

**THE INTERPLAY BETWEEN CONSUMER PROTECTION ACT 2019 AND
INFORMATION TECHNOLOGY ACT 2000: HAS IT BEEN EFFICACIOUS IN
PROVIDING A SAFE HAVEN FOR CONSUMERISM?**

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ABSTRACT

Consumerism along with the interests and rights of consumers, has gained an enhanced significance in the era of digital economy. Providing a well-established legal framework for protecting the interest of public is of paramount importance for every governmental or non-governmental entity. The enactment and introduction of the Consumer Protection Act, 2019 and its subordinate Consumer Protection (E-commerce) Rules, 2020, has been a paradigm shift in this direction. This legislation efficiently aimed at filling the vacuum that existed in the Consumer Protection Act, 1956, with respect to the rights and interests of consumers and the duties and liabilities of business entities in the digital space. The advent and exponential growth of digital economy requires that adequate safeguards should also be duly incorporated in the laws of the country.

Interestingly, the Information Technology Act, 2000, also aimed at augmenting the growth of e-commerce and digital economy in the country. While it has shown remarkable progress in some aspects, it still fails to establish trust between traders and consumers in the online space. It is this mutual trust and confidence which forms the bedrock of digital economy and is instrumental for the growth of e-commerce industry.

This article has closely analyzed various dimensions of the interplay between the Information Technology Act, 2000 and the Consumer Protection Act, 2019. It has further focused upon understanding the effectiveness of the legislations regarding the protection of consumerism in the current scenario and recent legal developments in this field.

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I. INTRODUCTION

Digitalization has not left any aspect of human life untouched in the current scenario. There have been active efforts from all across the globe to incorporate digitalization, so as to keep pace with the rapid developments and advancements in the space of information technology. The situation is no different in India wherein a flagship initiative was launched by the Central Government to digitalize the country under the '*Digital India*' program². The advent of the digital era has been marked by the promising growth of digital economy in India. The market of commercial and business activities has witnessed immense growth and enhanced experience with the commercialization of activities.³ E-commerce transactions offer multiple benefits both to the business entities and the consumers. Its unique features such as unboundedness, multiplicity and virtuality allow the exchange of goods and services across the globe, without any physical and time constraints. These features have contributed immensely to the growth and flourishing of e-commerce in India and around the world, however, e-commerce activities pose several challenges too. Threats to data protection and privacy, data integrity and security, lack of loyalty in consumer relations and threat to the violation of consumers rights in the digital space, form variety of challenges which plague the arena of e-commerce.⁴

Ensuring adequate safeguards for protecting the rights of consumers in the e-commerce transactions has gained significant importance. If online commercial transactions are not regulated stringently with regards to the interests of consumers, it may eventually lead to dire consequences, such as adverse impact on fair competition and free flow of authentic information in the system. This would further lead to deception and fraud on consumers, which would amount to flagrant violations of their rights. India has made several attempts to holistically guarantee and protect consumer rights through slew legislations. Various enactments aim at dealing with different aspects involved in e-commerce transactions and consumer protection. The two leading legislations currently in this field are the Information

² *Digital India program*, <https://digitalindia.gov.in/>

³ Rajiv Khare & Gargi Rajvanshi, *E-commerce & Consumer Protection: A Critical Analysis of Legal Regulations*, CLAP NLS, 55, 56-57 (2021).

⁴ Veeramani Siv, *Consumer Protection in the Age of Digital Transformation: A Judicial Response in India*, ICME, 137, 140-141 (2019).

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Technology Act, 2000⁵ and the recently enacted Consumer Protection Act, 2019⁶ and its subordinate Consumer Protection (E-commerce) Rules, 2020.⁷

II. NEED FOR CONSUMER PROTECTION IN THE DOMAIN OF E-COMMERCE

Commercial organizations are well organised and structured institutions which are well informed and enjoy a better dominating position than the consumers in the market. This places the consumers in a position which renders them vulnerable to exploitation at the hands of the commercial entities. This was categorically noted by the apex court in *Indian Oil Corporation v. Consumer Protection Council*⁸, wherein it held that the worst affected victims of these commercial organizations are the consumers and they need to be duly protected through the consumer protection. The consumers all across the globe enjoy multiple rights now, however, all these rights emanate from the four basic rights that were propounded by the former President of United States of America, Mr. John F. Kennedy, while he introduced the “*Bill of Consumer Rights*” in Congress in 1962. The four rights laid down by were-

- i. Right to Safety,
- ii. Right to Information,
- iii. Right to Choice,
- iv. Right to be Heard.

The advent of Information and communication technology has introduced fundamental changes in commercial and business transactions. The use of internet has propelled businesses to reach great heights at global platforms. However, this dynamic shift has exposed the consumers to innumerable threats, the most prominent of them being-

i) Exposure to unfair trade practices, ii) Insufficient information disclosure, eg., refund policies, information regarding warranty, cancellation terms⁹, etc., iii) unsafe products, iv) lack of confidentiality of consumer’s information, v) protection of identity of seller, vi) goods delivered fail to correspond to the description, quantity and quality, vii) Data privacy violations, viii) insecure payment mechanisms, etc.

⁵ Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

⁶ Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

⁷ Consumer Protection (E-commerce) Rules, 2020, The Gazette of India, 2020 (India).

⁸ *Indian Oil Corporation v. Consumer Protection Council*, (1993) 1 SCC 397.

⁹ Neelam Chawla, *E-Commerce and Consumer Protection in India: The Emerging Trend*, JOURNAL OF BUSINESS ETHICS, 581, 581-582 (2020).

The presence of such loopholes in the arena of e-commerce can potentially hamper the growth of this model. Hence, there existed a pressing need for developing and executing a robust legal framework for catering the needs of the evolving society.

III. CONSUMER PROTECTION IN DIGITAL ERA: LEGAL FRAMEWORK IN INDIA

There exist several legislations which address different aspects involved in E-commerce and Consumer Protection, however, the Information Technology Act, 2000¹⁰ and the recently enacted Consumer Protection Act, 2019¹¹ and its subordinate Consumer Protection (E-commerce) Rules, 2020¹² have gained prominence.

1. Information Technology Act, 2000

The conduct of commercial transaction over electronic media requires a stringent regulatory framework to prevent the multitude of wrongful and illegal acts that can very conveniently be carried out in the digital space, under the garb of anonymity. Thus, the online space and the protocols to be followed while operating in the online space precisely catered by the Information Technology Act, 2000. The relevant provisions have been analysed hereunder-

- The issues concerning Consumer's exposure to unfair trade practices have not been categorically dealt with in this Act, however, it goes a long way in tackling the issues which intermingle with the same.
- Section 6A of the Act mandates the concerned service provider to deliver its services in the most efficient manner¹³. It provides no room for procedural lapses which could be easily avoided by the efforts of the service provider.
- Section 8 of the Act provides that the law and provisions which are related to the regulation of IT transaction should be duly published in the Official Gazette¹⁴. This provision aims at bringing the provisions and laws to the notice of the public and creating awareness in them. Thus, it leads to the propagation and dissemination of authentic information which goes a long way in protecting and informing consumers.¹⁵

¹⁰Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

¹¹Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

¹² Consumer Protection (E-commerce) Rules, 2020, The Gazette of India, 2020 (India).

¹³Information Technology Act, 2000, § 6A, No. 21, Acts of Parliament, 2000 (India).

¹⁴Information Technology Act, 2000, § 8, No. 21, Acts of Parliament, 2000 (India).

¹⁵ Priyanka Barik, *Cyber Law's Emerging Role in Indian E-commerce*, <https://ksandk.com/regulatory/indian-e-commerce-law-under-cyber-law/KING-STUBB-&-KASIVA> (Dec 25th, 2022).

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- Section 10 of the Act provides legal validity to the contracts which are entered into on the electronic medium. This enables the parties to the contract to legally enforce the contract and sue on breach of contractual obligations.
- Chapter V – Section 14-16¹⁶ of the IT (Amendment) Act, 2008, provides that the transactions conducted in the electronic medium would be treated as secured transactions and payment mechanisms. This security instils trust and surety in the minds of the consumers.
- Section 72 & 72-A¹⁷ of the Act addresses the penalty that one would incur in case of a potential breach of privacy and confidentiality. This provides safety and security to the parties involved.
- Section 66D¹⁸ of the Act does not make it necessary for the seller to reveal his identity to the buyer, however, it entails a penal punishment of a specified term of imprisonment and fine, if the seller wrongly impersonates himself and cheats the buyer.

2. The Consumer Protection Act, 2019

Until 2019, the primary legislation that dealt with the rights and interests of the consumers has been the Consumer Protection Act, 1986. However, this Act proved to be incapable at effectively handling the complex situations which started emerging with the advent of the digital era. It lacked the framework of tackling the issues which revolved around e-commerce and related aspects. Thus, the legislature enacted the Consumer Protection Act, 2019 ('New Act') in 2019 to comprehensively address the issue of consumer protection. This new act has traversed a long way in protecting the interests and rights of the consumers in digital transactions and e-commerce activities. Some of the most significant provisions of this Act have been discussed below-

- The first and foremost development towards bringing e-commerce under the regime of consumer protection was expanding the definition of consumer under the New Act. Section 2(Z) of the Act defines consumer to be a person who "buys any goods" and "hires or avails any services"¹⁹. This includes any online or offline services through transactions and electronic means. This enlargement of scope benefits the consumers in online space being providing inclusivity.

¹⁶Information Technology Act, 2000, Chap. 5 § 14, No. 21, Acts of Parliament, 2000 (India).

¹⁷Information Technology Act, 2000, § 72, No. 21, Acts of Parliament, 2000 (India).

¹⁸Information Technology Act, 2000, § 66D, No. 21, Acts of Parliament, 2000 (India).

¹⁹Consumer Protection Act, 2019, § 2, cl. 7, No. 35, Acts of Parliament, 2019 (India).

- The New Act has also been bestowed with the definition of the term ‘*e-commerce*’. Section 2(16) defines ‘*e-commerce*’ as means of buying or selling of goods or services including digital products over digital or electronic network²⁰.
- Furthermore, the term ‘*electronic service provider*’ has been defined in Section 2(17) as any person who provides processes or technologies to enable a product seller to engage in advertising or selling goods or services to a person²¹. It includes online auction sites and any online market place.
- Section 2(47) of the Act has laid down stringent provisions wherein it has stated that if a service provider, merchant or trader reveals or shares the personal information of any consumer without their express consent then it would be categorically covered under the domain of ‘Unfair Trade Practice’²².
- Section 21 entails penalty provisions for any seller, trader, manufacturer, retailer or endorser, whoever perpetrates any false or misleading information through a misleading advertisement²³. Monetary Penalty can be imposed upon any such person who engages in such an activity and the Central Consumer Protection Authority is entrusted with the task of imposing the penalty.
- Chapter 4 Section 3-9 entails provisions to establish a Central, State and District Consumer Protection Council that would aim at providing advice and recommendation to the Government of the Country, State and District regarding enhanced protection of the consumer’s rights²⁴.
- Section 94 of the Act provides that the Union Government is empowered to take necessary steps to prevent unfair trade practices, direct selling and other vices involved in e-commerce transactions. The government can also prescribe rules in order to prevent unfair trade practices and fraud by e-commerce entities.

²⁰Consumer Protection Act, 2019, § 2, cl. 16, No. 35, Acts of Parliament, 2019 (India).

²¹Consumer Protection Act, 2019, § 2, cl. 17, No. 35, Acts of Parliament, 2019 (India).

²²Consumer Protection Act, 2019, § 2, cl. 47, No. 35, Acts of Parliament, 2019 (India).

²³Consumer Protection Act, 2019, § 21, No. 35, Acts of Parliament, 2019 (India).

²⁴Consumer Protection Act, 2019, Chap. 4 § 3-9, No. 35, Acts of Parliament, 2019 (India).

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- Section 101 provides for the execution of the power that has been vested by Section 94 in the government. It provides that the Central Government can make rules, by notification²⁵ so as to give effect to the provisions of Section 94.

IV. THE EMERGENCE OF THE NEW ACT

The above-mentioned provisions saliently incorporate the protection framework that has been established under the New Act, to specifically cater to the commercial transactions in the digital space. Until the enactment of this piece of legislation the rights and interests of the consumers were being hampered and compromised as the Consumer Forums lacked the adequacy to redress issues in the current digital domain.²⁶ They were appropriately equipped to handle the cases that emerged in the most effective and efficient way.²⁷ This jeopardized the prospects of securing protection for the rights that the consumers should ideally be entitled to.²⁸ The sudden splurge in the e-commerce activities and the conduct of online transactions without sufficient protection mechanism for the rights of the consumers deterred them from actively participating in such transactions.

The intent behind including consumer centric provisions in the Information Technology Act, 2000, was also to lay down regulations and rules that would determine conduct in related activities in the digital space. It aimed at the growth and promotion of e-commerce and to establish trust between the consumers and online traders so as to create and promote a conducive environment for trade and transactions between the parties. However, both these legislations fell short on the techno-legal aspects and were plagued with several lapses. Then with the introduction of the Consumer Protection Act, 2019 and the subsequent Consumer Protection Ecommerce Rules, 2020, the rights of consumers have garnered the attention that it should receive and their interests are being given the requisite consideration which they demand.

²⁵Consumer Protection Act, 2019, § 101, No. 35, Acts of Parliament, 2019 (India).

²⁶ Rajiv Khare & Gargi Rajvanshi, *E-commerce & Consumer Protection: A Critical Analysis of Legal Regulations*, CLAP NLS, 55, 56-57 (2021).

²⁷ *Id.*

²⁸ *Id.*

V. JUDICIAL APPROACH TOWARDS THE PROVISIONS OF THE NEW ACT

Recent legal developments have clarified the stands adopted by the judicial and quasi-judicial bodies with regards to the application of the provisions of the new Act.

A vital judgement being the case of *Horlicks Ltd. V. Zydus Wellness Products Ltd.*²⁹, wherein Zydus in one of its advertisements while promoting its product 'Horlicks', depicted a comparison between its product and another rival product 'Complain'. The advertisement showed that their product was better and healthier than the rival product. The court held that the advertisement could not be saved under Article 19 1(a) of Constitution since it constituted to be an unfair trading practice, and it was ordered to bring down the impugned advertisement. The court further laid down that if any comparisons are being made, they should not directly mislead or disparage. The advertisement in dispute has the ability to deceive consumers and also show-cased a false competitive spirit.

The *Connaught Plaza Restaurants ltd. V.KapilMitra*³⁰, is another significant progress in this regard. The Mc Donald's franchise situated at Connaught Plaza Restaurants Ltd. had organised a contest wherein they assured the customers of winning a prize whenever they ate the restaurant. However, the terms and conditions of availing the gifts and the scheme were concealed from the customers who were denied the gifts. After winning the contest they were intimated about the extra mandatory purchases that they were supposed to make. The NCDRC claimed that the practice amounted to an unfair trade practice and ordered compensation for the complainant and all other customers who have been deceived by such a practice as it was of the nature of a misleading advertisement.

VI. ANALYTICAL VIEWPOINT- INEFICIENCIES OF THE LEGISLATIVE FRAMEWORK

The Consumer Protection Act 2019³¹(CPA) and the Information Technology Act 2000³² (IT Act) have both been enacted to protect consumer rights in India. However, there have been instances where these two acts have failed to work together effectively to protect consumerism in India.

²⁹*Horlicks Ltd. v. Zydus Wellness Products Ltd.*, 2020 SCC Online Del 873.

³⁰*Connaught Plaza Restaurants Ltd. v. Kapil Mitra*, 2020 SCC Online NCDRC 192.³¹

Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

³² Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

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One of the key areas where the CPA and the IT Act have failed to work together effectively is in cases of online fraud and scams. While there exists a strong legislative framework in this regard in the CPA, the IT Act does not specifically address online fraud and scams. This has created a gap in the legal framework, which cybercriminals have been able to exploit.

Another area where the CPA and the IT Act have failed to work together effectively is in cases of data privacy and security. While the IT Act has provisions for data privacy and security, the CPA does not specifically address these issues. This has left consumers vulnerable to data breaches and identity theft, which can have a significant impact on their lives. Furthermore, there have been instances where the IT Act has been used to curtail free speech and expression, which are essential components of consumerism.³³ In such cases, the IT Act has been misused to target individuals and organizations that have spoken out against companies and products, thereby undermining consumer protection.

In conclusion, while both the CPA and the IT Act are important laws for protecting consumer rights in India, there is a need for greater coordination and collaboration between the two acts to ensure comprehensive and effective consumer protection in the digital age.

VII. THE EXISTING LOOPHOLES AND THE WAY FORWARD

The new Act seeks to criminalise certain acts such as unfair trade practices, insufficient information disclosure, data privacy violations, etc. which seriously hamper the rights of the consumers. It has expanded the jurisdiction of the quasi-judicial bodies and the Commissions and forums to deal with the issues which emerge out e-commerce transactions. Still certain vital issues continue to exist, like the prevalence of the ill effects of the highly competitive marketplace wherein the same products might be sold by different vendors at starkly different prices, thereby making it difficult to assess the true worth and value of the product.

Although provisions have been incorporated in the new Act to deal with privacy and data protection issues yet risk of potential misuse of data and personal information exists. Furthermore, concerns such as hacking, computer fraud, virus and alteration of financial

³³ Section 66A of the IT Act, 2000, LEGAL SERVICES INDIA, <https://www.legalserviceindia.com/legal/article-1905-section-66a-of-the-it-act>.

information, interception³⁴ are issues which have not been categorically and specifically dealt with in the legislations. Moreover, the entire consumer protection regime needs to be strengthened and better equipped so that justice is delivered to the consumer whose interests have been hampered or who have fallen prey to the vices of the business entities and its conduct. Efforts need to be made to educate consumers about their rights and rigorous implementation of them at every forum.

VIII. CONCLUSION

In the current global conditions, a strong, fair, competitive and progressing market can only sustain if the rights of the consumers are duly protected and recognised. Since consumers form the backbone of the entire commercial business system, safeguarding their interests becomes of utmost importance. The encounter of law and technology creates excellent opportunities but also poses several threats to the business world. The advent of e-commerce in India was a turning point both for consumerism and for the business entities. While the traders and sellers witnessed booming growth in their business consumerism on the other hand were witnessing several threats and challenges to their interests. India gravely lacked in creating a sustainable and comprehensive framework for protecting the rights of consumers until 2019. The Information Technology Act, 2000 has provided significant guidance in the e-commerce regime and regulated the activities in this domain until the revamped legislation came into existence. However, with introduction of the Consumer Protection Act, 2019 and its subordinate Consumer Protection (E-commerce) Rules, 2020, several crucial areas which were not dealt with by the previous Consumer Protection Act, 1986, have now been duly incorporated in the new enactments. This is an instrumental step towards guaranteeing rights to consumers and thereby bolstering the protection framework in India, provided effective implementation of the laws and procedures that have been established.

³⁴Neelam Chawla, *E-Commerce and Consumer Protection in India: The Emerging Trend*, JOURNAL OF BUSINESS ETHICS, 581, 586-587 (2020).