

# **THE INTER-RELATIONSHIP BETWEEN E-COMMERCE AND RIGHT TO PRIVACY: AN ASSESSMENT**

**Dr. Chanjana Elsa Philip**

**Ms. Tharzana P. A**



# THE INTER-RELATIONSHIP BETWEEN E-COMMERCE AND RIGHT TO PRIVACY: AN ASSESSMENT

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## Preface

In an era where e-commerce has become an integral part of our daily lives, the intersection of this digital phenomenon with the right to privacy emerges as a critical area of study. "The Inter-Relationship Between E-Commerce and Right to Privacy: An Assessment" aims to unravel this complex interaction, highlighting the nuances of privacy in the digital marketplace.

This book is structured to provide an in-depth exploration of the subject across seven chapters, each focusing on different dimensions of the relationship between e-commerce and privacy rights. The journey begins with a foundational understanding of the research problem, its significance, scope, objectives, and the hypotheses driving this study.

- **Chapter I** sets the stage by introducing the core concepts and framing the research problem. It outlines the objectives and methodology, providing a roadmap for the exploration ahead.
- **Chapter II** delves into the nature of information technology and e-commerce, examining the various forms, advantages, and limitations of e-commerce, and its implications for consumers in a borderless market.
- **Chapter III** underscores the importance of the right to privacy in the digital age, examining its definition, significance in the Indian context, and its critical role in the e-commerce landscape.
- **Chapter IV** presents a comparative study of consumer privacy rights in e-commerce across different regions, including the European Union, Japan, the United States, China, and Singapore, offering a global perspective.
- **Chapter V** focuses on the Indian legal scenario, discussing the rights of consumers and the challenges posed by data privacy in e-commerce and e-banking.

- **Chapter VI** explores the Indian legal system and consumer protection in e-commerce, analyzing cases of fraud and the legal frameworks in place to combat these challenges.
- **Chapter VII** concludes the book with a summary of findings and offers suggestions for future research and policy-making.

This book is intended for students, academicians, legal professionals, and anyone interested in understanding the delicate balance between the burgeoning world of e-commerce and the fundamental right to privacy. It offers a comprehensive analysis, enriched with case studies and legal perspectives, to provide a thorough understanding of this timely and critical issue.

Warmly,  
**Dr. Chanjana Elsa Philip**  
**Ms. Tharzana P. A**

## Abstract

The Inter-Relationship Between E-Commerce and Right to Privacy: An Assessment" explores the intricate dynamics between the burgeoning world of e-commerce and the fundamental right to privacy. This book offers a comprehensive analysis of how these two spheres interact and influence each other, especially in the context of the digital age where online transactions and data exchanges are ubiquitous.

Beginning with an introduction to the core concepts, the book systematically examines the nature and scope of information technology and e-commerce. It delves into the various types of e-commerce, their benefits and limitations, and the unique position of e-consumers in a borderless market. A significant portion of the book is dedicated to understanding the right to privacy, its meaning, and its particular relevance in India.

A comparative study follows, exploring how different global regions, including the European Union, Japan, the United States, China, and Singapore, approach consumer privacy in e-commerce. This provides a diverse international perspective on the issue.

The book then shifts focus to the Indian context, discussing the rights of consumers and the specific challenges posed by data privacy in e-commerce and e-banking. It analyzes the Indian legal system's approach to consumer protection in e-commerce, highlighting cases of fraud and the measures taken to address these issues.

In conclusion, the book synthesizes its findings and offers suggestions for future research and policy-making. This work is a valuable resource for students, legal professionals, and anyone interested in the interplay between digital commerce

and privacy rights, offering insights into the challenges and opportunities presented by this intersection.

**Keywords**

*E-Commerce, Right to Privacy, Digital Age, Information Technology, Consumer Protection, Data Privacy, Online Transactions, Global Perspective, European Union, Japan, United States, China, Singapore, India, Legal Framework, Consumer Rights, E-Banking, Privacy Challenges, Internet Privacy, Cybersecurity, Legal Analysis, Policy-Making.*

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**LIST OF ABBREVIATIONS**

CPA	Consumer Protection Act
CPC	Civil Procedure Code
CrPC	Criminal Procedure Code
E-Banking	Electronic Banking
E-Commerce	Electronic Commerce
EMV	Europay, MasterCard, Visa
EU	European Union
IMPS	Immediate Payment Service
IPC	Indian Penal Code
IT	Information Technology
ITA	Information Technology Act, 2000
NEFT	National Electronic Funds Transfer
NI Act	Negotiable Instruments Act
ODR	Online Dispute Resolution
OECD	Organization for Economic Co-operation and Development
PSS Act	The Payment and Settlement Systems Act,2007
RBI	Reserve Bank of India
RTGS	Real Time Gross Settlement
SBI	State Bank of India
US	United States

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**LIST OF CASES**

1	Avnish Bajaj v. State, (2005) 3 CompLJ 364 Del.
2	DIT International Taxation, Mumbai vs. Morgan Stanley & Co. INC, Appeal (civil) 2914 of 2007.
3	Grid Corporation of Orissa Ltd. v. AES Corporation 2002 AIR SC 3435.
4	ICICI Bank Limited v. Mr. Umashankar Sivasubramanian and Others Appeal No.435/2009.
5	M/s Pachisia Plastics vs. ICICI Bank Ltd.
6	Nasscom v. Ajay Sood & Others, 119 (2005) DLT 596, 2005 (30) PTC 437 Del.
7	Sanjay Kumar Kedia v. Narcotics Control Bureau, Appeal (crl.) 1659 of 2007.
8	Shankarlal Agarwalla vs. State Bank of India, AIR 1987 Cal 29.
9	Societe Des Products Nestle S.A. Anr. v. Essar Industries and Ors, 2006 (33) PTC 469 Del.
10	State of Delhi v. Mohd. Afzal & Others, 107 (2003) DLT 385.
11	State of Maharashtra v. Dr. Praful B. Desai (2003) 4SCC 601.
12	State of Punjab & Ors. v. M/S. Amritsar Beverages Ltd. & Ors, Appeal (civil) 3419 of 2006.
13	Tournier v National Provincial and Union Bank of England, [1924] 1 K.B. 461

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## CHAPTER I

### 1.1 INTRODUCTION

*“Privacy isn’t about something to hide. Privacy is about something to protect. And that’s who you are. That’s what you believe in. That’s who you want to become. Privacy is the right to the self. Privacy is what gives you the ability to share with the world that you are on your own terms.”*<sup>1</sup>

- Edward Snowden

In the past few decades humanity has witnessed many changes and developments in various sectors. Among them the notable ones are the development of science and technology, electronics, Internet and networking. As a result of the development in Electronics, humanity shifted from an age of mechanics to the age of electronics. The development in technology and networking helped mankind to create a global connection in all the aspects of life. With all these on one side, and on the other side, the internet was becoming a common and unavoidable part of human life, that’s when the humankind shifted their focus to the concept of Electronic Commerce (E-Commerce). The term ‘E-Commerce’ is defined in Consumer Protection Act, 2019 as, ‘buying or selling of goods or services including digital products over digital or electronic network’<sup>2</sup>. The concept of E-Commerce is one major fertile soil for all the business around the world. In the last twenty years, as an impact of the Internet revolution, we could see a change in the shape and lifestyle of human situation.

E-commerce consists of the buying and selling of products or services through such electronic systems as the Internet and other computer networks. The worldwide usage of E-Commerce had also introduced a new term for consumers. They are called as E-Consumers. The term ‘E-Consumers’ can be defined as, ‘the people who buy or use the services over a digital or electronic network’. Security and privacy are the major concerns in many areas of Computer Science. Privacy is characterized according to the traditional definition as “the claim of individuals, groups, or institutions to determine

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<sup>1</sup> Tarun Mittal, Edward Snowden’s quotes on the importance of Privacy, available at <https://yourstory.com/2017/06/edward-snowden-quotes-privacy>, last seen on 12/05/2021.

<sup>2</sup> The Consumer Protection Act, 2019.

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for themselves when, how, and to what extent information about them is communicated to others". Invasions of privacy occur when individuals cannot maintain an adequate degree of control over their personal information and its use<sup>3</sup>. In the recent times of worldwide electronic communication and increasing industry pressure for standard electronic authentication, the maintenance of privacy or in other words, the right to control one's personal information becomes a subject of increasing concern. E-commerce is an open space where everyone's personal information is required for each and every process or transaction. Hence, there is an accumulation of lot of personal data in Internet. When it comes to the matter of E-commerce where the majority of human population depends on a daily basis, there should be strict layer of protection for one's protection.

The rate of E-Commerce transactions has increased extra ordinarily with the widespread of Internet usage in last few years. At the same rate the risks and issues related to E-commerce were also increasing. It is to be noted that, the right to privacy is particularly important in e-commerce and in the recent times the privacy protection for consumer transactions has become more and more important in the platform of E-Commerce. The increasing concern for privacy at the consumer and governmental levels is a gentle reminder for use to set out to examine how regulatory efforts and existing measures adopted can protect the right to privacy in an electronic platform. Among the reasons which have contributed to the growing awareness and concern about the invasion of privacy in E-Commerce, include the lack of legal frameworks to counteract and prevent such an act of invasion. Even though the governments and authorities speak about the protection of consumers and the issues relating to privacy, most of these laws and regulations have only been made for the protection on general consumer rights without specific provisions of the consumer rights protection in e-commerce. This paper aims to develop the study on the legislation of E-Commerce and Consumer rights protection especially in the matter of privacy. It also includes a comparative study on relevant regulations of the right to privacy in European Union, United Kingdom and United

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<sup>3</sup> Taina Kaapu & Tarja Tiainen, Consumers' Views on Privacy in E-Commerce, Department of Computer Sciences, University of Tampere, Finland, available at <https://pdfs.semanticscholar.org/86ec/0e103a358d0caf51673f91d8a098ba8a7965.pdf> , last seen on 12/05/2021.

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States. The paper is an effort by the researcher to suggest directions for the future development of the privacy protection from a legal perspective.

## **1.2 RESEARCH PROBLEM**

Comparative analysis on right to privacy and e-commerce

## **1.3 SIGNIFICANCE**

This particular research will be an attempt to learn and analyze the aspect of Right to privacy in accordance with Electronic Commerce (E-Commerce). In this era of technology, it is important to learn and analyse that, whether all these developments are affecting the life of the people in an adverse manner. The technological advancements in the last few years had proved that, it can be a curse or a blessing and its purely based on how carefully we handle it or use it. Every remarkable invention in the history of mankind had the motive of developing the humanity and to make the life of humans simpler and faster. But as we always witness, the excessive use and blind belief of humans over technology and developments had always made a negative impact on humanity or it gave an opportunity for a few to misuse it and use it for personal gains by various forms of frauds.

Various incidents and reports all over the world indicates how badly the humanity is affected with the excessive or careless use of Internet and technology. In the case of E-commerce, it is a fertile soil for frauds who commit frauds with the help of abundant personal information of the people who use E-commerce. A study on how to tackle this issue of right to privacy is very much relevant at this point of time. The researcher here is trying to make an effort to learn and analyse the issues and risks in E-commerce and thus to find precautionary measures and make suggestions to prevent the risks and issues relating to one's privacy in E-commerce.

## **1.4 SCOPE OF THE RESEARCH**

In this particular research, the researcher is making an effort to conduct a detailed study about the issues relating to right to privacy in e-commerce. In other words, the privacy issues and risks faced by E-consumers in the platform of E-commerce. The advanced technology and its influence in day-to-day life of mankind, has benefits and negative impacts too. The adverse effects include health issues, online frauds, privacy issues like identity theft and cyber spoofing etc. This particular research will be covering the area

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of E-commerce and the issues faced by a consumer in the electronic platform. As the topic of this particular research paper is regarding the aspect of right to Privacy in Electronic Commerce (E-commerce), the researcher will be focusing only on the study of issues related to the right to privacy in E-commerce.

## 1.5 OBJECTIVE OF THE RESEARCH

The main objective of this particular research is to analyse the issues relating to right of privacy in E-commerce and to identify various types of risks involved I E-commerce. This research is also focusing on, identifying the factors which influence or challenges the use of E-commerce and to analyze the impact of these threats on E-commerce. As a part of the research to gain a clear picture of the scenario, researcher has also conducted a comparative study with the data of various countries on how they ensure the right of privacy of consumers in E-commerce. Finally, the researcher took the effort to do a critical analysis of the existing legislations in India pertaining E-commerce and cybercrimes in order to find the lacunas and how to prevent the crimes which affect the right to privacy of consumers in E-commerce platform and to suggest the need of amendment of law overcome the existing lacunae.

## 1.6 HYPOTHESIS

- Lack of trust of consumers in online shopping and E-Banking transactions due to threat to their privacy is a major hindrance in the growth of E-Commerce in India.
- The current legislature response which includes the Information Technology Act, 2000 and the Consumer Protection Act, 2019 is no strong shield to tackle various issues relating to E-Commerce is inadequate.
- In this modern era of an 'E' revolution, there is a need for amendment in the Indian Jurisprudence, for ensuring protection of Consumer Rights to prevent the frauds in E-commerce platform.

## 1.7 LITERATURE REVIEW

With the help article '*A Comparative Study on Consumer Right to Privacy in E-Commerce*' authored by '*Meirong Guo*', the researcher could acquire knowledge about, the issues relating to right to privacy in various countries especially in China. The author here also included information regarding the threats raised in E-commerce as a result of increased number of E-consumers in various countries. This article was one piece of work which influenced the researcher to do further study on the scenario of privacy

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issues and risks in various countries in E-commerce. In this particular article, when the author spoke about the risks and privacy issues, at the same time he also included the counter measures which those countries used to tackle the issues and thus protect the right of privacy of E-consumers. The researcher will be able to use this information to analyse and compare the scenario with the situation of E-commerce in India and protection of privacy in electronic platform. This study will be a great path for the researcher to come up with suggestions which can reduce or prevent the issues relating to right to privacy in E-commerce.

In the article *'The Global Governance of Online Consumer Protection and E-commerce Building Trust'*, published by *'World Economic Forum'* speaks in detail about why does privacy matter in E-commerce. The article is mainly focusing on explaining how it is important and the issues relating to it. The author here points out that, lack of awareness among the E-consumers is one big hindrance for the smooth functioning of E-commerce. The governments all over the world lack the study about the issues in E-commerce. Along with that the lack of awareness of the e-consumers makes the scenario worse and the same leads to the increased rate of frauds and other issues. This article helped the researcher to think and study about the need of privacy in E-commerce.

In his book *'An Introduction to Cyber Crime and Cyber Law'*, Prof. R.K Chaubey (Professor of Law, University of Allahabad) observes that, it is a form of Internet fraud, and it happens because, the users provide most of their personal information online, including their residential addresses. In certain cases, even more details are provided, such as bank account details. Once an identity thief has all these information, all sorts of Internet fraud can be perpetrated. This observation shows the importance of making our personal information more secure in cyber space, and thus to be sure that our information is not misused. This book helped the researcher to gain knowledge about various cybercrimes which happens in the E-commerce platform. Hence, this book was of great help for this particular research.

In the book of Ian J Lloyd, named *'Computer Fraud and Forgery'*, while explaining about the crimes in cyber world, he used a case as an example. The case was about a fraud committed by a Bank Employee in Kuwait, using the bank account details of customers. He took the details of Customers including their personal information through hacking the bank systems and he used those details to commit fraud by making fake bank

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accounts. Immediately his conduct was discovered and charges were put up against him. Here we can observe that how quick the fraudster was caught and severe action was taken. This happened because they were vigilant and existence of strict laws. But in India, unfortunately the cyber space has become a fertile land for the growth of criminals especially identity thieves. This part led the researcher to learn further more about the challenges and threats in Indian E-commerce and how effectively it is been treated and prevented in the future.

In her book *Cyber Crimes*, *Talat Fatima* had given a detailed description about the cybercrimes and various aspects of Identity Theft and it's after effects. This book has an important role in this research since the book was an important piece of information which helped the researcher to analyze various cybercrimes from a different perspective. This book also includes details about the situation of cybercrimes in India with the examples of how it's happening. The author also mentioned about the approach by the government and judiciary towards these issues.

In an online article *Identity Theft- a Critical and Comparative Analysis of Various Laws in India* written by *Shambhavi Suyesha*, it's mentioned that, after the initial step of collection of information is completed, various crimes like applying for new bank account, credit card, loans, benefits from certain government schemes, blackmailing etc are committed by the thief. But most of the times it's not reported to the Police until the information stolen is misused up to a level of one's own character assassination or causing someone's life. We can observe that most of the times identity theft or any privacy issues in E-commerce platform is not given much seriousness as it is required. This is one major cause which helps in increasing rate of crimes and issues in the digital world. This article helped the researcher to get more information and various aspects regarding the seriousness various privacy issues crime and the urgent need to prevent these threats as soon as possible.

In the book, *Indian Penal Code*, written by *Prof. S.N. Misra*, he mentioned about the various provisions in Indian Penal Code, 1860 which can be related to cyber offences and also the relationship between these provisions and the provisions in Information Technology Act, 2000. This book helped the researcher to gain an in-depth knowledge about the provisions in IPC related to this topic and up to what extent cybercrimes can be governed according to these provisions. This information made the researcher think

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further how to make suggestions to amend the existing provisions and make it adequate enough to tackle the recent issues and challenges in the E-Commerce platform. Hence, this book was a major reference during this research.

In an online article *Cyber Crime in Banking Sector* written by *Harshita Singh Rao*, the author clearly sates about the various cybercrimes and challenges faced by the Banking Sector. The author also spoke in connection with the existing legal framework in India regarding the handling of various cybercrimes and frauds which is a threat to E-banking in India. The author also mentioned in details regarding the reasons for various cybercrimes and also the impact of these cybercrimes on the banks, consumers. In this article, the researcher could find a detailed case study and examples of various major cybercrimes happened in India including the first ATM card fraud in India which happened in Chennai. The author as a suggestion said that the general population should be educated properly in order to realize the situation and forthcoming dangers and the people should also start reporting the cybercrimes even if it's not a major issue or if it's a claim of small amount. These details, examples and suggestions were really a great piece of information for the researcher in this particular research.

In online article '*Cyber Law & Information Technology*' written by *Talwant Singh* (Addl. Distt. & Sessions Judge, Delhi) the researcher could find famous cases related to E-commerce frauds and other cybercrimes. In the beginning of this article the author states that law professionals understand the law, criminal mindset, gathering of evidence and bringing an offender to justice and an IT professional understands better about network and its vulnerabilities. Hence, law enforcement agencies and computer professionals have an equal role in tackling cybercrimes in E-commerce platforms. In the further part, the author mentions in detail regarding the increase in number of cybercrimes in India and the decrease in complaints filed regarding these crimes especially in E-commerce platform. The case studies and examples in this article helped the researcher in getting a clear picture of issues faced by the online consumers in India and also various other challenges. Hence, this article played an important role in this particular research.

In an online article '*ODR and E-Commerce in India*' written by '*Pankhudi Khandelwal and Samarth Singh*', the authors clearly spoke about the current scenario of Online Dispute Resolution (ODR) methods all over the world and in India. The authors here

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tried to point out the perks of ODR methods if introduced in a major scale in India. This concept actually helped the researcher to frame few suggestions on how it can be implemented in India. For the same reason the researcher further did a comparative analysis of India and various other countries which follow ODR methods. Surprisingly, the researcher could find that, according to the data available, in most of the countries within a short period of time ODR methods were accepted by the population and it was very much effective in solving the disputes arising in E-commerce platform. This article gave a new dimension of thought for the researcher to analyze how to make effective changes in the existing Indian scenario regarding the E-commerce disputes and privacy issues in Indian E-commerce. Hence, this article was a major part of this particular research.

## **1.8 RESEARCH METHODOLOGY**

The researcher here opted to use Doctrinal method of research for the collection of information required for this particular research. Reference of books from the library and online reference will be used by the researcher to analyze the topic of the research and to acquire more knowledge about various aspects of the research. Since, the research is on the topic related to E-commerce; the researcher will have to depend upon online sources to extract the information. Hence, various articles and online journals will also be referred as part of reference for collecting data regarding the topic which is necessary for the research.

## **1.9 CHAPTERIZATION**

1st Chapter – Introduction and the Motive of the Research

In this chapter, the researcher discussed about the introductory part of this particular research and the motives for the selection of topic and further research. Along with it, the researcher had mentioned about the Research methodology, Scope, Objectives and Significance of the Research. A detailed review of the literature is added on the basis of the materials referred by the researcher for this particular research.

2nd Chapter - Information Technology, E-Commerce and Cyberspace

The researcher in this chapter had made an attempt to explain the basic parts of the research and also to include the technical aspect and definitions of various terms including Information Technology, E-Commerce and Internet. For having a clear picture

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of the further chapters the researcher also added the historical development and the recent shift to E-Commerce from the conventional method of Commerce.

### 3rd Chapter – Importance of Right to Privacy in the Digital Age

The researcher in this chapter included a detailed discussion regarding the importance of right to privacy in this digital age. Along with that to make a clear picture, the shift from offline platform to the platform of E-commerce is also discussed. The researcher took the effort to discuss about the right of privacy and its various characteristics and how does it matter especially, relating to the aspect of the topic of research that is, E-Commerce.

### 4rd Chapter – A Comparative Study in Right to Privacy in E-Commerce

In this chapter the researcher included a detailed comparative study on the right of privacy in various countries. It will include the information regarding the legal framework in UK, USA, China and Japan. This researcher also added a discussion regarding the influence of various International Instruments which made an impact on the Indian legal system.

### 5th Chapter – The Rights of Consumers in Indian Legal Scenario & Data Privacy Challenges in E-Commerce and E- Banking.

The researcher conducted a detailed study on security and data privacy challenges in online social networks and in the platform of E-commerce in this chapter. This chapter also covered various issues relating to mobile banking and online shopping in detail. The researcher had also covered various examples and famous cases of fraud which happened in India which is related to E-Commerce.

### 6th Chapter - Indian Legal System & Consumer Protection in E-Commerce

In this chapter, the researcher covered the discussion about the existing legal frame work in India regarding the protection of right to privacy and other rights of the consumers in the world of E-Commerce. This chapter also covers aspect of the changing approach of the judiciary towards E-Commerce. A detailed discussion and analysis is made regarding various legislations in India including the Consumer Protection Act, 1986 and the Information Technology Act, 2000 (2008). This was done to find out the lacunas and

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grey areas in these legislations and to make suggestions to make it adequate enough to tackle the issues related to privacy in E-Commerce platform.

### 7th Chapter – Conclusion and Suggestions

In this part of the research, the researcher included an analysis of all the chapters and combined all the information to come to a conclusion and to answer the statements mentioned in the hypothesis. After a thorough analysis of all the chapters and conclusion, the researcher made an effort to provide few suggestions which can bring a change if implemented in the Indian Legal System regarding the protection of consumer rights in E-Commerce.

## CHAPTER II

### INFORMATION TECHNOLOGY, E-COMMERCE AND CYBERSPACE

This chapter traces the impressions of advancement of Information and Communication Technology in the lap of the cyberspace. In this aspect it elaborates the significance of e-commerce in an online market of Indian economy. It features the rise of new environment for Indian commerce that is 'e-commerce' which has been consumed by Indian economy in 21st century. It proceeds to exhibit the e-commerce, its essential structure, its different types, characterization, attributes, its effect on Indian marketing and entrance of consumers in borderless market. The focal point of this study is to mirror a reasonable and elaborative image of new platform of online shopping in 'e-Market' and its impact on consumer behavior or conduct. The significant issue here is to give an outline of changing aspects of Indian business from 'physical commerce' to 'e-commerce'.

In the time of the new millennium, the Information and Communication Technology (ICT) has influenced the whole society. In the field of Information and Communication Technology the world has entered in an unprecedented period of an unparallel transformation wherein the universe is directed by the 'Cyberspace'. Information Technology is one of the quickly developing technologies across the globe. Information islands are currently being associated by digital highways using advanced and well-equipped communication technology. Information Technology is, thus, advanced out of the marriage between two flexible innovations specifically, Computer and Communication technologies. Information Technology speaks to the fourth era of human communication, after sight, oral and written communication and it has opened vistas for creating total new business modules so as to encourage and speed up cutting edge business transactions. The present universe is encompassed by the intensity of new mantra to be specific Information Technology. By chanting this mantra, the entire world has already become a global village. With the presence of Information Technology (IT) a large number of nations have exchanged over from paper-based commerce to e-commerce and from paper-based governance to e-governance. The momentous improvement in the economy has been the geometric development of trade, commerce

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and marketing in the business world in the lap of cyber space<sup>4</sup>. The cutting edge for business today is e-commerce and surely one of the authoritatively proclaimed targets of the Internet. E-commerce is a trade revolutionized by the Information Technology. The way of thinking behind the Indian economy has changed into a new idea that is the digital economy. The digital economy is likewise now and then called the Internet Economy or Web economy. Right now, digital networking and communication infrastructures give a worldwide platform over which individuals and associations devise procedures, interact, communicate, work together and search for escalated data. The computerized economy has assisted with making an economical revolution, which is apparent by remarkable economic performance and it is demonstrated as the longest time of continuous economic expansion in history. With the creation of the web technology, economy has altered from B-Commerce (Bania Commerce) to e-commerce (Electronic Commerce).

At the point when the Internet tsunami had hit the business sector, it turned everything else into history. These days, if a company name doesn't end with '.com', it is considered as a remain of the old economy. The Internet as a business element has made some amazing progress in a brief timeframe; however, its specialized advancements stretch more than four decades. Rise of the Internet as a huge open coordinate with a huge number of individuals associated online has offered lift to another intelligent e-market for buying and selling. For marketers in the online world, it is required to scrutinize the importance of conventional models and epitomize new ones rapidly changing and growing business and social environment. The powerful shield of Internet technology led to a digital revolution and this connection of computer networks has given birth to Cyberspace.

The twentieth century has seen Information Technology rise as the most prominent innovation which revolutionarily affects the lives of the individuals all over the world so much that the world has truly become a global village. Information Technology is the combination of two aspects: Information and Technology. Information and Technology is more over considered as a nervous system for an organization. It is an important resource that must be planned, arranged, secured, protected and controlled as other

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<sup>4</sup> J. Christopher Westland and Theodore H.K. Clark, *Global Electronic Commerce: Theory and Case Studies*, 4 (2001).

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valuable resources or assets, such as, people, money, material, machine and different facilities and so on. Overseeing information includes proficient way to deal with manage the global dynamic intelligent and interactive environment. The term 'Technology' originated from the Greek word "technologia" - It is a blend of two terms i.e "techne"+ "logia". If we solidify these phrasing then, "techne" signifies skill, craft or art and "logia" signifies comprehension/understanding of something or as a branch of knowledge. According to this aspect, term 'technology' has consistently referred to the procedure and practice of getting things done, understanding things and creating knowledge. Technology alludes to material articles for use to mankind, for example, machines, utensils or hardware, as well as broader themes, including frameworks, strategies for organization and techniques. The term expresses that so as to achieve information it is need of the hour to furnish with technique to evoke that knowledge. Information Technology has approached for dealing with the significant data in the lap of computers. This new innovation combined with a motivation to explore has generated a relentless mass migration of innovativeness decreasing time and separation by distance on the globe.

## **2.1 Nature and Scope of Information Technology**

When looking through a wider aspect, Information technology is concerned with all aspects of managing data and processing information, especially within a company or a large organization because computers are central to information management. Most of the companies and universities have computer departments within itself and its called as IT departments. It includes databases, computer software, hardware, and programs, semiconductor chips that put together process and produce the output. The outputs can be in the form of print or in machine readable form. Information technology is a system which includes hardware and software that capture, process, exchange, store and then present information using, electrical energy<sup>5</sup>. It also includes networking of computers exchanging of databases and feeding of information between one another. Basically, Internet is connecting computers all over the world and thus exists as the heart of Information Technological development. According to the words of Debra L. Shinder, Internet is like a glen thread which gives live to sustain the movement of information

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<sup>5</sup> Pelin Aksoy and Laura DeNardis, Introduction to Information Technology, 12 (2006).

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from a computer to another computer<sup>6</sup>. The telecommunication when combined with computer has paved the way to the latest breakthrough in the field of communication technology.

In our day-to-day life, Information technology has a very big role to play. Its most evident when we look into the sectors like railways, communications, airlines, banks, universities, companies, schools and above all that in our own homes in a way that its inseparable. In this modern world, all aspects of human activities are depended upon and governed by cyberspace. The arising of Information Technology has led to a dawn of new era in today's economy where the key factors are Internet and Digital Computers. Advancements in data and technological innovations in the most recent decade have essentially changed lives and gave new chances to consumers and organizations<sup>7</sup>.

### **2.2 E-Commerce – A New World of Business**

In the last two decades we could witness rapid advancements in modern global economy which is actually a consequence of continuing electronic, technological and scientific advancements. The concept of globalization, economy and the various means of accessing of the market have given a new dimension to the concept of e-commerce. The technologies which are related or associated with the e-commerce have made a revolution in the process of business<sup>8</sup>. In simple words, E-commerce can be explained as, enabling existing business processes to conduct transactions over the Internet. It is actually a new doorway for the consumers across the globe increase profits, improves the efficiency and above all it delivers better customer services.

A business transaction in which the parties use electronic medium to interact rather than through physical exchanges or direct contact is termed as E-commerce. The term E-commerce is the application of information technologies for internal business processes as well as activities in which a company involves during commercial activity such as globalization, enhanced productivity, sharing knowledge across institutions for competitive advantage and for reaching to new customers. It's basically buying and selling of goods and services through Internet. This new concept of E-commerce helps in the process of conducting traditional commerce through new methods of transferring

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<sup>6</sup> Debra L. Shinder, Computer Networking Essentials, 37 (2002).

<sup>7</sup> United Nations Conference on Trade and Development, 'Consumer Protection in Electronic Commerce'

<sup>8</sup> Kamlesh K. Bajaj and Debjani Nag, E-commerce: The Cutting Edge of Business, 7 (2000).

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possessing of information. However, E-commerce is limited to the aspect of transaction process and it does not include all range of functions and applications of a company<sup>9</sup>. E-commerce has wide possibilities since the Internet has made its access available twenty-four hours a day and seven days a week, anytime and anywhere.

### 2.3 E-commerce - Definitions

The term '*E-commerce*' was defined by *R.T Wigand* as, "The seamless application of information and communication technology from the point of its origin to its endpoint with the entire business processes conducted electronically and designed to enable the achievement or accomplishment of a business goal. These processes may be complete or partial and may include business to business, business to consumer and consumer to business transactions."<sup>10</sup>

E-commerce was defined by *European Union* as, "A general concept which covers any form of business transaction or data exchange executed by the use of information and communication technology, between the companies and their customers, or between companies and public administrations. E-commerce incorporates electronic trading of merchandise, services and electronic materials".<sup>11</sup>

*The World Trade Organization's (WTO) in its Ministerial Declaration* defines e-Commerce as, "the production, distribution, marketing, sales or conveyance of goods and services by electronic methods". The six essential instruments of E-commerce that have been perceived by WTO are fax, phone, TV, electronic payment and cash transfer systems, EDI (electronic data interchange) and the Internet."

*The European Commission* defined that, "E-commerce envelops more than the purchase of goods online. It incorporates a different arrangement of loosely defined behaviors, for example, shopping, browsing the Internet for goods and services, gathering data about things to buy and finishing the transaction. It additionally includes the satisfaction and conveyance of those goods and services and inquiries about the status of orders. Like any other supported business activity, it additionally implies consumer satisfaction

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<sup>9</sup> D. Kind, E. Turban, M. Warkentin, Lee and HM Chung, *Electronic Commerce- A Managerial Perspective*, 22 (2002).

<sup>10</sup> R. T Wigand, *Electronic Commerce: Definition, Theory and Context*, 6 (1997).

<sup>11</sup> *Electronic Commerce, WTO*, available at [https://www.wto.org/english/tratop\\_e/ecom\\_e/ecom\\_e.htm](https://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm) last seen on 13/05/2021.

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surveys, capturing data about consumers and keeping up consumer databases for marketing promotions and other related exercises."

E-commerce was defined by the *Gartner Group*<sup>12</sup> as an evolving set of:

- a) Business procedures planned for upgrading connections among undertakings and among people and ventures using information technologies;
- b) Home-grown or packaged programming applications that connect numerous endeavors or individual purchasers to consumers to lead business;
- c) Technologies and tools that empower these applications, procedures and processes to be executed and acknowledged; and
- d) Business process, (for example, acquirement or selling or requests status checking or payment) that cross limits.

Hence, E-commerce is all about business transactions, regardless of whether between private people or commercial entities, which occur in or over electronic systems. The main significant factor is that the business transactions occur over an electronic medium<sup>13</sup>. It can be conducted over phones, fax machines, automated teller machines (ATMs), electronic payment systems, for example, prepaid phone cards; electronic data interchange (EDI), TV and the Internet. In nutshell, it tends to be informed out that E-commerce has made new markets where costs are more straightforward, markets are worldwide and exchanging is profoundly productive. E-commerce and Information and Communication Technology have significant social results that business leaders can disregard at their own risk.

## 2.4 Different Types of E-commerce

According to the perspectives of buyer and seller relationship, E-commerce can be classified formally into the following categories:

- Business to consumer (B2C)
- Business to business (B2B)
- Consumer to business (C2B)

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<sup>12</sup> Olive Huang, Joanne M. Correia, Praveen Sengar, The Gartner E-Commerce Vendor Guide, 2014, Gartner Blog, available at, <https://www.gartner.com/en/documents/2634115>, last seen on 13/02/2020.

<sup>13</sup> L.J. Davies, A Model for Internet Regulation, SCL Blog, available at [www.scl.org/content/ecommerce](http://www.scl.org/content/ecommerce), last seen on 13/05/2021.

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- Consumer to consumer (C2C)
- M-Commerce

## 2.4.1 Business to consumer (B2C)

B2C is the most commonly seen business model, so there are numerous methodologies under this umbrella<sup>14</sup>. Right now, online businessmen sell products and services to individual consumers. B2C represents Business to Consumer as the name proposes; it is the model taking businesses and consumers collaboration. B2C (Business to Consumer) alludes to a businessmen speaking with or offering to an individual rather than a company. When B2C begun, it had a minor share in the market yet after 1995 its development was exponential. The essential idea driving this sort is that the online retailers and advertisers can sell their items to the online consumer legitimately by utilizing perfectly clear information which is made accessible by means of different online marketing tools<sup>15</sup>. Direct association with the clients is the fundamental element of this plan of action that is not the same as different business models.

Working together online never again requires a huge investment by retailers, on account of improvements in template based online stores which are based on packaged applications that are conveyed over the Internet. As almost all online stores require the equivalent works to be specific: order baskets, catalogues, payment processing, content management and also member management. The one zone where it's significant for online stores to separate is their look and feel, and normally retailers feel emphatically about their business marking. So, the capacity to make a special 'skin' for each site is a significant part of a template-based e-store offering. Business-to-Consumer type offers customers the capacity to browse, select and purchase stock online from a more varieties of dealers at better costs. The two or more elements that interact with one another in this type of transaction include one selling business and one consumer. The selling businessmen offer a lot of products at given price, discounts, transportation/shipping and delivery choices. Right now E-commerce the sellers and consumers both get

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<sup>14</sup> J.Tyler, Traditional Types of E-commerce Business Models, Big Commerce Blog, available at <https://www.bigcommerce.com/blog/types-of-ecommerce-business-models/#four-traditional-ecommerce-business-models>, last seen on 13/02/2020.

<sup>15</sup> The Five Different Types of E-Commerce, Designzzz, available at <https://www.designzzz.com/the-five-different-types-of-e-Commerce>, last seen on 15/05/2021.

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advantage through the nonstop shopping availability from any part of the world, with expanded open door for successful direct marketing, customizations and online client support. The uses of E-commerce in the retailing sector has seen it advance from an online variant of catalogue selling to accepting orders and payments online and making of zero inventories into huge discounts on the costs of items.

The B2C model of E-commerce is suited for the types of merchandise like, goods that can be easily converted into a digital form such as books, songs, videos, and software packages. It's also suitable for items that follow a fixed standard specifications like ink cartridges, printer ribbons etc. The main advantages of B2C method are that, it makes shopping faster and convenient. Along with that, broadband telecommunications pay an important role in enhancing the shopping experience. However, there are few challenges faced by the B2C E-commerce. Challenges includes, building traffic and sustaining loyalty. Due to high competition, smaller firms find it difficult to enter and survive in the market by remaining competitive. Also, online consumers are very price sensitive so acquiring and keeping new consumers is a hard task.

### **2.4.2 Business to Business (B2B)**

B2B stands for 'Business to Business'. It comprises of biggest type of Ecommerce. This model characterizes that Buyer and seller are two unique elements. It is like seller giving products to the retailer or distributor. It is the biggest type of online business including business of trillions of dollars/Rupees. In this method, the purchasers and sellers are both business entities and are not involving an individual consumer. It resembles the manufacturer providing products to the retailer or wholesaler. It is one of the cost-efficient approaches to sell out goods all over the world. B2B is the selling between organizations, retailer and the wholesaler. Productive utilization of capital requests little inventories, which involves envisioning demand, thus keeping up detailed information that streams between all parties associated with the present complex manufacturing processes. B2B method is a significant part of any online business. Leaving aside the basic exchange of funds, numerous organizations need a combination of financial soundness assessment, guarantee of value and delivery of products, Safeguards against extortion, fast collection of funds with capacity to change the assortment collection period, Reporting: endorsement of sale, payment, delivery, installment, procedures to deal with conflicts and data of various types corporate, technical, identity building-

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must be exchanged over the scattered divisions of large organizations/companies and thus new thoughts encouraged, evaluated and disseminated.

It is one of the most practically effective methods to sell out products all over the world. Hence, to sell those items, it first buys them from various companies i.e. the manufacturer of those products. It is like manufacturer providing goods to the retailer or wholesaler. Advantages of B2B commerce are: it energizes your online business, facilitates exports and imports, helps to determine buyers and suppliers and helps to anticipate market trends. B2B method enables inter-organizational interaction and transactions. This type of E-commerce requires more than two business entities and the intermediaries in B2B method can be markets and direct service providers who helps in connecting the buyers and sellers and finalizing the deal. This method can be used to facilitate almost all aspects of interactions between organizations and companies. It can be buyer centric, supplier centric or Intermediary centric.

### **2.4.3 Consumer to business (C2B)**

It's a platform where one consumer is a resource person selling goods through an online medium to other consumers for a price. It can be defined as a form of e-commerce where; a customer fixes a specific price for a product or service and another customer has a set of required specifications and specific price for a product or a commodity and then it's the responsibility of e-commerce business entity to match the requirements accordingly. This platform enables a consumer to decide the price of goods or service offered by a company<sup>16</sup>. In this form of E-commerce, a consumer gets to choose among wide varieties of products and services. It reduces, bargaining time and also increases the flexibility thus making the trade much easier. This platform can be called as a hybrid form of C2C and B2c E-commerce. It helps consumers across the globe by providing a common meeting point and platform for the transactions. It's not so different from the auction method. There are many websites which encourages typical auction where the sellers themselves can present their goods and the buyer who uses the sites can bid for them. Some of the common E-auction websites are [www.olx.com](http://www.olx.com), [www.auctionindia.com](http://www.auctionindia.com), [www.ebay.com](http://www.ebay.com) etc. There are various other e-commerce business models which are

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<sup>16</sup> P.T Joseph and S.J, E-commerce: An Indian Perspective, 53 (2008).

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similar to C2B model like Government to Business (G2B), Government to Citizen (G2C) etc.

For the C2B relationship to be satisfied, the parties must be clearly characterized. The consumer could be any person who has something to offer a business, either a product or a service. For example, it could be a blogger, or a photographer offering stock pictures to organizations<sup>17</sup>. Brent Walker, CMO and Vice President at C2B Solutions, says the distinctive element of C2B is that clients carry an incentive to the organization. "It should include consumers co-creating new thoughts and ideas, product/service ideas and arrangements with a company through social media platform. C2B can likewise imply that a business brings customer experiences and buyer driven answers for another business as its essential assistance or value-added offering," Seeking after a C2B approach is a key decision and requires a commitment to include the consumer in business choices. This requires additional exertion, assets and discipline to abstain from being internally focused, however it is basic for a business to prevail in a consumer driven commercial world.

### **2.4.4 Consumer to consumer (C2C)**

Consumer to Consumer e-commerce is conducted on websites like Craigslist and eBay. The introduction of C2C method has helped in creating a very individualistic and independent society. Here, the consumers don't have to always depend on other organizations to conduct their own business transactions. C2C method is completely between or among the consumers only. People may have new or utilized items that they sell websites like 'olx' and eBay to another person. That is considered as a C2C exchange which additionally occurs on different sites, for example, eBay, Amazon and Google products. Ebay's site, [www.ebay.com](http://www.ebay.com), is an extraordinary case of C2C web-based business since customers are keen on purchasing a pre-owned item at a less expensive cost. That advantage, alongside the simplicity of transferring an item, picture and description, make eBay an extraordinary e-commerce model. A hindrance, in any case, is that eBay charges high expenses to rundown and sell items, and in the event that you item doesn't sell in the assigned time you should reimburse the posting charge to keep

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<sup>17</sup> K. Arline, What is C2B?, Business News Daily, available at <https://www.businessnewsdaily.com/5001-what-is-c2b.html>, last seen on 17/05/2021.

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showing your item. Craigslist is a decent other option on the off chance that you are stressed over the expenses since they don't charge any charges to list on their site<sup>18</sup>.

During the time when E-commerce was introduced, it reclassified the customary structure of business by providing small firms and individuals a similar opportunity as multi-national corporations. Thus, numerous people have set up online organizations that has energized and helped business between customers. It helps the online managing of merchandise or services among individuals. It encourages the online exchange of products or services between two individuals. In spite of the fact that there is no noticeable middle person included however the parties can't do the exchanges without the platform given by online market maker, for example, eBay. In India the famous websites are: [www.myntra.com](http://www.myntra.com), [www.quikr.com](http://www.quikr.com) and [www.jabong.com](http://www.jabong.com) etc. The service and employment sites like [www.monster.com](http://www.monster.com), [www.naukri.com](http://www.naukri.com), etc are other few examples of C2C applications. These websites provide service by helping the consumers searching for jobs. Hence, C2C method is widely accepted and its applications are increasing day by day in the world of E-commerce.

### 2.4.5 M-commerce

The term Mobile commerce, also called as m-commerce, incorporates any money related transaction finished with the help of a cell phone. It is the latest development of e-commerce, empowering individuals to purchase and sell merchandise or services from anyplace, essentially utilizing a cell phone or tablet gadget<sup>19</sup>. In the year 2017, 34.5% of total e-commerce sales were through mobile banking and that number is increasing day by day. The important aspect is that, our utilization of mobile phones is impacting our purchasing choices in any event, when we are in a physical store. 33% of our choice to buy is impacted by looking into extra data on an item through our cell phone.

An intriguing situation that has happened in e-Business is Mobile Marketing 'or 'M Trade'. M-Commerce alludes to the utilization of cell phones for completing the

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<sup>18</sup> E-commerce Models, Chris Bell Blog, available at <https://chrisbell.com/SNHU/IT-647-website-construction-and-management/ecommerce-models-business-to-consumer-B2C.php>, last seen on 16/05/2021.

<sup>19</sup> N. Ali, Your M-Commerce Deep Dive: Data, Trends and What's Next in the Mobile Retail Revenue World, Big Commerce Blog, available at <https://www.bigcommerce.com/blog/mobile-commerce/#what-is-mobile-commerce>, last seen on 16/05/2021.

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transactions. The cell phone holders can get in touch with one another and can conduct the business. Indeed, even the website design and different companies or organizations streamline the sites to be seen accurately on cell phones. M-Commerce is characterized as 'the purchasing and selling of products and ventures through remote handheld gadgets, for example, cell phones and personal digital assistants. M-Commerce empowers clients to get to the Internet without any need to discover a spot to connect giving whenever and anyplace communications. The combination of the two quickest developing communication technologies ever, cell phones and the Internet make conceivable a wide range of new administrations and make a new huge market. The developing technology supporting M-Commerce dependent on Wireless Application Protocol and Third Generation (3G) transmission technology has driven numerous to accept that M-Commerce with its adaptability has more noteworthy potential than the Internet connected with PCs. Smart phones enables quicker, personal and secure handheld communications content and payment capacities for a progressing mobile workforce. Hence, this particular research is concentrated on all the types of e-commerce and particularly on B2C and C2B where the consumers become a victim of online frauds on most of the days.

## **2.5 Advantages/Benefits of E-commerce**

The uses of e-commerce have extended quickly as a result of the rapid growth of the technology just as the advancement of networks, protocols, software and specifications. E-commerce can be credited as multi-disciplinary nature. It retains in its lap different controls like marketing, computer science, consumer conduct, consumer psychology, economy, finance, management data frameworks, auditing, evaluating, accounting, management, banking business law and numerous different issues<sup>20</sup>.

### **2.5.1 Advantages for Consumers<sup>21</sup>**

- E-commerce helps consumers to do shopping and other transactions 24 hours a day and all year around from anywhere in the world.
- E-commerce enables better and fast customer services. It also paved the way for digitalized products and ensures quick delivery of the products.

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<sup>20</sup> A complete guide on the advantage of business ecommerce, available at <https://sell.amazon.in/seller-blog/advantages-of-ecommerce.html>, last seen on 16.05.2021.

<sup>21</sup> Ibid.

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- E-commerce led to more competition in the market space and as a result discounts are available for the consumers.
- E-commerce gives more opportunities and provides consumers with more choices that they can select from a wide range of products from many manufacturers in a reasonable price.
- In E-commerce there is no necessity for a physical store space or infrastructure investment. All that is needed is an innovative idea, unique product and well-developed strategy and design to reach E-consumers.
- The products available in digital platform are highly customizable, easy to identify, revise and edit. It gives a choice to the consumers to get customized products which are matching their needs.
- E-commerce provides consumers with comparatively less expensive products and services by allowing them to shop from long distance.
- E-commerce made a platform where the consumers can interact with other consumers in e-communities and exchange or share ideas and compare the experiences.

### **2.5.2 Benefits of E-commerce for Companies and Organizations<sup>22</sup>**

- E-commerce reduces the financial burden of production, processing and distribution.
- E-commerce helps to provide improved customer services in a simplified manner, increase productivity, reduce the use of paper, reduce transportation costs and improve flexibility.
- E-commerce enables the expansion of the market place to national and also international level. Internet enables a company to easily and quickly gain more customers, efficient suppliers and best business partners across the globe.
- E-commerce enables creating a highly specialized business. It makes the process of investing and gaining back profit much faster than in physical market platform.

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<sup>22</sup> The Top Advantage of e-commerce, available at <https://www.nchannel.com/blog/advantages-of-ecommerce/> last seen on 17/05/2021.

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### 2.5.3 Benefits of E-commerce to Society<sup>23</sup>

- E-commerce creates a platform which enables the people to enjoy the products and services which otherwise are not easily available for them. It includes opportunities to learn new professions and earn an academic degree also.
- E-commerce reduces the gap between the job providers and job seekers in a general public. Human Resources can get themselves put in any organization by posting resumes through internet, some companies likewise license individuals to work from their home. E-commerce through web gives a worldwide wide system to recognize and train human resource as well.
- E-commerce enables selling of merchandise in a lower price. As a result, middle class people are able to buy more products and also to increase their standard of living.
- With the help of Internet any one can get to any data, like from the tourism to financial or any other products. Access of worldwide data at lower cost, just by snap of a catch upgrades the information on the individuals and encourages them to change into a piece of an information-based society.
- Anyone can purchase any product or service from any area through Internet without going from their particular home or work environment. Business partners can get in touch with one another from their areas. It decreases traffic and diminishes air contamination and adds to reducing of global warming
- E-commerce promotes delivery of public services like education, health care, government programs of social services etc at a very less cost and with better quality.
- E-commerce provides a chance for individuals to work at home and a more convenient way of shopping where the consumer only has to travel less and as a result it reduces traffic and thus lowers air pollution.

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<sup>23</sup> Advantages of E-Commerce to Society and Nation, Money Matters, available at <https://accountlearning.com/advantages-e-commerce-society-nation/>, last seen on 17/05/2021.

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## 2.6 Disadvantages and Limitations of E-Commerce<sup>24</sup>

- Sellers need special web servers and different infrastructures, along with the network servers. The vast majority of the software development tools are yet developing.
- In the majority of the nation's telecommunication bandwidth is inadequate that is a most noteworthy obstacle in the advancement of E-commerce.
- It is difficult for clients to trust on unknown faceless merchant/seller, paperless exchanges and electronic money transactions.
- The data protection and Integrity of the system that deals the data are very serious issues. Various forms of viruses are a major threat. The risk of hackers getting to delicate records and passwords adds more threat to E-commerce.
- The consumers have entered into new commercial centre from physical market to Virtual digital market.
- In a perspective, the electronic market seems, by all accounts, to be an ideal market, where sellers and buyers across the globe share data and trade without the help of intermediaries. But, a more critical look demonstrates that new kind of intermediaries are existing in E-commerce in particular electronic malls that ensure products quality, Internet service providers, and the certification authorities to guarantee authenticity of domain names. Every one of these intermediaries adds to a transaction cost.
- The expense of creating e-commerce in-house can be exceptionally high in the cities where Internet connections are comparatively weaker.
- There is privacy and security threat in the B2C (Business to Consumer) platform. The E-commerce industry has an extremely long and troublesome errand of convincing clients to the point that online transactions and their privacy are very secure.
- There exists a lack of reliability, system security, and some other communication protocols.
- Numerous legal issues like security, privacy, fake websites, theft of personal data, fraudulent e-mails and e-Banking frauds are a few issues which are yet remaining unresolved and government guidelines are not refined enough.

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<sup>24</sup> 16 Disadvantages of E-commerce, available at <https://www.marketing91.com/disadvantages-of-e-commerce/>, last seen on 18/05/2021.

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- Relatively few companies understand that even an e-Business can't survive for a long time without loyal clients or customers. In the platform of e-commerce, customer loyalty is a fundamental issue.
- There exists a lack of reliability, system security, and some other communication protocols.
- Numerous legal issues like security, privacy, fake websites, theft of personal data, fraudulent e-mails and e-Banking frauds are a few issues which are yet remaining unresolved and government guidelines are not refined enough.
- Relatively few companies understand that even an e-Business can't survive for a long time without loyal clients or customers. In the platform of e-commerce, customer loyalty is a fundamental issue.

### **2.7 E-commerce: A new dimension for E-consumers in Borderless Market**

It's a fact that most established companies are a hybrid version of the old and the new just as today's economy which is a mixture of old and new. The same way, these days consumers are sort of getting interested in this hybrid form of the market. People do make use of the privileges of online shopping but still use the stairs for human interaction and a different shopping experience. However, it is a fact that in the global world, e-shopping has been very much embraced by buyers wherein consumer is not a King. In the platform of physical market, customer utilizes his five sense organs like: Eyes, Ears, Skin, Nose and Tongue to inspect an item. The Internet is presently equipped for fulfilling just two senses: Eyes, Hearing (understanding remarks and audits posted by clients). Because of the lack of privacy, security and trust, this kind of e-commerce has high chance of a premature death. The establishment of e-commerce has been reinforced by service-oriented items like: lodging booking, travel tickets, online advertisement of matrimonial and Sale and Purchase of products. In reality, a purchaser goes into shop, chooses product and hands over cash in return for the products which he is taking. The risks are less, and regardless of whether things turn out badly, consumer can usually go for the exchange of defected products<sup>25</sup>.

However, in trading over the Internet, things are not very simple: The fantasy of virtual dealer can abruptly turn into a nightmare. On one side, where Information Technology runs like a golden string in e-commerce, on the other hand, it is being misused by

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<sup>25</sup> Supra 21.

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exploiting the privileges of e-consumers through fraudulent advertisements, very tempting offers, bogus price quotations and malignant data, jurisdiction clashes at the hour of e-contracts across nations and absence of worldwide e-commerce guidelines etc.

This particular chapter mainly focused on the nature of commerce in a totally new aspect of cyber market. It can be noticed that, Information Technology is evolved out of the combination of two different technologies namely, Computer and Communication technologies. The advancement of e-commerce in this era is supported by the development of the Internet. E-commerce succeeded in creating a new market place where prices are more transparent, markets are worldwide, and efficient trading. E-commerce and Information technology are two factors which the modern business tycoons can't ignore. In this chapter, it's revealed that in this new digital economy, there is a direct relationship existing between 'Consumer Protection' and 'development of e-commerce' in an online market for the general development of the Indian economy. To ensure the sustainable development of Indian economy, government should actively consider the issue of protection of rights of consumers in e-commerce, especially the right of privacy in their policies. The sad and scaring fact is that, along with the development of digital economy, there is an increasing division between the profit and consumer rights in the digital platform. The purpose of this research is not to focus just on e-commerce development but specifically on protection of consumer rights. Since the consumers have entered in a new market platform, the chances of being exploited have also increased. Hence, the face of market has been transformed from physical to digital economy, the same way the models of shopping also witnessed a change wherein the consumers face risks and new challenges every single day.

## CHAPTER III

### IMPORTANCE OF RIGHT TO PRIVACY IN THE DIGITAL AGE

*“Information Technology and Business are becoming inextricably interwoven. I don’t think anybody can talk meaningfully about one without talking about the other.”*

Bill Gates

#### 3.1 Meaning of Right to Privacy

Every human being's right to privacy is unavoidable. Humans have an exclusive ethical, intellectual, and creative need for privacy<sup>26</sup>. As it also refers to the state of being away from other people's sight or interest, privacy guarantees the security of one's personal affairs. Over the years, scholars from different fields have attempted to describe what privacy really entails.

Black’s law dictionary defines right to privacy as “to be let alone or the right of a person free from unwarranted publicity<sup>27</sup>”. In the case of Sharda and dharpal the supreme court of India defined right to privacy as “the state of being free from intrusion or disturbance in one’s private life or affair”<sup>28</sup>.

Edward Bloustein defined privacy is an interest of the human personality. It protects the inviolate personality, the individual's independence, dignity and integrity<sup>29</sup>.

For a limited time, privacy allows a person to withdraw from society. It preserves the person's uniqueness. In these periods of isolation, people are more likely to cultivate their feelings and beliefs<sup>30</sup>.

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<sup>26</sup> Mozika, Jyoti J. (2013). Law and Protection of Right to Privacy.

<sup>27</sup> 11th edition, BRYAN A. GARNER, BLACKS LAW DICTIONARY 405(Thomas Reuters west 2019)

<sup>28</sup> supra 1

<sup>29</sup> Privacy as an Aspect of Human Dignity, (1964). 39 New York U.L.R. 962 at 971 cited in Privacy and Human Rights - An International Survey of Privacy Law and Practice available at <http://gilc.org/privacy/survey/intro.html> last seen on 15/05/202.

<sup>30</sup> John B Young, Privacy 4 (Chichester, Wiley, New York, 1978)

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In its broadest sense, the definition of privacy encompasses a variety of possibilities such as nondisclosure of records, sexual relationships, business secrets, and no observance by others. It may be argued that privacy is the polar opposite of publicity; for example, if someone publishes a person's private letters without his express or implied consent, his privacy is breached. In the same way, if a neighbor peeps into one's house from the outside, it is a breach of one's right to privacy. As a result, privacy is a condition of separation from others. In general, privacy refers to the right to be left alone.

### 3.2 Right to privacy in India

Right to privacy was not recognized as the fundamental right under Indian constitution, but the Supreme Court has given wider interpretation to Article 21 of the constitution and held that right to privacy is a fundamental right and it is an integral part of the right to life and liberty. The right to privacy is gotten from the English law which states that "Every man's house is his castle"<sup>31</sup>. It ensured the individual from any sort of unwanted interference in one's life by the public where general society isn't really idea of right of privacy in India and truly developing need to keep up and protect the privacy of the people.

The articles that envisage different aspects of privacy under the Indian constitution are Article 19, Article 20(3), Article 21, Article 23, Article 25.

In the case of *District Registrar and Collector v. Canara Bank*<sup>32</sup>, the Supreme Court of India eloquently describes the limits of permissible privacy intrusion by basing it on the doctrine of proportionality and redrawing the boundaries of the right to privacy by enabling fair and justifiable intrusion by administrative and judicial representatives. In this case, the Supreme Court struck down Section 73 of the A. P. Amendment to the Stamp Act, 1899, which allows the inspecting authority to go on a house-to-house search and seize documents that are missing a stamp. The Court strengthens the foundation of privacy against government interference with this decision.

In plethora of cases, the Supreme Court upheld the American Philosophy of physical protection against police surveillance and domiciliary visits at night, despite a minority

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<sup>31</sup> Vikas Chaudhry, INTERNATIONAL JOURNAL OF EDUCATION & MANAGEMENT STUDIES, 6(4), 454-456 available at [http://www.iahw.com/index.php/home/journal\\_detail/21#list](http://www.iahw.com/index.php/home/journal_detail/21#list) (last seen on 15/0/.2021).

<sup>32</sup> Registrar and collector v. Canara Bank (2005) 1 SCC 345

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opinion. In a minority judgment in the case of *Kharak Singh v. State of U.P.*<sup>33</sup>, Justice Subba Rao states that a person's home, where he lives with his family, is his castle, and that nothing is more detrimental to a man's physical happiness and he should be allowed to live in it.

Unauthorized collection, use, and access to an individual's biometric data can also constitute an invasion of bodily privacy. That is precisely the question before the Supreme Court in the case at hand *K. S. Puttaswamy v. Union of India*<sup>34</sup>. In this case, the petitioner challenged the constitutionality of the Aadhar project, which seeks to create a database of every Indian's personal identification and biometric information, on the grounds that there is a high risk of private entities misappropriating such sensitive personal information, which would pose a serious threat to physical privacy. Justice D. Y. Chandrachud analyzed the concept of privacy as being founded on autonomy and essential aspect of dignity. He opined that *"dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects individual a zone of choice and self-determination."*<sup>35</sup> The petitioner's argument was accepted by the highest court. The Supreme Court upheld that the right to privacy is the most prized right, ensuring individuals' autonomy and integrity, and that any legislation enacted would affirm the privacy standards recommended by the Expert Group on Privacy to ensure privacy security.

The *R. Raj Gopal v Tamil Nadu* case is a key decision on freedom of expression and of privacy. It represents an important point of view. The decision in the case was that it was impossible for a State to stop an article being published simply because it could cause the State to become defamed. Prevention such as that is a prior restraint that is illegal and unreasonable. Consequently, once the article is published, the only recourse of the State would be for defamation. Infringement of any other fundamental right is

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<sup>33</sup> *Kharak Singh v. State of U.P.* AIR 1963 SC 1295

<sup>34</sup> *K. S. Puttaswamy v. Union of India* decided on 26 September, 2018

<sup>35</sup> <https://inforrm.org/2017/09/04/case-law-india-puttaswamy-v-union-of-india-supreme-court-recognises-a-constitutional-right-to-privacy-in-a-landmark-judgment-hugh-tomlinson-qc/> last seen on 15/05/2021.

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implicitly part of the restrictions in accordance with Article 19 (2). Infringement of the right to privacy is therefore part of the constraints<sup>36</sup>.

When we look into the aspect of communication, Interception of communications in the public interest or for national security reasons is a typical example of privacy infringement. Telephone tapping is not only an infringement of privacy, but it also compromises citizens' freedom of speech and expression, as well as their right to life and personal liberty. The Supreme Court held in the well-known case of *People's Union for Civil Liberties v. Union of India*<sup>37</sup> that "telephone contact is an important aspect of man's private life." Telephone conversations are always confidential, and any rational person would expect such contact to be kept private. As a result, illegal phone tapping is a significant violation of an individual's right to privacy, which is enshrined in Art. 21 of the Constitution as part of the right to "life and personal liberty."

The way people communicate and share information has changed significantly as a result of advances in communication and information technology. People frequently use the internet for any type of transaction, whether it is a financial transaction, sending mail, or shopping for everyday necessities. This type of online transaction allows numerous public and private entities to restore a large amount of personal data. Every time we log on to the internet, we leave an electronic trail, and websites and online sites often monitor users in order to gain access to their personal interests, behaviors, and lifestyles, as well as to apply their marketing policies to individual customers. The availability of a large amount of data on the internet often leads to data abuse, unauthorized access, fraud, and identity theft, among other things, all of which compromise privacy and cause significant harm to individuals. In *Vinod Kaushik v. Madhvika Joshi*<sup>38</sup>, the Delhi High Court relied on Sec. 43 of the IT Act to interpret the term "unauthorized access" and invoked Sec. 66-C for conviction in a case involving the wife's unauthorized access to the husband's and father-in-law's accounts. Another heinous form of privacy invasion is electronic voyeurism, which involves the use of hidden cameras.

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<sup>36</sup> *R Ragapol v. state of Tamil Nadu* 1995 AIR 264.

<sup>37</sup> *People's Union for Civil Liberties v. Union of India* AIR 1997 SC 568

<sup>38</sup> Appeal No. 2 of 2010, decided on 29-6-2011

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Information or data protection refers to limitations on the collection and use of personal information. Information about an individual and sharing that information with a third party without the respective person's authority or consent is a very sensitive issue and a gross breach of one's right to privacy and personal life. Individuals, associations, and institutions all demand informational privacy. In India, the Indian Evidence Act of 1872, the Information Technology Act of 2000, the Medical Council Act of 1956, and other laws protect personal information.

Sensitive personal information is protected under the Information Technology Act of 2008. For the first time in India, the IT Rules of 2011 define 'sensitive personal data.' According to the Rules, a body corporate gathering such sensitive personal data must obtain written permission from the data provider. This information can only be obtained for a lawful reason related to the body corporate's operations. The body should also make certain that the data provider is informed that certain information is being collected. The provider should be informed of the reasons for the collection of such information, as well as the identities of those who will obtain it.

In certain instances, privacy is seen as a conflicting concern with certain constitutional rights, such as freedom of speech and expression and access to information. One of the most prized rights of any citizen in a democracy is freedom of speech and expression. This liberty allows an individual to express his emotions and exchange ideas. It plays a crucial role in the operation of the democracy. The right to privacy, on the other hand, limits freedom of speech and expression when it creates an unfair intrusion. Although freedom of expression allows for open debate on public topics, the right to privacy protects an individual's identity from being made public.

However, the conditions of the balance must be proportionate to the interests while balancing the right to privacy against other conflicting rights in the interest of society. In other words, the degree of invasion of privacy must be proportional to the goal desired, so that it can be given equal weight with other rights. To determine the manner of invasion of privacy and the balance of necessary considerations for the satisfaction of public interests, a proportionality test must be used. It's worth noting that, by applying the proportionality test, the judiciary assumes the burden of all such scrutiny and evaluation.

### 3.3 Why does Right to Privacy Matters in E-commerce?

Since the mid-1990s, e-commerce has become a significant element of business all through the world. In any case, obstacles to internet business do even now exist, remarkably in a universal context for consumers. Cross-border e-commerce represented only 7% of absolute online business-to-customer (B2C) sales in 2015, as indicated by the United Nations Conference on Trade and Development (UNCTAD), while business-to-business (B2B) speaks a lot of developing \$25.3 trillion e-commerce market. One significant constraining element in both developed and developing economies is the perception that cross-border online transactions and conveyance or delivery are less secure, and remedies don't exist for when something turns out badly<sup>39</sup>.

Generally speaking, trust among consumer and supplier or retailer is a greater issue online than in offline trade. There is normally restricted face-to-face or personal contact, yet products and services are bought. Customary shopping gives a social context that encourages the transaction. It generally includes a simultaneous exchange of products and cash, interactions with staff and "visual cues", which license the consumer to test the retailer or suppliers' professionalism. On the other hand, online transactions are "extended over space and time", and "dis-implanted" from a connection of individual trust and physical presence. Though virtual reality may help, the experience of online transaction clearly has a few contrasts from traditional forms.

In this environment, consumers are approached to reveal delicate data and individual information either to a retailer, online intermediary or digital platform. Credit card details can be hacked or individual identification leaked<sup>40</sup>. At the point when individual information related stories stand out as truly newsworthy, consumers might be deterred from going into e-commerce transactions in the future. Expanding quantities of "mobile-only" consumers and other new technologies, for example, electronic gadgets may raise new security and data treatment issues. Various governments have given guidelines to address online consumer and data protection, extortion and related issues of rivalry

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<sup>39</sup> The Global Governance of Online Consumer Protection and E-commerce Building Trust, weforum, available at <https://www.weforum.org/events/world-economic-forum-annual-meeting-2020>, last seen on 11/05/2021.

<sup>40</sup> Hayun Kang, Regulating Data - a Korean Perspective, Korea Information Society Development Institute Blog, available at <https://www.pecc.org/resources/trade-and-investment-1/2201-regulating-data-a-koreanperspective/file>, last seen on 11/05/2021.

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within their jurisdictions. Some depend on autonomous administrative bodies, for example, consumer protection, data protection or competition authorities, with the assignment of overseeing sound online markets. The expected outcome is boost of trust. Independent regulatory bodies' capacity to authorize any opportunistic behavior can likewise fill in as a system to manufacture more significant levels of trust. In certain nations, a different payment regulator is additionally set up that may address consumer issues identified with digital payments. In other cases, calls have been made to build up a particular e-commerce regulatory authority.

The trouble of developing sufficient online trust increases when cross-border transactions are made especially in the event that one of the parties to the exchange is from a jurisdiction with a high rate of incidence of counterfeits or a weak rule of law. In the event that consumers see that they don't benefit by a similar degree of assurance or have access to equivalent remedies in a foreign market –, for example, returns, the proper handling of delicate personal information or sufficient e-payment security – their trust in cross-border may diminish.

The unawareness or lack of knowledge with another country's legal system or framework for consumer and data protection may also affect trust<sup>41</sup>. In some cases, consumers may not be aware that they are shopping online across borders, potentially leading to damaged trust if issues arise. Various rules on customs procedures, duties, taxes and acknowledgment of e-signatures that include complexity may similarly fuel buyer discomfort with international e-commerce. It ought to be noted, obviously, that evaluating the effect of administrative difference on the degree of trust is a complex exercise. Care is expected to recognize legitimate/institutional components that are probably going to influence the degree of trust in e-commerce and other socio-cultural and economic factors at play. Low levels of cross-border trust affect export opportunities, especially for small and medium sized undertakings (SMEs) in developing nations, and leads to loss of revenue sources for e-commerce platforms, payments providers and logistic firms. Alternately, less administrative dissimilarity in

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<sup>41</sup> Deepak Saxena, George Cheriyan and Amol Kulkarni, Lessons from Running a Consumer Care Center in India, Center for Financial Inclusion Blog, available at <https://www.centerforfinancialinclusion.org/lessons-from-running-a-consumer-care-center-in-india>, last seen on 11/04/2021

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online consumer protection laws can make it simpler for private ventures to participate in e-commerce in the first place.

Governments have tried to team up on these cross-border challenges. Various competitions, consumer protection or data protection organizations arrange across jurisdictions, inevitably through provincial or international economic networks and institutions. As per an OECD study, 87% of 31 economies surveyed have frameworks to empower participation related to consumer protection among national authorities<sup>42</sup>. Some preferential and regional trade agreements (PTAs/ RTAs) have included provisions on online consumer protection. These advancements have encouraged into worldwide discussions on "encouraging e-commerce", online retail and digital trade writ huge. Discussions to date have to a great extent been related, however not synonymous, with the advancement of an interoperable and non-protectionist e-commerce infrastructure<sup>43</sup>.

For some of the policy makers, the need to include consumer protection for international trade deal comes from the view that e-commerce established not simply due to the connection between a consumer and a supplier or retailer, yet is inherently identified with more extensive administration framework for cross-border e-commerce. A specific degree of "framework trust" should be created at a global scale for e-commerce to convey more chances. For various governments, new standards could explain vulnerabilities on the degree to which local consumer protection or data protection laws bind retailers together in other jurisdictions.

Obviously, governments are not the only one in attempting to handle consumer protection related issues such as the matter of privacy in cross-border transactions. Private-sector mechanisms have been created over the previous decade by online platforms expecting to improve the administration gave by their particular system or through different joint efforts. Various market-based mechanisms may likewise improve the degree of trust in online transactions – for example, robust insurance, grievance redress and guarantee mechanisms – ensuring the system trust in online transactions

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<sup>42</sup> Consumer Protection Enforcement in a Global Digital Marketplace, OECD, available at <https://www.oecd-ilibrary.org>, <https://doi.org/10.1787/f041eead-en>, last seen on 12/05/2021.

<sup>43</sup> Supra 24, 24.

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and protecting the privacy of the consumer. In future, it is possible that the increasingly decentralized technological solutions will create, ensuring consumer protection and protection through distributed ledger technologies and artificial intelligence (AI). Consumer associations and networks plan to constrain difficulties and improve the e-commerce experience across the globe.

Generally speaking, consumer protection legislation means to protect the monetary interests of consumers, enable them with free and informed choice and give rights if issues arise. Administrative or regulatory instruments, embodied in legislation, can determine an obligation of data, a total prohibition of misdirecting and aggressive practices, a prohibition of unfair contract terms in specific sorts of contracts, etc. The equivalent is the situation in an online context; however legislation regularly should be updated to explain inclusion, as laid out in more detail in the following segment. Most nations around the globe have a legislative framework for consumer protection and many have found steps to cover online transactions. To some degree, this has been conveyed through "regionalization" of consumer law and policy, with coordination occurring to a more prominent and lesser degree between the EU, ASEAN and APEC, or normal methodologies by the BRICS countries (Brazil, Russia, India, China and South Africa).

At the universal level, a few advances have been made through the United Nations Commission on International Trade Law (UNCITRAL), the United Nations Conference on Trade and Development (UNCTAD), the International Consumer Protection and Enforcement Network (ICPEN), the Organization for Economic Co-operation and Development (OECD)<sup>44</sup>. In a global economy, computerized or otherwise, consumer law has fundamentally become an undeniably supranational wonder. Administrative and regulatory divergences and friction remains, however, overall administration has not kept pace with showcase advancements. Online consumer protection rules can be private, public or blended frameworks of governance. A few jurisdictions consider that industry self-regulation and market supervision by consumer associations best accomplishes online consumer protection. Here, policy makers consider that

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<sup>44</sup> Summary of Adoption of E-Commerce Legislation Worldwide, UNCTAD, available at [https://unctad.org/en/Pages/DTL/STI\\_and\\_ICTs/ICT4D-Legislation/eCom-Global-Legislation](https://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Global-Legislation), last seen on 11/05/2021.

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organizations frequently provide data, including on available forms of redress, to customers to enable informed choices. Firms publish their own discount, return and cancellation policies and regularly arrange customer feedback and assessment systems with the last being a significant attribute of peer-to-peer economy. Customer associations may flag potential infringement of rights and fraudulent or deceptive activity. Other policy makers decide to regulate in more detailed manner. Governments may adopt laws and guidelines that give e-consumers rights with respect to the return and cancellation of products and services or relating to the protection of data privacy. Governments may likewise set up various enforcement frameworks for these consumer rights: public, semi-private, and online or offline, including on the online dispute settlement strategies and procedures.

Frameworks for the protection of individual data are additionally viewed as a component of the online consumer protection toolbox by numerous stakeholders. Despite the fact that not only planned for securing consumers, given that individual data may not just relate with a B2C exchange and not all data protection subjects are consumers, the evidence proposes data protection legislation have a significant role in enhancing online consumer trust and confidence. In an online shopping survey conducted in the year 2017 by KPMG, among 18,000 consumers in 50 nations, 41% of respondents said that having control over how their personal data is utilized was bound to make them trust an organization or company, particularly in North America, Europe and South Africa<sup>45</sup>.

Although early examinations and studies found that people will perform a "privacy calculus" before unveiling data important to finish an e-commerce transaction, later stage discussion has shown that there is some cognitive dissonance between consumers' online conduct and their expressed preferences for privacy and security, leading to the "privacy paradox"<sup>46</sup>. Clients may esteem security; however, do nothing to ensure it. Recent research additionally features the limited objectivity of purchasers when playing

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<sup>45</sup> The Trust About Online Consumers – 2017 Global Online Consumer Report (2017), KPMG, available at <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2017/01/the-truth-about-online-consumers.pdf>, last seen on 15/05/2021.

<sup>46</sup> Ibid

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out this privacy calculus as it were; consumers lack expertise on the skill to think and compare the cost and benefits of sharing personal information<sup>47</sup>.

Further, regardless of privacy notices, people may not generally know about the data harvesting to which their own data is subject, as they once in a while, if at any time, read websites' terms and conditions (T&Cs) of service because of the length, legalistic language and a "take it or leave" it approach<sup>48</sup>. For need of any better other option, "tick, click and trust in the best" summarizes most customers' attitude. Through the internet of things (IoT), clients may in future permit smart gadgets to take part in online transactions on their behalf on learned preferences. A progressively deliberate utilization of digital assistants may require default or adapted consent mechanisms<sup>49</sup>. Conversely, tech advances could likewise prompt better outcomes for consumers if, for instance, AI framed by learned consumer patterns was utilized to shape consumer alliances that look for better terms.

The quick development of "data-centric" worldwide business models where the apparent hidden exchange deals in products or services for individual data has quickened debates globally on how policy-makers should approach the data privacy aspect with regards to digital business transactions. The European Union (EU) has set up a General Data Protection Regulation in Europe (GDPR) that guarantees the extraterritorial protection of data subjects in the EU from conduct occurring outside the European Union. There are additionally moves in Brazil, India and the US, among others, to introduce stronger or better data privacy rules. Few jurisdictions have developed mechanisms for ensuring the international transfer of individual/consumer data where adequate conditions are met. Discussions in this area right now, are likely to develop.

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<sup>47</sup> Trust and Risk in Consumer Acceptance of E-Services, Cutscier, available at [http://www.cutscier.org/pdf/AdvocacyCUTS\\_Comments\\_on\\_the\\_draft\\_Personal\\_Data\\_Protection\\_Bill2018.pdf](http://www.cutscier.org/pdf/AdvocacyCUTS_Comments_on_the_draft_Personal_Data_Protection_Bill2018.pdf), last seen on 15/05/2021.

<sup>48</sup> Towards Consumer-Empowering Artificial Intelligence, Proceedings of the 27th International Joint Conference on Artificial Intelligence Evolution of the Contours of AI, DOI, available at <https://doi.org/10.24963/ijcai.2018/714> last seen on 15/05/2021.

<sup>49</sup> Algorithmic Consumers, Harvard Journal of Law and Technology 2017, available at, <https://ssrn.com/abstract=2876201>, last seen on 15/05/2021.

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## CHAPTER IV

### A COMPARATIVE STUDY ON RIGHT TO PRIVACY OF CONSUMERS IN E-COMMERCE

"E-commerce" is broadly used to portray shopping on the Internet. It has been quickly developing as per the improvement of data innovation and advanced networking<sup>50</sup>. However, the idea of e-commerce is more extensive than online shopping. It includes every business exchange dependent on the electronic preparing and transmission of datum, content, sound and picture. Electronic transactions are made between an organization or a company and a customer, between various organizations or companies. While both of all raise issues of specialized security, it is fundamentally the primary exchange type that raises protection issues. Additionally, the security assurance for consumer transactions in e-commerce has become increasingly significant.

China has given some consideration to the consumer's privileges assurance from the start and established pertinent laws and guidelines to ensure purchaser rights. In any case, the greater part of these laws and guidelines have just been made for the insurance on general consumer rights without specific provisions of the consumer rights protection in e-commerce. In sharp differentiation to it, the developed nations and regions with advanced technology, for instance, EU, United States, and Japan, have set up a genuinely refined arrangement of legal protection of consumer rights<sup>51</sup>.

In the midst of universal electronic correspondence and expanding industry pressure for standard electronic validation, the maintenance of privacy (the privilege to control one's very own data) turns into a subject of expanding concern. The chance of an "invisible man" shows up generally clear in e-commerce, partly due to a lot of information accessible, mostly to the high adjustments anticipated from utilizing this information for business purposes. Thus, the privilege to protection is especially

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<sup>50</sup> H. L. Wang and S. Y. Li, Research on Some Problems of E-Commerce Law, Scientific Researcher, available at <https://www.scirp.org/journal/paperinformation.aspx?paperid=21278>, last seen on 10/06/2021.

<sup>51</sup> G. Spindler and F. Borner, E-Commerce Law in Europe and the United States, Springer, New York, (2002).

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significant in e-commerce. In this research paper, a comparative study was conducted on the most proficient method to secure consumer rights to learn more about the reality in e-commerce, comparing the applicable laws and guidelines in US, UK, China, Japan and other developed nations.

## **4.1 European Union and the Data Protection**

The EU Council of Ministers on October 24, 1995, passed the EU Data Protection Directive, which would be formally executed 3 years later. EU Council embraced the Electronic Communication Data Protection Directive, an enhancement to Data Protection Directive on September 12, 1996. In October 1998, the EU sanctioned the Personal Data Protection Act, which was additionally overhauled from the Directive of 1995. During mid-1999, the European Commission provided the General Principles on Personal Data Privacy Protection on the Internet, and afterward declared the advices on sightless and programmed personal data processing conveyed by hardware and software in Internet. Simultaneously, the EU Ministerial Conference set forward the Guideline on the Individual Right Protection managing personal data collection and preparing on data superhighway<sup>52</sup>.

Considering various degrees of the protection of individual data in the member states, the EU authorized the Directive so as to bring together these levels. One of significant highlights of the Directive is that the extent of security is extended to manual data. There are two essential motives behind the Directive: the first is to secure the fundamental rights and freedoms of an individual, particularly their right to privacy; the second is to guarantee that data is flown openly in the member states as per the general standards of free flow of goods and services<sup>53</sup>. The Directive of the EU gives elevated requirements of data protection and endeavors to dispense with data transmission hindrances in 15 member states. At the same time, so as to transmit information between the member states and a nation outside the EU, the Directive stipulates that the nation must follow the security models from the EU nations. The EU member states are not permitted to move their own data to any non-member state, until it guarantees sufficient assurance on data. The measure taken by the EU is utilized to ensure individual data and keep

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<sup>52</sup> Meirong Guo, A Comparative Study on Consumer Right to Privacy in E-Commerce, Scientific Research Blog, available at <https://dx.doi.org/10.4236/me.2012.34052>, last seen on 10/06/2021.

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little information from decimating incidentally. Besides, incidental data loss, data change, unapproved data access or exposure, just as different types of illicit operation, is secured by the measure.

The European Union declared that, it prohibited Bell, America Online, Atlantic, and other American ventures from sending consumer data over the Atlantic in 1998 as indicated by the EU Directive. This prompted a discussion on the issue of data privacy between the United States and the EU. In USA, data transfers are done by the carriers themselves, while in Europe, a fine will be imposed on the carrier who violates the data protection act. The EU and the United States agreed on individual "safe harbors", which is utilized to regulate the scope of data transfer between them. The agreement additionally discloses to American organizations the manners by which they should give a sufficient insurance to personal data within the limits of Directive. However, just few American organizations signed and vowed to consent to the agreement<sup>54</sup>.

As a result of this directive, American companies are restricted from collecting, storing, juggling, adopting, organizing, consulting or disclosing personal data collected from Europe; which means, it restricts any act of data processing. As per the directive, data controllers have mainly two obligations. The first one is to ensure the quality of data. As mentioned in Article 6 of the Directive, data controllers must ensure that personal data is processed under fair and reasonable conditions. The directive provides few principles of monitoring the quality of the data, which are utilized to control the methods of acquiring data and the accessible information type. According to the principles the data controllers should follow: they should have a legitimate purpose for data collection and also interpret the purpose; they only collect the data which is relevant to the purpose; they retain the data which is necessary to achieve the purpose; should ensure that the data is new and accurate; appropriate security measures should be considered for protecting the data; individuals should be allowed to see their own data and correct the inaccurate data and verify it; tell data collectors the current situation of personal data, the actual purpose of collecting the data and the about the third party who will accept or take over the data in the future; explain in detail that an individual must or may provide the data.

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<sup>54</sup> Supra 34, 29.

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The EU has made an attempt to streamline the judicial proceedings in order to make it more capable to tackle the disputes in E-commerce platform. It has also made changes and updated its legislation. The Directive on Consumer ADR is applicable to the procedures related to out of court settlement along with cross-border disputes and it's mostly focused on offline commerce. On 15th February 2016, the Regulation 524/2013 was introduced as a Regulation on Consumer Online Dispute Resolution (ODR), with specific ODR procedures for disputes between sellers and consumers based in European Union. It's mainly focusing on goods and/or services that are bought from an online platform, whether they are domestic or cross-border transactions<sup>55</sup>.

## 4.2 Japan's Private Data Information Processing

During the 1980s, Japan set up the "Private Life Protection Research Group", which conducted research on the issue of e-commerce consumer right to privacy. The Japanese government, in September 1982 authorized the strategies for privacy protection in private data processing, which set forward the standards for regulating the new law. The standards are made of the below mentioned four classes. The first one is the principle of restricting collection. At the point when gather the individual data, the motivation behind the collection must be clear, simultaneously, the substance of data ought to be limited to the vital data. Besides, the collection of data must be done in reasonable and genuine manners. The second is rule of limiting exploiting materials. The utilization of personal information, on a fundamental level, ought to be constrained within the extent of the collection purposes. The third rule is of personal participation. Proper measures should be taken to permit an individual to know the presence and contents of one's own data, and when it is vital, can revise the data. The latter is rule of proper management. The gathered or deposed personal materials ought to be managed by the right and new ways. Simultaneously, they ought to be kept from being taken, harmed, modified, and inappropriately circulated etc.

## 4.3 The United States: Self-Regulation Model

The United States is one among the countries across the globe where Internet technology achieved a great development. The concern of privacy protecting in United States and

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<sup>55</sup> The Global Governance of Online Consumer Protection and E-commerce Building Trust, World Economic Forum, available at, [http://www3.weforum.org/docs/WEF\\_consumer\\_protection.pdf](http://www3.weforum.org/docs/WEF_consumer_protection.pdf), last seen on 11/06/2021.

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the measures adopted are considered as the most accurate and successful in the world. The Privacy Act was enacted by the House and the Senate in 1974, which is considered as the fundamental law on privacy protection in the United States. The Act empowers the federal government agencies to collect and utilize personal information, and stipulates that government bodies can't utilize any private data without the consent of the parties. In the year 1986, the Congress passed the 'Electronic Communications Privacy Act', which is considered as the most significant act managing privacy issues of consumers in e-commerce.

The protection of right to privacy of consumers in e-commerce has been looked for through the methods of self-regulation by the E-commerce industry in the United States. The self-regulative estimates fall into four categories. The main one is constructive industry rule. For instance, in June 1986 the Online Privacy Alliance (OPA) declared its online privacy rule, which asserted the members to consent to follow and implement its privacy policy, yet it doesn't screen the performance of the members. The subsequent group is 'e-commerce privacy authentication program', which implies that private undertakings commit them to understand the e-commerce privacy protection policy. The third one is about technology protection strategy, which concentrates ensuring the privilege to security by consumers themselves. By utilizing the software technology to secure the right to privacy, consumers can be cautioned naturally before entering into the site about what data will be collected. The decision to continue or not is within the hands of the consumers. In addition, customers can choose ahead of time what information will be collected and they can pick permissible data in advance, other information outside of the choice won't be collected. The last group is called the safe harbour method, as another technique which consolidates self-regulations with legislative principles. The supposed safe harbour refers to the e-commerce privacy protection rule declared by specific online service providers<sup>56</sup>.

The United States advocates fundamentally exploit industry self-regulation to ensure right of privacy of consumer in e-commerce. But, the first priority is the legitimate

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<sup>56</sup> J. Phelps, G. Nowak and E. Ferrell, Privacy Concerns and Consumer Willingness to Provide Personal Information, *Journal of Public Policy & Marketing*, 19, 27-41 (2000) available at [https://www.researchgate.net/profile/Glen\\_Nowak/publication/247837717\\_Privacy\\_Concerns\\_and\\_Consumer\\_Willingness\\_to\\_Provide\\_Personal\\_Information/links/5743286d08ae9ace841a9788/Privacy-Concerns-and-Consumer-Willingness-to-Provide-Personal-Information.pdf](https://www.researchgate.net/profile/Glen_Nowak/publication/247837717_Privacy_Concerns_and_Consumer_Willingness_to_Provide_Personal_Information/links/5743286d08ae9ace841a9788/Privacy-Concerns-and-Consumer-Willingness-to-Provide-Personal-Information.pdf), last seen on 13/06/2021.

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protection of minors' right to online privacy protection. The United States on October 21, 1998, passed the 'Child Online Privacy Protection Act' and it was enacted from April 21, 2000. This can be considered as the first effective network privacy act in the United States, and the main real network enactment wherein the rights and interests of consumers are first considered. The demonstration focuses on protecting youngsters' privacy protection, which plainly gives seller commitments and punishments when the shopper is 13 years of age or younger.

In the ongoing years, the United States is pressurized by stringent principles of the EU, simultaneously the impact of domestic industry self-regulation is defective, and hence the voice of calling for legislating on privacy protection of consumers in e-commerce has emerged. The United States government despite everything attests that the issue ought to be dealt with Internet organizations and companies. The United States has not authorized extensive and foundational legislation to secure right of privacy of e-consumers, because of preferential advancement of e-commerce. It fears blocking the development of Internet with a hasty legislation. Furthermore, the United States is a nation of case law, and case law likewise has a significant role in securing privacy of e-consumers.

### **4.4 The Current Scenario in China**

According to the present scenario, China has legal departments associated with the protection of personal privacy, yet it has not yet framed a total framework as the idea of right to privacy is not clearly characterized by law. In common law, it is delegated an autonomous part of human instinct and treated independently. China uses an indirect strategy to ensure the right of privacy. So as to ensure right to privacy, the Supreme People's Court causes it to apply to the provisions of infringing the right to reputation by the methods of analogy. This judicial interpretation is utilized to react to this crisis circumstance by taking an alternative method to protect right of privacy indirectly. Subsequently, this is an important enhancement to the lack of legislation. However, the weaknesses of coordinating the right to privacy into the right to reputation are obvious. Certain laws do control a few parts of securing residents' privacy<sup>57</sup>. For instance, Articles 39 and 40 of the Constitution expresses that the home of citizens is inviolable, the freedom of correspondence and privacy of citizens are ensured by law. Article 140 of the

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<sup>57</sup> Y. N. Zhou, Research on China's E-Commerce Legislation, 21-22 (2002).

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'General Rule of Civil (Trial) Law' states that making others privacy public is considered as the conduct of infringing the right to reputation and, articles 252 and 253 of the Criminal Law deals with the criminal liability of infringing free communication.

Even during the time of rapid development of e-commerce industry and the widespread development and application of network privacy for effective protection has become the part of the e-commerce market environment conditions. When compared with the developed countries, there exists a sizable gap in network privacy protection of China. There should be learning and adapting from other countries and regions regarding the network privacy protection based on relevant legislative experience, and above all based on the situation of China. Simultaneously, it should be ensured that in the ambit of e-commerce environment of network privacy protection, with the help of systems engineering, government, industry, enterprise, e-commerce and network service providers, user personal etc jointly create a healthy e-commerce development environment<sup>58</sup>. The violation of e-commerce consumer privacy includes collection and disclosure of others' communications secrets without authorization. Also, online vendors, so as to promote goods and services, send junk mails to consumers without consent, infringe upon consumer's personal life, and violate right of privacy in e-commerce. As of now, there are no appropriate laws and regulations to control these issues in China.

### **4.5 Methods of Online Dispute Resolution in Singapore & various other Countries**

In the year 2002, Singapore launched a web platform names 'disputemanager.com', which is the first comprehensive Online Dispute Resolution (ODR) service in Asian continent. It was developed by the 'Singapore Academy of Law' along with its subsidiary which is the 'Singapore Mediation Centre' (SMC). This website or online portal mainly provides three services namely, 'E-settlement' which is an automated ADR process which gives an opportunity for both the parties to make offers and later agree for a settlement in case certain conditions are met; Online Mediation and Neutral Evaluation. This web portal also enables and supports the Singapore Domain Name

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<sup>58</sup> Chunmei Yang, Analysis on Protection of E-commerce Consumer Network Privacy, Science Direct, available at <https://core.ac.uk/download/pdf/82247109.pdf>, last seen on 15/02/2020.

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Dispute Resolution Service, but it's mainly focused on resolving disputes which come under Singapore (.sg) domain name<sup>59</sup>.

In the year 2004, Philippines launched an ODR website and which was then hailed as one of the most technologically advanced and impressive ODR websites. The authorities who initiated the service claimed that it will be an online multi-door courthouse which offers several services. The main objective was to ensure unbiased assessment of a case with the help of a neutral expert. In the process of mediation the main objective was to provide assistance for a settlement. When it comes to arbitration, an automated bidding program was initiated which gives the opportunity for the parties to identify the optimal settlement amount. Also, in the year 2004, ODR World was launched in Malaysia in order to help people trying to get what is rightfully theirs, even if it is a case of negligible sums to get what is rightly owed to them, even in the case of negligible sums.

Twenty-one economies which belong to the Asia Pacific Economic Cooperation (APEC) group initiated a work programme on Online Dispute Resolution in the year 2017. In the meeting held by them in the year 2018, APEC Ministers responsible for Trade mentioned the importance and necessity of developing an effective online dispute-resolution framework for small scale and micro enterprises. This topic was also raised on a serious note on the ASEAN agenda.

ODR methods in Africa were not successful completely due to the lack of availability of proper internet access. In South Africa where people prefer E-commerce, ODR method has been accepted in South Africa since there is large number of people using E-commerce platforms. At present, there are two ODR programmes in South Africa: the Online Ombudsman and the ZA Domain Name Dispute Resolution Regulations (ZADRR).

In case of any cross-border dispute in an E-commerce platform, consumers and business should have a certainty about the rules which are applicable, and also an effective way to find a solution for the problem. In the year 2009, a proposition was presented by the delegations of Brazil and Canada to the Organization of American States (OAS)

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<sup>59</sup> The Global Governance of Online Consumer Protection and E-commerce Building Trust, World Economic Forum, available at [http://www3.weforum.org/docs/WEF\\_consumer\\_protection.pdf](http://www3.weforum.org/docs/WEF_consumer_protection.pdf), last seen on 15/06/2021.

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regarding the matter of legally locating all consumer disputes within the jurisdiction of the consumer but this proposition met with significant resistance.

In Mexico, the authorities introduced 'Concilianet' as a free online platform for resolving all kinds of disputes between customers and merchants, which eventually reduced the time for dispute resolution by 50% and also led to settlements of almost 96% cases filed through its platform.

In June 2014, Brazil established an online platform for negotiation called 'Consumidor' and the website is [consumidor.gov.br](http://consumidor.gov.br). Within two years, the platform successfully handled more than 560,000 complaints regarding supply of goods and services and most importantly majority of the issues were resolved even before lawsuits. 47.5% of the complaints were filed against merchants in telecommunication, 23.9% against merchants in banking sector and a 9.7% of complaints against E-commerce service providers<sup>60</sup>.

Consequently, the US State Department proposed a blueprint for a worldwide ODR system for resolving consumer disputes that would not be depending on 'home-state' jurisdiction. The proposal in the initial stage was taken with great enthusiasm. A UNCITRAL group discussed the topic binaurally for 6 years from 2010 to 2016. The discussion mainly focused on establishing worldwide ODR procedures for small-value B2C transactions as well as B2B disputes arising from online transactions. In the later stages, there were differences of opinion regarding the inclusion of binding arbitration procedures. Due to the differences the group couldn't initiate a proper global ODR procedure but the group did not deny the scope of ODR and instead encouraged various nations all around the globe to consider a more forward approach on ODR methods.

### **4.6 International Instruments and its Influence on Indian Law**

The capability of the computers to do full time surveillance demanded for making specific set of rules in order to govern the acquiring and handling of confidential personal data. In most of the countries across the globe, the Constitution covers the aspect of right to privacy along with all the basic rights. The origin of such a legislation which is drafted for data protection can be traced back to 1970 when Germany enacted its first Data Protection Law. Later in the year 1973 Sweden included this aspect in

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<sup>60</sup> Supra 37, at 19.

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National Laws and the United States adopted this in the year 1974 and France in 1978. This later lead to the emerging of two important International instruments which are the Organization for Economic Co-operation and Development's (OECD) guidelines to govern the protection of right to privacy and cross-border data and the Council of Europe's Convention in the year 1981 for the Protection of Individual data regarding the Automatic Processing of confidential Personal Data.

There were a huge flow of Personal Data and hence these rules covered the safe processing of handling this data. These two instruments later became the core of data protection legislations in various countries. According to these rules, Personal information is data which requires protection from the stage of collection till the safe disposal of it. The basic factor of these rules is that, it allows people to access their data and if required to amend the data accordingly. The concept of protection of data and privacy differs accordingly in laws of different countries. The basic point is that, the personal data should be collected in fair means and it should be with the consent moreover, it should be used only for the purpose for which it is collected. The above mentioned agreements have also made an impact on the laws in India. In fact, the OECD guidelines were used in legislations of various countries, even though they are not coming under OECD. These directives strengthened various principles of data protection especially the Right to know from where the origin of the data, the Right to have the data rectified in case if its inaccurate, the Right to withhold the authorization to use data in certain circumstances and Right to take necessary action in case of unlawful possession. In fact, personal information is a reflection of an individual's personality so, the Supreme Court of India and all other Courts of India, have recognized and accepted that the Right to privacy is a significant aspect of the Right to life and personal liberty, which comes under fundamental Right guaranteed to every individual by the Constitution of India.

In the present scenario, there is no any specific legislation which deals with privacy issues and data protection. But there are various legislations and measures which covers the aspect of privacy protection directly or indirectly such as, Information Technology

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Act, Intellectual property, and Contractual relations<sup>61</sup>. The law laid down by the Court in the landmark *Tournier's case*<sup>62</sup> was followed by the Calcutta High Court in the case of *Shankarlal Agarwalla vs. State Bank of India*<sup>63</sup>. The Court also mentioned that the banks are responsible to maintain secrecy about the accounts and other details of their customers. There are few exceptions to the rule such as, when the disclosure of data was under the compulsion by law, where disclosure is required for the interest of the bank, where disclosing was a duty to the public and where the disclosure of information was made by consent of the customer whether it's express or implied. For covering the privacy issues, The Personal Data Protection Bill, 2006 and after that, the Privacy (Protection) Bill, 2013 were introduced in the Parliament. The shift from traditional banking to the use of technology in banking services have led to many challenges and issues in maintaining a proper and trustworthy relationship between a banker and the customer.

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<sup>61</sup> Dr. Vivek Kumar, A study of E-commerce and its Legal Frame Work: With Special Reference to India, 3 International Journal of Law 89, 92 (2017), available at <http://www.lawjournals.org/download/124/3-3-29-194.pdf>, last seen on 15/06/2021.

<sup>62</sup> *Tournier v National Provincial and Union Bank of England*, [1924] 1 K.B. 461 (1923, Court of Appeal of England and Wales Cases).

<sup>63</sup> *Shankarlal Agarwalla vs. State Bank of India*, AIR 1987 Cal 29.

## CHAPTER V

### THE RIGHTS OF THE CONSUMERS IN INDIAN LEGAL SCENARIO & DATA PRIVACY CHALLENGES IN E- COMMERCE & E-BANKING

*“Ever since men began modifying their lives with the help of technology, they have found themselves in a series of technological traps.” -Reger Revelle*

In this chapter the focus is being shifted from ‘e-Consumerism’ to the threats to ‘E-Consumerism’ in practice. In this part, the researcher discusses and elaborates the Human Rights Jurisprudence in India and also the recognition of Rights of consumers. This part of the research signifies the Consumer Protection in the aspect of Human Rights Jurisprudence. It speaks about various Rights of consumers and their recognition in the Second Generation of Human Rights which is the ‘International Covenant of Economic, Social and Cultural Rights’ (ICESCR). The major issue here is to put the focus on various threats to the Rights of Consumers in the online platform; rather be termed as ‘Old Thieves in New Attires’. This chapter covers the practical difficulties regarding the implementation of concept of ‘E-Consumerism’ in the online shopping world.

The Human Rights Jurisprudence consistently had a position of prime significance in India's rich inheritance of culture and authentic customs. The concept of “Right of Man” and other similar concepts of Human Rights are given importance from time immemorial. Human Rights can be defined as: ‘the Rights which are fundamental and inherent to the very existence of human being’. The foundation of Human Rights is the logic that, every man born in the world possesses have the same rights exercisable by him. Every single person is entitled with certain rights merely for the reason of being human<sup>64</sup>. As indicated by the United Nations, Human rights are the rights inborn to every single individual, paying no heed to nationality, race, ethnicity, sex, language, religion, or some other status. It incorporates the right to life and freedom, the right to speak freely and expression, freedom from torture and slavery, the right to education and work, and significantly more. Each and everyone are entitled to these above

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<sup>64</sup> Paras Diwan and Peeyushi Diwan, Human Rights and the Law, 1 (1996).

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mentioned rights, without any discrimination<sup>65</sup>. In the year 1776, the term “Human Rights” was first mentioned in ‘United States Declaration of Independence’. The concept of Human Rights is closely related with the concept of human dignity. Therefore each and every right, which are required for the maintenance of human dignity are called Human Rights. Human Rights standards depend on mankind's expanding and tireless interest for respect, dignity, justice, freedom and protection for respectable human existence.

### **5.1 A Glimpse on Rights of Consumers**

John F. Kennedy, the President of the United States of America, first recognized and defined the basic Rights of consumers in his special message to the Congress on Consumer Protection on March 15, 1962. The Four essential Rights, such as, the Right to be educated, the Right to safety, the Right to be heard and the Right to choose were fused in the UN Charter as Human Rights. Later the International Organization of Consumers Union (IOCU) and the Confederation of Indian Consumers' Organization (CICO) included three additional Rights like Right to Consumer Education, Right to Healthy Environment, and Right to be Redressed. A resolution was passed In the National Convention of CICO, held at Calcutta in the year 1991, for the incorporation of another Right, the Right to boycott. Also, right to fundamental needs is the most recent expansion to the Rights of consumers. These Rights, which are declared and recognized globally, makes a new dimension of consumer protection. Every one of these Rights attempts to extend the scope of consumer protection. The rights of the consumers are defined in detail in the following paragraphs:

- **The Right to Safety**

It is the Right to be ensured against goods or products, the production process and the marketing of merchandise and services that raises a threat to life and property. The importance is given to consumer's safety. The Right to safety is one of the most applicable attributes of Right to Life which is mentioned under Article 21 of the Indian Constitution.

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<sup>65</sup> Human Rights, United Nations, available at <https://www.un.org/en/sections/issues-depth/human-rights/>, last seen on 15/02/2020.

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- The Right to Choose

It is a consumer right which provides the platform for consumers to choose from wide varieties of goods and services at reasonable price and good quality. With the help of this right, consumers are enabled to select good quality products without compromising safety and satisfaction. In this time of advanced Internet facilities, e- Commerce, it gives more strength to this right by enabling wide variety of choices of products across the globe through websites.

- The Right to be Heard

This is a right which is having a significant role whenever a dispute arises against a person in the society. It can also be mentioned as, the 'Right to representation'. It is the duty of a seller to listen to the problems of a buyer of the goods or the receiver in case it's a service.

- The Right for a Clean and Healthy Environment

This Right ensures that the environment of work is safe for living and work and also, it is neither dangerous nor threatening and allows a life with dignity and well-being.

- The Right to Consumer Education

This right refers to making an individual capable of solving his/her problems himself/herself. With the help of consumer education, the consumer acquires general information regarding their rights, law, various aspects of consumer protection and also about the available mechanism for consumer protection.

- The Right to be informed

This right enables protection against fraudulent, labeling, misleading advertising or various other practices. The consumers must be educated with the complete facts and details which allow them to make an informed choice.

- The Right to Fundamental/Basic Needs

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This right can be considered as the primary right of a consumer. It's important for one's survival that the basic needs are met. This right cannot be denied to any consumers. The concept of consumerism emerges from the act of consumption and the priorities of consumption are for the satisfaction and fulfillment of the basic needs of a person.

- The Right to Compensation

This right empowers to be compensated for any act of misrepresentation, damaged goods or any unsatisfactory services. A consumer dispute redressal mechanism is established in all the nations for providing an adequate solution for consumer disputes.

- The Right to Boycott

This right provides the authority to consumers to boycott the use of any goods or services, in case if there is any conflict regarding the interests of the consumer.

### **5.2 Threats Affecting the Rights of Consumers in Online Platform**

The capability of Internet, electronic shopping and digital data gathering are various, and quite a long while back a lot of people who might have thought to have been rejected from the phenomenal chances, presently embrace the online world. With the widespread of 'e'- revolution, e-commerce has risen as the major face of virtual economy across the globe<sup>66</sup>. In online shopping, on one hand, customers are offered comfort, quality and wide variety of choice in goods and various services and all the more significantly, in the matter of costs. Still then again on the other hand, the Internet is open to new dangers for consumers in the e-marketing environment. The outcomes of shopping in the world without borders through the Internet function uniquely in contrast to the offline or the real world in different manners. The situation of the consumer in an electronic domain is fundamentally more vulnerable with regards to issues like payments, privacy an online transaction. Usually, consumers lack the chance to get adequate data about the real identity of the seller, the terms and conditions, details about the delivery charges, the quality of the goods and services, convenient and cost-effective dispute settlement. In case of small purchases there won't be any effective and practical means of settlement of dispute and this is considered as one major drawback

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<sup>66</sup> J.E.J Prins, Consumers, Liability, and the Online World, Information & Communication Technology Law, available at <https://www.tandfonline.com/doi/abs/10.1080/1360083032000106935?src=recsys&>, last seen on 13/06/2021.

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of cross border transactions. The Internet is more transparent and straightforward in the matter of price and selection of brand, but very less transparency and assurance when it comes to the matter of quality of the products and services. The consumer in e-platform has very limited control over what happens to his/her data as a result of highly manipulated marketing technologies<sup>67</sup>.

In a broader analysis we can say that, consumer rights violations in the cyber world come under the purview of 'Electronic Crimes'. The term 'Electronic crime' alludes to the utilization of the technologies to commit offenses by misusing the possibilities which is enhanced by the network revolution. Criminal activities in the Cyber world are laid on a matter of chances and dependent on the supposition that 'crime follows opportunity'. Electronic crimes are different from customary crimes, especially regarding the scenes of crime and the location of offender. The nature of Information Technology is that, any individual can use it if he/she is having a minimum or basic knowledge about it. Since the information and communication framework is very user friendly, the offenders consider it as a fertile ground to commit crimes even from any part of the world. However, detecting an electronic crime is very difficult in case of data theft and cheating in the online world<sup>68</sup>. Actually, it is considered as a white-collar crime because, these kinds of offenders will usually have access to technical knowledge means and above all technical expertise. In this specific circumstance, it is clear that it isn't just "old crimes in new jugs" that should be reevaluated, however, also new kinds of acts which can be considered as the "criminal activities" in cyber space.

### **5.3 E-Commerce & E-Banking**

In this modern era of advanced technology, we can see a huge change in the functioning of financial services and its use by the consumers. The researcher, in this section is majorly focusing on explaining about the threats and issues faced by the consumers in the online platform, especially the threats which arising during the use of Internet banking. For the very purpose of this section, electronic banking is considered as the

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<sup>67</sup> Kotler, P, What Consumerism Means to Marketers, Harvard Business Review, available at <https://www.scholars.northwestern.edu/en/publications/what-consumerism-means-to-marketers>, last seen on 13/06/2021.

<sup>68</sup> Mariya Karyada, The Socioeconomic Background of Electronic Crime, available at [https://www.researchgate.net/publication/276238957\\_The\\_Socioeconomic\\_Background\\_of\\_Electronic\\_Crime](https://www.researchgate.net/publication/276238957_The_Socioeconomic_Background_of_Electronic_Crime), last seen on 12/06/2021.

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retail banking. Retail banking can be designed as the banking in which banking organizations/institutions do transactions legitimately with the consumers, instead of different banks and corporations<sup>69</sup>. It's an attempt to portray the frauds which are faced by the online consumers day by day and how online platform has become a safe house or a fertile soil for the criminals.

As we all witnessed in our lifetime, it's a fact that technological development has made many revolutionary changes in various sectors across the globe. The very fast development of technology has increased the speed of everything which a human being is surrounded with<sup>70</sup>. Since the technology is developing day by day, it's not good for any business to stick to their traditional form of business. Hence, the companies and organizations are in one way or the other forced to adapt to the new form of market. Hence E-Commerce acts as an economic solvent and it paved the way for dissolving of traditional business practices or models. E-Commerce is a factor which drives the changes in economy and each and every aspect of the society rapidly from time to time according to the technological advancements. For instance, India is one important example where the economy is having an unexpected change in the platform of technology and thus as a result E-Commerce. Along with the development of technology, the banking sector also adapted to the changes and hence the concept of E-banking was originated. E-commerce can be considered as a third leg of a company which is already having two other legs which are valid and basic contractual software and infrastructure. Hence, the development of concept of e-banking and the advancement of e-commerce are directly proportional to each other.

From the very beginning to till date, E-banking has made rapid development and it also made an impact on the life of each and every human being in on or the other way<sup>71</sup>. Along with the changes, there were many benefits for the business world due to the development of E-banking platform. If a consumer wanted to make a payment or do

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<sup>69</sup> Investopedia, available on <https://www.investopedia.com/terms/r/retailbanking.asp>, last seen on 14/6/2021.

<sup>70</sup> Alexandro Pando, How Technology is Redefining E-Commerce, Forbes, available at <https://www.forbes.com/sites/forbestechcouncil/2018/03/06/how-technology-is-redefining-e-commerce/#790c003b62e3>, last seen on 14/06/2021.

<sup>71</sup> Karthik Ramaiah, Impact of Technology on E-Commerce Industry, Entrepreneur India, available at, <https://www.entrepreneur.com/article/326982>, last seen on 14/06/2021.

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some transaction in a cyber space, there should be a proper mode for payment. A person wouldn't have to pay for the internet since its free, but the goods and services which a consumer access through the internet definitely have a price. The new method of e-banking has made a huge impact on Business-to-Consumer model transactions. In these days, E-banking has become our part of life and a satisfactory medium for easy banking which is capable of bringing the banking features to our doorsteps.

From the last many years in India, the concept of retail banking had a rapid growth in the overall banking industry<sup>72</sup>. In the process of retail banking, the transactions are directly between the bank and the consumers. There are various services provided by these banks such as, include personal loans, mortgages, savings, debit cards and credit cards etc. With the help of Retail Banking an individual customer can connect and use number of commercial bank branches that are interconnected. In these days, an individual in his day-to-day life depends upon one or the other banking services. The retail banking is subjected to various changes day by day through the advancement of technology. Hence, it is important to foresee the risks and to find solutions for the issues related to security of a customer in retail banking. The following part of this chapter highlights various issues and risks faced by the consumers in the platform of retail banking.

### **5.4 E-Banking: Nature and Concept**

It is a difficult task to point out inventions which lead to a change in the business world other than E-Banking revolution. The banks are changing their strategies, improvising their services and providing more opportunities with the development of e-banking. The development in technology helped in reducing the cost for processing the information which ultimately resulted in the change of the structure of banking business. The e-banking services spread all around the world very quickly in the recent years. The development of e-banking and its impact was not only limited to developed countries who are having advanced economies, but also, countries who still have an underdeveloped banking system and economy.

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<sup>72</sup> Jeffrey E. Jarret, Internet Banking and E-Commerce: A Consumer Perspective, Journal of Internet Banking and Commerce, available at <http://www.icommercecentral.com/open-access/internet-banking-and-ecommerce-a-consumer-perspective.php?aid=66848>, last seen on 14/06/2021.

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E-Banking enables the functions of banking services with the help of electronic delivery channels. Electronic banking existed in India all these days in the form of ATMs (Automated Teller Machines) and phone transactions. In this era, Internet became a new channel for the consumers and the banks for facilitating banking transactions because, the Internet enables quick access, convenience and it is available 24x7 irrespective of location of the customer. It is actually a better opportunity for banks since, it reduces financial burden and highly efficient. Till the date, almost all the banks have combined their traditional banking with new electronic banking but few other banks only depend upon the new electronic channel for their functioning<sup>73</sup>. The banks which are 'virtual' in nature do not have a various branches but still make their physical presence such as, facilities like ATMs and administrative offices. According to many customers, e-banking is a 24x7 availability or access to money through various mediums. However, various types of transactions are involved in e-banking.

### 5.5 Need of E-Banking in the World of E-Commerce

Need of E-Banking is an inseparable aspect when it comes to E-commerce platform. The basic factor of online shopping is an e-shop, a server and a consumer who access the Internet using a browser or a mobile application. To have a clear picture about the concept of e-banking, there should be detail knowledge on the complete functioning of e-marketing. In the e-marketing platform, the basic factor is a web page which contains advertisements and details about the goods which should convince the buyer to make a purchase. There are few essential features which e-Shops should possess such as, Dynamic Web Page, Shopping Cart,<sup>74</sup> Shipping options<sup>75</sup> Personalized Web Pages, Online help, Shopping Basket, Encryption, Online delivery and Multiple Payment options etc. A retailer, with very less investment in his/her website only have to focus on only few things to acquire the profit but, a retailer who invested huge amount in a website should do more. Hence, the advertisement of a website in order to attract

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<sup>73</sup> Prakash Kumar, Internet Banking, Economic Discussion, available at <http://www.economicdiscussion.net/essays/banking-essays/essay-on-internet-banking/17828>, last seen on 15/06/2021.

<sup>74</sup> Debarpita Sen, Features of an E-commerce Website, Shiprocket 360, available at <https://360.shiprocket.in/blog/top-10-ecommerce-website-features/> last seen on 15/06/2021.

<sup>75</sup> MM Contributor, Characteristics of a Successful E-store, Merchant Maverick, available at <https://merchantmaverick.com/7-characteristics-succesfull-e-store/>, last seen on 15/07/2021.

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customers should include Attractive Advertising, Site name, Portals, Search Engines and most importantly Personal Recommendations. The success of an e-shop completely depends on the hard work and skills of the vendor in the world of e-Commerce. When a consumer is satisfied and decides to buy a product, the next step is to place the orders online. In a website there will be an icon which is for the shopping cart or basket. In an e-shop, the customer is supposed to browse and check all the products in the shop and then select the products according to his/her interests and move them to his/her basket. The website should also provide the feature where the customer at any point of time during the purchase can return the products in the cart and choose another and also the total value of the goods should be displayed<sup>76</sup>. If the customer is already having an account in the website, he/she don't have to register the complete details again and for the purpose of payment the customer should provide a credit/debit card number or can choose any other options of payment and for delivery of the product, his/her name and address details should be entered. Here the payment is done by using the facilities of e-banking. In a retail transaction, the payment is done at the same time of the purchase like, the retailer accepts the payment by the medium of cash or card and the customer take the product. Hence, to substitute the retail trade online, there should be an electronic medium.i.e. e-banking. In e-banking, there are various ways of payments such as Debit cards, Credit cards, e-cash, other online payments etc. Any contract, without consideration is not valid, hence, the payment in online shopping is completely done through e-Banking. There are various approaches to online sales and transactions. When observed it was evident that, among all the modes of payment, the riskiest mode is the one when the consumer provides his/her credit card details on an online platform which is not safe or secure. Hence, part of research is focused on challenges and risks faced by the customers in the process of E-Banking and also in E-commerce. To have a clear picture about e-Banking frauds, more focus was given on observing different electronic modes of payment.

### **5.6 Frauds or Challenges in E-Commerce Online Payment Platform**

*There are three things in this world which deserves no mercy; hypocrisy, fraud, and tyranny.*

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<sup>76</sup> Supra 49.

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- Frederick W. Robertson

In simple terms, the term 'fraud' can be characterized as a willful deceit or trickery or guile or a misleading deception or false thing<sup>77</sup>. From the origin of concept of business, there are various fraudulent activities practiced along with the business activities. There are various frauds faced by the customers in the banking sector and unfortunately there are more types of frauds originating day by day. Development of technology has always provided a huge number of facilities to the banking sector but on the other hand, various drawbacks were also developing in the form of different types of frauds. Various frauds such as identity theft, pharming, phishing, spoofing etc exist as a major threat to the e-banking world. The frauds and issues in e-banking world is discussed through the following headings:

## 5.6.1 Credit Card Frauds

Credit cards are used by a large majority of people all over the world. It plays a very important role when it comes to online shopping. Due to the daily use and high demand, people are not thinking about the risks of using the credit cards. Credit cards made it possible for consumers to go shopping without cash in their wallets. Credit card fraud can be defined as, when someone, a thief or a fraudster steal your credit card and uses the details to make purchases without authorization or withdraw cash using the stolen card<sup>78</sup>. There are various forms or methods of frauds committed by using credit cards. When a person genuinely loses the credit cards or forgets to collect back after using it for payment or losing the wallet which has the card or when the card is stolen by someone. The condition will be worse for the card holder if the password of the card is written on it or on the cover of the card or in the wallet. There are few other ways where the credit card frauds are committed. It's listed below:

- White Plastic Card Fraud

This is a method of credit card fraud where the fraudster uses a plastic piece to make a fake credit card. The group of fraudsters will manage to get the genuine information

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<sup>77</sup> See Merriam Webster Dictionary, 'Fraud', available at <https://www.merriam-webster.com/dictionary/fraud>, last seen on 10/07/2021.

<sup>78</sup> Dan Rafter, What is Credit Card Fraud ?, NortonLifeLock Blog, available at <https://www.lifelock.com/learn-fraud-what-is-credit-card-fraud.html>, last seen on 10/07/2021.

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and the card details of a card holder and will imprint it on the plastic piece which is cut in similar shape of a credit card. The signature on the card will be forged in order to make it more authentic. It is actually a kind of team work because mostly a group of fraudsters work together for committing this fraud. The fraudster then uses this fake card to withdraw the cash or make payments. Since, high expertise is used by the fraudsters in order to commit this fraud, by the time the card holder or the bank realizes that fraud has already committed it will be too late<sup>79</sup>. Same pattern of printing and embossing are used to make it impossible to differentiate between the original and the duplicate cards. This fraud is still difficult to be detected very soon since the bank employees are not always trained enough to carefully observe and find the defect and moreover, there is lack of time to scrutinize each and every card.

- Terminal Takeover Fraud

It is a type of fraud which is similar to identity theft in nature. Here the fraudster manages to get access to the banking system and gets details about victim's credit card. The fraudster here uses various ways such as using a malware, data breach etc to commit transactions which are unauthorized<sup>80</sup>. This type of fraud is almost related to 'skimming'. In this kind of fraud, the fraudster acts as an employee and finds a way to collect the information required. He then analyses the functioning of the systems and machines of the bank and make a replica of a part of it which help him collect the data. Later, fraudster takes back the machine which he attached which already has all the confidential data in it and replaces the original one back in the place and then disappears. This fraud is possible in the current scenario due to lack of knowledge about the recent crimes emerging in the cyber world. In the last few years this kind of fraud is not reported.

- Merchant Collusion

This is a fraud committed together by the owner/merchant and their employees or by a group of employees by sharing the card details and personal information of the

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<sup>79</sup> Julia Layton, How White Credit Fraud Works?, Scambaitcre Blog, available at <http://www.sid.in-berlin.de/nedkelly-world/howmoneylaundersworks1.html>, last seen on 17/07/2021.

<sup>80</sup> Account takeover fraud, Credit Cards, available at <https://www.creditcards.com/credit-card-news/glossary/term-account-takeover-fraud.php>, last seen on 17/02/2020.

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customers<sup>81</sup>. The owner allows access to the confidential data on his terminal which contains all the details about the credit cards swiped. The merchant can allow members of a gang to use his terminal as a host in order to transfer information on credit cards, which are swiped on his terminal. Sooner or later the information is used in various ways by the group of fraudsters.

- Skimming

Skimming is one of the white-collar crimes which is committed in a way that the cash is already taken before the commencement of a business even without the entry in the accounting system of business. Hence it is an off book crime, there won't be any trace of it even in the records or the system. It can happen to a company account or an individual in a way of Debit/Credit card or ATM skimming. Even though it is the simplest form of fraud among the white collar crimes, it is difficult to be detected since it leaves no trace to track and find the source of crime. Most of the times, it is found out accidentally. Still, in certain cases, it can be suspected by discovering the fact that revenue is lesser than what was expected. The term 'Skimming' is actually a slang word and the proper legal term which can be used is 'defalcation'<sup>82</sup>.

### 5.6.2 Identity theft

Identity theft incorporates using fraud or cheating to steal a person's personal data in order to utilize such data to get to assets or to acquire credit and different advantages in the victim's identity. Identity theft was a fraud which was possible back in olden days where internet was not even invented but, with the invention of internet, it became an easier job. Back in those days, a few of the techniques used to unlawfully acquire a person's identity data were stealing bills, mails, from the letter box, fixing or by collecting it from the relevant authorities who has their client's or employee's personal data. Another famous strategy was 'dumpster jumping' where the fraudster acquires data of a person by searching in the trash dumped by the people such as bank

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<sup>81</sup> Understanding Credit Card Frauds, Citeseerx, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.431.7770&rep=rep1&type=pdf> , last seen on 17/06/2021.

<sup>82</sup> What is Skimming Fraud?, Corporate Finance Institute, available at <https://corporatefinanceinstitute.com/resources/knowledge/other/skimming-fraud/>, last seen on 17/07/2021.

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documents, bills, old credit cards etc. Data was likewise extracted from the individual by the fraudster pretending to be a client service agent, surveyor etc. Despite the fact that these techniques are as yet common, they were very dangerous, and had a high possibility of being traced<sup>83</sup>. The advancement of technology has only helped the criminals since it made their work easy and tracking these crimes became almost impossible. In this era, Internet is actually a mask which a person can use to fake identities. It is possible to have various identities through different social media accounts and e-mails even without verification.

Basically, Identity theft has two steps and it can be done by one person or different persons. They are:-

1. Acquiring of one's personal data illegally.
2. Usage of the collected data for causing legal harm to the victim.

Fraudsters use various other methods other than internet to acquire personal data such as phone and emails. Few among the common identity theft practices are:

- Calls or messages promising a huge amount as reward if the person uses a particular website to transfer money or receive money.
- Requesting for payment in advance of service charges for transferring the prize money.
- Messages or calls which states that the user has won a lottery or some contest which the person actually never did.
- Advertisements which offer extra payment for work at home if the bank account is used to transfer money.

### 5.6.3 Phishing

It is a cybercrime, where the fraudster targets the people by using emails, phone calls or text message which looks genuine and legitimate so that individuals provide their confidential data such as bank details etc without any hesitation. As like in the other cybercrimes, the fraudster then uses these details to access to their accounts for identity

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<sup>83</sup> Shambhavi Suyesha, Identity Theft – A Critical and Comparative Analysis of Various Laws in India, Racolb Legal, available at <http://racolblegal.com/identity-theft-a-critical-and-comparative-analysis-of-various-laws-in-india/>, last seen on 12/07/2021.

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theft or stealing the money<sup>84</sup>. Phishing lawsuit was first reported and a suit was filed in California in the year 2004. The suit was against a teenager who made a replica of the 'America Online' website and used it for committing fraud by collecting confidential data of users and accessing their credit cards to withdraw cash. There are several other forms of phishing techniques the fraudsters come up with such as, 'vishing', 'smishing' etc.

### 5.6.4 Pharming

Pharming, is a term which was originated by combining of the words "phishing" and 'farming'. As the name indicates, it is very much similar to phishing. In this type of fraud, the internet traffic is being encountered and confidential data is stolen. In this method, the fraudster exploits the foundation or the basic of how the internet functions. There is a sequence of letters for a website such as [www.gmail.com](http://www.gmail.com), [www.google.com](http://www.google.com) etc; this sequence is converted to a set of digits which is called as 'IP address' in order to connect to a server. In the first stage, a hacker will install a virus in a user's computer which makes the computer redirect from the proper target website and instead take it to a fake website. Then, the hacker makes many users visit the same fake website. By using these fake websites viruses or Trojans are installed to the user's computer, or it can be an attempt to acquire personal and financial data for using it for identity theft<sup>85</sup>.

In fact, that's only one aspect of the threat, so ultimately you have to be very careful about the websites that you browse especially when it comes to the matter of sharing your financial and personal data. In case if you feel unsecure or strange about the website or if the site is asking for unwanted information make sure there is a lock button to the left of the address bar which denotes that it's a secure website or not.

Then click on the lock icon to check the certificate and ensure whether it's a secure website or not. Most of the DNS servers have anti-pharming techniques, still the chance of an attack can't be denied<sup>86</sup>. Hence, the only way to be on the safer side is to ensure

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<sup>84</sup> What is Phishing?, Phishing, available at [www.phishing.org/what-is-phishing](http://www.phishing.org/what-is-phishing), last seen on 17/07/2021.

<sup>85</sup> What is Pharming & How to Prevent it?, Kaspersky, available at [www.kaspersky.com/resource-center/definitions/pharming](http://www.kaspersky.com/resource-center/definitions/pharming), last seen on 17/07/2021.

<sup>86</sup> Ibid.

the safe use of websites and most importantly to be aware about the Internet and its all aspects.

### **5.6.5 E-Money Laundering or Cyber Money Laundering**

E-Money Laundering or Cyber Money Laundering is a very common form of cybercrime. Generally, the term 'laundering' refers to washing and ironing of clothes but when it comes to the aspect of frauds in cyber world, it is a process where the money derived from illegal activities are easily transferred without any trace. In simple words, it is a process of converting 'black money' into 'white money'. This term was first used in the Watergate Scandal case<sup>87</sup> in the year 1973. It was defined as, "a method of converting the money which is derived from illegal activities into a legally consumable form."

The internet made our daily activities very convenient; the same was applicable for the process of money laundering. Hence, it can be defined as the process of money laundering conducted through a cyber space or an electronic platform. It has the same nature as the conventional money laundering technique. Both of these are having similar basic steps: such as, Placement, Layering and Integration. The term 'placement' means placing of the illegal money into the proper financial system; 'layering' is the step where the black money is invested or moved through the global financial system hiding its origin, and 'integration', is where the black money is blended back into the economy along with the white money and no differences can be found from the legitimate funds<sup>88</sup>. It is one of the common financial techniques which is used to evade taxes and connected with illegal businesses such as narcotics, gold smuggling, corporate frauds, corruption of the government and various other white-collar crimes. The interesting fact about money laundering is that, even though it is dangerous, due to lack of knowledge and lack of trace on who is involved, it goes undetected. The major difference between conventional money laundering and cyber money laundering is that it offers a wide

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<sup>87</sup> United States v. Nixon, 418 U.S. 683 (1974, Supreme Court of the United States).

<sup>88</sup> Putri Pertiwi, Cyber-Laundering, The New Face of Money Laundering in the Digital Age, Integrity Asia Blog, available at <http://www.cnl.u.ac.in/2016/Notices/MOOTS/SILC%20Format.pdf>, last seen on 17/07/2021.

range, more speed, and less cost for the process. Just with the access to Internet an individual can do the necessary action for the purpose of e-money laundering.

### 5.6.6 Hacking and Cyber Vandalism

Hacking can be defined as a process of trying to get into a computer system with a motive to steal the data or to use it for some illegal activities. The term 'Hacking' is actually originated from the term 'Hacker', who is a person with high expertise in computer programming systems and languages. Hacking is actually a process which needs high intelligence and knowledge about computers but since, its mainly used for illegal purposes, the terms 'hacker' and 'hacking' is always referred in a negative way<sup>89</sup>. Basically, a hacker is an individual who makes access to computer systems even without authorization. In the hacking community, cracker is the term which is used to denote a hacker who is having illegal intentions or criminal intent; however both the terms are used accordingly. Both Hackers and crackers acquire unauthorized access scrutinizing and finding the weak point in the security system of websites and computers. Along with that Internet gives a huge advantage for the hackers since it has various features which are open and easily accessible.

Most of the times, hackers and crackers get engaged on gaining unauthorized access to an E-Commerce website. But there are few others who have more dangerous intentions and commit Cyber vandalism. Cyber vandalism can be defined as an act of intentionally defacing or ultimately destroying website. Cyber vandalism includes acts like sending very dangerous viruses and worms, cyber terrorism, and destruction of important computer networks<sup>90</sup>. Corporate security hires efficient hackers or team of hackers to identify the weakness and ensure the working of their own security system. There are various groups of hackers ranging from hackers involving only in criminal activities and

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<sup>89</sup> Hacking: Cyber Crime, Cyber Crime, available at <http://cybercrime.org.za/hacking/>, last seen on 17/07/2021.

<sup>90</sup> Cyber Crime and Cyber Vandalism, StuDocu, available at <https://www.studocu.com/en-us/document/ball-state-university/introduction-to-criminology/lecture-notes/cyber-crime-and-cybervandalism/3412595/view>, last seen on 17/07/2021.

hackers who use their skill for a good purpose. Hacking is an emerging threat in E-banking platform.

### 5.6.7 ATM Frauds

- Operational Fake ATMs

This is one of the common forms of frauds seen all over the world. In this method, fraudsters fix a magnetic card reading equipments in the ATM card slot of the ATM machine and a tiny spy cam will be hidden in order to record the PIN while someone uses the ATM and sometimes a hidden mirror is used. The magnetic card reading equipment helps in stealing the data from the Credit/Debit cards which are used in the ATM. Basically, this kind of fraud is committed within employees who manages the ATM accidentally or purposely expose ATMs to fraud by allowing fraudsters to acquire confidential information<sup>91</sup>. When a customer tries to withdraw money using the card, the ATM won't be in working condition but the equipment attached to the ATM will record the data from the cards which are used. Hence, the fraudsters will have access to all the confidential information including the card details and the PIN.

- ATM Trapping

ATM Trapping is a very common fraud. Here the fraudsters fix a device which makes the cash stuck in the ATM. Hence the customer won't be aware about it and can't see anything from the outside. Then customer normally will walk away with doubt and might go for complaining. AT the time when the customer leaves, the fraudsters who were watching will go in the ATM counter and get the cash. This kind of fraud was reported a lot in Europe since there was loss of millions in Europe alone due to this act of fraud. There are several ways used by the fraudsters to trap the cards in the ATM. One such method is to fix special equipment on the machine using some gum or tape in

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<sup>91</sup> Shubhra Jain, ATM Frauds – Detection & Prevention, iraj blog, available at [http://www.iraj.in/journal/journal\\_file/journal\\_pdf/12-410-151445396982-89.pdf](http://www.iraj.in/journal/journal_file/journal_pdf/12-410-151445396982-89.pdf), last seen on 17/07/2021.

order to make the card get stuck inside. The PIN is acquired by some equipment such as spy camera or mirrors which are attached near the keypad<sup>92</sup>.

### 5.6.8 Worms, Trojan Horses and Bots: Malicious Code

Malicious code can be characterized as a sort of dangerous computer code or web content intended to make system framework vulnerabilities prompting secondary passages, security breaches, data theft, and other potential harms to records and computing frameworks. There is no assurance that antivirus software will be capable of blocking this threat<sup>93</sup>. It is basically a code or software which is particularly created to cause damage, steal, or in general inflict some kind of illegal action on data and networks. Before, malicious code was used to impair computer, but in these days it is used to steal e-mail addresses, and some other confidential personal data. In this advanced era, malicious code is used as a tool to develop malware networks that are capable of stealing the information from banking organizations. In fact, malicious Code is a code in any part of a programming script that is designed to cause unauthorized effects such as destroys or harm the system or breach the security framework.

A virus is a computer program that can imitate or make duplicates of it and spread it to different files. Notwithstanding the capacity to replicate, most of the viruses convey a 'payload'. The pay load shows a message which might be exceptionally ruinous destroying documents, reformatting the computer's hard drive or making programs run inappropriately<sup>94</sup>. Probably the most recent advancement in virus dispersion is to insert them in the online advertising platform, including at Google and various other advertisement systems. Worm can be defined as a malware that is intended to spread from computer to computer rather from file to file. A worm doesn't really should be activated by a user or program so as to make a replica itself.

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<sup>92</sup> Jeremy Kirk, Criminals 'card-trapping' at ATM Machines to Get Cash, Computer World (19/10/2011), available at <https://www.computerworld.com/article/2499194/criminals--card-trapping--at-atm-machines-to-get-cash.html>, last seen On 17/02/2020.

<sup>93</sup> What is Malicious Code?, Kaspersky, available at <https://www.kaspersky.co.in/resource-center/definitions/malicious-code> last seen on 18/02/2020.

<sup>94</sup> What is a Computer Virus & What does it do?, Webroot, available at <https://www.webroot.com/au/en/resources/tips-articles/computer-security-threats-computer-viruses>, last seen on 18/07/2021.

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The term 'Trojan horse' can be defined as, an email virus normally discharged by an attachment in the email. Whenever opened, it searches in the hard drive for any personal and financial related data, for example, government records and PIN numbers. When it has acquired confidential personal data, it is sent to a fraudster's database. A Trojan horse isn't itself a virus since it doesn't replicate, however is regularly a route for viruses or different malicious codes like bots. These days, a Trojan horse covers a program to take passwords and send these passwords through email to the hackers. Bots (short for robots) are a kind of malicious code that can be secretly installed on one's computer when connected to the Internet. Once it is installed, the bots reacts to external commands sent by the fraudster who is attacking, and one's computer turns into a "Zombie", and can be constrained by a third party.

### 5.6.9 Triangulation fraud

The triangulation fraud is done through three points carried out through three points. The first is to make an online storefront which is fake, which offers goods with high demand at amazingly low costs. Most of the time, extra lure is included, similar to the data that the merchandise might be transported quickly if the products are paid using a credit card. The fake shop gathers address and credit card information and this is its lone purpose<sup>95</sup>. The second aspect of the fraud triangle includes utilizing other taken credit card information and the name gathered to order products at a genuine store and ship them to the original client.

### 5.6.10 Adware, Spyware and Browser Parasites

There are various challenges faced in the E-commerce environment in the matter for the security such as Adware Spyware and Browser parasites etc. These kinds of programs have the capability to install themselves in the computer even without an authorization. These kinds of programs are increasing day by day. If it is installed once, it is quite difficult to clear it off from the computer. Adware can be defined as a type of software application which displays advertisements while a program is already running<sup>96</sup>.

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<sup>95</sup> The Seven Types of E-commerce Fraud Explained, Information Age, available at <https://www.information-age.com/seven-types-e-commerce-fraud-explained-123461276/>, last seen on 18/07/2021.

<sup>96</sup> Adware, Kaspersky, available at <https://www.kaspersky.co.in/resource-center/threats/adware>, last seen on 18/07/2021.

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Whenever we browse in various websites, we could see a lot of pop-up ads. These are all adware and it's not always used for committing fraud or criminal activities.

A Browser Parasite is a kind of program which is capable of monitoring and changing the complete settings of a browser like, changing the home page of the browser, or transferring data about the visitors in the sites to another computer. It is a part of adware and it can steal the personal information from the victim's computer.

Spyware gathers your own data and gives it to interested third parties without your consent or knowledge<sup>97</sup>. Data collecting programs that are installed with the client's knowledge are not, appropriately, Spyware, if the client completely comprehends what information is being gathered and to whom it is being shared. However, spyware is mostly installed without the consent of the user when the user accidentally clicks on some deceptive pop-up window.

### **5.6.11 Virus Salami Attacks and Jias Virus**

Salami attacks are mainly used to commit a financial crime where the alteration in finances is so insignificant and it is completely unnoticed and leaves no trace. For example, a hacker or a bank employee installs a program to the bank server which is designed to deduct only small amount of money like 50 paise per month from every customer. Since it's a small amount of money the customer won't notice this small amount being debited all the time but, the hacker or the bank employee who did this fraud, gets a huge amount of money by the end of the month. Proving this fraud is a tough task because of the complicated programming and its gaining popularity these days. Along with it, a new form of virus called as the 'Jias Virus' is also becoming popular. This virus mainly focuses on attacking financial accounts of the users especially in Facebook and other social media platforms.

The rate of banking frauds is increasing day by day. In most of the cases, banks are unaware about how the fraud occurred. Even with strict regulatory controls, the

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<sup>97</sup> Malware: Viruses, Spyware, Adware & Other Malicious Software, University of Massachusetts Amherst, available at <https://www.umass.edu/it/security/malware-viruses-spyware-adware-other-malicious-software>, last seen on 18/07/2021.

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fraudsters are coming up with new techniques to commit various crimes. We can identify such frauds by certain signs such as:

- Receiving a credit card without making an application in the bank;
- Extra charges deducted from account unexpectedly;
- The bank statements shows transactions which are totally out of order;
- Phone call, mails or letters from the debt collectors;
- Receiving a notice from the bank stating that your credit card application is denied even when you didn't apply for one;
- Display of accounts which are not belonging to the customer which includes inappropriate data etc<sup>98</sup>.

Hence, it can be observed that e-Banking is a platform where the advanced technologies like networking, communications and digital media are used to reach bank's customers. Along with e-banking, traditional form of banking is also in practice all over the world. Both form of banking together holds the functioning of the whole banking sector. Online banking gives more profit and ensures less expense. It reduces a lot of paper work which is actually very convenient for both the bank and the customers. The growing consumerism is actually forcing the banks to ensure and implement effective security systems for the purpose of providing strong protection to consumers from online frauds.

In India, whenever any crime or illegal activity happens in the cyber world, it is dealt with the Information Technology Act, 2000. After analyzing this act, it is clear that, almost all the provisions are centered on to penal provisions for disclosing personal data. There is no specific protection for consumers against offences such as ATM Frauds, Pharming, Phishing, Money Laundering etc. RBI Guidelines can only be considered as a precaution against all these offences. So as to make e-Banking dependable and safe at the same time, it is essential to add penal provisions in the Information Technology Act, 2000 for preventing e-Banking frauds.

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<sup>98</sup> Supra 71 at 53.

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Hence, there is a necessity to ensure strong protection to consumers from all these cyber frauds by enacting a specific legislation. The IT Act, is only covering financial frauds indirectly. The absence of an efficient legislation relating to privacy and information protection has become a serious issue in India. Despite the fact that the data protection laws are not explicitly laid down in any statute till now, however, with certain guidelines and privacy standards prescribed by the Reserve Bank of India, the Indian financial sector have started the way toward sharpening the Government and individuals. During the process of sharpening, it is also the responsibility of the consumer to be aware about these guidelines in their everyday online exchanges. In order to deal with online challenges it is very important to implement legal provisions effectively in the country. So as to manage the issues in online platform, it is necessary to implement effective provisions all over the country.

## CHAPTER VI

### INDIAN LEGAL SYSTEM & CONSUMER PROTECTION IN E- COMMERCE

*“If you make a customer unsatisfied in the physical world, they might tell about it to six friends. But if you make customers unsatisfied on the Internet, they can tell it to six thousand friends.”<sup>99</sup>–  
Jeff Bezos*

The one principle followed by every businessman is that ‘Customer is the king’, who is capable of firing everyone in the organization basically just spending the cash elsewhere. Customers are the important resource of every business whether it’s conventional form of business or the business in the digital world. The idea of consumer protection has its profound roots in the Indian history. Indian legal system always made an attempt to ensure the protection of consumer rights. However, the Internet paved the way for a revolution which made the business transactions more advanced and transparent. In fact, Information and Communication Technology is transformational apparatus which has opened the entryways of digital world for physical world but the other side of this fact is that, a shift from physical world to virtual world has raised many challenges and threats for buyers and sellers. The development of technology has given more power to the customers than before<sup>100</sup>.

Hence, this chapter deals with existing laws pertaining to Protection of consumers in physical commerce and also in E-Commerce platform. The researcher is mainly focusing on the provisions of Consumer Protection Act, 1986 and Information Technology Act, 2000. A discussion on both the statues combined is necessary since, it’s high time that laws should be updated in order to tackle the issues and challenges arising along with the changes and development of technology.

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<sup>99</sup> Awaken the Greatness Within, available at <https://www.awakenthegreatnesswithin.com/47-inspirational-jeff-bezos-quotes-on-success/>, last seen on 16/07/2021.

<sup>100</sup> S. Carr, Why Customers are Important to Business, Customer Frame Blog, available at <https://customerframe.com/2018/07/why-customers-are-important-to-business/>, last seen on 19/07/2021.

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### **6.1 Modern India & Consumer Protection**

Many notable changes have occurred in all aspects of human life over the last thirty years. Post-Modernism has led to changes in science and technology especially the development of communication, computers, increasing importance for language in social and cultural studies. Periods of development can be categorized as 'pre-modern', 'modern' and 'post-modern'. Pre-modern is the ancient one and it includes traditional along with orthodox reasoning and characteristics of tribalism. The term 'Modern' represents a system of innovative thoughts and an era of knowledge. In fact, Modernity is an attempt to overcome the historical period by improvisation. Modernity was in fact an attempt to establish a just society where there are transparent and organized structures, practices and organized rules. Modernism can be considered as an artistic and cultural movement also as a revolution against the existing order. In this period of Post modernist era, the new challenges faced by the Indian Jurisprudence are: e-Consumerism, Cyber Crimes, Cloning, which are supposed to be resolved by using adequate legal system.

Cyberspace is the total interconnectedness of human beings through computers and telecommunication without regard to geographical location. It is also called virtual space as physical existence of cyberspace is not detectable at all. Cyberspace is the realm behind the computer screen, the other side of the telephone receiver, just a centimeter beneath the surface of the keyboard, where words and sounds and images and all forms of codified phenomena exist. The golden thread in the cyberspace is Internet. The Internet is changing irreversibly the economic landscape and the fundamental assumptions on which the businesses are based. It has transformed the industrial economy into electronic economy where the concept of e-Commerce has taken birth. In cyberspace global electronic communications have created new spaces in which distinct rules sets need to evolve.

### **6.2 Cases Related to E-Commerce Frauds in India**

Despite the fact that government has planned to launch a new e-commerce policy in this financial year, the number of registered cases related to fraud in the e-commerce platform has increased up to a great extent between August 2016 and November 2019, as per the reports of the government. E-commerce tycoons like Flipkart, Amazon, and Myntra dominate the Indian E-commerce. In the year 2017, 977 cases were reported in a

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span of seven months, and it increased to 2441 cases in the year 2018 and 4955 in 2019 and its 5620 in the beginning of this year. All these cases were registered under the e-commerce division of the National Consumer Helpline<sup>101</sup>. Since the usage of Internet and technology for communication has increased rapidly, the fraudulent activities are also increased. According to the recent draft of Consumer Protection rules in the year 2019, the consumer in India had filed 13,993 cases of fraud which comes under the purview of Consumer Protection Act, 1986<sup>102</sup>. The response of the judiciary to these frauds is recognizable from few of the important judgments passed on by the courts in India, from time to time.

### **Sony.Samandh.com Case**

India witnessed its first conviction of a cybercrime in the year 2002. The accused was convicted in a cyber fraud case for the first time in Sony-Samandh.com case. Sony India Private Ltd runs website named [www.sony-samandh.com](http://www.sony-samandh.com) which mainly focused on NRIs. The basic purpose of the website was to provide a platform for the NRIs to send Sony products to their family and friends in India after making an online payment. A login was made to the website in May 2002, with the identity of a woman named Barbara Campa. The person who logged in ordered a Color Television and a wireless headphone. Her credit card details were used to make the payment and according to the order, the products were supposed to be delivered to one Mr. Arif Azim who lives in Noida. The payment was approved by the credit card agency. The company delivered the products on the mentioned address and during the time of delivery, as a receipt of delivery, digital photographs of Mr. Arif Azim was taken. After a month and a half, credit card agency found that it's some kind of fraud and informed about it to the company. In fact, the transaction was completely unauthorized and the real owner was totally unaware of this transaction.

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<sup>101</sup> Sandeep Soni, E-commerce fraud: Whopping nearly 500% jump in online shopping fraud cases in just 3 years, Financial Express (11/12/2019), available at <https://www.financialexpress.com/industry/sme/ecommerce-fraud-ecommerce-fakes-online-fraud-fake-products-amazon-flipkart-fake-products-consumer-protection-act-ecommerce-policy/1791187/>, last seen on 16/07/2021.

<sup>102</sup> Bhumika Khatri, Nearly 14K Ecommerce Consumer Fraud Cases In India In Three Years, Inc42 (12/12/2019), available at <https://inc42.com/buzz/indian-consumers-complained-of-13993-frauds-in-online-shopping-in-3-years/>, last seen on 16/07/2021.

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A complaint was lodged at the Central Bureau of Investigation for online fraud. The case was registered and the provisions charged were Section 418 (Cheating), Section 419 (Punishment for Cheating), Section 420 (Cheating and Dishonestly Inducing Delivery of Property) of the Indian Penal Code 1860. Mr. Arif Azim was taken into custody and after a thorough investigation it was revealed that while he was working in a call center, he took the card details of Ms. Barbara Campa which he later used to make the payment. The products he ordered were later recovered by the CBI and hence, CBI had enough evidence against him. He was convicted by the court for the cybercrime he committed. This case is the first case where a cyber fraud was convicted in India. Since, the accused was only 24 years old and having no criminal background, the Court was very lenient. Hence, he was released after one year of probation. But the judgment was a turning point in the legal history of India. This judgment also enhanced the capability of Indian Penal Code to be applied to certain cybercrimes which is not coming under the purview of IT Act. Moreover, this judgment was a warning sent out by the Court that, the law is not to be played with<sup>103</sup>.

### **Sanjay Kumar Kedia v. Narcotics Control Bureau<sup>104</sup>**

The Petitioner (Sanjay Kumar Kedia) in this case was running a website which was used to sell drugs and psychotropic substances to customers even without any prescription. For this reason a notice was served to him under Section 67 of NDPS Act, 1985. Even though the petitioner filed an application for bail, it was rejected. Hence, the special leave petition to appeal against the rejection of bail. The petitioner's counsel cited section 79 as a defense and stated that as per the section, immunity is granted from prosecution. He also stated that, the petitioner's companies only provided third party data without having any knowledge or being aware that it's an offence under the Act. The Narcotics Control Bureau (Respondents) argued against this by stating that, here the petitioner and its associates are not an intermediary as mentioned under section 79 of the said Act since their acts and deeds were not only restricted to provision of third-party data without having knowledge of committing an offence under the NDPS Act. After designing, developing and hosting the pharmaceutical websites, the company was using

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<sup>103</sup> Talwant Singh, Cyber Law and Information Technology, Journal of Delhi District Courts 1, 12 (2013), available at <https://delhidistrictcourts.nic.in/ejournals/CYBER%20LAW.pdf>, last seen on 19/07/2021.

<sup>104</sup> Sanjay Kumar Kedia v. Narcotics Control Bureau, Appeal (crl.) 1659 of 2007.

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these websites to sell huge quantity of psychotropic substances in USA especially 'Phentermine' and 'Butalbital'. The Supreme Court held that, after analyzing the reports of the investigating agencies, the petitioner was not just an innocent intermediary as defined under Section 79 of the IT Act, in fact, they were the owners and hence they were responsible for the information therein and also mentioned that Section 79 only grants immunity only to an accused who has violated the provisions of the IT Act, 2000 and no immunity under the Narcotics Drugs and Psychotropic Substances Act, 1985.

### **Pune Citi Bank – Mphasis Call Center Fraud Case**

In this case, 3, 50,000 US Dollars were transferred into few accounts in Pune through e-banking from four accounts of US Citizens who were having accounts in Citi Bank without their knowledge. Few employees from the 'Mphasis' call centre during their conversation with the US Customers gained their trust and took their card details and PIN Number. The employees who committed this fraud were executives hired by Mphasis to assist in Citi Bank Services. According to the complaint of the US Customers, the money was transferred into various accounts in Pune. In the primary stage of investigation and interrogation, the police couldn't find any involvement of the employees. As a part of the investigation, the police had frozen the accounts to which the money was transferred into. But finally, after the continuous struggle and investigation, the police trace the culprits. It was revealed that, a total of 11 accused were involved in the crime and including three ex-employees of the call center and the other eight were not the employees of Mphasis. The 3 ex-employees were working there for a period of six months and at that time, they who had contact with the US Customers. Usually the employees are always checked at the time of entry and leaving the call center. These three might have by hearted it and used it later when they were out after the work. Finally, the police was able to save the image of the call center by tracing the real culprits. After this issue, it was made compulsory that a national ID along with a national data base is required for verification of name and details. Most of the times, banks are not aware of this and they cannot be held liable. Hence, customer awareness is the key to prevent these kinds of frauds<sup>105</sup>.

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<sup>105</sup> Cyber Law Case Studies, Cyber Legal Services, available at <https://www.cyberalegalservices.com/detail-casestudies.php>, last seen on 16/07/2021.

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## **Morgan Stanley's case- Landmark Judgment by Supreme Court<sup>106</sup>**

This judgment by the Supreme Court directed BPO to make a secure vault to prevent data theft and improve the privacy protection in India. It was decided to set up a separate Self-Regulatory Organization for the said purpose in April 2007. This paved the way for creating new security standards or protocols for software industry along with a global perspective.

## **ICICI Bank Phishing case**

In this case, e-Mails were used to commit the fraud. Only very recently few of the ICICI Bank customers realized the fact that e-mails can be a threat to their right to privacy and security. The customers received e-mails from a person who claimed to be a bank official and enquired about the bank details which is actually confidential. Later he directed them to use a web page which looks similar to that of the official website of the bank. The webpage looked so genuine but still out of doubt some customers contacted the bank to know the purpose of the mail. The bank authorities came to know about the phishing attack and registered the complaint<sup>107</sup>. This is one kind of fraud in E-commerce and E-banking platform which is faced by many organizations across the globe.

## **Avnish Bajaj v. State NCT of Delhi<sup>108</sup>**

In this case the Delhi High Court discussed about how a network service provider is liable for the loss of the confidential data which is available on their site. In this case, the network service provider was baazee.com. The prosecution argued that, even after knowing about the illegality of transactions, the accused still used banking channels for payment. After analyzing the provisions of IT Act, 2000, the Delhi High court held that a case can be filed against the company director. The judgment declared Avnish Bajaj not guilty.

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<sup>106</sup> DIT International Taxation, Mumbai vs. Morgan Stanley & Co. INC, Appeal (civil) 2914 of 2007.

<sup>107</sup> ICICI Bank Phishing, India Forensic, available at <http://www.indiaforensic.com/icicihack.htm>, last seen on 16/07/2021.

<sup>108</sup> Avnish Bajaj v. State, (2005) 3 CompLJ 364 Del.

### **Delhi Debit Card Fraud**

In this case, the fraudsters were using the debit card details of the people who used and ATM counter in Paharganj, Delhi. Around 300 people were victims of this fraud and an amount of 6 lakhs were stolen by the fraudsters using these details. This fraud was committed by a group of three people including the ATM Security guard. The guard by acting like helping the ATM users will see the card details and PIN number.

He was capable of memorizing long numbers. Knowing about the capability of the guard, Ajit Singh, the second culprit who is a commerce graduate made a deal with the guard along with his other friend Anil Mehra. The security guard was paid Rs.500 for each card details he transfer to Ajit and he thus made Rs.1.25 Lakhs. Anil Mehra later used these stolen details for online ticket booking and various other purposes in E-commerce platform. Once an SBI Customer who lost Rs.42,682 from an unauthorized transaction filed a complaint in the Delhi Crime Branch. During the investigation he mentioned about using his ATM in Paharganj ATM Counter. Hence, the police arrested the guard and the other two fraudsters.

### **Nasscom v. Ajay Sood & Others<sup>109</sup>**

This is a landmark judgment delivered by the Delhi High Court. In this judgment, the Court declared that 'Phishing' is a crime on the Internet platform. The court also mentioned in detail about the concept of phishing and also laid down few examples of phishing. Normally phishing include acts like person pretending to act as a representative of a bank and get the personal details of the consumers. A precedent was laid down through this judgment. The court stated that there is no particular legislation which covers the crime of Phishing but it was held illegal comparing to the provisions of 'Misrepresentation'. The image and reputation of the plaintiff was affected by the act of the defendants where they used the identity of 'Nasscom' (Plaintiff). The defendants used the identity of Nasscom to send e-mails to gather personal details of people whom they used for contacting people for their placement agency. The evidences were found

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<sup>109</sup> Nasscom v. Ajay Sood & Others, 119 (2005) DLT 596, 2005 (30) PTC 437 Del.

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from the defendants in an investigation conducted as per the instructions of the court. Two hard discs of computers used by the defendants were taken to custody and later court ordered to pay a compensation of 1.6 million and also to hand over the hard discs to the plaintiff. It's a milestone in the history of Indian Judiciary. This judgment made it possible to declare the phishing as a crime and to ensure remedies even though there is no any particular legislation existing. This judgment is actually a ray of hope which can lead to further developments in the matter of preventing threats and challenges in online platform and also to protect the rights of the consumers.

### **ICICI Bank Limited v. Mr. Umashankar Sivasubramanian and Others<sup>110</sup>**

It's a landmark judgment by the office of the Adjudicating Authority of Tamil Naidu under Information Technology Act, 2000. The complaint was about money debited from the complainant's account due to the bank's negligence. The ICICI Bank contented that it's a case of phishing and the negligence is on the customer's side. According to the decision of the adjudicating authority, ICICI had failed to prevent the phishing attacks and protect the consumers. As per Section 85 and few clauses of Section 43 of the IT Act, 2000 the bank was held liable to pay the compensation of Rs.12,85,000 including the expenses within a period of 60 days. After this, the ICICI Bank obtained stay order by filing an appeal before Cyber Appellate Authority. This case happened in 2007 and hence, it was decided on the basis of IT Act, 2000 and not referring to IT Act, 2008.

### **Infinity e-Search BPO Case**

In this case, the Indian business process outsourcing (BPO) firm named 'Infinity e-Search', were held liable for leaking out confidential information of around 1000 British customers. The company employee Karan Bahree, who was working in the Gurgaon Call center, was the one behind the act of fraud. Hence, the company had to admit it. In an "explanation letter" submitted by Karan to his employers, he said that a journalist named Oliver asked him for some information and he also paid for the same. Company denied its direct involvement in this act of fraud and also claimed that they were not aware of this act done by their employee. They also added that Nasscom had already

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<sup>110</sup> ICICI Bank Limited v. Mr. Umashankar Sivasubramanian and Others Appeal No. 435/2009.

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said that these incidents are very rare but still they will find a way to solve this issue<sup>111</sup>. Here in this case, the journalist who introduced himself as an undercover reporter in a news channel bribed the employee in order to collect confidential information of people<sup>112</sup>.

### **M/s Pachisia Plastics vs. ICICI Bank Ltd.**

This was a case of unauthorized withdrawal of money from the bank account in defendant's (ICICI) bank. The complainant had lost an amount of Rs.1, 18,000 without his knowledge from the account. The order of the forum held that defendant bank is not liable for the loss since its not their failure and hence it's the failure of the complainant that he failed to keep the card details and passwords of net banking safe and secure. Hence it's not a deficiency of services from the side of the bank and the burden is on the complainant to prove that there was no carelessness or negligence happened from the complainant's side.

### **6.3 Indian Constitution & Consumer Protection**

The Constitution of India is not having any particular provisions which speak about the consumers or about their rights. But this concept of Consumer protection can be related to the Directive Principles of State Policy which comes under Part IV of the Indian Constitution. The Constitution guarantees fundamental rights in Part III. According to Article 19(2) sub-clause (g), which guarantees freedom of profession, trade or business, thereby ensure that the State cannot prevent a citizen from carrying on a business, except by a law imposing a reasonable restriction according to the interest of the general public<sup>113</sup>. In other words, Article 19(2) is not applicable if the business conducted is illegal or immoral or it's causing any harm to the public and in case of such a business it can be prohibited or it should be licensed. However, reasonable restrictions can be imposed on any business also regarding the place and time.

In the matter of license and the permits which are required for conducting business or trade, the issuing of such license completely depend upon the appropriate authority and

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<sup>111</sup> Call Centre Employee Admits Role in Data Theft Expose, The Tribune (24/06/2005), available at <https://www.tribuneindia.com/2005/20050625/main2.htm>, last seen on 16/07/2021.

<sup>112</sup> Supra 78 at 59.

<sup>113</sup> M P Jain, Indian Constitutional Law, 1053, (8th ed., 2018).

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it's also a mandatory that the policies should be clearly laid down considering the consumer interest and general public. In case, if the law which requires license is not setting out the considerations, it would be considered as void. Basically, an already existing license can't be revoked before giving the licensee a chance to be heard. Also, the restrictions imposed on the licensee should be reasonable in nature. In fact, the restrictions imposed should be favorable for the consumer interest and complete prohibition can be imposed on manufacture of any kind of drug which is dangerous to public health.

According to Article 21 of the Indian Constitution, every person has the right to live with dignity and free from all sort of exploitation. Article 38 requires the State to make a social order in which ensures social, economic and political justice to all the institutions of life<sup>114</sup>. It is important to consider the fact that; a consumer cannot be left out while making this mandate practical. Article 39(b) and (c), requires the State to formulate its policy for securing the ownership and regulation of the material resources of the available in the community and also ensure equal distribution so that it results in common good, and also the functioning of the economic system should not lead to concentration of wealth in the hands of few and ultimately it should be for common good. This can be considered as the most significant directive t the state which supports public distribution system and also administration. This is the most important directive to the State under Chapter IV of the Constitution, which supports the whole public distribution system and the administrative mechanism to regulate hoarding and ensure profit in India. The Apex Court has mentioned that a statutory corporation, irrespective of the fact that its not be a public utility, it has also to function complying with Article 39 of the Constitution and can charge only reasonable price.

For a better quality and smooth functioning, the Constitution has distributed the matters relating to product and service control and regulation, between the State and the Centre. The subjects which concern the protection of consumer rights are placed in Concurrent List. That includes: Adulteration of food materials and various other goods, Social and Economic planning, Poisons and drugs excepting the cultivation or manufacture and sale for the purpose of exporting opium, Monopolies which are industrial and commercial, Medical, Legal and other professions, Trade and Commerce, distribution

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<sup>114</sup> Ibid, at 1470.

of the products which belongs to any industry where the such industry is controlled by the Union and is declared by law to be functioning in the public interest, and goods which are imported and food materials including edible oilseeds and oils, including oil cakes, cattle fodder, raw cotton, and raw jute, cotton seed, weights and measures, price control, electricity, books, newspapers and printing press.

## **6.4 Combating Frauds in E-Commerce: An Analysis of Indian Legal Scenario**

### **6.4.1 The Consumer Protection Act, 1986**

During mid 80s Industrial revolution was happening which led to the advancement in all aspects of trade and commerce all over the world. There was a global expansion of all the businesses. As a result, various new goods have appeared in the market according to the needs of the consumers and also services like insurance, electricity, transport, entertainment, housing finance and banking were also made available. With the development, a well-organized group of manufacturers and traders with new forms of or business and marketing came into the picture. This made a change in the relationship between the group of traders and the consumers. The new form of marketing established a space where the consumer's get influenced by the advertisements and thus make an increase in their demands. People were attracted to the products through the advertisements in television, newspaper etc. But, imperfections or any issues regarding the quality and quantity of the goods were considered as deficiency of services. It is important that for the welfare of the general public, the products should have a good quality or else it should not be allowed in the market. Despite of various provisions which provides consumer protection, and mentions strict action against adulterated and second quality products in various enactments like the Sale of Goods Act, 1930, Code of Civil Procedure, 1908, the Indian Penal Code, 1860, the Indian Contract Act, 1872 and the Standards of Weights and Measures Act, 1976, there was no great achievement in the matter of consumer protection. Even though relief was provided to the consumers by the Prevention of Food Adulteration Act, 1954 and Monopolies and Restrictive Trade Practices Act, 1969, still it was not adequate enough to ensure a complete protection for consumer rights.

On 5th December 1986, The Consumer Protection Bill, 1986 was introduced in the Lok Sabha fulfill the purpose of providing better protection to consumers. This bill highlighted the need to provide a better protection for consumer interests and to make

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provision for establishing consumer councils and various other authorities for dealing with consumer disputes. The bill was passed by both the Houses of Parliament and it was signed by the President on 24th December, 1986. It was published as Consumer Protection Act, 1986.

The main features of the Act are:

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highlighted the need to provide a better protection for consumer interests and to make provision for establishing consumer councils and various other authorities for dealing with consumer disputes. The bill was passed by both the Houses of Parliament and it was signed by the President on 24th December, 1986. It was published as Consumer Protection Act, 1986.

The main features of the Act are:

- To provide information to the consumers regarding the quality, quantity, purity, standard and most importantly about the price of the good in order to prevent unfair trade practices;
- To protect and promote consumer rights. The right to be protected from using products which are harmful to life;
- To ensure the right to be heard and to provide assurance that the interests of the consumers will be considered;
- For providing a fast and effective remedy for consumer disputes, quasi-judicial bodies are setup in Central, State and District levels. These quasi-judicial bodies are supposed to keep up the principles of natural justice and are empowered to provide relief of a specific nature and to award compensation to consumers if required. The Act also included penalties in case of cont complying with the orders.
- Right to redressal against of unfair trade practices or any kind exploitation of consumers; and
- Right to be aware about the rights of the consumers. It is the responsibility of the Consumer Protection Council that are established at the Central and State level, to promote and protect these rights and most importantly to make consumers aware of this right<sup>115</sup>.

This Consumer Protection Act, 1986 was amended for the first time in the year 1991 and then in the year 1993, 2002, and in 2008. The very recent amendment was in the year 2019. It is a milestone in the history of socioeconomic legislation and its ultimate aim is welfare of the public. The changes from time to time had led to many developments and

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<sup>115</sup> Consumer Protection Act - Basic Features, Consumer Co-ordination Council, available at <http://cccindia.org.in/Consumer%20Protection%20act%20Basics.pdf>, last seen on 17/07/2021.

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more varieties of goods. Hence, the main objective of this enactment is to ensure protection of consumer interests and consumer rights.

In an in-depth analysis of the Act, it can be observed that CPA is about protecting the people who struggle to prevent injustice. Basically, the Consumer Protection Act, 1986 provides a fast, simple and less expensive remedy to the consumers. The Act promotes the basic consumer rights and also provides three-tier redressal machinery for consumer grievances, which is known as Consumer Dispute Redressal Agencies. This enactment of this statute was a revolution in the Indian legal system in the matter of protecting consumer rights. The Act, tries to ensure justice without any delay and less paper work and with no excessive financial burden. This Act, gained its recognition as a common man's legislation which ensures justice. It is a fact that, in Post-Independence era, India has numerous laws and regulations to ensure the protection of consumer rights and interest but none of these existing laws covers all the aspects. The basic intention behind enacting all these legislations is to regulate different types of marketing activities.

The Consumer Protection (Amendment) Act, 2002 made changes in the original Act especially regarding the Jurisdictions of three-tier forums and their procedural mechanism. In the amendment of 2008, PART IV was added which included Prepaid Purchase Cards. Another addition was in DIVISION 3 and it was regarding the Investigations, Inspections and also Enforcement. Interpretation of Division is also included here. According to this Division, computer software comes under the purview of 'property' and 'record' means any data that is stored or recorded in any medium or by any sort of device, including electronic media or a computer.

### **6.4.2 The Consumer Protection Act, 2019: An Analysis**

The Consumer Protection Bill, 2019 was passed by the Parliament on 6th August 2019 in order to replace the Consumer Protection Act, 1986. The President of India approved the new Consumer Protection Act, 2019 on 9th of August 2019 and it will come into force on the date as notified by the Central Government. This Act has been enacted especially for the purpose of providing on time and an effective settlement of consumer disputes and various other related matters. The main aim of the Government for enacting this new Act instead of amending the 1986 Act was to provide strong protection to the consumers considering the developing E-commerce industry and also the advanced methods of

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business such as tele-shopping, online sales, direct selling and multi-level marketing up on the traditional methods of business.

The 2019 Act has introduced some major changes and ensures a better protection to the consumers in when compared with the earlier 1986 Act. The 2019 Act widened the scope of the term Consumer since it includes the Consumers in online platform and it covers E-Commerce transactions. According to Section 2(7) (b) of CPA 2019, the definition of a consumer is extended to online consumer. In the new amendment, sub clause 16 and 17 of Section 2(7) defined E-Commerce and Electronic Service Provider respectively. The 2019 Act has also made a change in the scope of the term 'Unfair Trade Practices' when compared to the 1986 Act. It now includes misleading advertisements in the online platform, not issuing bill or memo for the goods and services, failure in taking back the defective goods or provide remedy for defective services and refunding the amount within the time period mentioned in the bill or memo or within a period of 30 days in the absence of any such stipulated time period, and disclosure of confidential personal data of a consumer unless such disclosure is in accordance with law<sup>116</sup>. This was added in order to avoid the confusions and ensure the protection of Consumers in online platform.

Two highlights of the Act are:

**Act Covers E-Commerce Transactions:** The definition of the term 'Consumer' in the new Act widened the scope of the specific term. It now includes any person who buys any goods, whether it is through online or offline transactions, teleshopping, electronic means, direct selling or multi-level marketing<sup>117</sup>. The CPA of 1986 did not specifically mention about E-Commerce transactions, and in the new Act, this lacuna has been addressed.

**E-Filing of Complaints:** The new Act of 2019 provided a platform for the consumers to file complaints with the appropriate jurisdictional consumer forums located at the place of residence or work of the consumer. This is completely different from the current

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<sup>116</sup> Gaurang Kanth & Divjot Singh Bhatia, India: The Consumer Protection Act, 2019: An Overview, Mondaq Blog, available at <https://www.mondaq.com/india/Consumer-Protection/876600/The-Consumer-Protection-Act-2019-An-Overview>, last seen on 17/07/2021.

<sup>117</sup> Section 2(7)(b), The Consumer Protection Act, 2019.

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practice of filing the complaint at the place of purchase or where seller's registered office address is located. The New Act also contains provisions which enable the consumers to file complaints electronically and also provides for the hearing and/or examining the parties through the method of video-conferencing. This is added in order to make the procedures less complicated and to reduce the inconvenience faced by the consumers till now<sup>118</sup>.

Conclusively, the CPA, 2019 when compared with the CPA, 1986 clearly shows that it provides for a stronger shield of protection of consumer rights and interests considering the present era of digitization. The 2019 Act is capable of dealing with the development of technology and enables easier method for filing complaints. It also imposes strict liability in case of violation of consumer rights or interests. However, only in the coming years the fate of the CPA, 2019 can be decided. In fact, on a first look it appears to be a more consumer-friendly legislation when compared with the 1986 Act and also goes along the existing trends of E-commerce.

### **6.4.3 The Information Technology Act, 2000**

In the year 1999, the Ministry of Information Technology was formed to control and regulate the Information Technology and to make India IT Superpower<sup>119</sup>. The General Assembly of UN in its Resolution dated 30th January 1997, recommended that every State should follow the Model Law on E-Commerce which is adopted by the United Nations Commission on International Trade Law (UNCITRAL), while enacting or revising their laws. Accordingly, India has witnessed the framing and enactment of its first statute relating to Information Technology having the same pattern of the Model Law.

Basically, the Model Law ensures or provides equal treatment for users of electronic platform and conventional paper-oriented communication system. Thus, on 15th of May, 2000 the Information Technology Act, 2000 was passed by Parliament and was approved by the President on 9th June, 2000 and it came into existence on October, 17th

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<sup>118</sup> Stuti Galiya, India: Consumer Protection Act, 2019 – Key Highlights, Mondaq Blog, available at <https://www.mondaq.com/india/Consumer-Protection/838108/Consumer-Protection-Act-2019-Key-Highlights?signup=true>, last seen on 17/07/2021.

<sup>119</sup> Indian IT Industry, Indian Mirror, available at <https://www.indianmirror.com/indian-industries/information-technology.html>, last seen on 17/07/2021.

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of the same year. The IT Act is first of its kind in India which covers Information Technology and its various aspects and it's mainly focused on tackling various situations in the electronic world. It is fundamentally a commercial law which governs the authorization and recognition of the electronic activities and providing legal framework to tackle the issues in Internet relations in India. Even though the basic aim was to regulate the commercial dealings, it also covered the aspect of cybercrimes and frauds as well. In the last 19 years from its enactment, it has been amended only once in the year 2008 and it was an amendment which focused more on tackling cybercrimes.

### **Salient Features of the IT Act, 2000**

The preamble of the enactment talks about the main objectives of the Act which the legislature intended to achieve by enacting this particular Act. The preamble clearly is a key to understand the minds of the makers of the legislation. The Preamble of the Act clearly states that, it gives a lawful recognition to a wide range of transactions which are conducted by using methods of electronic data interchange and different methods for electronic communication, which is ordinarily referenced as 'Electronic Commerce', which involve using alternatives to conventional paper-based methods of communication and storage of the same. It also mentions that, the Act facilitates electronic filing of documents with various agencies and bodies of Government and further about amending various existing legislations such as Indian Evidence Act, 1872, the Indian Penal Code, 1860, the Reserve Bank of India Act, 1934 and the Bankers' Books Evidence Act, 1891 for any matters connected therewith.

Few of the salient features of the Act are as follows:

- It gives a lawful recognition to a wide range of transactions which are carried out by methods for electronic data interchange and different methods for electronic communication, which is ordinarily referenced as 'Electronic Commerce', instead of conventional method of paper based communication;
- This Act being the legislation which exclusively deals with commercial transactions, it pointedly provides legal recognition to electronic records, electronic signatures, and electronic filing of documents;
- It makes electronic filing of documents with the Government bodies or agencies an easier process;

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- The act gives legal authorization to electronic fund transfers between banks and other financial institutions;
- It provides legal recognition for maintaining the account books in an electronic form by the bankers and for the amendment of various statutes such as Indian Evidence Act, 1872, Indian Penal Code, 1860, RBI Act, 1934 etc.
- The IT Act deals with the significant part of the issues related to Information Technology, it also mentions about the procedure for filing complaints, manner of investigation, the powers of various authorities concerned and the Tribunals where appeal has to be filed.
- Most importantly, Privacy which is the most controversial issue in the Internet Age was considered for the first time in legal provisions in India. The Act made breach of privacy and confidentiality punishable not only with fine but also with imprisonment.

### **6.4.4 The Information Technology (Amendment) Act, 2008**

This Act has been amended by Information Technology (Amendment) Bill, 2006, passed in Lok Sabha on December 22nd and in Rajya Sabha on December 23rd of 2008. The lacunae in the IT Act, 2000 for long necessitated a refurbishing of the legislation. This was achieved in 2008 when the Act is not only thoroughly amended but a lot more is done. This amendment is a positive step to bring Cybercrimes within the legal framework. These changes are highlighted as under:

1. The most prominent change is the replacement of the term “Digital Signature” by the term “Electronic Signature” thus making the IT law more technology neutral which has been the approach of the Model Law on Electronic Signatures, 2001.
2. The major amendments have been in the long- awaited criminal area. A host of new Cyber crimes like child pornography, obscenity, depiction of sex explicit act, violation of privacy, cheating by personation, identity theft, cyber terrorism and sending offensive messages have been introduced.
3. The amendments are more investigation friendly and are paving the way for more fruitful and easier way to investigate cybercrimes and other online activities. Attempts and abetment of offences is also recognized as an offence under the Act. The complaints regarding these offences can now be looked into by an officer of

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the rank of Inspector and the earlier provision for Deputy Superintendent of Police has been done away with.

4. Terms like “Cyber Café”, “e-mail”, “and Communication device” have been defined. This has enlarged the area of law and has enriched its vocabulary to meet the Internet situations.
5. Elaborate provisions are introduced to safeguard cyber infrastructure in the country. For this, provisions for the establishment of a National Nodal Agency and Indian Computer Emergency Response Team (ICERT) have been introduced. The term “intermediaries” has been defined to include within its area a number of other service providers so as to enlarge the liability- susceptible class in cyberspace.
6. National Security has been given an upper hand. For this, monitoring, intercepting and decryption of flowing information have been made mandatory by the intermediaries and any person in charge of a computer source on the directions of proposed government agency. Failure to follow the directions has been made an offence.
7. To make the evidence more acceptable and reliable, the report of the Electronic Evidence Expert has been made relevant under the Evidence Law by making an amendment under the same. It is made clear that without technological expertise and the digitization of the legal process, little can be done to counteract the silicon onslaught.

The ministry of Communications and Technology published few guidelines on 11th April 2011. It was regarding the implementation of certain provisions of the Information Technology (Amendment) Act 2008 which includes:

1. Protection of confidential data: security procedures that should be followed by the organizations which deals with sensitive confidential data;
2. Careful handling of data by the intermediaries and
3. Guidelines which should be followed by all the Cyber cafes.

Some of data protection provisions which includes data protection in the Information Technology (Amendment) Act, 2008 are as mentioned below:

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- Section 43-A<sup>120</sup> - According to this section, a body corporate who is having a possession of, confidential data or handles sensitive data of a person in any computer source can be held liable to pay the compensation if it fails to implement and maintain reasonable security procedures, and if any wrongful loss or wrongful gain to any person due to this act of negligence. The term 'sensitive personal data' is not yet defined by the Central Government or any other authorities. Since it is not prescribed accurately, the data security will be specified on the basis of the agreement between the parties. In fact, the explanation (ii) of Section 43A lacks clarity in the matter whether the banks or any corporate body can enter into an agreement which includes standards lesser than those mentioned by the Central Government and also in case of a contradiction between the guidelines or standards mentioned by the Central Government and which are mentioned in the agreement, which would prevail. In this case, any stranger or a fraudster can commit some fraud in the online platform and the banks can be liable or the banks can deny it since it's not their fault and the customer is facing the loss. In either the cases one or the other party will have to face the situation. There should be a balance between the protection of consumers and also the protection of organizations and companies in E-banking and E-commerce platform.
- Section 66<sup>121</sup> – According to this section, if any person commits any act which is mentioned under Section 43, with a dishonest and fraudulent intention, he shall be punished with the imprisonment for a term which may extend up to three years or with fine which may extend to five lakh rupees or with both.
- Section 66-C<sup>122</sup> - As per this section, the crime of identity theft which is a big threat to the E-commerce platform has been added to the Information Technology (Amendment) Act, 2008.
- Section 66-D<sup>123</sup> - This section was added to the Information Technology (Amendment) Act, 2008 to penalize any act of cheating which is committed by using a Computer Resource.

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<sup>120</sup> Section 43-A, Information Technology (Amendment) Act, 2008.

<sup>121</sup> Section 66, Information Technology (Amendment) Act, 2008.

<sup>122</sup> Section 66-C, Information Technology (Amendment) Act, 2008.

<sup>123</sup> Section 66-D, Information Technology (Amendment) Act, 2008.

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- Section 72<sup>124</sup> - This section mentions about the punishment for a person who is having secured access to any kind of electronic data system, register, document, information or any other material, discloses that data to a third person without the consent of the person concerned shall be punished with imprisonment of two years or with fine up to one lakh or both.
- Section 72-A<sup>125</sup> - This section includes the punishment for disclosing personal data by any person even an intermediary in case of breaching a contract. Section 72-A is having a wide scope than Section 72. According to this section the person who commits this crime can be imprisoned for a term of 3 years and fine up to 5 lakhs. This section is applicable, only when the person uses this information with an intention to cause a wrongful loss or gain and most importantly without having the consent of the person or in case of breaching a contract.

Before the amended of IT Act in 2008, it had only two provisions which addressed the offences related to online platform. The Amendment Act made it possible to have stronger data protection techniques and along with it, it has strengthened the basic framework against cybercrimes. In fact, there were no specific provisions in any statute to resolve the issue of Data Protection. But, with the new Information Technology (Amendment) Act, 2008 it can be considered a start to overcome the lacuna of existing data protection laws in India. Even though it covers various aspects, it's still not completely capable of tackling all the issues related to privacy issues and various other threats in the online platform. Basically, if there is any issue relating to the cyber world, it should be coming under the ambit of IT Act. But only when we carefully analyze we could see that there are many more advanced threats which are not addresses in this particular statute.

### 6.4.5 Negotiable Instruments Act-1881

The NI Act mentions about negotiable instruments including cheques in electronic forms. Proper guidelines are issued and there are fixed standards in the RBI guidelines regarding the clearing of cheques<sup>126</sup>. Electronic cheque is defined as a 'mirror image' of

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<sup>124</sup> Section 72, Information Technology (Amendment) Act, 2008.

<sup>125</sup> Section 72-A, Information Technology (Amendment) Act, 2008.

<sup>126</sup> Reserve Bank of India, Government of India, Reports 2011, available at <https://m.rbi.org.in/scripts/PublicationReportDetails.aspx?UrlPage=&ID=624>, last seen on 17/07/2021.

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a paper cheque and this expression is not adequate. Considering the usage of cheques or its appearance, the electronic form of cheque is not at all a mirror image of a paper cheque. An electronic cheque should have a definition and also a way of writing and a valid signature which should be in a secure system. Hence, the term 'mirror image' should be changed into a better term which gives more clarity to the provisions in the NI Act.

According to the definition of an electronic cheque, it requires a digital signature which should be biometric or not and also a crypto system which is asymmetric. This particular definition was added in the year 2002 considering Section 3 of the IT Act, 2000. But in the year 2008 IT Act was amended and a separate provision was added mentioning about electronic signature. But still, there has been no change to the provisions in the NI Act. This leads to an absurdity and confusion or in other words inadequacy. Hence, in order to run along with the developments in E-commerce and to keep up with the ultimate aim of protecting consumer rights, there should be an amendment in the NI Act.

### 6.4.6 Data Protection Bill of 2019

The Indian Government recently made a step forward in the matter of tackling the privacy issue faced by the people in the electronic world. A committee was appointed by the government in the year 2017 for the purpose of a detailed study regarding the issues related to online privacy and data protection. The committee was headed by Justice B.N Srikrishna (Retd. Supreme Court Judge). A report was submitted by the committee after a year and a draft of the data protection bill was submitted. After the revision of the draft, the bill was submitted in the Lok Sabha on 11th of December 2019<sup>127</sup>. It was introduced as a part of the effort to solve the issues and ensure a better privacy and data protection for the users in online platform. The bill basically focused on few points which states that:

- The law should be able to handle the situations in the present and should be capable of handling the future issues.

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<sup>127</sup> Rudra Srinivas, All You Need to Know About India's First Data Protection Bill, CISOMAG (03/01/2020), available at <https://www.cisomag.com/all-you-need-to-know-about-indias-first-data-protection-bill/>, last seen on 16/07/2021.

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- It should be applicable for both private and public entities.
- Ensure that data is used only for the proper purpose for which it is collected.
- Authorities who are in charge of data collection should be responsible for the data processing.
  - The enforcement and issues regarding breach of security and should be dealt by statutory bodies.
  - The penalties and remedies provided should be adequate.

Even though India is trying to make changes and alter the laws, it's still far away from achieving a proper legal framework to tackle the present and future privacy issues in the online platform of E-commerce and E-banking<sup>128</sup>.

### 6.4.7 The Payment and Settlement Systems Act, 2007

In India before 2007, there was no statute which covers the issue of Electronic Fund Transfer. The Payment and Settlement Systems Act, 2007 was enacted in the year 2007 and it includes guidelines and standards which could handle the issues up to an extent. Electronic Fund Transfer Act of USA was the influence behind drafting this particular statute. The provisions of this act mainly dealt with the transfer of funds initiated by an individual by various means and which are managed electronically. According to Section 18 of the PSS Act, 2007, it empowers the RBI to issue guidelines and such guidelines should be complied compulsorily. The Act also mentions about the punishments and penalties in case of non-compliance with the provisions, rules and regulations mentioned in the Act. According to Section 25 of the Act, the issue of insufficiency in fund transfer is a punishable offence where the offender can be imprisoned for a term which may extend up to two years or with fine which is twice the amount of the transfer or with both. In order to ensure the smooth and effective electronic fund transfer and its various aspects, RBI was issuing numerous guidelines.

### 6.5 Development of Pro E-Commerce Approach in Indian Judiciary

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<sup>128</sup> Bhumes Verma, Data Protection in India and Europe: A Comparative Analysis, Lawyered, available at <https://www.lawyered.in/legal-disrupt/articles/data-protection-india-and-europe-comparative-analysis>, last seen on 17/07/2021.

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The Delhi High Court in the case *State of Delhi v. Mohd. Afzal & Others*<sup>129</sup> held that electronic records can be accepted as evidence and also mentioned that in case if any person challenges the admissibility of the electronic record doubting its accuracy, then the burden of proof lies on the person who raises the challenge. Here we can see that, the Court has taken a pro E-commerce approach. This can be further seen in another case of *Societe Des Products Nestle S.A. Anr. v. Essar Industries And Ors*<sup>130</sup>, where the Court accepts the developing scope of E-commerce in this modern time and laid down that since the world has given an important space for electronic evidence, it's the necessity of the time and it's the responsibility of the law to accept the reliance on electronic records as evidence.

The Courts understanding the increased scope of E-commerce and electronic records, has focused on the amendments in various Acts and how to apply it adequately within the scope of increased internet use and issues relating to it. In the case, *State of Punjab & Ors. v. M/S. Amritsar Beverages Ltd. & Ors*<sup>131</sup> Supreme Court referred to the recent amendments which relates to internet and various other technological developments and mentioned that Section 464 of the IPC deals with the inclusion of the digital signatures. Sections 29, 172, 167, 192 and 463 of the Indian Penal Code were amended in order to include electronic documents within the purview of 'documents'. Along with that, Section 63 of the Indian Evidence Act, 1872 has been amended in order to include admissibility of electronic outputs in the paper, media, optical or in magnetic form. Section 73A of the Evidence Act, covers the procedure for verifying digital signatures. Sections 85A and 85B of the Evidence Act also mentions about presumption regarding electronic records, electronic contracts, electronic messages and digital signature certificates.”

### 6.6 Analysis of Various Provisions

One of the major setbacks of online trade or E-commerce is the data protection and consumer's rights. The protection of consumer's data which is available in the online platform is the major concern in the recent time. Basically, the terms and conditions of data protection are dependent on the agreement between the parties. So, any issues

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<sup>129</sup> *State of Delhi v. Mohd. Afzal & Others*, 107 (2003) DLT 385.

<sup>130</sup> *Societe Des Products Nestle S.A. Anr. v. Essar Industries and Ors*, 2006 (33) PTC 469 Del.

<sup>131</sup> *State of Punjab & Ors. v. M/S. Amritsar Beverages Ltd. & Ors*, Appeal (civil) 3419 of 2006.

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regarding the disclosure will affect the contractual relationship. As mentioned above, if the data is disclosed or misused without the consent of the person concerned, it's a punishable offence under Section 72A of IT Act, 2000. The person who commits the crime can be imprisoned three years and a fine up to INR 5 lakhs. Also, in Section 43A of IT Act, 2000, it provides that if a body corporate that is handling any confidential personal data and is negligent in maintaining the confidentiality and reasonable security results in any kind of wrongful loss or wrongful gain to any individual, in that case such body corporate may be held liable to compensate the person affected. Other than these provisions in the IT Act, there is no specific legislation in this country covering the aspect of data protection and privacy issues in E-commerce. It's important that each entity who is collecting and keeping the data of people should always have the consent and also should maintain a separate and strong privacy policy in order to ensure the protection of data. Hence, it's the responsibility of the online service providers to keep an eye and prevent the unauthorized use of personal data.

Apart from the above mentioned issue, the other major concern in E-commerce is regarding the ambiguity about jurisdiction in case of any disputes. Generally, in civil cases, suits are filed according to the provisions of Section 20 of CPC, 1908. The section says that, suits can be filed in the courts which are in the local limits of whose jurisdiction the defendants are voluntarily residing, or having a business, or personally works for gain; or the cause of action, completely or in part, arises<sup>132</sup>. The confusion is whether this is applicable to the issues relating to online transactions in E-commerce. Essentially, the consumer courts/forums itself state that jurisdiction. For the purchases made online, in case of any dispute the complaint should be filed in the place where the head office or the main branch of the company is located. If this is not practically possible, then complaint can be filed where the issue had happened.

In fact, the things get complicated in case of issues relating to online transactions because the website can be accessed anywhere from the country or from any part of the world. When it comes to practice, online and offline transactions are treated in a similar manner by the Courts. In that scenario, Section 20 of CPC, 1908 would be applicable and as mentioned above, cases can be filed the place of company's registered office or where the issue happened. The problem here is that, none of the above mentioned is laid down

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<sup>132</sup> Section 20, Civil Procedure Code, 1908.

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as a law and thus confusion regarding the jurisdiction comes up again and again. Issue gets worse when the online goods or service provider is from another country. When these kinds of issues arise, Courts use 'long arm jurisdiction' which empowers the local Courts to have extra territorial application.

When Section 1(2) of the IT Act, 2000 and Section 75 is read along, it provides that, the Act is applicable to any or contravention there under committed outside the India territory by any person and if that particular act or conduct is committed using a computer, computer system or computer network which is located in India. Along with this, Section 3 of IPC, 1860 provides that any person who is liable, by any Indian law, to be tried for an offence committed outside India shall be dealt accordingly by the provisions of the IPC for any act committed outside Indian Territory in the same manner as if such act had been committed within India<sup>133</sup>. Hence, even though there is a confusion and uncertainty regarding the jurisdictional issue, these provisions act as ray of hope for the consumers to ensure the protection of their rights without having a jurisdiction issue.

After a deep analysis of the IT Act, it is crystal clear that most of the provisions are mainly focusing on penal provisions in case of disclosing the personal information by a body corporate or otherwise. There are no specific provisions which directly mention or cover various cybercrimes like Pharming, Phishing, and Cyber Money Laundering which are very common in the E-commerce platform in recent times. The guidelines issued by the RBI acts only as precautionary measures. TO ensure the safety and reliability of E-banking, it is very much important to add penal provisions which cover the advanced forms of crimes and frauds in E-banking and E-commerce.

The most important aspect of E-commerce is online shopping portals since violation of consumer rights happens mostly in this platform. These online shopping portals enables the consumer to get various forms of reliefs in case of any deficiency if, the consumer has notified the online shopping portal regarding the same within a specific time period as mentioned in the conditions. For example, the popular online shopping portal 'Myntra' provides a 30-day exchange offer for most of its products. But there are other online portals which they ask the consumers to notify within 48 hours of shopping in

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<sup>133</sup> Section 3, Indian Penal Code, 1860.

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case of any defect. The point is that, the rights of the consumers can be violated if the online portal itself is having a fraudulent intension. The famous issue of 'timatara.com' is an example for such fraud, where the consumers were made to pay in advance and then the products were not delivered. According to the terms of the portal, goods was supposed to be delivered within a time period of 21 days but it never happened and the consumers were cheated. Later, the directors of the company were arrested on the basis of the complaints filed by the consumers and the issues rose in the social media platform regarding the fraud. This happened to be a lesson for all the consumers who never tried to be aware about their rights. Hence, the proper application of Caveat Emptor was witnessed here.

It is the duty of the consumers to be aware of their rights because, the service providers or traders won't be aware or bothered about consumer's rights. It's also important that consumers ensure their safety and take precautionary measures for their own protection. The safest method in E-commerce is to choose the cash on delivery option which helps the consumer from not providing any confidential data and also ensuring the delivery of the product.

In this era of technology, banking sector is also depending on online transactions. This is something which should need utmost care and precautions. RBI has provided various guidelines and safeguards regarding the same in the form of circulars etc. One among them was about adding an authentication process for online transactions which needs information which is not written or displayed on the cards. RBI also has directed the banks to ensure the secure use of card payments and electronic transactions in order to protect the consumer rights. As a result, all 'MagStripe' cards were converted to EMV Chip Card for all customers in order to prevent any fraud in E-commerce. This enables an easy tracking of the usage of card and hence it acts as a preventive mechanism. Banks should also make the procedure easier for the customers to block their card as soon as possible in case of any theft and giving a follow up of the same.

Various modes of electronic payments have emerged recently such as NEFT, IMPS and RTGS. We can see that there are lots of people who use this method of fund transfer and it came up as a safe and secure banking channel for E-commerce users. Thus any issue caused in these can be considered as violation of customer rights. There should a limit on the adding of beneficiaries in a single day. When a new beneficiary is added without

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the proper authorization, the customer should be alerted and such a facility should be introduced. The banks also should advance according to the developing technology and should improve their features and also take the preventive measure to protect the consumers from the threats developed due to the day to day advancements of technology.

Mobile banking is one of the new facilities provided by the banks other than card payment and electronic payment. There should be similar approach to ensure the protection of consumer rights even in the case of mobile banking. RBI has provided a circular which states the guidelines for banks regarding mobile banking. The confidentiality of personal data is an important factor for the mobile banking operations. Hence, the technology used in mobile banking must be very secure and should be capable of ensuring confidentiality, authenticity and integrity.

There are high amount of risks involved in mobile banking such as hacking, unauthorized transfer, technological failure etc. It's the responsibility of the banks to tackle the issues by taking precautions and appropriate counter measures which will protect the users from the risks of Internet banking. Banks should disclose the details about the risks to the customers and also about their responsibilities and liabilities in their website or through any printed medium. In cases if the customer files a complaint with the bank regarding a transaction, then it's the responsibility of the bank, to solve the matter referred in the complaint. All the banks should have separate platforms where the customers can raise their issues and they also should disclose the grievance handling procedure and the compensation policy. Complaints related to mobile banking should come under the purview of Banking Ombudsman Scheme. It should be clearly mentioned about the jurisdiction of legal settlement.

Therefore, it can be observed that E-Banking is using the facilities of online networks, digital interactive media and computer communications to provide service to the customers. The increased use of internet banking never replaced the traditional forms of banking. In fact, it blended into a combination of today's banking sector. Online banking enables the customers have easy access to banking services and also reduced the paper work. The growing number of customers in the E-commerce platforms is forcing the banks to develop and implement effective security features and ensure a secure environment. For providing a very strong shield of protection to the consumers

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from the threats in the E-commerce platform, banks require advanced security features to manage each and every aspect of their functions and services.

As we have seen in the analysis above, The IT Act, 2000 (2008) has covered fraudulent financial activities only in an indirect manner. It is important and much required that the consumers in E-commerce platform should be protected by ensuring comprehensive security provisions. In India, the absence of a separate legislation pertaining to data protection and privacy issues is a matter of great concern. The fact is that, even though the laws relating to data protection are not specifically mentioned in any statute until now, however, with strict rules and regulations along with privacy norms provided by the RBI. During the process of sensitization it is the responsibility of the consumers to ensure their privacy as well as be aware about their day to day financial activities. Hence, to tackle the challenges in online platform, it is very important to have strict legal provisions and implement it effectively all over the country.

Finally, it can be stated that there exists a number of Acts to ensure the protection of consumer rights in the country. However, instead of questioning their purpose and worth, it is the need of the hour to introduce a comprehensive legislation which could include all the aspects which are related to E-commerce in India. Moreover, the consumers in the E-commerce world should be aware of their own rights granted to them and also about the exact redressal mechanism in the case of violation of the rights.

## CHAPTER VII

### CONCLUSION & SUGGESTIONS

#### 7.1 CONCLUSION

The main purpose of this particular chapter is to summarize the important aspects discussed in this research work and also to point out the emerging issues regarding privacy issues and consumer protection in E-commerce in India. This research work is a doctrinal and critical study on the topic of 'Right to Privacy in E-Commerce'. The research paper is mainly focused on the relation of law with commerce especially analyzing the role of law in Internet e-Commerce regarding the consumer protection. In this modern era of technology, Information Technology has made open many possibilities and various business transactions. As a result of this development, it has led to a shift from Commerce to E-Commerce. This E-Revolution has changed the market into a virtual world in the cyber space which ultimately is a threat to the consumers and humanity. Since, the face of market has changed from conventional type to a virtual platform; the same change is reflected in the modes of business and shopping. This change or shift came along with numerous threats in the E-commerce platform. Hence, the researcher concentrated more on the emerging challenges in E-Commerce platform and especially on the frauds which affects the consumers in E-Commerce during online shopping and e-banking.

The first part of the research speaks about the development and changes in the commerce and its shift to E-commerce and how it affected the Indian markets and the human life. As a result, there is an increase of using online shopping more than conventional method of shopping and it also increased challenges in online platform. Secondly, the research has covered about the exploitation of consumers in the cyber world which includes illegal activities and various other forms of frauds. Consumer rights violation has become as serious issue in this century of E-commerce. Thirdly, this research has focused on violation of consumer rights in E-commerce and E-banking along with few examples and cases. Fourthly, the researcher has conducted an in-depth analysis regarding Indian legislations on Consumer protection in E-commerce and Cyber law perspective. In short, it was analysed by the researcher that, the IT Act, 2000 (2008) is like a foundation stone legislation in which all provisions are drafted in a very

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systematic manner but still, it is not adequate enough to tackle the issue faced by an ordinary consumer who is a victim and not a cyber expert.

This chapter of conclusion and suggestions is formed by the researcher analyzing the data mentioned in all the previous chapters. This particular research was on the basis of the following hypotheses:

- Lack of trust of consumers in online shopping and E-Banking transactions due to threat to their privacy is a major hindrance in the development of E-Commerce in India.
- The current legislature response which includes the Information Technology Act, 2000 and the Consumer Protection Act, 2019 is no strong shield to tackle various issues relating to E-Commerce is inadequate.
- In this modern era of an 'E' revolution, there is a need for amendment in the Indian Jurisprudence, for ensuring protection of Consumer Rights to prevent the frauds in E-commerce platform.

After a thorough analysis the researcher here submits that, the hypotheses of this particular research are proved to be partially right and partially wrong. It is right when in the aspect that, Indian jurisprudence regarding the protection of consumer rights should be amended in order to tackle the issues and challenges in E-commerce. It is also highlighted that the Information Technology Act, 2000 and also the Consumer Protection Act, 1986 which happens to be the only comprehensive legislation to cover the issues in E-commerce, is not a string shield for protecting consumer rights. In fact, by analyzing the Consumer Protection Act, 1986 the researcher could realize that even with this Act, online consumers are not completely protected. Since the CPA, 1986 was enacted long time before the development of online business world or it was at a time when the E-commerce platform was not having a stronghold in India. However, the IT Act, 2000 is a strong shield which should to deal with the challenges in cyber world; hence, it must include solutions for all challenges or threats raised by Internet. The statement by the researcher that, lack of trust of consumers in online shopping and E-Banking transactions due to threat to their privacy is a major challenge in the development of E-Commerce in India is proved wrong after the analysis of increased use of E-commerce Day by day.

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The researcher here observed that, consumers prefer online shopping. Even though it is not basic necessity for them they prefer it because of good offers and wide variety of collection available in online shopping websites. Also, it enables them to sit at home and select between different brands very conveniently be not going anywhere physically. In most of the cases, the consumers trust the online shopping platforms more than conventional shopping. According to the study many people consider online banking as completely secure and most reliable if the person is aware about it and knows how to manage it. Bank officers' claims that online shopping and E-banking are safe. But they also warn that, card details shouldn't be used in malicious websites. Online shopping emerged as a trend these days and people do enjoy it.

It is a fact that, online shopping has influenced the choice of the consumers and the consumer behavior. There are people who adopted well with it and there are good websites who provide easy and clear mechanism for selling and buying ensuring consumer satisfaction, reliability and transparency. Websites like [www.jabong.com](http://www.jabong.com), [www.flipkart.com](http://www.flipkart.com), [www.myntra.com](http://www.myntra.com), [www.amazon.com](http://www.amazon.com) are examples of successful online shopping portals. The increased use of these websites by the consumers clearly indicates that its widely accepted and it has made their life easier. In fact, lack of trust or the authenticity of the E-commerce websites are not a major issue in the development of E-commerce. There are various other reasons the researcher has observed and are mentioned below:

- Lack of awareness about the consumer rights in E-commerce platform in India.
- Absence of a reliable, transparent and systematic mechanism for settling online consumer disputes.
- Consumers not reporting the frauds to the authorities and are reluctant to approach the Courts for remedies especially if it's a loss of small amount of money. Most of the times its reported to the police only when a huge amount is lost.
- Absence of a proper screening mechanism and registration for assuring the authenticity and proper documentation of E-commerce websites.
- Most of the people have an opinion that it's wastage of time approaching the Courts since it takes a lot of time to get a remedy. This is one major drawback which makes it difficult for the law to tackle the frauds in E-Commerce.

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- Internet has already become a part of our life and since we use it every day we all have the responsibility to know the negative side of it. It contains threats and challenges like cheating, illegal activities, frauds etc. It's not use blaming the law after something happens due to one's own negligence. Basic knowledge and co-operation is hence important and yet can't be avoided.
- Providing legal help to the victims is not possible until and unless the society is co-operative and they can be co-operative only once they are educated about their rights. The sad part is that, even when a consumer who is a victim of fraud in E-Commerce Platform comes forward and reports the crime; due to lack of proper legal mechanism they are disappointed mostly. The Consumer Protection Act, 1986 which is actually not adequate enough to tackle the issues in this modern era is one major drawback of this issue in India. Even with the new amendment in 2019, it is not adequate enough to tackle the issue and keep up with the consumer protection in cyber space. In case, the victim of online fraud tries to seek remedy under the IT Act, 2000, then there is no single adequate provision which speaks about the protection of consumer rights especially to protect the right of privacy. Hence, the researcher here is proposing few suggestions which can be helpful in improving the Consumer protection and ensure the Right to privacy in E-Commerce.

### 7.2 SUGGESTIONS

The development of technology has required the Indian Legal system to adjust and adapt to the change in order to preserve the harmony. It's not an easy task to change customary shopping concept which includes heading off to a shopping mall, touching and seeing the product in real and dealing with the retailer and buy it. However, online shopping is presently an accepted trend and legal bodies across the country must make sure there is an effective mechanism to keep the regulatory standards accordingly. There has been a plenty of lawful instruments to promote and ensure customer protection in the customary commercial world. In fact, these existing legal mechanisms are more suitable to focus on physical marketing and not focused up to the necessities of the E-Commerce platform. The consumers in E-Commerce platform can be secured only when Indian legal framework is capable to tackle the issues and challenges raised by the development of technology. Since the electronic environment has raised numerous

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challenges for the consumers, consequently, there is a need to follow and develop new techniques that can ensure consumer's trust and confidence in the new online world.

The researcher here is making an attempt to propose few amendments in the existing legislations in order to make the frame work completely capable to tackle the issues faced by the consumers in the E-Commerce platform. Basically, in each electronic transaction, it is important to ensure that whether the transaction is legally valid and enforceable. In order to ensure this, there are few legal issues which should be considered such as, whether the transaction is in electronic form? Whether it can be proved in a court of law and most importantly, which law deals with the enforceability of online transaction. In India, there is only one answer to these questions since the issues relating to electronic transactions are primarily governed by the IT Act, 2000 (2008). Unfortunately, the IT Act deals only with the very limited issues relating to electronic signatures, adjudicatory bodies, certification authorities, different cybercrimes and punishments. In fact, the legislators' intention to cover the aspect of E-Commerce is reflected in the Preamble of the IT Act but, the Act hardly covers all the aspects of the E-Commerce and its various dimensions. Till today, Indian Jurisprudence lacks an adequate legislation for ensuring a strong shield to tackle privacy issues faced by the online consumers and regulating the sale of goods various transactions over the Internet.

The researcher here submits few suggestions which can make the E-Commerce platform safer and secure for the consumers in the coming future.

Proposed Amendments in the Information Technology Act, 2000 & IT (Amendment) Act, 2008

1. After a detailed study it can be understood that, the Indian Contract Act, 1872 is a supporting hand to the IT Act, 2000 (2008) in any case when, a question or doubt arises regarding the validity of an online contract. A decision can be made only by a harmonious construction to both the statutes. In fact, Indian Contract Act, 1872 was framed about 142 years before and it was framed according to the situation of commercial transaction during that period of time. The illustrations mentioned in the Act are not adequate when it comes to the aspect of online contracts in this modern times. Hence, legal provisions regarding the valid online commercial

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contract must be amended in order to be updated and illustrations which are capable of complying with the recent developments should be added in the IT Act to make it a comprehensive Act which is capable of handling the issues and challenges in E-Commerce.

2. When a person visits any website for shopping, their whereabouts are recorded on the website and later the person gets a lot of E-mails which includes junk mails and spam mails. Not only on an online shopping platform but also a search for a product or service from a mobile phone led to situation where the person gets advertisements from various websites regarding the product or service which he/she searched for. The IT Act is not having any provisions which prevent these kinds of spamming and anti-privacy issues. Hence, there should be strict provisions in order to prevent such tracing unless consumer is interested in receiving such advertisements or updates.
3. The concept of 'Caveat Venditor' which means 'Let the vendor be aware' should strictly be applicable in online marketing world. In India, the growth of E-Commerce depends on how comfortable it is for the consumers. Consumers will trust and depend upon online shopping only when their privacy is protected and their rights are guaranteed. The execution period mentioned in the orders of court should be consumer friendly because, 'Justice delayed is Justice Denied'. Since the traditional rules and regulations are considerably slow, this maxim should be considered seriously in cyber disputes to ensure a faster procedural mechanism for online disputes.
4. According to Section 43-A of the IT Act, 2008 a body corporate that handles, possess or deals with sensitive data in a computer resource is liable to pay compensation in case of negligence in the matter of maintaining reasonable security standards and such negligence leads to cause wrongful loss or gain to any individual. But the issue is that, the Act has not explained or defined the term 'sensitive personal data' whether it covers all personal confidential information regarding the Bank Accounts such as: Account Number, Address of the account holder, PIN Number, Security Code if any, Mobile Number and other such important information. This should be clearly stated in the definition of the term 'sensitive data' in order to avoid confusion and make it more precise.

5. As mentioned in the analysis of IT Act in the previous chapter, there are no provisions which provide protection to the consumers against the offences such as Phishing, Cyber Money Laundering, Pharming, ATM Frauds etc. Guidelines provided by RBI can be considered only as precautionary measures. Hence, for making E-Banking safe and reliable, it is necessary to add penal provisions for E-Banking frauds in the IT Act, 2000 (2008). Most importantly, in the aspect of E-Banking, IT law must be more precise and strengthened in order to ensure security and privacy of confidential financial information.

### **Suggestions Regarding Conditions for Online Sellers in E-Commerce Transactions**

Selling of goods and services to consumers is not a new practice, but selling in online platform certainly is. When an online presence is established by Businessmen, most of the times they hardly consider the standards of satisfaction of the consumer and customer services. This often happens with well reputed online businesses that they fail to provide the basic information about contract along with essential terms and conditions of the contract and also information regarding solving of a complaint or redressal mechanism. Basically, every E-Commerce web site should have a registered office in India, but, for an ordinary consumer it is quite a difficult task to make sure whether the particular E-Commerce web site (which he/she is using) is an authentic registered one or a fake web site. Few provisions which should be applicable for online sellers are proposed below:

1. The process of online shopping and payment ultimately forms a legal E-Contract despite the fact that whether the consumers are aware with it or not. The legal terms of purchase should be made clear to the online consumers before signing the E-Contract. Each and every website has distinct methods of displaying the terms and conditions. Hence, sometimes it's difficult for the consumers to find the proper link from the home page or order page which mentions something like 'Disclaimers' or 'Legal Terms'. Most of the times, the terms and conditions are lengthy to read and are very small in size and it makes the situation of the consumer weakened. Hence, it is suggested that it should be made compulsory that the web designers should highlight the important legal terms in a way that its easily recognizable and which helps the consumer to understand the legal

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consequences of agreeing to the terms instead of blindly clicking an 'OK' button or 'I AGREE' button.

2. One of the recent troubling developments in E-commerce is the practice of automatic amendments of the contracts without the consent or knowledge of the consumers. This should be strictly prohibited since the service provider may make any changes or modify the agreement without letting the consumers know about it, by adding or changing a single sentence. This leads to lack of trust between the service providers and the consumers in E-commerce platform.
3. In the world of E-commerce, consumer is always the weaker party because, the terms of the contracts are always dictated by the seller and always accepted by the consumer. Here there is a lack of mutual respect and proper communications regarding the contract information. Hence, it should be mandatory that all websites which conduct online business should communicate the terms of contracts in their home page of the website or in any other way which is clearly visible and understandable to the consumers. Online service providers should also communicate the terms and conditions through phone, e-mail or by verbal communication.
4. The terms and conditions regarding the warranty of the product and period of limitation should be highlighted in the web sites which conduct online business. The payment options provided by the web sites should be safe and secure and ensuring the safety should be done by the sellers or the service providers in order to prevent the threat of hacking or scamming which affects the consumers.

### **Online Dispute Resolution Mechanism for E-Commerce**

In this modern era where any person sitting in any corner of the world can contact with another with the click of a mouse, depending up on litigation in the matters of online disputes is quite inconvenient, impractical and most importantly time consuming. Introducing an alternative approach to deal with online disputes might be a great step in redressing grievances and to gain trust and confidence of a consumer in E-Commerce. In recent times, E-Banking and pages of terms and conditions of online contract is becoming more complex. Most of the cases where a dispute regarding an online transaction arises, the consumer wants to solve the issue within no time by avoiding lengthy procedures and steps such as writing letters, E-mails, phone calls etc.

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Establishing Online Dispute Resolution (ODR) institution can bring a positive impact on the matter of settling online disputes effectively and quickly.

The researcher in the third chapter had already mentioned about the ODR methods adopted by Philippines in order to provide a faster settlement of online disputes. If it can be introduced in India, it will be great relief for consumers in the E-Commerce platform. Hence, Online Dispute Resolution is a good remedy to tackle the current issues of E-Commerce in India. It is a platform capable of solving online disputes as well as offline disputes. The kind of dispute and location of the dispute is not an issue in the method of dispute resolution through an online platform. In case of any dispute, the parties can communicate with the ODR institution by using E-mail or their official websites and then inform about the issue and choose method for solving the issue. If the matter is settled, it can be in writing, signed and finally, can be enforced like a decree of court according to the provisions of the Indian Arbitration and Conciliation Act, 1996. In the present situation, video and audio conferencing is one of the best facilities provided by the technology which can replace the direct face to face conversation in the real world.

Recently, in the case, *State of Maharashtra v. Dr. Praful B. Desai*<sup>134</sup>, the Supreme Court of India stated that video conferencing is an acceptable method of recording evidence for witness testimony. In *Grid Corporation of Orissa Ltd. v. AES Corporation*<sup>135</sup>, the Supreme Court held-“When an effective consultation can be achieved by resort to electronic media and remote conferencing, it is not necessary that the two persons 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”.

In India, the existing legal framework promotes ADR techniques through Lok Adalat, Nyaya Panchayat System, Arbitration and Conciliation Act, 2015 based on UNCITRAL Model law of arbitration, provision of statutory arbitration amongst other initiatives. The Indian legal framework supports ODR including Section 89 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

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<sup>134</sup> *Maharashtra v. Dr. Praful B. Desai* (2003) 4SCC 601.

<sup>135</sup> *Grid Corporation of Orissa Ltd. v. AES Corporation* 2002 AIR SC 3435.

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choose any ADR method to settle its disputes<sup>136</sup>. Thus, the legal framework as well as the precedents laid down by the Supreme Court of India support use of technology for dispute resolution and encourage use of ODR practices.

### **Need to Change the Cyber Complaint Mechanism in India**

It is a matter of great importance to establish adequate and convenient complaint mechanism for online customers to ensure justice to victimized consumers in an E-commerce platform. The existing E-commerce law in India mainly focuses on cyber security threats, cyber pornography, E-Governance, cyber terrorism, wide category of cyber offences and numerous authorities for ensuring justice to the victims of cybercrimes. Unfortunately, among all these serious cybercrimes, complaints of consumers regarding the claims of small amount of money are totally ignored. Only a small group of consumers such as IT Professionals, Lawyers and cyber law experts are aware about the complaint mechanism in case of an issue arises regarding the quality of goods, delivery or defective delivery of goods, non-delivery or delay in delivery, expired goods, second quality products, unnecessary charging which cause financial loss to the consumer etc. It is a fact that, in India most of the online consumers are not aware about all the available procedure of filing a complaint in case of any cybercrimes. Hence, an effective and reliable complaint mechanism is required for protecting the interest E-commerce consumers and ensuring consumer satisfaction in E-commerce platforms in India.

### **Need of Consumer Education regarding protection of rights in E-Commerce**

It is essential that a record should be kept for the effective enforceability of online transactions. In case of a dispute, reliable evidence should be produced which includes terms and conditions of the agreement and the transaction details between the parties. The lack of knowledge among the E-consumers regarding the issues in online platform and the remedies lead to procedural lapses since they are not aware about keeping the

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<sup>136</sup> S. K. Verma, Raman Mittal, Legal Dimensions in Cyberspace, 321 Indian Law Institute, New Delhi, 2004, 312-314.

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proof and proper documents of the transaction. Therefore, following are few suggestions by the researcher:

- Before the purchase the consumer should be aware about the warranty details. During the time of checking the warranty, it is important to verify some information before buying a product from a website. The details like, type of warranty and its period of time, Details of the contact for repair, refund or replacement clarification and conditions, the liability on seller in case the product is of bad quality and cause any damage etc. If there is a written warranty, it must be provided to the consumers before buying the product.
- An E-consumer should check online agreement whether in an event of dispute whether he/she can go to Court. Few websites only states the method of arbitration and hence the consumer is not provided the right to take the issue to the Court. In certain cases, the agreement clearly states the remedy of mediation even before the claim is taken to the Court. The seller's legal terms mentioned in the website should be verified by the consumer. In order to preserve the legal right, consumer should contact the seller immediately or as soon as possible if there is a problem with the quality or any other matter regarding of product.
- The E-commerce platform is a virtual territory where the principle of caveat emptor prevails and, as a result, consumers depend upon the reputation of the brand and performance of the brand during online shopping. Trademarks have a great importance in virtual world but still, they are vulnerable and are manipulated and adulterated in web platforms. Therefore, it's the responsibility of online consumers to be aware about the quality and originality of products and along with that, online vendors must provide guarantee about the quality and authenticity of their products.

### **Suggestion for Ensuring a Secure Online Shopping**

- Before purchasing a product from a website or any E-commerce platform, it is very important that the consumer should always check the details of the website or whether the company has a proper contact details and a physical address. Once the consumer gets the information it should be verified that the information and the contact details are genuine.

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- The consumers should always ask for extra details and references and verify it. A genuine and reputable company will always provide additional information by the request of consumers in order to ensure consumer satisfaction. Online shoppers must always ask for references and check them carefully. A reputable company will be pleased to send additional information for satisfaction of consumers.
- Before finalizing the purchase and making transaction check the guarantee details and whether it's adequate enough. The consumer should also know about the procedures of the company in case of returning of the products due to any kind of damage or quality issues.
- Never trust any promoters and be aware about the kind of companies who try to make a sale happened by using an anonymous e-mail address like 98765@gmail.com user123@yahoo.com etc. Never respond to any suspicious e-mails which contain messages like 'Congratulations! You have won a cash prize'. Never respond to such e-mails and refuse the prize and other offers.
- It is suggested that credit cards should be used to make the payments since it's a much safer mode of payment. Recourse is provided in case of any problem. The consumer can ask the concerned bank to do 'charge back' in case if he/she faces any problem with the transaction. Along with all the above mentioned suggestions, it's also important to keep a proper track on checking the credit card statements on a regular basis.
- The consumers should always make sure that they do business only with popular and trustworthy online merchants. It's important to watch out for merchants who sell duplicate products by manipulating a popular brand name. Remember to log out from the browser and clear the password when the session is done.

### **Suggested Methods for Secure E-Banking**

The following are the few suggestions provided by the researcher to provide basic information on how an online consumer can prevent financial frauds while using E-Banking facilities:

- In this modern era Phishing attacks are very common by which the personal information are stolen and consumer's right to privacy is threatened. By phishing attacks details like Bank account information, passwords, address, PIN number

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etc are stolen by the fraudster. These kinds of attacks are often successful due to the ignorance of consumers when it comes to the matter of consumer awareness and basic education materials which help a person to recognize these kinds of online frauds. According to the RBI guidelines, it is recommended not to reply or respond to any fraudulent mails which ask for personal information since legitimate online merchants and companies never asks for such personal information from a consumer.

- Online consumers must be very careful while using the passwords. The passwords used by the consumers should be strong, unique and secure. It is recommended that using of personal details such as names, address details, date of birth for the password should be avoided. The consumers should keep changing password often and avoid using the same passwords a=for all the services. All these methods can limit the damage who tries to gain access to one's personal information and harm the right of privacy.
- The consumer must check and verify the payment mechanism used by the website is licensed or an authentic one. One Time Password (OTP) should be used for a secure online transaction.
- A website where sensitive and important information's are handled must have the alphabet 'S' along with the alphabets 'http'. For example, <https://www.icicibank.com> is secure but <http://www.kobank.com> is not secure. The alphabet's' after 'http' stands to indicate that it is a secure web-site.
- The consumer should only provide his/her card details only in a secure website and not as a reply for any ordinary E-mail. Always keep in mind not to send any personal or financial information through e-mail. Never write the PIN Number and Password behind or anywhere on the Debit Card, ATM and Credit Card. Credit card statements, ATM receipts and bank statements which have account number and other details should be torn into small pieces before disposal.
- In very rare scenario, there is a possibility of typing mistake while ordering a product online. Hence, it's important to double check the order details especially regarding the quantity of the product. The consumer should also pay attention to the total price of the shopping before making a payment. If there is any issue regarding the price or quantity or notify the seller by any required means of communication immediately.

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- In E-commerce platform, there are scammers which are the real threats. Scammers send various text messages to consumers' phones and the messages won't be having a reply number. Therefore, it's better not to reply these kinds of e-mails and text messages. In case of any such fraudulent e-mails, consumer can forward it to the e-mail service providers using 'abuse@providers' for example, abuse@google.com. Consumers can contact the authorities in case of any Internet fraud or cybercrimes and file a complaint in websites and portals like ssp.cyberpb@nic.in, policeelp100@gmail.com, depol@vsnl.com, www.ic3gov.in etc.

### **Changes Required for an Effective and Secure E-Consumerism in India**

According to the analysis of the researcher, most of the people in India are interested in E-commerce platforms and depend up on this more than conventional form of shopping. People have started to accept Information Technology and E-commerce as a part of their day-to-day life. For some of the population it's just an enjoyment and however for others it's risky and time consuming. In E-commerce there are various other possibilities and services which are used by us other than online shopping. As mentioned in the beginning part, the biggest fear amongst the consumers is the lack of trust, quality of the products, authenticity of the websites and privacy issues during transactions which are also the major hindrance in the development of E-commerce in India.

A strong and secure platform for the effective functioning and development of E-Commerce can be ensured only when the rights of consumers are protected in E-commerce and this safety can be assured only when consumers are aware about the rights in the online world. By providing consumer awareness, E-consumerism and E-commerce can have an effective growth in India. A plethora of literature is available on the concept of 'Consumerism' in the conventional or physical commerce but, the concept of 'E-Consumerism' is highly ignored. The primary objective of consumer education is to provide proper knowledge and confidence which will help them take proper and safe consumer decisions. In order to avail the complete advantages of E-Commerce, it is now appropriate time to revamp the movement for E-consumerism in India for ensuring the

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protection of rights of consumers in cyber space. Great successes are achieved by co-operation rather than conflicts. This new revolution among the consumers will demand for a more efficient legal mechanism and thus strengthen the cyber law with better consumer-oriented provisions.

Hence, it is submitted that the nature of e-Commerce leads to more disputes than in face-to-face transactions. When we go through the legislative history of E-commerce in India, legislations are far behind the current need of E-commerce. Without justice, E-Commerce is irrelevant. The disputes arising in E-commerce platform must be resolved fairly, efficiently, and securely so that online consumers will have full confidence to depend up on E-commerce markets. The Internet should be made a trustworthy global marketplace completely functioning under the rule of law. In order for this to happen, the principles of accessibility, equity and fairness must be applicable for all the disputes arising in E-commerce platform. The major threat to Indian E-commerce platform is the threat for one's right to privacy and hence daggering their own lives in the later stages. If this issue and other E-commerce disputes are not resolved efficiently, then numerous benefits of new 'e-Commerce' and 'e-revolution' will be at stake. In fact, its need of the hour to that our legal systems adapt according to the post-internet online disputes. Only then, the internet can be a legitimate and secure global market place, where the consumers and the merchants can have healthy competition and proper legal mechanisms and ensure protection of their rights. If online consumers are denied of their rights in e-Commerce, in our country it will be considered as legally non-existent. Thus, Indian legal jurisprudence must be adequate enough and focus on improvising according to the technological development and new challenges in E-commerce to ensure the protection of legal rights of online consumers in online world.

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