"E-Consumer Protection Laws in India: A Structural Analysis"

A Thesis Submiteed

To

Sikkim University

In Partial Fulfilment of the Requirement for the

Degree of Doctor of Philosophy

By

[Deepankar Rai]

[Department of Law]

[School of Social Sciences]

[May – 2019]

Date: 26.05.2019

DECLARATION

I, **DEEPANKAR RAI,** hereby declare that the research work embodied in the thesis titled "**E-Consumer Protection Laws in India: A Structural Analysis**" submitted to the Sikkim University in partial fulfilment of the requirement for the **Degree of Doctor of Philosophy** is my original work. This thesis has not been submitted for any other degree of this University or any other University.

DEEPANKAR RAI

Ph.D. Registration No:
15/Ph.D/LAW/01
Registration Date:
20.05.2016
Department of Law
School of Social Sciences

6 माइल, सामदुर, तादोंग -737102
गंगटोक, सिक्किम, भारत
फोन-03592-251212, 251415, 251656
टेलीफैक्स -251067
वेबसाइट - www.cus.ac.in

6th Mile, Samdur,Tadong -737102
Gangtok, Sikkim, India
Ph. 03592-251212, 251415, 251656
Telefax: 251067
Website: www.cus.ac.in

सिक्किम विश्वविद्यालय
SIKKIM UNIVERSITY

(भारत के संसद के अधिनियम द्वारा वर्ष 2007 में स्थापित और नैक (एनएएसी) द्वारा वर्ष 2015 में प्रत्यायित केंद्रीय विश्वविद्यालय)
(A central university established by an Act of Parliament of India in 2007 and accredited by NAAC in 2015)

Date: 28/5/19

CERTIFICATE

This is to certify that Thesis titled "E-Consumer Protection Laws in India: A Structural Analysis" submitted to the Sikkim University for the partial fulfilment of the degree of Doctor of Philosophy in the Department of Law, embodies the result of bonafide research work carried out by DEEPANKAR RAI under my guidance and supervision. No part of the dissertation has been submitted for any other Degree, Diploma, Association and fellowship.

All the assistance and help received during the course of investigation have been duly acknowledge by him.

We recommend that this thesis be placed before the examiner for evaluation.

Supervisor

Research Supervisor
Department of Law
Sikkim University

Dr. Nidhi Saxena
Assistant Professor
Department of Law
School of Social Sciences
Sikkim University

Head of Department

HEAD
Department of Law
सिक्किम विश्वविद्यालय
Sikkim University

Dr. Pravin Mishra
Associate Professor
Department of Law
School of Social Sciences
Sikkim University

6 माइल, सामदुर, तादोंग -737102
गंगटोक, सिक्किम, भारत
फोन-03592-251212, 251415, 251656
टेलीफैक्स -251067
वेबसाइट - www.cus.ac.in

सिक्किम विश्वविद्यालय
SIKKIM UNIVERSITY
(भारत के संसद के अधिनियम द्वारा वर्ष 2007 में स्थापित और नैक (एनएएसी) द्वारा वर्ष 2015 में प्रत्यायित केंद्रीय विश्वविद्यालय)
(A central university established by an Act of Parliament of India in 2007 and accredited by NAAC in 2015)

6th Mile, Samdur,Tadong -737102
Gangtok, Sikkim, India
Ph. 03592-251212, 251415, 251656
Telefax: 251067
Website: www.cus.ac.in

Date: 25.05.19

PLAGIARISM CHECK CERTIFICATE

This is to certify that plagiarism check has been carried out for the following Ph.D. thesis with the help of **URKUND SOFTWARE** and the result is 2 % tolerance rate ,which is within the permissible limit (below 10% tolerance rate) as per the norm of Sikkim University.

"E-CONSUMER PROTECTION LAWS IN INDIA: A STRUCTURAL ANALYSIS"

Submitted by ***(Deepankar Rai)*** under the supervision of ***(Dr. Nidhi Saxena, Assistant Professor, Department of Law, School of Social Sciences, Sikkim University)*** Gangtok, Pin 737101, India.

.....
Signature of the Scholar
(DEEPANKAR RAI)

Research Supervisor
Department of Law
Sikkim University
.....
Countersigned by the Supervisor

.....
Vetted by Librarian 28/5/19

Librarian
Teesta-Indus Library
SIKKIM UNIVERSITY
6th Mile, Samdur, PO: Tadong
Gangtok-737102, Sikkim India

CONTENTS

ACKNOWLEDGEMENT

Date: 26th May 2019

I would like to express my special appreciation and thanks to my supervisor Dr. Nidhi Saxena, Assistant Professor, Department of Law, Sikkim University, Gangtok for her incredible and valuable support and supervision throughout this research work. In fact, no words suffice to express my deep sense of gratefulness towards her, who has been a source of stimulation as well as encouragement throughout my research work without her kind support and cooperation the study would not have been possible. She has been a source of constant motivator in my critical situations.

I am indebted towards Dr. Tshewang Dorjee Lama, Assistant Professor, Sikkim Government Law College, Burtuk with whom I have spent many memorable occasions discussing several other study related legal issues at his office which has always been a source of abundant inspiration.

I am extremely grateful towards Shri Veer Mayank, Assistant Professor, Department of Law, Sikkim University for his precious and valuable advices. I should not forget to recall Miss. Denkila Bhutia, Assistant Professor, Department of Law, Sikkim University, Dr. Sonam Yangchen Bhutia, Assistant Professor, Department of Law, Sikkim University and Shri Vijoy V, Assistant Professor, Department of Law, Sikkim University for their constructive enquiry, suggestions and perennial support. Thank you all for being wonderful teachers of my life.

I am grateful to Hon'ble Vice Chancellor, Professor Avinash Khare and Ex-Vice Chancellor Professor Jyoti Prakash Tamang and Professor T.B Subba, Sikkim University for the opportunity and facilities that were provided at every step, which

has helped me in numerous ways to complete this Research work on time. I would like to extend my sincere gratitude towards Dean School of Social Sciences Professor Nawal Kishor Paswan, Head Department of Law, Associate Professor Dr. Pravin Mishra and former HOD (Law) Professor Imtiaz Gulam Ahmed for their continued support which was an unremitting guidance for me.

Further, I would like to thank entire faculty as well as non-faculty members (including library staffs) of the Sikkim University and the library staffs of High Court of Sikkim for providing immense support and guidance while researching for the materials related to my research.

I would be failing in my duties if I do not thank the University Grant Commission for providing me with the Scholarship for undertaking this research work.

I would also like to extend my sincere appreciation towards my younger sister Miss Neelam Rai for bringing fruitful, meaningful and enjoyable time while preparing this manuscript and to Shri Nawin Rai for taking the pain staking work of lay out setting, printin and binding this manuscript at his press New Light Enterprise Old Children Park Tibet Road Gangtok.

Last but not the least, I would like to thank my parents Mome and Papa for their unconditional love, support, encouragements and sacrifices during the study.

Deepankar Rai

LISTS OF CASES

15. Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors (1986) 3 SCC 156
16. Competition Commission of India v. SAIL (2010) 10 SCC 744.
17. *Calder v. Jones 465 U.S. 783 (1984).*
18. D.S. Nakara V/S Union of India
    AIR 1983 S.C. 130 (India)
19. D.S. Nakara vs. Union of India, A.I.R. 1983 S.C 130.
20. Dhannalalv. Kalawatibai, (2002) 6 SCC 16
21. Exam Computer Ltd. V/S. Tagore Gracias Panji
    1994 (3) C.P.R 651 (N.C)
22. EDIAS Software International V/S. BASIS International Ltd
    947 F. Supp 413 (1996)
23. Excel Wear vs. Union of India, AIR 1979 SC 25.
24. EDIAS Software International v. BASIS International Ltd, 947 F. Supp. 413 (1996))
25. FTC v Consumer Credit Advocates P.C., 96 Civ. 1990
26. Gray v. American Radiator & Standard Sanitary Corp., N.E.2d. 176: 761. 1961.
27. Gupta Sanitary Stores v. Union of India, AIR 1985 Del 122.
28. Grid Corporation of Orissa Ltd. Vs AES Corporation, AIR SC 3435 2002.
29. Hanson V/S. Denckla
    357US 235, 253 (1958)
30. H*arshad Chiman Lal Modi v DLF Universal Ltd (2005) 7 SCC 791*
31. HUDA v/s Shankutala Devi (2017) 2 SCC 301.
32. Hanson v. Denckla, 357 US 235, 253 (1958).

33. Hakam Singh v. Gammon (India) Ltd, (1971) 1 SCC 286
34. Hotmail Corporation v/s Van Money Pie Inc., 1998 WL 388389 (N.D.Cal.)
35. Helicopteos Nacionales de Colombia, S.A. v. Hall 466 US 408.
36. International Shoe Co. v. Washington, 326 U.S. 310 (1945)
37. *Industrial Products, Karnal* v. *Punjab National Bank*, (1992) 1 CPR 70 (NC)
38. J.T Merchant (Dr) v/s Shrinath Chaturvedi, (2002) 6 SCC 635.
39. Jamna Das V/S. Ram Autar and Others, I.L.R (1912) 34 ALL 63; I.A. 7.
40. Kharak Singh V/S. State of U.P and Others, 1963 AIR 1295
41. Kiran Singh and Ors. v. Chaman Paswan and Ors, AIR 1954 SC 340.
42. Lucknow Development Authority v/s M K Gupta, (1994) 1 SCC 243.
43. Laxmi Engineering Works v/s P.S.G Industrial Institute, (1995) 3 SCC 583.
44. LIC India V/S. Consumer Education and Research Centre, 1995 (5) S.C.C 482
45. Lucknow Development Authority V/S. M.K. Gupta, AIR 1994 S.C. 787
46. M/s Cheema Engineering Services V/S. Rajan Singh, 1996 (2) C.P.R 11 (N.C)
47. M/s Abhinav Publishing India Pvt. Ltd V/S. M/s Graphics & Print, 1995 (2) C.P.P 6 (N.C)
48. M/s Spring Meadows Hospital and Another V/S. Harjal Ahluwali, AIR 1998 S.C. 1801
49. Mc Gee V/S. International Life Insurance Co, 355 US 220 (1957)
50. Mahindra and Mahindra Ltd V/S. Union of India, AIR 1979 SC 798
51. Mayor, Calcutta Municipal Corporation V/S. Tarapada Chatterjee, 1994 (1) C.P.R 87 (N.C)
52. Mantora Oil Products (P) Ltd V/S Oriental Insurance Co. Ltd, 1991 (1) C.P.J 326 (N.C)

53. Mukesh Jain V/S. V.K. Gupta, 1992 (2) C.P.J 493 (N.C)
54. M.C Chacko V/S. The State Bank of Travancore, AIR (1970) S.C 504
55. M. P. Sharma and Others V/S Satish Chandra, District Magistrate, Delhi and Others, 1954 AIR 300
56. Morgan Stanley Mutual Fund v. Kartick Das, (1994) 4 SCC 225
57. Maritz, Inc.v. Cybergold, Inc, 947 F. Supp. 1328 (E.D.Mo.1996)
58. M/s Exan Computers Ltd. V/S.Tagore GraciasPanji 1994 (3) C.P.R 651 (NC).
59. M/s Abhinav Publishing India Pvt. Ltd. V/S. M/s Graphics & Print, 1995 (2) C.P.R 6 (NC).
60. Modi Entertainment Network v. W.S.G. Cricket Pvt. Ltd, (2003) 4 SCC 341
61. M/S Cheema Engineering Services V/S. Rajan Singh, 1996 (2) C.P.R 11 (N.C).
62. M/S Spring Meadows Hospital and Another V/S.Harjal Ahluwalia, A.I.R 1998 S.C 1801.
63. Mantora Oil Products (P) Ltd. V/S.Oriental Insurance Co. Ltd, 1991 (1) C.P.J 326 (N.C).
64. Mukesh Jain V/S.V.K. Gupta, 1992 (2) C.P.J 493 (N.C).
65. Nalanda Ceramic v. N.S. Chaudhary & Co, AIR 1977 SC 2142
66. Nissan Motor Co V/S. Nissan Computer Corp- 89 Supp 2d 1154 (C.D. Cal 2000)
67. New York Times Co. v Sulllivan, 376 US 254 (1964)
68. National Thermal Power Corporation v. The Singer Company, AIR 1993 SC 998
69. Nalanda Ceramic v. N.S. Chaudhary & Co, AIR 1977 SC 2142.

70. Om Prakash V/S. Assistant Engineer, Haryana Agro Industries Corporation Lt 1994 C.P.J.I (SC).
71. Om Prakash V/S. Assistant Engineer, Haryana Agro Industries Corporation Ltd, 1994 (2) C.P.J 1 (S.C).
72. Om Prakash v/s Reliance General Insurance, (2017) 9 SCC 724.
73. Pavlovich V/S. Superior Court
58 . 3d 2 (Cal 2002)
74. People's Union for Democratic Rights and Others V/S. Union of India and Others, AIR (1982) S.C. 1473
75. People V/S Lipsitz, IA, P.8. (N.Y. Sup June 24 1997)
76. Pioneer Urban Land and Infrastructure Ltd V/S Govindan Raghavan and Ors Civil Appeal Nos. 12238 of 2018 and 1677 of 2019.
77. People v Lipsitz, IA, P.8, (N.Y. Sup. June 24, 1997)
78. Pannalal v. Bank of India, (1992) 1 CPR 34 (NC).
79. Quill Corp V/S. North Dakota, 504 US 298 (1992).
80. Quill Corp. v. North Dakota, 504 US 298 (1992)
81. R. V/S. Spencer, (2014) S.C.C 43
82. Regional Provident Fund Commissioner v. Shiv Kumar Joshi, (2000) 1 SCC 98
83. Rajasthan High Court Advocate's Association v. Union of India, (2001) 2 SCC 294.
84. R.P.F. Commr. v. Shiv Kumar Joshi, (2000) 1 SCC 98.
85. Rajasthan High Court Advocate's Association v. Union of India,(2001) 2 SCC 294
86. Rediff Communication Ltd. v. Cyber Booth, AIR 2000 Bom 27

87. Smt. Pushpa Meena V/S. Shah Enterprise (Rajasthan) Ltd 1991 (1) C.R.P 229.
88. Shriram City Union Finance Corporation Ltd. v. Rama Mishra, (2002) 9 SCC
89. Sita Ram Agarwalla & Anr. vs Jamunadas Agarwalla 1968 (16) BLJR 45
90. Shreya Singhal V/S Union of India (2015 SCC 248)
91. Satya v. Teja Singh, AIR 1975 SC 105-108.
92. Surinder Kaur v. Harbax Singh, AIR 1984 SC 1224-1226
93. Shri Ram Rattan Bhartiav Food Corporation of India, AIR 1978 Delhi 183
94. State of Karnataka v. Vishwabharathi House Building Coop. Society, (2003) 2 SCC 412.
95. Special Machines, Karnal v. Punjab National Bank, (1991) 1 CPR 52 (NC).
96. Shriram City Union Finance Corporation Ltd. v. Rama Mishra.
97. State of Maharashtra vs Dr. Praful B. Desai, 4 SCC 601 2003.
98. The Institute of Charted Accountants of India & Anr V/S. The Director General of Income Tax (Exemptions), Delhi & Ors. W.P (c) No. 3147, 3148 & 7181 of 2012.
99. Toys "R" US V/S. Step Two, 318 F 3d 446 (3d Cir. 2003)
100. Trimex International FZE Ltd. Dubai v. Vedanta Aluminio Ltd (2010)3 SCC 1
101. Vijaya Narayan Aggarwal V/S. M/s Chowgule Industries Ltd 1993 (2) C.P 231 (NC).
102. Worldwide Volkswagen v. Woodson, 444 US 286 (1980)
103. Washington Post Co. v Total News, 97 Civ. 1190
104. World-Wide Volkswagen Corp. v. Woodson, 222 U.S. 286 (1980).
105. Zippo Mfg. Co. v. Zippo Dot Com, Inc. 952 F.Supp. 1119 (W.D.Pa.1997).

ABBREVIATIONS

ADR	: Alternative Dispute Resolution
AIR	: All India Report
ALL ER	: All England Law Report
ANSI	: American National Standards Institute
APEC	: Asian Pacific Economic Co-operation
BC	: Banking Case
B2B	: Business to Business
B2C	: Business to Consumer
CART	: Communication Access Real-Time Translation
C2B	: Consumer to Business
C2C	: Consumer to Consumer
CCA	: Controller of Certifying Authorities
CCI	: Communications of India
C-DAC	: Centre for Development of Advance Computing
CRAC	: Cyber Regulations Advisory Committee
CRAT	: Cyber Regulation Appellate Tribunal
Cr.L.J	: Criminal Law Journal
Cr.P.C	: Criminal Procedure Code
CPC	: Code of Civil Procedure
CSS	: Content Scramble System
COPRA	: Consumer Protection Act
DCA	: Department of Consumer Affair
DOE	: Department of Electronics
DNS	: Domain Name System
DSC	: Digital Signature Certificate
DVD	: Digital Video (or Versatile) Disk

DoS	: Denial of Service
ECMS	: Electronic Copyright Management System
EC	: European Commission
E-Commerce	: Electronic Commerce
E- Consumer	: Electronic Consumer
E- Cash	: Electronic Cash
E-Com	: Electronic Commerce
E- Buyer	: Electronic Buyer
EDI	: Electronic Data Interchange
E-Seller	: Electronic Seller
E- Retailer	: Electronic Retailer
EFC	: Executive Finance Committee
ERNET	: Education Research Network
ETA	: Electronic (Amendment) Act
FDI	: Foreign Exchange Management
IAP	: Internet Access Provider
ICT	: Information and Communication Technology
ICA	: Indian Contract Act
ICICI	: Industrial Credit and Investment Corporation of India
ICC	: International Chamber of Commerce
IMS	: Infrastructure Management Services
ISPs	: Internet Server Provider
IT	: Information Technology
ICPEN	: International Consumer Protection Network
IPR	: Intellectual Property Rights
IRCTC	: Indian Railway Catering and Tourism Corporation
M-Commerce	: Mobile Commerce

MRTP	: Monopolies and Restrictive Trade Practices
NCP	: New Computer Policy
NCAIR	: National Centre for Automated Information Research
NCH	: National Consumer Helpline
ODR	: Online Dispute Resolution
OECD	: Organisation for Economic Co-operation and Development
PKI	: Public Key Infrastructure
RBI	: Reserve Bank of India
SCC	: Supreme Court Cases
UETA	: Uniform Electronic Transaction Act
UNDP	: United Nations Development Program
URL	: Uniform Resource locator
UNESCAP	: United Nation Economic and Social Commission for Asia and the Pacific
UNCITRAL	: United Nations Commissions on International Trade Law
UNCTAD	: United Nations Conference on Trade and Development
US	: United State
UK	: United Kingdom
VSNL	: Videsh Sanchar Nigam Limited
WAP	: Wireless Application Protocol
WIPO	: World Intellectual Property Organisation
WTO	: World Trade Organisation

Executive Summary

This work is divided into seven chapters dealing with various aspects of research work first chapter is 'Introductory'. This chapter articulates the problem for the study in the area of consumer protection and e-commerce, rational, scope and objective. It also describes the methodology employed and gives an overview of literature of the intended study. The second chapter is – 'Legal issues of consumer protection in E-Commerce and the Liability of Intermediaries' analyses the various problems faced by the consumers during internet transactions i.e. Pre-Purchase, Purchase and Post-Purchase which includes the legal issues associated with m-commerce in relation with consumers. It also incorporates other allied legal issues of e-commerce and the liability of intermediaries have also been analysed in this chapter. The Third Chapter – 'Legal Framework for the protection of E-Consumers in India' gives an account of analytical and evaluative study of consumer protection laws from the beginning of the British Raj, the legislative history and objective of Consumer Protection Act 1986 approach of the India judiciary on the consumer protection have also been discussed in this chapter with the help of case laws. Various authorities and organisation related to the consumers and their rights have also been highlighted. The Fourth Chapter – 'International Perceptive of Consumer Protection in E-Commerce'_discusses the various international Guidelines, Model Law and Policy on the subject of Consumer protection and electronic commerce with special emphasis on the Organisation for Economic Co-operation and Development (OECD) Guidelines for Consumer Protection in the Context of Electronic Commerce (1999), United Nation Guidelines on Consumer Protection (1985), The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce (1996), The United

Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Signature (2001), Organisation for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Border (2003), Organisation for Economic Co-operation and Development (OECD) Policy Guidelines for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce (2008), Organisation for Economic Co-operation and Development (OECD) Policy Guidelines for Online Identity Theft (2008), Organisation for Economic Co-operation and Development (OECD) Revised Guidelines for Consumer Protection in the Context of Electronic Commerce to addresses new and emerging trends and challenges faced by consumers in today's dynamic e-commerce marketplace (2016). It also focuses on the Indian compliance with international directives. The Fifth Chapter – 'Determining Jurisdiction in Cross Border transaction' throws light on the contractual and non-contractual cyber space disputes. It also incorporates the jurisprudence of internet by three schools. Further a deep insight has also been made into the issue of municipal laws and jurisdiction in cross border cyber space cases by studying the overview of the approach of judiciary of USA, European Union and India with the help of decided cases laws. The Sixth Chapter – 'Scope of Alternative Dispute Resolution (ADR)' intends to evaluate the origin, role of ADR and scope of Online Dispute Resolution (ODR) in India. The legal issues therein and the possibility of Online Dispute Resolution in Consumer disputes etc. The Seventh Chapter – 'Conclusion and Suggestions' addresses the conclusion and suggestions arrived at as a result of the discussions in the previous chapters. An attempt has been made to point out the inadequacies and lacunae for the online consumers and to suggest remedial measures to ensure effective protection in the cyberspace as well.

"E-Consumer Protection Laws in India: A Structural Analysis"

CHAPTER ONE

1.1. Introduction

In *Morgan Stanley Mutual Fund* v. *Kartick Das*, Hon'ble Supreme of India has stated the meaning of the expression 'consumer' in the following words:

> "The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer."[1]

1.2. Consumerism: A glance

A well-known Scottish economist, philosopher, and author Adam Smith in his classical work "The Wealth of Nations" described the market as a pillar of consumer power. (Smith Adam, 1776). According to him, the market is the place where the buyer and the seller have personal encounters. But with the passing of time, the scenario has changed. In the current socioeconomic situation, it turns out that the consumer is the victim of many inaccurate and unethical methods used or adopted on

[1]. (1994) 4 SCC 225

the market. Consumers are mostly illiterate, poor, back and even untrained. Against this, manufacturers are relatively more organized and marketed, they sell their goods and services. The consumer who was immediately called "market king" has become a victim of it. The consumer is not provided with the necessary and adequate information on consumer goods and their features, advantages and disadvantages. So far most consumers are concerned, modern industrial, economic and social developments have proved to be a matter of fiction and an empty slogan and an empty pan.

Since society was Laissez Faire, the state rarely used it to intervene in the lives of its citizens. There were no effective laws to regulate the relationship between the buyer and the seller. This trader encouraged to market monopolies and the merchant became the "king of the market". There was no measure to control the abandonment by merchants, unless they were serious offenses. The *"CaveatEmptor"* principle, that is, "let the buyer beware" was the rule of the day and it was assumed that the consumer was responsible for protecting himself and would do so by applying his intelligence and experience in negotiating the conditions of purchase. (Peter Smith & Dennis Swann, 1979). Terms and guarantees, established by the manufacturer and the merchant, were awaiting consumers. Consumers were abused and exploited by unscrupulous traders whose sole purpose was to make a profit at any cost. The Doctrine of Freedom of Contract made merchants ever more daring in their quest to gain more profits. All of these factors culminated in a new phenomenon that led to abuse and exploitation of consumers. Consumers need legal protection when goods do not give their promises or cause injuries (Peter Smith & Dennis Swann, 1979). This has led to the consumer movement around the world and therefore the concept of consumer was born and consumer protection become the primary duty of the state.

1.3. Consumerism, law and technology in India

Likewise, if we look at the Indian history it has been divided into Ancient, Medieval and Modern times. (P.N. Agarwala, 1985) During historical periods, trade or commerce has been one of the most prominent factors of Indian economy. (Prakash Charan Prasad, 1977) Indian civilization has deep roots in consumer protection in its rich land, dating back to 3200 BC, where social principles have been valued and well-crafted by moral practices. The king was the supreme authority to do justice, but his authority was circumscribed by the rules of the Dharma. The well-being of his subjects was the most important part of the leadership's apprehension. They have shown a deep focus on regulating not only community settings, but also the economic lives of people, throwing many trade restrictions to protect consumers from consumers. (A. Rajendra Prasad, 2008: 132-136)

There is a rapid development of digital economy in the end of twentieth century, along with this development numerous challenges most particular to regulate this digital economy has become one of the major challenges among other issues. In such situation the only legislating dealing with the challenges brought by the digital revolution is Information Technology Act, 2000, which is an enactment of the Parliament of India which was further amended in the year 2008 to make it more stringent in the matter of Cyber Crime. However, the concern for Consumer Protection in online commercial activities has highly been ignored by this law. Since, OECD says, "*the same level of protection provided by the laws and practices that*

apply to other forms of commerce should be afforded to the consumers participating in commercial activities through the use of global network".[2]

1.4. Statement of Problem

In the year 1984 the Government policy towards Information and Technology sector changed. The New Computer Policy (NCP-1984) reduced import tariffs on hardware and software to 60%. Even during this time the recognition of software exports as a "deli censed industry", was done so that banks were eligible for finance and freed from license-permit raj, there was even the permission for foreign firms to set up wholly-owned subsidiaries. All such policies are reasons for the development of a world-class Indian IT industry.

The early history of Internet in India, in fact, dates back to 1986 when it was launched in the form of Educational Research Network (ERNET) meant only for the use of educational and research communities. It was a joint undertaking of the Department of Electronics (DOE) of the Government of India, and the United Nations Development Program (UNDP), which provides technical assistance to developing nations.

It was on August 15, 1995 Videsh Sanchar Nigam Limited (VSNL) formally launched the *Internet for the Indian public.* Today, it has been exactly 20 years since the

[2]. Guidelines for Consumer Protection in the Context of Electronic Commerce approved on 9 December 1999 by the OECD Council, are designed to help ensure that consumers are no less protected when shopping on line than they are when they buy from their local store or order from a catalogue. By setting out the core characteristics of effective consumer protection for online business-to-consumer transactions, the Guidelines are intended to help eliminate some of the uncertainties that both consumers and businesses encounter when buying and selling on line. The result of 18 months of discussions among representatives of OECD governments and business and consumer organisations, the Guidelines will play a major role in assisting governments, business and consumer representatives to develop and implement online consumer protection mechanisms without erecting barriers to trade. Available at https://www.oecd.org/sti/consumer/34023811.pdf visited on 25 Nov 2016

Internet entered our country's e-sphere and has been powering our lives in ways unimaginable back then from education, banking, shopping, to the notorious hacks and scams; Internet has become ubiquitous. It has moved from the bulky desktops in cyber cafés and arrived into the palms of people, the future looks even more sweeping with balloon Internet complete with flying cars and virtual reality zones where all that is needed to explore is – human imagination. Twenty years later, according to the latest data released by the Telecom Regulatory Authority of India (TRAI), there are a total of 302.35 million Internet subscribers in India.

Since the opening to a commercialization use of the first World Wide Web in 1991 other developments during that decade made a situation leaded to the creation of the electronic commerce marketplace, buying and selling of products and services by businesses and consumers through an electronic medium, without using any paper documents over the internet was started and popularly known as E-Commerce.

United Nations Economic and Social Commission for Asia and the Pacific (*in short* UNESCAP) have broadly define E-commerce as *"the process of using electronic methods and procedures to conduct all forms of business activity. It encompasses the production, advertising, sale and distribution of products via telecommunication networks."*[3]

Rapid developments in Information and Communication Technology (ICT) have fuelled the new paradigm of Electronic Commerce (E-Commerce) in India however at the same time have invented various related consumer problems. E-commerce has changed the face of retail, services, and other things that make our economy work. Unlike the off-line environment where consumers get an opportunity to inspect

[3]. United Nations Economic and Social Commission for Asia and the Pacific. Available at http://www.unescap.org/drpad/publication/survey1999/svy5a.htm visited on 26 Nov 2016.

potential purchases and to judge for themselves the trustworthiness of a seller, in the online world, consumers are forced to proceed on faith, knowing very little about the seller to whom they are entrusting a variety of material.

In India, the Consumer Protection Act, 1986 is specifically designed to protect the consumers interest with an object to provide for better protection of interest of consumers speedy and simple mechanism for redressal further adjudicating bodies under the Act are empowered to grant relief and award compensation whenever appropriate. However, this Act does not specifically controls or coordinate those dealings/business which are done in cyberspace. At the same time provisions of Consumers Protection Act, 1986 are applicable to disputes arising out of e-commerce provided that both the parties ought to have situated within the boundaries this nation i.e. within Indian jurisdiction.

Guidelines of Organisation for Economic Co-operation and Development (in short OECD) in context of Consumer Protection in Electronic Commerce adopted in the year 1999, have rightly identified e-commerce as being *"Inherently International in Nature."* Thus the potential of the internet to create a virtual borderless market has made the conventional territorial based laws governing consumers incompatible with the non-territorial nature of e-transactions.

> "The UNCITRAL accepted the Model Law on Electronic Commerce in 1996. The General Assembly of United Nations by its Resolution No. 51/162 dated 30th January, 1997

endorsed that all States should give favourable considerations to the said Model Law"[4]

The Model Law provides for equal legal treatment of users of electronic communication and paper based communication. Pursuant to a recent declaration by member countries, the World Trade Organisation is likely to form a work programme to handle its work in this area including the possible creation of multilateral trade deals through the medium of electronic commerce. On E-Commerce which was adopted by India and enacted Information Technology Act 2000 in India a pioneering e-commerce enabling legislations such as the Utah Digital Signatures Act, 1995; the Singapore Electronic Transactions Act, 1999 and the Malaysian Electronic Signatures Act. Object and reason of Information Technology Act, 2000 was

> "New communication systems and digital technology have made intense changes in the way we live. Businesses and consumers are increasingly using computers to create, transmit and to store information in the electronic form instead of traditional paper documents. Information stored in electronic form has many advantages. Like it is cheaper, easier to store, retrieve and speedier to communicate. Although people are attentive of these advantages they are hesitant to conduct business or conclude any transaction in the electronic form due to lack of appropriate legal framework. The two principal hurdles which stand in the way of facilitating electronic commerce and electronic governance are the requirements as to

[4] UNCITRAL Model Law on Electronic Commerce in 1996. Available at http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html visited on 29 Nov 2016.

> ‘writing and signature for legal recognition’. At present many legal provisions accept the existence of paper based records and documents and records which should bear signatures. The Law of Evidence is traditionally based upon paper based records and oral testimony. Since electronic commerce eliminates the need for paper based transactions hence, to facilitate e-commerce, the need for legal changes has become an urgent necessity. International trade through the medium of e-commerce is growing rapidly in the past few years and many countries have swapped over from traditional paper based commerce to e-commerce.” [5]

The bare reading of the objective of information technology Act, 2000 makes it clear that the Act came into existence to give a fillip to the growth of electronic transactions. The enactment was to provide legal recognition to all transaction made by electronic means, thereby facilitating e-governance. However, the Act contains provision of offence relating to computer with the intention of identifying the online wrongful activities and to ensure security practices. The categories of offence include various economic offences as well.

.It is pertinent to mention here that in spite of being a special regime for e-commerce, has done little to achieve the objective stated in its preamble. In the current form the Act is inadequate in the context of e-consumer protection as it has several drawbacks and grey areas inasmuch as there are many important issues and areas, which are very important for the promotion and development of e-commerce in India which are not covered by the IT Act, 2000.

[5] Information Technology Act, 2000 (Statement of Objects and Reasons)

In e-commerce the medium as well as place of business is completely different as compared to the physical market at the same time it would not be wrong to say that the rights of the consumers are equal in both the places i.e. offline or online. However, numerous cases are reported in print media and electronic media on a daily basis regarding consumer problems and to my utter surprise scope of investigation and redress is very limited lack of appropriate rules and regulations for the consumers who often indulge in e-commerce faces practical problems such as identification of the business entities and there exact place of business, if dispute arises the seller will raise the jurisdiction issue which will further create a problem regarding the dispute resolution system all these issues are the basic problems which require immediate attention because the current consumer legislation in India are inadequate to address these emerging issues.

Today e-commerce a new technology and a new frontier for global business and trade but it is still evolving. Apart from that, internet, the back bone of e-commerce is primarily vulnerable. This brings to the fore a number of legal issues, which are not addressed by the existing legal system. For example, if one buys a book from shop, the laws of country in which the shop is located binds him. But if one procures the same thing through the internet from a different country, it is still doubtful whose laws will govern the transaction. There is a need for a well-defined and conducive legal and regulatory framework to promote e-commerce.

Already in a world where there are divergent national regulations, to arrive at a global law is extremely difficult. But as global interaction is one of the main aspects of e-commerce, legal and regulatory framework must need to have a global scope. Further there is uncertainty prevailing regarding how the existing legislations can be applied to the virtual environment. The legal vacuum thus created by the e-commerce is

posing a big question as to whether law should follow the technology or should it be ahead of technology.

Major consumer related issues raised by e-commerce/internet transaction system are as follows:-

1. High risk of Fraud and unethical conduct :

The number one e-commerce security issue is fraud as internet is a particularly suitable communications medium for those seeking to engage in fraud a web shop with a professional look can be created in a couple of hours, it can be operated at distance and can be moved, and removed, as suits the needs of the criminal, further identity deception, false advertising, receiving payment without intention to supply, and scams like pyramid selling schemes etc. are the problems which is growing day by day in the virtual world. Neither Indian Penal Code, 1860 nor Information Technology has not defined term Fraud therefore a reference is taken from Indian Contract Act, 1872 section 17[6] of the Act defines "Fraud". But the problem in the form of paradox is that such nature of cases even though reported the theory of criminal law is punishment and recovery of the loss i.e. damages and/or compensation is not provided to the aggrieved person. Thus we cannot clearly state whether Criminal law should apply or rather Civil law should apply in cyber space as a result the Doctrine of Restitution is failing.

[6]. Section 17 (Fraud) - "means and includes any act or concealment of material fact or misrepresentation made knowingly by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract"

2. Security Issues :

Security is one of the principal and continuing concerns that restrict customers and organizations engaging with e-commerce. The security of the transaction is the core and key issues for the development of E-commerce. More over viruses are used as a tool of nuisance and a threat in the e-commerce world. They only disrupt e-commerce operations and are also classified as a Denial of Service (DoS) tool. Likewise the Trojan horse is a remote control programs and their commercial twins are also the most serious threat to e-commerce. Trojan horse programs allow data integrity and fraud attacks to originate from a seemingly valid client system and can be extremely difficult to resolve, inasmuch as a hacker could initiate fraudulent orders from a victim system and the e-commerce server wouldn‘t know the order was fake or real. In the year 2007 a complaint was lodged by Kingfisher airlines with the Economic Offence Wing (Mumbai) which involved online booking of more than 15,000 tickets of Kingfisher Airlines, using specific codes of an equal number of credit cards, all issued by ICICI Bank. The fraud had come to light after thousands of credit card holder approached the ICICI Bank saying they had never booked a ticket. In this case the gang had booked tickets online using credit card numbers obtained from restaurants, hotels, shopping malls and other retail outlets.[7] Password protection, encrypted client-server communication, public private key encryption schemes are all negated by the simple fact that the Trojan horse program allows the hacker to see all clear-text before it gets encrypted. The online transaction requires consumers to disclose a large amount of sensitive personal information to the vendor, placing themselves at significant risk. A lot of security starts with somebody stealing a

[7]. The Times of India Available at http//:articles.timesofindia.indiatimes.come/2007-01-25/india/27875773_1_cvv-credit-card-air-tickets, Visited on 2 Dec 2016.

consumer's credit card number, bank information, credentials, etc. They do this by putting malware on a person's device and then watching what the person types to steal credentials.

3. Problem with Consumer Privacy issue (Abuse of personal information):

The central problem of e-commerce is privacy. Many users do not accept e-commerce as a complete substitute to normal commerce because of security concerns. From the European prospective, the individual's right to privacy is considered as a human right to be protected by the state. But the new technologies have enhanced the possibilities of invasion into the privacy of individuals and provide new tools in the hands of eavesdroppers. Under Indian constitutional law, the right to privacy is implicit in the fundamental right to life and personal liberty guaranteed by Article 21 of the Constitution this would include the right to be let alone. But e-commerce has changed the structure of the society when a person planned to buy products from online means, he/she must require to register in particular online website and also have to comply with the terms and conditions of the e-seller/e-retailer. The basic requirements of most of the online shop is name, address, phone number, e-mail id, job details, annual income, date of birth etc. So there is every likelihood of transferring the personal information of e-consumers to their subsidiary companies or to some other unknown persons and such information are widely misused. So it is truly a threat to the concerned people privacy and the present laws are inadequate to handle the issues. Section 72A[8] of the information Technology Act 2000 imposes

[8]. Section 72-A. Punishment for disclosure of information in breach of lawful contract.—Save as otherwise provided in this Act or any other law for the time being in force, any person including and intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract,

criminal liability for breach of privacy or for disclosure of information in breach of lawful contract but the power to intercept, monitor and decrypt information through computer resource is vested with the Government. Further Section 43A[9] of the Information Technology Act, 2000 imposes civil liability on body corporate dealing with sensitive personal data to provide for damages in case of failure to protect data but the relief provided under these section are inadequate to address the issue of e-consumer.

4. Complex Contractual Terms and Seller Warranty Issues :

It would be difficult for large-scale organizations to draw up a separate contract with every individual. They therefore keep a printed form of contract. Such standardized form of contracts contain large number of terms and conditions in "fine print" which restrict and often exclude the liability, and therefore the consumer is left with no other choice to accept the offer whether he/she likes its terms or not. Likewise in many

---

such material to any other person, shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both

[9]. Section 43-A. Compensation for failure to protect data.—Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, in negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected. Explanation.—For the purposes of this section,—

(i) "body corporate" means any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities; (ii) "reasonable security practices and procedures" means security practices and procedures designed to protect such information from unauthorised access, damage, use modification, disclosure or impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit;

online shopping websites the term used in the contracts are very complex and have implied conditions favouring the seller. By simply clicking "I agree" button or icon the e-consumers are automatically bound by the conditions that are put by the e-seller and sometimes enter into legally binding contracts. The terms used in the contract are highly technical and it is very hard to understand even for a skilled person. In some websites the contracts are such a lengthy one so there is a possibility for e-consumers who came to online shopping for time saving purpose to easily ignore the contents in the contract. Later when he/she founds defects in that product, through these implied conditions the e-retailer or online shopping website easily escapes from the clutches of Law. Further some website offers the products at very low cost with seller warranty i.e. with manufacturer warranty. It raise question about its genuineness and original identity. If you put "seller warranty" in practical purpose it is not at all a warranty but an attractive term to lure e-consumers money. As these kinds of products when put in competition with original, as like original with less price tag, the e-consumers easily become easy prey to this unfair trade practise. In the above scenario one instance occurred in the case of Yatra.com a website which provides for travel information, pricing, availability and reservation for airlines among other travel related activities. In March 2012, yatra and other organisations sold kingfisher airlines tickets through yatra super saver scheme with heavy discounts, where passenger would know the name of the airlines only after booking the ticket. This was the period when no one was ready to purchase tickets of Kingfisher airlines. On March 28, Kingfisher cancelled the flight and the passengers were only given the option of refund and were not given the option of alternative airlines thereby causing deficiency in service.[10]

[10]. http//:consumerdaddy.com/consumer-review-for-television-eighteen-yatracom-p-2902.htm

Unlike, Unfair Contract Terms Act, 1977 in England, there is no specific legislation in India concerning the question of exclusion of contractual liability. There is a possibility of striking down unconscionable bargains either under Section 16 of the Indian Contract Act, 1873[11] on the ground of undue influence or under Section 23[12] of that Act, as being opposed to public policy. Thus the Standard Form of Contracts which contain a large number of terms and conditions in fine print, which restrict and often exclude liability under the contract gives a unique opportunity to the giant online company to exploit the e-consumers by imposing upon them terms which often look like a kind of private legislation and which may go to the extent of exempting the company from all liability under the contract. The battle against abuse has fallen to the courts where the weakest party is consumer.

5. Dispute Resolution Mechanism:

Consumer Protection Act, 1986 provides for a three tire Redressal Machinery approach in resolving consumer disputes having both pecuniary and territorial jurisdiction,[13] but the definition of e-consumers is nowhere defined in the said Act. The courts in India considers e-consumers dispute as normal traditional online consumer dispute and have/has failed to live up with the present scenario. According to Civil Procedure Code, 1908 the suits other than immovable property should be instituted where defendant resides or cause of action arise.[14] Also the Consumer Protection Act, 1986 states that the District Forum has jurisdiction to try suits "where

[11]. Section 16.Definition of Undue influence

[12]. Section 23. What consideration and objects are lawful, and what not. The consideration or object of an agreement is lawful, unless. The consideration or object of an agreement is lawful, unless" it is forbidden by law; 14 or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

[13]. Sections 11, 15, 17, 19, 21 and 23 of COPRA, 1986

[14]. Section 20 Civil Procedure Code, 1908

the defendant voluntarily resides or carries on business or has a branch office or personally works for gains or where the cause of action wholly or partly arises".[15] Further it states that the suit should be filed within the local limits of concerned District Forum and thus it raises a question of law regarding the position and power of the Consumer Court in Cross border disputes that whether the suit filed by the consumer where the cause of action wholly or partly arises is maintainable or not. Section 75 of I.T Act, 2000 prescribes about extra territorial jurisdiction of the Indian Courts however the only condition being that this section applies only to those offences and contraventions listed under the I.T Act, 2000 as the same is purely industry based enactment hence does not address issue relating to consumer grievances. Developed countries like US, UK have joined with other developing countries like China, Chile etc. and have already formed an International Network called International Consumer Protection Network (ICPEN) to gather and share cross border complaints and to help consumers and to resolve their complaint through arbitration. When we look at the agreement of some online shopping websites they clearly mentioned that "in case of dispute only arbitration is available and Court review is limited over the arbitral award". Further some international online websites in their agreements specifically stated that they are subjected only to the law of their country though they have business in India and also these agreement have a clause which state it is subject to change without any prior notification to e-consumers. Therefor in such situation the genuine plea of e-consumer remains unheard/unattended due to the want of appropriate forum as well as mechanism.

[15]. Section 11 of COPRA, 1986

6. Jurisdiction Issue in cross border transactions:

Confidence of a consumer depends upon two major factors (i) that he/she will get what he/she expects and (ii) that if things go wrong, he/she can seek a redress. Traditionally, most consumer contracts were domestic in nature. A consumer would buy foreign goods only if he/she travelled abroad or would do so through a seller/distributer in his/her own country but the internet as a medium allows consumer to cross boundaries in matter of seconds, without being aware of the transaction or the foreign jurisdiction. (Ramsay, I. 2006). More over the website domain name and e mail address are not necessarily sufficient in determining the location and physical space of the e-seller. Jurisdiction becomes a challenge due to the complexity of the e-commerce transactions wherein the seller, buyer, server, internet service provider are located in different countries. (Norbert Reich, 2000). For instance, Speak Asia Online a market research firm based in Singapore was carrying out online survey activities in India. In order to participate in these online surveys, a customer had to make a payment of Rs 11,000/- per annum. However the claim of this company were found to be incorrect unravelling a fraud to a tune of Rs 2000 crores.[16] While an offence of cheating has been made out U/S 420 of Indian Penal Code, as the firm is not incorporated in India, as such no legal redress mechanism exists for the consumers. This particular case is reflective of the jurisdictional issue in e-commerce and is also indicative of the fact that legal mechanisms have not kept pace with technological development. All e-commerce is potentially international and each and every countries have/has their own consumer protection standards. As a general rule, a decree would be nullity where for example, the court which has passed the decree had

[16]. Available at http://www.Indianexpress.com/news/speak-asia-fraud-rs-2-000-crores/825777, Visited on 11 Dec 2016.

inherent lack of jurisdiction over the subject matter of the suit, but, if it had jurisdiction over the subject matter of the suit, then the decree will not be nullity, even though the decision may be contrary to law.[17] On another hand when a business goes online, it may subject itself to the jurisdiction and system of law of every country around the world. The seller's connection with the jurisdiction of the purchaser may be vague and remote. On one hand when consumers who are familiar with their domestic laws when go online they may lose the benefit of domestic consumer protection laws. *"globalization has increased the international dimensions of access to justice and consumer protection as developments in communication and technology facilitate the possibility of cross border frauds."* (Charles E.F.Richette and Thomas G.W.Telfer (ed.), 2003)

Hence the right of consumers and e-consumers, although theoretically the same, but different in use or pleasure. Thus, in the case of buying and selling products or services in the virtual electronic world, the buyer is known as e-buyer, seller is known as e-seller, retailer is known as e-retailer, e-consumer and transaction is known as e-transaction.

1.5. Review of the Literature

1. Akhileshwar Pathak, Consumer Rights in the New Economy: Amending the Consumer Protection Act, 1986, INDIAN INSTITUTE OF MANAGEMENT AHMEDABAD. INDIA, W.P. No. 2015-08-04, August 2015.

The author states that, Indian business and commercial law, due to our British connection, is founded on the British common law. This includes, *inter alia* The Contract Act, 1872 and The Sale of Goods Act, 1930. However, the foundations have

[17]. Sita Ram Agarwalla & Anr. vs Jamunadas Agarwalla 1968 (16) BLJR 45

to be supplemented and built on to address issues which arise with changes in society. The UK has brought in several legislations and regulations to address rights and obligations arising under contracts. *In this article the author have reviewed the main proposed amendments and have identified further areas of amendments in Consumer Protection Act. However, in the article the author have neither defined nor quoted e-consumer, which is the most important term needed to be interpreted. Moreover the author states that Consumer Protection Act is itself a very broad Act and have examined the only three consumer related problems i.e. unfair trade practice, unfair terms in contract, commerce through online platforms only and is silent upon other major issues such as Fraud and Unethical conduct in an online environment.*

2. M. Ali Nasir, "Legal issues involved in E-commerce" Magazine Ubiquity archive Volume 2004 Issue February Pages 2-2 ACM New York, NY, USA

The author states that exponential growth of the Internet and online activity raise a number of new regulatory issues and legal questions particularly in the context of doing business on the Internet. The author further states that authorities seeking to apply their laws in traditional ways or to expand legal control over international links face many challenges due to the global nature of the Internet. *In this article after an introductory section on Internet expansion and the complexity of law on the Internet, the author covers several areas of law pertaining to e-business, including those covering electronic transactions, privacy and security, and copyright and trademark issues. Each area is described in a separate section of the paper. Special attention is focused on extra-territorial issues, including e-business across several jurisdictions, and various national laws. All of these issues have created the need for new general legal areas on doing business electronically. But the arenas of privacy, security, copyright, trademark, and consumer protection are too large to be covered in such a*

general text; the author nevertheless describes these crucial fields of e-business legislation in an explanatory way. Thus, each category lacks a description of theory and practice.

3. Niranjanamurthy M, DR. Dharmendra Chahar, "The study of E-Commerce Security Issues and Solutions" *International Journal of Advanced Research in Computer and Communication Engineering Vol. 2, Issue 7July 2013*

In this paper the author have discussed E-commerce Security Issues, Security measures, Digital E-commerce cycle/Online Shopping, Security Threats and guidelines for safe and secure online shopping through shopping web sites. *This article has helped in understanding the basic concept of security issue in e-commerce, which in itself is a very wide concept. At the same time also alerts us upon common mistakes that leave e-consumers vulnerable include shopping on websites that aren't secure, giving out too much personal information, and leaving computers open to viruses. This has helped the study to analyse how security can be well defined. However, the author have not addressed and/or explained the role of a server in any of the transactions. As server plays a very important role in deciding the location of person/individual which further very crucial for deciding the jurisdictional issues in online disputes.*

4. Dr.Rakesh Kumar & Dr.AjayBhupen Jaiswal, "Cyber Laws" 2011 APH Publishing Corporation, New Delhi.

The book "Cyber Laws" concern with the transboundary problem of cyberspace so within the framework of doctoral assignment attempt has been mate to find out how law and judiciary have balanced the emerging needs to the society in Indian legal jurisprudence. *However, the growing unregulated e-commerce transactions needs*

new specific laws to address the issues of e-consumers and the understanding of balance

between old laws and judiciary has become less significant for the ends of justice. Hence, for ensuring justice to every one (here e-consumers) there is a need to focus on various other factors including amendment to the existing laws.

5. KausarHina, "E-Commerce and the Rights of E-Consumers" Manupatra, available at www.manupatrafast.com

This paper highlights the different socio legal aspects of e-commerce and the rights of e-consumers *and has helped the study to understand the general pattern of Rights of E-consumers, which give us a way to find out the measures of ensuring protections of identified rights.*

6. Chetan Karnatak, CYBERSPACE: JURISDICTIONAL ISSUES OF E-COMMERCE AND CONSUMER PROTECTION, Abhinav National Monthly Refereed Journal of Research in Commerce & Management, Volume 3, Issue 7 (July, 2014)

The author states that, in e-commerce environment there is a strict need of strong and pervasive laws at the international level, both for determining the governing law of the contract and also for establishing the proper forum for settling the disputes and the recognition and compulsory enforcement of such forum decisions in other territorial jurisdiction. *This article have helped in gaining understanding that in e-commerce environment there is a strict need of strong and pervasive laws at the international level, both for determining the governing laws of the contract and also for establishing the proper forum for settling the disputes and the recognition and compulsory enforcement of such forum decisions in other territorial jurisdiction.*

Apart from this, the article is very insightful in understanding how jurisdiction plays a very crucial role in e-commerce. Thus making the study more focusing on jurisdictional issue. But the articles itself is not providing any solutions of issues with regard to jurisdiction in borderless space/online environment. How to establish the forum for redressal of such dispute is still needed to be figured out.

7. Sachin Mishra, Determining Jurisdiction over E-Commerce disputes in India, Manupatra

The author states that, E-commerce websites should lay down purchasing and payment process in sequence with absolute clarity, regular updating and monitoring of information provided. The terms and conditions should not be general in nature but specific depending upon the nature of the goods & services offered and they should be brought to the sufficient attention of the consumers and provide ample opportunity to read and then accept. *However, formations of contracts in e-commerce transactions and different forms of e-contract is nowhere discussed in this article. Rather the findings of the author was more inclined towards standard form of contracts only. There is a need to handle the issues of freedom of contract in the era of standard form of contract in online transactions.*

8. A European Initiative in Electronic Commerce, "Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions" 15/04/97

The aim of this European Initiative is to encourage the vigorous growth of electronic commerce in Europe, it provides a coherent policy framework for future Community action, and aims at establishing a common European position to achieve global consensus through international negotiations. *However, no such policy/policies*

have/has been formulated by the Indian parliament up till now, with regard to e-commerce, thus the analysis of this initiative will be very insightful in understanding as to how legally harmonised online regulations, thereby making the study more focusing on redressal of online dispute.

9. Prof (Dr) Ashok R. Patil, "25 Years of Consumer Protection Act: Challenges and the Way Forward" Sri Vidya Printers, Bangalore 2014.

This book possess various collection of articles on E-consumer protection and solutions especially on e-consumer contracts and issues such as need for developing alternatives to formal adjudication like arbitration, mediation etc. *However, the author have only felt the need of alternative forms of adjudications but the author neither proposed any model nor suggested any existing model, which share and resolve the complaints of the states through arbitration as the alternative dispute can be a very effective mechanism to handle the online consumer issues, hence there is a need to formulate a model law which can be implemented and fitted both in national and international scenario.*

10. Justice Yatindra Singh, "Cyber Laws" Universal Law Publishing 2010

The author states that, Right to privacy in the light of Information and Technology may have to be dealt with by the courts or suitable legislations have to be enacted. *This book have helped in gaining understanding that in e-commerce environment there is a strict need of a separate strong laws for the protection of privacy in an online environment for the e-consumers. Apart from this, the book is very insightful in understanding how privacy plays a very crucial role in e-commerce. Thus making the study more focusing on Right to Privacy and need to find out the legal and technical*

solutions which can be implemented by the various institutions specifically dealing with the e-consumer issues.

11. Chris Reed, "Internet Laws" Universal Law Publishing 2010

In this book, the author have examined the internet laws globally and have analysed the legal problems and principles which are common to all countries. *However, there is a prerequisite to understand and discuss the solutions of these problems in an international perspective and to examine the policy/policies of Organisation for Economic Co-operation and Development (OECD), International Chamber of Commerce (ICC), International Consumer Protection and Enforcement Network (ICPEAN) and (UICITRAL) model law on electronic commerce, and to find out how far it is workable.*

12. Pavan Duggal, "Legal Framework on Electronic Commerce and Intellectual Property Rights in Cyberspace" Universal Law Publishing 2014

This book is on the evolution, development and current state of legal frameworks on electronic commerce and intellectual property rights in cyberspace as also various legal, policy and regulatory issues connected with use of the computers, computer systems, computer networks, computer resources and communication devices, digital and mobile ecosystem. It further reveals the complexities and nuances pertaining to the emerging trends concerning cyber law. The have discussed the challenges being faced by the Indian legal regime while regulating computers, computer systems, computer networks, computer resources and communication devices and further looks at the deficiencies of the Indian approach in dealing with it and is a standing guide for all stakeholders in India who are covered under the Indian Cyber law in terms of the respective rights, duties and obligations which they are expected to perform within the

parameters of the law. *However, the author have not been able to discuss and/or identify the legal issues of consumer in e-commerce and their rights rather the approach of the author is fully inclined only towards Information and Technology Act, 2000 which is purely industry based legislation.*

13. Pavan Duggal, "Cyberlaw: The Indian Perspective" 2002 Saakshar Law Publications, Delhi

The author opines that, India has to face the challenges of cyberspace and its regulation in a very bold, prompt and decisive manner if it wants to become an IT superpower in the future. *However, the author have failed to identify that with the growth of information and technology industry there has been a rapid growth of e-consumers too. Cyber space has now become a platform which provides various goods and service to an individual according to his/her own needs and the existing regulating laws are becoming defunct day by day, hence the researcher cannot ignore the requirement of discussion/debate on new and a separate law for the protection of e-consumers.*

14. Hossein Kaviar, "International Arab Journal of e-Technology, Vol. 2, No. 2, June 2011"

The author states, that consumer is weaker party in electronic contracts, especially business to consumer contracts (B2C). More importantly, consumers do not always have effective methods for asserting their rights and resolving disputes, in the context of electronic contracts. *While discussing, the B2C model the author focused mainly up on the liability of the company but at this juncture the liability of the intermediary in the cases of consumer dispute in e-commerce transactions needs to be addressed.*

15. Sumanjeet and Mahlawat, Sameer (2004), "E-Commerce in the Indian Legal Regime", Indian Journal of Applied Economics, Vol. 1, No. 1, pp 176-181.

The authors of this article states that, the growth of e-commerce will depend on the concomitant advancement of a consistent legal and regulatory framework able to cope with ensuring rights and obligations in a virtual environment. A number of developing countries have pursued policies to formulate consistent legal and regulatory framework to support electronic transactions across state, national and international borders. *However, they have not discussed the policies formed by UK, US and Singapore in the context of international jurisprudence in toto, as the same will be helpful in suggesting the model in the context of Indian legal system.*

16. Ryan Yagura, "DOES CYBERSPACE EXPAND THE BOUNDARIES OF PERSONAL JURISDICTION?" IDEA: The Journal of Law and Technology 1998

The personal jurisdiction analysis presented in this article is an attempt to reconcile the myriad of personal jurisdiction cases founded on the Supreme Court's historical but vague notions concerning the sovereignty of the states and fairness to the defendant. It also examines the ways in which the courts have applied personal jurisdiction requirements. *Hence, these principles cannot be ignored as they are developed in US legal system, and the applicability of these principles needs to be examined in contrast with the Indian legal structure.*

17. Alan Davidson, "The Law of Electronic Commerce" CAMBRIDGE UNIVERSITY PRESS, 14 Sep 2009, Cambridge, United Kingdom.

The author states that, commerce via the World Wide Web and other online platforms has boomed, and a new field of legal theory and practice has emerged. Legislation has been enacted to keep pace with commercial realities, cyber-criminals and unforeseen

social consequences, but the ever-evolving nature of new technologies has challenged the capacity of the courts to respond effectively. *This article have helped in gaining understanding that e-commerce environment itself is a volatile place and is constantly challenging the capacity of the judiciary around the world especially in cross border issues/cases. Apart from this, the article is very insightful in understanding how judiciary in and around the world is solving such issues. Thus making the study more focusing on determining jurisdiction in cross border transactions, in the various countries.*

1.6. Rational and Scope of Study

Most of the time scholar are found to pay attention and focuses on the problem associated with e-commerce as a whole in India. They failed to address the issue and problems those are faced by consumers directly or indirectly in the online environment. Hence, an attempt is made here to understand the Consumer Protection Act 1986, E-Consumers and their specific problems in the online market place. This study may help policy makers(s) of the State to formulate comprehensive policies to address the legal problems faced by the consumers in the virtual world, which is an urgent need India. During the course of study it focuses on the following research questions along with objectives.

1.7. Hypothesis

"Existing legal framework has failed to address the e-consumers issues"

"Future of online regulation lies in standard global legal harmonisation"

1.8. Objective

- *To study about the existing consumer protection legal framework/policy in India vis-à-vis e-commerce.*
- *To study about various unresolved legal issues/problems of e-consumers.*
- *To study about the formation of contracts in e-commerce transactions and different forms of e-contracts.*
- *To study about the jurisdictional issues in e-commerce in cross-border transactions.*
- *To study whether the Server can be a determining factor for identifying jurisdiction.*
- *To study how far intermediary be held liable in e-consumer transactions.*
- *To study about the possibility to introduce Alternative Dispute Resolution mechanism in e-consumer disputes.*

1.9. Research Question

- ✔ What are the various unresolved legal issues and/or challenges/problems frequently faced by e-consumers?
- ✔ To what extent traditional Indian consumer protection policies are workable/applicable in the internet age and what sort of changes if any are required to address the current issues & challenges of e-commerce?
- ✔ How are traditional contract principles that have been developed over a century concerning the formation of Contracts applicable in cyberspace?

- ✔ Whether Consumer Act is able to safeguard the rights of the e-consumers in the absence of Contract to the contrary?
- ✔ Whether the intermediary be held liable in the cases of consumer dispute in e-commerce transactions?
- ✔ Whether alternative dispute redressal (ADR) mechanism can be introduced to resolve the e-consumer dispute in cross-border transactions?
- ✔ How to determine the issue of jurisdiction in the cross border dispute of e-commerce?

1.10. Research Methodology

This researcher applied doctrinal method to conduct this research. A comprehensive review of existing literature, legislations, cases decisions and official documents mixed with newspaper articles was primarily relied in order to get a clear updated picture of the current consumer protection law in the era of e-commerce. Due to certain limitations including the cross border nature of internet empirical techniques could not be applied. However to test the hypothesis this researcher has focused on various judgement of Indian as well as foreign courts.

CHAPTER TWO

LEGAL ISSUES OF CONSUMER PROTECTION IN E-COMMERCE AND THE LIABILITY OF INTERMEDIARIES IN INDIA.

2.1 Introduction

E-commerce is understood to mean the *production, distribution, marketing, sale or delivery of goods and services by electronic means*.[18] The Asia Pacific Economic Co-operation ("APEC") has adopted a wider definition of e-commerce to include *all business activity conducted using a combination of electronic communications and information processing technology*. (A. Didar Singh, 1999). The United Nations Economic and Social Commission for Asia and the Pacific ("UNESCAP") has also defined e-commerce as '*the process of using electronic methods and procedures to conduct all forms of business activity*. (A. Didar Singh, 1999).

Development of information and communication technology in the last decade have significantly changed lives and provided new opportunities for consumers and business.[19] The General Assembly, in its resolution 70/186 of 22 December 2015, considered that e-commerce, "which should be understood to include mobile commerce, has become increasingly relevant to consumers worldwide and that the opportunities it offers should be harnessed to help facilitate economic development and growth based on emerging network technologies, with computer, mobile phones and connected devices that promote consumer welfare"[20]

[18]. "The Work Programme on Electronic Commerce; Background Note by the Secretariat", Council for Trade-Related Aspects of Intellectual Property Rights, WTO.

[19]. United Nation Conference on Trade and Development, 24th April 2017. https://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf, Visited on 16 Dec 2016.

[20]. General Assembly Resolution No. A/RES/70/186.

The scope of electronic commerce is wide and includes all electronically mediated transactions between an organisation and a third part. It is not restricted to the buying and selling of products, but includes pre-sale and post-sale activities too. (TI Akomolede, 2008)

"An increasing number of the consumer has access to the internet and engage in e-commerce, which provides easier and faster access to products and services. It also presents some challenges for consumers that differ from those encountered during offline commercial transactions."[21]

As per OECD an e-commerce transaction can be defined as "the sale or purchase of goods or services, conducted over a computer network by methods specifically designed for the purpose of receiving or placing of orders"[22]

E-commerce includes a wide range of transactions via mobile phones and other devices, such as PCs and tablets. The further purchase is often done via applications and platforms. E-commerce is normally conceived in terms of consumer protection with regard to transactions between companies and consumers, but it is not limited to such transactions.

The set of legal issues that arise in e-commerce transactions are Contracts, Security, Authentication, Privacy and Data Protection, Consumer Protection, Intellectual Property Rights, Domain Names, Jurisdiction, Liability, Taxation, Content Regulation, Advertisement, Electronic Payment Issues, Foreign Direct Investment, Corporate Structure and Funding etc.

[21]. United Nation Conference on Trade and Development, 24th April 2017. https://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf
[22]. www.stats.oecd.org/glossary/detail.asp?ID=4721

A transaction between companies and consumers requires the online presence of a trader to sell online and accept online orders. As far as consumers are concerned, the process requires internet access to review products and purchase online. A payment method must be specified such as credit card, electronic money, bank transfer or cash on delivery. Finally, the product must be delivered either online for digital content products, or for consumers at home or at a collection point for goods.

Business-to-Consumer, e-commerce is forecast to double from $ 1.2 trillion in 2013 to $ 2.4 trillion in 2018. (UNCTAD. 2015). In 2015, UNCTAD launched the business-to-consumers e-commerce index,[23] which measures the readiness of countries for e-commerce based on the following four indicators: (i) Internet use penetration, (ii) Secure servers per million inhabitants, (iii) Credit card penetration and (iv) Postal reliability score.

Some of the most common e-commerce challenges faced by consumers in developing countries are in the following areas: (UNCTAD. 2015).

1. Weak internet infrastructure, including low online connectivity, speed and reliability.
2. Unstable communication network.
3. Language barrier.
4. Misleading information and marketing practices regarding both goods and services and price.
5. Lack of clear and adequate information about the identity and location of traders, as well as goods and services, prices and guarantees

[23]. www.unctad.org/en/PublicationsLibrary/tu_unctad_ict4d07_en.pdf. Visited on 18 Dec 2016.

6. E-commerce offer made by anonymous traders.
7. Drip pricing practices, where the final amount due is not known until the whole process is complete.
8. Uncertainty on merchantability of goods.
9. Monetary refunds for non-satisfactory products.
10. Non-compliance with refund policy on merchant websites
11. Irreversibility of electronic payments.
12. Security of online and mobile payments and chargeback options.
13. Unclear information on chargebacks and withdrawal.
14. Denial by e-commerce website of responsibility for online payments that are blocked by banks or payment gateways.
15. Fraudulent and fly-by-night operators who take money from consumers without providing products or services.
16. Non-provision of promised services or offered gifts.
17. Non-compliance with legally established cooling off periods.
18. Insufficient or non-existent customer care.
19. Denial of after-sales service.
20. Lack of consumer awareness of their rights and duties, as well as those of businesses.
21. Lack of basic information technology skills and financial literacy.
22. Concern about dispute resolution procedures.

2.2. Major Consumer related issues in internet transactions.

There are three stages of the consumer-business relationship in which consumer protection issue in e-commerce can be identified, viz.

i. Pre-Purchase

ii. Purchase and

iii. Post-Purchase are discussed hereunder.

2.2.1 Pre-purchase

2.2.1.1 *Information requirements:*

One of the common challenges consumers face during pre-purchase is the difficulty of establishing the identity and location of a provider of products online. Some jurisdictions identify challenges such as misleading information on actual and total prices, effective interest rates and consumer rights under the relevant national law.

2.2.1.2 *Unfair commercial practices:*

The impersonality of e-commerce weakens the relationship between providers and consumers, thereby increasing consumer vulnerability. The web-based environment is propitious to unfair commercial practices. Therefore consumer trust in digital markets is one of the main challenges in the development of e-commerce. Unfair commercial practices influence transactional decisions of consumers in relation to products and prevent consumers from making informed choices and they deceive consumers as to the nature of the products and by providing untruthful information to the consumers, using aggressive marketing techniques, creating confusion between the trade names or trademarks of competitors and falsely representing themselves as consumers and posting reviews in their name.

In 2014, the Advertising Code Committee of the Netherlands found that advertisement on a major accommodation booking platform was misleading. The

claims were “we have only one room left” and “only one left” at a specific price. The authority found that it was not clear to the average consumer that these claims referred only to the rooms a hotel hade made available through that platform. The platform’s failure to inform consumers that its claims related only to those rooms meant that consumers might be misled into believing that the hotels were fully booked. Whereas in fact, the same hotels might have rooms available through other booking channels. The Appels Board upheld the decision. (European Commission, 2016)

In seeking to gain a competitive advantage over competitors who offer better goods and services and/or lower prices, traders may mislead consumers by exaggerating the quality or misrepresenting the features of their products or services.

2.2.2. Purchase

Consumer faces a number of challenges during the purchase phase after they have decided to buy a certain product online. The most common challenges at this stage include

2.2.2.1 *Unfair contract terms:*

Contract terms define the rights and duties of the parties bound by them. Consumers are subject to considerable protection when entering into contracts with companies. The law automatically assumes that companies and consumers have unequal negotiating power. Where consumers conclude contracts with companies that use standard form conditions, such as e-commerce companies, the customer has not had the opportunity to negotiate those conditions and there is a risk that the conditions are unenforceable. (Examples of unfair terms may include provisions that mislead a consumer, force him to pay an unreasonable fine, or are free business channels from

obligations or vary the terms of the contract.[24] In Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors[25] this Court held that : "*This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type.....*"

The Law Commission of India in its 199th Report, addressed the issue of 'Unfair (Procedural & Substantive) Terms in Contract'. The Law Commission inter-alia recommended that legislation be enacted to counter such unfair terms in contracts. In the draft legislation provided in the Report, it was stated that: "A contract or a term thereof is substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties."[26]

The Law Commission of India prepared and submitted its report on Unfair Terms in Contract which was concerned with the standard form of contracts imposing unfair and unreasonable terms upon unwilling consumers or persons who had no bargaining power, before the then Minister of Law, Justice and Company Affairs Government of India on 28th July 1984. Later, the Law Commission of India felt that subject of 'Unfair Terms in Contract' has attained grave importance in recent times not only in relation to consumer contracts but also in regard to other contracts, and further realised that, since 1984, there have been significant developments in other countries

[24]. Azrights "Unfair Contract Terms" available at, http://www.azrights.com/services/business/unfair-contract-terms-act/ Visited on 20 Dec 2016.
[25]. (1986) 3 SCC 156
[26]. Pioneer Urban Land and Infrastructure Ltd . vs . Govindan Raghavan and Ors Civil Appeal Nos. 12238 of 2018 and 1677 of 2019.

and detailed statutes have been enacted or proposed and there are voluminous Reports of the Law Commissions such as the Report of the Law Commission of England and Scotland (2004), the Report of the South African Law Commission, 1998, the Interim Report of the British Columbia Law Institute, 2005, the Discussion Paper of the Standing Committee of Officers of Consumer Affairs, Victoria (Australia), 2004, Report of the New Zealand Law Commission, 1990 and Ontario Law Reform Commission,1987, etc. In view of these developments in other countries, the Law Commission decided to take up a detailed study of the subject *suo motu* and has also referred to the statutes and Law Commission Reports of various countries in relation to unfair terms.[27] The Law Commission of India forwarded its 199 Report which was, on unfair (Procedural and Substantive) Terms in Contract, on 3rd August 2006 before the Minister of Law and Justice, Government of India, wherein, the Law Commission analysed Section 16,[28] 23,[29] 28[30] and 74 of the Indian Contract Act, 1872 and was of the view that the net result is that the Indian Contract Act, as it stands today, cannot come to the protection of the consumer when dealing with big business. The Commission in its 103rd Report opined that the existing sections of the Indian Contract Act, do not seem to be capable of meeting them is chief caused by unfair terms incorporated in contracts. Further, the ad hoc solutions given by courts in response to their innate sense of justice without reference to a proper yardstick in the form of a specific provision of statute law or known legal principle of law only produce uncertainty and ambiguity.[31]

---

[27]. Law Commission Of India 199th Report On Unfair (Procedural & Substantive) Terms In Contract, Page 3 & 4.
[28]. "Undue influence"
[29]. "Illegality and Public Policy"
[30]. "Ouster of jurisdiction of Court to adjudicate"
[31]. Supra note 28 at Page 51 & 52.

2.2.2.2. *Online Payment Security*

Online and mobile payments are payments made using the internet and computers or mobile devices, through an existing personal account, usually a bank account, credit card or debit cards, or a payment service provider. In parallel with technological developments, the use of mobile devices by consumers in e-commerce payment transactions has been expanding. As noted in the UNCTAD manual on Consumer Protection, mobile payments are expected to make up 3 percent of e-commerce payment.[32] However, online mobile payments systems present challenges for the consumer are a security risk when making payment online. Consumers data can be accessible to unauthorized third parties without the knowledge and consent of the consumers, further at times delays in receipts of payments by traders, irreversible payments, late conformations and payment blockage between the banks, payment gateway or company to which payment was made without the consumer being aware of where the payment has been detained are the most common problems occurred during online payment.

In China, an increasingly widespread practice is the third party payment method, whereby a consumer deposits the due amount with a third party who keeps it until the consumer receives the goods without complaint at which time the payment is transferred to the traders. This escrow system also provides for fair, accessible, rapid and low-cost online mediation.[33]

2.2.2.3. *Data Protection*

[32]. http://unctad.org/en/PublicationsLibrary/webditcclp2016dI.pdf, visited on 21 Dec 2016.
[33]. Y Yu.2016. Escrow in e-commerce, presented at the seventh meeting of the UNCTAD Research Partnership Platform. Geneva. 19 October, available at http//:unctad.org/en/Pages/MeetingDetails.aspx?meetingid=1157, visited on 22 Dec 2016.

The consumer may be more at risk when making a purchase online. The use of credit and debit cards during purchases made via the internet has led to an increase in the frequency with which personal information about consumers is collected and traded by service providers and intermediaries.[34] Researchers have noted that the next generation of e-commerce will be conducted by digital agents based on algorithms, which will choose products and perform transactions on behalf of consumers. Despite their benefits, algorithmic consumers will increase the vulnerability of consumers to risk in areas such as privacy and cyber security. Algorithmic consumer system is capable of collecting registering and aggregating the enormous amount of personal data, which may be accessed by unauthorized parties without consumer consent. (MS Gal and N Elkin-Koren, 2001)

2.2.2.4. *Privacy including in non-monetary transactions.*

Every e-commerce website is to maintain the privacy of its users. Using innovative technologies and the lack of secure systems makes it easy to get personal and confidential information about individuals and organizations. Privacy concerns have also been raised with regard to the Internet Corporation for assigned names and numbers, a public searchable resource used to determine the identity of domain name registrars. The database contains the name of the individual or company that registered a particular domain name, as well as the address of the owner, the dates on which the domain was

[34] Association of Southeast Asian Nations (ASEAN)-Australia Development Cooperation Programme and UNCTAD.2016, Project on strengthening technical competency on consumer protection in ASEAN: E-commerce module, available at http://aadep2.org/six-modules-strengthening-technical-competency-consumer-protection-asean, visited on 23 Dec 2016.

created, when it expires and when it was last updated. Private groups criticize the company for selling information about its registrars, arguing that many of them are individuals who have never agreed to sell their information as a merchandise when signing up for the service

a) the dissemination of sensitive and confidential medical, financial and personal data of individuals and organizations;
b) send spam (unsolicited);
c) Monitoring of consumer activities using web cookies; and
d) unreasonable control and assessment of an employee's activities, including e-mail correspondence.

We do not have a specific law that protects the privacy rights of a person or an organization against private parties. However, On August 24, 2017, a nine-judge panel of the Supreme Court issued a verdict in KS Puttaswamy v. Union of India, unanimously upholding the right to privacy as a fundamental right under the Indian Constitution . The verdict put an end to a constitutional struggle that began almost exactly two years ago, on August 11, 2015, when the attorney general of India stood up during the dispute over the Aadhaar settlement, and stated that the constitution did not guarantee any basis for privacy. (Indian Constitutional Law and Philosophy, 2017). The Constitution of India upholds the right to privacy as a fundamental right of every citizen; the right is exercisable only against a State action. Even the IT Act addresses the issue of protecting privacy rights only from Government action. Further, the law relating to a banker's secrecy law in India has been followed from the English case law. However, with e-commerce, such common law seems manifestly unsuited.

For example, the UK has a specific legislation to protect the interests of individuals with regard to data processing. Some of these legislations can have an extraterritorial impact. The implementation of the European Union general data protection directive is likely to have a significant impact on non-member countries. The Directive restricts companies with low privacy protection from carrying on business within the EU. Codes of conduct or self-regulation are also employed sometimes in conjunction with legislative measures.

In the US, the federal government is giving a lot of attention to personal information and privacy. The OCC has come out with comprehensive directions to banks to ensure that the privacy of individuals is not violated. Financial institutions have been warned about "pretext phone calling." Financial institutions should also not rely on Employee discretion in the release of customer financial information but rather should adopt specific policies and procedures. These institutions should protect customer financial information from other types of fraudulent access such as burglary, illegal access to computer systems and employee bribery. (Anvit Shetty and Ors, 2002).

2.2.3. Post-Purchase

Concern during the post-purchase phase includes liability and arrangements for the return of goods and refunds when goods are not delivered if delivered in an unsatisfactory condition or materially differ from the goods ordered. During the phase, consumers may have difficulties reaching providers or finding a means of communicating with businesses. Possible measures to protect online consumers in this phase include providing for a cooling off period for online purchases and limiting consumer liability in the digital marketplace.

2.2.3.1 *Dispute resolution and Redress*

Consumer Protection Act, 1986 provides for a three tire Redressal Machinery approach in resolving consumer disputes having both pecuniary and territorial jurisdiction,[35] but the definition of e-consumers is nowhere defined in the said Act. The courts in India considers e-consumers dispute as normal traditional online consumer dispute and have/has failed to live up to the present scenario. According to Civil Procedure Code, 1908 the suits other than immovable property should be instituted where the defendant resides or cause of action arise.[36] Also the Consumer Protection Act, 1986 states that the District Forum has jurisdiction to try suits where the defendant voluntarily resides or carries on business or has a branch office or personally works for gains or where the cause of action wholly or partly arises.[37] Further, it states that the suit should be filed within the local limits of concerned District Forum and thus it raises a question of law regarding the position and power of the Consumer Court in Cross-border disputes that whether the suit filed by the consumer where the cause of action wholly or partly arises is maintainable or not. Section 75 of I.T Act, 2000 prescribes "offences or contravention committed outside India by any person irrespective of his nationality"[38]. Section 75 states "*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*".[39] Interestingly this section is applied to those offences and contraventions listed under the I.T Act, 2000 only as the same is purely industry based enactment

[35]. Sections 11, 15, 17, 19, 21 and 23 of COPRA, 1986
[36]. Section 20 Civil Procedure Code, 1908
[37]. Section 11 of COPRA, 1986
[38] Section 75, Information Technology Act 2000
[39] *bid*

hence does not address issue relating to consumer grievances. Developed countries like the US, UK have joined with other developing countries like China, Chile etc. and have already formed an International Network called International Consumer Protection Network (ICPEN) to gather and share cross-border complaints and to help consumers and to resolve their complaint through arbitration. When we look at the agreement of some online shopping websites they clearly mentioned that "in case of dispute only arbitration is available and Court review is limited to the arbitral award". Further, some international online websites in their agreements specifically stated that they are subjected only to the law of their country though they have business in India and also these agreement have a clause which state it is subject to change without any prior notification to e-consumers. Therefore in such situation, the genuine plea of e-consumer remains unheard/unattended due to the want of appropriate forum as well as mechanism.

In Brazil, the National Consumer Secretariat created an online conciliation mechanism in 2014. Which allows direct exchange between consumers and providers to resolve dispute online. This service is provided by the State to promote direct interaction between consumer and suppliers, to reduce consumer conflicts.[40]

Mexico launched an online dispute resolution mechanism in 2008, hosted by the Office of the Federal Prosecutor for the Consumer. The mechanism provides consumers who have purchased goods or services, either online or offline, access to a

[40]. http://www.consumidor.gov.br, visited on 27 Dec 2016.

paperless and bureaucracy-free-conciliation system, through which they can initiate and resolve complaints on an Internet-based virtual platform.[41]

The European Commission launched a dispute resolution platform in 2016 to help consumer and traders solve dispute online over purchases made online.[42]

2.2.3.2. *Cross-border e-commerce*

a) Unfamiliar language.
b) Lack of certainty when receiving a product as described or ordered.
c) Hidden costs, including those related to customs duties and currency conversion, and shipping or delivery
d) Conformity of products to local standards.
e) Lack of clarity about the protection afforded by the seller's jurisdiction, the remedies available in the event of disputes and the enforcement of decisions in favour of the consumer [43]

The confidence of a consumer depends upon two major factors (i) that he/she will get what he/she expects and (ii) that if things go wrong, he/she can seek a redress. Traditionally, most consumer contracts were domestic in nature. A consumer would buy foreign goods only if he/she travelled abroad or would do so through a seller/distributor in his/her own country but the internet as a medium allows the consumer to cross boundaries in a matter of seconds, without being aware of the transaction or the foreign jurisdiction. (Iain Ramsay, 2007) Moreover, the website

[41]. http://concilianet.pfofeco.gob.mx/Concilianet/comoconciliar.jsp, visited on 27 Dec 2016.
[42]. http://ec.europa.eu/consumer/odr/main/index.efm, visited on 27 Dec 2016.
[43]. Consumer International and European Union 2015. Consumer condition scoreboard, available at http:// ec.europa.eu/consumer_evidence/consumer_scoreboards/index_en.htm, visited on 29 Dec 2016.

domain name and email address are not necessarily sufficient in determining the location and physical space of the re-seller. Jurisdiction becomes a challenge due to the complexity of the e-commerce transactions wherein the seller, buyer, server, internet service provider are located in different countries. (Norbert Reich, 2000) For instance, Speak Asia Online a market research firm based in Singapore was carrying out online survey activities in India. In order to participate in these online surveys, a customer had to make a payment of Rs 11,000/- per annum. However, the claim of this company was found to be incorrect unravelling a fraud to a tune of Rs 2000 crores.[44] While an offence of cheating has been made out U/S 420 of Indian Penal Code, as the firm is not incorporated in India, as such no legal redress mechanism exists for the consumers. This particular case is reflective of the jurisdictional issue in e-commerce and is also indicative of the fact that legal mechanisms have not kept pace with technological development. All e-commerce is potentially international and each and every country have/has their own consumer protection standards. In H*arshad Chiman Lal Modi v DLF Universal Ltd*, the Hon'ble Apex Court at para 30 states that

"The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter".[45] In Kiran Singh and Ors. v. Chaman Paswan and Orsa[46] four Judge Bench of this Court speaking through Vankatarama Ayyar, J. held that:

[44]. Available at http://www.Indianexpress.com/news/speak-asia-fraud-rs-2-000-crores/825777, visited on 30 Dec 2016.
[45]. (2005) 7 SCC 791
[46]. AIR 1954 SC 340

"It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the every authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties". Now when a business goes online, it may subject itself to the jurisdiction and system of law of every country around the world the question of 'territorial' jurisdiction gets complicated. The seller's connection with the jurisdiction of the purchaser may be vague and remote. On one hand when consumers who are familiar with their domestic laws when going online they may lose the benefit of domestic consumer protection laws. "globalization has increased the international dimensions of access to justice and consumer protection as developments in communication and technology facilitate the possibility of cross-border frauds." (Charles E.F.Richette and Thomas G.W.Telfer (ed) 2003)

2.2.3.3. *Jurisdiction and choice of law*

The issue of jurisdiction is a crucial one in e-commerce. The question has always been which court assumes jurisdiction in resolving a dispute arising from a contract between the parties, in view of the fact that the parties may be residing in different jurisdictions with different legal systems. In such case examination of Private International Law and the Brussels Convention on Jurisdiction and Enforcement of Judgement in Civil and Commercial Matters[47]

[47]. Brussels Convention on Jurisdiction and Enforcement of Judgement in Civil and Commercial Matters, 1958. Available at https://www.jus.uio.no/lm/brussels.jurisdiction.and.enforcement.of.judgments.in.civil.and.commercial.matters.convention.1968/portrait.a4.pdf, visited on 2 Jan 2017.

becomes important. The convention is applicable to those countries that have ratified it and incorporated its provisions into their municipal laws.

Recognition and Enforcement of a foreign judgment is the final stage in Private International Law. A foreign judgement has to be recognised in the receiving State to be enforced by the Court. India is party to various international conventions[48] which are helpful in recognition and enforcement of foreign judgement in various issues. However, due to no specific universal convention on the issue of cyberspace copyright, the general law relating to recognition and enforcement is applied. In the absence of international convention or multilateral convention like in case of European Union's Brussels Regulation, India applies its domestic general law principles on the issue. The general principles of recognition and enforcement of foreign judgement are not created for cyberspace oriented cases. Therefore, in the absence of any clear-cut policy with regard to cyberspace, the traditional methods of rules relating to there cognition and enforcement has to be applied.

Code of Civil Procedure, 1908 (in short CPC) is applicable in a matter of recognition and enforcement of the foreign judgment. Section 13 and 14 of the Code of Civil Procedure, 1908, lays down the rules relating to recognition and enforcement of the foreign judgment. However, Indian courts also recognise the reciprocal agreement

[48]. India is party to various international convention such as Warsaw Convention of 1929 (Amended by the Hague convention of 1955) relating to Carriage of Goods and Persons by Air, Brussels Conference of 1922 1923, relating to Carriage of Goods by Sea, Geneva Protocol on Arbitration clauses (1923), International Convention on the Execution of Foreign Arbitral Awards, Geneva Convention 1956 on International Carriage of Goods by Road, Convention on Settlement of Investment Disputes (1965), Geneva Convention relating to Uniform Law of Bills of Exchange.

under section 44A of the Code of Civil Procedure.[49] has been filed in a District Court, the decree[50]may be executed in India as if it had been passed by the District Court.

It is important to emphasise here that, freedom of contract is an established principle in the Law of Obligation and the parties can, therefore, agree on the terms and conditions of the contract including the choice of laws to govern the transaction.[51] However, this is easier in contracts that are not standard form contracts only.

2.3. Other allied legal issues of e-commerce.

2.3.1. *Contract:*

> At the heart of e-commerce is the need for parties to be able to form valid and legally binding contracts online. How e-contracts can be formed, performed, and enforced as parties replace paper documents with electronic media.

1) Offer and Acceptance: The Information Technology Act, 2000 ("IT Act") deals with contractual aspects of the use of electronic records, such as attribution, acknowledgement, time and place of dispatch and receipt. However, since the IT Act is only an enabling Act, it is to be read in conjunction with the Indian Contracts Act,

[49] Code of Civil Procedure, 1908, Explanation 1 of Section 13 states that "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification"

[50] Explanation 2 of the Section 13 states that " Decree' with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect to a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment."

[51] African Petroleum V/S Owodunni (1991)8 NWLR (pt 210) 351. And the provisions of Section 4 of the Supply of Goods (Implied Terms) Act 1973 (UK) where a supplier freedom to limit terms is now completely abolished. The act provides full protection for buyers in consumer transactions and qualified protection in non-consumer transactions.

1872 ("Contract Act"). Formation of any contract, under the Contract Act, would involve three main ingredients.

a) an offer,

b) an acceptance and

c) Consideration of the contract.

These ingredients would be applicable to e-contracts. Additionally, Internet communication does not consist of a direct line of communication between the sender and receiver of e-mail as in ordinary means of communication. The message is broken into chunks in the process of delivery. This raises issues of the exact time of communication of acceptance of the contract as such a time is critical for determination of the rights of the parties. The IT Act has laid down certain methods for determining the exact time and place of dispatch and receipt of the e-mail.

2.3.2. *Online Identity:*

Transactions on the Internet, particularly consumer-related transactions, often occur between parties who have no pre-existing relationship, which may raise concerns of the person's identity with respect to issues of the person's capacity, authority and legitimacy to enter the contract. Digital signatures, is one of the methods used to determine the identity of the person. The regulatory framework with respect to digital signatures is governed by the provisions of the IT Act.

2.3.3. *Security:*

Security over the Internet is of vital importance to promote e-commerce. Companies that keep sensitive information on their websites must ensure that

they have adequate security measures to safeguard their websites from any unauthorized intrusion. A company could face security threats externally as well as internally. Externally, the company could face problems from hackers, viruses and Trojan horses. Internally, the company must ensure security against its technical staff and employees. Security can be maintained by using various security tools such as encryption, firewalls, access codes/passwords, virus scans and biometrics.

Moreover, a company could also be held liable for inadequate security procedures on its website. For example, last year, a person decided to sue Nike because Nike's website was hacked and the contents of the domain were re-directed through the person's webservers in the U.K., bogging them down and costing the web hosting company time and money.[52]

2.3.4. *Authentication:*

Different authentication technologies have evolved over a period of time to ensure the identity of the parties entering into online transactions. However, there are some issues that need to be considered by companies.

A) Digital Signatures should be used as authentication tools in the electronic contract:

The digital signature must follow the Public Key Infrastructure ("PKI"). This acts as a limitation on the use of any other technology for authentication purposes. If Indian e-commerce companies use some other form of authentication technology, it could be said that there has been no authentication at all.

[52]. www.wired.com/news/politics/0,1283,37286,00.html visited on 2 Jan 2017.

B) Evolving inter-operable technology standards:

Laws of different countries provide different authentication standards, sometimes specifying a clear technology bias. These different authentication standards need to be interoperable so as to facilitate cross-border transactions. This would need a high degree of co-operation between countries and the technology providers.

For example, an e-commerce company that uses PKI authentication technology for online contracts with Indian consumers may use different/other forms of technology while entering into online contracts with consumers in other countries. In such a case, these contracts with foreign consumers may not be recognised in India as the authentication technology used is not PKI. However, such contracts may be enforceable in the foreign jurisdiction depending upon the laws of the foreign country.

2.3.5. *Privacy and Data Protection:*

Protecting the privacy of users is a significant issue for every e-commerce website. The use of innovative technologies and the lack of secure systems make it easy to obtain personal and confidential information about individuals and organizations. In July 2001, several privacy groups filed a complaint in the United States regarding confidentiality issues in the Microsoft Windows XP operating system. Some operating system features store personal data, such as passwords and credit card details, so that users do not have to re-enter this information when browsing websites.

However, though the Operating System was launched successfully on October 25, 2001, privacy groups have still have criticised the Federal Trade Commission for not taking any action on the complaint.[53]

The web cookie also faces the risk of extinction under a proposed European Commission directive. However, the Interactive Advertising Bureau of UK has marshalled support from several businesses across Europe to launch a lobbying effort that it calls "Save our Cookies" as it believes that British companies could lose approximately US$ 272.1 million if web-cookies are banned.[54]

Facebook CEO Mark Zuckerberg was grilled by the Senators at Washington DC for privacy invasions and further not being able to prevent his social networking tool from being used for harm as well, resulting in "false messages, foreign interference in election and hate speech, as well as developers and privacy of data" and faced sharp criticism from lawmakers.[55]

Important privacy concerns on the Internet include:

a) Dissemination of confidential medical, financial and personal data of individuals and organizations.
b) Sending spam (unwanted) mails;

---

[53]. COMPUTERWORLD July 30, 2001 available at https://booksgoogle.co.in/books?id=k2BTXU9tE2kC&pg=PA16&lpg=PA16&dq=privacy+groups+filed+a+complaint+in+the+US+about+the+privacy+issues+in+Microsoft%E2%80%99s+Windows+XP+operating+system+in+the+year+2001&source=bl&ots=p4iJ_SSvVo&sig=IFoqR452cuaqHGsAgTl5l4e4aUg&hl=en&sa=X&ved=0ahUKEwiYyYfg1NPaAhVILI8KHcSpDFEQ6AEIVDAD#v=onepage&q=privacy%20groups%20filed%20a%20complaint%20in%20the%20US%20about%20the%20privacy%20issues%20in%20Microsoft%E2%80%99s%20Windows%20XP%20operating%20system%20in%20the%20year%202001&f=false, visited on 3 Jan 2017.

[54]. "Europe Goes After the Cookie", October 31, 2001 available at www.unwired.com, visited on 4 Jan 2017.

[55]. Twin Cities Pioneer News, April 10, 2018 at 5:00 PM available at https://www.twincities.com/2018/04/10/congress-grills-facebook-ceo-mark-zuckerberg-who-acknowledges-big-mistake/, visited on 4 Jan 2017.

2.3.6. *Intellectual Property Rights:*

Any company intending to commence e-commerce activities should bear in mind is the protection of its intellectual assets. The Internet is a boundless and unregulated medium and therefore the protection of intellectual property rights ("IPRs") is a challenge and a growing concern amongst most e-businesses. The existing laws in India that protect IPRs in the physical world, the efficacy of these laws to safeguard these rights in e-commerce is uncertain. Some of the significant issues that arise with respect protecting IPRs in e-commerce are discussed hereunder:

Determining the subject matter of protection: With the invention of new technologies, new forms of IPRs are evolving and the challenge for any business would be in identifying how best its intellectual assets can be protected. For example, a software company would have to keep in mind that in order to patent its software, the software may have to be combined with physical objects for it to obtain a patent.

Ascertaining novelty originality: Most intellectual property laws require that the work/ mark/invention must be novel or original. However, the issue is whether the publication or use of a work invention mark in electronic form on the Internet would hinder a subsequent novelty or originality claim in an IPR application for the work/invention/mark. An e-commerce company would have to devote attention to satisfying the parameters of intellectual property protection including originality requirements in its works to preclude any infringement actions from third parties who own similar IPRs.

Enforcing IPRs: it is difficult to adjudicate and decide cyber-disputes. The Internet makes the duplication, or dissemination of IPR- protected works easy and

instantaneous and its anonymous environment makes it virtually impossible to detect the infringer. Moreover, the infringing material may be available at a particular location for only a very short period of time.[56] A company must also keep in mind that since IPRs are inherently territorial in nature, it may be difficult to adjudge as to whether the IPR in a work or invention is infringed if it is published or used over the Internet, which is intrinsically boundless in nature. For example, if 'Company A' has a trademark registered in India for software products, but a web portal based in the US uses the same trademark for marketing either software products or for marketing some other goods, it may become difficult for Company A to sue for infringement. Moreover, due to differences in laws of different nations, what constitutes infringement in one country may not constitute infringement in another. Further, even if Company A succeeds in proving an infringement action since the IPR that it owns is only valid for India, the scope of remedies that may be available to Company A would be territorial and not global. Thus, the web-portal may be restrained from displaying its site in India or may have to put sufficient disclaimers on its website. In order to restrain infringement in other countries, Company A may need to file proceedings in those countries also. This process may prove to be time-consuming and expensive for the aggrieved Company.

In light of certain technology driven mechanisms such as electronic copyright management systems ("ECMS") and other digital technologies that are evolving to prevent infringement, the recent World Intellectual Property Organisation ("WIPO") Copyright Treaty[57] explicitly mandates that all contracting parties to the treaty shall

[56]. "Hosts" and web page creators can delete files within a matter of hours or days after their posting.

[57]. India has not signed this treaty. Pursuant to this treaty, the US Government has enacted that Digital Millennium Copyright Act to afford protection to digital copyrights.

have to provide adequate legal remedies against actions intended to circumvent the effective technological measures that may use by authors to prevent infringement of their works.[58] However, these mechanisms may not be commercially viable and their use may also depend on international interoperability standards, as well as privacy concerns.

Preventing unauthorized Hyperlinking and Meta tagging: The judiciary in many countries is grappling with issues concerning infringement of IPRs arising from hyperlinking and Meta tagging activities. Courts in certain jurisdictions have held that hyperlinking, especially deep-linking may constitute copyright infringement, whereas Meta tagging may constitute trademark infringement.

Protection against the unfair competition: Protection against unfair competition covers a broad scope of issues relevant for electronic commerce. So far, electronic commerce has not been subject to specific regulations dealing with matters of unfair competition. Companies on the Internet, have to constantly adapt to and use the particular technical features of the Internet, such as its interactivity and support of multimedia applications, for their marketing practices. Problems may arise with regard to the use of certain marketing practices such as (i) Interactive marketing practices (ii) spamming and (iii) immersive marketing.

2.3.7. *Domain Names:*

A company that commences e-commerce activities would at first have to get its domain name registered. While registering domain names, if the company chooses a domain name that is similar to some domain name or some existing trademark of a third party, the company could be held liable for

[58]. Article 11, WIPO Copyright Treaty, 1996.

cybersquatting. Over the past few years, domestic and international fora have handled and decided numerous cybersquatting disputes. Recently the "info" top-level domain was opened for registration and within no time the WIPO has already received two cases for dispute settlement.[59] Further, another US Company, NeuLevel Inc. who had been restrained from distributing the ".biz" domain names, has now been allowed to do so as the plaintiffs declined to post a bond that would have prevented the company from handling out new domain names.[60] Moreover, the ICANN recently confirmed that it had finalised a contract with Museum Domain Management Association whereby "museum" has also been included as a generic top-level domain in the global domain name system.[61]

2.3.8. *Jurisdiction:*

"According to the traditional rules of private international law, the jurisdiction of a nation only extends to individuals who are within the country or to the transactions and events that occur within the natural borders of the nation". (Cheshire and North, 11th Ed. pg. 188) However, in e-commerce transactions when the company takes customers to a specific country due to its Web site, it may be necessary to protect any legal process that could lead to the country. Accordingly, any content posted on the website should be reviewed to ensure compliance with the laws of any jurisdiction in which the organization wants to sell or promote their products or services. Hence when parties are residing

[59]. http://www.it.mycareer.com.au/breaking/2001/10/22/FFX18I063TC.html, visited on 5 Jan 2017.
[60]. http://news.zdnet.co.uk/story/0,t269-s2098080,00.html, visited on 5 Jan 2017.
[61]. http://www.washtech.com/news/regulation/13217-1.html, visited on 8 Jan 2017.

at different places having different jurisdiction the same will effect in the enforcement and interpretation of the contract.

For example, XYZ, a company in London, having its server in the USA, may sell its products to customers in India or other countries. In such a situation, if you receive defective goods or if you regret having made the purchase, the question would arise as to which jurisdiction can you sue the company or claim damages or withdrawal respectively. The company, on the other hand, might find itself confronted with foreign laws, which he may not be aware of. For example, the US courts have in numerous cases have held a company in X state liable in Y state on the basis that the website could be accessed in Y state. (Cheshire and North, 11th Ed.pg.188). Action, against the host company, may be by way of a civil lawsuit, criminal prosecution or an action by regulators. The US courts have developed the "minimum contacts" theory whereby the courts may exercise personal jurisdiction over persons who have sufficient minimum contacts with the forum state.[62] These "minimum contacts" may consist of physical presence, financial gain, a stream of commerce, and election of the appropriate court via contract.[63] Various courts have held that statements purposely directed at the forum may create sufficient contacts for jurisdiction.[64]This would mean that even if you are not physically present in a nation, you can be sued in that foreign court as long as your website has minimum contacts with that nation. Therefore, a

[62]. The Due Process Clause of the 14th Amendment of the Constitution of the United States as referred to in "A Separate Jurisdiction for Cyberspace?" by Juliet M. Oberding and Terje Norderhaug http://www.ascusc.org/jcmc/vol2/issue1/juris.html, visited on 9 Jan 2017.

[63] International Shoe Co. v. Washington, 326 U.S. 310 (1945) cited from"A Separate Jurisdiction for Cyberspace?" by Juliet M. Oberding and Terje Norderhaug. http://www.ascusc.org/jcmc/vol2/issue1/juris.html, visited on 10 Jan 2017.

[64] *Calder* v. *Jones*, 465 U.S. 783 (1984) cited from"A Separate Jurisdiction for Cyberspace?" by Juliet M.Oberding and Terje Norderhaug. http://www.ascusc.org/jcmc/vol2/issue1/juris.html. However, Indian courts have yet not taken any particular stance regarding the "minimum contacts" theory. Visited on 11 Jan 2017.

company should insert appropriate choice of law and choice of forum clauses in its online contract, which should specify the jurisdiction to which the parties to the contract would be subject to. Such clauses have been held by courts to be binding upon the parties.[65]

2.3.9. *Liability:*

Since the Internet knows no boundaries, the owner of a website could be confronted with legal liability for non-compliance or violation of laws of almost any country. Liability may arise due to various activities *inter alia* due to hyperlinking (inserting a clickable link to another site) and framing (incorporating another website into a frame or window appearing within a webpage on the linking site),[66] fraud, libel and defamation,[67] invasion of privacy, trademark and copyright infringement. There exist three types of liability:-

1) *Contractual Liability:* A website that offers goods or services should contain an online contract to which the customer must assent. The contract needs to be carefully drafted to protect the website owner from liability and should address the key terms and conditions for the provisions of goods or services. The contract should clearly establish the exact time and manner of acceptance of the contract. In the event of dispute or breach of contract, the liability of the

[65] *CompuServe, Inc.* vs. *Pattterson*, 89 F.3d 1257, 1259-1260 (6th Cir. 1996) cited from Julian S. Millsteinetal *Doing Business on the Internet: Forms and Analysis (1999)*.

[66]. Washington Post Co. v Total News, 97 Civ. 1190 cited from Richard D. Harroch, Esq.*Start-up and Emerging Companies: Planning, Financing, and Operating the Successful Business* (Vol 2 Revised Ed.)

[67]. New York Times Co. v Sulllivan, 376 US 254 (1964) cited from Richard D. Harroch, Esq.*Start-up and Emerging Companies: Planning, Financing, and Operating the Successful Business* (Vol 2 Revised Ed.)

owner of the website would be limited only to the extent of the terms of the contract.

2) *Statutory liability:* Depending on the type of business, a website would have to comply with the provisions of the law, central or state, in that jurisdiction. But various nations differ with respect to statutory compliances and permitted activities. The website would, therefore, in addition to the state laws, be required to comply with the provisions of the statutes of the countries in which the website would be vastly accessed. Failure to comply with such foreign laws may lead to liability under such law. For example, an Indian company using comparative advertising on the worldwide web, not knowing that such practices are prohibited in Germany and France may be liable for violation of the laws of Germany or France.

3) *Tortuous Liability:* Liability under tort may arise due to wrongful interference with the business or wrongful defamation or any remark or action that may cause injury to one's property or reputation. Thus, although no contractual relationship may exist as well as where the interference or damage is unintentional, the website owner may be liable for the wrongful injury. The law of torts lays down a duty on every man to take reasonable care to avoid any harm to any person. The owner of the website also owes a duty to the user and is bound to take reasonable care to avoid any harm that may be done.

2.3.10. *Content Regulation.*

The Internet offers a quick and cost-effective means of disseminating information. However, the unrestricted flow of content over the Internet through different jurisdictions could raise various concerns. While traditionally there are several

restrictions placed on the content of information that is distributed, the challenge lies in evolving similar parameters to regulate the content of information on the Internet. The issue, while publishing or displaying content over the internet, are;- (a) Nature of Content, (b) Violation of the Statutory Law, (c) Licensing framework, (d) Imposition of Liability.

Nature of Content: Different nations have developed certain standards with respect to the display, exhibition and dissemination of content. While regulating content transmission over the Internet, diverse cultural and religious issues, national interests and security and global standards of decency and morality would have to be kept in mind. For example, a website that displays certain content which may be objectionable in Country A, but permissible in Country B. In such a case, based upon whether the courts in Country A have jurisdiction or not, the website could be restricted from displaying such content. Therefore, if a company's target audience is a large range of countries, the company should ensure that the content on its website is not against the national, security or cultural interests of these countries.

Violation of the Statutory Law: An e-commerce company should also bear in mind that content displayed over the Internet could violate provisions of Indian as well as foreign statutes. For instance, as per the IT Act, any person who publishes any obscene information in any electronic form is liable to be penalised.[68] The IT Act has an extra-territorial operation[69] and therefore, even a website outside India could be penalised for publishing obscene information. As per the diagram above, if a company's website displays obscene

[68]. Section 69 of the IT Act.
[69]. Section 75 of the IT Act.

information about the US President, the company could be sued under Indian law, and possibly in the US if it violates the provisions of any US law. Similarly, publication of obscene information could also violate the provisions of the Indian Penal Code. Further, publishing information that is deprecating upon women could be in contravention of the provisions of the Indecent Representation of Women's Act.

Several countries have enacted legislation to regulate content on the Internet. The US has passed the Communications Decency Act, Australia had introduced the Broadcasting Services (Online Services) Act, 1999 and Malaysia has enacted the Communications and Multimedia Act, 1998.

Licensing framework: Licensing is the key regulatory tool through which public authorities can exercise control over their national markets, particularly in relation to telecommunications and broadcasting. Companies must bear in mind that communication and broadcasting of content must be done after securing appropriate licences. The proposed Communications Convergence Bill, 2001 of India ("Convergence Bill") mandates that any service who obtains licences under the Convergence Bill for network infrastructure facilities, networking services, application services, content application services and value-added network application services must abide by the codes and standards laid down by the Communications Communication of India ("CCI")[70]that is set up under the Convergence Bill.[71] The CCI has to regulate programme codes and standards to ensure *inter alia*, national interests, sovereignty and security of the country, promotion of culture and values, and

[70]. Section 28 of the Convergence Bill.
[71]. Section 6 of the Convergence Bill.

prevent obscenity or indecent representation of women or offence to religious views.[72]

Imposition of Liability: In the event that content regulations are not abided by, different countries would hold different parties liable. Depending upon the liability provisions in different countries, the following parties may be held liable:

1) The network service provider;
2) The e-commerce company; or
3) The user /Consumer.

There may be instances where more than one party is held liable for an act or one party is liable in more than two countries for the same act. For example, a company that publishes obscene information and pictures on its website could be liable under the IT Act. Simultaneously, the Internet Service Provider could also be held liable for publication of obscene material unless it proves that it had exercised all due diligence or had no knowledge that obscene content was being displayed by one of its users. Further, a company's website that provides links to another website that displays obscene or defamatory material could be held liable for violating content regulations. Therefore, it would be the primary duty of every company to take reasonable precautions to ensure that the content on its website is not in violation of any Indian or foreign content regulation law.

2.3.11. *Advertisement:*

Many websites advertise goods or services to customers. The traditional laws of advertising, which apply to ordinary sales, are enacted in the interest of all consumers to prevent deceptive and unfair acts or practices. These laws would

[72]. Section 20 of the Convergence Bill.

also be applicable to advertising or marketing on the Internet. The websites may be subject to any liability that may arise due to false designations, origin, misleading description of the fact that is likely to cause confusion or misrepresent the nature, characteristics, quality or geographic origin of the goods or services that are offered for sale in an advertisement.[73] In addition to advertising laws, depending on the kind of business, the websites would also have to comply with the laws applicable to such a business.

Certain countries have introduced legislation that places limitations on Internet advertising. In such a case, would a website owner be subject to liability for violation of the laws of a country even though it was not aware of such limitations or restrictions on advertisement?

For example, the courts have in certain cases held a website of another country liable for fraudulent Internet advertising in violation of a state statute.[74]

2.3.12. *Electronic Payment Issues:*

In addition to normal currencies, e-financial instruments / digital currencies such as Cyber Cash[75] and e-cash[76] can be used for the purchase of current as

[73]. FTC v Consumer Credit Advocates P.C., 96 Civ. 1990 cited from Richard D. Harroch, Esq.*Start-up and Emerging Companies: Planning, Financing, and Operating the Successful Business* (Vol 2 Revised Ed.).

[74]. People v Lipsitz, IA, P.8, (N.Y. Sup. June 24, 1997) cited from Richard D. Harroch, Esq.*Start-up and Emerging Companies: Planning, Financing, and Operating the Successful Business* (Vol 2 Revised Ed.)

[75]. Cyber Cash Inc created a system called Cyber Cash which permits secure transactions through complex routing transaction.

[76]. Digi Cash, a Netherlands based Company has formed an electronic payment system known as e-cash. The system involves purchasing 'units' or 'credits' from a bank to a particular value in a particular currency which can be used to trade on Internet. The seller of the goods can take e-cash units and either use it to buy some other goods on the Internet or redeem it at participating banks for its own country's currency. Mark Twain Bank in the US issues e-cash on Internet.

well as capital assets over the Internet and for carrying on other commercial activities. Before regulating the use of such financial instruments, it would be essential to identify the issues that these instruments pose. Some of these issues are:

a) *Secure Credit Card Transactions:* An e-commerce website that accepts online credit card payments must ensure that it has adequate security measures to safeguard confidential customer data that is provided on the site. In the event that credit card numbers are leaked on the Internet, the website could be held liable for damages caused to the consumers.

b) *Recognition of digital currencies:* To be effective, existing laws would need to recognise the payment of digital currencies, as an enforceable consideration against obligations undertaken by the other parties. Further, the extent to which these digital currencies are "valid tender" would also need to be examined.

c) *Determining the relevant jurisdiction:* This would mean determining the relevant law that parties will be governed by in respect of electronic transactions (whether by the contract or in its absence, by general principles of law). This may create problems, especially when the laws in Country A, where the company is registered permit electronic payment contracts, whereas the laws in Country B, where the consumer is located, do not regulate electronic payment contracts.

d) *Risk of Regulatory Change:* The regulatory environment for electronic payment is likely to change with technological innovations in modes of

payment.[77] Therefore, any form of legislation made in this regard should be technologically neutral. Pursuant to the IT Act the Reserve Bank of India ("RBI"), in consultation with the National Payment Council is in the process of giving final touches to the draft of the Payment Systems Regulations Act. This proposed legislation will bring in all electronic fund transfers in the country, such as money orders, settlements at payment gateways, stock and commodity exchanges and clearing houses under the jurisdiction of the RBI.

e) *Transaction risks:* These include the liability for security failures in the system of the transaction and the relevant standard of care for system security.

f) *Consumer-oriented risks:* These include risks concerning privacy, consumer protection, money laundering, tax avoidance, online fraud and crime.

g) *Disabling IT Act:* The IT Act does not apply to negotiable instruments which are likely to create problems in the growth of electronic payment mechanisms.

h) *No virtual banks:* The recently announced Internet Banking Guidelines in India, which stipulate that purely virtual banks on the Internet are not allowed, may be a hindrance in maximising the potential of the Internet for electronic payments. However, existing banks are not prevented from setting up e-commerce operations for their customers.

2.3.13. *Foreign Direct Investment:*

Indian Government has liberalized foreign direct investment in India. As per the Foreign Exchange Management Act, 1999, FDI is allowed on an automatic basis, (i.e. without any prior approval of the Ministry of Commerce and Industry) up to a certain limit or fully, in most sectors. In July 2000, vide Press Note No. 7 (2000

[77] An e-payment system also called an electronic payment system or online payment system where cash is not required for the transaction. https://securionpay.com/blog/e-payment-system/ visited on 16 Jan 2017.

Series), the Government has also allowed 100% FDI in e-commerce activities.[78] However, this investment is subject to the following conditions:

1) FDI is allowed only in companies engaged in B2B e-commerce activities and not in retail trading; and
2) 26% of the FDI has to be divested in favour of the Indian public within a period of five years if the companies are listed in other parts of the world.

Therefore, companies engaged in B-2-C, e-Commerce activities cannot obtain FDI on an automatic basis. They would have to seek prior approvals from the Foreign Investment Promotion Board under the Ministry of Commerce and Industry, which would consider such applications on a case-to-case basis.

2.4. M-Commerce

Mobile commerce and also known as "mobile e-commerce" or "m-commerce" means commercial transactions and communication activities conducted through wireless communication services and networks by means of short message service "SMS", multimedia messaging service "MMS" or the internet, using small, handheld mobile devices. "Mobile operator" refers to a company that provides services to mobile subscribers, "Mobile vendors" refers to a company that sells goods and services through mobile platforms, either directly or through intermediaries including website operators such as Yahoo and eBay. "Mobile Aggregators" are entities that assist mobile vendors by, for example, processing and forwarding multiple third-party vendor charges to mobile operators for billing to the mobile subscriber and lastly "Mobile subscriber" are those individuals who pay for mobile subscriptions.

[78]. Ministry of Electronics & Information Technology, Government of India, http://meity.gov.in/e-commerce, visited on 17 Jan 2017.

With the union of operating platforms, mobile commerce is now expanding into Internet-based e-commerce, thereby, it is progressively hard to recognize m-commerce within e-commerce. While mobile commerce does not as such require Internet access, ever more m-commerce transactions occur by means of communication system protocol "WAP" /"i-mode" and wireless communication networks e.g. "2G" "3G" "4G" and "5G". In addition, an increasing number of personal data devices or smartphones are now able to support wireless telephonic communications including audio and video. The mobile subscribers can use their device for host of services such as;-

- To purchase contents e.g. movies, games and ringtones.
- To play games and gamble online.
- To access weather, news, mobile TV and to vote in interactive TV programs.
- To access online banking, financial services and to make transactions.

Despite the various advantages of these mobile platforms we cannot overlook other associated challenges in m-commerce because of the small screen of mobile device and limited storage capacity. Organisation for Economic Co-Operation and Development have raised concern on increased risk of commercial exploitation of minors and amplified vulnerability of mobile devices to unauthorised use data security breaches and privacy risks.[79]

2.4.1. Legal issues associated with m-commerce in relation with consumers.

The various issues related to consumers are;-

[79]. OECD Ministerial Meeting on the Future of the Internet Economy, Seoul, Korea, 17-18 June 2008.

2.4.1.1. Limited Information disclosure

An e-commerce retailer sent an offer for a TV to one of its customers on his mobile phone. The offer indicated that full information about the company, the TV and the terms and conditions of the sale were available on the company's website, and provided the URL. The customer ordered the item without consulting the webpage. When he received the bill, he was surprised at the high shipping and handling charges. He complained to the company, but was informed that the full details on costs were provided on the website.

2.4.1.2. Conformation process

A consumer using a mobile phone reached a website offering a one month free online access to a business magazine. He provided his details through SMS to accept the offer. He did not however notice the contract terms that were at the bottom of the page. They stated that after one month he would have to pay for the service; viewing the terms would have required extensive scrolling. The consumer was puzzled two months later when he received his mobile phone bill by SMS, which included a charge for the above service he did not recall indicating that he wanted to subscribe to it at the end of the trial period.

2.4.1.3 . Stock Purchase

A consumer signed on to his bank to place an order to sell stock over a mobile phone. He validated the details of the order, thinking he had confirmed the transaction. He did not realise that he had to scroll to the bottom of the validation page for confirmation information. The process for confirming the order was not clearly indicated; as a result, the transaction was not executed.

2.4.1.4. Complex chain of contract

A television talent show invited viewers to vote for their favourite contestants by sending short codes through their mobile handsets. The price of the call was disclosed only at the bottom of the screen in fine print that appeared for 10 seconds. Moreover, the print was impossible to read from the distance that viewers would normally sit from their television screens. There was no confirmation process sent on their mobile phones after voting, viewers simply saw a message thanking them for their votes. Mobile subscribers did not realize that they had been billed for premium rate (above the cost of standard transmission) messaging services until the charges appeared on their mobile service bills. When they disputed the charges with their mobile service operators, they were informed that they had to pay the bill and take the problem up themselves with the television programme.

2.4.1.5. Cross Border Dispute

A consumer received an SMS containing a link to a website, which advertised a luxurious watch at a low price. The consumer felt confident that the offer was genuine because it came from a mobile site from which he had already bought similar products and which contained information in his native language. He therefore placed an order to buy the watch. When the watch was not delivered, the consumer complained to the customer service department of the company, and found out that the business that he purchased the item from was in fact operated by another company which was not based in his country. When he complained to government authorities, he was told that they could do nothing since the business was located outside the country.

2.4.1.6. Protection of minors (Access to harmful or adult content)

A 15 year old found out about a website offering adult oriented photos for free from his friends. He went to the site using his mobile phone, knowing his parents would not be able to monitor his web activity closely. The website contained a warning that users should be over the age of 18. He responded that he was, and was granted instant access.

2.4.1.7. Marketing practice targeting children

A 13 year old was intrigued by various messages she received on her mobile handset from a vendor from whom she had previously bought a ringtone. The vendor encouraged her to buy all sorts of goods and services. She ended up buying a number of additional ringtones, games, and horoscopes. Her mother asked the mobile operator to intercept the ads, but it indicated that it was powerless to do so.

Above illustrated hypothetical cases raises a number of issues for mobile subscribers which as follows;-

- **i.** The inability of consumers to know when they are accessing premium messaging services on the mobile handsets.
- **ii.** Absence of a confirmation process,
- **iii.** The mobile operator's deficiency to provide an effective dispute resolution and redress system for the billing dispute.
- **iv.** Non-existence of effective dispute resolution mechanisms to address consumer complaints in cross border m-commerce transactions.
- **v.** The want of age verification technology to discourage minors to enter into a contract.

2.5. Liability of Intermediaries in India and the Information Technology (Intermediary Guidelines) Rules, 2011.

In online intermediary services the entity that enters into contact with the service provider via the platform is generally a consumer. The relationship between service provider and intermediary is an agency contract the service provider is the principal and the intermediary is the agent. However, generally speaking, the agent is responsible towards its principal. Legal relationship that comes into existence once a client of a final service uses an intermediary to conclude such a contract. Examples in the form of hypothetical scenarios: (J Sénéchal, 2016).

a) The intermediary offers services that have been indicated (in quantity, price, and characteristics) by the provider. Through its platform it puts in contact the two parties of the deal receiving a fee from the provider without asking the consumer any fee.
b) The intermediary informs the consumer that he/she will have to pay a fee for the service rendered by the platform.
c) The intermediary limits itself providing commercial information concerning the service provider, but does not, generally, make it possible for a contract to be concluded between the latter and the consumer.

A valuable consideration is given by the client in the form of his/her personal data, to the intermediaries which we have seen are among the most valuable assets of online intermediaries. Those data are not only necessary in order to render the intermediary service, but have a further economic value, both for profiling that specific client, and for creating an aggregate data-bank. (Margherita Colangelo and Vincenzo Zeno-Zencovich, 2016).

2.5.1. Definition of intermediary and Internet Intermediary.

As per Oxford dictionary; "Person who acts as a link between people in order to try and bring about an agreement"[80]is an intermediary.

Organisation for Economic Co-operation and Development's project report on Internet intermediaries April 2010, defined "Internet Intermediaries" as Internet intermediaries bring together or facilitate transactions between third parties on the Internet. They give access to, host, transmit and index content, products and services originated by third parties on the internet or provide Internet-based services to third parties.[81]

2.5.2. Examples of Internet intermediaries

- Network operators:

  Mobile network operators (BSNL, Vodafone, Airtel, Jio etc.)

- Infrastructure Management Services (IMS):

  These companies create and maintain networks for the network operators, e.g. Cisco, Huawei, Ericsson, Dark Fibre Africa.

- Internet Access Provider (IAPs):

  Companies that provide access to the internet like Airtel India, Jio, BSNLetc

- Internet Service Provider (ISPs):

  Many IAPs as well as network operators are also ISPs and the term is often used interchangeably.

- Hosting Providers:

  Website hosting services are basically the plot of internet land that your website storefront sits on. If you have a website, it needs to be on the web, and

[80]. English Oxford Living Dictionary, available at https://en.oxforddictionaries.com/definition/intermediary, visited on 18 Jan 2017.
[81]. Originally issued under the code DSTI/ICCP(2009)9/FINAL.

these hosting services are the landlords that put up your site and keep it running so your customers can access and see it when they type in your URL.[82]

- Social networks:

  Facebook, Twitter, LinkedIn, Orkut, Google +

- Search engines and aggregators:

  Google, Naver in Korea and Baidu in China

- Internet cafes/cybercafes

- Comment sections on blogs or website.

2.5.3. Information Technology (Intermediaries Guidelines) Rules, 2011

These guidelines was published and notified in The Gazette of India: Extraordinary on 11 April 2011.[83] Definition of intermediaries is imported from Section 2 sub section (1) clause (w) of the Information Technology Act, 2000.[84] Rule 3 of the above guidelines prescribes for the due diligence to be adhered by the intermediaries.[85]

---

[82].https://www.top10bestwebsitehosting.com/DomainHostingComparison?utm_source=google&kw=hosting%20providers%20in%20india&c=243012245026&t=search&p=&m=e&adpos=1t1&dev=c&devmod=&mobval=0&network=g&campaignid=247009428&adgroupid=9537074868&targetid=kwd302006128784&interest=&physical=20472&feedid=&a=216&ts=hi&topic=&gclid=EAIaIQobChMI4pnr4pOD3AIVxxiPCh3cowPMEAAYASAAEgJmxfD_BwE

[83]. G.S.R. 314(E).— In exercise of the powers conferred by clause (zg) of subsection (2) of section 87 read with sub-section (2) of section 79 of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following rules, namely.-

[84]. "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message.

[85]. The intermediary shall observe following due diligence while discharging his duties, namely: — (1) The intermediary shall publish the rules and regulations, privacy policy and user agreement for access-or usage of the intermediary's computer resource by any person. (2) Such rules and regulations, terms and conditions or user agreement shall inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information that —
(a) belongs to another person and to which the user does not have any right to;(b) is grossly harmful, harassing, blasphemous defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner

However, Section 79 of the Information Technology Act, 2000 exempts intermediaries from liability in certain instances. "It states that intermediaries will not be liable for any third party information, data or communication link made available by them". The Act extends "safe harbour protection" only to those instances where the intermediary merely acts a facilitator and does not play any part in creation or modification of the data or information. The provision also makes the safe-harbour protection contingent on the intermediary removing any unlawful content on its computer resource on being notified by the appropriate Government or its agency or upon receiving actual knowledge.[86]

Supreme Court of India in Shreya Singhal V/S Union of India (2015 SCC 248) stated that "knowledge" under section 79(3) of the IT Act would only mean knowledge of the intermediaries pursuant to an order of a court of law and held that an intermediary would be liable if it does not expeditiously remove any objectionable content despite receipt of a court order directing removal of such content.

---

whatever; (c) harm minors in any way; (d) infringes any patent, trademark, copyright or other proprietary rights; (e) violates any law for the time being in force; (f) deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature; (g) impersonate another person; (h) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource; (i) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting any other nation.

[86]. R & A Associates is an integrated Corporate Secretarial & Legal Services Firm, LIABILITY OF INTERMEDIARIES UNDER INFORMATION TECHNOLOGY ACT, 2000, available at http://www.rna-cs.com/, visited on 18 Jan 2017.

2.6. Conclusion

There is a rapid development of digital economy in the end of twentieth century, along with this development numerous challenges most particular to regulate this digital economy has become one of the major challenges among other issues. In such situation the only legislating dealing with the challenges brought by the digital revolution is Information Technology Act, 2000, which is an enactment of the Parliament of India which was further amended in the year 2008 to make it more stringent in the matter of Cyber Crime. However, the concern for Consumer Protection in online commercial activities has highly been ignored by this law. Since, OECD says, "*the same level of protection provided by the laws and practices that apply to other forms of commerce should be afforded to the consumers participating in commercial activities through the use of global network"*.[87]

Government of India must provide the same level of protection to its citizens in the cases of online transactions for which separate legal framework is need of an hour.

[87]. Guidelines for Consumer Protection in the Context of Electronic Commerce approved on 9 December 1999 by the OECD Council, are designed to help ensure that consumers are no less protected when shopping on line than they are when they buy from their local store or order from a catalogue. By setting out the core characteristics of effective consumer protection for online business-to-consumer transactions, the Guidelines are intended to help eliminate some of the uncertainties that both consumers and businesses encounter when buying and selling on line. The result of 18 months of discussions among representatives of OECD governments and business and consumer organisations, the Guidelines will play a major role in assisting governments, business and consumer representatives to develop and implement online consumer protection mechanisms without erecting barriers to trade. https://www.oecd.org/sti/consumer/34023811.pdf visited on 19 Jan 2017.

CHAPTER THREE

LEGAL FRAMEWORK FOR THE PROTECTION OF E-CONSUMERS IN INDIA

3.1. Introduction

A well-known Scottish economist, philosopher, and author Adam Smith in his classical work "The Wealth of Nations" described the market as a pillar of consumer power. (Adam Smith, 1937). According to him, the market is the place where the buyer and the seller have personal encounters. But with the passing of time, the scenario has changed. In the current socioeconomic situation, it turns out that the consumer is the victim of many inaccurate and unethical methods used or adopted on the market. Consumers are mostly illiterate, poor, back and even untrained. Against this, manufacturers are relatively more organized and marketed, they sell their goods and services. The consumer who was immediately called "market king" has become a victim of it. The consumer is not provided with the necessary and adequate information on consumer goods and their features, advantages and disadvantages. So far most consumers are concerned, modern industrial, economic and social developments have proved to be a matter of fiction and an empty slogan and an empty pan.

Since society was Laissez Faire, the state rarely used it to intervene in the lives of its citizens. There were no effective laws to regulate the relationship between the buyer and the seller. This trader encouraged to market monopolies and the merchant became the "king of the market". There was no measure to control the abandonment by merchants, unless they were serious offenses. The *"CaveatEmptor"* principle, that is, "let the buyer beware" was the rule of the day and it was assumed that the consumer

was responsible for protecting himself and would do so by applying his intelligence and experience in negotiating the conditions of purchase. (Peter Smith & Dennis Swann, 1979). Terms and guarantees, established by the manufacturer and the merchant, were awaiting consumers. Consumers were abused and exploited by unscrupulous traders whose sole purpose was to make a profit at any cost. The Doctrine of Freedom of Contract made merchants ever more daring in their quest to gain more profits. All of these factors culminated in a new phenomenon that led to abuse and exploitation of consumers. Consumers need legal protection when goods do not give their promises or cause injuries. (Adam Smith, 1937). This has led to the consumer movement around the world and therefore the concept of consumer was born and consumer protection become the primary duty of the state.

Likewise, if we look at the Indian history it has been divided into Ancient, Medieval and Modern times. (P.N. Agarwala, 1985). During historical periods, trade or commerce has been one of the most prominent factors of Indian economy. (Prakash Charan Prasad, 1977) Indian civilization has deep roots in consumer protection in its rich land, dating back to 3200 BC, where social principles have been valued and well-crafted by moral practices. The king was the supreme authority to do justice, but his authority was circumscribed by the rules of the Dharma. The well-being of his subjects was the most important part of the leadership's apprehension. They have shown a deep focus on regulating not only community settings, but also the economic lives of people, throwing many trade restrictions to protect consumers from consumers. (A. Rajendra Prasad, 2008). This chapter examines the historical perspective of consumer protection in India from the old (Vedic age) to the third millennium (XXI century). It also briefly discusses the development of consumer laws / laws in India. Finally, this research work focuses on the interdisciplinary research of

law with technology in which the role of the law has been analyzed in the Internet e-Commerce for consumer protection.

3.2. Pre-Independence Legislations for consumers in British India.

3.2.1. The Sales of Goods Act, 1930

The term 'Goods' means every kind of movable property other than money and actionable claims. The Sale of Goods Act, 1930 is mainly based on the English Sale of Goods Act, 1893. Before the Sale of Goods Act, 1930, the law relating to sale of goods was covered under the chapter VII of the Indian Contract Act, 1872, the provision of which were found to be inadequate. Therefore, a strong need was felt to have an adequate Sale of Goods Act and consequently a new Act called Sale of Goods Act, 1930 was passed[88] (R.K. Bangia, 2009) This Act provides for the settlement of consumer seller disputes. This Act has changed the principle of 'Caveat Emptor' and casted a responsibility on the seller to offer mercantile goods. Besides return of price or free repair or replacement, damages can also be claimed for any loss or harm or inquiry if suffered by buyer.

3.2.2. The Indian Penal Code, 1860

By the Charter Act of 1833, the First Law Commission was appointed by the Government in India in 1835. Lord Macaulay and three members Charles Hay Cameron, John Macpherson Macleod and George William Anderson prepared a draft for the first Indian Penal Code which came into existence in 1860. (B.M. Gandhi, 2009). Various consumer protection provisions find its place in it, such as (1) Prohibition of fraudulent use of false instrument for weighing (Section 264), (2)

[88]. The Sales of Goods Act, 1930, No. 3, Acts of Parliament, 1930 (India). Contains 66 Sections came into force from 1st July, 1930 which extends to whole of India except the State of Jammu and Kashmir. See: R.K. Bangia, Law of Contract I With Specific Relief Act, Allahabad Law Agency, Law Publishers, Faridabad, 2009.

Fraudulent use of false weight or measures (Section 265), (3) Being in possession of false weight or measure (Section 266) and (4) Making or selling false weight or measure (Section 267). The purposes of these provisions are to maintain honesty in trade and commerce for the protection of rights of consumers. (S.N. Misra And Sanjay Kumar Misra, 1994). There are more provisions like: (1) Prohibition of Adulteration of food or drink intended for sale (Section 272), (2) Sale of noxious food or drink (Section 273), (3) Adulteration of drugs (Section 274), (4) Sale of adulterated drugs (Section 275) and (5) Sale of drug as a different drug or preparation (Section 276). From these provisions the concern for consumer protection is lucid in the early Indian modern era. (K.D. Gaur, 2009)

3.2.3. The Indian Contract Act, 1872

A vital element impacting business transactions and regulatory framework is contract. Law of Contract is the most important and basic part of 'Mercantile Law'. It is not only the merchants or trader but every person who lives in the organized society, consciously or unconsciously, enters into contracts from sunrise to sunset. When a person buys a computer or hires a taxi or goes to video library to buy a video cassette or takes a credit card from a bank or gives loan to another or he does booking for a marriage palace, he/she enters into and performs contracts. Such contracts create legal relations giving rise to certain rights and obligations. (K.C. Garg, V.K. Sareen, Mukesh Sharma And R.C. Chawla, 2009). This legislation protects the rights of traders as well as consumers in business transactions. The Indian Trust Act, 1882 was also enacted during this period.

August 15, 1947 was a historic occasion. After a thousand years of subservience India had fortified the right to govern through its elected representatives. (B. Shiva Rao, 1972) and on 26th day of January 1950 India adopted its own

Constitution its spirit and dreams are reflected in the Preamble of the Constitution. The Drafting committee of the Constitution gave the Preamble "the place of pride". (Durga Das Basu, 1988) Fundamental rights ensures that everyone in India lives with human dignity and is devoid of any form of exploitation. It includes the protection of the health and the strength of humans. Directive Principles of State Policy establish certain economic and social policies to be pursued by the various governments of India for the welfare of the people and economic democracy. Independent India adopted a "socialist"[89] model. Socialism means providing a dignified standard of living for workers and, above all, ensuring safety from the cradle to the grave. (J.N. Pandey, 2008)

The earliest steps taken by the national government in the direction of consumer protection in India were the Banking Companies Act, 1949 and the Industries (Development and Regulation) Act, 1951, the Emblems and Names (Prevention and Improper Use) Act, 1950, Industries (Development and Regulation) Act, 1951, Forward Market (Regulation) Act, 1952, Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Prevention of Food Adulteration Act, 1954, the Essential Commodities Act, 1955, the Companies Act, 1956, the Indian Standards Institutions (Certification of Marks) Act, 1956, the Standards of Weight and Measures Act, 1956 (1976), Trade and Merchandise Act, 1958, The Bureau of

[89]. In D.S. Nakara vs. Union of India, A.I.R. 1983 S.C 130 (India). The Supreme Court has held that the basic framework of 'Socialism' is to provide a decent standard of life to the working people. This among others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily toward Gandhian Socialism. This is the type of socialism which we wish to establish in our country. In Excel Wear vs. Union of India, AIR 1979 SC 25, the Supreme Court considered the effect of the word 'Socialist' in the Preamble. The Hon'able Court held that the addition of the word 'Socialist' might enable the Courts to lean more in favour of nationalism and State ownership of industry.

Indian Standards Act, 1986 and Monopolistic and Restrictive Trade Practices Act, 1969 (Amended in 1984).

Other legislations from the point of consumer interest are: Cinematograph Act 1952, the Vegetable Oil products (Quality Control) Order 1955, Price Competition Act 1955, Security Contract (Regulation) Act 1956, Specific Relief Act 1963, Hire Purchase Act 1972, the Packaged Commodity Regulation Order 1975, Sales Promotion Employee (Condition of Service) Act 1976, Prevention of Black Marketing and Maintenance of Supplies of Essential Commodity Act 1980, the Essential Commodities (Special Provision) Act, 1981, the Household Electrical Appliances (Quality Control Order 1976 Amendment in 1981) and Textile (Consumer Protection) Regulation 1988.

In 1974, another legislations passed by the Government of India namely, the Maintenance of Internal Security Act, 1971 and the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The major aim of these legislations has been to check inflation, profiteering, hoarding, black marketing and unscrupulous trade practices

3.3. Legislative History and Objectives of Consumer Protection Act, 1986.

On 15th March 1962, John F. Kennedy the *(xxxv President of United States: 1961-1963)*[90]offered a special message before the Congress of United States on Protecting the Consumer Interest stating that: - . . . *"Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the*

[90]. John F. Kennedy, *93 - Special Message to the Congress on Protecting the Consumer Interest*, THE AMERICAN PRESIDENCY PROJECT, (Dec. 02, 2016, 11:05 AM), http://www.presidency.ucsb.edu/ws/?pid=9108

economy is by consumers. But they are the only important group in the economy who are not effectively organized, whose views are often not heard." And declared *four consumer's rights* before the American Congress. These rights include:

I. The right to safety:

II. The right to be informed:

III. The right to be heard:

IV. Later on International Organisation of Consumers Union (in short IOCI) added three more rights in the list:-

I. The right to representation in government policy.

II. The right to an environment that is not threatening to human well-being and

III. The right to consumer education.

In the year 1975 the then Prime Minister Indira Gandhi launched Twenty-Point Program (TPP), with an object "to eradicate poverty and to advance the quality of life by providing a range of socio-economic benefits and aspects formulated for disadvantaged people in the country". Later in March 1985 United Nations Consumer Protection Guidelines were adopted in New York. Since this was the first concrete effort for the implementation of comprehensive consumer protection law and the establishment of consumer councils and other consumer dispute resolution authorities. The National Council for Consumer Protection with its twenty eight members, consisting of representatives of several ministries after two meetings, decided to convene a national consumer protection workshop from March 11 to 15, 1985 with consumer representations. As a result, a bill was discussed at another meeting on January 20 and 21, 1986. Successively government of India was also pleased to restore its Twenty Point Program in 1982 and 1986 by addition, United Nations

Charter of Human Rights in this program[91]. Subsequently in the same year of 1986 Consumer Protection Act was drafted by the Indian Legislature, approved by the House of Parliament on December 17, 1986, and was notified in May 1987.[92]

"The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for that purpose…… The law sought *inter alia* the promotion and protection of consumer rights such as"[93]

"(*a*) The right to be protected against marketing of goods which are hazardous to life and property"

"(*b*) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices"

"(*c*) the right to be assured, wherever possible, access to variety of goods at competitive prices"

"(*d*) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums"

"(*e*) the right to seek redressal against unfair trade practice or unscrupulous exploitation of consumers; and

(*f*) right to consumer education."[94] [95]

---

[91]. Twenty Point Program, https://www.gktoday.in/twenty-point-programme_22 Visited on 2 Feb 2017.

[92]. Consumer Unity & Trust Society, *State of the Indian Consumer*, CUTS INTERNATIONAL (Dec. 05, 2016, 01:00 PM), www.cutsinternational.org/cart/pdf/State_of_the_Indian_Consumer.pdf Visited on 4 Feb 2017.

[93]Consumer Protection Act, 1986 (Statement of Objects and Reasons)

[94]Consumer Protection Act, 1986, Chapter III Objects of the Central Council.

[95]. State of Karnataka v. Vishwabharathi House Building Coop. Society, (2003) 2 SCC 412 at page 419 Para 10

In order to clarify some procedural issues, the law was amended in 1991 and provides that:-

A. Each action of the district council is drafted by the president and at least one member.
B. Any decision of the district council is signed by its chairman and the members or members who have conducted the proceedings.
C. If every position or point differs in a procedure of the president and a member of the tribunal, the same applies to the other member in this point or points and the opinion of the majority is the order of the district council and
D. In the case of a vacancy in the office of the president, the person who may be appointed chairman of the district council or the state commission may be temporarily nominated for such mandate. Consumer protection (amendment) 1993
E. The law was revised again in 1993 to extend the scope of the areas covered by the law and entrust more powers to repair agencies. Consequently, the Act, inter alia, intended to provide for:-[96]

A. Extending the scope of the law in order to allow consumers to bring collective complaints where such consumers have a common interest and make complaints about restrictive commercial practices adopted by a commercial operator.
B. Allow independent consumers to file complaints with compensation agencies where the goods bought by them only to earn their living suffer from any defect.

[96]. Parliament in the Forty-fourth Year of the Republic of India, The Consumer Protection (Amendment) Act, 1993, No 50, Act of Parliament, 1993 (India).http://bombayhighcourt.nic.in/libweb/actc/yearwise/1993/1993.50.pdf. visited on 6 Feb 2017.

C. Treatment of construction related services such as "services".

D. Establishment of selection committees for the selection of non-judicial members of the various compensation agencies.

E. Increase the monetary competence of district forums / state commissions.

F. Agencies provide additional repair costs by granting the parties, ordering the removal of defects or deficiencies of goods or services and grant powers to recover assets that may put public security at risk faculty, etc.

G. Imposing punishments on the complainant in the case of frivolous or harassing complaints; is

H. Ordering a one-year deadline for filing complaints

Although the Act provided valuable opportunity to consumers to seek redressal of their grievances, the disposal of cases was not fast enough. Several bottlenecks and shortcomings have come to light in the implementation of various provisions of the Act. With a view to achieve quicker and effective disposal of consumer complaints and to widen the scope of the Act, it was again amended in the year 2002. This amendment Act provided for:-[97]

A. Creation of the National Commission and State Commissions,

B. The time limit for admissibility of complaints, communications and complaints / appeals was determined.

C. Limitations on adjournments and

D. Increase the pecuniary limits of the jurisdiction of consumer forums so that district courts can face complaints about the value of goods or services and compensation indemnities up to Rs20 lakhs (against the previous limit of Rs.5

[97]. Parliament in the Forty-fourth Year of the Republic of India, The Consumer Protection (Amendment) Act, 2002, No. 62, Acts of Parliament, 2002 (India) http://www.delhistatecommission.nic.in/1_1_4.html. Visited on 7 Feb 2017.

lakh); Rs20 lakh up to Rs.1 crore (compared to the previous limit of Rs.5 lakh up to Rs20 lakhs) and the National Commission on Rs.1 crore (compared to the previous upper limit of Rs.20 lakhs).

The amendment Act of 2002 also provides for:

Charging of fee in respect of complaints filed with consumer dispute redressal agencies.

Depositing, equal to fifty percent of the amount of compensation or of the fine or amounts specified in the law prior to the admission of appeal.

Exclusion of Services Used for Commercial Purposes from Consumer Records Agencies.

Prescribe the qualifications for members of the consumer dispute redressal agencies.

Re-appointment of the President and District Court members, state commissions, and the National Commission for another five-year period.

Extend the provisions of the law to service providers who engage in unfair or restrictive commercial practices or provide services which are hazardous and

Bring the sale of spurious goods or services in the expression of unfair commercial practices.

The recovery of amounts ordered by consumers disputes redressal agencies as arrears of revenue on the ground.

Provision of provisional orders, where necessary.

Replacement of heirs or legal representatives as part of the complaint in the event of the death of the applicant or the other party

Mandatory constitution of consumer councils at district, national and national levels.

These developments shows that the Act has passed through a natural phase of evolution and its scope has widened to cover more and more areas of consumer concern. A relevant question that now arises in the present context is, Who is a consumer and why he needs protection and from whom?

3.3.1. Consumer Protection Act, 1986: An analysis

The Consumer Protection Act of 1986 (hereinafter "the Law") is the most important in terms of consumer protection legislation. This is an umbrella law that has expanded the scope of seeking to repair consumer injustices without compromising the common law resources available to them. In other words, the law protects consumers in addition to the provisions of any other law and not in derogation.[98]This law applies to government, businesses and other sectors involved in the process and all administrative activities, businesses, judicial institutions and society in general, however, this law has got to be directly and specifically related to the subject. (S.K. Verma, M. Afzal Wani & S.S. Jaswal, 2004). Under the Act, redressal of grievances is available to consumers with respect to defects in goods and deficiencies in services as defined by the Act. However, it is expected from the complainant that they should come before the Redressal Agencies with clean hands and the relief claimed by them are not inflated. (D.N. Saraf, 1995). In view of its global importance it is worth recalling in this chapter some important provisions of the Consumer Protection Act of 1986, namely “consumer”, “complainant”, “complaint”, “consumer dispute”, “defect”, “deficiency”, “goods”, “manufacturer”, “restrictive trade practice”, "service", “spurious goods and services”, “trader”, and "unfair trade practice" Definitions of all the relevant terms and expression given in Chapter I enables to

[98]. The Consumer Protection Act, 1986, No. 68, Acts of Parliament, 1968 (India) : Section 3

determine the entitlement of any person to any remedy under the Act and to identify the goods and services with respect to which the remedy may be claimed.

3.3.2. Definition of Consumer

(i) Ordinary Definition

A relevant question that arises first of all in the current context is who is a consumer? In the answer, it can be emphasized that, in simple terms, every human being who consumes something for his survival is a consumer. For example, a person who eats food, buys products at an approved cooperative store or ration shop, travels on horseback, oxcart, camel cart, bus, car, train or train, rents a taxi or auto-rikshaw, rent an apartment or house, buy a house, nibble or scratch your teeth, sew clothes, clean sheets, buy a car or any other mode of transportation, pay for them electricity and water costs, buy shoes or get repaired and drink alcohol. We are also a consumer who works in the building, goes to the doctor, lawyer or any professional, operates bank vaults and safes, hires an architect and surveyors, goes to the cinema and theater and participates in any type of transaction.(Rajendra Kumar Nayak, 1991).

(ii) Dictionary Meaning

Longman Dictionary of English Language[99] defines consumer as

"One who purchases goods or service"

The Oxford Advance Learners Dictionary[100] also defines consumers as *"A person who buys goods or uses services."*

[99]. LAXMAN DICTIONARY OF ENGLISH LANGUAGE 343 (New Ed. Essex, Longman Group U.K Ltd, 1991).

[100]. THE OXFORD ADVANCE LEARNERS DICTIONARY OF CURRENT ENGLISH 252 (Fifth Ed, Oxford University Press 1989).

Similar to Collins English Dictionary[101] a consumer is a *"Person who purchases goods and services for his own personal needs."*

Whereas the Random house Dictionary[102] defines consumers as

"A person or an organization that uses a commodity or services."

According to the Oxford English Dictionary[103] a consumer is *"One who purchases goods or pay for services."*

Black's Law Dictionary:

"*Consumer is one who consumes. Individuals who purchase, use, maintain, and dispose of products and services. Users of the final product. A member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practices for which state and federal consumer protection laws are enacted*."[104]

(iii) Statutory Definition

Further, The Consumer Protection Act, 1978 of Finland, defines 'consumer' as 'a person who acquires consumer goods or services primarily for his personal use or for use in his private household'.[105] Almost identical definition has been used in Section 1 of Draft Consumer Protection Act for Slovenia which defines 'consumer' as 'a person who acquires goods and services in the first place for his personal use or in his/her household'.[106]

---

[101]. COLLINS ENGLISH DICTIONARY (3rd Ed, 1991).
[102]. DICTIONARY OF THE ENGLISH LANGUAGE (2nd Ed Random house. New York1987).
[103]. OXFORD DICTIONARY, 802(1989).
[104]. BLACK'S LAW 316 (6th ed. 1891-1991).
[105]. The Consumer Protection Act, 1978, Finland.
[106]. Draft Consumer Protection Act, Slovenia.

Part III of United Kingdom's Consumer Protection Act, 1987 under Section 20(6) of defines 'consumer' as under:-

(a) in relation to any goods, means any person who might wish to be supplied with the goods for his own private use or consumption;

(b) in relation to any services or facilities, means any person who might wish to be provided with the services or facilities otherwise than for the purposes of any business of his; and

(c) in relation to any accommodation, means any person who might wish to occupy the accommodation otherwise than for the purposes of any business of his;[107]

Consumer:

Under Section 2(l)(d) of the Consumer Protection Act, 1986 defines "consumer" as any person who;

buys any goods for a consideration but does not include a person who obtains such goods for resale or for any commercial purpose; or

hires or avails of any services for a consideration, when such services are availed of with the approval of the first mentioned person *but does not include a person who avails of such services for any commercial purposes*;

Explanation.— For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment.[108]

In Lucknow Development Authority v. *M.K. Gupta,* Hon'ble Supreme Court held that *"*The word "consumer" is a comprehensive expression. It extends from a person who

[107]. Consumer Protection Act 1987

[108]. Consumer Protection Act, 1986

buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use of private or public services." [109] The Act opts for no less wider definition. It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it*."*

In *Morgan Stanley Mutual Fund* v. *Kartick Das*, the Supreme Court stated the meaning of the expression 'consumer' in the following words:

"The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer."[110]

In Regional Provident Fund Commissioner v. *Shiv Kumar Joshi*, *Hon'ble Supreme Court held that "*The definition of 'consumer' under the Act includes also the beneficiary for whose benefit the services are hired or availed of*."*[111]

[109]. (1994) 1 SCC 243
[110]. (1994) 4 SCC 225
[111]. (2000) 1 SCC 98

It only excludes from this definition persons who obtain such goods for resale or for any commercial purpose. The term "commercial purpose" has not been defined in the Consumer Protection Act, 1986. However, the term "commercial purpose" has come for determination before the Consumer Forums in large number of cases and has also led to the pronouncement of apparently contradictory decisions by various Consumer Forums including the National Commission, thereby inviting a lot of criticism.

The Rajasthan State Commission in the case of *Smt. Pushpa Meena V/S. Shah Enterprises (Rajasthan) Ltd,*[112]said that the use of the jeep as a taxi to obtain benefits was a commercial objective and therefore the buyer / user was not a consumer sense of law.

The National Commission in the case of *Vijay Narayan Aggarwal V/S.M/s Chowgule Industries Ltd,*[113]said that if a person is doing large-scale business and purchasing goods for profit, the purchase is for commercial purposes and not as a consumer.

The National Commission in the case of *Mayor, Calcutta Municipal Corporation* v. *Tarapada Chatterjee*,[114]said it was not a consumer dispute when the water supply was made by the company from its statutory duty and not paying taxes.

The National Commission in the case of *M/s Exan Computers Ltd. V/S.Tagore GraciasPanji*,[115]said that the purchase of an installer at the applicant's residence for own computer use was not for commercial purposes and the actor was a consumer. The purchase of equipment in this case had not taken place in order to carry on for profit, but to earn a living.

[112]. 1991 (1) C.P.R 229.
[113]. 1993 (2) C.P.J 231 (NC).
[114]. 1994 (1) C.P.R 87 (NC).
[115]. 1994 (3) C.P.R 651 (NC).

It has been laid down by National Commission in the case of *M/s Abhinav Publishing India Pvt. Ltd. V/S. M/s Graphics & Print,*[116] that the nature of business investment is an important factor to consider in determining the purpose of acquiring goods or services. If there are large investments and prices involved in an operation, it may be for resale and profit. Likewise, if goods are purchased on behalf of a company for commercial purposes, they may indicate the purpose of the purchase.

It has been laid down by National Commission in the case of *M/S Cheema Engineering Services V/S. Rajan Singh,*[117] that if any person purchases a machine for earning his livelihood he should be treated as a consumer even if he takes assistance of one or two persons to assist or help him in operating the machine. In this case, the consumer had purchased a brick manufacturing machine for earning his livelihood.

The Supreme Court of India in the case of *M/S Spring Meadows Hospital and Another V/S.Harjal Ahluwalia,*[118]has also held that the definition of "consumer" is wide enough and it includes not only the person who hires services but also the beneficiary of such services other than the persons who actually hire such services. Therefore, if a child is admitted for his treatment in a hospital, both the child as well as his parents should be treated as consumers.

In *Mantora Oil Products (P) Ltd. V/S.Oriental Insurance Co. Ltd,*[119]it was held by the National Commission that the "unfair trade practice" defined in the Act not only relate to purchasing of goods but also to hiring of services.

In *Mukesh Jain V/S.V.K. Gupta,*[120]a complaint had been filed alleging unfair trade practice on the part of banks. Rejecting the view that the unfair trade practices

[116]. 1995 (2) C.P.R 6 (NC).

[117]. 1996 (2) C.P.R 11 (N.C).

[118]. A.I.R 1998 S.C 1801.

[119]. 1991 (1) C.P.J 326 (N.C).

relate only to goods, the National Commission held that the unfair trade practices relate to both goods and services.

In *AkhilBhartiya Grahak Panchayat V/S. Secretary Sbarda Bhawan Education Society,*[121] an institute had admitted students in excess of sanctioned number in violation of the approval they had obtained from the concerned authorities and those students could not be granted registration. The National Commission, accordingly held that the activity of admitting students in addition to the approved quota by any institution amounts to an unfair trade practice.

In *Om Prakash V/S. Assistant Engineer, Haryana Agro Industries Corporation Ltd,*[122]the Supreme Court of India has held that if a trader intentionally delays delivery of any goods to the consumers that amounts to unfair trade practice. In this case the delivery had been made to other purchasers who were below in the priority list and, as a result of the delay, the complainant had suffered some loss.

However it is pertinent to mention here that Where the complainant's case involves a determination of complex questions of law and fact which cannot be satisfactorily determined by the Consumer Forum in the time frame provided under the Act it would be better for the complainant to seek redress of his grievances in a civil court. *Pannalal* v. *Bank of India,* (1992) 1 CPR 34 (NC). The Act does not contemplate the determination of complicated issues of fact involving taking of elaborate oral evidence and adducing of voluminous documentary evidence and a detailed scrutiny and assessment of such evidence by the Consumer Redressal Forums. *Industrial Products, Karnal* v. *Punjab National Bank,* (1992) 1 CPR 70 (NC); *Special Machines, Karnal* v. *Punjab National Bank,* (1991) 1 CPR 52 (NC).

---

[120]. 1992 (2) C.P.J 493 (N.C).
[121]. 1994 (2) C.P.J 283 (N.C).
[122]. 1994 (2) C.P.J 1 (S.C).

3.4. Public Interest Litigation in the light of Consumer Protection Act, 1986

In Consumer Case No. 97 of 2016, Ambrish Kumar Shukla & 21 Ors V Ferrous Infrastructure Pvt. Ltd filed before National Consumer Disputes Redressal Commission one of the important issues *inter alia* which was discussed by a larger Bench therein was:

> "(i) Whether a complaint under Section 12(1) (c) of the Consumer Protection Act filed on behalf of or for the benefit of only some of the numerous consumers having a common interest or a common grievance is maintainable or it must necessarily be filed on behalf of or for the benefit of all the consumers having a common interest or a common grievance against same person (s);
>
> (vi) Whether the term 'consumer' given in section 12(1)(c) includes the term 'Person' as defined in section 2(m) of the Act, meaning thereby that groups of firms, societies, association, etc. could join hands to file the joint complaints, u/s. 12(1)(c) of the Act National Commission held that:
>
> The primary object behind permitting a class action such as a complaint under Section 12(1) (c) of the Consumer Protection Act being to facilitate the decision of a consumer dispute in which a large number of consumers are interested, without recourse to each of them filing an individual complaint, it is necessary that such a complaint is filed on behalf of or for the benefit of all the persons having such a community of interest".[123]

In other words the complaint can be made by recognized consumer association, whether the consumer to whom the goods sold or delivered or service provided is member of such association or not. (V.K. Aggarwal, 3rd ed)

[123] I(2017)CPJ1(NC)

It is the general principle of law that only the injured person has the right to appear before a court or a legislative body on a particular matter. The third person does not have the right to move the courts for the wrongdoings of others, is called *locus standi*, (BLACK'S LAW 941 6th ed. 1891-1991). Likewise, in the principle of the "Privity of Contract" Strange to a Contract cannot sue and is equally applicable in India as in England. (R.K. Bangia, 2005)

Privy Council in *Jamna Das V/S. Ram Autar and others*,[124] rejected a stranger's claim to enforce the contract against a contracting party. In this case, the owner of certain immovable property mortgaged the property and borrowed Rs. 40,000/- from the appellant. She (mortgagor) subsequently, sold the same property to the respondent no.1 (Ram Autar Pandey) for Rs. 44,000/- (other respondents were his representatives). She allowed the purchaser to retain Rs. 40,000/- to redeem the mortgaged property. The plaintiff sued the defendants (purchaser) for recovery of this debt. Although, he got decree against other representatives but not against Ram Autar. He, therefore, made an appeal to the Privy Council. The Privy Council dismissed the appeal with costs. It is, thus, clear that the mortgagee failed to recover benefit of contract only because he was not a privity to the contract.

After independence, Supreme Court of India in *M.C. Chacko V/S. The State bank of Travancore*,[125] further approved the doctrine of privity of contract in India and was also pleased to defined probable exceptions to it.

However, Supreme Court under Article 32 and the High Courts under Article 226 respectively allows the third party/person to file the petitions for the redressal of the public grievances in the name and style of Public Interest Litigation. (Nirmalendu,

[124]. I.L.R. (1912) 34 All. 63; L.R. 39 I.A. 7.
[125]. A.I.R. (1970) S.C. 504.

Bikash & Rakshit, 1999). In the said context, *People's Union for Democratic Rights and Others V/S Union of India and Others*,[126] is one of the leading and quite noteworthy PIL case in India. In the year 1982 Asian Games were conducted in New Delhi, for which the Indian Government constructed several constructions through the contractors. Huge number of poor and illiterate labour were employed in those constructions. Since they do not know their rights and actual wages contractor were paying very less. The petitioner being the voluntary social organisation brought this matter before the Supreme Court under Article 32 alleging that the Central Government and its contractors were exploiting the illiterate labours by paying lesser wages. The respondent Central Government contented that the petitioner was not the actual aggrieved person and they have no legal right to file the Writ. Double bench of Supreme Court comprising of Justice P.N. Bhagwati and Justice Baharul. Islam did not accept the contentions of the respondents and ordered the Central Government to pay the minimum wages to all the workers.

Principle Established: When the actual sufferers could not bring their difficulties any third person, society or association can file writ petition before Supreme Court and High Court. Similar, principle has been adopted in Consumer Protection Act, 1986. Under this Act not only the original consumer but also any other person or association can also file complaints against the seller of the defective goods or services for the welfare and protection of the real consumers.

Class Action: In original Consumer Protection Act, 1986 there was no provision for "Class Action". By the Consumer Protection (Amendment) Act, 1993, clause (c) of

[126]. A.I.R. (1982) S.C. 1473.

Section 12 read with sub-clause (iv) of clause (b) of Section 2(1) were added, providing the opportunity for "class action."

Judgement on Pecuniary Jurisdiction and Class Action was given by a full bench of National Consumer Disputes Redressal Commission (NCDRC) in *Ambrish Kumar Shukla & 21 Ors V/S Ferrous Infrastructure. Pvt. Ltd*,[127] wherein (NCDRC) observed the following at paragraph 15 of the Judgement;-

- "A complaint under Section 12 (1)(c) of the Consumer Protection Act can be filed only on behalf of or for the benefit of all the consumers, having a common interest or a common grievance and seeking the same / identical relief against the same person".
- "It is the value of the goods or services, as the case may be, and not the value or cost of removing the deficiency in the service which is to be considered for the purpose of determining the pecuniary jurisdiction".
- "The interest has to be taken into account for the purpose of determining the pecuniary jurisdiction of a consumer forum".
- "The consideration paid or agreed to be paid by the consumer at the time of purchasing the goods or hiring or availing of the services, as the case may be, is to be considered, along with the compensation, if any, claimed in the complaint, to determine the pecuniary jurisdiction of a consumer forum".
- "A group of cooperative societies, Firms, Association or other Society cannot file such a complaint unless such society etc. itself is a consumer as defined in the aforesaid provision".

[127]. I(2017)CPJ1(NC)

- "More than one complaints under Consumer Protection Act are not maintainable on behalf of or for the benefit of consumers having the same interest i.e. a common grievance and seeking the same / identical against the same person. In case more than one such complaints have been instituted". (Saba, 2017).

Single consumer legislation is the Consumer Protection Act of 1986. However, it does not address the issue or problems of maintaining or increasing the supply of any essential product or ensuring fair distribution and availability fair prices or dealing with people engaged in the collection and marketing of essential goods and infrequent inflationary disease for which the year 1981 Essential Commodities Act (Special Provisions) and Prevention of Black-Marketing and Maintenance of Supply of Essential Commodities Act, 1980 was promulgated.

3.5. The Bureau of Indian Standards Act, 1986.

Bureau of Indian Standards is another instrument of State tool to protect and promote consumer interest through formulation of well-regulated and independent mechanisms to deliver quality goods, services and public services to consumer satisfaction and the Bureau of Indian Standards Act, 1986 is another Act of great importance for the consumer movement approved by the Indian Parliament.

In the twilight years of the British Rule in India, when the country faced the giant task of setting up industrial facilities, it was the Institute of Engineering (India), which prepared the first draft of an institution that could assume the National Standards. On September 3, 1946, the Department of Industries and Supplies issued a memorandum announcing formally the creation of an organization called the Institution of Indiana Standards and on January 6, 1947, the ISI came into force. One of the symbolic roles of the Institute of Standards of India (I.S.I.) was to draw the standard of the National

Flag of India. However, after independence, it was necessary to recognize and influence the organization so that it could effectively carry out its functions, leading to the promulgation of the Indian Independent Bureau of 1986 and the establishment of the Office of Indian Standards as a statutory body on the 1st April 1987. One of the main goals of this law was to do. Standardization is intrinsic to life, improves quality of life, provides important contributions to safety, public health and environmental protection and is based on the experiences of everyday life. The Indian Office of Standards (BIS) is similar to other standardization bodies around the world. Standards are consensus documents that are formulated through technical committees that have representatives of producers, technical experts and users aimed at these standers after taking the views of anyone who may be interested. BIS standards are classified as basic standards, product specifications, and test methods and practice codes, and the BIS has made almost 17,000 standards. (Praveen Saxena, 2009)

In the case of *The Institute of Charted Accountants of India & Anr V/S The Director General of Income Tax (Exemptions), Delhi &Ors,*[128]Supreme Court of India had observed that: "BIS is empowered to frame rules or regulations, exercise coercive powers, including inspection, raids they possess search and seizure powers and are invariably subjected to Parliamentary or legislative oversight."

3.6. Monopolies and Restrictive Trade Practices Act, 1969

In 1967, then Union Finance Minister Shri Morarji Desai led the appointment of a committee to examine the key issues related to the operation and operation of the licensing system in India and to the benefits of other large industrial houses.

[128]. (W.P.(c)Nos. 3147, 3148 & 7181 of 2012)

Consequently, in April 1968, the Committee was appointed under the chairmanship of Mr Subimal Dutt. (Smriti Chand, 2007), following reports from the Commission for Monopoly Investigation and the Hazari Committee. Dutt or the "Industrial Licensing Policy Research Committee" presented its report along with its recommendation in July 1969. “On the basis of which the 1969 Monopoly and Restrictive Trade Law was issued, and accordingly, MRTP committee in 1970 to study the effects of such practices, case by case, the public interest and recommend appropriate to the purposes and objectives of corrective measures” (Natasha Kwatiah, 2008) with the aims and objectives: “The Bill is designed to ensure that the operation of the economic system does not result in the concentration of economic power to the common detriment and to prohibit such monopolistic and restrictive trade practices as are prejudicial to public interest.”[129]

The provisions on "restrictive commercial practices", including the maintenance of resale prices, are largely based on the Restrictive Trade Act of 1956 and the United Kingdom for resale prices of 1964. Similarly, the provisions on "unfair trade" are based on the United Kingdom's Fair Trading Act of 1973. American antitrust laws[130] of USA in particular the 1980 Sherman Antitrust Act, the Clayton Antitrust Act of 1914, the Federal Trade Commission Act of 1914 and Australian and Canadian laws in this area also served as a guide to defining the provisions on monopolistic, restrictive and unfair trading practices, (S.M Dugar, 2006) in India. In *Mahindra and Mahindra Ltd vs Union of India*. The Supreme Court of India has stated that "restrictive commercial practice has or may have the effect of preventing, distorting or

[129]. The Monopolies and Restrictive Trade Practices Act, 1969 (Statement Objects and Reasons) [*Repealed by Competition Act, 2002 Act No 12 of 2003, S. 66, w.e.f. 1-9-2009*]

[130]. Federal and state statutes to protect trade and commerce from unlawful restraints, price discriminations, price fixing, and monopolies. Most states have mini-antitrust acts patterned on the federal acts.

restricting competition on the market. This law makes a distinction between the monopoly of commercial practices and restrictive. The monopolistic business practices referred to as the dominant commercial practices, that is to say that a company or group of companies, reached a dominant position in the market was in a position to control the market, adjusting prices or production or elimination of competition. Similarly, when the joint venture created by a group of two or more companies to avoid competition in the market, regardless of their market share, it is restrictive business practices. Such practices are considered prejudicial to public interests".[131] The Government of India appointed in 1977 a Sachar Committee to carry out the necessary review of the operation of the MRTP Law and make the necessary recommendations to rationalize its business. As a result, changes were introduced in the MRTP Act in 1980 and 1984. A significant amendment was also introduced in 1991 when Chapter III on monopolies was abolished. (Natasha Kwatiah, 2008).

Section 36A of the MRTP Act, 1969 defines "unfair trade practice" as a commercial practice that, in order to promote misleading method which includes oral or written declarations regarding the quality, status, conditions and price of goods or services; guarantee or promise in respect of goods or services; disparaging of goods and services of another person; and false advertising and false declarations with regard to gifts, prizes and offers in sale etc.

Section 36A had five sub-sections that covers different issues such as:

36A (1): False representation of products or services, including false descriptions, warranties, guarantees or performance of products or services.

36A (2): false pricing ad.

131 AIR 1979 SC 798.

36A (3): Contest, lotteries, gambling or ability to sell.

36A (4): Sale of goods not complying with the rules of security provided by law.

36A (5): Hoarding or destruction of goods or refusal to sell goods.

Consequently, it is not controversial that the concept of unfair commercial practices arises from the Law on Monopoly and the Restriction of Commercial Practices of 1969. However, in 1991, when the liberalization of the economy in India was introduced. The MRTP was inadequate to meet the needs of the new globalized economy, since modifying the MRTP law would be a giant task. Since then, the Indian Parliament has formulated a contemporary competition law that would strengthen consumer welfare by supporting competition on the market. (Dr. S Chakravarthy, 2006) MRTP law has been promulgated to benefit consumers by promoting market competition. However, the term "consumer" has not been defined under MRTP law. The definition of "consumers" for the purposes of the MRTP law was adopted by the definition contained in the Consumer Protection Act of 1986.

3.7. Competition Act, 2002

Although the MRTP, Act has been applied with the aim of resource allocation and leverage on the market, the desired results have not been achieved. Conversely, excessive government control over small and large businesses has made daunting market conditions for consumers, new businesses and businesses have been severely limited by complex procedures. Therefore, existing and new companies had difficulty surviving and therefore could not give any advantage to the consumer. The new economic policy of 1991 has caused a cloud of changes in the Indian economy. Changes to the policy and regulation of national licenses have been made. The previously tightly regulated market in India has been liberalized in harmony with the

WTO regime, thus opening doors to foreign investment. Prior to the central government's prior approval to launch new activities, extensions, mergers, mergers and acquisitions were not needed now without departments, the business activity limit was eliminated by the principle of new industrial policy, 1919 In that MRTP, it became undesirable, rather an impediment to the progression of the Indian economy due to its ambiguous nature, several amendments were introduced to cure its defect, but all efforts were useless. (Sourabh Singh, 2015) Finance Minister in his budget speech in February 1999. He observed that…….

> "The MRTP Act has become out dated in definite zones in the light of global economic surges relating to competitions laws. We need to change our attention from control monopolies to support competition. The government has decided to appoint a committee to examine the variety of issues and propose a modern law of competition appropriate to our conditions"[132]

"In October 1999, the Indian Government appointed a High Level Committee on Competition Policy and Competition Law to advise modern competition law in line with international developments in the country and suggest a legislative framework that implies a new law or MRTP law. The Raghavan Committee submitted its report on competition policy to the government, stating that the relevant laws - MRTP (1969) and the Consumer Protection Act (1986) are not enough to deal with anti-competitive practices". (C. R. L. Narasimhan, 2000) "Draft of Competition Act was submitted to the Government in November 2000 and after having discussion on both the houses of Parliament president gave his assent on 2002 Competition Act",

[132]. http://indiabudget.nic.in/ub1999-2000/bs/speech.htm visited on 24 Feb 2017.

(Surabhi Singhi, 2000) taking into account the economic development of the country, with the object and the scope,

- for the creation of an Independent Competition Commission (a quasi-judicial body) to prevent practices from adversely affecting competition,
- promote and support competition in markets,
- protect the interests of consumers and
- Ensure the free exchange of other market participants in India and for matters related or incidental thereto.[133]

The Consumer Protection Act, 1986, and monopolies and restrictive commercial practice, the 1969 law had a significant overlapping of unfair commercial practices. In fact, the definition of "unfair commercial practice" is literally the same in both decrees. The 2002 Competition Act consists of refined and modified content of "restrictive commercial practice" and "monopoly commercial practice". However, "unfair business practices" are completely excluded from the new law because the Consumer Protection Act, protecting consumer interests, has provisions for "unfair commercial practices". Since the consumer finds a complete definition in the law, every single consumer or consumer association can move the India Competition Commission to action under the law for anti-competitive and dominant abuse offenses. The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. In Competition Commission of India v. SAIL, Supreme Court held that “The advantages of perfect competition are threefold: allocative efficiency, which ensures the effective allocation of resources; productive efficiency, which ensures that costs of production are kept at a minimum; and dynamic

[133]. THE COMPETITION ACT, 2002, No. 12 OF 2003.

efficiency, which promotes innovative practices. These factors by and large have been accepted all over the world as the guiding principles for effective implementation of competition law"[134].

In addition to dealing with bad conduct of competition, the law also provides for a promotional role. The Indian Competition Commission has a promotional role in providing government advice and awareness and training on the issues of competition. The Consumer Protection Act of 1986 and the Competition Act of 2002 are aimed at consumer well-being. Consumer protection legislation provides direct aid to an individual, while the law on competition minimizes market distortions and addresses a wider number of consumers, so both legislation includes issues complementing each other.

Some of the important provisions relating with consumers;-

"Agreement" Section 2 (b) of the Competition Act 2002 provides for any agreement, understanding or action in concert,

(i) "whether such agreement, understanding or action is formal or in writing; or"

(ii) "whether or not such agreement, understanding or action is intended to be enforceable or not by means of judicial proceedings;"

The "cartel" is defined in Section 2 (c) of the Competition Act of 2002 and "includes an association of producers, sellers, distributors, traders or service providers that restrict, control or attempt to control production, distribution , the sale or the price of, or, the sale of goods or the provision of services by agreement among themselves."

[134]. (2010) 10 SCC 744.

The term CARTEL was not clearly defined under The MRTP Act, 1969. The implicit reference to Cartel was provided in Section 33(1)(d) of MRTP Act, 1969, which has now been replaced by explicit definition of Cartel[135].

Under the MRTP Act, 1969 does not define the term "Consumer" hence resort is made to Consumer as defined under the Consumer Protection Act, 1986. Which states that "Consumer" *includes* only such purchasers or buyers who make purchases for *their own consumption*. This *deficiency* has now been cured by virtue of Section 2 (f) of The Competition Act, 2002.

It is relevant to note here that, under the Competition Act of 2002, *even if* a person buys goods or uses services for *commercial purposes*, he / she will be a consumer, while for the purposes of the Consumer Protection Act of 1986 a person purchasing goods / exploitation of services for *commercial purposes* is not considered a consumer and may not require relief under this law. In Mogan Stanley Mutual Fund v. Kartick Das, Supreme Court held that "Consumer is the one who purchases goods for private use or consumption"[136] further in *R.P.F. Commr.* v. *Shiv Kumar Joshi*, Supreme Court held that "Consumer includes also the beneficiary for whose benefit the services are hired or availed of".[137]

It is relevant to note here that, under the Competition Act of 2002, industrial or commercial services also *fall within* the scope of the law, *while* commercial or industrial services are excluded under the Consumer Protection Act.

[135]. Supra note 132.
[136]. (1994) 4 SCC 225.
[137]. (2000) 1 SCC 98.

3.8. Formation of Contract:

There are no formalities in terms of customary law to enter into contracts. However, when the parties accept such formalities or if the law prescribes, the agreement must be signed and signed. A written and signed agreement between the parties was affected by the introduction of the Consumer Protection Act 1986, whose main purpose is consumer protection to establish the rights of suppliers in relation to an agreement on consumption. In general, the Consumer Protection Act of 1986 applies when goods or services are promoted (advertised) or provided during the normal course and for consideration. However, it does not apply in some cases, for example, if a consumer is a legal person or if the transaction refers to services on a contractual basis. From now on, to discuss the legal framework for consumer protection in India, it is essential to address some of the important principles of the contract without entering into the details of the law.

The term "contract" means an agreement made by law.[138]Agreement means every series of promises and every series of promises that matter to the other.[139] And a proposal when accepted becomes a promise.[140]Perhaps all the agreements are not enforced by law, so all agreements are not contracts. However, all contracts are agreements. In this situation question arises, what agreements are contractual? Answer to this question is provided in Chapter II Section 10 of the Indian Contract Act 1872 which states that “all agreements are contracts if they are made by the free

[138]. Section 2(h) of The Indian Contract Act, 1872, No 9 Acts Of Parliament 1872 (India)
[139]. Section 2(e) of The Indian Contract Act, 1872, No 9 Acts Of Parliament 1872 (India).
[140]. Section 2(b) of The Indian Contract Act, 1872, No 9 Acts Of Parliament 1872 (India).

consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void."[141]

From the above paragraph we came to a point that to form a contract some of the essential ingredients are needed which as follows:-

1) *An agreement* must be between the two parties. An agreement is the result of the proposal or the offer of one of the parties followed by its acceptance by the other.
2) The agreement must be between the parties who are *competent to contract*.
3) Must be *lawful consideration and lawful object* in respect to such agreement.
4) The *consent* of the parties must be *free* when they enter the agreement.
5) The agreement must not be, *expressly declared to be void*.

From the above legal view there are four different types of agreements:-

1) Valid contracts: which fulfils the essential of Section 10.
2) Void contracts:[142]
3) Voidable contracts:[143]
4) Illegal contract:[144]

[141]. Section 10 of The Indian Contract Act, 1872, No 9 Acts of Parliament 1872 (India).
[142]. Section 2(g) An agreement not enforceable by law is said to be void. For instance, an agreement by a minor has been held to be void and also include an agreement without consideration.

[143]. An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other, is a voidable contract. For instance, when the consent of the party to a contract has been obtained by coercion, undue influence, fraud or misrepresentation, the contract is voidable at the option of the party whose consent has been so obtained

[144]. There are certain agreements which are illegal in the sense that the law forbids the very act being opposed to public policy.

3.8.1. Offer and Acceptance by Telephone

In Bhagwandas Goverdhandas Kedia V/S. M/S. Girdharilal Parshottamdas, An offer was made via the long-distance phone (telephone) to the defendants at Khamgaon's and that the offer was also accepted by telephone. There is a dispute over the issue of jurisdiction and the court of first instance stated that when a contract was made for telephone conversation, the place where the acceptance of the offer is indicated/tenderer is the place where it was stipulated hence the Ahmadabad Civil Court was competent to test the case. This proposition of law was challenged before the Supreme Court in Special Leave Petition for Revision filed by the defendant with an argument that in the case of the telephone contract the place where the bid is accepted is the place where the contract is made because acceptance is spoken in the instrument i.e. phone placed / stored in Khamgaon. The Court of Justice, composed of J.C. Shah, by Judge K.N Wanchoo and Judge Md. Hidayatullah, pronounced their split verdict with a ratio of 2: 1.

Where Judge Shah and Judge Wanchoo gave their opinion to the majority of English law as laid down in the case of Entores Ltd V / S Miles Far East Corporation and saw any reason to extend the postal rule to make a telephone call and argued that in case of a contract entered into on the phone where the acceptance of the bid shown is the place where the contract is made and in this case only the Ahmadabad court competent to try this case. Judge Hidayatullah inter alia, stated, that the text of Section 4 of India's contract law covers a case of telephone communication. Our law does not provide separate laws for mail, telegraph, telephone or wireless. Some of them were unknown in 1872 and no attempt was made to change the law. It can be assumed that the language was considered sufficient to cover the cases of these new inventions. If the rule suggested on behalf of the plaintiffs is accepted, it would be a

powerful defence in the hands of the proposer if his denial hearing the speech could remove the implications of our law that acceptance is complete as soon as it arrives during the broadcast to the proposer. In the present case, both parties admitted that acceptance was clearly heard to Ahmadabad. The acceptor was able to say that the acceptance communication as far as it was concerned was complete when he (the acceptor) made his acceptance in transferring to it (the bidder) to be out (the acceptor) Power withdrawal in terms of Section 4 of India's contract law. It was obvious that the word of acceptance was pronounced at Khamgaon and the moment the acceptor spoke his acceptance he put it in course of transmission to the proposer beyond his recall which he could not revoke thereafter. The gap in time was so short it can be said that the speech was heard immediately, but if we put new inventions under our statutory law we are obliged to say that the acceptor by speaking into the telephone put his acceptance in the transmission to the proposer.

At this point it is worth mentioning here that during the issuance of the Contracts Act 1872 legislatures did not know about telephone, telex or computer they never imagined of scientific inventions as such, so we did not anticipate communication with different technologies. However, India's Supreme Court, through Hidayatullah Justice stated that the law may be amended to meet current needs. In addition, circumstances have changed and new inventions emerge. It seems that the opinion of the majority in the case of Kediais had paralyzed and the same would be virtually overcome by a rapid change in technological innovations and circumstances. In addition, these changes have made dissenting opinion expressed by Justice Hidayatullah, more relevant than the opinion of the majority of today. In addition to this, India is one of the signatories of the Model Law on Electronic Commerce, 1996. On this basis, India has promulgated the Law on Information Technology 2000. The

signing of that agreement and the entry into force of the law set the opinion of the binding majority in the redundant Kedias case.

3.8.2. E-Contracts

Contracts are executed and distributed via a software system. In theory they are akin to customary commercial (paper) contracts wherein the sellers have presented their products, prices and conditions after examine their options, buyers negotiate prices and terms (where possible), order and make payments, products bought by the consumers will be delivered by the seller. However, because of the way in which it differs from traditional commerce, e-commerce poses new interesting technical and legal challenges. (Vasudha Tamrakar & Pratibha Pal, 2003)

3.8.3. Definition of E-contract

"Electronic contract which is also popularly known as e-contracts are mostly formed and executed by two or more individuals using electronic means, such as e-mail".[145]

3.8.4. Kinds of E-contract

E-contracts can be broadly categorized into three types: Click wrap contracts, Shrink wrap contracts, Browse wrap. (Sankalp Jain, 2016).

1. Click-wrap Contracts:

A click wrap agreement is the main part of the software package installation process. It is also known as a "click" agreement or a click-in license. Such agreements allow a buyer to express their consent to the terms of a contract by clicking on an acceptance button that appears when the buyer obtains or installs the product. A buyer cannot

[145]. E-Contract Law and Legal Definition, US Legal Definition, https://definitions.uslegal.com/e/e-contract/

start using the software until he clicks the button to accept the terms and conditions of the agreement. Click-wrap agreements require buyer action in order to begin usage but do not guarantee cognizance of the agreement terms. Buyers can assent to the contract without even reading it in order to use the product. Buyers cannot negotiate and must, therefore, accept the terms as they are. Most courts find these agreements enforceable. Reasonably, there is always a concern because click-wrap agreements may be accepted without users actually reading or understanding contract terms when manifesting assent.

Click-wrap agreements can be of the following types:

a) Type and click where the user should type "I Accept" or other words you specify in a on-screen box, then click a "Send" button or the like. This proves acceptance of the terms of the contract. A user can not proceed to download or view destination information without following these steps.
b) Icon Clicking where the user must click on an “OK” or “I agree” button on a dialog box or pop-up window. A user indicates rejection by clicking “Cancel” or closing the window.

The UNCITRAL Model Law on Electronic Commerce (1996) in gives statutory recognition to Click-Wrap license.[146]

2. Shrink-wrap Contracts:

[146]. The UNCITRAL Model Law on Electronic Commerce (1996) in Article 11 states the Formation and validity of contracts: In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose. Retrieved from <http://www.uncitral.org/pdf/english/texts/electcom/05-89450_Ebook.pdf>

"Shrink-Wrap License Agreements" have been an important part of software connections and developed a feature of the computer market by the early 1980's[147] Shrink wrap contracts are license agreements or other relations and situations which can only be read and acknowledged by the purchaser after opening the product. Thus, the Shrink-Wrap Agreements are typically agreements printed on a box in which software is sold and the opening of the box mean the use of the software[148] Shrink-wrap agreements operate slightly differently. For example, they are used when one purchases off-the shelf software. The agreement is imprinted on the software box, CD-Rom case, or other materials included inside the package. "The license begins when the buyer reads his terms and opens the wrapping or wrapping of packaging." Buyers should return the software package to the retailer if they decide not to comply with the agreement. Judges are equally concerned about purchasers who actually receive the notification of the sale, consciously accepting the sale and conditioning the sale after the acceptance of the license.

3. Browse wrap

This agreement is considered a navigation agreement, which is intended to be binding on the Contracting Parties, through the use of the website. They include the use policy and terms of use of websites such as Flipkart or E-Bay and the shape of the corner or down the site

[147]. David Einhorn, *The Enforceability of Tear-Me-Open Software License Agreement*, 67 J. PAT & TRADEMARK OFF SOC'Y 509 (1985), quoted in AunyaSingsangob, "A Validity of Shrink- Wrap and Click-Wrap License Agreements in the USA : Should we follow UCITA?", p. 5. Retrieved from <http://legalaid.bu.ac.th/files/articles/A_VALID_OF_SWL. pdf>

[148]. Under the Uniform Civil Code, Article 2 (i): Creation of Contract by Conduct is Recognized: "A Contract for the sale of goods may be made in any manner sufficient to show agreements, including conduct by the parties, which recognizes the existence of such a Contract".

4. Electronic Data Interchange or (EDI):

These agreements are used in commercial transactions that allow the transmission of data from one computer to another so that every transaction in the commerce round (for example, from receiving an order from a foreign buyer through preparation and export of presentations and other official documents, possibly leading to the shipment of goods) can be handled virtually without documentation. (Mrs. Neeta Pramod, 2015)

There are no solid legal examples on the legitimacy of key shrinking and exchange agreements in India. Similarly, Click Wrap contracts are also valid in the United States.[149] The New Jersey Appellate Division considered the actor to sign a valid and binding agreement by clicking on the "Accept" option and the first being unavoidable by the resulting contract.[150]

3.8.5. Validity of E-contracts in India

Supreme Court of India in Trimex International FZE Ltd. Dubai v. Vedanta Aluminio Ltd.[151] Has held that that e-mail conversations among parties in relative to conjoint compulsions constitute a contract. [152] Which means the essential ingredients of a valid contract i.e. communication of the proposals, acceptance of proposals, revocation of proposals etc. are recognised both by the IT Act 2000 and Evidence Act, 1872 and these communication may be articulated via electronic medium. (Dr PremLata, 2016).

[149]. Hotmail Corporation v/s Van Money Pie Inc., 1998 WL 388389 (N.D.Cal.)
[150]. Agama Law Associates (ALA), E-CONTRACTS IN INDIA, Blog, https://archanabala.com/2015/06/03/e-contracts-in-india/#_ftn1 visited on 2 March 2017.
[151] Trimex International Fze ... vs Vedanta Aluminium Limited,India, SC474; 2010(1)
[152]. (2010) 3 SCC 1

The contract law of India does not prohibit the applicability of electronic agreements if such agreements provide all the vital components of a legal agreement. Alongside the Contract Act 1872 honours the traditional agreements and all oral contracts until it is done with the free consent of the parties involved to bargain, take legal concern and by a legal object provided the same should not explicitly stated to be cancelled.

Free consent is one of the utmost essential ingredients of a lawful agreement. However, there is no room for electronic contract negotiations and it is typically a "take or leave" transaction.

In some cases other party of the agreement stood in an unfair dominant position in situation Indian courts have found that such electronic agreements are unreasonable, irrational and unjust, and therefore unnecessary.

One of such case is LIC India V/S Consumer Education and Research Centre[153] the Supreme Court at para 56 has held that "*In dotted line contracts there would be no occasion for a weaker party to bargain as to assume to have equal bargaining power. He has either to accept or leave the service or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forgo the service forever*."

3.9. Standard Form of Contract

"Standard form of contract is very popular in today's complex assembly of huge institutes with huge infrastructural connotation. The use of standard terms and conditions is restricted not only to contracts in merchantable businesses, but indentures with civic establishments, global companies, or in banking and protection trade etc. Standard form of contracts have become commonplace. They establish

[153]. 1995 (5) SCC 482.

almost in each split of commerce and occupation, customer deals, service, hire-purchase, assurance, management, any form of travel or the carrier facilities or while taking software agreements from the internet etc" (Yamini Rajora, 2015). But there are also inherent dangers in standard form contracts. Example, contracting parties may not be on equal terms and one party consistently has to sign on the dotted line with no opportunity for that party to negotiate over the terms at all. One party may be completely unfamiliar with the terms or language employed by the other. The presence of dominance in standard form contract theory reduces the fairness and transparency in practice.

Similarly, the standard form of contracts have diverse names the French call them "Contracts d'adhesion" and the Americans call them "adhesion contracts" or "contracts of adhesion". In Black's Law Dictionary (7th Ed. p.38). 'Adhesion contracts' are defined in the following way:-

A standard-form of contract prepared by one party to be signed by the party in a weaker position, usually a consumer, who has little choice about the terms. Also termed Contract of adhesion; adhesory contract; adhesionary contract; take it or leave it contract; leonire contract. Amongst various standard form contract some sets of trade and professional forms are extremely one-sided, grossly favouring one interest group against others and are commonly referred to as contracts of adhesion. From weakness in bargaining position, ignorance or indifference, un-favoured parties are willing to enter transactions controlled by these uneven legal documents" Quinlin Johnstone and Dan Hopson, Ir, Lawyers and Their Work, 329-30 (196). Standard form contracts can be undersood as 'pre-printed contracts' with pre-designed terms and conditions. These terms and conditions are unilaterally prepared by one party and offered to the other on a take, without giving any opportunity to respond. the party has

two choice i.e. either to accept or reject but no right to bargain for any change i.e. party has to fill the basic details at blank space and made his sign as an expression of acceptance. Some services-providers seek to exclude or limit their possible legal liability by the insertion of exclusionary clauses in the standard form contract offered by them.[154]

3.10. Shortfall of the Indian Statute Law

The Law Commission of India in its 103rd Report on Unfair Contract Terms have pointed out the Inadequacy of the Contract Act to meet the situation at para 3.3 states that "The entire basis of contract, that it was freely and voluntarily entered into by parties with equal bargaining powers, completely falls to the ground when it is practically impossible for one of the parties not to accept the offered term. In order to render freedom of contract a reality and particularly of one whose bargaining power is less than that of the other party to the contract, various measures like labour legislation, money-lending laws and rent Acts have been enacted, however, the the Indian Contract Act lacks general provision under which courts can grant relief to the other party. Recommendation of the Commission at Chapter 6 Page 9: The Commission felt that the answer to this problem would be to enact a provision in the Indian Contract Act, 1872, which will combine the advantages of the (English) Unfair Contract Terms Act, 1872 and Section 2.302 of the Uniform Commercial Code of the United States.[155]

[154]. Report No.199 of the Law Commission on 'Unfair (Procedural and Substantive) Terms in Contracts' http://lawcommissionofindia.nic.in/reports/rep199.pdf visited on 10 March 2017.

[155]. Report No.103 of the Law Commission on 'Unfair Terms in Contracts' http://lawcommissionofindia.nic.in/101-169/Report103.pdf visited on 10 March 2017.

3.11. Information Technology Act, 2000

The United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on Electronic Commerce in 1996. The General Assembly of United Nations by its Resolution No. 51/162 dated 30th January, 1997 recommended that all States should all States should consider the provisions of said Model Law and accordingly frame or revise their laws.[156] The Model Law provides for equal legal treatment of users of electronic communication and paper based communication. Pursuant to a recent declaration by member countries, the World Trade Organisation is likely to form a work programme to handle its work in this area including the possible creation of multilateral trade deals through the medium of electronic commerce. "It was, therefore, proposed to provide for legal recognition of electronic records and digital signatures. The will enable the conclusion of contracts and the creation of rights and obligations through the electronic medium."[157]. It is also proposed to provide for a regulatory regime to supervise the Certifying Authorities issuing Digital Signature certificates. To prevent the possible misuse arising out of transactions and other dealings concluded over the electronic medium, it is also proposed to create civil and criminal liabilities for contravention of the provisions of the proposed legislation.[158]

Silent features of the IT Act 2000. (Nandan Kamath, 2001).

[156]. UNCITRAL, Model Law on Electronic Commerce (1996)http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html visited on 10 March 2017.

[157] Sudarshan Cargo Pvt Ltd vs M/S Techvac Engineering Pvt Ltd on 25 June, 2013

[158]. Information Technology Act 2000, Received the assent of the President on June 9, 2000 and published in the Gazette of India, Extra., Part II, Section 1, dated 9th June, 2000, pp. 1-32, Sl. No. 10.

(i) Provides legal recognition of transactions made through the exchange of electronic data and other electronic means of communication commonly referred to as "electronic commerce" rather than paper communication methods;

(ii) This is an IT law that deals with commercial transactions and provides legal recognition for electronic signatures, electronic records, electronic filing of documents for the authentication of any information or subject matter requiring recognition under any law;

(iii) Facilitate the electronic submission of documents with government agencies;

(iv) Facilitating the assignment, recognition and issuance of electronic data archives;

(v) Provides for a legal sanction for the transfer of funds between banks and financial institutions;

(vi) Provides legal recognition to banking book of account in electronic form and modifies the Indian Penal Code of 1860, Indian Investigation Act of 1872, Act of Banking Law, Banking Act of 1891 and Bank of stock of India in 1934.

(vii) The Law on Information Technology covers not only the substantial part of IT issues but also the procedure and the way of submitting complaints, investigations, powers of competent authorities and courts.

(viii) Privacy, which is the most controversial matter of the Internet era, has for the first time a place in the provisions of the law in India. Violation of confidentiality and confidentiality was punished not only by fine but also by detention.

3.11.1. The Information Technology (Amendment) Act, 2008

The statement of Objects and Reasons for the Information Technology (Amendment) Act, 2006, which are given as follows

(i) The Law on Information Technology was issued in 2000 in order to strengthen the growth of electronic transactions, facilitate the legal recognition of electronic commerce and electronic transactions, facilitate electronic governance and security procedures in the context of the use as much as possible of information technology around the world. However, the use as well as the misuse of Internet transactions in 2006 is much more than its usage from the initial year of 2000.

(ii) With proliferation of Information Technology enabled services such as e-governance, e-commerce and e-transactions, protection of personal data and implementation of security practices and procedures relating to these applications of electronic communications have assumed greater importance and they require harmonization with the provisions of the Information Technology Act.

(iii) Further, protection of Critical Information Infrastructure is pivotal to national security, economy, public health and safety. Therefore, it has become necessary to declare such infrastructure as a protected system so as to restrict its access.

(iv) A rapid increase in computer and Internet usage has led to new forms of crime such as the publication of video voyeurism, e-commerce fraud such as personalization, phishing, pharming, spam, identity theft, and offensive messages through communication services. Criminal provisions should therefore be included in the Law on Information Technology (2000), the Indian Penal Code (1908), 1872, and the Criminal Procedure Code (1973) to prevent such

crimes. With this law of amendment, new criminal sections were added in the original law.

(v) In 2001, the United Nations Commission on International Trade Law (UNCITRAL) adopted the Electronic Signature Model Act. The United Nations General Assembly, in its resolution no. 56/80 of December 12, 2001, recommended to all states that they consider the electronic signatures model to be valid. Since digital signatures are linked to a specific technology under the current provisions of the Information Technology Act, in 2000-2007, it has become necessary to set up an alternative electronic signature technology to harmonize with the Model Law

(vi) The service providers may be authorized by the Central Government or the State Government to set up, maintain and upgrade the computerized facilities and also to collect, retain appropriate service charges for providing such services at such scale as may be specified by the Central Government or the State Government. Therefore, the amendment was required so as to fulfil the need of time and challenges posed by Internet-era in India. [159]

3.12. Consumer Protection Bill 2018

The rationale behind the Consumer Protection Act of 2018 is that "deceptive advertising, telemarketing, multilevel marketing, direct sales and e-tailing pose new challenges to consumer protection to deal with the situation effectively". Consumers are the end users, therefore, any incomplete due diligence performed by the entity providing the platform for the electronic market, may leads to the harassment of

[159]. The then Hon'ble Minister of Communications & IT, Mr. Dayanidhi Maran discussed the statement of Objects and Reasons for ITAA-2006 ... renamed as Information Technology (Amendment) Act 2008 herein after referred to as. ITAA 2008. https://cactusblog.files.wordpress.com/2010/01/it_act_2008.pdf visited on 15 March 2017.

consumers facing the excessive loss of the time and energy needed to get a remedy for the damage caused. To overcome this situation, the bill provides for a serious punishment, including in some deterrent cases detention. In addition, if an advertiser delivers misleading advertising, the proposed regulatory authority may, at the company's end, claim 10 lakhs and also request the withdrawal of the advertisement.

The bill also has a number of provisions to simplify consumer dispute resolution process forum resolution. Mediation is an alternative dispute resolution mechanism and is under the supervision of consumer courts, namely the National Commission or the State Commission or the District Commission, given the circumstances. A mediator shall attempt to resolve the dispute between the parties, facilitating the discussion between the parties to direct the parties directly to identify problems, reducing misunderstandings, exploring different ways to engage everyone in an attempt to resolve the dispute. (Dhruv Dikshit, 2015).

3.13. Authorities / Organisations Related To Consumer Protection

3.13.1. Department of Consumer Affairs (DCA)[160]

Department of Consumer Affairs (DCA) is one of the two Departments under the Ministry of Consumer Affairs, Food & Public Distribution. It was constituted as a separate Department in June 1997 as it was considered necessary to have a separate Department to give a fillip to the nascent consumer movement in the country.

The Department has been entrusted with the following work

- Internal Trade

[160]. Department of Consumer Affairs (Ministry of Consumer Affairs, Food & Public Distribution, KrishiBhawan, New Delhi, Government of India) http://consumeraffairs.nic.in/forms/contentpage.aspx?lid=37 visited on 18 March 2017.

- The Essential Commodities Act, 1955 (10 of 1955) (Supply, Prices and Distribution of Essential Commodities not dealt with specifically by any other Department).
- Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980(7 of 1980).
- Regulation of Packaged Commodities.
- Training in Legal Metrology.
- The Emblems and Names (Prevention of Improper Use) Act, 1952.
- Implementation of Standards of Weights and Measures - The Legal Metrology Act, 2009.
- Implementation of Bureau of Indian Standards Act, 1986.
- Laying down specifications, standards and codes and ensuring quality control of bio-fuels for end uses.
- Consumer Cooperatives
- Implementation of Consumer Protection Act, 1986.
- Monitoring of prices and availability of essential commodities.
- National Test House.

3.13.2. CONFONET Scheme

The Consumer Forums in Country (CONFONET) project has been implemented in the context of the Consumer Protection Act of 1986. "According to the law, quasi-judicial mechanisms, consumer dispute redressal commission at the state level and

national were setup"[161]. "The project was started and an Executive Finance Committee (EFC) was willing to provide a turnkey solution in each of the district forums, the state and national level committee, including ties with their state and central governments."[162] The project aims to improve operational efficiency, coordination, accessibility and speed in the judicial administration and establish the infrastructure of information and communication technologies (ICT) in consumer writing forums throughout India. Its goal is to provide:

- E-Governance
- Efficiency Transparency
- Systematizing of working
- To achieve time bound delivery of justice to the consumers.

"The Confonet Project is a technical solution for development and implementation of a computer network based system for the application areas with main focus on Case Monitoring."[163]The activities undertaken as part of the project include:

1) System study, design & development of Case Monitoring System, the standardized application software for NCDRC, SCDRCs and District Forums
2) Specification finalization and supply of suitable Hardware for each of the 629 locations in phases depending on the readiness of the site
3) Procurement & supply of system software
4) Networking including both LAN & WAN
5) Training of staff on computer awareness & application usage

[161]. Information about: confonet.nic.in, http://infosite.in/confonet.nic.in visited on 19 March 2017.
[162]. ConfoNet: Computerization and Computer Networking of Consumer Forums in Country http://www.confonet.nic.in/ visited on 19 March 2017.
[163]. ConfoNet: Computerization and Computer Networking of Consumer Forums in Country http://www.confonet.nic.in/Scope.html visited on 19 March 2017.

6) Onsite deployment support through trained technical manpower posted at field locations.

3.13.3. National Consumer Helpline

National Consumer Helpline (NCH) is a project of the Union Ministry of Consumer Affairs that operates under the Centre for Consumer Studies at Indian Institute of Public Administration. "The Project recognizes the need of consumers for a Telephone Helpline to deal with multitude of problems arising in their day-to-day dealings with business and service providers."[164] "NCH provides a National Toll Free No-1800-11-4000"[165] SMS can also be sent to +918130009809 (charges apply) mentioning the name and city. "A consumer can call to seek information, advice or guidance for his queries and complaints."[166]

The national consumer helpline aids consumers find solutions to product and service issues[167]

- Provide information about companies and regulators.
- Facilitating consumers to file complaints against service providers
- Encouraging consumers to use available consumer complaint mechanisms,
- Educate consumers on their rights and responsibilities

It advises consumers to deal with problems with defective products, service shortages and unfair commercial practices.

---

[164]. Consumer Resources, NATIONAL CONSUMER HELP LINE, https://consumerresources.in/2017/04/30/national-consumer-helpline-nch/ visited on 20 March 2017.

[165]. National Consumer Helpline, http://www.nationalconsumerhelpline.in/index.aspx visited on 25 March 2017.

[166]. CONFONET, *Supra* note 158.

[167]. Department of Consumer Affairs Ministry of Consumer Affairs, Food & Public Distribution Government of India, http://consumerhelpline.gov.in/nch.php visited on 26 March 2017.

The helpline follows a three-level approach.[168]

1) First, consumers are informed of their rights in a particular consumer problem.
2) If the problem remains unresolved, it will be ordered to address the issue with industry bodies or chambers of commerce, industry regulators (such as in areas such as insurance and bank) or "government officials responsible for the industry relevant industry"[169]
3) As a last resort, consumers will be invited to bring their case to consumer courts under the Consumer Protection Act. "This line of assistance has been designed to promote paths for out-of-court settlement of consumer disputes and, consequently, it helps reduce the burden on consumer courts"[170]

3.14. Conclusion

Oliver Wendell Holmes said, "Legislation of today is to meet the social needs of yesterday" The function of social legislation is to continually adjust the legal system with the changing needs of the society which are constantly outgrowing that system. The legislation attempts to bridge the gulf between the existing law and the current needs of the society. Laws such as the Bureau of Indian Standard Act, Weight and Measures Act, the Essential Commodities Act focuses on the various product available in the market and is more concern for quality contains, after effects etc. The price of these products by the promotion campaign, truth in advertising unfair trading practices, while distribution and delivery of products, after-sales service and warranty, etc. are considered by the MRTP Act, which was further repealed and replaced Competition Act. Any kind of suffering and exploitation to the consumers are dealt

[168]. National Consumer Helpline, Supra note 162.
[169]. Complaint Board, National Consumer Complaint Forum, https://www.complaintboard.in/complaints-reviews/snapdeal-l304647/page/2 visited on 27 March 2017.
[170]. Ibid note 165.

by the law on the basis of Sale of Goods Act, Contract Act and Consumer Protection Act. Further consumer disputes redressal agencies have been established under the Consumer Protection Act, 1986. A simplified and time-bound procedure to file the complaint and to dispose off the same has also been laid down. However, it has been observed that the agencies are following technical procedure of civil courts. Thus, there is unnecessary delay in the disposal of complainants and speedy justice in denied to the consumers. There is urgent need to give thought to this problem so that objects of the Act may be achieved. There are three alternative device for consumer protection. (Dr. Keshav Sharma, 2001).

a) Consumer association: consumer unions envisage providing protection to consumer interest and rights. Consumer evolve to ensure distributive justice to consumers when the business enterprise fails to recognize its social responsibilities. (Dr. Rifat Jan, 2007)
b) Business self-regulations: Under this system a business enterprise on its own maintain certain ethical standards towards consumers and evolves consumers oriented marketing plans and programmes. Business by self-regulation gives fair deal not only to a consumer but also to a retailer.
c) Consumer legislation: It is the crudest form as well as the last resort to secure a disciplined business conduct. The government by implementing special consumer legislation ensures competition, provision of information to consumers and fair play through regulation of unfair trade practices. More over legislation also ensures the consumers right to represent their interest in all government regulating agencies.

It is pertinent to mention here that we have crossed the industrial age and reached the information age at this juncture we are in a transition phase of new digital world wherein our economy is developing rapidly under the name and style of E-Commerce. Due to the technological development today market has acquired a different shape/nature. Internet has provided consumers with a powerful tool for searching and buying goods and services at the conveniences of home from venders located around the world, at any time. Physical buying of goods and services over market places have replaced with the virtual shops where everything is available from needle to luxury cars what consumer intends to purchase have been kept in it. The demand of higher standard in living resulted in the number of consumer needs and consumer transactions through cyberspace have resulted in growing number of legal complications for the consumers. The Internet is changing irreversibly the economic landscape and the fundamental assumptions on which the businesses are based.[171] In such situation the only law on e-Commerce in the era of digital age is the Information Technology Act, 2000. However, after analysis of various consumers oriented legislations it is also clear that not even a single legislation is available in legal text for the protection of rights of consumers in an online shopping/environment. Therefore, in Indian jurisprudence strong but separate legislation is a need of an hour for the protection of rights of consumers in cyberspace for online shoppers.

[171]. Cyber Space does not have definite definition. It does not have geographical location. The term is used to refer all objects and identities within its network. Cyberspace is an Internet Metaphor. See: Rodney D. Ryder, "Law and Privacy in the Cyber Space: A Premier on the Indian Information Technology Act, 2000", *Manupatra News line*, September, 2008, p. 3.

CHAPTER FOUR

INTERNATIONAL AND NATIONAL SCENARIO OF CONSUMER PROTECTION IN E-COMMERCE

4.1. Introduction

The most outstanding development in the 21th century which has changed the shape of human civilization has taken place in electronics and as a result of which there has been infinite expansion of knowledge that is commonly described as information explosion which has further attributed the geometric expansion of trade and commerce through the Internet available through website in cyberspace which is popularly known as e-Commerce. The web accepts no restrictions of the country and allows the free flow of trade and commerce between the citizens of different countries. (S.R. Sharma (edited), 2003). E-commerce and the internet have created new ways in which businesses can relate to their customers, suppliers, partners and investors. These relationships are beginning to challenge the traditional distribution structure that dominated 20th century commerce, sometimes with great success and sometimes with no success at all. Equally important, information developed by businesses engaged in e-commerce is becoming as important as the products being sold, and in many cases, information has actually become the product.[172] Continuous development in the IT[173] and telecommunication technologies has introduced E-commerce as the modern business method that meets the needs of not only the organization but also of traders and consumers to reduce costs, improving the quality of goods and also increases the speed of service delivery. Electronic commerce is the wave of technology that strikes every face of a domestic lifestyle, as well as everyone's workplace in electronic commerce. Tradition happens everywhere

[172]. https://www.goldbergkohn.com/practices-it-ecommerce.html visited on 2 April 2017.
[173]. Hereinafter the acronym IT shall be used for the Information & Technology.

electronically. Instead of physical exchange of documents, direct meeting between officials are possible through video conferencing etc. Needless to mention here that Information technology has emerged as the main liability for businesses and society (V.D. Dudeja, 2001). With the appearance of Information Technology (IT) most of the countries have switched over from paper based commerce to e-Commerce and from paper based governance to e-governance. (B.B. Nanda and R.K. Tewari, 2000). The momentous development in the economy has been the geometric expansion of trade, commerce and marketing in the commercial world in the lap of cyber space. (J. Christopher Westland and Theodore H.K. Clark, 2001). The Internet is becoming a basic need today, it has changed the shopping experience of e-shoppers, as virtual stores score on convenience, variety and price. Brick and mortar retailers can no longer afford to ignore the potential of this medium. (Preeti Desai, 2006). Online shopping has truly come of age and consumers are keen to shop on the net.[174] In this retail business, one does not count footfalls. Nor do customers get the real world, touch-and-feel experience of the goods they buy. The shopping ambience, too, is only as good as the customer wants it to be. Still shoppers are flocking to these "virtual malls" in millions. Online shopping is no longer a fashion; it is an acknowledged and important part of the retail experience, with more than a tenth of the world's population having bought products and services over the Internet.[175]

[174]. Latest findings of a survey released by Internet and Mobile Association of India (IAMAI) source: www.domain-b.com/ebusiness/general visited on 2 April 2017.
[175]. "The Other Retail Story", Business Standard, 20th December 2005.

4.2. United Nations Guidelines for Consumer protection (UNGCP) of 1985 read with 2016.

The United Nations Guidelines for Consumer Protection (UNGCP)[176]are a valuable set of principles that set out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems and for assisting its member states in formulating and enforcing domestic and regional laws rules and regulations that are suitable for their own economical and environmental circumstances as well as formulating international corporation among member states and encouraging the sharing of experience in consumer protection. These Guidelines were *first adopted* by the General Assembly *in resolution 39/248 of 16 April 1985, later expanded* by the Economic and Social Council *in resolution1999/7 of 26 July 1999,* and *was further revised and adopted* by the General Assembly in *resolution 71/186 of 22 December 2015.* The United Nations Conference on Trade and Development (UNCTAD)[177] promotes the Guidelines and encourages interested Member States to create awareness of the many ways in which Member States, businesses and civil society can promote consumer protection in the provision of public and private goods and services.

Consumer Protection Guidelines contain 97 Articles. However, these guidelines do not have any legal effect but merely provide what could be called an internationally recognized set of basic objectives, still, an essential start to what may one day be *international consumer law*. "Article 3 of these guidelines, defines the term

[176]. Hereinafter the acronym UNGCP shall be used for the United Nations Guidelines for Consumer Protection.

[177]. Hereinafter the acronym UNCTAD shall be used for the United Nations Conference on Trade and Development.

"consumer" *generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs."*

The objective of the guidelines are;-

"(*a*) To assist countries in achieving or maintaining adequate protection for their population as consumers".

"(*b*) To facilitate production and distribution patterns responsive to the needs and desires as consumers".

"(*c*) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to the consumers".

"(*d*) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers".

"(*e*) To facilitate the developments of independent consumers groups".

"(*f*) To further international cooperation in the field of consumer protection".

"(*g*) To encourage the development of market conditions which provide consumers with greater choice at lower price".

"(*h*) To promote sustainable consumption".

Article 14 of the guidelines states that;- Member States should establish consumer protection policies that encourage:

"(*a*) Good business practices".

"(*b*) Clear and timely information to enable consumers to contact businesses easily, and to enable regulatory and law enforcement authorities to identify and locate them

by providing include information such as the identity of the business, its legal name and the name under which it trades, its principal geographic address, website and e-mail address or other means of contact, its telephone number and its government registration or licence number".

"(*c*) Clear and timely information regarding the goods or services offered by businesses and the term and conditions of the relevant transactions".

"(*d*) Clear, concise and easy to understand contract terms that are not unfair".

"(*e*) A transparent process for the confirmation, cancellation, return and refund of transactions".

"(*f*) Secure payment mechanism".

"(*g*) Fair affordable speedy dispute resolution and redress".

"(*h*) Consumer privacy and data security".

"(*i*) Consumer and business education".

"Article 26 provides that;-Consumers should be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts and unconscionable conditions of credit by sellers".

"Article 39 provides that;-Information on available redress and other dispute-resolving procedures should be made available to consumers. Access to dispute resolution and redress mechanisms, including alternative dispute resolution, should be enhanced, particularly in cross-border disputes".

“Article 43 provides that;-Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects”.

Part - I of these guidelines specifically deals with Electronic commerce under below mentioned Articles which as follows;-

“Article 63 provides that;-Member States should work towards enhancing consumer confidence in electronic commerce by the continued development of transparent and effective consumer protection policies, ensuring a level of protection that is not less than that afforded in other forms of commerce”.

“Article 64 provides that;-Member States should, where appropriate, review existing consumer protection policies to accommodate the special features of electronic commerce and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace”.

“Article 65 further provides that;-Member States may wish to consider the relevant international guidelines and standards on electronic commerce and the revisions thereof, and, where appropriate, adapt those guidelines and standards to their economic, social and environmental circumstances so that they can adhere to them, as well as collaborate with other Member States in their implementation across borders. In so doing, Member States may wish to study the Guidelines for Consumer Protection in the Context of Electronic Commerce of the Organization for Economic Cooperation and Development”.

4.3. UNCITRAL Model Law on Electronic Commerce (MLEC), 1996.

The UNCITRAL Model Law on Electronic Commerce was adopted by the United Nations Commission on International Trade Law (UNCITRAL)[178] in 1996 to promote the harmonization and unification of international trade law, so as to remove unnecessary obstacles to international trade caused by inadequacies and divergences in the law affecting trade. The Model Law was prepared in response to a major change in the means by which communications are made between parties using computerized or other modern techniques in doing business (sometimes referred to as "trading partners"). The Model Law is intended to serve as a model to countries for the evaluation and modernization of certain aspects of their laws and practices in the field of commercial relationships involving the use of computerized or other modern communication techniques, and for the establishment of relevant legislation where none presently exists.[179]

"This Law has been divided into two parts i.e., part I dealing with E-Commerce in General consisting of 3Chapters and part II consisting of Chapter 1 only. Significantly, Part I has provided for the establishment of a functional equivalent for paper-based concepts such as "writing", "signature" and "original". In addition, this part lays down rules for the formation and validity of contracts concluded by electronic means, for the attribution of data messages, for the acknowledgement of receipt and for determining the time and place of dispatch and receipt of data messages. Further, certain provisions of the MLEC were amended by the Electronic Communications Convention in light of recent electronic commerce practice.

[178]. Hereinafter the acronym UNCITRAL shall be used for the United Nations Commission on International Trade Law.

[179]. Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/ 51/17), Annex I.

Moreover, part II of the MLEC, deals with electronic commerce in connection with carriage of goods and is complemented by other legislative texts, including the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the "Rotterdam Rules") and may be the object of additional work of UNCITRAL in the future" (Dr. Jyoti Rattan, 2015)

Important features of this Model Law are:

1. "First feature of this law is "electronic equivalence". Significantly, the Model Law does not directly consider electronic communications valid but it provides that information or documents will not be denied legal effect or enforceability solely because they are in electronic format. Therefore, it conferred validity one transaction indirectly".
2. "For achieving electronic equivalence, the model law provides various rules specifying conditions which must be fulfilled for an electronic communication to constitute a legally valid substitute for a conventional and paper-based communication. It provides that a legal requirement to provide information or a document sent "in writing" is satisfied by its electronic equivalent if it is in a form that can be subsequently accessed and used by the recipient".
3. "Further, under the law electronic documents are treated as "original" documents if there is a reliable assurance as to the integrity of the information and that the information is capable of being displayed to the person to whom it is to be presented. Further, the information must be complete and remain unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display. However,

the question of reliability is to be determined in the light of all the circumstances, including the purpose for which the document was created".

4. "It confers the validity on e-evidence as it provides that evidentiary rules do not deny the admissibility of an electronic communication solely on the grounds that it is in electronic form".
5. "Significantly, the law lays down the conditions for data retention. It provides that the message must be retained in the format in which it was generated and any information indicating origin, destination, date and time of the message is retained. Another important condition for retention is that the information contained with the electronic message must be accessible so as to be usable for subsequent reference".
6. "It is worth to note that the Model Law is accompanied by a Guide to Enactment, which provides background and explanatory information to assist States in preparing the necessary legislative provisions. The CLOUT (Case Law on UNCITRAL Texts) system contains cases relating to the application of the Model Law on Electronic Commerce"[180].

4.4. OECD Guidelines for Consumer Protection in the Context of Electronic Commerce ("1999 Recommendation")

In April 1998, the OECD Consumer Policy Committee began developing a series of general guidelines to protect consumers engaged in electronic commerce without creating trade barriers. In particular, the purpose of the guidelines was to provide a structure and a set of principles to assist Governments, Business associations, Consumer groups and self-regulatory bodies, Individual businesses and consumers

[180]. Supra note 176.

engaged in electronic commerce by providing clear guidance in the context of electronic commerce.[181] OECD recognised that electronic commerce may offer consumers new and substantial benefits, including convenience, access to a wide range of goods and services with an ability to gather and compare information about such goods and services, unfamiliar commercial situation which may put consumers interest at risk during cross border transaction, applicable law and jurisdiction in the said context, transparent and effective consumer protection mechanism, further with a consideration that electronic commerce should be open and accessible to all and to devote special attention to the development of effective cross-border redress system.[182]

---

[181]. OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce, 9th Dec 1999* at page 10.Governments in reviewing, formulating and implementing consumer and law enforcement policies, practices and regulations if necessary for effective consumer protection in the context of electronic commerce. Business associations, consumer groups and self-regulatory bodies, which provide guidelines on the fundamental characteristics of effective consumer protection that should be taken into account in the examination, formulation and application of self-regulatory regimes in the context of electronic commerce. Individual businesses and consumers engaged in electronic commerce, by providing clear guidance as to the core characteristics of information disclosure and fair business practices that businesses should provide and consumers should expect in the context of electronic commerce.

[182]. Recognizing that electronic commerce can offer new and new consumers substantial benefits, including convenience, access to a wide range of products and services, and the ability to collect and compare information about those assets and services; Recognizing that some special features of electronic commerce, as the ease and speed with which companies and consumers can communicate about goods and services and participate in cross-border transactions, can create business situations that are not familiar to consumers and that could jeopardize their interests, it is increasingly important for consumers and companies must be informed and be aware of their rights and obligations in the electronic market; Recognizing that the rules regarding applicable law and jurisdiction in the consumer context could have implications for a wide range of problems in electronic commerce, as well as the applicable law and the jurisdiction in force other contexts could have implications for consumer protection;

Recognizing that consumer confidence in electronic commerce has improved for the constant development of transparent and effective consumer protection mechanisms that limit the presence of fraud, deceptive or unfair online business conduct; Considering that electronic commerce must be open and accessible to all consumers; and Taking into account

RECOMMENDS THAT MEMBER COUNTRIES:

Consult, cooperate and facilitate the exchange of information between them and third countries, companies, consumers and their representatives, both nationally and internationally, by providing an effective consumer protection in the context of electronic commerce in accordance with Guidelines.[183]

OECD *Guidelines for Consumer Protection in the Context of Electronic Commerce, 9th Dec 1999 is consists with four parts: Part One; Scope, Part Two; General Principles (Section I to VIII), Part Three; Implementation, Part Four; Global Co-operation.*

SCOPE of the Guidelines:[184]

These Guidelines apply only to *business-to-consumer electronic commerce* and *not to business-to-business transactions*.

GENERAL PRINCIPLES:[185]

---

governments, businesses, consumers and theirs Representatives should pay special attention to the development of effective cross-border resource systems

[183]. Take the necessary steps to implement the relevant sections of the Guidelines contained to all relevant governments departments and agencies, the economic sectors involved in electronic commerce, to consumer representatives, the media, educational institutions and other relevant groups of public interest. Encourage companies, consumers and their representatives to take an active role in promoting the implementation of the guidelines at international, national and local levels. Encourage governments, businesses, consumers and their representatives to participate and consider the recommendations of the exams in progress rules concerning the applicable law and jurisdiction. Invites non-member countries to take this into account Recommendation when reviewing your policies, initiatives and regulations. Implement guidelines to encourage the development of new business models and technological applications for the benefit of consumers; and encourage consumers to take advantage of all available tools to strengthen their position as buyers.

[184]. Supra note 178 Guidelines Part One at page 13.

[185]. Ibid

Section I. TRANSPARENT AND EFFECTIVE PROTECTION

Consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.[186]

Section II. FAIR BUSINESS, ADVERTISING AND MARKETING PRACTICES:

"Businesses engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices".[187]

"Businesses should take into account the global nature of electroniccommerce and, wherever possible, should consider the various regulatory characteristics of the markets they target".

"Businesses should not exploit the special characteristics of electronic commerce to hide their true identity or location, or to avoid compliance with consumer protection standards and/or enforcement mechanisms".

"Businesses should develop and implement effective and easy-to-use procedures that allow consumers to choose whether or not they wish to receive unsolicited commercial e-mail messages".

"Where consumers have indicated that they do not want to receive unsolicited commercial e-mail messages, such choice should be respected".

---

[186]. Ibid Governments, businesses, consumers and their representatives should work together to obtain that protection and determine what changes can be necessary to deal with the particular circumstances of electronic commerce.

[187]. Supra note 180 at page 14 & 15.

"Businesses should take special care in advertising or marketing that is targeted to children, the elderly, the seriously ill, and others who may not have the capacity to fully understand the information with which they are presented".

Section III. ONLINE DISCLOSURES:[188]

A. INFORMATION ABOUT THE BUSINESS

"Businesses engaged in electronic commerce with consumers should provide accurate, clear and easily accessible information about themselves sufficient to allow, at a minimum":

B. INFORMATION ABOUT THE GOODS OR SERVICES

"Businesses engaged in electronic commerce with consumers should provide accurate and easily accessible information describing the goods or services offered; sufficient to enable consumers to make an informed decision about whether to enter

[188] Supra note 178 at page 15 & 16.*i)* Identification of the business – including the legal name of the business and the name under which the business trades; the principal geographic address for the business; e-mail address or other electronic means of contact, or telephone number; and, where applicable, an address for registration purposes and any relevant government registration or licence numbers. *ii)* Prompt, easy and effective consumer communication with the business. *iii)* Appropriate and effective resolution of disputes. *iv)* Service of legal process. *v)* Location of the business and its principals by law enforcement and regulatory officials.

Where a business publicises its membership in any relevant self-regulatory scheme, business association, dispute resolution organisation or other certification body, the business should provide consumers with appropriate contact details and an easy method of verifying that membership and of accessing the relevant codes and practices of the certification body.

into the transaction and in a manner that makes it possible for consumers to maintain an adequate record of such information".

C. INFORMATION ABOUT THE TRANSACTION:

"Businesses engaged in electronic commerce should provide sufficient information about the terms, conditions and costs associated with a transaction to enable consumers to make an informed decision about whether to enter into the transaction".[189]

Section IV. CONFIRMATION PROCESS

"To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or

[189]. Supra note 178 at page 16 and 17.Such information should be clear, accurate, easily accessible, and provided in a manner that gives consumers an adequate opportunity for review before entering into the transaction. Where more than one language is available to conduct a transaction, businesses should make available in those same languages all information necessary for consumers to make an informed decision about the transaction. Businesses should provide consumers with a clear and full text of the relevant terms and conditions of the transaction in a manner that makes it possible for consumers to access and maintain an adequate record of such information.

Where applicable and appropriate given the transaction, such information should include the following:

i) An itemisation of total costs collected and/or imposed by the business.

ii) Notice of the existence of other routinely applicable costs to the consumer that are not collected and/or imposed by the business.

iii) Terms of delivery or performance.

iv) Terms, conditions and methods of payment.

v) Restrictions, limitations or conditions of purchase, such as parental/guardian approval requirements, geographic or time restrictions.

vi) Instructions for proper use including safety and health-care warnings.

vii) Information relating to available after-sales service.

viii) Details of and conditions related to withdrawal, termination, return, exchange, cancellation and/or refund policy information.

ix) Available warranties and guarantees. All information that refers to costs should indicate the applicable currency.

modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction".[190]

Section V. PAYMENT

Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.[191]

Section VI. DISPUTE RESOLUTION AND REDRESS:[192]

A. APPLICABLE LAW AND JURISDICTION

"Business-to-consumer cross-border transactions, whether carried out electronically or otherwise, are subject to the existing framework on applicable law and jurisdiction".

"Electronic commerce poses challenges to this existing framework. Therefore, consideration should be given to whether the existing framework for applicable law and jurisdiction should be modified, or applied differently, to ensure effective and transparent consumer protection in the context of the continued growth of electronic commerce".

"In considering whether to modify the existing framework, governments should seek to ensure that the framework provides fairness to consumers and businesses, facilitates electronic commerce, results in consumers having a level of protection not

[190]. Supra note 178 at page 17.The consumer should be able to cancel the transaction before concluding the purchase.
[191]. Ibid Limitations of liability for unauthorised or fraudulent use of payment systems, and chargeback mechanisms offer powerful tools to enhance consumer confidence and their development and use should be encouraged in the context of electronic commerce.
[192]. Supra note 178 at page 18.

less than that afforded in other forms of commerce, and provides consumers with meaningful access to fair and timely dispute resolution and redress without undue cost or burden".

B. ALTERNATIVE DISPUTE RESOLUTION AND REDRESS

Consumers should be provided meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden.[193]

Section VII. PRIVACY[194]

"Business-to-consumer electronic commerce should be conducted in accordance with the recognised privacy principles set out in the OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data (1980), and taking into account the OECD Ministerial Declaration on the Protection of Privacy on Global Networks (1998), to provide appropriate and effective protection for consumers".

[193]. Businesses, consumer representatives and governments should work together to continue to use and develop fair, effective and transparent self-regulatory and other policies and procedures, including alternative dispute resolution mechanisms, to address consumer complaints and to resolve consumer disputes arising from business-to-consumer electronic commerce, with special attention to cross-border transactions: *i)* Businesses and consumer representatives should continue to establish fair, effective and transparent internal mechanisms to address and respond to consumer complaints and difficulties in a fair and timely manner and without undue cost or burden to the consumer. Consumers should be encouraged to take advantage of such mechanisms. *ii)* Businesses and consumer representatives should continue to establish co-operative self-regulatory programmes to address consumer complaints and to assist consumers in resolving disputes arising from business-to-consumer electronic commerce. *iii)* Businesses, consumer representatives and governments should work together to continue to provide consumers with the option of alternative dispute resolution mechanisms that provide effective resolution of the dispute in a fair and timely manner and without undue cost or burden to the consumer. *iv)* In implementing the above, businesses, consumer representatives and governments should employ information technologies innovatively and use them to enhance consumer awareness and freedom of choice. In addition, further study is required to meet the objectives of Section VI at an international level.

[194]. Supra note 178 at page 19.

Section VIII. EDUCATION AND AWARENESS

"Governments, businesses and consumer representatives should work together to educate consumers about electronic commerce, to foster informed decision making by consumers participating in electronic commerce, and to increase business and consumer awareness of the consumer protection framework that applies to their online activities".[195]

IMPLEMENTATION

"*To achieve the purpose of this Recommendation, Member countries should at the national and international level, and in co-operation with businesses, consumers and their representatives".*[196]

GLOBAL CO-OPERATION

"In order to provide effective consumer protection in the context of global electronic commerce, Member countries should".[197]

---

[195]. Ibid. Governments, business, the media, educational institutions and consumer representatives should make use of all effective means to educate consumers and businesses, including innovative techniques made possible by global networks. Governments, consumer representatives and businesses should work together to provide information to consumers and businesses globally about relevant consumer protection laws and remedies in an easily accessible and understandable form.

[196]. Supra note 178 at page 20. Review and, if necessary, promote self-regulatory practices and/or adopt and adapt laws and practices to make such laws and practices applicable to electronic commerce, having in mind the principles of technology and media neutrality. Encourage continued private sector leadership that includes the participation of consumer representatives in the development of effective self-regulatory mechanisms that contain specific, substantive rules for dispute resolution and compliance mechanisms. Encourage continued private sector leadership in the development of technology as a tool to protect and empower consumers.

i. Promote the existence, purpose and contents of the Guidelines as widely as possible and encourage their use.
ii. Facilitate consumers ability to access both consumer education information and advice and to file complaints related to electronic commerce.

Consumer protection guidelines in the context of electronic commerce approved on December 9, 1999 by the OECD Council, was designed to help ensure that consumers are not less protected during online purchases they are when they buy at your local store or order from a catalog, from definition of the fundamental characteristics of effective consumer protection for the business-to-consumer transactions, the guidelines are intended to help eliminate some of the uncertainties that consumers and businesses face when buy and sell online. These guidelines plays an important role in helping governments, representatives of companies and consumers to develop and implement online consumer protection mechanisms without creating barriers to trade. These guidelines reflect the existing legal protections available to consumers in more traditional forms of commerce. Its purpose is to encourage fair trade, advertising and marketing practices, clear information about online identity of the company, the goods or services it offers and the terms and conditions of any transaction a

---

[197]. Supra note 178 at page 21. Facilitate communication, co-operation, and, where appropriate, the development and enforcement of joint initiatives at the international level among businesses, consumer representatives and governments. Through their judicial, regulatory and law enforcement authorities cooperate at the international level, as appropriate, through information exchange, coordination, communication and joint action to combat cross-border fraudulent, misleading and unfair commercial conduct. Make use of existing international networks and enter into bilateral and/or multilateral agreements or other arrangements as necessary and appropriate, to accomplish such co-operation.

i. Work toward building consensus, both at the national and international levels, on core consumer protections to further the goals of enhancing consumer confidence, ensuring predictability for businesses, and protecting consumers.
ii. Co-operate and work towards developing agreements or other arrangements for the mutual recognition and enforcement of judgements resulting from disputes between consumers and businesses, and judgements resulting from law enforcement actions taken to combat fraudulent, misleading or unfair commercial conduct.

transparent process for the confirmation of transactions; secure payment mechanisms fair, timely and affordable dispute resolution appeal Protection of privacy and consumer and business education. They are technology neutral, encouraging private sector initiatives that include participation of consumer representatives and stresses the need to cooperation between governments, companies and consumers.[198]

4.5. UNCITRAL Model Law on Electronic Signature, 2001 (MLES).

This Model Law was approved by the UNCITRAL and came into force in 2001. It's main objective was to grant legal recognition to e-signature and to bring uniformity in national laws relating to e-signature. It consists of two Parts i.e., Part I consisting of 12 articles and Part II, Guide for enactment of the MLES.

"Model Law applies where electronic signatures are used in the commercial activities. However, it does not override any rule of law intended for the protection of consumers. Important features of this Model Law are": (Dr. Jyoti Rattan, 2015)

i. "Significantly, the Model Law grants legal recognition to E-Signature as it provides that where the law requires a signature of a person, then that requirement is met in relation to a data message if an electronic signature is used provided that the signature is as reliable as was appropriate for the purpose for which the data message was generated or communicated. The reliability is determined in the light of all the circumstances, including any relevant agreement".

[198]. Organisation for Economic Co-Operation and Development, *"Guidelines for Consumer Protection in the Context of Electronic Commerce"* approved on 9 December 1999 by the OECD Council, available at www.oecd.org, assessed on 27 April 2017.

ii. “It defines electronic signature as "data in electronic form in, affixed to, or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message. "Significantly, two parties involved in data message are: Signatory i.e. a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents and relying party who may act on the basis of certificate or an electronic signature”.

iii. “Further, an electronic signature is reliable provided it meets following four conditions: the signature creation data are linked solely to the signatory; the signature creation data was under the sole control of the signatory; any alteration of the electronic signature, made after signing, is detectable; and where the purpose of the signature is to provide assurance as to the integrity of the underlying information, any alteration of that information must be detectable”.

iv. “It imposes duty on the signatories to use reasonable care to avoid unauthorized use of their electronic signature. Therefore, where they become aware that the security of their electronic signature has been compromised, they must notify any person that might be affected without delay”.

v. “It also imposes duty on a relying party (a party receiving certificate or e-record) to verify there liability of an electronic signature or to observe any limitations that may be placed on a certificate. A certificate is a data message

that confirms a link between the signatory and the signatory creation data. Therefore, where he fails to do so then he will bear the legal consequences of its failure to take reasonable care".

vi. "It is important to mention that signatories who use e-signature must have Electronic Signature Certificate (ESC) issued by a certification service provider who apart from issuing certificates also provides other services related to electronic signatures. Further, according to Law certification service providers must fulfil following: to act in accordance with States policies and practices; to exercise reasonable care to ensure the accuracy of any information found on its certificates; to provide reasonably accessible means whereby parties relying on a certificate can confirm certain information pertaining to the certificate; and to utilize trustworthy systems".

vii. "Further, following factors must be considered when determining trustworthiness of the certification service providers : Financial and human resources of the provider; Quality of hardware and software systems; Procedures for processing certificates; Availability of information to signatories and relying parties; Regularity and extent of independent audits; and Regulation or licensing by government authorities".

4.6. OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Border (2003).

Undermining the integrity of both domestic and global market results in significant consumer injury which is detrimental to both business and consumers confidence. The

above guidelines address such fraudulent and deceptive commercial practices in business-to-consumer (B2C) transactions. The development of the Internet and developments in telecommunications technologies have fetched substantial benefits to consumers in terms of price and choice and eased the globalisation of markets through cross-border transactions. They have also delivered unique chances for businesses and people engaged in fraudulent and deceptive commercial practices to harm consumers from different jurisdictions and to escape enforcement experts. Cross-border trade carriages new challenges to the joint ability of consumer protection policy and enforcement agencies to protect consumers, and the progress of e-commerce in particular will make these challenges even more important. Most present laws and enforcement systems designed to address fraudulent and deceiving commercial practices against consumers were developed at a time when such practices were mostly domestic, and such laws and systems are therefore not always suitable to address the developing problem of cross-border fraudulent and deceptive commercial practices that harm consumers. Moreover, Member countries have diverse consumer protection systems, involving different laws, enforcement procedures, and roles for judicial authorities, and rely to varying extents on civil, criminal, and administrative law.

I. Hence, scope of these guidelines are intended to foster international co-operation against fraudulent and deceptive commercial practice.[199] For the

[199]. OECD Guidelines for Protecting Consumer from Fraudulent and Deceptive Commercial Practice Across Cross Borders (2003) at page 10 Scope and definitions They reflect a commitment by the Member countries to improve their enforcement systems and laws to increase their effectiveness in combating such practices, while recognising that co-operation in particular instances will occur within the existing legal framework. The Guidelines are primarily aimed at national public bodies, as determined by each Member country, with enforcement authority for protecting consumers. They recognise that some Member countries have many competent bodies, some of which are regional or local, that can take or

purposes of these Guidelines, "fraudulent and deceptive commercial practices" refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented.[200] "Consumer Protection Policy agency" means any national public body, as determined by each member country, that is specifically responsible for formulating policies to protect consumer from fraudulent, misleading, or unfair commercial practices and has power to (a) conduct investigation or (b) to pursue enforcement proceedings or both.

II. Member country should introduce domestic framework for combating cross-border fraudulent and deceptive commercial practices.[201]

Member countries should review their own domestic frameworks to identify obstacles to effective cross-border co-operation in the enforcement of laws designed to protect consumers against fraudulent and deceptive commercial practices, and should consider changing domestic frameworks, including, if appropriate, adopting or

---

initiate action against fraudulent and deceptive commercial practices. The Guidelines also recognise that in some Member countries private enforcement bodies may play an important and complementary role in ensuring a high level of consumer protection, including in cross-border situations.

[200]. OECD Guidelines for Protecting Consumer from Fraudulent and Deceptive Commercial Practice Across Cross Borders (2003) at page 10 1. A practice of making misrepresentations of material fact, including implied factual misrepresentations that cause significant detriment to the economic interests of misled consumers. 2. A practice of failing to deliver products or provide services to consumers after the consumers have been charged. 3. A practice of charging or debiting consumers' financial, telephone or other accounts without authorisation. Available at http://www.oecd.org/internet/consumer/oecdguidelinesforprotectingconsumersfromfraudulentanddeceptivecommercialpracticesacrossborders2003.htm accessed on 28 April 2017.

[201]. Ibid Member countries should provide for: 1. Effective measures, of a kind and at a level adequate to deter businesses and individuals from engaging in fraudulent and deceptive commercial practices. 2. Effective mechanisms to adequately investigate, preserve, obtain and share relevant information and evidence relating to occurrences of fraudulent and deceptive commercial practices. 3. Effective mechanisms to stop businesses and individuals engaged in fraudulent and deceptive commercial practices. And 4. Effective mechanisms that provide redress for consumer victims of fraudulent and deceptive commercial practices

amending national legislation to overcome these barriers further Member countries should consider how, in appropriate cases, their own consumer protection enforcement agencies might use evidence, judgements, and enforceable orders obtained by a consumer protection enforcement agency in another country to improve their ability to expeditiously halt the same conduct in their own countries.[202]

III. Principles for international co-operation.[203]

IV. Notification, information sharing, assistance with investigations, and confidentiality.

Member countries and their consumer protection enforcement agencies should develop ways to promptly, systematically and efficiently notify consumer protection enforcement agencies in other Member countries of investigations that affect those

[202]. Ibid (II) E & G

[203]. Supra note 196

A. Member countries should improve their ability to co-operate in combating cross-border fraudulent and deceptive commercial practices recognising that co-operation on particular investigations or cases under these Guidelines remains within the discretion of the consumer protection enforcement agency being asked to co-operate. This agency may decline to co-operate on particular investigations or proceedings, or limit or condition such co-operation, on the ground that it considers compliance with a request for co-operation to be inconsistent with its laws, interests or priorities, or resource constraints, or based on the absence of a mutual interest in the investigation or proceeding in question.

B. Consumer protection enforcement agencies should co-ordinate their investigations and enforcement activity to avoid interference with the investigations and enforcement activity of consumer protection enforcement agencies taking place in other Member countries.

C. Consumer protection enforcement agencies should make every effort to resolve disagreements as to co-operation that may arise.

D. Member countries and their consumer protection enforcement agencies should make use of existing international networks and enter into appropriate bilateral or multilateral arrangements or other initiatives to implement these Guidelines.

E. Member countries should enable their consumer protection policy agencies in consultation with consumer protection enforcement agencies to take a leading role in developing the framework for combating fraudulent and deceptive commercial practices set forth in these Guidelines.

F. Member countries should designate a consumer protection enforcement agency or a consumer protection policy agency to act as a contact point to facilitate co-operation under these Guidelines. These designations are intended to complement and not replace other means of co-operation. Such designations should be notified to the Secretary-General.

countries, so as to alert them of possible wrongdoing in their jurisdiction, simplify assistance and co-operation under these Guidelines and avoid duplication of efforts and potential disputes.[204]In particular, Member countries should work towards enabling their consumer protection enforcement agencies to share the following information with consumer protection enforcement agencies in other Member countries inappropriate instances:

1. Publicly available and other non-confidential information.

2. Consumer complaints.

3. Information about addresses, telephones, Internet domain registrations, basic corporate data, and other information permitting the quick location and identification of those engaged in fraudulent and deceptive commercial practices.

[204] . C. To address the speed at which those engaged in fraudulent and deceptive commercial practices can victimise large numbers of consumers, for example, through the Internet, Member countries should work together to develop fast, efficient methods for gathering and sharing information. They should build on existing projects to gather and share information, including consumer complaints and notifications of pending investigations and cases, through online tools and databases.
D. To address the dispersal of relevant evidence in multiple jurisdictions, Member countries should work toward authorising their consumer protection enforcement agencies, either directly or through appropriate mechanisms authorised by their judicial or administrative authorities, to obtain information, including documents and statements, and otherwise provide investigative assistance for foreign consumer protection enforcement agency investigations and actions, subject to appropriate safeguards.
E. To address the need to locate and identify those engaged in fraudulent and deceptive commercial practices, Member countries and their consumer protection enforcement agencies and other competent authorities should, in co-operation with one another and with domain name registrars and other relevant stakeholders, work together to develop options for reducing the incidence of false header and routing information and inaccurate information about holders of domain names.
F. Member countries should take appropriate steps to maintain the necessary confidentiality of information exchanged under these Guidelines, in particular in sharing confidential business or personal information. Member countries should, to the fullest extent possible consistent with their own laws, respect safeguards requested by other Member countries to protect confidential business or personal information shared with them.

4. Expert opinions, and the underlying information on which those opinions are based and

5. Documents, third-party information, and other evidence obtained pursuant to judicial or other compulsory process.

V. Authority of consumer protection enforcement agencies.[205]

All consumer protection enforcement agencies whose territories are affected by fraudulent and deceptive commercial practices against consumers should have appropriate authority to investigate and take action within their own territory.

VI. Consumer Redress.

Member countries should jointly study the role of consumer redress in addressing the problem of fraudulent and deceptive commercial practices, devoting special attention to the development of effective cross-border redress systems.[206]

---

[205]. B. Member countries should work toward enabling their consumer protection enforcement agencies to take action against domestic businesses engaged in fraudulent and deceptive commercial practices against foreign consumers. C. Member countries should work toward enabling their consumer protection enforcement agencies to take action against foreign businesses engaged in fraudulent and deceptive commercial practices against their own consumers. D. Member countries acknowledge that the exercise of the authority described above may properly be subject to other bilateral arrangements between countries, and subject to other arrangements within a regional economic integration organisation.

[206]. Such study should focus on: The possible roles that consumer protection enforcement agencies can play in facilitating consumer redress, including the pursuit of redress on behalf of defrauded consumers, support of private claims, and advice to consumers who wish to obtain redress. The effectiveness of existing cross-border consumer redress systems. The feasibility of authorising consumer protection enforcement agencies to gather and share information about assets to aid a foreign consumer protection enforcement agency in appropriate cases.

Approaches to improving international arrangements for effecting timely freezes of business-related assets located in another country inappropriate cases.

Approaches to improving international arrangements for the mutual recognition and enforcement of judgements ordering redress inappropriate cases.

VII. Private sector co-operation.

"Member countries should co-operate with businesses, industry groups, and consumer groups in furthering the goals stated in these Guidelines, and should solicit their input and support. Member countries should in particular co-operate with them on consumer education and encourage their referral of relevant complaints to consumer protection enforcement agencies. Member countries should also encourage co-operation by such third parties as financial institutions and domain name registrars in halting fraudulent and deceptive commercial practices across borders".

4.7. OECD Policy Guidelines for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce, 2008.

Mobile commerce is currently growing at a rapid pace in many OECD countries due to advance mobile phones and other such devices that allows them to benefit from a board range of mobile services that are different from what is currently possible from fixed computers. There is an increase in number of mobile subscriber between 1997 and 2005, at an average compound growth rate of 24% per year.[207]

Mobile commerce, also known as, "mobile e-commerce" or "m-commerce" means commercial transactions and communication activities conducted through wireless communication services and networks by means of short message service (SMS), multimedia messaging service (MMS), or the internet, using small handheld mobile devices that typically have been used for telephonic communications. "Mobile operator refers to a company that provides services to mobile subscribers, "mobile vendor" refers to a company that sells services and service through mobile platforms,

Approaches to developing additional safeguards against the abuse of payment systems and redress for consumer victims of such abuse.

[207]. OECD Annual Report 2007 available at https://www.oecd.org/newsroom/38528123.pdf. Accessed on 30 April 2017.

either directly or through intermediaries including website operators. (such as Yahoo and eBay)and mobile aggregators (i.e. entities that assist mobile vendor charges to mobile operators for billing to mobile subscribers) "mobile subscriber" refers to the individual who pays for a mobile phone subscription. With the coverage of operating platforms, mobile commerce is now expanding into internet based e-commerce. This is making it increasingly difficult to distinguish mobile commerce from other forms of e-commerce. While mobile commerce does not as such require internet access, ever more m-commerce transactions occur by means of communication system protocols (such as Web HTML, TCP/IP), Wireless Application Protocol (WAP), and i-mode) and phones connected to wireless communication network (e.g. 3G and 4G)[208]. In addition, an increasing number of personal data device or smart phone are now able to support wireless telephonic communications. The development of third generation of mobile broadband service which provides high speed internet access on mobile phones, complete with audio and higher quality graphics, has expanded consumers interest in the device and opened up the potential of new commercial applications.

Currently, mobile phone subscriber can use their devices:

- To purchase and download content, such as movies, music, ring-tones or games.
- To play online games and gamble online.
- To access information available on a mobile screen, such as weather forecast or the news, mobile TV and program related information broadcast alongside TV channels.

[208]. The "G" is short for *generation,* so 3G and 4G represent the third and fourth generations of mobile broadband Internet.

- To obtain information tailored to data about their location through location technology.
- To access online banking and financial services and make transactions.
- To make payments for mobile activities, either charged on credit cards or on mobile phone bills.
- As payment devices "e-wallet" to purchase goods or services and
- To vote in interactive TV programmes etc.

The OECD policy guidelines for addressing emerging consumer protection and empowerment issue in mobile commerce aims at providing measures that stakeholders could take to address a number of key issues that have emerged in countries where the market is well advance. OECD annual report 2007 at page 98 notes that "mobile devices have unique characteristics that attract consumers interest, they are easy to use and offer consumer access to service whenever they want from areas where mobile service is available, but that they also present inherent technical constraints such as small screen, size, limited storage and memory capacity, battery life and low processing power".

During the OECD Ministerial meeting on the future of the internet economy held at Seoul, Korea, 17-18 June 2008, the delegations of different member countries considered that the principles contained in the E-commerce Guidelines apply to m-commerce and further recognised that the principles of the guidelines could be effectively applied by mobile operators, website operators, mobile aggregators and mobile venders of financial and other commercial services, as well as mobile subscribers, to address the issue mentioned above. In doing so the committee would also incorporate consumer protection, security, privacy and spam However, this document is not designed to provide a comprehensive set of policy principles and

actions but rather offers some principles to guide an evolving exploration and analysis of current and future challenges posed by m-commerce.[209]

4.8. OECD revised their 1999 Guidelines for Consumer Protection in the Context of Electronic Commerce to addresses new and emerging trends and challenges faced by consumers in today's dynamic e-commerce marketplace on 24 March 2016.

PART ONE: GENERAL PRINCIPLES

A. Transparent and Effective Protection

Consumers who participate in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.[210]

B. Fair Business, Advertising and Marketing Practices

Businesses engaged in e-commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices as well as the general principle of good faith.[211]

---

[209].OECD Policy Guidelines for Addressing Emerging Consumer Protection and Empowerment Issue in Mobile Commerce 2008.

[210].OECD (2016), Consumer Protection in E-commerce: OECD Recommendation, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264255258-en. Page 10. Part one (A)(2) Governments and stakeholders should work together to achieve such protection and determine what changes may be necessary to address the special circumstances of e-commerce, including for children and vulnerable or disadvantaged consumers. In so doing, they should take into account the insights from information and behavioural economics.

[211].Supra note 206 at Page 11 & 12. Part one (B)Businesses should not make any representation, or omission, or engage in any practice that is likely to be deceptive, misleading, fraudulent or unfair. This includes the general impression likely conveyed to consumers by the representation or practice as well as implied factual misrepresentations

conveyed through features such as the good or the service's name, words, pictures, audio and/or video and the use of disclaimers that are hidden, hard to notice or to understand. Businesses should not misrepresent or hide terms and conditions that are likely to affect a consumer's decision regarding a transaction. Businesses should not use unfair contract terms.

- If contract terms stipulate monetary remedies in the case of a consumer's breach of contract, such remedies should be proportionate to the damage likely to be caused.
- Businesses should not engage in deceptive practices related to the collection and use of consumers' personal data.
- Businesses should not permit others acting on their behalf to engage in deceptive, misleading, fraudulent or unfair practices and should take steps to prevent such conduct.
- Businesses should be able to substantiate any express or implied representations for as long as the representations are maintained, and for a reasonable time thereafter.
- Businesses should comply with any express or implied representations they make about their adherence to industry self-regulatory codes or programmes, privacy notices or any other policies or practices relating to their transactions with consumers.
- Businesses should not attempt to restrict a consumer's ability to make negative reviews, dispute charges, or consult or file complaints with government agencies and other complaint bodies.
- Advertising and marketing should be clearly identifiable as such.
- Advertising and marketing should identify the business on whose behalf the marketing or advertising is being conducted where failure to do so would be deceptive.
- Businesses should ensure that any advertising or marketing for goods or services are consistent with their actual characteristics, access and usage conditions.
- Businesses should ensure that advertised prices do not misrepresent or hide the total cost of a good or a service.
- Endorsements used in advertising and marketing should be truthful, substantiated and reflect the opinions and actual experience of the endorsers. Any material connection between businesses and online endorsers, which might affect the weight or credibility that consumers give to an endorsement, should be clearly and conspicuously disclosed.
- Businesses should take special care in advertising or marketing that is targeted to children, vulnerable or disadvantaged consumers, and others who may not have the capacity to fully understand the information with which they are presented.
- Even where not obligated to do so, businesses should consider offering consumers the possibility to withdraw from a confirmed transaction in appropriate circumstances.
- Businesses should take into account the global nature of e-commerce and consider the various regulatory characteristics of the markets they target.
- Businesses should not exploit the special characteristics of e-commerce to hide their true identity or location, or to avoid compliance with consumer protection standards and/or enforcement mechanisms.

C. Online Disclosures

Online disclosures should be clear, accurate, easily accessible and conspicuous so that consumers have information sufficient to make an informed decision regarding a transaction. Such disclosures should be made in plain and easy-to understand language, at a relevant time, and in a manner that enables consumers to retain a complete, accurate and durable record of such information.[212]

1. Information about Business[213]

- Businesses should develop and implement effective and easy-to-use procedures that allow consumers to choose whether or not they wish to receive unsolicited commercial messages, whether by e-mail or other electronic means. When consumers have indicated, at any time, that they do not want to receive such messages, their choice should be respected.
- Businesses should not offer, advertise or market, goods or services that pose an unreasonable risk to the health or safety of consumers. Businesses should co-operate with the competent authorities when a good or a service on offer is identified as presenting such a risk.
- Businesses should consider the needs of persons with disabilities when designing e-commerce platforms and online payment systems.

[212]. OECD (2016), Consumer Protection in E-commerce: OECD Recommendation, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264255258-en. Visited on 1 May 2017 at Page 10. Part one (C) *General Principles* When more than one language is available to conduct a transaction, businesses should make available in those same languages, all information necessary for consumers to make an informed decision regarding a transaction. All information that refers to costs should indicate the applicable currency, unless it is apparent from the context. Businesses should take into account the technological limitations or special characteristics of a device or platform, while providing all necessary information.

[213].*Information about the business* Businesses engaged in e-commerce with consumers should make readily available information about themselves that is sufficient to allow, at a minimum: i) identification of the business; ii) prompt, easy and effective consumer communication with the business; iii) appropriate and effective resolution of any disputes that may arise; iv) service of legal process in domestic and cross border disputes; and v) location of the business. This information should include the legal name of the business and name under which it trades; its principal geographic address; an e-mail address, telephone number or other electronic means of contact; appropriate domain name registration information for web sites that are promoting or engaging in commercial transactions with consumers; and any relevant government registration or license information. When a business publicises its membership in any relevant self-regulatory programme, business association, dispute resolution organisation or other body, the

2. Information about Goods and Services[214]

3. Information about the Transaction[215]

---

business should provide sufficient information to enable consumers to easily contact such body. Businesses should provide consumers with easy methods to verify that membership, access the relevant codes and practices of the organisation, and take advantage of any dispute resolution mechanisms offered by the organisation.

[214]. *Information about Goods and Service* Businesses engaged in e-commerce with consumers should provide information describing the goods or services offered that is sufficient to enable consumers to make informed decisions regarding a transaction. Depending on relevant factors, including the type of good or service, this should include information such as:

i) Key functionality and interoperability features;

ii) Key technical or contractual requirements, limitations or conditions that might affect a consumer's ability to acquire, access or use the good or service;

iii) Safety and health care information; and

iv) Any age restrictions.

[215]. *Information about the Transaction* Businesses engaged in e-commerce should provide information about the terms, conditions and costs associated with a transaction that is sufficient to enable consumers to make an informed decision regarding a transaction. Consumers should be able to easily access this information at any stage of the transaction.

Businesses should provide consumers with a clear and full statement of the relevant terms and conditions of the transaction. Where applicable and appropriate given the transaction, such information should include the following:

i. Initial price, including all fixed compulsory charges collected and/or imposed by the business;

ii. Information on the existence of variable compulsory and optional charges collected and/or imposed by the business when they become known by the business and before consumers confirm the transaction;

iii. Notice of the existence of other routinely applicable costs to the consumer that are collected and/or imposed by third parties;

iv. Terms, conditions, and methods of payment, including contract duration, recurring charges, such as automatic repeat purchases and subscription renewals, and ways to opt out from such automatic arrangements;

v. Terms of delivery or performance;

vi. Details of and conditions related to withdrawal, termination or cancellation, after-sales service, return, exchange, refunds, warranties and guarantees;

vii. Privacy policy; and

viii. Information on available dispute resolution and redress options.

D. Conformation Process

Businesses should ensure that the point at which consumers are asked to confirm a transaction, after which time payment is due or they are otherwise contractually bound, is clear and unambiguous, as should the steps needed to complete the transaction, especially for new payment mechanisms[216].

E. Payments

Businesses should provide consumers with easy-to-use payment mechanisms and implement security measures that are commensurate with payment-related risks, including those resulting from unauthorised access or use of personal data, fraud and identity theft.[217]

---

[216]. OECD (2016), Consumer Protection in E-commerce: OECD Recommendation, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264255258-en. Page 15.Businesses should provide consumers with an opportunity to review summary information about the good or service, as well as any delivery andpricing information before consumers are asked to confirm a transaction. They should enable consumers to identify and correct errors or to modify or stop the transaction, as appropriate. Businesses should not process a transaction unless the consumer has provided express, informed consent to it. Businesses should enable consumers to retain a complete, accurate and durable record of the transaction, in a format compatible with the device or platform that the consumers used to complete the transaction.

[217]. Ibid at Page 16.Governments and stakeholders should work together to develop minimum levels of consumer protection for e-commerce payments, regardless of the payment mechanism used. Such protection should include regulatory or industry-led limitations on consumer liability for unauthorised or fraudulent charges, as well as chargeback mechanisms, when appropriate. The development of other payment arrangements that may enhance consumer confidence in e-commerce, such as escrow services, should also be encouraged. Governments and stakeholders should explore other areas where greater harmonisation of payment protection rules among jurisdictions would be beneficial and seek to clarify how issues involving cross-border transactions could be best addressed when payment protection levels differ.

F. Dispute Resolution and Redress

Consumers should be provided with meaningful access to fair, easy-to-use, transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress, as appropriate, without incurring unnecessary cost or burden. These should include out of court mechanisms, such as internal complaints handling and alternative dispute resolution (hereafter, "ADR"). Subject to applicable law, the use of such out-of-court mechanisms should not prevent consumers from pursuing other forms of dispute resolution and redress.

1. Internal complaints handling.[218]
2. Alternative Dispute Resolution (ADR).[219]
3. Redress.[220]

G. Privacy and Security.

[218]. *Internal complaint handling,* The development by businesses of internal complaints handling mechanisms, which enable consumers to informally resolve their complaints directly with businesses, at the earliest possible stage, without charge, should be encouraged.

[219]. *Alternative dispute resolution,* Consumers should have access to ADR mechanisms, including online dispute resolution systems, to facilitate the resolution of claims over e-commerce transactions, with special attention to low value or cross-border transactions. Although such mechanisms may be financially supported in a variety of ways, they should be designed to provide dispute resolution on an objective, impartial, and consistent basis, with individual outcomes independent of influence by those providing financial or other support.

[220]. Redress, Businesses should provide redress to consumers for the harm that they suffer as a consequence of goods or services which, for example, are defective, damage their devices, do not meet advertised quality criteria or where there have been delivery problems. Governments and stakeholders should consider how to provide redress to consumers in appropriate circumstances involving non-monetary transactions. Governments and stakeholders should work towards ensuring that consumer protection enforcement authorities and other relevant bodies, such as consumer organisations, and self-regulatory organisations that handle consumer complaints, have the ability to take action and obtain or facilitate redress for consumers, including monetary redress.

Businesses should protect consumer privacy by ensuring that their practices relating to the collection and use of consumer data are lawful, transparent and fair, enable consumer participation and choice, and provide reasonable security safeguards.[221]

H. Education, Awareness and Digital Competence.

Governments and stakeholders should work together to educate consumers, government officials and businesses about e-commerce to foster informed decision making. They should work towards increasing business and consumer awareness of the consumer protection framework that applies to their online activities, including their respective rights and obligations, at domestic and cross-border levels.[222]

PART TWO: IMPLEMENTATION PRINCIPLES

To achieve the purpose of this Recommendation, governments should, in co-operation with stakeholders:[223]

---

[221]. Privacy and security, Businesses should manage digital security risk and implement security measures for reducing or mitigating adverse effects relating to consumer participation in e-commerce.

[222]. Education awareness and digital competence, Governments and stakeholders should work together to improve consumers' digital competence through education and awareness programmes aimed at providing them with relevant knowledge and skills to access and use digital technology to participate in e-commerce. Such programmes should be designed to meet the needs of different groups, taking into account factors such as age, income, and literacy. Governments and stakeholders should make use of all effective means to educate consumers and businesses, including innovative techniques made possible by global networks.

[223]. Implementation Principles, Review and, if necessary, adopt and adapt laws protecting consumers in e-commerce, having in mind the principle of technology neutrality; Establish and maintain consumer protection enforcement authorities that have the authority and powers to investigate and take action to protect consumers against fraudulent, misleading or unfair commercial practices and the resources and technical expertise to exercise their powers effectively; Work towards enabling their consumer protection enforcement authorities to take action against domestic businesses engaged in fraudulent and deceptive commercial practices against foreign consumers, and to take action against foreign

Work towards improving the evidence base for e-commerce policy making through: The collection and analysis of consumer complaints, surveys and other trend data, and by conducting Empirical research based on the insights gained from information and behavioural economics;

PART THREE: GLOBAL CO-OPERATION PRINCIPLES

In order to provide effective consumer protection in the context of global e-commerce, governments should: Facilitate communication, co-operation and develop the enforcement of joint initiatives at the international level among governments and stakeholders to improve the ability of consumer protection enforcement authorities and other relevant authorities, as appropriate, to co-operate and co-ordinate their investigations and enforcement activities, through notification, information sharing, investigative assistance and joint actions.[224]

---

businesses engaged in fraudulent and deceptive commercial practices against domestic consumers;

i. Encourage the continued development of effective co-regulatory and self-regulatory mechanisms that help to enhance trust in e-commerce, including through the promotion of effective dispute resolution mechanisms;

ii. Encourage the continued development of technology as a tool to protect and empower consumers;

iii. Facilitate the ability of consumers to access consumer education information and advice and to file complaints related to e-commerce.

[224]. In particular, governments should:– Call for businesses to make readily available information about themselves that is sufficient to allow, at a minimum, location of the business and its principals for the purpose of law enforcement, regulatory oversight and compliance enforcement, including in the cross-border context,– Strive to improve the ability of consumer protection enforcement authorities to share information subject to appropriate safeguards for confidential business information or personal data, and – Simplify assistance and co-operation, avoid duplication of efforts, and make every effort to resolve disagreements as to co-operation that may arise, recognising that co-operation on particular cases or investigations remains within the discretion of the consumer protection enforcement authority being asked to co-operate.

– Call for businesses to make readily available information about themselves that is sufficient to allow, at a minimum, location of the business and its principals for the purpose of law enforcement, regulatory oversight and compliance enforcement, including in the cross-border context,

– Strive to improve the ability of consumer protection enforcement authorities to share information subject to appropriate safeguards for confidential business information or personal data, and

– Simplify assistance and co-operation, avoid duplication of efforts, and make every effort to resolve disagreements as to co-operation that may arise, recognising that co-operation on particular cases or investigations remains within the discretion of the consumer protection.

---

i. Make use of existing international networks and enter into bilateral and/or multilateral agreements or other arrangements as appropriate, to accomplish such co-operation;

ii. Continue to build consensus, both at the national and international levels, on core consumer protections to further the goals of promoting consumer welfare and enhancing consumer trust, ensuring predictability for businesses, and protecting consumers;

iii. Co-operate and work toward developing agreements or other arrangements for the mutual recognition and enforcement of judgments resulting from disputes between consumers and businesses, and judgments resulting from law enforcement actions taken to combat fraudulent, misleading or unfair commercial conduct;

iv. Consider the role of applicable law and jurisdiction in enhancing consumer trust in e-commerce.

4.9. Law relating to E-Commerce: Indian compliance with international directives.

4.9.1. Birth and arrival of e-commerce in India:-

In our country we belong from a very special generation. We have seen the 20th Century further crossed the millennium and now we are experiencing everything in this 21st Century. We have seen such times when the meaning of television was just "Doordarshan"[225]. The first official user of mobile phone in India were two politicians Late JyotiBasu, the then West Bengal Chief Minister who on 31st July, 1995, but they have never anticipated that there will be a great revolution in telecommunication sector in the coming years. (Business Today, 2011). The call tariff used to be more than eight rupees for one minute and people used to wait for months in line for a train ticket. It was that time when United Kingdom, United States and in Europe everything was fifty to hundred years ahead than our country. It was that time when the internet was not yet born.

The early history of Internet in India, in fact, dates back to 1986 when it was launched in the form of Educational Research Network (ERNET) meant only for the use of educational and research communities. It was a joint undertaking of the Department of Electronics (DOE) of the Government of India, and the United Nations Development Program (UNDP), which provides technical assistance to developing nations. Later on August 15, 1995 Videsh Sanchar Nigam Limited (VSNL) formally launched the Internet for the Indian public at four metro cities. (IBNLive.com, 2015).

[225]. Doordarshan had a modest beginning as an experimental telecast starting in Delhi on 15 September 1959, with a small transmitter and a makeshift studio. Regular daily transmission started in 1965 as a part of All India Radio. Doordarshan began a five-minute news bulletin in the same year.

Gradually internet synchronised in the daily life of the individual as a result lot of parallel development took place. If we perceive the important milestones formerly in the growth of e-commerce we can understand the complete story of a generation and the glimpse of its future too, further in the year 2002 Indian Railway Catering and Tourism Corporation (IRCTC) having its IP address as www.irctc.co.in started its first (e-ticketing) online ticket reservation. (Jitendra Singh, 2011). Railway ticket was an important necessity for the people and at the same time one of the biggest scourge. At that time IRCTC provided an unseen convenience to its consumers via online medium. People learned to visit the online website, login and to use their credit card. For the sake of saying it was just a start but it was a big step for the Indian consumers. Through IRCTC each and every class of Indian consumers were identifying the internet and online payment. The year 2002 is the landmark for the first internet generation of India because in upcoming years, Gmail, Yahoo Chat, Orkut, and Facebook, began making a different world. Many people knew the internet through Facebook, by and large, it was within the college generations only, but in the next four years these collagens further became the wage earners and this college crowd became the first set of online consumers of India. The year 2003-04 was the time when Deccan Airlines started the trend of low-cost airlines. (Azhar Kazmi, 2008). The year 2005-06 was the interesting time for the Indian travel & booking industry since Yatra.com and Makemytrip.com started online flight booking in India likewise Deccan Airlines had changed the definition of air travel by introducing low cost flights. On the lines of those Spice jet, Indigo and Go Air also started their flights in the market for many routes, as a result big profit was gained and names such as Makemytrip, Cleartrip, and Yatra became popular.

This transition was made easier by those who were young middle-class generations. People started to call their children and started to book flight and train tickets and the relevance of local travel agent started to end. Meanwhile, the first generation of internet users were no longer young students and after their graduation, they have started working in I.T companies, Multinational companies, and financial companies in return drawing hefty salaries. Since this generation was already internet generation therefore online payment, credit cards were very normal for them. For all the reasons stated above we can say that Indian consumers learned online transaction from travel booking in which the growing social status of the young working class played a very important role.

One more quite noticeable thing is that till now the story of product e-commerce was not started in India.

The basis of online transaction is "first money then goods" which system is not prevalent in offline business. That's why in the beginning online payment was always a trust issue for the consumers. Is it not, that my money is invested and I don't receive my desired goods? Hence, for the way of goods, the trust of the consumers became the major impediment, therefore in the initial stage, this transaction was limited. For travel booking, the consumer has to commit his future booking as this booking is the prime necessity for him/her and secondly in exchange for his/her money here ticket becomes goods, which a consumer receives immediately. Henceforth, the starting credit of the Indian e-commerce goes to travel and booking industry.

From here begins the story of product e-commerce or product E-tailing in India. In the year 2007 Flipkart.com in its initial phase of operation, was registered as Flipkart Online Services Pvt. Ltd and sold only books, which was a small beginning. Later the

company grew bigger and ventured into selling other products such as electronic goods, e-books, stationery supplies, fashion and life style products as well. (Amit Tiwari, 2015).

The important and the biggest milestone of our lifestyle was yet to arrive and its name was Smart Phone. On 9th Oct 2007 Steve Jobs launched "I-Phone 3G" (Timeline of Apple, 2006). and till the year 2008 every gazette lover dreamed of owning one. I-Phone, have certainly changed so many things around us hence a different research can be conducted upon it. I-Phones have changed the meaning of industry in the year 2008 and a sort of race started in the entire world, the phone became more advanced than the computer. On 5th November 2007, Android Beta was publicly released and later in September 2008 the first commercial version, Android 1.0, was released which is continually developed by Google and the Open Handset Alliance.[226] People began spending 24 hours of their lives over the phone, India too became the part of this wave and in few years people began buying I-Phones and Android phones by spending thousands of rupees. In the year 2009 Myntra started online website to sell customised printed T-shirts and Coffee Mugs for its online consumers, further in the year 2010 Samsung Galaxy-S, along with HTC Desire, Sony X-peria, LG and other companies launched Android in the main stream smart phone market,[227] further in this year only Snapdeal started to sell daily online deals and by the year 2011 they converted themselves into market place and started online shopping too. In the year 2012 Jabong started its online fashion and lifestyle store and until the year 2013, it became the most popular shopping website in India having its 60% delivery in Tier-II

[226]. History of Android available at https://www.android.com/history/ visited on 18 May 2017.

[227]. https://gizmodo.com/samsung-galaxy-s8s-killer-feature-lands-months-late-1797048439 visited on 18 May 2017.

cities[228] which is quite appreciating. Up till now, the first internet generation of India have entered into their 30th years and was drawing annual salaries in lakhs and they were being followed by the young earning internet generation, smart phone revolution was also moving ahead and have reached in the hands of 15 crore Indians. Through these smart phones, internet and its use started to grow more intensely. In the year 2012-13 Whatsapp spread across India, today seven crore people are in Whatsapp from India alone the number of Indian users is increasing day by day. (India Digital Market Overview, 2009) Till the end of the year 2013 companies like Flipkart, Snapdeal, Myntra and Jabong invented a solid discount delivery model, those consumers visiting these sites were receiving, amazing variety, easy shopping and best price. (Ankur Aggarwal, 2017). Flipkart continuously received money from the market and its popularity started to grow more. In the year 2013 Amazon enters India and in 2013-14 both Indian and foreign investors invested in Indian e-commerce industry. Ads relating to these companies are publicised in TV's prime time and during IPL matches. Babyoye, Firstcry, Lensekart, Zivami, Fabfurnish are various segment specific e-tailing sites which are popular. In the year 2014 Flipkart acquires/buys Myntra and in the month of October all major websites during Diwali offered a sale for one to two days in a small window and have attracted visitors and customers in crore, fifty to two hundred crores of daily sales and revenue was achieved. It is said that on 6th Oct 2014 Flipkart made a sale worth 900 crores in just ten hours, and today Flipkart is daily selling products worth 150 crores. In the year 2013-14, the annual e-telling sales are 3 billion dollars. Thus e-commerce and especially e-tailing in India had arrived.

[228]. On the basis of population, Indian cities are classified by the Reserve Bank into tier. Population (2001 Census) Tier-I: 100,000 and above, Tier-II: 50,000 to 99,999, Tier-III: 20,000 to 49,999, Tier-4:10,000 to 19,999 Tier-5: 5,000 to 9,999, Tier-6less than 5000

The history of e-commerce is important because from here we can know what are those parameters resulting in the growth of e-commerce and specially the rapid growth of e-tailing within few years, and now the question arise,

4.9.2. What are the key drivers of e-commerce in India?

Behind the rapid growth of e-commerce and especially e-tailing in India there is an interesting environment having its source to help build an ecosystem most ideal for its development besides computers and mobile devices and these parameters are:-

(1) Broadband internet and 3G network penetration,

(2) Smart device penetration led by smart phones followed by tablets and laptops

(3) Rising standers of living and fast growing middleclass population with high disposable income.

(4) Busy life styles, urban traffic congestion and lack of time for off line shopping.

(5) Availability of much wider product range

(6) Lower prices, most of the products have heavy discounts and in comparison to off line cheap price tags.

(7) Evolution of the online market place model, with sites like Jabong.com, Flipkart, Snapdeal, and Infibeam. These early market leaders constructed a strong ecosystem.

All these seven points can be connected with fifteen years of social, technical and industrial developments of our as well as other foreign countries.

Technology:

Without having access to the internet consumers cannot participate in online shopping. When an internet was available in and around the country in the form of broadband and 3G which is one of the basic and the most important fundamental requirement of online shopping. Consistently cheaper smart phones, tablets, and laptops made this foundation more strong. Today a common man can be found a whole day in the internet spending every moment of his life on the internet.

Increasing income and life style:

If we talk about other developments then comes our lifestyle and social status. In past ten years employment rate increased, salaries got doubled, there was a three to ten times hike in the real estate market, money was coming to the people and the excess money was remaining with them, which we often term as disposable income. Each and every individual desired for branded clothes, shoes, electronics, i-phone, jewelleries, fashionable glasses etc. But when their income increased life of an individual became busy due to work and pressure, in such situation instead of roaming around in the market for shopping they realised and better understood the convenience of online shopping. When the income grew and his expenses raised he became a mature consumer, now he did not need bargaining, he was looking for the cheapest product or was in search of a great deal, now he wants varieties, comparison of online and offline, what he wants he wants that only, instead of what is there on the shelf of a shopkeeper but even more than that. Hence, social status gave birth to a demanding, powerful and a mature consumer and this demanding and powerful consumer in search of variety in products, better pricing and for the sake of best deal was online.

E-commerce Ecosystem:[229]

The third and the most important development is that in the development of e-commerce, e-commerce has its own hands. Initial companies worked as a leaders, they provided excellent services, facilities such as cash on delivery (COD), online payment provided to the consumers, great websites were designed, delivered orders on time, if the wrong product were delivered the same was returned, when consumer used and experienced this service confidence was developed his/her trust towards e-commerce began to grow. Consumers trust is the combined effect of the above mentioned seven points which further resulted in the growth of e-commerce.

The 'e-Revolution' has placed virtually the entire trading universe in cyberspace. (Dr. Gagandeep Kaur, 2017) E-Commerce is a gateway of technological success of the Indian business scenario in the era of information explosion. With e-Commerce, shopping can be done at any time by using "fingertips" instead of "feet". The geographical barriers have become a blur. (Avinash Asokan, 2010). A shop located in another country and a shop next to your home is both on "one finger click" away. In the context of e-Commerce, the relationship is not just selling through the web but managing customer relationship in general. Particularly from the perspective of buyer and seller relationship, e-Commerce application can be divided formally into six categories: (U.G. Shanmuga Sundram, 2001)

[229]. By definition, an ecosystem is a community of living organisms (plants, animals and microbes) in conjunction with the non-living components of their environment (things like air, water and mineral soil), interacting as a system. Therefore, an e-commerce ecosystem is the complex network or interconnected systems that make up an e-commerce business.

I. Business-to-Business (Termed as ‘e-hub’, the Second Industrial Revolution. It includes: Electronic Data Interchange (EDI), Electronic Resource Management (ERM).

II. Business-to-Consumer (Includes: e-tailing, e-brooking, e-news, e-learning, e-service etc)

III. Consumer-to-Business (Includes: commercial transactions between consumers and businessmen in online shopping and trading).

IV. Consumer-to-Consumer (Popular as e-Bay e-Commerce).

V. Business-to-Government

VI. Government-to-Consumer

However, the only law which relates with e-commerce in India is the Information and Technology Act, 2000 read with Information and Technology (Amendment) Act, 2008. The genesis of these Acts is the UNCITRAL Modal Law of 1996. Information and Technology Act 2000 (2008) provides legal recognition to the electronic transactions which facilitates e-commerce as well hence it is a purely industry based law. Both Model law and I.T Act does not provide any strict provisions to protect the interest of the online consumers, neither regulations for the e-commerce website, nor any redress mechanism system to address the complaints of the online consumers followed with certainty regarding jurisdiction, which creates online consumer more vulnerable in an online environment. Consumer faces severe challenges in the ‘e-revolution’ brought by the Internet during virtual commercial communications, contracts concluded without face-to-face negotiation at a distance and e-Banking

transactions. (Hossein Kaviar, 2011). The OECD guidelines for Consumer Protection in the Context of Electronic Commerce 1985 and revised guidelines for Consumer Protection in E-Commerce 2016 *inter alia* states that *consumer who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce, without erecting trade barriers.* (emphasis supplied)

The word "e-consumers" has/have not been explicitly mention/definition, even at the above mentioned international instruments. However, these instrument considers key consumer protection challenges in electronic commerce or "e-commerce" such as, unfair commercial practices, unfair contract terms, online payment security, data protection and privacy, dispute resolution and redress including cross-border online transactions.

The only legislation which specifically deals with the consumer protection in India is the Consumer Protection Act, 1986 (COPRA) though this legislation was framed according to the United Nations Guidelines on Consumer Protection 1985 and is one of the admirable and welfare oriented legislation in India which provides quick cheap and effective redress to the aggrieved consumers and have stood the test of time. But now the nature of transactions are changing, cross border transactions are becoming more and more common and with this the grip of existing laws are gradually falling down pushing the online consumers more and more into vulnerable hoax of web popularly known as internet.

Economy of our country was liberalised globalised and privatised in 1991 by adoption the new economic policy. Doors are now open for Foreign Direct Investments (FDI), India is becoming digital economy. The concept of e-governance have already been

initiated and all this is/was possible because there was an existing law i.e. I.T Act 2000 (2008), to regulate industrial transactions. However, the rights and protection of the citizens who actually are the integral part of the digital economy by virtue of being the end user were over looked or diluted.

Further, after perusal of different laws relating to consumers in India read with different international instruments related with electronic commerce this researcher submits that first of all "e-consumers" have not been explicitly mention/definition anywhere. Various challenges for consumer in e-commerce have not been completely identified by the authority concerned in India. The only slogan reiterated for consumers via different press and social media is "JagoGrahakJago". Back bone of consumer jurisprudence in India is Consumer Protection Act, 1986 and the only protection available to the India consumers is Right to Information i.e. "right to be informed about quality, quantity, potency, purity, standard and price of goods or services as the case may be to protect the consumer against unfair trade practice". But at this juncture these protection available in off line environment is not workable in an online environment because due to the trans border nature of e-commerce territorial laws cannot catch hold such traders whose prime motive is to deceive the consumers. Hence, remedy in a form of specific regulations have to be formulated, along with specific procedure to address them with a mechanism for their dispute settlement etc.

Further, even the international guidelines do not provide any model law in this context and have categorically urged the member nations *to adhere the global co-operation principle in order to provide effective consumer protection in the context of global e-commerce, it further suggest that ADR mechanism including online dispute resolution (ODR) system have to be encouraged.*

In the said context perusal of Civil Procedure Code, 1908, Section 89,[230] provides;-

(1).“……..the court may reformulate the terms of a possible settlement and refer the same for: - ……”

(a) Arbitration; (b) Conciliation; (c) judicial settlement including settlement through LokAdalat; or (d) mediation.

(2). Where a dispute has been referred –

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.

Appraisal of the above legislations undoubtedly proves that mechanism of Alternative Dispute Resolution has already been honoured, adopted and practiced in India. However, in the context of privacy one must not forget to quote the Canadian privacy jurisprudence developed with the advent of technology and the internet hence, judicial decisions of Canadian Supreme Court have significant implications for the internet and digital privacy. In the case of R. V/S Spencer,[231] the Supreme Court of Canada applied a broad approach in understanding the online privacy interest and held that;-

“Privacy is admittedly a “broad and somewhat evanescent concept”…….

“….Three broad type of privacy interest – (i) territorial (ii) personal and (iv) informational – which, while often overlapping, have proved helpful in identifying the nature of privacy interest or interests at stake in particular situations……”.

[230]. Added by C.P.C.(Amendment) Act 46 of 1999 (w.e.f. 1-7-2002)

[231]. (2014) SCC 43.

"The court found that the nature of appellants privacy interest in subscriber information relating to a computer used privately was primarily an informational one and held:"

"……..the identity of a person linked to their use of internet must be recognised as giving rise to a privacy interest beyond that inherent in the person's name address and telephone number found in the subscriber information…."

It then set out three informational privacy: (i) privacy as secrecy (ii) privacy as control and (iii) privacy as anonymity.

It further emphasized on the importance of anonymity in informational privacy, particularly in the age of internet and held that:

"…….anonymity may, depending on the totality of circumstances, be the foundation of privacy interest that engages constitutional protection against unreasonable search and seizure…."

"The Canadian Supreme Court has used Section 8 of the Canadian Charter[232] to expand the scope of right to privacy and has been held to be more than just physical right as it includes the privacy in information about one's identity."

Similarly, Right to Privacy is also enshrined in the Constitution of South Africa, 1996[233] in Chapter 2, Section 14 of the Bill of Rights which reads as follows;-

[232]. The Canadian Charter of Rights and Freedoms (French: *La Charte canadienne des droits et libertés*), in Canada often simply the Charter, is a bill of rights entrenched in the Constitution of Canada. It forms the first part of the Constitution Act, 1982. The Charter guarantees certain political rights to Canadian citizens and civil rights of everyone in Canada from the policies and actions of all areas and levels of the government. It is designed to unify Canadians around a set of principles that embody those rights. The Charter was signed into law by Queen Elizabeth II of Canada on April 17, 1982, along with the rest of the Act.

"14. Privacy:- Everyone has right to privacy, which includes the right not to have-

(a) their person or home searched

(b) their property searched

(c) their possession seized, or

(d) the privacy of their communication infringed"

Further, Hon'ble Supreme Court of India (Constitution Bench) comprised of nine judges in the matter of Justice *P S Puttaswamy (Retd) and Anr V/S Union of India and Ors*[234]*.....,* on August, 24th 2017, delivered its Land mark judgement on Right to Privacy and held:

"……. Right to privacy is protected as an intrinsic part of Right to life and Personal Liberty under Article 21 and as a part of freedom guaranteed by Part III of the Constitution".

With this the earlier decision of Supreme Court in *M P Sharma and Others V/S Satish Chandra, District Magistrate, Delhi and others*,[235] and *Kharak Singh V/S State of U.P and Others*,[236] stating Right to Privacy was not protected by the Constitution of India was over-ruled.

---

[233]. The Constitution of South Africa is the supreme law of the country of South Africa. It provides the legal foundation for the existence of the republic, sets out the rights and duties of its citizens, and defines the structure of the government. The current constitution, the country's fifth, was drawn up by the Parliament elected in 1994 in the first non-racial elections. It was promulgated by President Nelson Mandela on 18th December 1996 and came into effect on 4 February 1997, replacing the Interim Constitution of 1993.
[234]. Writ Petition (Civil) No 494 of 2012.
[235]. 1954 AIR 300.
[236]. 1963 AIR 1295.

4.10. Conclusion

In India, Consumer Protection Act 1986 defines the rights of consumers. However, *Service on Net* has not been defined. It is not clear whether online trading business amounts to providing service, as defined under Consumer Protection Act and whether it would include services promised online and delivered offline. The modern e-shopping covers a wide range of transactions effected via personal computer and tablets mobile, telephone and other devices, to effect the process of such transaction internet access is required to review products and to acquire them online presents some challenges for consumers that differ from those encountered during offline commercial transactions. In 2015, UNCTAD launched the business-to-consumer e-commerce index, which measures the readiness of countries for e-commerce based on the following four indicators: Internet use penetration: secure server per million inhabitants: credit card penetration: and postal reliability score.[237] "Key feature of e-commerce is involvement of businesses and consumer from different jurisdictions." The OECD guidelines for consumer protection in e-commerce appeal upon Governments to establish national policies for consumer protection that includes information disclosure, contract terms, secure payment mechanisms, consumer privacy and data security (emphasis supplied), including dispute resolution and redress, covered by consumer education program and finally stress to exchange information and cooperation in cross-border matters. The internet has facilitated the emergence of a collaborative economy where transaction now occur between consumer on online platforms however one pertinent difficulty in such collaborative economy is the identification of the business and/or peer provider operating in platforms.[238]

[237]. http://www.unctad.org/en/PublicationsLibrary/tn_unctad_ic4d07_en.pdf. visited on 26 May 2017.

[238]. United Nations (UNCTAD) TD/B/C.I/CPLP/7 (contribution for the Government of France) visited on 26 May 2017.

CHAPTER FIVE

DETERMINING JURISDICTION IN CROSS BORDER TRANSACTIONS

5.1. Introduction

Jurisdiction is combination of Juris means “law” and diction means “to speak”. It means the authority granted to a legal body to make pronouncement on legal matter and in the administration of justice.

Jurisdiction plays an important role in day to day governance of the law and order in any other State and are of three kinds;-

i. Prescriptive or legislative jurisdiction.

   It is basically the jurisdiction power of the State to legislate a particular law relating to person, certain circumstances and/or an issue. Both Centre Government as well as State Government can legislate laws within their own domain without any conflict which may be applicable to person and/or certain circumstances. One of the good examples in this regard may be Information Technology Act, 2000 which governs the cases or contraventions happening not only in India however governs such cases which have started in any part of the country or any part of the world.

ii. Enforcement jurisdiction.

   Is the power of State to enforce particular law, however, these laws are enforced through different law enforcement agencies.

iii. Adjudicative or Judicial jurisdiction.

   Is the power of Court to try and adjudicate matters placed before them. There may be different kinds of issue before the court in a particular case but it is importance for a Court to satisfy itself as to whether that Court has a power to

adjudicate or not. Because there may be different kinds of parties residing within the jurisdiction of the Court or not Subject matter fall under the jurisdiction of the Court or not. Hence, judicial jurisdiction is also important for deciding or resolving a particular case before a Court.

However, one of the major challenges faced by the traditional Courts is to ascertain jurisdiction in internet or cyber transaction. The task to determine the jurisdiction becomes more challenging when there is no uniform law throughout the country, e.g. United States (each state have their own laws). Likewise it is not that easier for a country like India also where uniform law exists throughout the country to determine the correct jurisdiction arising out of internet transactions where multiple parties residing in different territories are involved. E.g.

Ram orders a law book advertised for a price of Rs 500/- in a website named XY.

The website is operated by a company CD having its registered office in another country named GH.

The website is launched through a server located in country named LM which is operated by Z.

Ram finds his credit card statement showing debit i.e. payment made to CD company, however he have failed to receive the ordered book and decides to take action.

This hypothetical illustration is evident enough to understand the complex nature of jurisdiction in cross border transactions, which further creates a doubt that consumers may be left without any defence in cases where the service provider and intermediaries in cyberspace are spread out in various jurisdiction.

Jurisdiction under Indian laws is dealt with through the civil law, Civil Procedure Code, 1908 which as follows;-

Section 6 of the C.P.C, 1908 deals with Pecuniary Jurisdiction.

Section 16 of the Code states Subject matter Jurisdiction and

Section 20 states where the defendant resides or the cause of action arises i.e. Territorial Jurisdiction

5.2. Cyberspace disputes

Laws are codified in order to solve the disputes between two or more persons in an offline environment but if dispute arises in the cyberspace which law will apply is not certain more over verifying the location of the consumer is virtually impossible. A consumer can even pay anonymously for services with the digital equivalent of cash, e.g. e-Cash. It is important to note that when a physical delivery of goods is required, an online business can limit its customer base to the jurisdictions where it is delivered, but with digital goods and services delivered online, it is almost impossible, and the business may have to rely on the truth of the customer's location data [239]

Cyberspace is a space created by networks of computers. It is virtual space different from the physical place, having borderless nature of territory, unlimited accessibility, ubiquitous in nature, spontaneous dissemination hence easy to access, duplication or copy is as original as the original work. Hence, cyberspace is worldwide accepted because of these characteristics. Further to make government more effective, transparent and spontaneous some of the countries including India have been using cyberspace for e-governance.

[239]. http://cyber.law.harvard.edu/ecommerce/disputes.html visited on 2 June 2017.

5.2.1. Contractual dispute

A contractual dispute is usually considered a breach of contract, meaning that a party failed to perform a duty or promise that they agreed to in the contract. (Sachin Mishra) E.g.

“Disputes between the enterprise and the Internet Service Provider (ISP)”

"This is the dispute that arises between the company and the Internet service provider (ISP) or web hosting service provider, including disagreements about service interruptions, data protection, etc.

Example: if A, an ISP, contracts with an enterprise, B, to provide an uninterrupted web hosting service to B. But A fails to provide the same. This may lead to a dispute between A and B.”

“Dispute in Business-to-business (B2B)”

Such disputes usually take place between the company and its suppliers, such as non-compliance with contractual obligations, misrepresentation, and complaints from service providers offered by suppliers

Example: an automobile manufacturer makes severalB2B transactions such as buying tires, glass for windscreens, and rubber hoses for its vehicles. If the supplier fails to perform its obligation within the stipulated time limit this may lead to a B2Bdispute.”

“Dispute in Business-to-consumer (B2C)”

"These disputes often occur between the company and its customers, such as non-payment for goods or services, non-performance of contractual obligations, poor performance of the contract, misrepresentation, violation of privacy policy and

violation of the security of confidential information It is between the company and its customers that this is the largest possible scope for disputes.

Example: The final transaction (in the previous example), a finished vehicle sold to the consumer, is a single (B2C) transaction. If the consumer finds any defect in the vehicle then this may lead to a B2C dispute."

5.2.2. Non-contractual disputes

"A non-contractual dispute is essentially a dispute arising from non-compliance with the legal obligations of the parties to the transaction and are common in online business.[240]

"Copyright dispute"

"The company may be held liable for copyright infringement if it uses copyrighted material that exceeds reasonable use and without permission.[241] Example: An enterprise provides an online English- Hindi dictionary Facility to the users. Another enterprise subsequently published another online English- Hindi dictionary Facility. The former enterprise can sue the letter for infringement of copyright under section 51 of the Copyright Act, 1957."

"Failure of Data protection"

The company can be held responsible for sharing or releasing confidential customer information as described in the privacy section.[242] Example: if the services provided by an enterprise are of such a nature that the law mandates that it is the duty of the

[240]. http://cyber.law.harvard.edu/ecommerce/disputes.html visited on 5 June 2017.

[241]. Under the provision of Copy Right Act, 1957

[242]. Under the provision of Information Technology Act, 2000

enterprise to provide data protection to the customers. Failure in observing such a mandate may give rise to a liability under the IT Act, 2000."

"Right of free expression"

"The company can be prosecuted for defamation of defamatory material posted online. Example: if a company makes a defamatory statement about an honorable person on its website, then he has full rights to prosecute the company for defamation under the provisions of the IPC, 1908. "

"Competition law, Domain name disputes"

"The enterprise may be subject to trademark infringement suits if it infringes a registered or otherwise legally recognized trademark.[243] Example: In US, if the company has registered a domain name corresponding to a trademark or registered trademark, a complaint may be filed under ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) or the law US federal law on federal Anti cyber squatting Consumer Protection Act." (Berkman Center)

5.3. Jurisprudence of Internet

State laws are traditionally based on border and jurisdiction. (Aron Mefford, 2011) Traditional jurisprudence on jurisdiction assumes that the law is made for a definite group of people residing in a certain territory where the government of that territory will prescribe the law and execute the law. Legal rights and responsibilities are therefore largely dependent on where one is located. With the growth of Internet based activities, however, these elements have become increasingly irrelevant. (Trachtman JP, 1998). Online activities bring people together from all over the world

[243] Under the provision of Trade Mark Act, 1999

and trans-national activities become very much a part of daily life. When the regulation of such activities comes into a question traditional Jurisprudence loses its foundation. (Joanna Zahalik Rachael T. Krueger, 1996). In fact, some of the traditional elements of legal authority have been demolished by the global nature of the Internet. (Ballon IC, 1997)

Any legal system should have the consent of the people governed to be seen as legitimate. Otherwise, there is a serious possibility that citizens will rebel against or simply ignore the law. For traditional territorial legitimacy, individuals living in a given territory should have some say in how law/laws affecting them have been written. (Berman N, 1992)

State wishing to control activity on the Internet suffer from two legitimacy problems. (Dawson S, Kloczko A and Waldron BD, 2003) First, there is the general problem present in all international transactions that an actor in country. 'A' may be subjected to the laws of country 'B' although he/she had no voice in the enactment of those laws. (Degnan R E and Kane MK, 1988) In the past, this problem only impacted upon a few transactions (e.g. if there was no choice of law clause in a contract) and then only those who had notice first. However, the Internet presents unique problems for state legitimacy because of its unprecedented ability to bring people together from all over the world on such a regular basis. This increased interaction means that there are more transactions between people from different states. A greater number of transactions means a greater number of conflicts and disputes and so legitimacy problems arise for states trying to exercise jurisdiction. Such failings by the law to address some of these new challenges pave the way for a new school of thought on Internet Jurisdiction. (BimalRaut, 2004)

As society changes and new technologies emerge, it is vital that the law fills the gap between the old norms and what new norms require. (Clark EE, Cho, G and Hoyle, 1997). Therefor with relation to internet law and jurisdiction, three mainstream school of thoughts have emerged. One is a radical school which considers that cyberspace should be completely free from the government and any physical control or the law of any state of government. Another school of thoughts argues that a distinctive set of cyber laws are required for cyberspace. Finally, the third school of thought suggests a blend of law and technology to regulate cyberspace successfully.

5.3.1. Declaration of Independence of Cyberspace – Radical School.

This school makes the declaration that cyberspace is independent from all kinds of government regulation. Accordingly, any disputes and concerns that arise in cyberspace should not be governed by any one law or government authority. Cyberspace will have its own set of norms and pattern. It says;-

"Government of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather. We have no elected government, nor are we likely to have one, so I address you with no greater authority than that which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear. Governments derive their just powers from the consent of the governed. You have neither solicited nor received ours. We did not invite you. You do not know us, nor do you know our world. Cyberspace does not lie within your borders. Do not think that you can build it, as

though it were a public construction project. You cannot. You have not engaged in our great and gathering conversation, nor did you create the wealth of our marketplaces. You do not know our culture, our ethics, or the unwritten codes that already provide our society more order than is both everywhere and nowhere, but it is not where bodies live. We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity. Your legal concepts of property, expression, identity, movement and context do not apply to us. They are all based on matter and there is no matter here. But we cannot accept the solutions you are attempting to impose. We must declare our virtual selves immune to your sovereignty, even as we continue to consent to your rule over our bodies. We will create a civilization of the Mind in Cyberspace."[244]

After careful analysis of this approach one can easily say that this is an extremist, non-legalistic view and as such is unlikely to be accepted by legislators as the recommended approach.

5.3.2. Law based on the physical world cannot be applied to cyberspace.

This school of thought emphasis the need to recognise that cyberspace is distinctive and so a distinctive set of laws are needed to order this space. Accordingly, law based on the physical world cannot be applied to cyberspace. It argues;-

Many of the jurisdictional and substantive quandaries raised by border-crossing electronic communication could be resolved by one simple principle: conceiving of Cyberspace as a distinct "place" for purposes of legal analysis by recognising a

[244]. A Declaration of the Independence of Cyberspace http://www.eff.org/~barlow/Declaration-Final.html (13/06/03); Barlow JP, "Selling Wine With out Bottles: The Economy of Mind on the Global Internet" http://www.eff.org//Publications/John_Perry_Barlow/idea_economy_article.html visited on 7 June 2017.

legally significant border between Cyberspace and the real world. Treating Cyberspace as a separate "space" to which distinct laws apply should come naturally. Crossing into Cyberspace is a meaningful act that would make application of a distinct "law of Cyberspace" fair to those who pass over the electronic boundary. To be sure, Cyberspace is not a homogenous place; groups and activities found at various online locations possess their own unique characteristics and distinctions and each area will likely develop its own set of distinct rules. (David G. Post & David R Johnson, 1996)

This approach suffers from serious unanswered questions.

- If the law made by any particular national government cannot be applied, which body should have law making authority?
- Who will then enforce those rules?
- Which laws are to be applied in internet dispute?

5.3.3. Hybrid theory combining law and technology.

The final school of thought argues that cyberspace is not free from any form of laws and regulations, however, not only the law can regulate cyberspace. According to this theory, it is the combination of law and technology which can form a successful model of regulation.

The architecture of cyberspace or its code already regulates some behaviour in cyberspace. The code, or the software and hardware that make cyberspace the way it is, constitutes a set of constraints on how one can behave. This school of thought differs with the previous two theories substantially. The cyberspace is not free from government regulations and solely the government laws will not be able to regulate

but there should be hybrid of law and technology. Technology in the form of code (Lessig L, 1999) will play a crucial role. For example, the law can prohibit the viewing of pornographic material by minors. To help prevent minors accessing such materials, technology can be used to introduce a password based system whereby no password are issued to any users that are underage. In this sense, these features of cyberspace also regulate the Internet, just as the architecture in real space regulates physical constructions. Nevertheless, these school of thought have not adequately addressed the dilemma of how to determine which is an appropriate forum to hear a matter which has arisen out of internet activities. (Edward L and Waelde, 2000)

5.4. Jurisdiction Rule in United States

In the United States, a court has no power over all people in the world. Before a court can decide a case, it must determine whether there is "personal jurisdiction" over the parties. An applicant cannot sue a defendant in a jurisdiction outside the defendant unless the defendant has established a relationship with that court that the defendant would reasonably require to be sued. (Betsy Rosenblatt)

In the Federal Legal system of United States concept of jurisdiction becomes more important and interesting to analyse since each State have its own sets of laws, on the issue of jurisdiction United States Courts apply various principles based on the claim of property, tort, contract etc. In the cases of Tort Courts applies the Principle of *Lex Loci Delicite*[245] or the law of the place of the wrong. Issue of jurisdiction raised in

245. The ***lex loci delicti*** is the Latin term for "law of the place where the delict tort was committed" When a case comes before a court and the parties and the causes of action are local, the court will apply the *lex fori*, the prevailing municipal law, to decide the case. However, if there are "foreign" elements to the case, the forum court may be obliged, under conflict of laws, to adjudicate whether the forum court has jurisdiction to hear the case.

property Suits are dealt based on the first restatement principle of *Lex Situs* of the law of physical location, which was later enlarged by the principle of second restatement of law in 1971 wherein *the Court should apply the law of the jurisdiction with the significant relationship to the litigation*. Likewise for Contractual dispute the Court applies the principle of *Minimum Contacts*, for corporate and individuals.

5.4.1. General Jurisdiction rule

The terms "general" and "specific" jurisdiction were apparently coined by Von Mehren and Donald Trautman in the 1960s.[246] General jurisdiction signifies the defendant's "dispute-blind" amenability to suits on any cause of action, whether or not the litigation has any connection with the forum (Mary Twitchell, 1988). General jurisdiction can be understood as "the court's jurisdiction to deal with all types of cases that take place in the geographical area"[247]. Accordingly, the general jurisdiction gives authority to court to deal with many cases. An example may be quoted as 'A lives in AB country, and enters into contract in CD Country where he breaches the contract. The Court of AB country will have personal jurisdiction over A for actions he commits anywhere i.e. Court in AB country may assert general personal jurisdiction over A. Further, the plaintiff can always file a case in the country of residence of defendant and ask court to apply general jurisdiction over him. There may of course be reasons to transfer the case to the country of defendant's residence etc. but this is another topic.

[246]. T. von Mehren and Donald T. Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv L Rev 1121, 1135-36, 1164-66 (1966) (defining "specific jurisdiction" and "general jurisdiction"). See also Andrew L. Strauss, Beyond National Law: The Neglected Role of the International Law of Personal Jurisdiction in Domestic Courts, 36 Harv Intl L J 373, 378 n 25 (1995) ("The distinction between specific and general jurisdiction was first suggested by Arthur von Mehren and Donald Trautman.").

[247]. https://definitions.uslegal.com/g/general-jurisdiction/ visited on 20 June 2017.

General jurisdiction over natural persons and business entities.[248]

General Jurisdiction of court builds on the resident of that State. A natural person who is resident of some country will be subject to general jurisdiction of court of that country. Therefore, if a person is resident in a state and intends to live there permanently, the state will have general jurisdiction over him.

Courts treat natural persons as having one and only one state of permanent residence.

For example, if Debbie's house is in Florida, and she has a Florida driver's license, courts will probably consider Florida her state of permanent residence. Even if Debbie studies in New York a few months a year, probably Florida alone will have general personal jurisdiction over her.

An incorporated business entity is at home in its state of incorporation and the place of its principal place of business usually its headquarters. For example, if a company is incorporated in Delaware (Delaware is a favourite place to form a company) and its headquarters is in California, both Delaware and California will have general jurisdiction over the company.

Other business entities and organizations are subject to different rules.

For partnerships and Limited Liability Companies, the entities will be at home in every state in which a partner or member lives. For example, if a partnership has ten partners in ten different states, the partnership will be subject to general jurisdiction in each state.

[248]. uslawessentials, What are General and Specific Personal Jurisdiction?, available at https://uslawessentials.com/general-specific-personal-jurisdiction/ visited on 20 June 2017.

Perkins v. Benguet Mining Co., 342 U.S. 437 (1952) was a United States Supreme Court case which held that an Ohio state court could exercise general personal jurisdiction over a foreign corporation on the basis of that company's "continuous and systematic" contacts with the state of Ohio. Benguet Consolidated Mining Co. was a Philippine mining corporation, owned by American John W. Hausermann, that temporarily stopped its mining operations and relocated its president to Ohio during the World War II Japanese occupation of the Philippines. The Court held that the president's use of his office in Ohio to carry on continuous business activities during this period allowed Ohio to properly assert general jurisdiction over his company.

5.4.2. Specific Jurisdiction rule.

Specific jurisdiction refers to jurisdiction that arises from the defendant having certain minimum contacts with the forum state so that the court may hear a case whose issues arise from those minimum contacts. The defendant in the case could be an individual or a business. A minimum contacts claim is stronger when it relates directly to the purpose of the contacts. Specific jurisdiction may also apply if a defendant owns property in the area where the case is filed, even if he/she does not live there.[249] For example, if David is a resident of Pennsylvania, New York cannot have general jurisdiction over him. A plaintiff could not sue David based on David's activities that have no connection with New York. However, if David commits a tortious act in New York, then a plaintiff injured by David in New York should be able to demonstrate that a New York court has specific jurisdiction over David, based on his tortious conduct in New York. The plaintiff could sue David in New York because a New

[249]. https://definitions.uslegal.com/s/specific-jurisdiction/ visited on 22 June 2017.

York court will have personal jurisdiction over David, based on his contacts with the state and the connection between those contacts and New York.[250]

5.4.2.1. Criteria for minimum contact

Minimum contacts is a term used in the United States law of civil procedure to determine when it is appropriate for a court in one state to assert personal jurisdiction over a defendant from another state. The United States Supreme Court has decided a number of cases that have established and refined the principle that it is unfair for a court to assert jurisdiction over a party unless that party's contacts with the state in which that court sits are such that the party "could reasonably expect to be hauled in to court" in that state".[251]

A non-resident defendant may have minimum contacts with the forum state if they

1) have direct contact with the state;
2) have a contract with a resident of the state;[252]

---

[250]. Supra note 246

[251]. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).was a landmark decision of the Supreme Court of the United States in which the Court held that a party, particularly a corporation, may be subject to the jurisdiction of a state court if it has "minimum contacts" with that state. The ruling has important consequences for corporations involved in interstate commerce, their payments to state unemployment compensation funds, limits on the power of states imposed by the Due Process Clause of the Fourteenth Amendment, the sufficiency of service of process, and, especially, personal jurisdiction. *Brief fact* International Shoe Co. did not pay the tax at issue in this case, so the state effected service of process on one of their salesmen with a notice of assessment. Washington also sent a letter by registered mail to their place of business in Missouri. International Shoe made a special appearance before the office of unemployment to dispute the state's jurisdiction over it as a corporate "person." However, the trial court ruled that it had personal jurisdiction over the defendant corporation. This ruling was upheld in the appeal tribunal, the Superior Court, and the Supreme Court of Washington. International Shoe Co. then appealed to the U.S. Supreme Court. *Ruling* Suit cannot be brought against an individual unless they have minimum contacts with the forum state, and such lawsuit does not offend traditional notions of fair play and substantial justice.

[252]. McGee v. International Life Insurance Co., 355 U.S. 220 (1957). was a case following in the line of decisions interpreting International Shoe v. Washington. The Court declared that

3) have placed their product into the stream of commerce such that it reaches the forum state;[253]

4) seek to serve residents of the forum state;[254]

5) have satisfied the Calder effects test;[255]or

6) have a non-passive website viewed within the forum state.

5.4.3. Sliding Scale Test (Subjective Territoriality Test)

In Banyan Tree Holding (P) Limited vs. A. Murali Krishna Reddy and Ors.[256] The Hon'ble High Court of Delhi was as pleased to examine the Jurisdiction theory of U.S.A the U.K., Canada, Australia and India involving internet related disputes in the

---

California did not violate the due process clause by entering a judgment upon a Texas insurance company who was engaged in a dispute over a policy it maintained with a California resident. The importance of this finding is highlighted by the facts of the case; mainly that International Life Insurance did no other business within the state of California besides maintaining this single policy, which the company became responsible for by its acquisition of another insurance company which previously had held the policy. However; the case never explicitly stated that no other business was conducted within California and the previous assumption is presumptive by definition.

[253]. Gray v. American Radiator & Standard Sanitary Corp., N.E.2d. 176: 761. 1961. Phyllis Gray (Plaintiff) was injured when a water heater exploded. This took place in Cook County, Illinois. Subsequently, Plaintiff brought suit in Illinois against both Titan Valve Manufacturing Company (Titan) and American Radiator & Standard Sanitary Corporation (Defendant). The suit alleged that the safety valve had been negligently constructed for use in the water heater. Synopsis of Rule of Law. In a products liability action, a defendant who sells products that he knows will be used within a given forum may be required to defend an action within that forum state, if the product sold in fact causes injuries within the state.

[254]. World-Wide Volkswagen Corp. v. Woodson, 222 U.S. 286 (1980).is a United States Supreme Court case involving strict products liability, personal injury and various procedural issues and considerations. The 1980 opinion, written by Justice Byron White, is included in the first-year civil procedure curriculum at nearly every American law school for its focus on personal jurisdiction.

[255]. Calder v. Jones, 465 U.S. 783 (1984).was a case in which the United States Supreme Court held that a court within a state could assert personal jurisdiction over the author and editor of a national magazine which published an allegedly libellous article about a resident of that state, and where the magazine had wide circulation in that state.

[256]. MANU/DE/3072/2009

online environment. It may also be advantageous to extract the following views of the Court in para 18 and 19 of the judgement (supra).

> "Para 18. For determining the level of interactivity of the website, for the purposes of ascertaining jurisdiction of the forum state, the "sliding scale" test was laid down in Zippo Mfg. Co. v. Zippo Dot Com, Inc. 952 F.Supp. 1119 (W.D.Pa.1997). "The brief facts of the case includes plaintiff Zippo Manufacturing was a Pennsylvania corporation dealing with cigarette lighters manufacturing while, the Defendant was a California corporation operating an internet website and an internet news service with offices only in California. Viewers from other states had to visit the website to subscribe for the Defendants news service by filling out an online application. Payment was made by credit card over the internet or telephone. Around 3,000 of the Defendants subscribers were residents of Pennsylvania who had contracted to receive the Defendants service by visiting its website and filling out the online application. Additionally the Defendant entered into agreements with seven internet access providers in Pennsylvania to permit their subscribers to access the Defendants news service. The Defendant was sued in a Pennsylvania court for trademark dilution, infringement and false designation. After discussing the development of the law till then, the District Court first observed: The Constitutional limitations on the exercise of personal jurisdiction differ depending upon whether a court seeks to exercise general or specific jurisdiction over a non-resident defendant. Mellon, 960 F.2d at 1221. "General jurisdiction permits a court to exercise personal jurisdiction over a non-resident defendant for non-forum related activities when the defendant has engaged in "systematic and continuous" activities in the forum state,

Helicopteos Nacionales de Colombia, S.A. v. Hall 466 US 408"[257]. Further, "In the absence of general jurisdiction, specific jurisdiction permits a court to exercise personal jurisdiction over a non-resident defendant for forum-related activities where the "relationship between the defendant and the forum falls within the "minimum contacts framework" of International Shoe Co. v. Washington 326 US 310 and its progeny Mellon, 960 F.2d at 1221."[258]

"Para 19.The Zippo court then noted that "a three pronged test has emerged for determining whether the exercise of specific personal jurisdiction over a non-resident defendant is appropriate: (1) the defendant must have sufficient "minimum contacts" with the forum state, (2) the claim asserted against the defendant must arise out of those contacts, and (3) the exercise of jurisdiction must be reasonable." The court in Zippo classified websites as (i) passive, (ii) interactive and (iii) integral to the defendants business. On facts it was found that the Defendants website was an interactive one. Accordingly it was held that the court had jurisdiction to try the suit. The Zippo courts observation that "the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the internet" has been compared by that court to a "sliding scale".

The court concluded that this level of contact with the state justified the exercise of specific personal jurisdiction. The court noted that the case reveals "sliding scale", in which, "at one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a

[257]. Babcock, B. A., Massaro, T. M., & Spaulding, N. W. (2017). *Civil Procedure: Cases and Problems*. Wolters Kluwer Law & Business.
[258]. Ibid

foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper,(e.g. Compuserve v. Patterson).[259]

At the opposite end are situations where a defendant has simply posted information on an Internet website, which is accessible to users in foreign jurisdictions. A passive website that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction,(e.g. Bensusan Restaurant Corp. v. King).[260] The middle ground is occupied by interactive websites where a user can exchange information with the host computer. In these cases, the exchange of information and the interactivity that occurs on the website determines the jurisdiction, (Maritz, Inc.v. Cybergold, Inc.)[261]."

To sum up, the sliding scale approach classifies the websites on the basis of interactivity. The above judgements have underlined the fact that "Personal jurisdiction must adapt to progress in technology" where a business entity conducts over the Internet.

Interestingly, Zippohas also been followed in Canada. In Braintechv. Kostuik,[262]the plaintiff technology company was incorporated in Nevada, domiciled in British Columbia and maintained a research facility in Texas. It obtained a judgement in a Texas defamation action, alleging that the defendant, a resident of British Columbia, had posted defamatory material on an internet bulletin board. The computer hosting this bulletin board was not located in Texas, and there was no evidence that anyone in Texas has actually viewed the offending material. The British Columbia Court refused

[259]. CompuServe, Inc. v. Patterson, 89 F.3d 1257(6thCir. 1996);
[260]. Bensusan Restaurant Corp. v. King, 937 F. Supp. 295 (SDNY, 1996)
[261]. Maritz, Inc. v.Cybergold, Inc.,947 F. Supp. 1328 (E.D.Mo.1996)
[262]. Braintech v.Kostuik,(1999) 63 BCLR (3d) 156 (British Columbia Court of Appeal)

to recognize the Texas judgement because it found no purposeful commercial activity has been carried on by the defendant in Texas. Accordingly, there was no real or substantive connection between the litigation and that State and held that "the plaintiff must offer better proof that the defendant has entered Texas then the mere possibility that someone in that jurisdiction might have reached out to cyberspace to bring the defamatory material to a screen in Texas."

5.4.3.1. Passive Website

Passive website is designed for information purposes only.

In Bensusan Restaurant Corp. v. King,

" The Defendant there had a small jazz club known as "The Blue Note" in Columbia, Missouri and created a general access web-page giving information about the said club as well as a calendar of events and ticketing information. In order to buy tickets, web browsers had to use the names and addresses of ticket outlets in Columbia. Bensusan (the plaintiff therein) was a New York corporation that owned "The Blue Note, a popular jazz club in the heart of Greenwich Village in New York. It owned the rights to "The Blue Note" mark. It accordingly sued the Defendant for trademark infringement in New York. It was noticed that New York had a long arm statute. The New York court held that the Defendant had not done anything "to purposefully avail himself of the benefits of New York. Like numerous others, the Defendant had "simply created a web site and permitted anyone who could find it to access it. Creating a site, like placing a product into the stream of commerce, may be felt nationwide or even worldwide but, without more, it is not an act purposefully directed towards the forum state".[263]

[263] 937 F. Supp.295 (S.D.N.Y. 1996)

5.4.3.2. Interactive Website

An 'interactive' website is a dynamic website and provides more than 'mere' information.

In Cody v.Ward,[264]a Connecticut resident brought suit in Connecticut against a California resident, claiming reliance on fraudulent representations made by the defendant resulting in a loss. The court held that it had valid jurisdiction over the defendant based solely upon bulletin board messages posted by the defendant on an online service's "Money Talk" bulletin board and e-mail messages and telephone conversations from the defendant in California to the plaintiff in Connecticut. It simply concluded that the "purposeful availment" requirement was satisfied by the defendant's electronic contacts with the plaintiff.

In CompuServe, Inc. v. Patterson,[265]CompuServe, an Ohio Corporation with its main offices and facilities in Ohio, sued one of its commercial shareware providers, a resident of Texas. The suit was filed in Ohio and the defendant asserted that the Federal District Court in Ohio lacked jurisdiction over him, claiming never to have set foot in Ohio. The appellate court measured the defendant's "contacts" with Ohio and concluded that jurisdiction was proper because:

(a) By subscribing to CompuServe and subsequently accepting online CompuServe's Shareware Registration Agreement (which contained an Ohio choice of law provision) in connection with his sale of shareware programmes on the service, as well as by repeatedly uploading shareware programmes to CompuServe's computers and using CompuServe's e-mail system to correspond with CompuServe regarding

[264]. Cody v.Ward,954 F. Supp. 43 (D. Conn. 1997)
[265]. Supra note 37.

the subject matter of the lawsuit the defendant "Purposefully availed" that jurisdiction.

(b) the cause of action arose from Patterson's "activities" in Ohio because he only marketed his shareware through CompuServe; and

(c) it was not unreasonable to require Patterson to defend himself in Ohio because by purposefully employing CompuServe to market his products, and accepting online the Shareware Registration Agreement, he should have reasonably expected disputes with CompuServe to yield lawsuits in Ohio.

In Hanson v. Denckla,[266]the court held that "the unilateral activity of those who claim some relationship with the non-resident defendant cannot satisfy the requirement of contact with the forum state".

In EDIAS Software International v. BASIS International Ltd.,[267]an Arizona based software distributor brought suit in Arizona against a New Mexico software development company arising out of the termination of an agreement between the companies and public statements made by the defendant about the termination. The defendant had no offices in Arizona. The defendant's contacts with Arizona analysed under the "purposeful availment" test consisted of: (a) a contract with the plaintiff (executed in New Mexico with a New Mexico choice of law provision); (b) phone, fax and e-mail communications with plaintiff in Arizona; and (c) sales of software products to the plaintiff and other Arizona residents; and visits to Arizona by officers of the defendant. The court upheld the plaintiff's claim of personal jurisdiction over the defendant.

[266]. Hanson v.Denckla, 357 US 235, 253 (1958); See also Worldwide Volkswagen v.Woodson, 444 US 286 (1980); Burger King v.Rudzewicz, 471 US 462 (1985); Asahi Metal Indus. Corp. Ltd. v.Superior Court of Cal., 480 US 102 (1987)

[267]. EDIAS Software International v.BASIS International Ltd., 947 F. Supp. 413 (1996)

In Quill Corp. v. North Dakota,[268]the court outlined following 5 relevant factors:

1. The defendant's burden in defending in the foreign forum,
2. The interest of the forum state in adjudicating the dispute,
3. The plaintiff's interest in securing 'convenient and effective' relief,
4. The interest of the judicial system in obtaining the most effective resolution of controversies, and
5. The shared interest of several states in furthering fundamental substantive social policies.

After analyses the aforesaid cases, one may conclude that all the three cases fall in the category of 'interactive website', though their degree of interactivity differ. However Application of 'minimum contacts' and 'long arm of statute' principles have been used by the courts to determine personal jurisdiction by differentiating between 'passive' and 'interactive' websites. An important element of minimum contacts is that the contacts need to be of such a character and degree that a defendant could reasonably have expected to be hauled into court in the distant state.

5.4.4. The Effects Test (Objective Territoriality Test)

"Zippo has been criticised as being ineffective in lending legal certainty in the face of ever-changing technology which has witnessed a shift from the use of passive websites to those that are either partly or wholly interactive. If the test were to be static irrespective of the changes in technology, then it would become irrelevant if a majority of the websites answered the definition of an interactive website. That would result in a 'chilling effect' on international commerce of which the internet is a major

[268]. Quill Corp. v.North Dakota,504 US 298 (1992)

vehicle. It would then fail to provide the balance between the interests of consumers and those of producers and marketers".[269]

The difficulty experienced with the application of the *Zippo* sliding scale test has paved the way for application of the 'effects' test. The courts have thus moved from a 'subjective' territoriality test (that a court will regulate an activity only if it is shown having originated in its territory - exemplified by the decision in Louis Feraud Int'l SARL v. Viewfinder Inc 406 F Supp 2d 274 (SDNY 2005)] to an 'objective territoriality' or "effects test in which the forum court will exercise jurisdiction if it is shown that effects of the Defendants website are felt in the forum state. In other words it must have resulted in some harm or injury to the plaintiff within the territory of the forum state. Since some effect of a website is bound to be felt in several jurisdictions given the nature of the internet, courts have adopted a 'tighter' version of the 'effects' test, which is intentional targeting.

The 'effects' test was first evolved in *Calder v. Jones*.[270] The plaintiff therein was a resident of California who commenced a libel action in a California court against the National Enquirer based on an article that it printed and circulated in California. Apart from the Enquirer and its local distribution company, its editor and the author of the article were all in Florida. Affirming the assertion by the California court of personal jurisdiction over the defendants, the Supreme Court held that:

"*California is the focal point both of the story and of the harm suffered. Jurisdiction over petitioners is therefore proper in California based on the 'effects' of their Florida conduct in California*".

[269]. JUSTICE S. MURALIDHAR, *Jurisdictional Issues in Cyberspace,* The Indian Journal of Law and Technology, Vol 6, 2010, at page 15.
[270]. 465 U.S. 783 (1984).

Yahoo! Case

The effects test propounded in *Calder* has been applied with mixed results. One of the most discussed decisions of a French court where the effects doctrine was applied is the *Yahoo*! case.[271] A French Jew while surfing on the net came across Nazi memorabilia being offered for sale on a web page hosted by Yahoo. The offering of Nazi memorabilia for sale was an offence under the French penal law. Although the website of Yahoo! France did not host a similar web page, it could be viewed on the Yahoo! website hosted from the US by anyone in France. LICRA, an organization fighting racism and anti-Semitism, and the Union of Jewish students in France (UJEF) sued Yahoo and Yahoo France in the courts in France. The French court ordered Yahoo! to block access to its US website from France, in order to prevent internet users in France from accessing the objectionable items offered for auction sale on that site. It found that this was technologically feasible through a series of devices for which it examined experts. It thus rejected Yahoo!'s argument that the French court's order was not capable of being implemented beyond the borders of France. The French court essentially applied the effects test to assert jurisdiction. It held that "*by permitting internet users in France to participate in the sale of such objects, Yahoo had committed a wrong within the territory of France*." Although the website was capable of being viewed from anywhere in the world, the French court concluded that it had caused harm to the two claimants located in France. The mere possibility of downloading the objectionable information did not alone determine the question of jurisdiction. The French court also considered the effect it would have on the public at large in France who could access Yahoo's website and who were targeted. Thus the

[271]. Tribunal de grande instance [T.G.I.] [ordinary court of original jurisdiction] Paris, May 22, 2000 and November 22, 2000, No RG:00/0538 (Fr.).

court concluded from the fact that Yahoo Displayed advertisements in French to visitors at the US based server and that Yahoo France provided a link to the US based Yahoo server that Yahoo did intend its services to reach persons in France and also intended to profit from the visitors from France to its US based website.

In *Nissan Motor Co. v. Nissan Computer Corp*.[272] although the defendant did not sell goods to its consumers on its websites (which were registered under the domain names 'nissan.com' and 'nissan.net') it had intentionally changed the content of its website to exploit the goodwill of the plaintiff by profiting from the confusion created among the consumers. It was therefore held to have "deliberately and substantially directed its activity toward the forum state."

It is pointed out that in developing criteria to be used in determining whether a website has targeted the forum state, care must be taken to ensure that it must be technology neutral in the sense that it will remain relevant even as new technologies emerge. Furthermore, the criteria must not display any bias towards either consumers, who would seek to apply the law governing the destination of the product, or producers who seek to apply the law of the place of origin of the goods. Further, as Michael Geist points out, the real question would be whether the targeting of a specific jurisdiction was foreseeable.[273]

This in turn depends on three factors:

"To identify the appropriate criteria for a targeting test, we must ultimately return to the core jurisdictional principle – foreseeability. Foreseeability should not be based on a passive versus active website matrix. Rather, an effective targeting test requires an assessment of whether the targeting of a specific jurisdiction was itself

[272]. 89 F. Supp. 2d 1154 (C.D. Cal. 2000).
[273]. Supra note 267

foreseeable. Foreseeability in that context depends on three factors: contracts, technology, and actual or implied knowledge. Forum selection clauses found in website terms of use agreements or transactional click-wrap agreements allow parties to mutually determine an appropriate jurisdiction in advance of a dispute. They therefore provide important evidence as to the foreseeability of being hauled into the courts of a particular jurisdiction. Newly-emerging technologies that identify geographic location constitute the second factor. These technologies, which challenge widely held perceptions about the Internet's architecture, may allow website owners to target their content to specific jurisdictions or engage in 'jurisdictional avoidance' by 'de-targeting' certain jurisdictions. The third factor, actual or implied knowledge, is a catch-all that incorporates targeting knowledge gained through the geographic location of tort victims, offline order fulfilment, financial intermediary records, and web traffic."[274]

5.4.5. Combination of Zippo 'Sliding Scale' and Calder 'Effects' test

The courts in the USA have recently adopted a combination of the *Zippo* 'sliding scale' test and the *Calder* 'effects' test in order to examine whether the forum court has jurisdiction in a case involving trademark infringement by the use of the internet.

In *Toys "R" US v. Step Two*,[275] the Court of Appeals revisited the issue. In that case, the plaintiff, Toys "R" Us (Toys), a Delaware corporation with its headquarters in New Jersey, owned retail stores worldwide where it sold toys, games, and numerous other products. In August 1999, Toys"R" Us acquired Imaginarium Toy Centers, Inc., which owned and operated a network of 'Imaginarium' stores for the sale of

[274]. Michael A. Geist, *Is There a There There? Toward Greater Certainty for Internet Jurisdiction*, 16 BERKELEY TECH. L.J. 1345, 1356 (2001).
[275]. 318 F.3d 446 (3d Cir. 2003).

educational toys and games. In this process, Toys "R" Us also acquired several Imaginarium trademarks. The defendant, Step Two, was a corporation in Spain that owned or franchised toy stores operating under the name 'Imaginarium' in Spain and nine other countries. It had registered the Imaginarium mark in several countries where its stores were located. At the time of the litigation, there were 165 Step Two Imaginarium stores possessing the same unique facade and logo as the stores owned by Toys "R" Us, and selling the same types of merchandise as Toys "R" Us sold in its Imaginarium stores. However, Step Two did not operate any stores, maintain any offices or bank accounts, or have any employees anywhere in the United States. In 1995, Imaginarium Toy Centers, Inc. (which Toys "R" Us had later acquired) registered the domain name 'imaginarium.com' and launched a website featuring merchandise sold at Imaginarium stores. In 1996, Step Two registered the domain name 'imaginarium.es', and also began to advertise the merchandise that was available at its Imaginarium stores. In April 1999,Imaginarium Toy Centers registered the domain name 'imaginarium.net', and launched another website where it offered Imaginarium merchandise for sale. In June 1999, Step Two registered two domain names, 'imaginariumworld.com' and 'imaginarium-world.com'. In May 2000, Step Two also registered three more domain names including 'imaginariumnet.com' and'imaginariumnet.org'. Toys "R" Us brought action against Step Two alleging that Step Two had used its websites to engage in trademark infringement, unfair competition, misuse of the trademark notice symbol, and unlawful 'cybersquatting.'

It reversed and remanded the case for limited jurisdictional discovery relating to Step Two's business activities in the United States. The Court emphasized that:

"*the mere operation of a commercially interactive website should not subject the operator to jurisdiction anywhere in the world. Rather, there must be evidence*

that the defendant 'purposefully availed' itself of conducting activity in the forum state, by directly targeting its website to the state, knowingly interacting with residents of the forum state via its website, or through sufficient other related contacts."

The California Supreme Court in *Pavlovich v. Superior Court*[276] was divided 4:3 on the question of whether a Texas website operator who had posted software designed to defeat the plaintiff's technology for encrypting copyrighted motion pictures was subject to personal jurisdiction in California where the motion picture, computer, and DVD industries were centred. In rejecting jurisdiction, the majority focused on the fact that the defendant did not know that the particular plaintiff, a licensing entity created by the motion picture and DVD industries, was located there. The dissent thought it sufficient that the defendant was on notice that its conduct would harm the motion picture and DVD industries centred in California. In *Revell v. Lidov*,69 the plaintiff, a Texas resident sued Lidov, a Massachusetts resident and the Columbia University for posting a defamatory piece on the university's bulletin board. The court applied both *Zippo* and *Calder*. It first found that the website was interactive and individuals could both send and receive messages. But applying *Calder* it found that the article made no reference to Revell's Texas activities and was not directed at Texas readers as distinguished from other readers. Also, Lidov did not know that Revell was a Texas resident when he posted the article and therefore could not reasonably anticipate being hauled into a Texas court. Consequently, the Texas court was held not to have jurisdiction.

[276]. 58 P.3d 2 (Cal. 2002).

5.4.6. Analysis of the three test

Thomas Schultz points out that the dynamics of jurisdiction are reasonableness and fairness.[277] Schultz concludes that both the subjective territoriality and objective territoriality or the effects tests, if construed too broadly, are bound to be unfair and unreasonable. According to Schultz, a middle path had to be chosen between the too narrow ('subjective territoriality') and the too broad ('effects') jurisdictional bases for better managing trans border externalities. This middle path was 'targeting.' Schultz defines targeting to mean "in essence that the activity must be intended to have effects within the territory of the state asserting jurisdiction."[278] Targeting is described as "something more than effects, but less than physical presence."[279]

Legal scholars C. Douglas Floyd and Shima Baradaran-Robison add: Nor is the central difficulty in Internet cases created by the fact that a defendant has undertaken conduct that might subject itself to jurisdiction everywhere, rather than only in one or a few states. A tort feasor who mails a thousand bombs to recipients in one state, and one to recipients in each of the other forty-nine states, should not be relieved from geographic responsibility for the consequences of his actions in each of those states simply because he is subject to suit everywhere, or because his conduct has a uniquely intensive relationship with a single state. The problem in Internet cases is not that the defendant is potentially subject to suite very where, but that he is potentially subject to suit anywhere, without having any particular reason to know where that might be. This lack of predictability and geographically specific notice lies at the heart of the difficulties that the courts have experienced in applying traditional jurisdictional

[277]. Thomas Schultz, *Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface*, 19 EUR. J. INT'L L. 779 (2008).
[278]. Ibid
[279]. Ibid

concepts in cases in which the instrument of wrongdoing is an Internet posting. The case of the Internet posting is more analogous to one in which a defendant throws a bottle containing poisonous as into the ocean, with awareness that it may cause injury to someone, somewhere, if it is found and opened someday. (C. Douglas Floyd & Shima Baradaran-Robison, 2006).

After discussing the inconsistent results arrived at by courts in different cases having more or less similar facts, they emphasise the need for a uniform approach, whether the cases involve torts, or inter-state commerce disputes. Thereafter they conclude:

(1) A unified approach to questions of personal jurisdiction should be applied to all cases in which jurisdiction is asserted in a forum remote from the defendant's residence or the place of wrongdoing, regardless of the particular subject matter of the action, the legal theories that it raises, or the means by which the allegedly wrongful conduct of the defendant has been committed. (2) The factors informing such an approach must be sufficiently flexible to take account of the wide array of differing contexts in which issues of personal jurisdiction are presented, and, in particular, to take account of the unique characteristics of the Internet that have increasingly troubled the courts in recent years. (3) The Supreme Court's apparent importation of notions of a defendant's purpose or its intent to target the forum state is flawed and has created more problems than it has resolved in the context of modern actions involving informational torts. (4) Questions of personal jurisdiction should turn on objective (rather than subjective) factors that have primary reference to whether the defendant objectively should be on notice that it has caused the effects giving rise to the action in the particular forum state. If such notice does exist, the court should further inquire whether the intervening acts of third parties should relieve the defendant of geographic responsibility for those effects and whether the balance of the

interests of the defendant, the plaintiff, and the forum state makes it fundamentally unfair to subject the defendant to suit there. (C. Douglas Floyd & Shima Baradaran-Robison, 2006).

"To summarize the position in the US, in order to establish the jurisdiction of the forum court, even when a long arm statute exists, the plaintiff would have to show that the Defendant "purposefully availed" of jurisdiction of the forum state by "specifically targeting" customers within the forum state. A mere hosting of an interactive web-page without any commercial activity being shown as having been conducted within the forum state, would not enable the forum court to assume jurisdiction. Even if one were to apply the "effects" test, it would have to be shown that the Defendant specifically directed its activities towards the forum state and intended to produce the injurious effects on the plaintiff within the forum state. We now take a brief look at the decisions in other common law jurisdictions."[280]

Some courts have required the plaintiffs to show that the defendant should be shown to have foreseen being 'hauled' into the courts in the forum state by the very fact that it hosted an interactive website. (C. Douglas Floyd & Shima Baradaran-Robison, 2006).

5.5. Jurisdiction rule in European Union.

The European method to personal jurisdiction in cross-border dispute is different from the American approach. The rules defining which country's courts have jurisdiction over a defendant are set out in a regulation issued by the Council of the European Union known as the ''Brussels Regulation''. This new regulation[281] is modernise

[280]. Banyan Tree Holding (P) Limited vs. A. Murali Krishna Reddy and Ors. MANU/DE/3072/2009 at para 28.
[281]. 1990 O.J. (C.189) 2(consolidated).

treaty of 1968 among European countries known as the 'Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters'.

(a) Brussels Regulation

The Brussels Regulation, which became effective on March 1, 2002, (The Regulation[282] on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters) replaces Brussels Convention of 1968. It is applicable to all European Council countries except Denmark which will endure to follow the rules of the Brussels Convention and the EFTA countries (Iceland, Liechtenstein, Norway, Switzerland and Poland), where rules of the 1988 Lugano Convention will be an appropriate.

Applicability of Brussels Regulation in Online Environment

The Brussels Regulation has become the recognised law to resolve disputes concerning jurisdiction and enforcement of judgments in civil and commercial matters. The Regulation is also pertinent to resolve online commercial disputes. On the issue of jurisdiction the Brussels Regulation sets the rule:-

> "Subject to the provisions of this Regulation, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State".[283]

Additional, a person domiciled in a Contracting State may in another Contracting State be sued ''in matters relating to contract in the courts for the place of performance of the obligation in question''.[284] Further, the domicile of a company or

[282]. Regulation (EC) No. 44/2001 O.J. 16 January, 2001 L 121
[283]. The Brussels Regulation; Article 2
[284]. The Brussels Regulation; Article 51

other association (including a partnership) is where it has its statutory seat (i.e., its registered office), its central administration or its principal place of business.[285]

From the point of promotions and sale, the Regulation says that the consumer may sue at home if the trader follows commercial activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State.[286]

As websites are generally manageable from anywhere thus a trader with a website might said to be directing its activities to all EU countries. In case of a dispute, a consumer has a right under Article 15 to take legal action in his or her home (jurisdiction) court. (chapter1.docx) Article 15 has broadened the scope of trader's liability as they can now be sued in foreign courts i.e. for an online trader defending lawsuits at multiple locations could be both expensive and frustrating. Article 16 gives the consumer the choice to sue in either the consumer or the seller's domicile; the seller, however, may only sue in the consumer's domicile.[287] Notably, Article 17 prohibits overriding these jurisdictional provisions by forum selection clauses.[288]

It would be for the European Court of Justice to decide what constituted "directed activities". A website may be seen "directed to other states" if it offers a choice of the languages or currencies of those states, or gives product specifications or delivery times or prices for them. It amounts to a marketing exercise whereby a website is promoting or targeting its products or services to consumers in specific EU states.[289]

---

[285]. The Brussels Regulation; Article 60

[286]. The Brussels Regulation; Article 15

[287]. Regulation 44/2001, Art. 16 (1) and (2).

[288]. Regulation 44/2001, Art. 17. The provision permits such a clause only in limited circumstances, such as if it is entered after the dispute arises or if it permit the consumer a greater range of choices than the Regulation. Article 15 defines instalment sales contracts and other agreements to which the consumer-protective provisions apply.

[289]. The UK Department of Trade and Industry (DTI) had proposed a way out, that if the website is 'directed' at a particular foreign territory, then the consumer can bring

(b) Rome Convention

To determination such cross-border consumer contractual disputes the EU Member States became signatories to the Rome Convention, 1980. The Convention gave freedom of choice to the contracting parties as it states that

> "A contract shall be governed by the law chosen by the parties. The choice must express or demonstrated with reasonably certainty."[290]

It further states that:-

> "The mandatory rules of the consumer's country of habitual residence will always apply whatever choice of law is made."[291]

In the absence of choice of law "the contract is to be administered by the law of the country with which it is most closely connected".[292] It is presumed that

> "The contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has his habitual residence or its central administration".[293]

A choice of law made by the parties shall not have the result of divesting the consumer of the protection afforded to him by the mandatory rules of the law of the

---

proceedings against the trader in their home state, but if the website is a general site, and not especially directed at the consumer's territory, then trader's own local law would be applicable.

[290]. The Rome Convention; Article 3.1

[291]. The Rome Convention; Article 5.1

[292]. The Rome Convention; Article 4.1

[293]. The Rome Convention; Article 4.2

country in which he has his habitual residence. Thus, the 'mandatory rules of the law' cannot be limited or omitted by contractual agreement. Therefore, if the contract meets one of the following 3 tests then the court will apply the law of the consumer's country in deciding the parties' rights and obligations under the contract regardless of any choice of law to the contrary:

I. "If in that country the conclusion of the contract was headed by a specific invitation addressed to him or by advertising and he had taken in that country all steps necessary on his part for the conclusion of the contract".

II. "If the other party or his agent expected the consumer's order in that country", or

III. "If the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order provided that the consumer's journey was arranged by the seller for the purpose of inducing the consumer to buy".[294]

(c) Applicability of the Rome Convention in Online Environment

Both the Brussels Regulation and the Rome Convention highpoints the 'consumer oriented' provisions stating that:-

> "The consumer may bring proceedings against the trader in the state of the consumer's domicile/habitual residence, if the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising."

The questions are – whether these provisions are applicable to an online environment also? And does a website stimulated by a trader amount to a specific invitation?

[294]. The Rome Convention; Article 5.2

Applying the Conventions in an online setting would require an interpretation of the phrase "preceded by a specific invitation addressed to him or by advertising" i.e. whether an Internet website constitutes advertising in the state of the consumer's domicile. The answer lies in the nature and form of "specific invitation". If the website provides information in the 'country specific language' and offers goods and services in such currency then it may fulfil the condition of "specific invitation". In such a case a website is to be seen as the one being 'directed' at that specific country and the consumer can bring proceedings against the trader in their specific home country. For example, a website giving information in French and quoting prices in Fran, cannot be said to be 'directed' towards the UK consumers.

As far as the applicable law is concerned the courts within the EU apply the Rome Convention even where the applicable law is that of a third country or the parties are not resident or established in the EU.

5.6. Applying Doctrine in Hypothetical online consumer case.[295]

Consumer, domiciled in State A, accesses the website of Seller, which is incorporated in State B, and contracts to buy goods.

This fact pattern can work in two ways.

First, Consumer pays for the goods and Seller does not deliver (or delivers a defective product). In the US and EU, Consumer can, of course, sue in Seller's state of incorporation, State B. But Consumer will prefer to litigate at home. In the US,

[295]. Richard Freer, "American and European Approaches to Personal Jurisdiction Based Upon Internet Activity" Emory University School of Law, Research Paper No. 07-15 August 7, 2007 available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1004887 visited on 6 July 2017.

Consumer probably can do so. In *McGee v. International Life Insurance Co.*,[296] an insurance company sold one contract of insurance in California. After it refused to pay a death benefit, plaintiff sued in California. The Court upheld jurisdiction, noting that though the defendant had little contact with the forum, the claim arose directly from that contact. It also emphasized the unfairness of forcing the consumer to travel to Texas to assert a relatively small claim. Despite *McGee*, however the open-endedness of the minimum contacts analysis virtually invites Seller to litigate the question of jurisdiction in State A. In the EU, meanwhile, it is absolutely clear that the consumer-friendly provisions of Article 16 allow the consumer to sue at home.

Second, Seller ships the goods, but Consumer fails to pay. In the EU, Article 16requires Seller to sue Consumer in the latter's domicile. In the US, the Supreme Court has not addressed a case quite on point. True, in *Burger King*,[297]the Court allowed Burger King to sue allegedly breaching franchisees in the state of its incorporation. But that was hardly the typical consumer case; the parties entered a 20-year, million dollar deal. The most relevant Supreme Court case is not about applying minimum contacts in the consumer context. Rather, it is about forum selection clauses.

One gets the impression that such provisions are ubiquitous in consumer contracts in the US. No doubt such clauses in website contracts, requiring the consumer to agree to being sued in Seller's home state, would be upheld. Thus, the US law on this score is clear (and not friendly to consumers).

[296]. 355 U.S. 220 (1957)
[297]. 471 US 462 (1985)

5.7. Position in India along with case laws

In every civilized society there are two sets of laws (i) Substantive laws and (ii) Procedural laws. Substantive laws determine the rights and obligations of citizens. Procedural laws prescribe the procedure for the enforcement of such rights and obligations. But the efficacy of substantive laws to a large extent depends upon the quality of the procedural laws. Unless the procedure is simple, expeditious and inexpensive, the substantive laws however good are bound to fail in their purpose and object. In this view the Code of Civil Procedure 1908 assumes considerable importance in India. (Law Commission of India 27th Report) An eminent Chief Justice of a High Court observed thus (Chagla C.J, 1958) "The more you study the Civil Procedure Code the more you realise what an admirable piece of legislation it is". Similar views were expressed in the course of the evidence given before the Law Commission in connection with the preparation of its Report on the Reforms of Judicial Administration (Law Commission of India 14th Report) the issue of jurisdiction should be looked into from all possible sources: (a) Code of Civil Procedure, 1908(b) Choice of forum, and (c) Choice of law.

5.7.1. Code of Civil Procedure, 1908

Part I of the CPC, 1908 describes Suits in general Jurisdiction of the Court and Resjudicata Section 9 provides the jurisdiction to the courts to try all suits of civil nature.[298]

[298]. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. [Explanation I].—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.[Explanation I].—For the purposes of this section, it is immaterial whether or not

To articulate the jurisdiction of the courts in online environment it is essential to associate four jurisdictional principles of Civil Procedure Code, 1908.

(i) Pecuniary Jurisdiction[299] (Section 6),

(ii) Suits to be instituted where subject matter situates[300] (Section 16),

(iii) Suits for compensation for wrongs to person or movables[301] (Section 19),

Other suits to be instituted where defendants reside or cause of action arises[302] (Section 20).

---

any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]

[299]. Pecuniary jurisdiction.— Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

[300]. Suits to be instituted where subject-matter situate.—Subject to the pecuniary or other limitations prescribed by any law, suits—
(a) for the recovery of immovable property with or without rent or profits,
(b) for the partition of immovable property,
(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
(d) or the determination of any other right to or interest in immovable property,
(e) for compensation for wrong to immovable property,
(f)for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain. Explanation.—In this section "property" means property situate in 1[India].

[301]. Suits for compensation for wrongs to person or movables.—Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts. Illustrations
(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.
(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

Delhi High Court in Gupta Sanitary Stores v. Union of India,[303]while interpreting the expression 'carries on business' the court summed up the legal position in the following terms: "I take the test to be this: What is the nature and purpose of the activity in question? If it is commercial in character, the suit can be filed at the principal place of business or principal office, and also at the place where the cause of action arises wholly or in part.[304] In most cases where the business is not of a commercial nature, the suit must be filed against the government at the place where the cause of action arises wholly or in part. For example, if the contract is entered into at Calcutta, the Courts at Calcutta will have the jurisdiction."[305]

---

[302]. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or (c)The cause of action, wholly or in part, arises. [Explanation].— A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. Illustrations
(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.
(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.
[303]. AIR 1985 Del. 122 (FB)
[304]. Shri Ram Rattan Bhartiav Food Corporation of India, AIR 1978 Delhi 183 (FB)
[305]. Nalanda Ceramic v. N.S. Chaudhary & Co, AIR 1977 SC 2142

In Rajasthan High Court Advocate's Association v. Union of India,[306] the Supreme Court held that the expression 'cause of action' has acquired a judicially settled meaning: "Compendiously the expression means every fact, which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises.

In Casio India Co. Ltd. v. Ashita Tele Systems Pvt. Ltd.,[307] the plaintiff was aggrieved by the registration of the domain name www.casioindia.com by the defendant with its registered office in Mumbai. It filed a suit for trademark infringement in the Delhi High Court under the relevant provisions of the trademarks Act, 1999 along with an interim injunction application under Order 39 Rule 1 &2 CPC, 1908. On the issue of territorial jurisdiction, the defendant contended that it carried on business in Mumbai only and no cause of action arose in Delhi. The plaintiff, however, averred that the website could be accessed from Delhi also. After referring to Gutnick, Justice Sarin observed that "once access to the impugned domain name website could be has from anywhere else, the jurisdiction in such matters cannot be confined to the territorial limits of the residence of the defendants." Hence, it was held that 'the fact that the website of the defendant can be access from Delhi is sufficient to invoke the territorial jurisdiction of this court.'

Finally, the decisions of our court. At one end of the spectrum we have decision of the learned single Judge of this Court in Casio India Co. Limited v. Ashita Tele Systems

[306]. Rajasthan High Court Advocate's Association v. Union of India,(2001) 2 SCC 294
[307]. Casio India Co. Ltd. v. Ashita Tele Systems Pvt. Ltd, (2003) 70 DRJ 74

Fvt. Limited 2003 (27) FTC 265 (Del). The court considered 'carrying on business from Bombay' by the defendant as 'passing-off action'. in this case there were two defendants, Defendant No 1 who got registration of domain name www.casioindia.com and the Registrar who registered the domain name as Defendant No. 2. The plaintiff, registered owner of the trademark "Casio" in India, claimed to be a 100% subsidiary of Casio Computer Ltd., Japan (Casio Japan). He had also obtained the registration of large number of domain names in India like Casio India Company.com, CasioIndia.org, CasioIndia.net as well as Casio India.info, CasioIndia.Biz and CasioIndia Co. Defendant No. 1 had managed to get the registration of the aforementioned domain names during the time when it held a distributorship agreement with the plaintiff. It was held by the learned single Judge after referring to the decisions in Rediff Communication Ltd. v. Cyber Booth MANU/MH/0308/1999 : AIR 2000 Bom 27 and the High Court of Australia in Dow Jones & Co. Inc. v. Gutnick (supra) that "once access to the impugned domain name website could be had from anywhere else, the residence of the Defendant". According to the learned single Judge since a "mere likelihood of deception, whereby an average person is likely to be deceived or confused was sufficient to entertain an action"[308] for passing off, "it was not at all required to be proved that any actual deception took place at Delhi. Accordingly, the fact that the website of Defendant No. 1 can be accessed from Delhi is sufficient to invoke the territorial jurisdiction of this Court ..."[309]

[308] Casio India Co. Limited vs Ashita Tele Systems Pvt. Limited 106 (2003) DLT 554

[309] ibid

5.7.2. Choice of Forum

Supreme Court in the case of Shriram City Union Finance Corporation Ltd. v. Rama Mishra has held that "In fact, the parties may themselves agree beforehand that for resolution of their disputes, they would either approach any of the available courts of natural jurisdiction or to have the disputes resolved by a foreign court of their choice as a neutral forum according to the law applicable to that court. Thus, it is open for a party for his convenience to fix the jurisdiction of any competent court to have their dispute adjudicated by that court alone. In other words, if one or more courts have the jurisdiction to try any suit, it is open for the parties to choose any one of the two competent courts to decide their disputes. In case parties under their own agreement expressly agree that their dispute shall be tried by only one of them then the parties can only file the suit in that court alone to which they have so agreed".[310]

Supreme Court in Modi Entertainment Network v.W.S.G. Cricket Pvt. Ltd, held that "it is a well-settled principle that by agreement the parties cannot confer jurisdiction where none exists, on a court to which CPC applies, but this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign court". [311]

Supreme Court in Hakam Singh v. Gammon (India) Ltd., held that: "where two courts or more have, under the Code of Civil Procedure, jurisdiction to try a suit or proceeding, an agreement between the parties that the dispute between them shall be tried in one of such courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Indian Contract Act, 1872." [312]

---

[310]. Shriram City Union Finance Corporation Ltd. v. Rama Mishra, (2002) 9 SCC 613
[311]. Modi Entertainment Network v. W.S.G. Cricket Pvt. Ltd., (2003) 4 SCC 341
[312]. Hakam Singh v. Gammon (India) Ltd., (1971) 1 SCC 286

Supreme Court in Dhannalal v. Kalawatibai, has ruled that: "There is no wrong without a remedy (Ubi jus ibiremedium). Where there is a right, there is a forum for its enforcement. The plaintiff is dominuslitis, that is, master of, or having dominion over the case. In case of conflict of jurisdiction the choice ought to lie with the plaintiff to choose the forum best suited to him unless there be a rule of law excluding access to a forum of the plaintiff's choice or permitting recourse to a forum will be opposed to public policy or will be an abuse of the process of law." [313]

Thus, the forum of choice is discretionary and at the instance of the contractual parties. The parties may submit themselves to the exclusive or non-exclusive jurisdiction of either natural or neutral forum

5.7.3. Choice of Law

When Court apply the choice of law rules to determine "what law should be applied?" Assessment of contractual obligation is required there after two choices which may be applied are: (a) either to apply the law of forum (*lexfori*) or (b) to apply the law of the site of the transaction or occurrence that gave rise to the litigation in the first place (*lex loci*). The modern theory of conflict of Law recognizes and in any event prefers the jurisdiction of the state which has the most intimate contact with the issues arising in the case. Ordinarily jurisdiction must follow upon functional lines.[314]

In *National Thermal Power Corporation* v. *The Singer Company*,[315] the Supreme Court held that: "The expression 'proper law of a contract' refers to the legal system by which the parties to the contract intended their contract to be governed. If their intention is expressly stated or if can be clearly inferred from the contract itself or its

[313]. Dhannalalv. Kalawatibai, (2002) 6 SCC 16
[314]. Surinder Kaur v. Harbax Singh, AIR 1984 SC 1224-1226
[315]. National Thermal Power Corporation v. The Singer Company , AIR 1993 SC 998

surrounding circumstances, such intention determines the proper law of the contract. Where, however, the intention of the parties is not expressly stated and no inference about it can be drawn, their intention as such has no relevance. In that event, the courts endeavour to impute an intention by identifying the legal system with which the transaction has its closest and most real connection. The expressed intention of the parties is generally decisive in determining the proper law of the contract. The only limitation on this rule is that the intention of the parties must be expressed *bona fide* and it should not be opposed to public policy."

In the absence of an express statement about the governing law relating to commercial contract between the parties belonging to different countries, the inferred intention of the parties determines that law. The true intention of the parties, in the absence of an express selection, has to be discovered by applying "sound ideas of business, convenience and sense to the language of the contract itself". In such a case, selection of courts of a particular country as having jurisdiction in matters arising under the contract is usually an indication of the intention of the parties that the system of law followed by those courts is the proper law by which they intend their contract to be governed.

Where the parties have not expressly or impliedly selected the proper law, the Courts impute an intention by applying the objective test to determine what the parties would have as just and reasonable persons intended as regards the applicable law had they applied their minds to the question. The judge has to determine the proper law for the parties in such circumstances by putting himself in the place of a "reasonable man". He has to determine the intention of the parties by asking himself "how a just and reasonable person would have regarded the problem."

For this purpose the place where the contract was made, the form and object of the contract, the place of performance, the place of residence or business of the parties, reference to the courts having jurisdiction and such other links are examined by the courts to determine the system of law with which the transaction has its closest and most real connection.

Supreme Court in *Satya* v. *Teja Singh*, has held that "every case which comes before an Indian court must be decided in accordance with Indian law. It is another matter that the Indian conflict of laws may require that the law of a foreign country ought to be applied in a given situation for deciding a case, which contains a foreign element. Such recognition is accorded not as an act of courtesy, but on considerations of justice. It is implicit in that process that a foreign law must not offend our public policy."[316]

Examination of these judgements delivered by the Apex Court of our country have settled that Indian Courts have a judicial right to determine the choice of law by identifying the system of law with which the transaction has its closest and most real connection. The whole emphasis is supplied on to select suitable law.

5.8. Conclusion

European Union is very cautious regarding consumer interest their directives promotes transparency and accountability in online commerce. In online consumer cases, the European Union position is clear and can be easily applied. On the other hand in regard to electronic contracts and consumer interest the United States law are applicable to both General and Specific jurisdictions. India with the Common Law principles is now in a Juxtaposition either to prefer Coordinated Market Economy

[316]. Satya v. Teja Singh, AIR 1975 SC 105-108

(CME) regulation of European Union or the Liberal Market Economy (LME) regulation of United States. Unable to follow either of these market regulators, India has good but aged Consumer Protection law without changes since 1986 and there are virtually no watchdogs to protect online consumers moreover our Indian laws are largely considered to be unfriendly due to heavy delay in justice delivery system.

CHAPTER SIX

SCOPE OF ALTERNATIVE DISPUTE RESOLUTION

6.1. Introduction

The internet has truly emerged as a real borderless, global market place where anyone having admittance to a computer linked to the World Wide Web may participate in some sort of international commercial transaction. (Biukovic, L., 2002) Commerce stimulated by high technology has now transformed itself into electronic commerce and the internet has become a new, fast-developing means of communication and a new business tool. Electronic commerce is one of many things that draw people to the cyberspace, as evidenced by the frequent traffic to commercial websites (Biukovic, L, 2002). With the expansion of cyberspace, business and individuals use computer networks to conduct business, share information, converse and develop communities across borders of space and time on virtually every subject. (Munir AB and Yasin SHM, 2010) The appearance of internet technology has far reaching effects on how businesses are run. (Susskind Richard, 1998) E-commerce has created unique opportunities for cross border transaction and has also led to a different kind of dispute and thus requires a different mode of resolving disputes. (Smedingoff T J and Bro RH, 1999) ODR[317] transform the way disputes are being resolved in particular, in business to consumer (B2C) transaction. While ODR offers a more successful means of resolving e-commerce disputes. (Hornle Julia, 2002)

With the growth of Internet & e-commerce, disputes of different nature have surfaced including social, commercial, intellectual property related and often involving entities and individuals from multiple territorial jurisdictions. The parties to disputes, who

[317] The acronym ODR shall be used in Online Dispute Resolution

may belong to different jurisdictions, are cautious of submitting to the courts of another jurisdiction to adjudicate upon the disputes in question. So in that case Online Dispute Resolution programmed software or by appointing a neutral third party or panel and conducted entirely online seems to be the most feasible and workable solution (Karnika Seth) The virtual world of cyberspace has become our favoured means of social interaction and a powerful medium to conduct cross border business. Internet is also one of the most reliable means of assimilating and dissimilating information and a high tech stage for business opportunity (Karnika Seth) and efficient means of communication. According to E bay Census Guide, 2009, India has experienced a broad shift in e commerce activity and online shopping has gained wide acceptance (India Report). In United States, online retail activity increased in the second quarter of 2009 constituting 3.6% of total retail sales (Second Quarter, 2009). As ODR is an innovative way to resolve objection issues or disputes especially with regards e-commerce. Though many authors have defines ODR like some may have defined as the resolution of disputes that result from online conduct (Gralf Peter G, 2003) or some may have defined means to resolve disputes on the internet (Rafal M., 2005). From the definition as given so far, in short that ODR is only concerned with internet disputes. It is fair to state that ODR originated from traditional ADR[318]. For this reason, many authors have seen ODR simply to means using the internet to provide ADR. ODR involves the use of information technology to assist the application of traditional alternative dispute resolution mechanisms in the cyberspace (R Arun, 2007).

With commercial transaction now making wave in the cyberspace and online dispute becomes conventional (Nwandem, Osinachi, 2014). This has led to the evolution of

[318] The acronym ADR shall be used as Alternative Dispute Resolution

ODR. While, its emergence ODR has shown itself capable of resolving online dispute especially with regards e-commerce.[319] One area of ODR that has attracted an international organizations and private institutions is online arbitration. Online arbitration has mostly been used to resolve both online and offline disputes. The ODR process has been called for its convenience, speed, simplicity and been least expensive when compared with traditional ADR and litigation. Thus, most of these challenges are solvable and establishing ODR as a feasible online comparable of alternative dispute resolution (Nwandem, Osinachi, 2014).

6.2. Origin, Role and Scope Of Online Dispute Resolution

ODR method is a modern day ADR[320] technique which uses internet to resolve disagreements between two parties. No legislation defines ODR in any specific terms it is only understood as a method which channelize dispute settlement in cyberspace. Farah defined "Online Dispute Resolution' to mean utilizing information technology to carry out alternative dispute resolution". (Farah C). Schiavetta explained that the online dispute resolution comprises of a process to resolve dispute exclusively online and also other dispute resolution process that use internet (Schiavetta S, 2004). In its inception it was only considered as a medium for solving virtually originated disputes but now ODR is used in case of traditional offline disputes also. The idea of ODR was first published in a series of online articles by Virtual Courthouse in 1996 (Nikita Vedrevu, 2018). According to Professor 'Ethan Katsh and Professor Janet Rifkin', who are considered as the lead the way of the concept and the structure of ODR stands on three essential factors, namely convenience, trust and expertise (Katsh E, 2006). Not only has the development of society and technology exaggerated the

[319]. The acronym e-commerce shall be used as electronic- commerce

[320]. The acronym ADR shall be use for Alternative Dispute Resolution

complexities of human life they also aid in eliminating the same by providing effective means. Thus, by invention of World Wide Web in 1989 and the appearance of first 'Internet Service Provider in 1992', online dispute resolution mechanism found its way into the world (Nikita Vedrevu, 2018). In 1996, the National Centre for Automated Information Research (NCAIR) supported the first conference devoted to ODR, (Nikita Vedrevu, 2018) and funding from it was used to launch the few considerable ODR projects, the Virtual Magistrate, the Online Ombudsman's Office at the University of Massachusetts and a number of ODR project at the University of Maryland. Virtual Magistrate and Online Ombudsman's office resolved matters of e-defamation and website copy right infringement.[321] The origin of the ODR can be traced back to 1996 when the Virtual Magistrate project was established to offer online arbitration system to resolve a defamation matters.[322] Since 1999, many ODR service providers have vigorously resolved disputes both in public and private domain involving government and commercial entities.[323] In India, use of ADR techniques is explicitly buoyant through Naya Panchayat System, Lok Adalat, Arbitration and Conciliation Act, 1996 based on UNICITRAL[324] Model law of arbitration, provision of statutory arbitration amongst other initiatives. The Indian legal framework support ODR including Section 89 of Code of Civil Procedure, 1908 that endorses use of alternative dispute resolution between parties (Karnika Seth). Similarly, Order X Rule 1A confers power on the court to direct the parties to a suit to choose any ADR method to settle its disputes. In addition, the Information Technology Act, 2000. grants legal recognition to use of electronic signatures and electronic records.

[321]. Centre for Technology and Dispute Resolution, Online Ombud's narrative 1 :website developer and the newspaper at www.ombuds.org/narrative 1.html

[322]. Ibid

[323]. United States ODR provider at www.adr.org. In Australia ADR online at www.adr.online.org etc.

[324]. The acronym UNCITRAL shall be used for United Nation Commission for International Trade Law

Recently, in "state of Maharashtra vs Dr. Praful B. Desai"[325], the Supreme Court of India established that the Video conferencing is an acceptable method of recording evidence witness testimony (Karnika Seth). "In Grid Corporation of Orissa Ltd. Vs AES Corporation"[326], the Supreme Court believed-

> "When an effective consultation can be achieve by resort to electronic media and remote conferencing, it is not necessary that the two person required to act in consultation with each other must necessarily sit together at one place unless it is the requirement of law or of the ruling contract between the parties".

Online Dispute Resolution is a stem of dispute resolution which uses technology to assist the resolution of disputes between parties (F Petrauskas and E Kybartiene, 2011). ODR is particularly convenient and efficient where parties are located at a distance. Hence, it castoffs the need to travel since parties can communicate even at a distance. It can be used to determine internet related disputes more particularly e-commerce disputes. Besides disputes arising from online interactions and transaction, ODR can also be used for traditional offline disputes. (Nwandem Osinachi Victor L, 2014). Most of the authors have further described ODR using other names like some of the names used are 'Internet Dispute Resolution (iDR)', 'Electronic Dispute Resolution (eDR)', 'Electronic ADR (eADR)', 'Online ADR (oADR)' (F Petrauskas and E Kybartiene, 2011)

ODR is used to resolve varied nature of dispute including civil, commercial, industrial and banking disputes through banking Ombudsman scheme, construction or

[325]. 4 SCC 601 2003
[326]. AIR SC 3435 2002

partnership disputes, project liability and insurance related disputes (Karnika Seth). New subject areas such as telecommunications law or labour law are being added to the scope of application of ODR. For, instance, in USA the Federal Mediation and Conciliation Service is using ODR to settle labour disputes. In e-governance many government departments are also using ODR to settle consumer grievances (Karnika Seth). ODR denotes greater elasticity as it can be initiated at any point of a judicial proceeding or even before a judicial proceeding begins. ODR can also be concluded if the parties mutually decided that it is not leading to a workable solution. The parties have the sovereignty to decide the mode and procedure for online dispute resolution in case disputes arise from a particular e-contract (Karnika Seth). Although, the internet began in 1969; ODR did not appear until the early 1990's. For the first two decades the internet was used by a limited number of people in limited number of ways. (E Katsh, Lex Electronica Vol 10, No 3). Until 1992, the internet was largely used by the US department of defence to guarantee that its computer system will remain functional in event of any enemy attack and commercial activities were banned from using the net (P.K Jay and C.S Rajiv, 2001). As commercial activities on the net were allowed to continue the rate of online disputes began to rise. This led to the inception of ODR. Since, the idea of ODR emerged out of the belief that dispute would increase as online activities grew. This belief was true as companies who entered into commercial transaction online began having one dispute or the other. (Rafal M., 2005) From 1999 commercial establishment began to show interest in online dispute resolution. It was at this point that ODR to the large extent became accepted as the most suitable dispute resolution process in the cyberspace and it has been demonstrated to resolve both online and offline disputes. (Rafal M., 2005)

The procedure used in online arbitration is quite similar to offline arbitration save for the fact that the former takes place on the internet. In internet arbitration parties can file their case free of charge. It prides itself as world leader in low-cost arbitration.[327] Some of the thriving online arbitration institutions are FINRA, onlineARBITRATION.net and e Quibbly (NwandemOsinachi Victor L, 2014). Characteristically, online arbitration providers resolve disputes relating to e-commerce, domain issues, intellectual property matters and money claims. These online arbitration sites have qualified and industry experienced arbitrators who can adequately resolve any kind of online dispute between parties (NwandemOsinachi Victor L, 2014). In online arbitration a party who determined to resolve the dispute via online arbitration commence arbitration by filing a statement of claim with the ODR provider specifying applicable facts and remedies requested. The claim is filed at the website of the ODR (NwandemOsinachi Victor L, 2014). To file a statement the claimant has to pay some fees. Filing fees depend on the ODR provider and also the nature of the claim[328]. As soon as the claim is lodged at the website of the ODR provider, the ODR provider then contacts the other party i.e. respondent with the e-mail address provided by the claimant, informing the respondent of the initiated claim and also persuading the respondent to consent to online arbitration. Once the respondent approval to online arbitration the respondent will then respond to the arbitration claim by filing at the website of the ODR provider, an answer specifying the significant facts and available defences to the claim[329]. After that both the parties' i.e. claimant and respondent shall select an arbitrator from the list of potential

[327]. Internet –ARBitration: How net-arbitration works. Available at http://www.net-arb.com/how-arbitration-works.php. Visited on 10 Jan 2019.

[328]. Parties initiates claims under the net-ARB will file claims free of charge as filing fees under net-ABR has been completely eliminated.

[329]. FINRA: Arbitration Process. Available at www.finra.org/ArbitrationAndMediation/Arbitration/Process/

arbitrators recognized by the ODR provider they have agreed to refer their disputes to. The names of these arbitrators are displayed on the website of the chosen ODR provider. The choice of the arbitrators will be done by parties and communication as to choice of mediators will be done through exchange of emails (M.S Jaberi, 2010). ODR provided three modes on how the arbitration agreement can be concluded they are as follows (M.S Jaberi, 2010) :-

a. Opposite parties proclaim their consent by referring their dispute to arbitration by email.
b. Websites selling goods and services put an arbitration clause in the terms and conditions section of their websites. In this part consumers can declare their approval by clicking "I agree" or "I accept" button on pop-up box on computer screen.
c. The third mode is quoted by the UNCITRAL Model Law, in which parties in the cyberspace, refers their disputes to a document containing arbitration clause.

6.3. Scope Of Online Dispute Resolution In India

Indian judicial system has been overloaded by huge pendency of cases, which has resulted delay in Justice. Latest statistics shows huge pendency of matters in the higher and lower courts. At the end of February 2016, 59,468 cases were pending in Supreme Court. There were more than 2.18 Crore cases pending in district courts across the country and 12 states have more than 5 lakhs cases to decide, while a little more than one case, on an average, was pending conclusion for at least 10 years (The Indian Express, June 9, 2016). One more drawback of Indian legal system is high costs of litigation. These factors have resulted in loss of faith of people in the Indian judicial system. Therefore people avoid going to courts for their claims and disputes.

This lack of faith has developed resolution of disputes by alternative methods like Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). These methods have been established successful in reducing pendency of cases and costs in developed as well as in developing countries (Jaskaran Singh, 2016).

In India, use of ADR techniques is unambiguously encouraged through Nyaya Panchayat System, Lok Adalat, Arbitration and Conciliation Act, 1996 based on UNCITRAL Model law of arbitration, provision of statutory arbitration amongst other initiatives. The Indian legal framework supports ODR including Section 89[330] of Code of Civil Procedure, 1908 that promotes use of alternative dispute resolution between parties. Similarly, Order X Rule 1A confers powers on the court to direct the parties to a suit to choose any ADR method to settle its disputes (Pankhudi Khandelwal and Samarth Singh). The practice of ODR is not utterly unknown in India. ODR has been recognised in India under the Banking Ombudsman Scheme, 2006 issued by the Reserve Bank of India wherein complaints were allowed to be made online to the Banking Ombudsman.[331] The provisions of the Information Technology Act, 2000[332]

[330] Section 89 of the CPC- ""Settlement of disputes outside the Court. (1)Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for- arbitration, conciliation, judicial settlement including settlement through Lok Adalat or Mediation. 2) Where a dispute has been referred(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act; (b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of subsection(1) of section 20of the Legal Services Authorities Act, 1987and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat; (c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all theprovisions of the Legal Services Authorities Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act; (d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as maybe prescribed.

[331] The Banking Ombudsman Scheme 2006, Ref.RPCD.BOS.No.441/13.01.01/2005-06. Available at www.centralbankofindia.co.in/pdf/Banking.

[332] Hereinafter the acronym IT shall be used as Information Technology Act

must be used for establishing an Information and Communication technology base that may be conducive for the development of ODR mechanism in India. The IT Act grants legal recognition to use of electronic signatures and electronic records (Pankhudi Khandelwal and Samarth Singh).

Even in International level the ODR has been working very successfully. Various countries has accomplished this system to solve number of disputes such as Consumer to Consumer, Business to Business, Business to Consumer, small value of claim disputes, family disputes, inter-state disputes and other civil disputes. It has numbers of advantages over the traditional courts system and ADR systems. There are number of benefits of ODR but in spite of these characters it has not been developed in India. There are various obstacles in the way of ODR in India. Following are some of the problems and barriers faced by the mechanism: (Jaskaran Singh, 2016).

a. People don't have trust and confidence in these mechanisms as they have in states institutions like courts and states run dispute resolution system. Indians do not have trust and faith in computer and internet technology (Jaskaran Singh, 2016).
b. There are various pre-condition for ODR and for its development like Up-to-date technology, internet, connectivity, inter-connection of computer, advanced and well educated manpower (Jaskaran Singh, 2016).
c. Along with the education, for the smooth functioning of different processes under ODR adequate number of qualifies personal and technical knowledge to generate public is must.

A legal mechanism for ODR can be created by analysing Indian Arbitration Act, 1996 with Information Technology Act, 2000. For example, 'section 7(3) states that

Arbitration Act provides that the agreement should be in writing'. Though, if the agreement is made online and referred to ODR, the same will be valid under Section 4[333] of the IT Act. Similarly, Section 31(1) states that the Arbitration Act requires the arbitral award to be in writing and signed by members of arbitral tribunal. Both these requirements can be fulfilled under Section 4 and 5 of the IT Act which provide for legal recognition of electronic records and electronic signature respectively. Both section 4 and 5 can help in building a legal base for ODR in India (S. K. Verma and Raman Mittal (eds), 2003). Consumer Protection Bill, 2015 (Draft Bill) has been introduced in Lok Sabha. The Statement of objects of the Bill states that the rapid development of e-commerce has provided new options and opportunities for consumers. Equally, this has provided the consumer vulnerable to new forms of unfair trade and immoral business practices which require appropriate and swift executive interventions to prevent consumer damage (Pankhudi Khandelwal and Samarth Singh). The Consumer Protection Bill, 2015 provides for option of electronic filing of complaints.[334] The Bill also introduces mediation as one of the alternative dispute resolution mechanism. It provides for the formation of 'Consumer Mediation Cells' which will be established and attached to the redressal commissions at the district, state and national levels (Pankhudi Khandelwal and Samarth Singh). Once the complaint is confessed and if it appears to the court that there exist an element of settlement, which may be acceptable to the parties, the court shall direct the parties for mediation as provided under the Bill. Therefore, in order to make ODR a success for dealing with online consumer grievances in India, necessary amendments will have to

[333]. Section 4 of IT Act:-where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then such requirement shall be deemed to have been satisfied if such information or matter is rendered or made available in an electronic form and accessible so as to be usable for a subsequent reference.

[334]. Section 21(1) of the Draft Bill (Consumer Protection Bill).

be made in IT Act, 2000 and the Consumer Protection Act so that both the acts read together can provide a conducive base for successful functioning of ODR mechanisms (Pankhudi Khandelwal and Samarth Singh). Arbitration and Conciliation Act, 1996 has been amended in the year 2015 along with the Information and Technology Act, 2000 provides legal foundation to the ODR system. Standardized principles of ODR have been included under these laws. National e-Governance plan of India were also helped to support the ODR system. Therefore it is not wrong to say that development of Information and Communication Technology, the idea of digital India and e-Governance has encouraged ODR movement (Jaskaran Singh, 2016). As per Internet and Mobile Association of India and entwine advisors, about 150 million people in India are involved in e-commerce and participation in e-commerce is likely to increase to 230 million households by 2024-25.(AniketDhwaj Singh and Swarnika Singh, 2016). By 2016, total numbers of internet users are increased to 462124989, which is 35% of the total population strength. In the year 2011 only 10% of the total population uses the internet. This fast growing internet users has not been witnessed in any other country (Jaskaran Singh, 2016). India has incorporated uniform principles of alternative dispute resolution in the Arbitration and Conciliation Act, 1996 which was amended in the year 2005. The Arbitration Act provides for alternative disputes resolution means like arbitration, conciliation etc. for both national and international stakeholders[335]. In spite of that, the Arbitration Act has still not measured the use of information and communication technologies (ICT) for dispute resolution in the required manner. For instance, online dispute resolution (ODR) is still missing from the Indian scenario despite the Arbitration Act. P4LO[336]

[335] Online Dispute Resolution (ODR) In India, ODR in India And ODR Services In India. Cyber Arbitration Trends in India 2017 by TLCEODRI, 10 Jan 2017. Available at www.*odrindia.in.*

[336] Hereinafter the acronym P4LO shall be used for Perry4Law Organisation.

has been advocating use of ODR in India since 2004. We have also been managing the exclusive TLCEODRI[337] since 2012.[338]

As far as ODR is anxious the techno legal centre of fineness for online dispute resolution in India TLCEODRI has launched a beta version of ODR platform that can be used for dispute resolution by national and international stakeholders alike[339]. The test platform is guided by the digital India principles and simple access of Internet would be enough to resolve the disputes from across the world. Further, a special facility of conducting Online Arbitration or Cyber Arbitration is also there where parties to the dispute can defer their disputes to the platforms[340] of P4LO or TLCEODRI. Techno Legal Centre of Excellence for Online Dispute Resolution (ODR) in India has been managing techno legal issues of ODR since 2012. However, ODR related issues were managed by us in one form or other since 2005 (Praveen Dalal, 2015).

With the exceptional growth of e-commerce and eased global consumer transactions over the internet, a number of disputes occur which often involve parties from different jurisdictions. To resolve such disputes innovative mechanisms such as ODR using techniques like arbitration, mediation and the like methods can be extremely useful. (Pankhudi Khandelwal and Samarth Singh). These laws can further be amended to provide for a successful ODR system thereby encouraging e-commerce and ensuring the timely resolution of disputes of an online consumer

[337] Hereinafter the acronym TLCEODRI shall be used for Techno Legal Centre of Excellence for online Dispute Resolution in India

[338]. Online Dispute Resolution (ODR) In India, ODR in India And ODR Services In India. Cyber Arbitration Trends in India 2017 by TLCEODRI, 10 Jan 2017. Available atwww.*odrindia.in.*

[339] Online Dispute Resolution (ODR) In India, ODR in India And ODR Services In India. Online Dispute Resolution (ODR) Services for National and International Stakeholders launched by TLCEODRI, July 31 2015 by TLCEODRI. Available at www.odrindia.in.

[340]. Supra note 332.

(Pankhudi Khandelwal and Samarth Singh). In the virtual world loss of time frequently causes loss of opportunities and persons involved in electronic commerce or any type of online relationship will wish to resolve problems in the fastest possible way. It also certifies smoother functioning of the whole process (Pankhudi Khandelwal and Samarth Singh). As a result, online ADR, utilizing increasingly classy tools provided by the network can be expected to be a resource of growing value and should be incentivised for its faster growth.

6.4. Legal Issues Arising From Online Dispute Resolution Procedures

There are legal requirements which must be met by ODR procedures and these are contained in two EC Commission Recommendations. The first is the Commission Recommendation of 30th March 1998 (98/257/EC), which provides the integrity application to the bodies responsible for out-of-court settlement of consumer disputes[341]. The second is the commission recommendation of '4 April 2001 (2001/310/EC)' on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes. Recommendation 98/257/EC only applies to binding arbitration procedures, while Recommendation 2001/310/EC relate to non-binding resolution. Independence and neutrality are important for the quality of justice in ODR and also necessary of building up confidence in e-commerce.[342] The concept of independence and impartiality go to the very heart of justice, as justice must be seen to be done. The neutrals and service providers in an ODR proceeding must be seen to be independent and impartial as these qualities and important in getting the rust of the parties, especially the consumer.[343] As above mentioned, some online traders usually

[341]. "The Problems Inherent in Enforcing B2C E-Contracts across State Borders Suggest that this Form of E-Commerce Requires New Means of Dispute Resolution to be implemented specifically for E-commerce Transaction". Available at *www.academia.edu*

[342]. ibid

[343]. Ibid

subscribe to ODR schemes, which bind the traders to submit any dispute with a consumer to be resolved by the ODR scheme. The consumers however not bound by this scheme. An issue which repeatedly arises in this instance is that of trust, as most of these ODR schemes are subsidize by the businesses which subscribe to them and can therefore not be seen to be independent of these businesses.[344] In online arbitration independence and impartiality are very vital because the resolution reached would be binding on the parties. (Thomas Schultz et al, 2001) [345] The concept of independence and impartiality is also very important in mediation as the outcome of a mediation process is usually put in writing in the form of a contract which is binding on the parties[346]. Confidentiality and privacy have always been an aspect which has encouraged parties to choose to settle dispute out of control. There has always been the assurance that the proceeding gathered in out of court settlement would not be published or shared with other parties (Ethan Katsh). The publication of the proceedings of ODR seems essential for the purpose of inducing trust in ODR as people cannot trust in ODR if the results of ODR proceedings are unidentified. Therefore, there is a need to clout a balance between these two conflicting needs. And a suggestion would be that the results of the proceedings be available with the names of the parties and even the subject matter being obscured (Ethan Katsh).

Recommendation 2001/310/EC (Ethan Katsh) provides that the fairness of dispute resolution procedures should be protected by allowing the parties to provide any necessary and pertinent information. Each party is consequently expected to be given

[344]. Ibid

[345]. Thomas Schultz et al "Online Dispute Resolution: The State of the Art and the Issues" 2001, Available at http://www.online-adr.org/reports/TheBlueBook-2001.pdf.

[346] Ibid

equal chance to state their case and counter to the other party's submissions.[347] Since ODR scheme usually rely on written submissions, the parties should be given a fair time in which to respond. Consideration should therefore be given to parties who are inexperienced in IT, and this puts them in a disadvantaged position against an experienced party.[348]The effectiveness of an ODR procedure must be guaranteed and it should be easily accessible and available to both parties. For instance by electronic means, irrespective of where the parties are situated.[349]

6.5. Online Dispute Resolution in Consumer Protection

By using the internet the number of disputes arising from Internet commerce is rise. Various websites have been recognized to help resolve these Internet disputes as well as to help the resolution of disputes that may occur offline. The perilous expansion of the use of the Internet makes it possible for businesses to expand their markets and provide services to large groups of e-consumers (Wilikens, M.; Vahrenwald, 2000). In other words e-commerce transactions will sometimes result in e-disputes. To ensure that e-disputes are resolved adequately because uncertainty over the legal framework may inhibit both consumers from purchasing products or services over the Internet and companies from entering into the electronic market place (Wilikens, M.; Vahrenwald, 2000). ODR is a wide field which may be applied to a range of disputes from interpersonal disputes including consumer to consumer disputes (C2C), to court

[347]. The Problems Inherent in Enforcing B2C E-Contracts across State Borders Suggest that this Form of E-Commerce Requires New Means of Dispute Resolution to be implemented specifically for E-commerce Transaction". Available at *www.academia.edu/.../*)

[348]. Ibid

[349]. Recommendation 2001/310/EC, Commission Recommendation of 4th April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, Official Journal L 109, 19/04/2001 P. 0056-0061. Available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001H0310:EN.

disputes and interstate conflicts etc.[350] While the application of ODR is not limited to disputes arising out of business to consumer (B2C) online transactions, it seems to be particularly suitable for these disputes (L. Bygrave, 2002).

Conversely, the growth of the World Wide Web as a virtual market for business-to-business (B2B) and business-to-consumer (B2C) transactions requires a broader definition and application of traditional disclosure provisions. In the Internet perspective, the obligations of disclosure should be sufficient to include certain duties for e-businesses requiring or offering ADR as dispute resolution method (Feliksas Petrauskas and EglėKybartienė, 2011).

There are many problems arising in matter with ODR and consumer protection like despite of having the benefits of ODR critics have pointed to a number of challenges and limitation. According to them although ODR is faster, convenient, flexible and voluntary, several complications in the process have questioned the claim that ODR is an appropriate alternative to litigation or traditional ADR. So let us discuses some of the emerging issued on ODR:-

6.5.1. Lack of Face to Face encounter

Critics of ODR have argued that ODR offers no face to face contract (L.Q. Hang, 2001). Many authors/writers has disagree that ODR especially mediation and arbitration through e-mail lose the dynamics of traditional ADR. (L.B. Eisen, 1998). Other authors have discussed that the spirit of face to face encounter in ADR especially via mediation is that parties are able to banish their feelings and emotions in a more formal setting such as court room and they are able to look directly in the face of the other party and feel the accusation and loss suffered. So this would be very

[350]. National Centre for Technology and Dispute Resolution, Standards of Practice [interactive]. Available at www.odr.info.

difficult to attain when parties communicate via computer screens. (Ethan Katsh, 2000). Face to face meetings is easy and convenient because interaction can take place quickly and spontaneously and often on a non-verbal level. (J. Hornle, 2008). On the other hand lack of face to face encounter makes it harder for the mediator to establish parties' trust and confident in the procedure. (I. Manvey, 2001). Further without face to face encounter (F2F), the parties may not be satisfied with any settlement that is concluded, regardless of the speed and efficiency of the process. (I. Manvey, 2001). Despite the face to face challenges encounter posed by ODR subscriptions of ODR have come up with solution to the loss of the face to face contact. One suitable solution is this challenge is the use of video communication through the internet. This is made possible through the video conference device. Face to face communication is replaced by powerful screen to screen communication. (I. Manvey, 2001). This however requires mediators to adopt their communication skills from face to face interaction to screen interaction. At present video-conferencing is the favoured technology in ODR. It is almost the same with face to face encounter as parties can see themselves take evidence and reach agreement as through it were a face to face arrangement. (I. Manvey, 2001).

6.5.2. Issues of confidentiality and Security

Several authors have questioned regarding the confidentiality and protection of sensitive materials. The main questions posed are :- 'How can we sure that the data sent and received will not be tempered with and how can we sure that no unauthorised third party will have access to the information?' because one of the important features of ADR is "Confidentiality". Further the protecting trust and discussion process in ADR is very crucial because parties are more likely to speak freely when they can be sure that their words will not come back to be held against them. (E. Katsh, 1995).

Therefore, if one party does not fully trust the other party, the ADR process is in threat. (L.Q. Hang, Vol. 41, No. 3, Article 4). Lack of security not only weakens the confidentiality which is one of the principles of ADR, but also makes people unresponsive in using ODR to resolve their disputes. (M. S. Jaberi). Nevertheless, to overcome these problems some security measures have been executed so one of such is the "Digital Signature".[351] Thus the digital signature plays a crucial role in ensuring the authenticity, integrity and non-repudiation of data communication thus enhancing trust and it is an authentication method that uses public-key cryptography.[352] Till now various countries have enacted a law validating digital signature same status of a pen and paper document. One of such countries is the United States of America.

Another useful technique especially for online arbitration is the "electronic file management" software. This is used for complex, larger-scale arbitration. The software was invented as an alternative to email since emails cannot guarantee adequate security for online dispute resolution (J.Hornle). Thus the electronic file management means that all documents pertaining to the case in question are stored electronically in a systematic order. The said software permits individual documents or passages to be easily retrieved, displayed or printed, cross-referenced, compared, annotated and searched for keywords. Thus it's widely used in practice as it is more secured. (J.Hornle).

[351]. A digital signature takes the concept of traditional paper based signing and turns it into an electronic "finger print". This finger print or coded message is unique to both the document and the signer and binds them together. Digital signatures ensure the authenticity of the signer. Any change made to the document after it has been signed invalidates the signatures, thereby protecting against signature forgery and information tampering.

[352]. The public- key cryptography consists of two keys. Private and public keys which is used to secure data communication. A message sender uses the recipient's public key encrypt a message, to decrypt the sender's message, only the recipient's private key may be used.

6.5.3. Problems with E-Arbitration Agreement

Essentially in tradition arbitration, an arbitration agreement is a written contract in which two or more parties agree to settle a dispute outside the court via arbitration. By signing an arbitration agreement, a party is simply agreeing to arbitration in the case of any future dispute.[353] Though, the definition is not different from e-arbitration agreement. The only thing that separates e-arbitration agreement from traditional arbitration agreement is that a party agrees on-line to resolve disputes via online arbitration. Thus, this is simply done by clicking either "I agree" or "I accept" while a filling a consumer agreement forms online (M. S. Jaberi). While another difference is that the traditional arbitration agreement is in writing and is signed by parties, e-arbitration is done via internet so there is no form of writing but a show of consent made possible by simple indicating "I accept" or "I agree". But unfortunately this form has raised so many questions as to the validity of this form of agreement. The main question posed is that the "United Nation Convention on the Recognition and Enforcement of Foreign Arbitral Award" also known as New York Convention gives a firm requirement that an agreement be in writing for it to be valid. Therefore can an arbitration agreement made online be considered to be in writing? Can it be said to be valid in line with the provisions of the New York Convention? The Convention in Article 2 provides that:-[354]

> "Each contracting states shall recognised an agreement in writing under which the parties undertake to submit to arbitration all or any

[353]. Free- Advice: what is an arbitration agreement? Available at http://law.freeadvice.com/litigation/arbitration/agreement arbitration.htm.

[354]. Article II New York Convention 1958. Available at http://www.wrbitration-icca.org/media/0/12125884227980/new-york convention of 1958 overview pdf. visited 25 Feb 2017.

differences which may have arisen or which may arise between them in respect of a defined legal relationship".

Many authors have contended that the Convention is an obsolete document which did not envisage unprecedented development of higher technology such as the internet as a means of communication (L. Biukovic, 2002). Interestingly, the UNCITRAL[355] model law on Electronic commerce 1996 has resolute this challenge. As a result of Article 6.1 of the UNCITRAL Model Law on Electronic Commerce, an e-arbitration agreement has the same status as the traditional arbitration agreement and thus becomes valid.[356] As the UNCITRAL made rules to make e-signatures[357] and e-documents equivalent to paper ones, several countries have followed suit by enacting laws on electronic commerce. For example, in 1999 US enacted the Uniform Electronic transaction Act (UETA) 1999 and Electronic Signature in Global and National Commerce Act 2000. Also Australia enacted the Electronic (Amendment) Act (ETA) 2011 to take care of e-commerce. And New Zealand in 2002 also passed into law the Electronic Transaction Act, (NwandemOsinachi Victor L, 2014)

6.5.4. Problems with Enforcement of E-Arbitral Awards

In traditional arbitration an arbitral award decision made by an arbitration tribunal in an arbitration proceeding. An arbitral award is like a judgement in a court of law.[358] Thus, the e-arbitral award is given online i.e. via electronic means or via the internet. But in traditional arbitration once an award is given the next step is to enforce the

[355]. Hereinafter the acronym UNCITRAL shall be used as United Nation Commission on International Trade Law

[356]. Article 6(1) of UNCITRAL Model Law on Electronic Commerce provides: - "where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent references".

[357]. Article 7 of UNCITRAL Model Law on Electronic commerce makes e-signature equivalent to a hand written signature and admissible as evidence in legal proceedings.

[358]. USLEGAL: Arbitral Award Law and Legal Definition. Available at http://definitions.uslegal.com/a/arbitral-award/.

arbitral award. On the other hand, an issue lies as to the form of an e-arbitral award. Since, Article 2 of the New York Convention provides that:- (NwandemOsinachi Victor L, 2014)

> "To obtain recognition and enforcement, the applicant party shall, at the time of the application, supply duly authenticated originals or duly certified copies of the award and the arbitration agreement".

It simply means that if the original award is not produced, the successful party in the arbitration will not be able to invoke the New York Convention system. (M. S. Jaberi) The question now arise is "How can this requirement of authenticity and originality be reconciled with the online award?" therefore, a likely solution to this challenge will be to read Article 4 together with Article 3 of the New York Convention which provides that:- (J. Herboczkova, Vol. 1, No. 1)

> "The contracting state shall recognized and enforce arbitral awards in accordance with the procedural laws of the territory where the award is relied upon".

This simply means that if the state accepts an electronic form of writing there should be no barriers to the enforcement of the electronic award (J. Herboczkova, Vol. 1, No. 1).

6.5.5. Culture and Language Barriers

The distinctive creation of technology the internet commands interaction between different ethnic groups and race. While dispute arising out of e-commerce transaction are inevitable there comes a challenge to respect to language and culture especially when the dispute is between parties originating from different cultural backgrounds. One solution to this challenge is the use of professional translators and interpreters to

help in communication. And the job of the translator and interpreters is simply to convert information from one language to another. While another technology used to aid communication here is the use of the "Communication Access Real-time Translation (CART). The CART is a "speech-to-text" device with the help of the device spoken words is transcribed into text either by a live person or by a computer program (L.C. Interpreting Services). Despite the fact many authors/writers have disappointed with this device because it's unable to provide accurate translation and contextual interpretation. Thus, human interpreters and translators have been suggested as the most appropriate (L.Q. Hang, Vol. 41, No. 3).

6.6. Conclusion

Therefore the concept of ODR in the cyberspace is undeniably a great innovation especially for online users and those involved in e-commerce. Due to technological advance disputes can be resolved instantly and in the comfort one's home. Thus ODR have taken disputes resolution to a whole new level but it has also introduced some complexities with it. However, many of these complexities would disappear in time once ODR practitioners gain more experience in managing the technology and processes (Eugene Clark et al, Vol 17, No. 1). As more the technologies are develop more ODR providers breaching the language barriers with the development of language translation software (Ethan Katsh et al). Despite the fact ODR at present may not provide a perfect solution to disputes arising from B2C e-contracts across borders, it is however the best option available for the resolution of such disputes. As new technologies continue to develop however, new methods would begin to be developed to deal with the present shortcoming of ODR (Ethan Katsh et al).

CHAPTER SEVEN

CONCLUSION AND SUGGESTIONS

This research is an attempt to discuss the legal framework of the Consumer Protection Act, 1986 in contrast with the new technology i.e. internet. However, if we look back in the pages of history we may observe the Indian legal system experienced a revolution with the enactment of the Consumer Protection Act, 1986 which is a beneficial legislation specifically designed to protect the consumers interest, hence, deserves liberal construction Om Prakash v/s Reliance General Insurance (2017) 9 SCC 724. Object of this act is to provide for better protection of interest of consumers speedy and simple mechanism for redressal further adjudicating bodies under the Act are empowered to grant relief and award compensation whenever appropriate HUDA v/s Shankutala Devi (2017) 2 SCC 301. The provisions of the Act have to achieve the purposes of enactment as it is a social benefit oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach, subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment, Lucknow Development Authority v/s M K Gupta (1994) 1 SCC 243.

Alternative Dispute Resolution under Section 89 of CPC is applicable to the Consumer Fora and it ought to be duly invoked by consumer fora, Bijay Sinha Ray v/s Biswanath Das (2018) 13 SCC 224. This act provides protection of interests of consumers in form of quick and speedy redressal of grievances. It provides for additional remedies and it is not in derogation of any other law. As National Commission has control over the consumer fora under section 24-B of Act, it was requested to develop mechanism for speedy relief to consumers. Also usage of video

conferencing facility recommended in case of expert witnesses Bijoy Sinha Roy v/s Bishwanath Das (2018) 13 SCC 224.

The Quasi Judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission created by the Act are quasi-judicial tribunals and not courts intended to supplement existing judicial system Laxmi Engineering Works v/s P.S.G Industrial Institute, (1995) 3 SCC 583. The object and purpose of enacting the Act is to render simple inexpensive and speedy remedy to the consumers with complaints against defective goods and defective services. Principles of natural justice is observed to give relief of a specific nature and to award compensation to consumers. Penalties for non-compliance with the orders given by the quasi-judicial bodies have also been provided. J.T Merchant (Dr) v/s Shrinath Chaturvedi (2002) 6 SCC 635.

However, development of information and communication technology in the last few years have resulted an impact in peoples life which ultimately have brought new opportunities for consumers & business. A new term viz, "E-commerce" was coined in the market, which is understood to mean the production, distribution, marketing sale or delivery of goods and services by electronic means. The Asia Pacific Economic Co-operation (APEC) has adopted a wider definition of e-commerce to include all business activity conducted using a combination of electronic communication and information processing technology. The United Nations Economic & Social Commission for Asia Pacific (UNESCAP) has also defined e-commerce as the process of using electronic methods and procedures to conduct all forms of business activity.

An increasing number of consumer has access to the internet and engages in e-commerce which provides easier and faster access to products and services, needless to mention it also presents some challenges for consumers that differ from those encountered during offline commercial transactions.

Findings of the Study

- One of the common challenges consumers face during pre-purchase is the difficulty of establishing the identity and location of a provider of products online. Some jurisdictions identify challenges such as misleading information on actual and total prices, effective interest rates and consumer rights under the relevant national law.
- The impersonality of e-commerce weakens the relationship between providers and consumers, thereby increasing consumer vulnerability. The web-based environment is propitious to unfair commercial practices. Therefore consumer trust in digital markets is one of the main challenges in the development of e-commerce. Unfair commercial practices influence transactional decisions of consumers in relation to products and prevent consumers from making informed choices and they deceive consumers as to the nature of the products and by providing untruthful information to the consumers, using aggressive marketing techniques, creating confusion between the trade names or trademarks of competitors and falsely representing themselves as consumers and posting reviews in their name.
- Online mobile payments systems present challenges for the consumer are a security risk when making payment online. Consumers data can be accessible to unauthorized third parties without the knowledge and consent of the consumers, further at times delays in receipts of payments by traders,

irreversible payments, late conformations and payment blockage between the banks, payment gateway or company to which payment was made without the consumer being aware of where the payment has been detained are the most common problems occurred during online payment.

- The use of credit and debit cards during purchases made via the internet has led to an increase in the frequency with which personal information about consumers is collected and traded by service providers and intermediaries
- Further, the law relating to a banker's secrecy law in India has been followed from the English case law. However, with e-commerce, such common law seems manifestly unsuited.
- Concern during the post-purchase phase includes liability and arrangements for the return of goods and refunds when goods are not delivered if delivered in an unsatisfactory condition or materially differ from the goods ordered. During the phase, consumers may have difficulties reaching providers or finding a means of communicating with businesses
- Consumer Protection Act, 1986 provides for a three tire Redressal Machinery approach in resolving consumer disputes having both pecuniary and territorial jurisdiction,[359] but the definition of e-consumers is nowhere defined in the said Act. The courts in India considers e-consumers dispute as normal traditional online consumer dispute and have/has failed to live up to the present scenario.
- However, the only law which relates with e-commerce in India is the Information and Technology Act, 2000 read with Information and Technology (Amendment) Act, 2008. The genesis of these Acts is the UNCITRAL Modal Law of 1996. Information and Technology Act 2000 (2008) provides legal

[359]. Sections 11, 15, 17, 19, 21 and 23 of COPRA, 1986

recognition to the electronic transactions which facilitates e-commerce as well hence it is a purely industry based law. Both Model law and I.T Act does not provide any strict provisions to protect the interest of the online consumers, neither regulations for the e-commerce website, nor any redress mechanism system to address the complaints of the online consumers followed with certainty regarding jurisdiction, which creates online consumer more vulnerable in an online environment. Consumer faces severe challenges in the 'e-revolution' brought by the Internet during virtual commercial communications, contracts concluded without face-to-face negotiation at a distance and e-Banking transactions.[360] (Hossein Kaviar, June 2011). The OECD guidelines for Consumer Protection in the Context of Electronic Commerce 1985 and revised guidelines for Consumer Protection in E-Commerce 2016 *inter alia* states that *consumer who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce, without erecting trade barriers.* (emphasis supplied)

- The word "e-consumers" has/have not been explicitly mention/definition, even at the above mentioned international instruments. However, these instrument considers key consumer protection challenges in electronic commerce or "e-commerce" such as, unfair commercial practices, unfair contract terms, online payment security, data protection and privacy, dispute resolution and redress including cross-border online transactions.

[360]. Hossein Kaviar, "Consumer Protection in Electronic Contracts", *International Arab Journal of e-Technology*, Vol. 2, No. 2, June 2011, pp. 96-104 at p. 96.

- The only legislation which specifically deals with the consumer protection in India is the Consumer Protection Act, 1986 (COPRA) though this legislation was framed according to the United Nations Guidelines on Consumer Protection 1985 and is one of the admirable and welfare oriented legislation in India which provides quick cheap and effective redress to the aggrieved consumers and have stood the test of time. But now the nature of transactions are changing, cross border transactions are becoming more and more common and with this the grip of existing laws are gradually falling down pushing the online consumers more and more into vulnerable hoax of web popularly known as internet.
- Economy of our country was liberalised globalised and privatised in 1991 by adoption the new economic policy. Doors are now open for Foreign Direct Investments (FDI), India is becoming digital economy. The concept of e-governance have already been initiated and all this is/was possible because there was an existing law i.e. I.T Act 2000 (2008), to regulate industrial transactions. However, the rights and protection of the citizens who actually are the integral part of the digital economy by virtue of being the end user were over looked or diluted.
- Further, after perusal of different laws relating to consumers in India read with different international instruments related with electronic commerce this researcher submits that first of all "e-consumers" have not been explicitly mention/definition anywhere. Various challenges for consumer in e-commerce have not been completely identified by the authority concerned in India. The only slogan reiterated for consumers via different press and social media is "Jago Grahak Jago".

- Back bone of consumer jurisprudence in India is Consumer Protection Act, 1986 and the only protection available to the India consumers is Right to Information but at this juncture these protection available in off line environment is not workable in an online environment because due to the trans-border nature of e-commerce territorial laws cannot catch hold such traders whose prime motive is to deceive the consumers. Hence, remedy in a form of specific regulations have to be formulated, along with specific procedure to address them with a mechanism for their dispute settlement etc.
- In the case of Trimex International FZE Ltd. Dubai v. Vedanta Aluminio Ltd Hon'ble Supreme Court of India has held that e-mail conversations among parties in relative to conjoint compulsions constitute a contract.[361] (Dr Prem Lata, 2016)
- The contract law of India does not prohibit the applicability of electronic agreements if such agreements provide all the vital components of a legal agreement. Alongside the Contract Act 1872 honours the traditional agreements and all oral contracts until it is done with the free consent of the parties involved to bargain, take legal concern and by a legal object provided the same should not explicitly stated to be cancelled.
- Free consent is one of the utmost essential ingredients of a lawful agreement. However, there is no room for electronic contract negotiations and it is typically a "take or leave" transaction.
- In some cases other party of the agreement stood in an unfair dominant position in a situation Indian courts have found that such electronic agreements are unreasonable, irrational and unjust, and therefore unnecessary.

[361]. Dr Prem Lata, e- commerce and consumer law, CONSUMER AWAKENING, (June 7, 2016), http://blogs.consumerawakening.com/e-commerce-and-consumer-law/

- In LIC India V/S Consumer Education and Research Centre the Supreme Court held that "*In dotted line contracts there would be no occasion for a weaker party to bargain as to assume to have equal bargaining power. He has either to accept or leave the service or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forgo the service forever.*"[362]
- Standard form of contract is popular but there are also inherent dangers in standard form contracts.

    1. Contracting parties may not be on equal terms and one party invariably has to sign on the dotted line, with no opportunity for that party to negotiate over the terms at all.

    2. One party may be completely or relatively unfamiliar with the terms or language employed by the other.

- The 103rd report of the Law Commission of India has examined all issues, including the relevant provisions regarding the implementation of standard contracts or Adhesion agreements in India and has already suggested to introduced a separate chapter in provisions of Indian Contract Act, 1872 addressing the problem of standard contracts by combining the (English) Unfair Contract Terms Act, 1872 and Section 2.302 of the Uniform Commercial Code of the United States.
- Information Technology (Intermediaries Guidelines) Rules, 2011 published and notified in The Gazette of India: Extraordinary on 11 April 2011.[363] Definition of intermediaries is imported from Section 2 (w) of the Information

[362]. 1995 (5) S.C.C 482.

[363]. G.S.R. 314(E).— In exercise of the powers conferred by clause (zg) of subsection (2) of section 87 read with sub-section (2) of section 79 of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following rules, namely.-

Technology Act, 2000.[364] Which includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes. Rule 3 of the above guidelines prescribes for the due diligence to be adhered by the intermediaries.[365] However, Section 79 of the Information Technology Act, 2000 exempts intermediaries from liability in certain instances. It states that intermediaries will not be liable for any third party information, data or communication link made available by them. The Act extends "safe harbour protection" only to those instances where the intermediary merely acts a facilitator and does not play any part in creation or modification of the data or information. The provision also makes the safe-harbour protection contingent on the intermediary removing any unlawful content on its computer resource on being notified by the appropriate

[364]. "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message.

[365]. The intermediary shall observe following due diligence while discharging his duties, namely: — (1) The intermediary shall publish the rules and regulations, privacy policy and user agreement for access-or usage of the intermediary's computer resource by any person.
(2) Such rules and regulations, terms and conditions or user agreement shall inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information that — (a) belongs to another person and to which the user does not have any right to; (b) is grossly harmful, harassing, blasphemous defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever;
(c) harm minors in any way;
(d) infringes any patent, trademark, copyright or other proprietary rights;
(e) violates any law for the time being in force;
(f) deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature;
(g) impersonate another person;
(h) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource;
(i) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting any other nation.

Government or its agency or upon receiving actual knowledge (R & A Associates, 2000).

- Supreme Court of India in Shreya Singhal V/S Union of India (2015 SCC 248) stated that "knowledge" under section 79(3) of the IT Act would only mean knowledge of the intermediaries pursuant to an order of a court of law and held that an intermediary would be liable if it does not expeditiously remove any objectionable content despite receipt of a court order directing removal of such content.
- In online intermediary services the entity that enters into contact with the service provider via the platform is generally a consumer. The relationship between service provider and intermediary is an agency contract the service provider is the principal and the intermediary is the agent. However, generally speaking, the agent is responsible towards its principal. Legal relationship that comes into existence once a client of a final service uses an intermediary to conclude such a contract. Examples in the form of hypothetical scenarios: (J Sénéchal, 2016)
- The intermediary offers services that have been indicated (in quantity, price, and characteristics) by the provider. Through its platform it puts in contact the two parties of the deal receiving a fee from the provider without asking the consumer any fee.
- The intermediary informs the consumer that he/she will have to pay a fee for the service rendered by the platform.
- The intermediary limits itself providing commercial information concerning the service provider, but does not, generally, make it possible for a contract to be concluded between the latter and the consumer.

- A valuable consideration is given by the client in the form of his/her personal data, to the intermediaries which we have seen are among the most valuable assets of online intermediaries. Those data are not only necessary in order to render the intermediary service, but have a further economic value, both for profiling that specific client, and for creating an aggregate data-bank (Margherita Colangelo and Vincenzo Zeno-Zencovich, 2016).
- Online Dispute Resolution is particularly convenient and efficient where parties are located at a distance. Hence, it castoffs the need to travel since parties can communicate even at a distance. It can be used to determine internet related disputes more particularly e-commerce disputes. Besides disputes arising from online interactions and transaction, ODR can also be used for traditional offline disputes (NwandemOsinachi Victor L, 2014).
- ODR is used to resolve varied nature of dispute including civil, commercial, industrial and banking disputes through banking Ombudsman scheme, construction or partnership disputes, project liability and insurance related disputes (Karnika Seth).
- New subject areas such as telecommunications law or labour law are being added to the scope of application of ODR. For, instance, in USA the Federal Mediation and Conciliation Service is using ODR to settle labour disputes. In e-governance many government departments are also using ODR to settle consumer grievances (Karnika Seth).
- ODR denotes greater elasticity as it can be initiated at any point of a judicial proceeding or even before a judicial proceeding begins. ODR can also be concluded if the parties mutually decided that it is not leading to a workable solution. The parties have the sovereignty to decide the mode and procedure

for online dispute resolution in case disputes arise from a particular e-contract (Karnika Seth).

- In India, use of ADR techniques is unambiguously encouraged through Nyaya Panchayat System, LokAdalat, Arbitration and Conciliation Act, 1996 based on UNCITRAL Model law of arbitration, provision of statutory arbitration amongst other initiatives.
- The Indian legal framework supports ODR including Section 89[366] of Code of Civil Procedure, 1908 that promotes use of alternative dispute resolution between parties. Similarly, Order X Rule 1A confers powers on the court to direct the parties to a suit to choose any ADR method to settle its disputes (Pankhudi Khandelwal and Samarth Singh).
- The practice of ODR is not utterly unknown in India. ODR has been recognised in India under the Banking Ombudsman Scheme, 2006 issued by

[366]. Section 89 of the CPC- "Settlement of disputes outside the Court. (1)Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for- arbitration, conciliation, judicial settlement including settlement through Lok Adalat or Mediation. 2) Where a dispute has been referred (a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act; (b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of subsection(1) of section 20 of the Legal Services Authorities Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat; (c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act , 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act; (d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

the Reserve Bank of India wherein complaints were allowed to be made online to the Banking Ombudsman.[367]

- Even in International level the ODR has been working very successfully. Various countries has accomplished this system to solve number of disputes such as Consumer to Consumer, Business to Business, Business to Consumer, small value of claim disputes, family disputes, inter-state disputes and other civil disputes. It has numbers of advantages over the traditional courts system and ADR systems.
- The Consumer Protection Bill, 2015 provides for option of electronic filing of complaints.[368] The Bill also introduces mediation as one of the alternative dispute resolution mechanism. It provides for the formation of 'Consumer Mediation Cells' which will be established and attached to the redressal commissions at the district, state and national levels (Pankhudi Khandelwal and Samarth Singh).
- Once the complaint is confessed and if it appears to the court that there exist an element of settlement, which may be acceptable to the parties, the court shall direct the parties for mediation as provided under the Bill.

Keeping in view the nature of the online commerce involving business-to-business (B2B) or business-to-consumer (B2C) contracts, it is important that the issue of jurisdiction should be looked into from all possible sources: *(a) Code of Civil Procedure, 1908 (b) Choice of forum, and (c) Choice of law.*

- Code of Civil Procedure, 1908

[367]. The Banking Ombudsman Scheme 2006, Ref.RPCD.BOS.No.441/13.01.01/2005-06. Available at www.centralbankofindia.co.in/pdf/Banking.
[368]. Section 21(1) of the Draft Bill (Consumer Protection Bill).

Part I of the CPC, 1908 describes Suits in general Jurisdiction of the Court and Resjudicata Section 9 provides the jurisdiction to the courts to try all suits of civil nature.[369]

To articulate the jurisdiction of the courts in online environment it is essential to associate four jurisdictional principles of Civil Procedure Code, 1908.

(i) Pecuniary Jurisdiction[370] (Section 6),

(ii) Suits to be instituted where subject matter situates[371] (Section 16),

(iii) Suits for compensation for wrongs to person or movables[372] (Section 19),

---

[369]. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. [Explanation I].— A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. [Explanation I].—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]

[370]. Pecuniary jurisdiction.— Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

[371]. Suits to be instituted where subject-matter situate.—Subject to the pecuniary or other limitations prescribed by any law, suits— (a) for the recovery of immovable property with or without rent or profits, (b) for the partition of immovable property, (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property, (d) or the determination of any other right to or interest in immovable property, (e) for compensation for wrong to immovable property, (f)for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.
Explanation.—In this section "property" means property situate in 1[India].

[372]. Suits for compensation for wrongs to person or movables.—Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was

(iv) Other suits to be instituted where defendants reside or cause of action arises[373] (Section 20).

In Gupta Sanitary Stores v. Union of India,[374] while interpreting the expression 'carries on business' the court summed up the legal position in the following terms: "I take the test to be this: What is the nature and purpose of the activity in question? If it is commercial in character, the suit can be filed at the principal place of business or principal office, and also at the place where the cause of action arises wholly or in part.[375] In most cases where the business is

---

done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts. Illustrations

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

[373]. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or (c)The cause of action, wholly or in part, arises.

[Explanation].— A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. Illustrations

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

[374]. AIR 1985 Del 122.

[375]. Shri Ram Rattan Bhartia v/s Food Corporation of India, AIR 1978 Delhi 183.

not of a commercial nature, the suit must be filed against the government at the place where the cause of action arises wholly or in part. For example, if the contract is entered into at Calcutta, the Courts at Calcutta will have the jurisdiction."[376]

In Rajasthan High Court Advocate's Association v. Union of India,[377] the Supreme Court held that the expression 'cause of action' has acquired a judicially settled meaning: "Compendiously the expression means every fact, which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises.

- Choice of Forum

Thus, the forum of choice is discretionary and at the instance of the contractual parties. The parties may submit themselves to the exclusive or non-exclusive jurisdiction of either natural or neutral forum.

- Choice of Law

Examination of these judgements delivered by the Apex Court of our country have settled that Indian Courts have a judicial right to determine the choice of law by identifying the system of law with which the transaction has its closest and most real connection. The whole emphasis is supplied on to select suitable law.

[376]. Nalanda Ceramic v/s N.S. Chaudhary & Co, AIR 1977 SC 2142.

[377]. Rajasthan High Court Advocate's Association v/s Union of India, (2001) 2 SCC 294.

Resultantly:

It is *disproved* that the *existing legal framework have failed to address the e-consumer issue*. Furthermore, we cannot lose sight of the pre and post transactions difficulties faced by the Indian consumers due to lack of apposite rules and regulations.

Hence, it is *proved* that *future of online regulations lies in standard global legal harmonisation.*

Suggestions:

- ✓ The term viz. "e-commerce" and "e-consumers" have not been defined anywhere in Indian Jurisprudence. Hence, it is suggested that, to grant the protection of consumers rights in cyberspace the above mentioned terms may be defined by the Indian Parliament.
- ✓ It is suggested that Rules may be framed wherein E-commerce website launched from any corner of the world if targeting Indian consumers must oblige with the Indian laws.
- ✓ Since OECD guidelines do not offend our public policy hence, it is suggested that efforts be made to incorporate the letters and sprit of these guidelines in our Consumer Protection regulations.
- ✓ Consumer Protection Act, 1986 is a beneficial legislation and have stood the test of time however to regulate the growing problems of the consumers in online environment it is suggested that, supplementary legislation which specifically address the problems of the consumer in online environment may be inserted in the Consumer Protection Act, 1986.
- ✓ It is suggested that to encourage fair trade, advertising and marketing practices, clear information about online identity of the company, the goods or

services it offers and the terms and conditions of any transaction, process for the confirmation of transactions, secure payment mechanisms etc. should be provided by the e-commerce company.

- ✓ Due to lack of effective regulations online consumer cases are often overlooked by the investigating agencies hence it is suggested that the collection and analysis of consumer complaints, surveys and other trend data, and further by conducting Empirical research based on the insights gained from information and behavioural economics evidence may be collected for legislating effective e-commerce policy for our nation.
- ✓ After analysing the issue of jurisdiction from all possible sources: (a) Code of Civil Procedure, 1908 (b) Choice of forum, and (c) Choice of law. Keeping in view the nature of the online commerce involving business-to-business (B2B) or business-to-consumer (B2C) contracts, it is suggested that India should become a signatory to the Convention of cybercrimes treaty and should ratify it a product of four years of work by European and international experts. This move would go a great deal in resolving the jurisdictional controversies that may arise in cybercrime cases.
- ✓ The Convention is the first international treaty on crimes committed via the Internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child pornography, hate crimes, and violations of network security. It also contains a series of powers and procedures such as the search of computer networks and lawful interception.
- ✓ Its main objective, set out in the preamble, is to pursue a common criminal policy aimed at the protection of society against cybercrime, especially by adopting appropriate legislation and fostering international cooperation.

- ✓ In order to make ODR a success for dealing with online consumer grievances in India it is suggested that necessary amendments be made in Information Technology Act, 2000 and the Consumer Protection Act, 1986 so that both Acts read together can provide a conducive base for successful functioning of ODR mechanism.
- ✓ Further, to build up trust and confidence in these mechanisms, up to date technology, internet connectivity, inter connections of computers advance and well educated manpower are key ingredients upon which policy makers must work.

REFERENCES

1. Adam Smith, *The Wealth Of Nations*, (The Modern Library 1937). India Book Distributors (Bombay) limited,3-2-870/17198 VNR Commercial Complex Kachiguda Station Road Hyderabad.
2. A. Rajendra Prasad, *Historical Evolution of Consumer Protection and Law in India: A Bird's Eye View*, Volume 11, No. 3: *Journal Of Texas, Consumer Law Summer*, Page 132, 132-136 (2008).
3. A. Didar Singh, "Electronic Commerce: Issues for the South" Trade-related Agenda, Development and Equity, Working Paper, South Centre, October 1999, p. 4.
4. Azright "Unfair Contract Terms". Available at http://azrights.com/srvices/business/unfair-contract-terms-act. Visited on 20 Dec 2016.
5. Association of Southeast Asian Nations (ASEAN)-Australia Development Cooperation Programme and UNCTAD.2016, Project on strengthening technical competency on consumer protection in ASEAN: E-commerce module, available at http://aadep2.org/six-modules-strengthening-technical-competency-consumer-protection-asean, visited on 23 Dec 2016.
6. Adam Smith, The Wealth Of Nations, (The Modern Library 1937).
7. A. Rajendra Prasad, *Historical Evolution of Consumer Protection and Law in India: A Bird's Eye View*, Volume 11, No. 3,JOURNAL OF TEXAS, CONSUMER LAW SUMMER, Page 132, 132-136 (2008).
8. AzharKazmi, "Strategic Management & Business Policy", 3rd Ed, 2008, Tata McGraw-Hill Publication New Delhi at page 531.

9. Amit Tiwari, *"India's Best Known Startup Story – The Journey of Flipkart ",*Techstory, March 19th, 2015, Available at http://techstory.in/flipkart-story/, visited on 14 May 2017.
10. Ankur Aggarwal, *"Best online shopping sites in India – top 10 categories [Nov 2017]",* November 4, 2017, Incomeboy, available at https://incomeboy.com/top-10-best-online-shopping-sites-in-india/ visited on 20 May 2017.
11. AvinashAsokan, "E-COMMERCE SCENARIOS", SCRIBD, Oct 12, 2010, available at https://www.scribd.com/document/39193151/Ppt, visited on 23 May 2017.
12. Aron Mefford, "Lex Informatica: Foundations of Law on the Internet" (1997) 5 *Indiana Journal of Global Legal Studies* 211.
13. A Declaration of the Independence of Cyberspace http://www.eff.org/~barlow/Declaration-Final.html (13/06/03); Barlow JP, "Selling Wine Without Bottles: The Economy of Mind on the Global Internet" http://www.eff.org//Publications/John_Perry_Barlow/idea_economy_article.html visited on 17 June 2017.
14. Aniket Dhwaj Singh and Swarnika Singh, "Need For Online Dispute Resolution" BLR204 (July-September 2016)
15. Biukovic, L., 2002, *International Commercial Arbitration in Cyberspace*: Recent Developments, Northeastern Journal of International Law and Business, Vol 22: Issue 3. *Available at http;//scholarlycommons.law.northwestern./edu/njilb/vol22/issue3/20.* Visited on 1.1.2019.

16. Betsy Rosenblatt, *Principles of Jurisdiction,* available at https://cyber.harvard.edu/property99/domain/Betsy.html Visited on 19 June 2017.
17. BimalRaut, "Determining the Judicial Jurisdiction in the Transnational Cyberspace" (2004) Thesis for Doctor of Juridical Science, School of Law, Queensland University of Technology.
18. Ballon IC, "The Law of the Internet: Developing a Framework for Making New Law" (1997) 2 *Cyberspace Lawyer* 12; Beall CP, "The Scientological Defenestration Of Choice-Of-Law Doctrines For Publication Torts on the Internet" (1997) 15 *The John Marshall Journal of computer & Information Law* 361; Burmeister K, "Jurisdiction, Choice of Law, Copyright and the Internet: Protection against Framing in an International Setting: (1999) 9 *Fordham Intellectual Property, Media & Entertainment Law Journal* 625; Borchers PJ, "Conflict Of Laws: (1999) 49 *Syracuse Law* 333; Booysen H, "Is International Law Relinquishing Its Exclusively Public Law Nature?" (1997) 4 *Tulsa Journal of Comparative & International Law* 219; Burk DL, "Jurisdiction in a World Without Border: (1997) 1 Verginia Journal Of Law And Technology 3 http://vjolt.student.virginia.edu/graphics/voll/hom_ar3.html>(2/10/2000); Conflicts on the Internet: Choice of Law in Transnational Cyberspace" (1996) 29 *Vanderbilt Journal of Transnational Law* 75; Caden ML & Lucas SE, "Accidents on the Information Superhighway: On-line Liability and Regulation: (1996) 2 *Richmond Journal of Law & Technology* 3.
19. Berman N, "Modernism Nationalism and the Rhetoric of Reconstruction" (1992) 4 *Yale Journal of Law and the Humanities* 351.

20. Berkman Center, Online Lecture & Discussion Series by Diane Cabell, "Using ICANN's UDRP".
21. B.B. Nanda and R.K. Tewari, *"Cyber Crime-A Challenge to Forensic Science*", The Indian Police Journal, Vol. XLVI-XLVII, Nos. 4 & 1, April-September, 2000, pp. 102-103.
22. BLACK'S LAW 941 (6th ed. 1891-1991).
23. B.M. Gandhi, Indian Legal and Constitutional History 297 (Eastern Book Company, Lucknow, 2009).
24. Business Today, *"1995: Mobile services come calling"* 9th Jan, 2011, available at http://www.businesstoday.in/magazine/focus/year-1995-round-up/story/11660.html, visited on 10 May 2017.
25. B. Shiva Rao, India's Freedom Movement 11 (Oriented Longman Ltd., India, 1972)
26. Clark EE, Cho, G and Hoyle (eds*) E-Business: Law and Management for 21st Century*, Canberra, Info-Sys Law International, 2001; Ballon IC, "The Law of the Internet: Developing a Framework for Making New Law" (1997) 2 Cyberspace Layer.
27. *CompuServe, Inc.* vs. *Pattterson,* 89 F.3d 1257, 1259-1260 (6th Cir. 1996) cited from Julian S. Millsteinetal *Doing Business on the Internet: Forms and Analysis (1999).*
28. *Calder* v. *Jones*, 465 U.S. 783 (1984) cited from"A Separate Jurisdiction for Cyberspace?" by Juliet M.Oberding and Terje Norderhaug. http://www.ascusc.org/jcmc/vol2/issue1/juris.html. However, Indian courts have yet not taken any particular stance regarding the "minimum contacts" theory. Visited on 11 Jan 2017.

29. California Software Incorporated v. Reliability Research, Inc., 631 F. Supp. 1356 (C.D. Cal. 1986) cited from Cheshire and North, 11th Ed. pg. 188et al *Doing Business on the Internet: Forms and Analysis (1999).*
30. Charles E.F.Richette and Thomas G.W.Telfer (ed.), International Perspectives on consumer Access to Justice, (Cambridge: Cambridge University Press, 2003) P.1
31. Copy Right Act, 1957
32. Civil Procedure Code, 1908.
33. Consumer Protection Act, 1986
34. Chagla C.J (as he then was) in his foreword to Soonavala's Treaties on the Law of Execution Proceedings (1958).
35. Centre for Technology and Dispute Resolution, Online Ombud's narrative 1 :website developer and the newspaper at www.ombuds.org/narrative 1.html.
36. C. Douglas Floyd & Shima Baradaran-Robison, *Toward a Unified Test of Personal Jurisdiction in an Era of Widely Diffused Wrongs: The Relevance of Purpose and Effects*, 81 IND. L.J. 602, 659 (2006).
37. Consumer Resources, NATIONAL CONSUMER HELP LINE, https://consumerresources.in/2017/04/30/national-consumer-helpline-nch/ visited on 20 March 2017.
38. Consumer Unity & Trust Society, *State of the Indian Consumer*, CUTS INTERNATIONAL (Dec. 05, 2016, 01:00 PM), Available at www.cutsinternational.org/cart/pdf/State_of_the_Indian_Consumer.pdf Visited on 4 Feb 2017.
39. C.R.L. Narasimhan, Competition Report: Difficult but Useful Reading, The Hindu (Monday June 12, 2000). Available at

http://www.thehindu.com/2000/06/12/stories/06120007. Visited on 19 Feb 2017.

40. ConfoNet: Computerization and Computer Networking of Consumer Forums in Country http://www.confonet.nic.in/ visited on 19 March 2017.
41. Durga Das Basu, Constitutional Law Of India 1 (Prentice-Hall of India Pvt. Limited, New Delhi, 1988).
42. Department of Consumer Affairs (Ministry of Consumer Affairs, Food & Public Distribution, KrishiBhawan, New Delhi, Government of India) http://consumeraffairs.nic.in/forms/contentpage.aspx?lid=37 visited on 18 March 2017.
43. D.N. Saraf, Law Of Consumer Protection In India 298 (Mumbai 1995).
44. Dr. S Chakravarthy, *Why India Adopted A New Competition Law, In* The Collected Works Of Cuts International (2006).
45. Dhruv Dikshit, What are the new features of Consumer Protection Bill, 2015?, IPLEADERS, September 21, 2015, https://blog.ipleaders.in/consumer-protection-bill-2015 visited on 16 March 2017)
46. Dr PremLata, e- commerce and consumer law, CONSUMER AWAKENING, (June 7, 2016), http://blogs.consumerawakening.com/e-commerce-and-consumer-law/ visited on 5 March 2017.
47. Guidelines for Consumer Protection in the Context of Electronic Commerce 1999. Available at https://www.oecd.org/sti/consumer/34023811.pdf visited on 25 Nov 2016
48. Dr. Gagandeep Kaur, *"THREATS TO THE RIGHTS OF CONSUMERS IN E-BANKING IN INDIA: AN OVERVIEW"* SSRN, 12 Jun 2017, available at

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2983199, visited on 21 May 2017.

49. Dr. Keshav Sharma, Article, "Consumer Movement in Inda" The Daily News Paper Kashmir times, 15, 2001, page 5
50. Dr. Rifat Jan, CONSUMERISM AND LEGAL PROTECTION OF CONSUMERS, with a Critical and Explanatory Commentary and Latest Case Laws 79 (Deep & Deep publications Pvt Ltd New Delhi 2007)
51. Dr. Jyoti Rattan, "LAW RELATING TO E- COMMERCE: INTERNATIONAL AND NATIONALSCENARIO WITH SPECIAL REFERENCE TO INDIA", International Journal of Social Science and Economics Invention (IJSSEI) Volume//01//Issue//02//August 2015.
52. Department of Consumer Affairs Ministry of Consumer Affairs, Food & Public Distribution Government of India, http://consumerhelpline.gov.in/nch.php visited on 26 March 2017.
53. Degnan R E and Kane MK, "The Exercise of Jurisdiction over and Enforcement of Judgements Against Alien Defendants" (1988) 39 *Hastings Law Journal* 799.
54. David G. Post & David R Johnson "Law and Borders – The Rise of Law in Cyberspace" (1996) 48 *Stanford Law Review* 1367. http://www.temple.edu/lawschool/dpost/Border.html (13/06/03) visited on 10 June 2017.
55. Dawson S, Kloczko A and Waldron BD, "Beyond Gutnick: Enforcement of Foreign Defamation Judgement in Australia" (2003) 52 *Journal for the Australian and New Zealand Societies for Computers and the Law* 2.

56. Edward L and Waelde C (eds), *Law and the Internet: A Framework for Electronic Commerce*, 2nd Ed, Hart Publishing, Oxford, 2000.
57. "Europe Goes After the Cookie", October 31, 2001 available at www.unwired.com, visited on 4 Jan 2017.
58. Ethan Katsh, "The Online Ombuds Office: Adapting Dispute Resolution to Cyberspace" Available at http://www.odr.info/ncair/katsh.htm.
59. European Commission, 2016, Guidelines on the implementation/application of Directive 2005/29/EC on unfair commercial practices. Available at, http://ec.europa.eu/consumer/consumer_rights/unfair-trade/unfair-practices/index_en.html. Visited on 19 Dec 2016.
60. English Oxford Living Dictionary, available at https://en.oxforddictionaries.com/definition/intermediary, visited on 18 Jan 2017.
61. Ethan Katsh et al, "E-Commerce, E-Disputes, and E-Dispute Resolution: In the shadow of 'eBay Law'. Available at http://www.umass.edu/cyber/katsh.pdf
62. Ethan Katsh, "The New Frontier: Online ADR becoming a global priority, Dispute Resolution Magazine,2000, p.8. Available at www.umass.edu/cyber/Katsh_aba.pdf.
63. Eugene Clark et al "Online Dispute Resolution: Present Realities, Pressing Problems and Future Prospects" International Review of Law Computers & Technology, Vol 17, No. 1. Pg 7-25. Available at http://taylorandfrancis.metapress.com/(1ezk3bqsklijw145wmtvz55)/app/home/contribution.asp?referrer-parent&baclto-issues,2,10:journal,11,28;linkingpublicationresults,1:100647,1

64. E Katsh, “Online Dispute Resolution : Some Implications for the Emergence of Law in Cyberspace. Lex Electronica Vol 10, No 3. Pg.3. *Available at http://www.lex-electronica.org/articles/v10-3/katsh.htm.*
65. E. Katsh., “Dispute Resolution in Cyberspace” 1995, 28 CONN. L. REV. pg. 971.
66. FTC v Consumer Credit Advocates P.C., 96 Civ. 1990 cited from Richard D. Harroch, Esq.*Start-up and Emerging Companies: Planning, Financing, and Operating the Successful Business* (Vol 2 Revised Ed.).
67. F Petrauskas and E Kybartiene, *Online Dispute Resolution in Consumer Disputes*, 2011. Available at www. mruin.eu/en/mokslo_darbai/jurisprudencija/.

1. Farah C, *Critical analysis of online dispute resolution: optimist, realist and the bewildered,* 11(4) Computer Telecommunications Law Review,123-128. *Available at https://legaldesire.com/online-dispute-resolution-mechanismexpansion-alternate-dispute-resolution-mechanism-india/*
2. Free- Advice: what is an arbitration agreement? Available at http://law.freeadvice.com/litigation/arbitration/agreement arbitration.htm.
3. Feliksas Petrauskas and EglėKybartienė, “Online Dispute Resolution In Consumer Disputes”, 2011. University of MykolasRomeris. Available at *https://www.mruni.eu/upload/iblock/0c4/8_Petrauskas_Kybartienuy-1.pdf*
1. Gralf Peter G, 2003, online Dispute Resolution: Consumer Redress in Global Market place. Vol 7 No. 8German Law Journal 647 at p.651. visited on 4.1.2019
2. Guidelines for Consumer Protection in the Context of Electronic Commerce approved on 9 December 1999 by the OECD Council, are designed to help

ensure that consumers are no less protected when shopping on line than they are when they buy from their local store or order from a catalogue. By setting out the core characteristics of effective consumer protection for online business-to-consumer transactions, the Guidelines are intended to help eliminate some of the uncertainties that both consumers and businesses encounter when buying and selling on line. The result of 18 months of discussions among representatives of OECD governments and business and consumer organisations, the Guidelines will play a major role in assisting governments, business and consumer representatives to develop and implement online consumer protection mechanisms without erecting barriers to trade. https://www.oecd.org/sti/consumer/34023811.pdf visited on 19 Jan 2017.

1. History of Android available at https://www.android.com/history/ visited on 18 May 2017. Available at https://gizmodo.com/samsung-galaxy-s8s-killer-feature-lands-months-late-1797048439 visited on 18 May 2017.
2. Hossein Kaviar, "Consumer Protection in Electronic Contracts", *International Arab Journal of e-Technology*, Vol. 2, No. 2, June 2011, pp. 96-104 at p. 96.Avialble at http://cyber.law.harvard.edu/ecommerce/disputes.html visited on 2 June 2017.
3. Hornle Julia, 2002, Cross Border internet dispute resolution. United Kingdom: Cambridge University Press. *Available at https://www.cambridge.org/.../crossborder-internet-dispute-resolution/CDA11E35A1711. Visited on 1.1.2019*

4. India Report, Future Potential and Direction of e commerce in India. *Available at http://indiareport.in/internet-advantage/future-potential-and-direction-of-ecommerce-in-india.* Visited on 4.1.2019
5. I. Manvey., "Online Dispute Resolution: What future? 2001. Available at http://Hhoumyre.chez.com/uni/mem/17/odro1.pdf.
6. Information Technology Act, 2000
7. Indian Constitutional Law and Philosophy "The Supreme Court's Right to Privacy Judgment – I: Foundations" August 27, 2017, available at https://indconlawphil.wordpress.com/2017/08/27/the-supreme-courts-right-to-privacy-judgment-i-foundations/ accessed on 24 Dec 2016.
8. IBNLive.com, "20 years of Internet in India: On August 15, 1995 public Internet access was launched in India" Posted on: 07:48 AM IST Aug 15, 2015, available a http://www.ibnlive.com/news/tech/20-years-of-internet-in-india-on-august-15-1995-public-internet-access-was-launched-in-india-1039859.html. visited on 12 May 2017.
9. International Shoe Co. v. Washington, 326 U.S. 310 (1945) cited from"A Separate Jurisdiction for Cyberspace?" by Juliet M. Oberding and Terje Norderhaug. http://www.ascusc.org/jcmc/vol2/issue1/juris.html, visited on 10 Jan 2017.
10. J Sénéchal, 'The Diversity of the Services provided by Online Platforms and the Specificity of the Counter-performance of these Services – A double Challenge for European and National Contract Law', (2016) 1 *EuCML*39, at 40 speaks of "tenuous border between intermediation and distribution".
11. J.N. PANDEY, THE CONSTITUTIONAL LAW OF INDIA 32-33 (Central Law Agency, Allahabad, 2008).

12. J. Christopher Westland and Theodore H.K. Clark, *Global Electronic Commerce: Theory and Case Studies*, Universities Press, Hyderabad, 2001, p. 4.
13. Jaskaran Singh, "Need and Scope of Online Dispute Resolution in India", 2016, International Research Journal of Commerce and Law. Vol. 04. Issue-2. Available at www.academia.edu/35519767/NEED_AND_SCOPE_OF_ONLINE.
14. Jitendra Singh, *"IRCTC face of e-ticket in India",* Nov 22, 2011, available at http://www.iamwire.com/2011/11/irctc-face-of-e-ticket-in-india/1862, visited on 13 May 2017.
15. John F. Kennedy, *93 - Special Message to the Congress on Protecting the Consumer Interest*, THE AMERICAN PRESIDENCY PROJECT, (Dec. 02, 2016, 11:05 AM), http://www.presidency.ucsb.edu/ws/?pid=9108
16. J. Herboczkova., 'Certain aspects of online arbitration'. Journal of American Arbitration, Vol. 1, No. 1. Available at http://www.law.muni.cz/sborniky/dp08/files/mezinaro/herboczkova.pdf
17. J. Hornle., "Online Dispute Resolution – The Emperor's new Clothes? Benefits and Pitfalls of Online Dispute Resolution and its Application to Commercial Arbitration 2003, International Review of Law, computer and technology, Vol 17 (1). Available at https://doi.org/10.1080/1360086032000063093
18. Jaskaran Singh, "Need and Scope of Online Dispute Resolution in India", 2016, International Research Journal of Commerce and Law. Vol. 04. Issue-2. Available at www.academia.edu/35519767/NEED_AND_SCOPE_OF_ONLINE.

19. K.D. Gaur, Textbook On The Indian Penal Code 393-394 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2009).
20. K.C. Garg, V.K. Sareen, Mukesh Sharma And R.C. Chawla, Mercantile Law: Incorporating Latest Amendments In Company Law, Economic Laws And Others Laws 1 (Kalyani Publishers, Ludhiana, 2009).
21. Karnika Seth, Online Dispute Resolution, Seth Associates. *Available at http://www.karnikaseth.com/wp-content/uploads/ODR-CIAC%20conference%20paper.pdf.* Visited on 1.1.2019
22. Katsh E, *Online Dispute Resolution : some implications have emergence of law in cyber space*, 2006 .Vol. 10 n. 3LEX Electronica. Available at http://www.lex-electronica.org/articles/v10-3/katsh.htm.
23. Karnika Seth, Online Dispute Resolution, Seth Associates. *Available at http://www.karnikaseth.com/wp-content/uploads/ODR-CIAC%20conference%20paper.pdf.*
24. Law Commission Of India 199th Report On Unfair (Procedural & Substantive) Terms In Contract, Page 3 & 4.
25. L.C. Interpreting Services: Can Digital Devices Replace devices-replace-interpreters. Available at http://signlnguagenyc.com/can-digital-devices-replace-interpreters/)
26. L.Q. Hang, "Online Dispute Resolution Systems: The Future cyberspace Law. Santa Clara Law Review, Vol. 41, No. 3, Article 4. Available at http://digitalcommons.law.scu/edu/lawreview/vol41/iss3/4
27. L.B. Eisen, Are we ready for mediation in cyberspace, 1998, B.Y.U L. REV. 1305. Available at http://scholarship.richmond.edu/law-faculty-publications.

28. L. Biukovic, “International Commercial Arbitration in Cyberspace: Recent Development”, 2002, Northwestern Journal of International Law and Business Vol. 22: Issue 3. Available at http://scholarlycommons.law.northwestern.edu/njib/vol22/iss3/20
29. L. Bygrave, “Online Dispute Resolution—What it Means for Consumers”. Paper presented at a conference entitled “Domain Name Systems and Internet Governance” Grace Hotel, Sydney, 7 May 2002, p. 2. Available at dictionary.sensagent.com/online dispute resolution.
30. Lessig L, *Code and Other Laws of Cyberspace*, Basic Books, New York, 1999; Lessig L, “The Law of the Horse: What Cyber law Might Teach” 113 *Harward Law Review* 501; Lessig L, “Zoning Speech on the Internet: A Legal and Technical Model” (1999) 98 *Michigan Law Review* 395; Henry H. Perritt, *Law and the Information Superhighway*, John Wiley & Sons, New York 1996
31. L.Q. Hang, “Online Dispute Resolution Systems: The Future cyberspace Law. Santa Clara Law Review, Vol. 41, No. 3, Article 4. Available at http://digitalcommons.law.scu/edu/lawreview/vol41/iss3/4.
32. Legal Issues in E-Commerce by Anvit Shetty and Ors 2002.Available at http://www.consumidor.gov.br, visited on 27 Dec 2016.
33. L.Q. Hang., “Online Dispute Resolution Systems: The future cyberspace Law.2001, Santa Clara Law Review, Vol. 41, No 3, Article 4. Available at http://digitalcommons.law.scu/edu/lawreview/vol41/iss3/4.
34. Law Commission of India 27th Report (The Code Of Civil Procedure, 1908) December 1964. Government of India Ministry of Law.
35. Law Commission of India 14th Report (Reforms of Judicial Administration) Vol. I Page 263, Para 10.

36. Mary Twitchell, The Myth of General Jurisdiction, 101 Harv L Rev 610, 613(1988).
37. M. S. Jaberi, "Online Arbitration: A vehicle for dispute resolution in Electronic commerce". Available at www.academic.edu/1842719/online Arbitration A vehicle for Dispute Resolution in Electronic commerce.
38. M. S. Jaberi, "Online Arbitration: A vehicle for dispute resolution in Electronic commerce". Available at www.academic.edu/1842719/online Arbitration A vehicle for Dispute Resolution in Electronic commerce.
39. M.S Jaberi, Online arbitration: A vehicle for dispute resolution in electronic commerce, 2010. Available at http://ssrn.com/abstract=21a28242.
40. MS Gal and N Elkin-Koren. "Algorithmic consumers". Harvard Journal of Law and Technology 30(2).
41. Mrs. Neeta Pramod, *A study of Formation and challenges of electronic contract in cyberspace*, LEGAL SERVICES INDIA, (December 12, 2015), http://www.legalservicesindia.com/article/article/a-study-of-formation-and-challenges-of-electronic-contract-in-cyberspace-1943-1.html visited on 1 March 2017.
42. "More Than Two Crore Cases Pending in India's District Courts: Report" The Indian Express, June 9, 2016. Available at *https://indianexpress.com › India › Do Not Use India News.*
43. Ministry of Electronics & Information Technology, Government of India, http://meity.gov.in/e-commerce, visited on 17 Jan 2017.
44. Margherita Colangelo and Vincenzo Zeno-Zencovich, Online platforms, competition rules and consumer protection in travel industry, Journal of European Consumer and Market Law, 6 Apr 2016. Available at

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2758347, visited on 19 Jan 2017

45. Munir AB and Yasin SHM 2010, *Information and communication technology law state, internet and information, legal & regulatory challenges*, Sweet & Maxwell Asia. Available at https://kundoc.com/pdf-information-and-communication-technology-law-state-internet. Visited on 1.1.2019
46. Natasha Kwatiah, *Essay on the Monopolies and Restrictive Trade Practices*, ECONOMICS DISCUSSION, (April 16, 2008), http://www.economicsdiscussion.net/essays/essay-on-the-monopolies-and-restrictive-trade-practices/19157 visited on 17 Feb 2017.
47. New York Times Co. v Sulllivan, 376 US 254 (1964) cited from Richard D. Harroch, Esq.*Start-up and Emerging Companies: Planning, Financing, and Operating the Successful Business* (Vol 2 Revised Ed.)
48. Nikita Vedrevu, "*Online Dispute Resolution Mechanism: Expansion of Alternative Dispute Resolution Mechanism In India"*2018, 27 March. *Available at https://legaldesire.com/online-dispute-resolution-mechanismexpansion-alternate-dispute-resolution-mechanism-india/*
49. Nwandem, Osinachi, Online Dispute Resolution: Scope and Matters Arising (December 24, 2014). Available at SSRN: https://ssrn.com/abstract=2592926 or http://dx.doi.org/10.2139/ssrn.2592926 .visited on 4.1.2019
50. Nandan Kamath, Guide To Information Technology Act, Rules &Regulations 51 (Universal Law Publishing, Delhi, 2001)
51. National Consumer Helpline, http://www.nationalconsumerhelpline.in/index.aspx. Visited on 25 March 2017.

52. Norbert Reich, *Consumerism and Citizenship in the Information Society in Consumer Law*, 168, The Hague/London:Kluwer Law International,2000. http://www.Indianexpress.com/news/speak-asia-fraud-rs-2-000-crores/825777, Visited on 11 Dec 2016.
53. Norbert Reich, Consumerism and Citizenship in the Information Society in Consumer Law, 168, Thomas Wilhelmsson, SallaTuomola(ed.) (The Hague/London:Kluwer Law International,2000)
54. Nwandem Osinachi Victor L, "Online Dispute Resolution: Scope and Matters Arising", 2014. *Available at https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2592926_code2286811.pdf?.*
55. Nikita Vedrevu, "*Online Dispute Resolution Mechanism: Expansion of Alternative Dispute Resolution Mechanism In India"*2018, 27 March. *Available at https://legaldesire.com/online-dispute-resolution-mechanismexpansion-alternate-dispute-resolution-mechanism-india/.*
56. Nirmalendu, Bikash & Rakshit, *Right to Constitutional Remedy: Significance of Article 32,* Vol. 34, No. 34/35, ECONOMIC AND POLITICAL WEEKLY 2379-81 (1999)
57. National Centre for Technology and Dispute Resolution, Standards of Practice [interactive]. Available at www.odr.info.
58. Ontario Law Reform Commission, 1987 http://unctad.org/en/PublicationsLibrary/webditcclp2016dI.pdf. Visited on 21 Dec 2016.
59. OECD Ministerial Meeting on the Future of the Internet Economy, Seoul, Korea, 17-18 June 2008.

60. Organisation for Economic Co-Operation and Development, *"Guidelines for Consumer Protection in the Context of Electronic Commerce"* approved on 9 December 1999 by the OECD Council, available at www.oecd.org, assessed on 27 April 2017.
61. OECD Guidelines for Protecting Consumer from Fraudulent and Deceptive Commercial Practice Across Cross Borders (2003) Available at http://www.oecd.org/internet/consumer/oecdguidelinesforprotectingconsumers fromfraudulentanddeceptivecommercialpracticesacrossborders2003.htm accessed on 28 April 2017.
62. OECD Annual Report 2007 available at https://www.oecd.org/newsroom/38528123.pdf. Accessed on 30 April 2017.
63. OECD Policy Guidelines for Addressing Emerging Consumer Protection and Empowerment Issue in Mobile Commerce 2008.
64. OECD (2016), Consumer Protection in E-commerce: OECD Recommendation, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264255258-en. Visited on 1 May 2017.
65. Preeti Desai, Past President, Internet and Mobile Association of India, expressed during Press Release on Is* February, 2006 available at www.domain-b. eom/ebusiness visited on 31 March 2017.
66. P.K Jay and C.S Rajiv, Fools us once Shame on you- fools us twice shame on us. What we can learn from the privatizations of the internet backbone network and domain name system, 2001. *Available at http://paper.ssm.com/sol3/papers.cfm?abstract*
67. Pankhudi Khandelwal and Samarth Singh, "ODR and E-commerce in India", Blog. *Available at legalreferee.com.*

68. Peter Smith & Dennis Swann, *Protecting The Consumer – An Economic And Legal Analysis* (1979).
69. P.N. Agarwala, *The History Of Indian Business: A Complete Account Of Trades Exchanges From 3000 B.C. To The Present Day* (Vikas Publishing House Pvt. Ltd., New Delhi, 1985).
70. Prakash Charan Prasad, *Foreign Trade And Commerce In Ancient India* (Abhinav Publications, New Delhi, 1977).
71. "Private International Law", Cheshire and North, 11th Ed. pg. 188
72. People v Lipsitz, IA, P.8, (N.Y. Sup. June 24, 1997) cited from Richard D. Harroch, Esq.*Start-up and Emerging Companies: Planning, Financing, and Operating the Successful Business* (Vol 2 Revised Ed.) Available at https://securionpay.com/blog/e-payment-system/ visited on 16 Jan 2017.
73. Peter Smith & Dennis Swann, Protecting The Consumer – An Economic And Legal Analysis (1979).
74. P.N. Agarwala, The History Of Indian Business: A Complete Account Of Trades Exchanges From 3000 B.C. To The Present Day (Vikas Publishing House Pvt. Ltd., New Delhi, 1985).
75. Prakash Charan Prasad, Foreign Trade And Commerce In Ancient India (Abhinav Publications, New Delhi, 1977).
76. Parliament in the Forty-fourth Year of the Republic of India, The Consumer Protection (Amendment) Act, 1993, No 50, Act of Parliament, 1993 (India).http://bombayhighcourt.nic.in/libweb/actc/yearwise/1993/1993.50.pdf. visited on 6 Feb 2017.

77. Parliament in the Forty-fourth Year of the Republic of India, The Consumer Protection (Amendment) Act, 2002, No. 62, Acts of Parliament, 2002 (India) http://www.delhistatecommission.nic.in/1_1_4.html. Visited on 7 Feb 2017.
78. Praveen Saxena, *STANDARDS IN DAILY LIFE*, PRESS INFORMATION BUREAU GOVERNMENT OF INDIA,(Jan. 29, 2009, 10:04 AM), http://pib.nic.in/feature/fe1099/f0810991.html visited on 15 Feb 2017.
79. R & A Associates is an integrated Corporate Secretarial & Legal Services Firm, LIABILITY OF INTERMEDIARIES UNDER INFORMATION TECHNOLOGY ACT, 2000, available at http://www.rna-cs.com/
80. R.K. BANGIA, LAW OF CONTRACT 58 (Part I, 2005).
81. Recommendation 2001/310/EC, Commission Recommendation of 4th April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, Official Journal L 109, 19/04/2001 P. 0056-0061. Available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001H0310:EN.
82. Rafal M., 2005, Regulation of Online Dispute Resolution: Between Law and technology. *Available at http://www.odr.info/cyberweek/Regulation%20%of20ODR_Rafal%20Morek.doc*.)
83. Rafal M., 2005, Regulation of Online Dispute Resolution: Between Law and technology. *Available at http://www.odr.info/cyberweek/Regulation%20%of20ODR_Rafal%20Morek.doc*. Visited on 4.1.2019

84. Ramsay, I. (2006). Consumer Law, Regulatory Capitalism and the 'New Learning' in Regulation. *Sydney Law Review* [Online] **28**:9-35. Available at: http://www.law.usyd.edu.au/slr/slr28_1/Ramsay.pdf. Visited on 10 Dec 2016.
85. R Arun, 2007. *The Legal Challenges Facing Online Dispute Resolution: An Overview.* Available at http://www.galexia.com/public/research/articles/research aeticles-art42.html. visited on 4.1.2019
86. Report of the New Zealand Law Commission, 1990
87. Rajendra Kumar Nayak, Consumer Protection Law In India (An Eco-Legal Treaties On Consumer Justice), (Ed.1, Bombay, N.M TripathiPvt. Ltd, 1991).
88. Ramsay, I. (2007). *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets*. [Online]. Oxford: Hart Publications. Available at: http://www.hartpub.co.uk/books/details.asp?isbn=9781841135052. Visited on 29 Dec 2016.
89. R & A Associates is an integrated Corporate Secretarial & Legal Services Firm, LIABILITY OF INTERMEDIARIES UNDER INFORMATION TECHNOLOGY ACT, 2000, available at http://www.rna-cs.com/, visited on 18 Jan 2017.
90. R.K. Bangia, Law of Contract I With Specific Relief Act, Allahabad Law Agency, Law Publishers, Faridabad, 2009.
91. Ryder D.Rodney, Guide to Cyber Laws, Wadhwa & Co. Publishers, edn.1, 2001.
92. Report No.199 of the Law Commission on 'Unfair (Procedural and Substantive) Terms in Contracts'

http://lawcommissionofindia.nic.in/reports/rep199.pdf visited on 10 March 2017.

93. Richard Freer, “American and European Approaches to Personal Jurisdiction Based Upon Internet Activity” Emory University School of Law, Research Paper No. 07-15 August 7, 2007 available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1004887 visited on 6 July 2017.
94. Report No.103 of the Law Commission on 'Unfair Terms in Contracts' http://lawcommissionofindia.nic.in/101-169/Report103.pdf visited on 10 March 2017.
95. UNCITRAL, Model Law on Electronic Commerce (1996)http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html visited on 10 March 2017
96. Sachin Mishra, Determining Jurisdiction over E-commerce dispute in India, Manupatra at page 5. Available at http://cyber.law.harvard.edu/ecommerce/disputes.html visited on 5 June 2017.
97. S.R. Sharma (edited), *Encyclopaedia of Cyber Laws and Crime: Laws on E-Commerce*, Vol. 3, Anmol Publications Pvt. Ltd., New Delhi, 2003, pp. 123-140.
98. S.N. Misra And Sanjay Kumar Misra, Indian Penal Code 368 (Central Law Publications, Allahabad, 1994)
99. Sourabh Singh, *MRTP Act: Rise Fall and Need for Change: Eco Legal Analysis*, UKESSAYS, (23rd March, 2015), http://www.ukessays.com/essays/economics/mrtp-act-rise-fall-and-need-for-

change-eco-legal-analysis-economics-essay.php#ftn24 visited on 17 Feb 2017. Available at http://indiabudget.nic.in/ub1999-2000/bs/speech.htm

100. Sankalp Jain, *Electronic Contracts: Nature, Types and Legal Challenges*, SSRN, (30 May 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2786438 visited on 27 Feb 2017.

101. Surabhi Singhi, *Competition Act, 2002 And Its Relevance*, LEGAL SERVICE INDIA, http://www.legalserviceindia.com/articles/compet.htm visited on 22 Feb 2017.

102. Saba, *"Class action suits" held maintainable under Consumer Protection Act, 1986,* SCC ONLINE, (Jan 10, 2017, 11:10 PM), http://blog.scconline.com/post/2016/10/27/class-action-suits-held-maintainable-under-consumer-protection-act-1986/, visited on 13 Feb 2017.

103. Smriti Chand, *Dutt Committee on Industrial Licensing*, YOUR ARTICLE LIBRARY, (March 25, 2007), Available at http://www.yourarticlelibrary.com/industries/dutt-committee-on-industrial-licensing/23446/ visited on 16 Feb 2017.

104. Schiavetta S., *Relationship between e ADR and Article 6 of European Convention of Human Rights pursuant to case law of European Court of Human Rights*, 2004 (1) Journal of Information Law and Technology. Available at *https://warwick.ac.uk/fac/soc/law/elj/jilt/2004_1/schiavetta/*

105. S. K. Verma and Raman Mittal (eds), "Legal Dimensions in Cyberspace", 2003, Indian Law Institute, New Delhi. Available at shodhganga.inflibnet.ac.in/bitstream/10603/113328/6.

106. Second Quarter, 2009 online sales up 2.2% September 12,2009. *Available at http://www.suite101.com/content/second-quarter-2009-online-sales-up-22-a14771*. visited on 4.1.2019

107. Susskind Richard, 1998, *The Future of Law: facing the challenges of information technology*, Clarendon Press. *Available at https://www.worldcat.org/title/future-of-law-facing-the-challenges-of-information-technology/oclc/39891575***.**Visited on 1.1.2019.

108. Smedingoff T J and Bro RH, 1999, *Moving with change: electronic signature legislation as a vehicle for advancing e-commerce,* The John Marshall Journal of Computer & Information Law, Spring, 17 J. Marshall J. Computer & Info.L. 723.

109. S.K. Verma, M. Afzal Wani & S.S. Jaswal, A Treaties On Consumer Protection Laws 325 (The Indian Law Institute 2004)

110. Schiavetta S., *Relationship between e ADR and Article 6 of European Convention of Human Rights pursuant to case law of European Court of Human Rights*, 2004 (1) Journal of Information Law and Technology. Available at *https://warwick.ac.uk/fac/soc/law/elj/jilt/2004_1/schiavetta/.*

111. Timeline of Apple "iPhone" Rumors (1999-Present), Dec 18, 2006, available at https://www.fiercewireless.com/wireless/timeline-apple-iphone-rumors-1999-present, visited on 18 May 2017.

112. India Digital Market Overview, *"Internet use in India and the development of the Indian online markets"*, 2009 available at http://www.digitalstrategyconsulting.com/india/2015/06/internet_use_in_india_and_the_1.php, visited on 19 May 2017.

113. Trade Mark Act, 1999

114. Trachtman JP, “Cyberspace, Sovereignity, Jurisdiction and Modernism” (1998) 5 *Indiana Journal of Global Legal Studies* 561.

115. Traditional Notions of Fair Play and Substantial Justice Lost in Cyberspace: Personal Jurisdiction and online Defamatory Statements (2001) 51 *Catholic University Law Review* 301; Joanna Zahalik Rachael T. Krueger, “Law Without Borders In Cyberspace” (1996) 43 *Wayne Law Review* 101; Aron Mefford, “Lex Informatica: Foundations of Law on the Internet” (1997) 5 *Indiana Journal of Global Legal Studies* 211.

116. T. von Mehren and Donald T. Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv L Rev 1121, 1135-36, 1164-66 (1966) (defining "specific jurisdiction" and "general jurisdiction"). See also Andrew L. Strauss, Beyond National Law: The Neglected Role of the International Law of Personal Jurisdiction in Domestic Courts, 36 Harv Intl L J 373, 378 n 25 (1995) ("The distinction between specific and general jurisdiction was first suggested by Arthur von Mehren and Donald Trautman.").

117. The Times of India Available at http//:articles.timesofindia.indiatimes.come/2007-01-25/india/27875773_1_cvv-credit-card-air-tickets, Visited on 2 Dec 2016.

118. Twenty Point Program, https://www.gktoday.in/twenty-point-programme_22 Visited on 2 Feb 2017.

119. TI Akomolede, “Contemporary Legal Issues in Electronic Commerce in Nigeria” Potchefstroom Electronic Law Journal PER 2008(3) ISSN 1727-3781. www.stats.oecd.org/glossary/detail.asp?ID=4721 Visited on 17 Dec 2016

120. The Report of the Law Commission of E ngland and Scotland (2004)

121. The Report of the South African Law Commission, 1998 \

122. The Interim Report of the British Columbia Law Institute, 2005

123. The Discussion Paper of the Standing Committee of Officers of Consumer Affairs, Victoria (Australia), 2004

124. Twin Cities Pioneer News, April 10, 2018 at 5:00 PM available at https://www.twincities.com/2018/04/10/congress-grills-facebook-ceo-mark-zuckerberg-who-acknowledges-big-mistake/, visited on 4 Jan 2017.

125. The Due Process Clause of the 14th Amendment of the Constitution of the United States as referred to in "A Separate Jurisdiction for Cyberspace?" by Juliet M. Oberding and Terje Norderhaug http://www.ascusc.org/jcmc/vol2/issue1/juris.html, visited on 9 Jan 2017.

126. The Banking Ombudsman Scheme 2006, Ref.RPCD.BOS.No.441/13.01.01/2005-06. Available at www.centralbankofindia.co.in/pdf/Banking.

127. "The Problems Inherent in Enforcing B2C E-Contracts across State Borders Suggest that this Form of E-Commerce Requires New Means of Dispute Resolution to be implemented specifically for E-commerce Transaction". Available at *www.academia.edu*

128. Thomas Schultz et al "Online Dispute Resolution: The State of the Art and the Issues" 2001, Available at http://www.online-adr.org/reports/TheBlueBook-2001.pdf.

129. U.G. ShanmugaSundram, "E-Commerce in the New Millennium", *The Indian Journal of Commerce*, Vol. 54, No. 4, October-December, 2001, pp. 193-194

130. **Unfair Contract Terms Act, 1977** http//:consumerdaddy.com/consumer-review-for-television-eighteen-yatracom-p-2902.htm

131. United Nation Conference on Trade and Development, 24th April 2017. https://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf , Visited on 16 Dec 2016.

132. UNCTAD. 2015, Information Economy Report 2015: Unlocking the Potential of E0commerce for Developing Countries (United Nations publication. Sale No. E.15.11.D.1. New York and Geneva) www.unctad.org/en/PublicationsLibrary/tu_unctad_ict4d07_en.pdf. Visited on 18 Dec 2016.

133. United States ODR provider at www.adr.org. In Australia ADR online at www.adr.online.org etc.

134. United Nations Economic and Social Commission for Asia and the Pacific. Available at http://www.unescap.org/drpad/publication/survey1999/svy5a.htm visited on 26 Nov 2016.

135. UNCITRAL Model Law on Electronic Commerce in 1996. Available at http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html visited on 29 Nov 2016.

136. Volume 1, S.M Dugar, Commentary On The Mrtp Law, Competition Law And Consumer Protection Law (Law, Practice And Procedure) 5 (4th Ed. Wadhwa And Company, New-Delhi 2006)

137. Vasudha Tamrakar & Pratibha Pal, *E-Contracts and Its Legality*, LEGAL SERVICE INDIA, (June 10, 2003), http://www.legalserviceindia.com/articles/ecta.htm visited on 25 Feb 2017.

138. V.D. Dudeja, Infromation Technology E-Commerce & E-Business 2-4 (common wealth publisher, New Delhi 2001)

139. V.K. Aggarwal, Consumer Protection-Law & Practice 61 (3rd Ed.).

140. Washington Post Co. v Total News, 97 Civ. 1190 cited from Richard D. Harroch, Esq.*Start-up and Emerging Companies: Planning, Financing, and Operating the Successful Business* (Vol 2 Revised Ed.)

141. WIPO Copyright Treaty, 1996, Article 11. Available at http://www.it.mycareer.com.au/breaking/2001/10/22/FFX18I063TC.html, visited on 5 Jan 2017.

142. Wilikens, M.; Vahrenwald, A.; Morris, P, Out-of-court dispute settlement systems for e-commerce. Report of an exploratory study Joint Research Centre, 20th April 2000, p. 2. Available at www.mruni.eu/lt/mokslo_darbai/jurisprudencija//.

143. Yu.2016. Escrow in e-commerce, presented at the seventh meeting of the UNCTAD Research Partnership Platform. Geneva. 19 October, available at http//:unctad.org/en/Pages/MeetingDetails.aspx?meetingid=1157, visited on 22 Dec 2016.

144. Yamini Rajora, *Contract of Adhesion and Doctrine of Fundamental Breach*, ACADEMIKE (ISSN: 2349-9796), (April 30, 2015), https://www.lawctopus.com/academike/contract-adhesion-doctrine-fundamental-breach/ visited on 7 March 2017.