

# Consumer Rights and E-Commerce Regulation in India: A Legal Analysis

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## Abstract

Digitalisation and easy Internet access has affected upon the growth of e-commerce activities around the world which has also affected the business activities in India. E-commerce as a platform through the working of network allows the exchanges of goods and services. Giving the different and better facilities to consumer the online retail sector has experienced the massive growth in the recent years. Along various benefits, there exists several unfair trade practices adversely affecting the rights of the consumers. This has invited the need for enforcement of legal framework at domestic level, matching the international standards to govern the electronic transactions while protecting the consumers rights. The effectiveness of new Consumer Protection Act, 2019 and Consumer Protection(E-commerce) Rules, 2020 is analysed stressing upon the factors leading to build the consumer trust viz-a-viz contributing towards economic growth in Indian pretext.

Keywords: Increase in Internet, E-Commerce, E-Consumer Protection

## 1. Introduction

Nascent growth in information and technology all over the world has also revolutionised the way of doing business which has affected the commercial arena. Consumers are treated as the king of the market and the way consumer are involved in the business transactions have also changed with the digitalisation of platforms. The paradigm shift from brick-and-mortar system of doing business to the online platform has brought ease of doing shopping for the consumer, as just by the click of a button goods and services can be delivered at the doorsteps, saving time and energy while giving various choices to the consumers at the time pf purchase. This shift from offline to online transactions with various benefits has also brought certain externalities and challenges concerning consumer protection in India. There are certain potential downsides of the online transactions which can affect the interest of the consumer, such as, safety, security, dispute resolution challenges, jurisdictional concerns.[1] To witness the continuous growth in the e-commerce activities it is pertinent to adopt the legal framework which provides protection to the consumers on online platform. The integrity of the e-marketplaces plays a major role in developing trust of the consumers. On the same lines, this paper aims to comprehensively analyse the legal framework of consumer rights and e-commerce rules in India by studying consumer behaviour pattern while opting for online transactions.

## 2. E-Commerce and Its Legal Aspects

In this section the discussion is made about the legal aspects of E-Commerce and consumer protection along with the international standards.

### 2.1 Legal Status of E-Commerce as per International Standard

The UN Commission on International Trade Law (UNCITRAL) has adopted a Model Law on e-commerce in 1996<sup>1</sup> for promotion of harmony and integration of international law by addressing difficulties and discrepancies in law which act as an obstacle in trading activities. In furtherance to the principles laid down in the Model Law and international conventions, member states have implemented the laws in its municipal jurisdiction. Development of municipal laws based on the Model Law is ascribed to adhere to the modification in the mode of operation of communications and transactions between the contracting persons using computer as a technology making it ease of doing businesses. Model Law has bridged the gap between international standards and domestic laws in regulation and practicing commercial transactions in electronic medium giving it a modernised version. In 1985 while addressing the authentication issues including bill of lading amongst

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<sup>1</sup> Evolution of Model Law has its roots in continues deliberations and consultative process going on since 17<sup>th</sup> session after the report titled as “Legal Aspects of Automatic Data Processing” submitted by Secretary General in 1984 highlighting issues of authentication.

the other business transactions, the commission, to fill the gap between the legal loopholes in international law has suggested the use of computers in the business transactions. Resultantly, the foundations of Model Law were adopted by the commission aiming towards the growth of economy and increase in the efficiency of international trade which comprises:

- ❖ Automatic Data Processing enablement in international and national trade.
- ❖ Non-discriminatory policies of contracts on paper as well as in online transactions.
- ❖ Focusing the gap and target the remedial measures for removing inadequacies in municipal legislations which creates hindrances to trade at international level and adopting the modern communication techniques.
- ❖ Removing the ambiguities at national level laws and governing the use of communication techniques contributing to extend the trade activities at international markets.
- ❖ Promotion and facilitation of electronic commerce for the member states to meet the standard of international instruments.

In the want to adopt universally acceptable code guided on the similar policy consideration, it is important to have unanimity between national and international standards. The Model Law works on the principle of functional equivalent approach which analyse the conventional approach of paper-based contracts and the manner through which these can be replaced with electronic form of contract. thus, the idea is to identify source, content, and non-repudiation of data.<sup>2</sup> It is fact, that comparison of electronic means of communication cannot be equated with the physical mode of documents, thus formation of laws shall be modified in the manner that it gives legal recognition to electronic data messages. Moreover, UNCITRAL Model Law of e-commerce gives legal recognition to electronic data messages, and it shall not be denied having effect on to the legal validity and enforceability of these messages on the sole ground of these forming the data messages.<sup>3</sup>

## 2.2 Rationale of Consumer Protection in E-Commerce in India

E-commerce is related to the buying and selling of goods that involves online business transactions (It encompass several types of transactions, retail, online auctions, digital product downloads (data), electronic payments, and many more.), typically it provides the electronic platforms such as websites and mobile applications. E-commerce has become increasingly popular due to its convenience, accessibility, and ability to reach a global audience. It has transformed the way businesses operate and how consumers shop, offering a wide range of products and services available at any time from virtually anywhere with an internet connection.

It is quintessential to protect the consumer rights on e-commerce platforms. On the similar grounds, OECD guidelines of 2000, amongst the other criteria have recognized upon the three dimensions of consumer protection in e-commerce transactions, firstly every consumer to have platform facilitating the e-commerce access, secondly, building consumer trust and confidence in e-commerce transactions by addressing fraudulent and unfair trade practices giving effect to consumer protection regime effectively, and thirdly, obligation of all the stakeholders to promote and create effective redressal mechanism targeting consumer welfare.<sup>4</sup> The OECD guidelines in 2016 has laid emphasis upon a pivotal role of consumer protection authorities in protection of e-consumers interest and cooperation in trans boundary matters.<sup>5</sup> Relying upon the same, it is witnessed that the e-commerce entities have increased worldwide over the period of time as shown in Figure 1.[2]

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<sup>2</sup> DP Mittal, Law of Information Technology, 2000

<sup>3</sup> Article 3 of UNCITRAL E-Commerce Law

<sup>4</sup> OECD (2000), Guidelines for Consumer Protection in the Context of Electronic Commerce, OECD Publishing, Paris, <https://doi.org/10.1787/9789264081109-en-fr>

<sup>5</sup> OECD (2016), Recommendation of the Council on Consumer Protection in E-commerce, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264255258-en>.

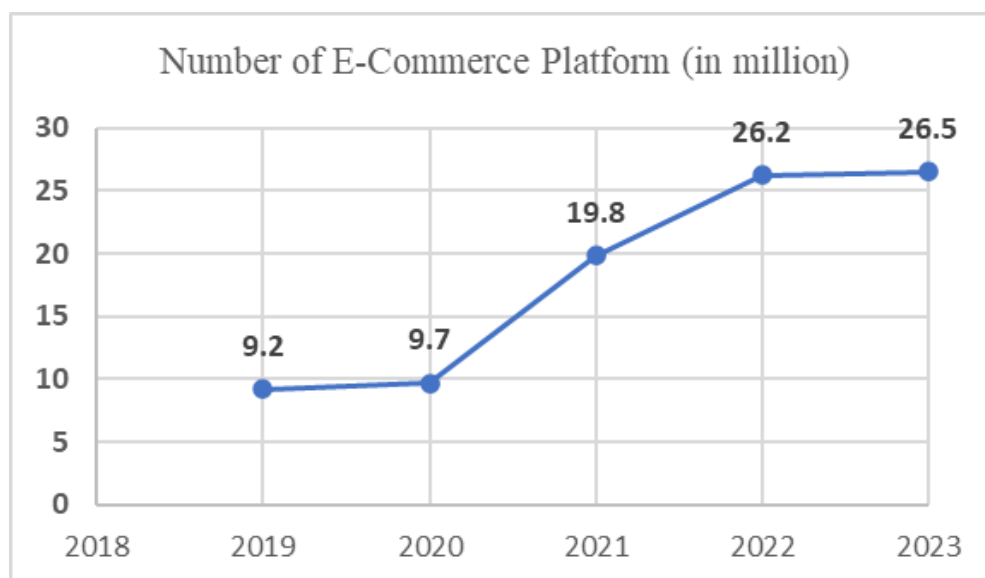


Fig. 1 Growth in number of e-commerce entities globally

Source: <https://www.markinblog.com/how-many-ecommerce-sites/>

The UNCTAD Programme on E-commerce and Law Reform, since 2000 has supported developing nations like Asia, Africa, and Latin America in their efforts to set up a legal regime, to develop trust of consumers in online transactions and to conduct domestic and international trade online with an ease.<sup>6</sup> As per UNCTAD, Consumer protection in electronic commerce, 2017, Asia being one of the regions which represent a substantial economic growth in e-commerce as these regions holds greatest market shares of B2C e-commerce.<sup>7</sup> On the other hand, The econsumer.gov is a project of the International Consumer Protection and Enforcement Network (ICPEN) and have partnership of more than 65 consumer protection agencies working around the world, gives a platform to authorities to sport the trend, identify and combat fraud. it investigates majorly in nine categories of international online frauds, out of which reports suggests that top categories of frauds committed and reported online are:

1. Online shopping
2. Miscellaneous investments and investment advice
3. Business Imposters
4. Vacation Travels and
5. Romance Scams

As per the data 26,737 reports were filed in the year 2023 making a total loss of \$172.8 million USD.<sup>8</sup> The same is shown in the Figure 2 below. As per the report, through these online frauds 80% losses have been suffered by the e-consumers worldwide where online shopping being at the top.

<sup>6</sup> UNCTAD, 2000 Ecommerce and Law Reforms <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform>

<sup>7</sup> UNCTAD Consumer protection in electronic commerce, 2017 [https://unctad.org/meetings/en/SessionalDocuments/cicplpd7\\_en.pdf](https://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf)

<sup>8</sup> Worldwide E-Commerce loss reports <https://econsumer.gov/en/News/ComplaintTrend/3#crnt>

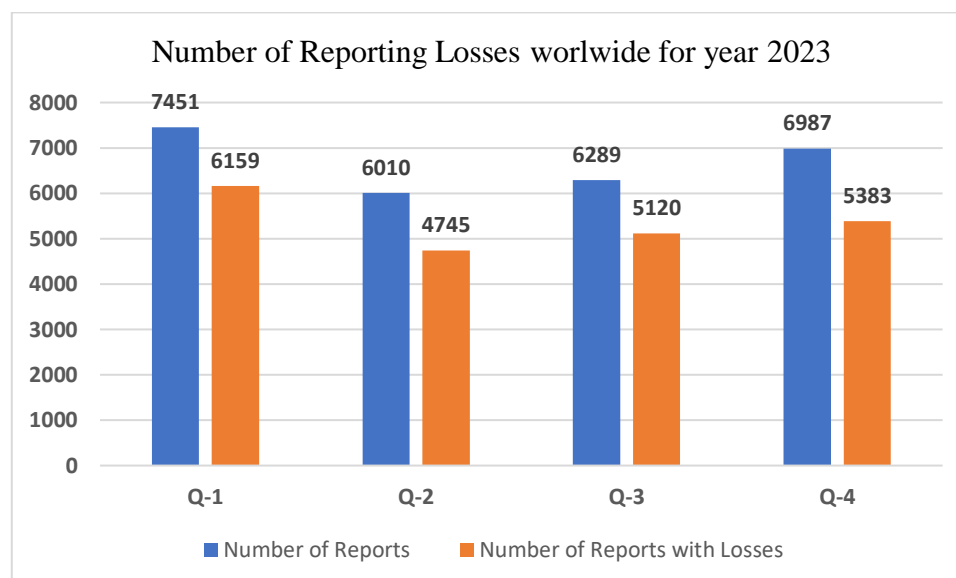


Fig. 2 Number of E-commerce Loss Report

Though India is not the member state of ICPEN, however looking upon the status of the online frauds committed worldwide it becomes pertinent to discuss consumer protection in India while specifically focusing upon the e-commerce activities. The e-commerce industry in India has a tremendous growth trajectory and is expected to surpass the growth of e-commerce industry in United States by 2034 to become the second largest e-commerce market worldwide. The growth of Indian e-commerce market was US 46.20 billion dollars in 2020 growing at a 19.24% CAGR and expected to reach US 111.40 billion dollars in 2025. The key drivers for the growth of e-commerce sector in India are apparel and grocery amongst the others. Indian e-commerce is expected to grow at CAGR of 27% to reach US 163 billion dollars by 2026.<sup>9</sup> Targeting B2C e-commerce specifically is expected to record a growth of 8.68% CAGR during 2023-2027.

The digital e-commerce has increased upwards due to COVID-19 pandemic due to shift in customer purchasing behaviour from offline to online means of doing shopping. For the last three years in 2020, 2021 and 2022 the total volume of business has increased by 8%, 28% and 53% respectively. As per the survey report by published by Payoneer in 2022, e-commerce sector in India is ranked at 9<sup>th</sup> position in the world for cross border trade.<sup>10</sup> The growth of e-commerce sector is visible with the penetration of smartphones and internet access to the Indian population. The government of India's scheme of "Digital India" has led to the increase in internet connections to 830 million in 2021. Where 55% connections were seen to be available in urban areas and 45% connections were found in rural set up bridging the gap between rural and urban setup in India.<sup>11</sup>

As per the IAMAI and KANTAR report, the internet users are expected to be increased in the country from 622 million in 2020 to 900 million by 2025 as shown in Figure 3.<sup>12</sup> There have been data showing increase in 4G and 5G network India with the increase in mobile devices that has brought more flexibility amongst the consumers to passively buy and sell over internet. The Digital India initiative has also introduced and made shift to e-wallets resulting in increase in digital payments.<sup>13</sup> For the same purpose RBI has also taken an initiative to formulate regulations on digital payments.<sup>14</sup> This made it pertinent to study the legal status of consumer protection specifically targeting e-commerce rules.

<sup>9</sup> Indian E-Commerce industry analysis, IBEF <https://www.ibef.org/industry/ecommerce-presentation>

<sup>10</sup> [https://s28.q4cdn.com/543571417/files/doc\\_financials/2022/ar/2022-annual-report.pdf](https://s28.q4cdn.com/543571417/files/doc_financials/2022/ar/2022-annual-report.pdf)

<sup>11</sup> <https://www.ibef.org/industry/ecommerce-presentation>

<sup>12</sup> [https://www.iamai.in/sites/default/files/research/Internet%20in%20India%202022\\_Print%20version.pdf](https://www.iamai.in/sites/default/files/research/Internet%20in%20India%202022_Print%20version.pdf)

<sup>13</sup> Digital Payments driving the growth of digital economy, <https://www.nic.in/blogs/digital-payments-driving-the-growth-of-digital-economy/>

<sup>14</sup> Reserve Bank of India (Digital Payment Security Controls) directions, 2021, <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/MD7493544C24B5FC47D0AB12798C61CDB56F.PDF>

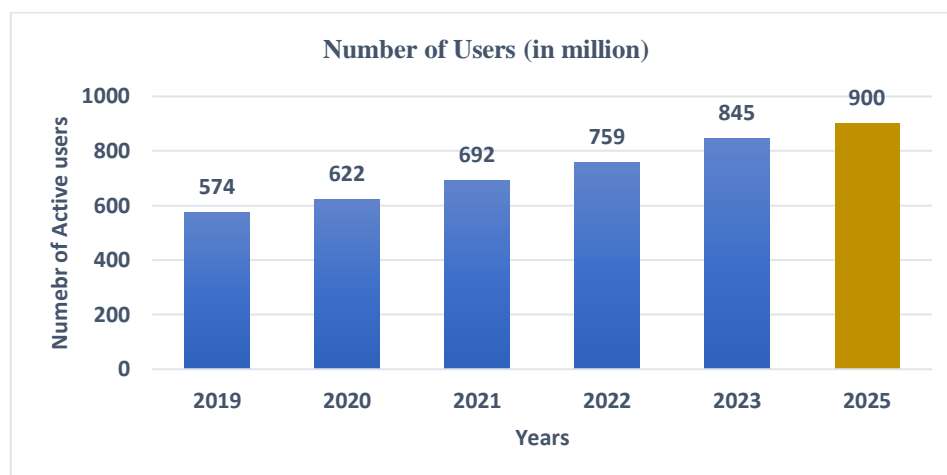


Fig. 3 Number of E-commerce loss report [9]

### 2.3 Need for E-Commerce Protection Laws

The position of consumer in the market is at a lower side where the seller dominates the market and gives lesser opportunities to consumer to negotiate. Inequality of negotiating powers makes it paramount to protect the consumers' rights against the sellers. While focusing upon the behavioural patterns of consumers in the market, trust plays an important role while selling goods and services. It is thus suggested that law plays an important role in creating trust between two contracting parties.<sup>15</sup> Increase in reliability develops from the law protecting their rights. It is also supported by the study of European e-consumers behavioural pattern that psychological aspect plays an essential role amongst the e-consumers to maintain their trust.<sup>16</sup> The reason of distress amongst the e-consumers can be manifold, yet the primary reasons are insecure and less effective payment mechanism, poor online security and issues regarding data protection, less effective marketing program, substandard quality of goods and services, delay in delivery and futile return policies.<sup>17</sup>

As a continuous practise, it is observed that there have been various violations leading to so many instances of e-consumers being hacked, making it a challenge to create safe and secure marketplace for the e-consumer to transact. E-commerce entities, on one hand are earning through the increased e-commerce transaction, on the other hand it becomes a costly affair for these entities to set up a platform for e-business while safeguarding the data privacy of consumers as per the standard guidelines laid down by General Data Protection Regulations (GDPR) in various jurisdictions.<sup>18</sup> It is notable that during covid-19 pandemic situations, the consumers have opted for e-shopping at the cost of their safety and security due to the prevailing situations of that time. However, it again brings us to the same premise that building trust and confidence of e-consumers is important to sustain businesses.

There exists correlation between law and society, and it gives peace of mind and security including business activity and develops trust in the system. With the change in society, there has to be change in the law to bring harmony in society. The development of technology brings development in law to reinstate trust and confidence amongst consumers. On the same lines, the time has changed, where the people going for online transactions, look for the legal framework for safe and secure online environment wherein an e-agreement is considered as a lawful contract.<sup>19</sup>

<sup>15</sup> Erin A. O'Hara Choice of Law for Internet Transactions: The Uneasy Case for Online Consumer Protection, 153 U. PA. L. REV. 1883 (2005). [https://scholarship.law.upenn.edu/penn\\_law\\_review/vol153/iss6/2](https://scholarship.law.upenn.edu/penn_law_review/vol153/iss6/2)

<sup>16</sup> Jaciow, M., Wolny, R., & Stolecka-Makowska, A. (2013). E-consumer in Europe. Comparative analysis of behaviours, Helion, Gliwice.

<sup>17</sup> Kamari, F., & Kamari, S. (2012). Trust in Electronic Commerce: A New Model for Building Online Trust in B2C. European Journal of Business and Management, 4, 125-133.

<sup>18</sup> See cross-border shopping statistics and trends. <https://www.invespro.com/blog/cross-border-shopping/>

<sup>19</sup> Section 10A of Information Technology Act, 2000 read with the essential elements of the contract under Indian Contract Act, 1872. See Bolton, G. E., Katok, E., & Ockenfels, A. (2004). How effective are electronic reputation mechanisms? An experimental investigation. Management science, 50(11), 1587-1602.

### 3. Methodology

Focusing the Indian legal regime in protecting the e-consumers rights is emerging with the development and adoption of technology in various aspects of life. This makes it interesting to explore in a comprehensive manner the gap that with the increase in e-commerce transactions there exists evidence which witness that e-consumers are still reluctant to entrust the online platform for doing any commercial transactions. As contrast with the brick-and-mortar pattern of shopping, there exist risk in online transactions because the e-consumer is negotiating with an unknown supplier. The common issues related to e-consumer insecurity are data privacy violation, quality of products, return and exchange policies, jurisdictional issues, arbitrary terms, and conditions.<sup>20</sup> In order to combat the menace of such concerns of e-consumers, the Consumer Protection Act, 2019 was enacted replacing the previous legislation (i.e. Consumer Protection Act, 1986) and simultaneously, Consumer Protection (E-Commerce) Rules, 2020 came into force in July 2020 focusing the issues of e-consumer rights. It is apparent that to attract the e-business and to have investment opportunities at global level, India being an emerging jurisdiction to develop the rules regarding e-commerce business, must gain consumer trust.[8] The Act, 2019 and Rules, 2020 are two legislations which can lead to paradigm shift in the e-commerce business in India. Thus, implications of these laws towards e-consumers' safety and security for building trust in e-transactions is important and these two laws have been reviewed and analyzed as a subject.

### 4. Analysis

#### Comparative Analysis of the Consumer Protection Act, 1986 and Consumer Protection Act, 2019

The development of e-commerce has opened the doors for new delivery systems of goods and services, providing opportunities to consumers for exploring verity of products and services with an ease of sitting at a place. However, such new trend has made the e-consumers vulnerable and susceptible to new forms of unethical practices. The Act of 1986 has certain limitations with respect to applicability and adjudication process in e-transactions. The Consumer Protection Act, 2019 brings the fundamental change in the law adding upon the scope, applicability, penalty, and governance of e-commerce transactions. Now, the Act, 2019 is applicable upon the buying and selling of goods and services over electronic network<sup>21</sup> and it specifically defines online marketplaces and inventory involved in the e-transactions.<sup>22</sup> Moreover, creating the regulatory and adjudicating body in the name of CCPA for consumer protection.[3]

The Consumer Protection Act, 2019 also brought about the express provisions providing the mechanism for dispute settlement through mediation process with the mutual consent of the parties on the filing of complaint or at any time thereafter.<sup>23</sup> A mediation cell to operate in every city where there is bench of commission and at regional benches to fast track the process of mediation.<sup>24</sup> In order to make the redressal procedure speedier, no right to appeal has been given against the order of mediation keeping into consideration the interest of consumer and seller.<sup>25</sup>

#### Detailed Analysis of E-Commerce Rules 2020

The Consumer Protection(E-commerce) Rules, 2020 were notified in July 2020 with an aim to protect the consumers' interests and rights in e-commerce.[4] Some of the observations which can bring a notable change in the consumer protection jurisprudence are highlighted in the table below:

Table1: Description of Rules of Consumer Protection (E-Commerce) Rules, 2020 focusing upon the rights and liabilities of Marketplaces and Sellers

S No	Focused Area	Rule No	Description
1.	Applicability of Rules 2020	Rule 2	<ul style="list-style-type: none"> <li>On both goods and services bought or availed on electronic platform</li> </ul>

<sup>20</sup> Chawla, N., & Kumar, B. (2022). E-commerce and consumer protection in India: the emerging trend. *Journal of Business Ethics*, 180(2), 581-604.

<sup>21</sup> Section 2(16) of the Consumer Protection Act, 2019

<sup>22</sup> Section 2(17) of the Consumer Protection Act, 2019

<sup>23</sup> Section 37 of the Consumer Protection Act, 2019

<sup>24</sup> Section 74-81 of the Consumer Protection Act, 2019

<sup>25</sup> Section 81 of the Consumer Protection Act, 2019

			<ul style="list-style-type: none"> <li>• Retail models of e-commerce</li> <li>• All the entities whether inventory and marketplace model. *</li> <li>• Unfair trade practice in every model of e-commerce</li> <li>• An entity offering goods and services to the consumers in India but not established in India.</li> </ul>
2	Duties of E-commerce Entities	Rule 4	<ul style="list-style-type: none"> <li>• An entity to be incorporated under the Companies Act.</li> <li>• An entity to appoint point of contact for smooth compliance.</li> <li>• Establishment of adequate grievance redressal mechanism.</li> <li>• Appointment of grievance redressal officer and display of his name, contact details on the platform.</li> <li>• Grievance redressal officer to acknowledge complaint within 48 hours and complaint to be resolved in a month.</li> <li>• In case of imported goods being offered, the importer's details and the seller's name to be mentioned.</li> <li>• No cancellation charges to be imposed upon consumer if any such cost is not beard by entities.</li> <li>• The payment towards refund request shall be affected within stipulated time.</li> <li>• No manipulation in prices to gain unreasonable profit by the means of unjustified costs and discrimination against same class of consumers.</li> </ul>
3	Liabilities of E-Commerce Entity	Rule 5	<ul style="list-style-type: none"> <li>• The entities to require that the information of the goods provided by the sellers on the platform to be accurate and it must correspond with the nature, quality, and appearance of goods.</li> <li>• Requirement of display of certain information on its platform such as: Details of the sellers (principal address with all its branches and name and details of website in case of any dispute), separate complaint number for each complaint lodged and the mechanism through which the consumer can monitor his complaints, Information mentioning the details of return and exchange policies, warranty and guarantee policy, details pertaining to shipment and delivery, payment modes (including the information about method of payment), charges,</li> </ul>

			if any to be paid by the user and grievance redressal mechanism. <ul style="list-style-type: none"> <li>• Maintenance of records of the sellers, for its identification if the goods offered removed under copyright/trademarks or IT Act.</li> </ul>
4	Sellers' Duty on E-Marketplace	Rule 6	<ul style="list-style-type: none"> <li>• No adoption of unfair trade practice by seller while offering the goods and services.</li> <li>• Seller not to falsely represent himself as a consumer and post review of products and services and shall not misrepresent any product offered.</li> <li>• Seller shall not refuse exchange and refund of the product or services which are in defect or deficient.</li> <li>• Seller to have prior written contract with e-commerce entity for undertaking the sale.</li> <li>• Seller to appoint grievance redressal officer for consumer grievances.</li> <li>• Seller to ensure that marketing and advertisement of products to be consistent with characteristics, usage, and conditions of goods.</li> <li>• Sellers to provide e-commerce company incorporated under companies Act, mentioning its principal place or branches, if any, with the details of website, email id and customer contact details.</li> </ul>
5	Duties and Liabilities of inventory E-Commerce Entities	Rule 7	<ul style="list-style-type: none"> <li>• Inventory model of e-commerce entities shares same liability and duties as that of marketplace e-commerce entity.</li> </ul> <p>*Inventory-based model, goods and services is owned and sold directly to consumer by entities.</p>

The e-commerce Rules, 2020 provides a great initiative to develop a consumer trust in e-commerce transactions while protecting their interests in case of any violations. The adoption of e-commerce Rules, 2020 have again made the point there has been a shift from caveat emptor and caveat venditor and proving the notion that consumers are now given upper hand in the business activities.

## 5. Discussion

After an analysis of various provisions of the Consumer Protection Act, 2019 and the e-Commerce Rules, 2020, the inclusion of grievance redressal mechanism is a step towards creating transparency and bridging the gap between e-commerce entities and sellers through defining their rights and liabilities backed by the stringent penal provisions.[5 ] By making it an obligation for the marketplace entities to provide the details of the grievance redressal officer and acknowledgment of consumer complaint within 48 hours of lodging it and resolution of such complaints within 1 month is a step towards adopting the law which is beneficial for the consumer interest. The Act, 2019 has introduced a mandate for e-commerce entities to disclose their refund and exchange policies on the website and in case of refund of the goods and services, it is again mandated upon the sellers and marketplace entities to initiate and complete the refund within the time stipulated.[6] However, with the simultaneous increase in online frauds dubious transactions performed by the sellers on e-platform makes it skeptical for the consumers to entrust their confidence in online transactions.[7 ] On this note, the entities to ensure the timely resolution of grievances and refund to the consumers to keep the trust intact upon the e-



commerce entities in line with the new legislation. Mode of payment is another parameter through which safety and security of consumers can be hampered and because of this concern, cash on delivery is treated as safe option by the consumers in doing online shopping as compared to online payments. It is perceived that full disclosure of information on the website adds upon the trust building of the e-consumers.[9] The Act, 2019 and Rule, 2020 are comparatively new legislations which has come to an effect aiming to protect the consumers' interest which in turn will give direct effect upon the economic growth of the country. However, to check upon the implication of the legislation, it would take some time to have full effect towards its aim.

## 6. Limitations

There are certain limitations in the research made. The impact study of the legal framework of e-consumer protection is the main limitation. It is because the legislation and Rules made thereunder are new and the judicial viewpoint while resolving the disputes have been recently started. The analysis of law and the observations made in the study may change with the change in time and modification and development of law.

## 7. Conclusion

The digital economy of India majorly relies upon the e-commerce market. The consumer protection Act, 2019 and the Rules, 2020 act as a pillar in supporting the e-commerce growth in the country. The comprehensive analysis of law has provided with the reformatory development in the domain specific fortifying the consumer rights in digital era.[10] The introduction of the new concept through the law such as, grievance redressal mechanism, establishment of CCPA, modification in the powers of dispute redressal commissions has proved to be an efficient law. The aim of the study is to review the consumer behavioural pattern in e-commerce activities which gets affected with the key issues such as, unfair trade practices, data privacy concerns, payment issues.[11] However, the present study has highlighted upon the enactment of the new law which has taken into consideration these major concerns of the consumers bringing transparency and fair practice amongst the online sellers and marketplaces. Moving forward, all the stakeholders may continue to collaborate and adapt to the ongoing emerging filed to digitalisation and technology to keep up with the changing dynamics of e-commerce while protecting the consumer interest.

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