “relevant information”, which may result in confusions and many interpretations. For that reason, it is inevitable to define the term “relevant information”. Nevertheless, it has been argued that the scope of “relevant information” needs to maintain a balance between the less information and the excess of information. Less information may fail to serve the purpose of a consumer; on the other hand, the excess of information may cause difficulties for an e-trader to comply with, and even for a consumer to hold, which may eventually result in ignoring of information by the consumer.¹¹ It is further argued that unless the “relevant information” is also treated as a part of binding contract, effective consumer protection in e-commerce may not be achieved.¹²

The CP Act 2019 for the first time specifically defines the concept “consumer rights” (these rights were earlier stated as objective of the Councils established under the Consumer Protection

⁸ Gagandeep Kaur, *Jurisprudence of E-Commerce and Consumer Protection in India* (1stedn, Satyam Law International 2015)50.

⁹ The Consumer Protection Bill 2015, clause 2(12)(ii)

¹⁰ The Consumer Protection Act 2019, s 2(11)(ii)

¹¹ Akhileshwar Pathak, ‘E-Retailing and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directive’ Indian Institute of Management Ahmedabad Working Paper 2015-10-02, 14 <<http://vslir.iima.ac.in:8080/jspui/bitstream/11718/17055/1/WP2015-10-02.pdf>> accessed 20 December 2017.

¹² Akhileshwar Pathak, ‘E-Retailing and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directive’ Indian Institute of Management Ahmedabad Working Paper 2015-10-02, 22 <<http://vslir.iima.ac.in:8080/jspui/bitstream/11718/17055/1/WP2015-10-02.pdf>> accessed 20 December 2017.

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Act 1986). One of the rights, as included in the definition, is consumers' right to be informed. Section 2(9) of the CP Act 2019 recognises the consumers' right to be informed, which reads as:

“(9) ‘consumer rights’ includes,—

- (i)
- (ii) The right to be informed about the quality, quantity, potency, purity, standard and price of the goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;”

The CP Act 2019 also proposes to establish an administrative agency, the Central Consumer Protection Authority (hereinafter referred to as “the CCPA”)¹³ conferring with the powers and functions to protect, promote and enforce the rights of consumer, prevent unfair trade practice or false and misleading advertisement; and to bring class action.¹⁴ The idea behind establishing the CCPA is to fill institutional void in the regulatory regime.¹⁵

The CP Act 2019 requires an electronic service provider to designate a nodal officer to receive any notice to be served on an electronic service provider by the Commissions to be established under the CP Act 2019; and for that purpose, an electronic service provider is also required to publish the address of such nodal officer on the platform from where it provides services.¹⁶ Section 2(16) of the Act 2019 also defines the term “e-commerce”. The definition reads as: “‘e-commerce’ means buying or selling of goods or services including digital products over digital or electronic network;”

Apart from the above provisions, the CP Act 2019 also introduces a new liability on product service providers. The CP Act 2019 makes “product service provider” liable in a product liability

¹³As per the news report, Consumer Affairs, Food and Public Distribution Minister Ram Vilas Paswan has said that under the Consumer Protection Act, 2019, the Central Consumer Protection Authority (CCPA) would be set up (by the first week of April 2020) to address issues related to consumer rights, unfair trade practices and misleading advertisements.< <http://newsonair.com/Main-News-Details.aspx?id=381629>> accessed 6 June 2020

¹⁴ The Consumer Protection Act 2019, s 18(1).

¹⁵ Standing Committee on Food, Consumers Affairs and Public Distribution, *The Consumer Protection Bill, 2015, Statement of Objects and Reasons* (Ninth Report, 2016) para 4.

¹⁶ The Consumer Protection Act 2019, s 65(2).

action when any conscious withholding of information by product service providers causes any harm,¹⁷ or the service providers fail to provide sufficient warning or instruction to avoid any harm.¹⁸ The “product service provider” is defined as: “product service provider, in relation to a product, means a person who provides any service in respect of such products”.¹⁹ Provisions are incorporated in the CP Act 2019 for the liability of manufacturer of the product to give warning with respect to improper and incorrect use, and adequate instructions for correct usage to avoid harm.²⁰ Further, any deliberate concealment of important information is defined as “misleading advertisement” under section 2(28) the CP Act 2019. The relevant provision of section 2(28) of the CP Act 2019 reads as:

“(28) ‘misleading advertisement’ in relation to any product or service, means an advertisement, which—

- (i)
- (ii)
- (iii)
- (iv) deliberately conceals important information;”

Thus, the Consumer Protection Bill 2015 made service providers liable for withholding relevant information. However, the Bill failed to define the term “relevant information”, which resulted in vagueness in the provision. Though the CP Act 2019 incorporates a similar provision, yet, the provision makes it more difficult for consumers to established “deficiency in service” by service provider, as a consumer is now required to establish withholding relevant information was deliberate from the side of the service provider. Further, the CP Act 2019 fails to recognise liability of e-commerce marketplace as a service provider; though, it has been recognised by many consumer forums in various decisions pertaining to consumer disputes in e-commerce. Hence, the following are the vital pieces of information, which are required in e-commerce for consumer protection, do not find a place in the CP Act 2019: (a) the identity, name, location, address of e-traders; (b) name, address, location and contact details of consumer grievance

¹⁷ The Consumer Protection Act 2019, s 85(b).

¹⁸ The Consumer Protection Act 2019, s 85(c).

¹⁹ The Consumer Protection Act 2019, s 2(38).

²⁰ The Consumer Protection Act 2019, s 84(e).

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redressal officer and procedure for filing such complaint and process of redressal such complaint; (c) inadequate description of goods or services; (d) expected delivery date; (e) time duration, procedure and conditions to claim cancellation of contract, repair or replacement of goods or services, refund of payment and compensation; (f) details of price of the goods or services, including taxes, delivery charges or other charges; (g) process of formation of consumer contract in e-commerce; and (h) protection of consumer data or information. In addition, provisions with respect to the time, language and manner of disclosure of the above-mentioned information in e-commerce platforms also do not find its place in the CP Act 2019. It has been suggested that the e-traders who do not provide information about their place of business establishment on their website must be punished by imposing punitive damages. It is further recommended that self-regulatory agencies like Euro label and Better Business Bureau (BBB) should also adopt in India. Such agencies provide certification to e-traders as to their authenticity, which ultimately enables consumers to trust an e-commerce platform for ordering goods or services.²¹ This suggestion can be further supported by the previous research on e-commerce deception that reveals that “human ability to detect deception is a little better than chance”. Hence, inability of consumers to differentiate between a genuine e-commerce site and a fake e-commerce site necessitated the requirement of support mechanism to help consumers to detect fraud e-commerce site.²²

It is suggested that compulsory physical presence of e-traders in India will ensure control of industry specific regulatory bodies over e-traders in India, and secondly, will enable courts to attach physical properties of e-traders in the event of consumer claims.²³ Further, it has also been argued that in addition to compulsory registration of e-traders in India, a national website should

²¹Pratima Narayan, ‘Jurisdiction Concerns in E-Consumer Contracts’ in Ashok R Patil (ed), *25 Years of Consumer Protection Act: Challenges and the Way Forward* (Chair on Consumer Law and Practice, National Law School of India University 2014).

²² Bo Xiao and Izak Benbasat, ‘Product-Related Deception in E-Commerce: A Theoretical Perspective’ (2011) *MIS Quarterly* 186.

²³Pratima Narayan, ‘Jurisdiction Concerns in E-Consumer Contracts’ in Ashok R Patil (ed), *25 Years of Consumer Protection Act: Challenges and the Way Forward* (Chair on Consumer Law and Practice, National Law School of India University 2014).

be maintain that should display the list of all the registered e-traders in India, which will help a consumer to identify a genuine e-trader.²⁴

To bring a level playing field, the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India amended the Legal Metrology (Packaged Commodities) Rules, 2011 in 2017. The new Legal Metrology (Packaged Commodities) Amendment Rules, 2017 imposes obligation on e-commerce entities to mandatorily display on digital or electronic platform the declaration as provided in sub-section 1 of section 6 of the Legal Metrology (Packaged Commodities) Amendment Rules, 2011 (the disclosure requirement of section 6 has been discussed in Chapter 3 of this study) except the details of month and year of manufacturing and packaging of the commodity. However, the new Amendment Rules exempts “marketplace based model of e-commerce”. In such cases, the responsibility of declaration to be made under section 6 of the Legal Metrology (Packaged Commodities) Amendment Rules, 2017 shall be on the seller or manufacturer or dealer or importer of the packaged goods.²⁵

In a move to bring authenticity and reduce anonymity of e-commerce traders, the recent e-Commerce Policy provides for compulsory registration of e-commerce sites/apps as business entity in India.²⁶ Non-registration will disentitle e-commerce websites or apps to receive payments through Indian banks or payment gateways.²⁷ In addition, e-commerce players would be required to make the following disclosures on their platforms: seller’s details including name, legal entity, address and contact details (which includes email and phone number);²⁸ an undertaking from the seller about the genuineness of product;²⁹ purposes and uses of data

²⁴M Mahindra Prabu and P Rajadurai, ‘The Ways to Empower the E-Consumer in the Alarming Field of Online Shopping’ in Ashok R Patil (ed), *25 Years of Consumer Protection Act: Challenges and the Way Forward* (Chair on Consumer Law and Practice, National Law School of India University 2014).

²⁵The Legal Metrology (Packaged Commodities) Amendment Rules 2017, rule 6(iii)(10).

²⁶Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, *Draft National e-Commerce Policy: India’s Data for India’s Development* (2019) para 3.4.

²⁷Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, *Draft National e-Commerce Policy: India’s Data for India’s Development* (2019) para 3.7.

²⁸Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, *Draft National e-Commerce Policy: India’s Data for India’s Development* (2019) para 3.9.

²⁹Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, *Draft National e-Commerce Policy: India’s Data for India’s Development* (2019) para 3.10.

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collection upfront in an easily understandable and simplified form;³⁰ ratings and reviews of consumers in a transparent and non-discriminatory manner;³¹ phone number and email address of grievance officer of e-commerce sites or apps;³² timeline of redressal of grievances of consumer, subject to the maximum period of one week;³³ list of prohibited products as prescribed by Directorate General of Foreign Trade (DGFT) or any other competent authority and an undertaking of seller with respect to non-engagement in transaction of such products.³⁴ Further, to bring transparency in price of foreign e-Commerce sites or apps available to Indian consumer which display price in Indian Rupee (INR), the e-Commerce Policy provides for compulsory display of maximum retail price (MRP) by such sites or apps on all physical products, packaged products and invoices.³⁵

The recent Draft Model Guideline on e-Commerce also proposes for certain disclosure requirement by e-commerce sites on their website; such as, details about sellers, including business identity, legal names, principal physical address, website names, contact details, email address, manner and mode of contacting by consumers, the nature of business, the products they sell;³⁶ contractual terms between sellers and e-commerce entity pertaining to guarantee/warranty, return, exchange, refund, modes of payment, delivery, grievance redressal mechanism to facilitate consumer in making informed choice;³⁷ security, manner of use, method of cancel, charge back options and other cost of various payment methods;³⁸ single-figure total price as

³⁰ Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, *Draft National e-Commerce Policy: India's Data for India's Development* (2019) para 3.8.

³¹ Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, *Draft National e-Commerce Policy: India's Data for India's Development* (2019) para 3.21.

³² Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, *Draft National e-Commerce Policy: India's Data for India's Development* (2019) para 3.23.

³³ Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, *Draft National e-Commerce Policy: India's Data for India's Development* (2019) paras 3.24-3.25.

³⁴ Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, *Draft National e-Commerce Policy: India's Data for India's Development* (2019) paras 3.26-3.27.

³⁵ Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, *Draft National e-Commerce Policy: India's Data for India's Development* (2019) para 3.5.

³⁶ Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Model Framework for Guidelines on e-Commerce for Consumer Protection* (2019) 2.

³⁷ Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Model Framework for Guidelines on e-Commerce for Consumer Protection* (2019) 3.

³⁸ Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Model Framework for Guidelines on e-Commerce for Consumer Protection* (2019) 3.

well as break up price, including delivery, taxes, postage, conveyance and handling;³⁹ health care and safety warning and shelf life of products;⁴⁰ reasonable and fair delivery terms or the shipping policy;⁴¹ upfront about how return, exchange and refund process carries out and the costs bearer of return shipping;⁴² name and contact details of grievance officer and the mechanism for filing complaints by consumers, and the complaint number for the purpose of tracking a complaint.⁴³ In addition, it has been proposed for mandatory display by e-commerce sellers the requisite information in pre-packaged commodities as prescribed by Legal Metrology (Packaged Commodities) Amendment Rules, 2017 and further information as required either by law or other mandatory regime which provides for disclosure of contractual information.⁴⁴

Conclusion

Thus, In India, the principal law for recognising consumers' right to be informed is the Consumer Protection Act, 2019. The CP Act 2019 recognises consumers' right to be informed about the "quality, quantity, potency, standards, purity and price of the goods or services". In addition to the provisions of the CP Act 1986, the Food Safety and Standards Act, 2006; the Food Safety and Standards (Packaging and Labeling) Regulations, 2011; the Legal Metrology (Packaged Commodities) Rules, 2011; the Drugs and Cosmetics Act, 1940; and the Drugs and Cosmetics Rules, 1945 also provide for specific information to be furnished to consumers by traders and/or manufacturers. Yet, all the provisions which provide for furnishing information about the goods or services and the price constitute a part of total information which may be required by a consumer in e-commerce for the protection of the consumer's rights and interest. The pieces of information, which are considered vital for the protection of consumers in e-commerce are: the information about the identity, name, location, address of traders; the name,

³⁹ Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Model Framework for Guidelines on e-Commerce for Consumer Protection* (2019) 4.

⁴⁰ Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Model Framework for Guidelines on e-Commerce for Consumer Protection* (2019) 4.

⁴¹ Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Model Framework for Guidelines on e-Commerce for Consumer Protection* (2019) 4.

⁴² Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Model Framework for Guidelines on e-Commerce for Consumer Protection* (2019) 4.

⁴³ Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Model Framework for Guidelines on e-Commerce for Consumer Protection* (2019) 5.

⁴⁴ Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Model Framework for Guidelines on e-Commerce for Consumer Protection* (2019) 4.

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address, contact details of the grievance officer, the process of complaint and the procedure of redressal of grievances; the process of formation of contract; description of goods or services; expected delivery date; time duration, procedure and conditions for seeking cancellation of contract, rejection and return of goods or service, claim for repair, replacement of goods or services, refund and damages; the price of the goods or services including taxes, delivery charges or other charges and modes of payments; and any other terms and conditions of the contract. Moreover, the point in time and the manner and language in which the information is required to be provided to consumers are also fundamental in e-commerce. However, any legal provision with respect to the disclosure of all the above information in e-commerce platform is largely missing in the existing Indian legal framework.

The CP Act 2019 provides that any conscious withholding of relevant information amounts to deficiency in service under the CP Act 2019. Yet, the CP Act 2019 fails to define the term “relevant information”, which a trader is bound to provide to a consumer.

In contrast to the Indian legal provisions, in the UK, the Electronic Commerce (EC Directive) Regulations, 2002 and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations, 2013 contain provisions for a good deal of information required to be provided by traders to consumers. Such legal provisions also provide the manner and standards of providing such information. The legal position is also similar in Canada, where the Internet Sales Contract Harmonization Template and the Canadian Code of Practice for Consumer Protection in Electronic Commerce have laid down detailed principles with respect to the prior information requirements of the consumers in e-commerce, and the manner or the standards of providing such information. The legal liability of e-traders in the event of breach of the obligation has also been prescribed under the legal provisions of the UK and Canada.