
THEORY OF TRUST AND E-COMMERCE ENTITIES

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“It is not the consumer who is the king, but it is the large corporation who is the king in the economy. Whatever happened is not because the consumer wants it but because large and powerful corporations prefer it that way”

– John K. Galbraith.

Introduction:

Trust is paramount for a well-functioning digital market that benefits all. Consumer protection policies and laws are critical in building trust by protecting consumers from defective products, deceptive and abusive practices, and fraud. The consumer protection act of 2019 replaced the 1986 act recognizing the challenges posed by digital trade, e-commerce and social media marketing. E-commerce has introduced complexities into the consumer marketplace. Seller on digital platform through tactics such as flash sales, fake reviews, and manipulated ratings can distort the market dynamics and exercise an unfair competitive advantage eroding the consumer trust.

Research Objectives:

1. To identify the specific types of unfair trade practices currently prevalent in India and suggest measures to address these issues by aligning with established standards and practices.
2. To analyse the scope and adequacy of the Consumer Protection Act, 2019 in addressing consumer rights within digital and online marketplaces.
3. To examine the operational and regulatory challenges faced by enforcement bodies in implementing consumer protection measures against e-commerce entities.
4. To identify legal and institutional shortcomings within the current consumer protection framework and propose reforms to enhance its effectiveness in the digital economy.

Methodology:

This research employs an integrated methodology combining both normative juridical and empirical juridical approaches to examine the legal mechanisms addressing advertisements that breach advertising norms and their role in safeguarding consumer rights. The study follows a qualitative and descriptive research design, relying mainly on secondary data sources. Under the normative juridical approach, relevant legal materials such as statutes, regulations, guidelines, and judicial decisions are analysed to understand the principles governing advertising practices and their adherence to procedural standards. The empirical juridical component involves collecting and reviewing secondary data through extensive literature analysis using the documentary study method. The gathered information will undergo thematic analysis to identify key patterns and emerging trends. Through this methodology, the study seeks to deliver a holistic evaluation of existing legal measures, enhance comprehension of consumer rights protection, and propose constructive recommendations for strengthening the legal framework in this area.

Who is a consumer?

A consumer is generally understood to be a person who consumes any goods or avails any service. Under section 2(7) of the consumer protection act, consumer refers to any individual who avails services or purchases goods for consideration whether partly or fully paid and promised to be paid. It also includes the users of such goods or person getting benefited from such services. The act extends to both offline and online transactions, including those transacted through electronic mean, teleshopping, direct selling or multilevel marketing.

Unfair trade practices:

Unfair trade practices represent a broader category of deceptive or wrongful actions that results in economic harm. It also refers to the electronic service provider disclosing to another person any personal information given in confidence by the consumer. The rapid development of e-commerce has led to a new delivery system for goods and services and at the same time exposed consumers vulnerable to new forms of unfair trade practices. Unfair trade practices in the e-commerce sector are set of deceptive and manipulative practices that is inclusive of deceptive advertising wherein an e-commerce entity makes a false claim about products' quality and such other features, Fake reviews, pricing misrepresentation, discriminatory pricing and contractual

and service breaches which includes the refusal to refund or return for defective products. Further it also includes Digital manipulation that are commonly referred to as Dark Patterns involving the use of deceptive interface designs in order to coerce users.

Unfair trade practices in India:

The consumer behaviour and market operations has undergone a profound transformation through the expansion in Indian economy, globalization of markets, and technological advancements. The integration of information and communication technology has created a border-less digital economy. This has further exposed consumers to new vulnerabilities and unethical practices such as false advertisement, defective goods, misleading pricing, adulteration, counterfeit products and such other practices. The traditional concepts of caveat emptor or let the buyer beware has now lost its relevance, and at present consumers completely rely upon the information provided by the sellers for their purchases made online. Consequently, consumers in developing country particularly in India's open and expanding market are frequently deceived and exploited through unfair trade practices.

Theory of trust:

Theory of trust serves as a foundational concept that facilitates consumer engagement in digital marketplaces. Consumers inherently rely upon the expectation that e-commerce platforms and online sellers will act with reliability, competence and integrity in delivering the product and services.

- I. The misleading advertisement and deceptive practices continue to undermine trust in the online platforms. Widespread and unregulated presence of sponsored content, fabricated reviews distort the consumers ability to make informed decisions. This requires increased caution on the part of the consumer. However, such vigilance is not uniformly attainable for consumers who are less adept to technology and vulnerable consumer groups.
- II. Security vulnerabilities and data privacy breached poses a significant threat to consumer confidence in digital market. These breaches erode the public trust in digital systems, discouraging engagement and investment in online services.
- III. Accountability in digital platform remains ambiguous and inconsistent. These

platforms act as intermediaries rather than direct vendors, diffusing responsibility when issues arise. This has an adverse impact upon the enforcement mechanism weakening consumer protection regime.

The Consumer Protection Act, 2019, along with the E-Commerce Rules, 2020, acts as a comprehensive legislative framework safeguarding consumer rights and ensuring transparency and accountability of e-commerce entities.

The enforcement bodies implementing consumer protection measures against ecommerce entities faces significant operational and regulatory challenges. In India despite the enactment of consumer protection act, 2019 and the related e-commerce rules, enforcement is primarily hindered through infrastructural inadequacies and delay in dispute resolution. The intermediary role of the e-commerce entities dilutes their accountability. Further the enforcement authorities suffer from the issues of algorithmic transparency and data protection. Moreover there is a need for enforcement agencies to coordinate with other international agencies to effectively address the cross-border disputes. In order to address these issues there is a need to enhance the capacity of enforcement bodies with adequate technology such as AI driven monitoring tools, enhanced consumer education campaigns and such other. The need of the hour is to integrate and bridge the gap between legislative intent and ground level enforcement.

Given the unique market structure in developing economies like India, what legislative framework a standalone UTP statute or, integration into antitrust law, or integration into consumer protection law is most effective for safeguarding consumer welfare and protecting small and medium enterprises from unfair practices?

The development and implementation of laws and regulations on unfair trade practices in developing economy like India must be in line with special developmental context such as high consumer vulnerability due to low consumer awareness and education, especially in rural areas making them easily susceptible to misleading advertisements and substandard goods. The existence multiple overlapping or distinct laws can lead to complexity and jurisdictional issues. The presence of a large informal sector, significant barriers to market entry, high concentration of economic power, and endemic corruption in developing economies requires Unfair Trade Practices law to adopt a contextualized approach.

In the light of evolving market structure in developing economies like India, integration of Unfair trade practices into consumer protection law is the most effective for safeguarding consumer interests. A dedicated consumer protection framework, with a strong regulator such as central consumer protection authority provides a direct, efficient and easily accessible avenue for addressing consumer grievances. This allows redressal not only of individual transaction related issues but also allows for collective action against widespread unfair trade practices. The broader definition of Unfair Trade practices under the consumer protection act ensures legal adaptability in the digital era of exploitation. Further, the Consumer Protection (e-commerce) rules, 2020 directly regulates online platforms. These rules are crucial for addressing practices such as preferential listing, deep counting and restrictive agreements which puts the small and medium enterprises in an unfairly disadvantageous position. The rule provides for immediate and practical safeguard against unfair trade practices by imposing specific duties upon the e-commerce entities. The consumer centric approach of consumer protection act offers speedy and cost-efficient access to justice in addressing digital market challenges making the need for standalone unfair trade practice statutes superfluous.

But there exists a significant gap between the potential of the act as evident from its wordings and on-the-ground implementation and enforcement. The official statements and press releases from the department of consumer affairs often cite the major impediment to the goal of expedited redressal to be the backlog of cases. The reports and advisories from the central consumer protection authority for instance the 2023 guidelines for the prevention and regulation of dark patterns highlights the evolving nature of digital unfair trade practices. General critics and published scholarly research papers highlights the persistent problem of low consumer awareness especially in rural and semi-urban areas. Further the effectiveness of consumer dispute redressal commission is hampered by inadequate infrastructure and vacancies of judicial and non-judicial members. Even the e-Jagriti portal introduced by the government suffers from significant shortcomings such as digital exclusion of consumers in remote or less digitally aware areas.

Virtual courts and application of artificial intelligence for legal precedents can speed up the justice delivery system. Adequate measures can be taken to provide for technological infrastructure and training. There can be a shift towards alternative dispute resolution mechanisms which helps reduce the litigative burden. There must be a substantial increase in budgetary allocation for human resources and technological infrastructure and strengthen the

regulatory authorities to tackle systematic unfair trade practices through punitive measures thereby pre-empting large volume of individual litigations.

Jurisdictional conflict in cross border e-commerce:

The regulatory and legal challenges focus upon the limitations of legal frameworks which impede effective e-commerce consumer protection. The fundamental difficulty lies in the application of territorial laws to the borderless e-commerce functionality. The issue of determining where the e-commerce contract was formed and determining the applicable law remains as a biggest challenge in cross border e-commerce consumer dispute. The jurisdictional ambiguity is further complicated primarily because of lack of uniformity in international consumer protection rules.