

## **E-Commerce and Jurisdiction in Consumer Disputes: Indian Perspective**

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### **Abstract**

The internet has made the world flat without any geographical boundary. E-commerce is built on electronic communication system that travels freely without any territorial boundary. E-commerce does not recognise either jurisdictional or geographic boundaries.<sup>1</sup> This nature of e-commerce creates a challenge in determining jurisdiction of courts in case of a dispute between a consumer and an e-trader. The existing legal framework for territorial jurisdiction is primarily focused on geographical boundaries. The challenges of jurisdiction in e-commerce do not restrain to resolution of consumer disputes but also include jurisdiction to regulate e-commerce for the protection of rights and interest of consumers. This paper is an honest attempt to analyse the jurisdictional issues and challenges in e-commerce and to test the efficacy of the existing legal framework in India with respect to jurisdiction to decide consumer disputes and regulate e-commerce platforms.

### **Introduction**

In e-commerce, due to its peculiar nature, geographical boundaries do not exist. Hence, anyone can buy any type of product or service from any seller from any place in the world. This feature of e-commerce is like air, water and birds, which also do not understand geographical boundaries and the governance in particular territory. On the other hand, jurisdiction for governance and deciding disputes in any system of government depends on the territorial jurisdiction over the subjects. These conflicting peculiarities of e-commerce and jurisdiction have given raise to many jurisdictional issues in e-commerce across the world in general and in India in particular, such as, territorial jurisdiction over e-commerce disputes, personal jurisdiction over e-commerce traders, and the territorial and personal jurisdiction to regulate e-commerce. Further, traders often through their policy and terms of sale exclude jurisdiction of other forums, except the forum determined by traders. Moreover, the use of “choice of law clause” in international consumer contract results in inconvenience to consumers in enforcing their rights in foreign countries, which is costly, time consuming and challenging. In addition, anonymity in the internet creates a new challenge in determining jurisdiction in e-commerce disputes.

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<sup>1</sup> Abdulhadi M Alghamdi, *The Law of E-Commerce: E-Contracts, E-Business* (1<sup>st</sup> edn, AuthorHouse 2011)1.

### **Fundamental Jurisdictional Issues in E-Commerce**

Jurisdictional issue is primarily determined by courts in case of any dispute. A court must have jurisdiction of both territorial and personal to decide a dispute. The traditional concept of territory has been changed with the increase of e-commerce; therefore, determining jurisdiction has become a problem.<sup>2</sup> A contract concluded in e-commerce may not attract the traditional principles of jurisdiction. For example, if P, from Mumbai chooses to download an e-book from an e-commerce platform operates from Malaysia; yet, the server of the e-commerce platform is located in Thailand. P pays through credit card. However, P is incapable to download the e-book due to the errors in the platform. Now, P wants to sue the e-trader who is in Malaysia, but the server of the e-commerce platform is in Thailand. Here the question arises: what is the place of resident of the defendant.<sup>3</sup> In e-commerce, a server stores the business including digital products. Hence, a question may arise whether the place of server can be considered as a place of business for determining jurisdiction. Yet, a server acts as a medium of communication just like telephone or telex machine which are used in offline commercial transaction. Further, an e-trader may use multiple servers for a single e-commerce transaction. For example, one server may be used for hosting website, for receiving orders and payments another server may be used and a third server may be used for storing and uploading digital products. In addition, a server simply provides technical support which does not have authority to make decisions, take responsibility or have autonomy.<sup>4</sup>

Further, in case of an international e-commerce agreement, it is difficult to identify which law of nations will be applicable to such agreement, the law of the nation of the buyer or the law of the nation of the seller. In practice, law of the nation of the vendor is applied in order to bring court proceedings against the vendor. Nevertheless, this practice results in serious inconveniences to consumers. Some cross border e-traders specifically mention in their e-commerce agreements that, though they operate in India, yet, laws of their own nation will govern them.<sup>5</sup> Besides, prosecuting e-traders in other countries is costly, challenging and also time consuming.<sup>6</sup> The ability of the internet to make a virtual global market has made the traditional geography based laws in India incompetent to tackle the issues attached to the

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<sup>2</sup> Masood Ahmed, Mohd Imran, An Analysis of E-Commerce, its impact issues concerning the rights of E-consumers, Indian Bar Review, (2018)Vol. 45(1) 2018, Bar Council of India Trust, New Delhi 122-123.

<sup>3</sup>Pratima 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).

<sup>4</sup>Pratima 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).

<sup>5</sup>M 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).

<sup>6</sup>Nuzhat Parveen Khan and Parveen Khan, 'Online Shopping in India: Issues and Challenges with Special Emphasis on the Consumer Protection Bill, 2015' [2018] *Jamia Law Journal* 11-12.

borderless nature of e-commerce transactions.<sup>7</sup> It would not be exaggerating to say that e-commerce reduces a state's capability to safeguard its domestic consumers and to regulate or control the goods or services which cross its geographical boundary.<sup>8</sup>

The difficulty in locating an e-trader is another unique challenge of e-commerce. Home pages, e-mail domains, electronic addresses of e-traders may not signify their geographical location. Hence, determining jurisdiction in such a situation would be difficult.<sup>9</sup> It has been observed that no presumption can be made about the place of business of the e-trader merely relying on the sole fact that the domain name or email address of the e-trader is connected to a particular country.<sup>10</sup>

Moreover, disputes or legal rights in e-commerce may not be limited to contractual disputes or rights.<sup>11</sup> Jurisdiction may be contractual and non-contractual. Non-contractual jurisdiction encompasses jurisdiction to regulate an e-commerce platform as well as the e-trader, which also raises an issue of concern for consumer protection. In addition, e-commerce site or app comes with "terms of service" agreement, that is subject to their own local laws, thus, any transaction with such site or app would bind a consumer to such agreement, and if any dispute arises, the consumer may have to resort to the principles of "private international law". However, application of the traditional principles of jurisdiction in a borderless internet transaction has remained challenging for the courts.<sup>12</sup>

The peculiarities of the internet and the anonymity in the internet as well as in e-commerce posed difficulties in determining jurisdiction that resulted in creating puzzles in the minds of consumers.<sup>13</sup> Additionally, locating the geographical address of e-commerce platforms is a difficult task for a consumer.<sup>14</sup> Thus, due to the jurisdictional problems, despite many consumer issues have arisen in e-commerce, only a small number of cases have been brought to consumer

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<sup>7</sup>Pratima 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).

<sup>8</sup>Sonia E Rolland, 'Atoms Versus Bits: Consumer Protection in the (Cyber) Trade Regime' (2014) Proceeding of the Annual Meeting (American Society of International Law), the Effectiveness of International Law 354.

<sup>9</sup>Pratima 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).

<sup>10</sup>Ammu Charles, *E-Commerce Laws: Law and Practices* (1<sup>st</sup> edn, Eastern Book Company 2019) 35.

<sup>11</sup> Aparna Viswanathan, *Cyber Law: Indian and International Perspective on key topics including Data Security, E-commerce, Cloud Computing and Cyber Crimes* (1<sup>st</sup> edn, LexisNexis Butterworths Wadhwa Nagpur 2012) 290.

<sup>12</sup> RK Singh, *Law Relating to Electronic Contracts* (2<sup>nd</sup> edn, LexisNexis 2016) 225.

<sup>13</sup> Karnika Seth, *Computers, Internet and New Technology Law* (2<sup>nd</sup> edn, LexisNexis 2016) 25.

<sup>14</sup> Masood Ahmed, Mohd Imran, 'An Analysis of E-Commerce, its impact issues concerning the rights of E-consumers' (2018) Indian Bar Review, Vol 45(1) 2018, Bar Council of India Trust, New Delhi 121.

forums and courts.<sup>15</sup> Further, considering the nature of e-commerce, enforcement of judgments of courts and laws of one country over the defendants in another country is problematic. In most of the cases (where the transaction value is small), the costs of enforceability are more than the benefit derive.<sup>16</sup>

Another issue with respect to dispute resolution and jurisdiction in e-commerce is the use of arbitration clause in consumer contracts in e-commerce. It has been argued that dispute resolution through arbitration is too costly for consumers. Further, in case of cross-border e-commerce transactions, consumers would be confused with respect to the applicable laws governing the dispute, as laws regulating e-commerce are substantially absent in many parts of the world.<sup>17</sup>

Thus, the peculiar nature of e-commerce creates a challenge in determining jurisdiction of courts in e-commerce disputes. In addition, the other major issues with respect to jurisdiction in e-commerce are: use of jurisdictional clause and arbitration clause in consumer contracts; anonymity in e-commerce; difficulties in identifying the geographical location of e-traders; determination of applicable law, jurisdiction in cross border e-commerce transactions; difficulties in enforcing judgments or orders of Indian courts or tribunals over foreign nationals in cross border e-commerce transactions; and jurisdiction of Indian authorities to regulate foreign e-commerce platforms as well as e-traders.

### **Jurisdiction in E-Commerce and the Information Technology Act, 2000**

In deciding jurisdiction of courts in contractual disputes, the place where the “cause of action” has arisen plays an important role. The place where the contract is formed is considered as a place where the part of “cause of action” has arisen. In case of non-instantaneous mode of communication, a contract is formed at a place where acceptance of the offer is dispatched. Whereas, in case of instantaneous mode of communication, a contract is formed at a place where the acceptance of the offer is received. Section 13 of the Information Technology Act 2000 (hereinafter referred as “the IT Act”) incorporates provisions to identify the place of despatch and receiving of electronic communication, which helps in identifying the place of formation of e-contact, and that decides the place of “cause of action” and jurisdiction of courts. Section 13(3) of the IT Act reads as:

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<sup>15</sup>Pratima 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).

<sup>16</sup>Jyoti Maheshwari and Pragya Vats, ‘E-Consumers: Protection and Solutions’ 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).

<sup>17</sup>Jyoti Maheshwari and Pragya Vats, ‘E-Consumers: Protection and Solutions’ 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).

“(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.”

Further, section 13(5)(b) of the IT Act provides the following provision which reads as:

“(5) For the purposes of this section,—

(a) .....

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;”

Hence, in applying the principles of section 13 of the IT Act and the principles of contract law, it may be concluded that in e-commerce, a contract is formed at the place of business or the place of residence of a consumer, the place where the consumer receives acceptance to his offer in e-commerce. Thus, “cause of action” partly arises at the place of business or residence of the consumer (where the consumer makes the offer and the e-trader accepts that offer), in the event of any consumer dispute in e-commerce. Therefore, by virtue of the provisions of section 13 of the IT Act, principles of contract law and rules of “cause of action”, consumer may knock the door of the court having territorial jurisdiction over his place of business or residence. However, the provisions under section 13 of the IT Act are subject to the contract between the parties, which gives an upper hand to the e-trader to override the default rules laid down in section 13 of the IT Act.

So far as exercising jurisdiction over foreign e-traders is concerned, the IT Act provides for extra territorial application of the Act. Section 75 of the IT Act expands its applicability outside the country. Section 75 of the IT Act reads as:

“Act to apply for offences or contravention committed outside India.—(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.”

However, it has been observed that the above provision is applicable with respect to the offences and contraventions as provided under the IT Act. Since the IT Act is an industry-based law, hence it apparently does not address the issues of local consumer grievances. Secondly, whether the authority established under the IT Act would have power over foreign e-traders who enter into contract with consumers over the internet is not clear under the existing provisions of

the IT Act. Further, presuming the e-traders would be bound by the authority, yet, foreign e-traders may simply ignore such authority.<sup>18</sup> It has been argued that the extraterritorial application of the IT Act is “only self-claimed”. This provision of the IT Act cannot compel foreign courts to enforce judgments passed by Indian courts on the basis of the provisions laid down in the IT Act.<sup>19</sup>

Apart from the above provisions, courts in India may also follow the Principles of International Law in order to exercise jurisdiction over foreign websites. The following are the four principles recognised as principle of International Law for deciding jurisdiction:<sup>20</sup>

- A. Passive personality test: As per this theory, any act in foreign nation which is harmful to the national of the forum state, the foreign national may be punished for such act.
- B. Protective principle: According to this principle, if the act of aliens, which is done from abroad affects security of the state, the state can assume jurisdiction over aliens.
- C. Extra territoriality principle: As per this principle, if the acts occurring abroad have effect within the forum state, the courts in the forum state can interfere with the acts occurring in foreign state.
- D. Universal principle: According to this principle, it is a matter of international public policy to suppress any criminal activities like trafficking, hijacking. Therefore, exercising jurisdiction in such cases is justified.

In civil matters, it has been recognised that by the agreement between the parties, parties may determine applicable law and jurisdiction. Yet, in the absence of such terms in the contract, the jurisdiction can be decided on the basis of following objective principles:<sup>21</sup>

- A. Place of business or habitual residence of the person who has to perform the contract.
- B. For the performance of the contract, the place where necessary step was taken.
- C. Place where an invitation to enter into contract or an advertisement was received.
- D. Place where an agency or a branch is located.

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<sup>18</sup>Pratima 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).

<sup>19</sup>PD Sebastian, ‘Governance of Cyberspace: Some Reflections on Jurisdiction’ in Vimlendu Tayal (ed), *Cyber Law Cyber Crime Internet and E-Commerce* (Bharat Law Publications 2011).

<sup>20</sup>Sarla Gupta and Beniprasad Agrawal, *Cyber Laws: Law Relating to Information Technology, Hacking, Intellectual Property Rights, Trade Marks, E-Commerce, Computers, Computer Software, Internet and Cyber Crimes etc* (2<sup>nd</sup>edn Premier Publishing Co 2016) 976.

<sup>21</sup>Sarla Gupta and Beniprasad Agrawal, *Cyber Laws: Law Relating to Information Technology, Hacking, Intellectual Property Rights, Trade Marks, E-Commerce, Computers, Computer Software, Internet and Cyber Crimes etc* (2<sup>nd</sup>edn Premier Publishing Co 2016) 976.

However, in case of consumer contract, it has been recognised that mandatory rules of national law shall apply irrespective of the choice of law.<sup>22</sup>

Thus, in an internet dispute, each party, service providers may come from different jurisdictions and the effect of its transaction might be felt altogether in a different jurisdiction; therefore, it is justifiable for the state to assume jurisdiction over the internet based disputes. The internet allows everyone to deal with the people of every country in the world. Even without soliciting any customer in any state, simply with a website, one can receive order for illegal goods, bets for any prohibited services or behavior from any jurisdiction. Due to the pervasiveness of the internet, without really trying, it may be literally everywhere. Thus, without accepting the burden of being held liable wherever they do business, one cannot take the benefit of the convenience of the internet.<sup>23</sup> Though in absence of specific provision in the IT Act, the Delhi High Court in *Banyan Tree*<sup>24</sup> case tried to evolve principles to determine jurisdiction of the court in the internet related activities, however, the following issues remain unanswered: (a) the issues with respect to jurisdiction to regulate foreign e-commerce platforms doing businesses in India; (b) use of legality of jurisdiction exclusion clause or choice of law clause (by foreign e-traders) in e-commerce consumer contracts; (c) the issue with respect to anonymity in internet resulting in lack of clarity pertaining to geographical location of e-commerce platforms; (d) the issue of enforcement of Indian court's judgment in foreign nation.

Thus, the Indian legal position is ambiguous and unclear without any specific principle for the court with respect to the jurisdiction of courts in e-commerce. Hence, concrete principles are needed to determine jurisdiction of Indian courts in the virtual world.<sup>25</sup>

### **Issues of Jurisdiction in E-Commerce and the Consumer Protection Act, 2019**

In determining the jurisdiction of the consumer forums, it is important to identify and define complainant, business, place of business, mode of business and transaction between consumers and traders. The Consumer Protection Act, 2019 (hereinafter referred to as “the CP Act 2019”) expanded the meaning of all the indicators, which may determine the jurisdiction of consumer forums.

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<sup>22</sup> Reed C, *The Internet Law, Text and Materials* cited in Sarla Gupta and Beniprasad Agrawal, *Cyber Laws: Law Relating to Information Technology, Hacking, Intellectual Property Rights, Trade Marks, E-Commerce, Computers, Computer Software, Internet and Cyber Crimes etc* (2<sup>nd</sup>edn Premier Publishing Co. 2016) 976.

<sup>23</sup>Sarla Gupta and Beniprasad Agrawal, *Cyber Laws: Law Relating to Information Technology, Hacking, Intellectual Property Rights, Trade Marks, E-Commerce, Computers, Computer Software, Internet and Cyber Crimes etc* (2<sup>nd</sup>edn Premier Publishing Co. 2016) 976.

<sup>24</sup> *Banyan Tree Holding (P) Limited v A Murali Krishna Reddy* [2009] MANU/DE/3072.

<sup>25</sup>MrinaliKomandur, 'Jurisdiction and enforcement of E-Commerce Contracts' [2017] International Journal on Consumer Law and Practice 91.

The CP Act 2019 recognises e-commerce as a form of business within the definition of “consumer”. The scope of the ways of transactions, which a consumer is required to enter into to become a consumer is extended by the CP Act 2019 by incorporating the new words in the definition of “consumer”, which read as: “the expressions ‘buys any goods’ and ‘hires or avails any services’ includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing”.<sup>26</sup>

Further, the CP Act 2019 enlarges the definition of the term “goods” under section 2(21). The term “food”, as defined by the Food Safety and Standard Act, 2006, is incorporated within the definition of “goods” under the CP Act 2019. Section 2(21) of the CP Act reads as:

“goods means every kind of movable property and includes ‘food’ as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006;”

The implication of this change is to bring the food delivery platforms in e-commerce within the purview of the CP Act 2019.<sup>27</sup>

The CP Act 2019 defines the term “product liability”, which reads as:

“product liability means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto;”

Thus, under the CP Act 2019, a manufacturer or a seller of any defective product or service relating thereto will be required to pay compensation to consumer.<sup>28</sup> Further, the CP Act 2019 specifically defines the terms “product manufacturer”,<sup>29</sup> “product seller”<sup>30</sup> and “product service

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<sup>26</sup> The Consumer Protection Act 2019, s 2(7) explanation (b).

<sup>27</sup> Satvik Verma, ‘Consumer Protection Act, 2019: Enhancing Consumer Rights’ (*Bar & Bench*, 2 September 2019) <<https://www.barandbench.com/columns/consumer-protection-act-2019-enhancing-consumer-rights>> accessed 6 January 2020.

<sup>28</sup> The Consumer Protection Act 2019, s 2(34).

<sup>29</sup> Section 2(36) of the Consumer Protection Act 2019 defines “product manufacturer”, which includes a maker, assembler, a person who puts his mark on the product, designer, fabricator, producer, constructor, remanufacturer, a maker who sells, distributes, installs, leases, packages, prepares, markets, labels, maintains, repairs or otherwise involve in placing the product for commercial purpose.

<sup>30</sup> The term “product seller” is defined in section 2(37) of the Consumer Protection Act 2019, which includes a person, in the course business, sells, imports, installs, distributes, prepares, leases, labels, packages, repairs, markets, maintains, or a service provider or in involve in placing the product for commercial purpose; but does not include a seller of immovable property, unless such person sells constructed house, homes or flats; person involve only in a financial capacity, or leases a product, or an electronic service provider.



provider”<sup>31</sup>. Thus, these provisions have expanded the scope of consumer protection under the CP Act 2019.

The CP Act 2019 incorporates new criteria to determine the jurisdiction of District Commission. The new provision provides that the District Commission shall have jurisdiction if within the local limits of its jurisdiction, *inter alia*, “a complainant resides or personally works for gain”.<sup>32</sup> A similar provision has also incorporated with respect to the jurisdiction of State Commission.<sup>33</sup> This provision provides an added benefit to consumers in e-commerce. This provision would enable consumers to conveniently seek redressal of their grievances against the e-traders who do not, generally, have any branch or office in their district or state.<sup>34</sup> This provision also makes the affair simpler, as due to the scattered nature of e-commerce transactions, it is complicated to determine the place of business of e-commerce traders who operate over the internet.<sup>35</sup>

The CP Act 2019 also brings convenience in filing complaint before the District Commission by giving an option to file a complaint “...electronically in such manner as may be prescribed”.<sup>36</sup> Further provision is also made in the CP Act 2019 with respect to filing of a complaint in case a consumer is a minor. In such a case, minor’s parent or legal guardian can be a complainant as per the new definition “complainant”.<sup>37</sup> Further, the CP Act 2019 enlarges the responsibility under the product liability action. The provisions under this Act impose obligations under product liability actions on the product service providers in addition to the manufacturers and the sellers of the product.<sup>38</sup> The CP Act 2019 incorporates and defines the term “consumer rights”.<sup>39</sup> The

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<sup>31</sup> Section 2(38) defines “product service provider” as “product service provider, in relation to a product, means a person who provides any service in respect of such product”.

<sup>32</sup> The Consumer Protection Act 2019, s 34(2)(d).

<sup>33</sup> The Consumer Protection Act 2019, s 47(4)(d).

<sup>34</sup> GaurangKanth and Divjot Singh, ‘The Consumer Protection Act, 2019: An Overview’ (*Mondaq*, 18 December 2019) <<http://www.mondaq.com/india/x/876600/DoddFrank+Wall+Street+Reform+Consumer+Protection+Act/The+Consumer+Protection+Act+2019+An+Overview>> accessed 5 January 2020.

<sup>35</sup> SoumyaShekhar, ‘All that you need to know about the new consumer protection law’ (Citizen Matters, 30 October 2019) <<http://citizenmatters.in/faq-consumer-protection-amendment-act-14404>> accessed 6 January 2020.

<sup>36</sup> The Consumer Protection Act 2019, s 35(1) proviso.

<sup>37</sup> The Consumer Protection Act 2019, s 2(5)(vii).

<sup>38</sup> The Consumer Protection Act 2019, s 2(6)(vii).

<sup>39</sup> The Consumer Protection Act 2019 under section 2(9) expressly defines six categories of “consumer rights”. The definition reads as: “consumer rights includes,—

- (i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
- (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practice;
- (iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- (iv) the right to be heard and to be assured that consumer’s interest will receive due consideration at appropriate fora;

CP Act 2019 incorporates detailed provisions to give power to the Central Consumer Protection Authority (CCPA) to investigate, take action or other measures for the protection of consumer rights.<sup>40</sup>

Further, the CCPA has been empowered under section 18 of the CP Act 2019 with the following powers to protect consumers' rights:

“(1) The Central Authority shall—

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

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Central Authority may, for any of the purposes aforesaid,—

- (a) inquire or cause any inquiry or investigation to be made into violation of consumer rights or unfair trade practices, either *suomotuor* on a complaint received or on the direction from the Central Government;
- (b) file complaints before the District Commission, State Commission or the National Commission, as the case may be, under this Act;
- (c) intervene in any proceedings before the District Commission, the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;
- (d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;
- (e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
- (f) undertake and promote research in the field of consumer rights;
- (g) spread and promote awareness on consumer rights;
- (h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;
- (i) mandate the use of unique and universal goods identifier in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;

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(v) the right to seek redressal against unfair trade practice or restrictive trade practice or unscrupulous exploitation of consumers; and

(vi) the right to consumer awareness;”

<sup>40</sup> The Consumer Protection Act 2019, s 18-22.

- (j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
- (k) advice the Ministries and Departments of the Central and the State Governments on consumer welfare measures;
- (l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.”

The CCPA is further authorised to conduct a preliminary inquiry to find out a *prima facie* case of unfair trade practice or false or misleading advertisement or any violation of consumer rights. In furtherance of its inquiry, if it finds any preliminary case, the CCPA is required to cause the full investigation to be made by the District Collector or the Director General.<sup>41</sup> However, if the CCPA is of the opinion that the issue should be dealt by a concern Regulator established by law, it may refer the issue to that regulator with its report.<sup>42</sup>

Moreover, if after the investigation, the CCPA finds that any advertisement is false or misleading or against the interests or rights of consumer, it may direct the advertiser or the trader or the manufacturer or the publisher or the endorser to discontinue such practice or to modify in the manner and within time as may be prescribed in the order.<sup>43</sup> Further, the CCPA may also impose penalty for false or misleading advertisement.<sup>44</sup> Thus, the CCPA will fill the institutional void in regulating traders for the purpose of consumer protection.

Apart from the dispute settlement through consumer forums, the CP Act 2019 introduces mediation as a form of settlement of consumer disputes. The State Governments are obliged to establish “District Consumer Mediation Cell”, which is to be attached to the District Commission in each district and a “Consumer Mediation Cell” to be attached to the State Commission.<sup>45</sup> Further, the Central Government is obliged to establish a “National Consumer Mediation Cell” to be attached to the National Commission.<sup>46</sup>

Thus, among many new welcoming provisions in the CP Act 2019, two provisions which may provide relief to consumers to a greater extent are: (a) the provision which enables consumers to file a complaint in the District Commission or the State Commission within whose local jurisdiction the complainant resides or personally works for gain; and (b) empowering the CCPA as an administrative body to protect consumers' rights and interests. However, the following questions still remain unanswered under the existing provisions of the CP Act 2019: (a) Will consumer forums be able to exercise jurisdiction over foreign e-traders? (b) Will the CCPA be

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<sup>41</sup> The Consumer Protection Act 2019, s 19(1).

<sup>42</sup> The Consumer Protection Act 2019, s 19(2).

<sup>43</sup> The Consumer Protection Act 2019, s 21(1).

<sup>44</sup> The Consumer Protection Act 2019, s 21(1).

<sup>45</sup> The Consumer Protection Act 2019, s 74(1).

<sup>46</sup> The Consumer Protection Act 2019, s 74(2).

able to regulate foreign e-traders for the protection of consumers in India? (c) Whether foreign e-traders are required to comply with consumer protection laws in India? (d) Will the decisions of the consumer forums be enforceable in the foreign nation against the foreign e-traders? (e) Will the consumer forums still be able exercise jurisdiction in the presence of arbitration clause, or choice of forum clause, or choice of law clause in the consumer contract? (f) How will the consumer forums and enforcement agencies trace the location of e-traders of anonymous or fraud character? Answers to these questions are vital for the effective protection of consumers in e-commerce. It has been argued that the internet is fundamentally global in nature and the challenges brought about by it have global implications. Hence, e-commerce cannot be sustained in an atmosphere of legal uncertainty. Legal principles must be developed recognising the global character of e-commerce.<sup>47</sup> Thus, it has been observed that considering the unequal bargaining power and the difference of economic resources between the consumer and the seller, burden should not be imposed upon consumers to sue defendant in a foreign state.<sup>48</sup>

Further, for protecting consumers from cross-border e-commerce frauds, it has been suggested that governments, representatives of consumers and business players across the world should develop a common legal framework similar to the “EU Directives on E-commerce” in the form of commonly applying principles for addressing jurisdictional issues in e-commerce. As a first step, a common regulatory framework should be developed among the South Asian Countries similar to the EU directives.<sup>49</sup> Further, it has been recommended that for the protection of consumers in cross-border transactions, India should join international network, such as, the International Consumer Protection and Enforcement Network (ICPEN), which collects and shares international consumer complaints and also provide help to consumers in resolving their disputes.<sup>50</sup> Technologically enabled abuses can be checked through the technological innovations. Hence, in dispute resolution in e-commerce, technology based tools such as “video conferencing” or “software-based mediation” can help in resolving disputes in e-commerce. Additionally, this method may especially help e-consumers as e-consumers are familiar with technology.<sup>51</sup>

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<sup>47</sup>Farooq Ahmed Mir, ‘Legal Aspects of E-Commerce in India’ in Vimlendu Tayal (ed), *Cyber Law Cyber Crime Internet and E-Commerce* (Bharat Law Publications 2011).

<sup>48</sup>Jaokim ST Oren, ‘International Jurisdiction over Consumer Contracts in e-Europe’ (2003) *The International and Comparative Law Quarterly* 669.

<sup>49</sup>Pratima 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).

<sup>50</sup>M 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).

<sup>51</sup>Jyoti Maheshwari and Pragya Vats, ‘E-Consumers: Protection and Solutions’ 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).

The recent e-Commerce Policy of the Government of India realised the importance of electronic redressal of consumer grievances in e-commerce. The Policy promised that a system of electronic grievance redressal mechanism will be established, which will further enable the mechanism to award compensation to aggrieved consumer electronically.<sup>52</sup>

The recent Draft Model Guidelines on e-Commerce has proposed a little step, in realising the importance of regulating e-commerce entities, by bringing them within the purview of Indian legal system. The Draft Model has proposed for compulsory registration of e-commerce entities carrying or intended to carry business in India and mandatory submission of a self-declaration to the Department of Consumer Affairs stating that entities are in compliance with the requirements under the Guidelines.<sup>53</sup>

### Conclusions

The IT Act has its extra territorial jurisdiction. Hence, if any person contravenes any provision of the IT Act, which involves any computer network, computer or computer system in India, the courts in India may exercise jurisdiction in such case. The Delhi High Court in *Banyan Tree*<sup>54</sup> has accepted the “effect” test along with the “sliding scale” test of the US Courts for determining jurisdiction in internet based disputes. Apart from these tests, several other tests have also been accepted in deciding jurisdiction over foreign nationals in general, such as, passive personality test, protective principle, extra territoriality principle and universal principle.

The Civil Procedure Code, 1908 (hereinafter referred to as “the CPC”) also provides provision for deciding jurisdiction of civil court in contractual disputes in general. However, the provisions are similar with the provision for deciding jurisdiction in the CP Act 1986.

Thus, from the perspective of consumer protection in e-commerce, the existing legal framework of India is inadequate with respect to the jurisdictional issues in e-commerce, particularly, the issues with respect to personal and territorial jurisdiction; ousting jurisdiction clause in a consumer contract; and the jurisdiction to regulate and prescribe standards for foreign e-commerce businesses.

Though many provisions are incorporated in the CP Act 2019 which expand the jurisdiction of consumer forums, yet, the issues with respect to the power to regulate foreign e-commerce website, the practices of ousting jurisdiction of consumer forums or laws of residence of

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<sup>52</sup> 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 4.16.

<sup>53</sup> 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.

<sup>54</sup> *Banyan Tree Holding (P) Limited v A Murali Krishna Reddy* [2009]MANU/DE/3072.

consumers by e-commerce traders remain untouched under the existing provisions of the CP Act 2019.

In the UK, the CR Act does not give validity to any consumer contract, which excludes the applicable law of the European Economic Area (EEA), if the contract has a close connection with the UK.