

Jurisdictional Issues in E-Commerce – A Critical Appraisal of the Indian Legal Regime

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Abstract-India has been a witness to a technological revolution that has opened up several opportunities for businesses and a major beneficiary of this development is the rapidly growing ECommerce sector in India that has been credited for the expansion of major businesses like Amazon and Flipkart. Computer networks have thus, become an important part of the economic infrastructure as transactions are facilitated over the web.

The internet has eliminated all geographic boundaries, making the globe flat. E-commerce is based on an electronic communication system that travels freely without any territorial limit. E-commerce disregards both territorial and judicial limitations.¹ Due to the nature of e-commerce, it can be difficult to determine which courts should hear a dispute between a consumer and an e-trader. Geographical boundaries are the main emphasis of the current law framework for territorial jurisdiction. The challenges of the jurisdiction in e-commerce do not restrain the resolution of consumer disputes but also include jurisdiction to regulate e-commerce for the preservation of the rights and interests of consumers. To test the effectiveness of the current legal framework in India concerning jurisdiction to resolve consumer disputes and control e-commerce platforms, this paper makes an honest effort to analyse the jurisdictional challenges and issues that arise in e-commerce.

Keywords: E-Commerce, Jurisdiction, Choice of Law, The IT Act 2000, Consumer protection law

INTRODUCTION

E-commerce has brought a paradigm shift in trading throughout the world. Although the Indian e-commerce sector has witnessed an impressive growth rate in recent years, the sector is still beset with some serious challenges. The etymological

meaning of E-commerce is the business transaction of buying and selling of products and services by & customers solely through an electronic medium, without using any paper documents. The Organization for Economic Cooperation and Development (OECD) defines E-commerce as a new way of conducting business, qualifying it as business occurring over networks that use non-proprietary protocols that are established through an open standard-setting process such as the Internet. The rapid popularity and acceptance of e-commerce throughout the world are driven by greater customer choice and improved convenience in commercial transactions with the help of the internet where the vendor or merchant can sell his products or services directly to the customer and the payment can be made electronic fund transfer system through debit card, credit card or net banking etc. Out of these conveniences and ease of doing business, the e-commerce market and its holding in the whole trade and commercial transactions is increasing in demand as well as expanding very fast replacing non-e-commerce transactions in so many sectors. E-commerce is already appearing in all areas of business and customer services.²

With the increasing use of information and communication technology (ICT) s, a new branch of jurisprudence known as Cyber Law or Cyber Space Law or Information Technology Law or Internet Law, emerged to regulate law and order in cyberspace. In 1996, for the first time, a Model Law on E-commerce (MLEC) was adopted by United Nations Commission on International Trade and Law (UNCITRAL) which was subsequently adopted by the General Assembly of the United Nations. The main objective of MLEC was to bring

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¹ Abdulhadi M Alghamdi, *The Law of E-Commerce: E-Contracts, E-Business* (1st edn, Author House 2011)1

² Rajendra Madhukar Sarode, "Future of E-Commerce in India Challenges & Opportunities" 1(12) IJAR 646 (2015).

a uniform law relating to e-commerce at the international level and to bring electronic transactions to a level at par with paper-based transactions ascertaining the rights and liabilities of the transacting parties similar to those of paper-based transactions. India being a signatory to this Model law enacted the Information Technology Act, 2000. Accordingly, to give effect to the UNCITRAL law on E-Signature (MLES), in 2001 India enacted the Information Technology (Amendment) Act, 2008.

Defining E-Commerce

The term E-Commerce stands for 'Electronic Commerce'. There is no standard definition for the term e-commerce as such, it is said to be used in the sense of denoting a mode of conducting business through electronic means unlike conventional physical means. Such electronic means include 'click & buy' methods using computers as well as 'm-commerce' which makes use of various mobile devices or smartphones.⁴ The concept of E-commerce not only includes selling and purchasing goods online but also its delivery, payments, supply chain and service management.

Example: An individual visits a retail store and purchases merchandise not currently in stock from a computer-enabled kiosk located inside the shop. An e-commerce transaction since agreement occurred over computer-mediated networks. Electronic commerce covers all business conducted through computer networks. In recent years, advances in telecommunications and computer technologies have made computer networks a fundamental part of the economic infrastructure. Progressively companies are facilitating transactions over the web. There has been incredible competition to target every computer owner, connected to the Web.

LAWS REGULATING E-COMMERCE IN INDIA

1. The Foreign Exchange Management Act, 1999 & The FDI Policy

Investments, specifically foreign investments in E-Commerce in India are governed by the FEMA. In addition to this, the Department of Industrial Policy

and Promotion announces the FDI Policy which is notified by the RBI as an amendment to the Foreign Exchange Management(Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000. The consolidated FDI policy lays down the route of investments, either via automatic route or through government approval through the Foreign Investment Protection Board. So Far, 100 % FDI is allowed in companies engaged in B2B commerce through automatic route³ and no FDI is allowed to companies engaging in single-brand⁴ and multi-brand retail.⁵

2. The Indian Contract Act, 1872

The Provisions relating to communication of proposals, acceptance and revocation⁶ in the Indian Contract Act, 1872 will govern the agreements that arise out of an ECommerce Transaction. Furthermore, the agreement must not be unlawful, forbidden by law, fraudulent, immoral and opposed to public policy⁷ and must not be a result of one party exercising undue influence over the other.⁸ The Agreements happen in the form of Standard Form of Contracts.

3. The Information Technology Act, 2000

Agreements that take place on E-Commerce platforms are mostly in the form of E Contracts. The provisions of the IT Act provide that an electronic contract is valid and enforceable,⁹ if it complies with all prerequisites under The Indian Contract Act, 1872. Moreover, the legislation also addresses the dispatch and receipt of Electronic contracts which is an essential factor in determining acceptance of a contract¹⁰ without altering or modifying any existing substantive law of the contract.

The main aim of the IT Act was to provide legal recognition to the transactions carried out by the means of electronic data interchange and through other electronic means of communication, commonly referred to as electronic commerce (e-commerce). The IT Act 2000 facilitates e-commerce and e-governance in the country. It contains provisions for Legal recognition of electronic records and digital signatures rules for attribution of the e-record, for mode and manner of

³ Para 6.2.16.2.1 of the Consolidated FDI Policy, 2014

⁴ Para 6.2.16.3 of the Consolidated FDI Policy 2014

⁵ Para 6.2.16.4 of the Consolidated FDI Policy 2014

⁶ Section 4, The Indian Contract Act, 1872

⁷ Section 23, The Indian Contract Act, 1872

⁸ Section 16(3), The Indian Contract Act, 1872

⁹ Section 10-A, The Information Technology Act, 2000

¹⁰ Section 13, The Information Technology Act, 2000

acknowledgment, for determining time and place of dispatch and receipt of electronic records. The Act also establishes a regulatory framework and lays down punishment regimes for different cybercrimes and offences. Significantly, under the Act, the Certification authority is a focal point around which this Act revolves as most of the provisions are related to the Regulation of Certification Authorities i.e., the appointment of a Controller of CAs, grant of license to CAs, recognition of foreign CAs and duties of subscribers of digital signature certificates. It also made the offences like hacking, damage to computer source code, publishing of information that is obscene in electronic form, breach of confidentiality and privacy, and fraudulent grant and use of digital signatures punishable. Further, it provides for civil liability i.e., Cyber contraventions and criminal violations, penalties, the establishment of the Adjudicating Authority and the Cyber Regulatory Appellate Tribunals.¹¹ The related provisions of the Indian Panel Code, 1860, the Indian Evidence Act, 1872, Banker's Book Evidence Act, 1891 and the Reserve Bank of India Act, 1934 were also amended to address the related issues of electronic commerce, electronic crimes and evidence, and to enable further regulation as regards electronic fund transfer.

Information Technology (Amendment) Act, 2008 India incorporated Information Technology (Amendment) Act, 2008 to give the implementation of the UNCITRAL Model Law on Electronic Signatures, 2001 in India. The IT Act of 2000 was amended to make it technology-neutral and recognized electronic signatures over restrictive digital signatures. The Act brought many changes such as the introduction of the concept of e-signature, amendment of the definition of intermediary, etc. Besides, the state assumed specific powers to control websites to protect privacy on the one hand and check possible misuse leading to tax evasion on the other hand. It is important to note that this act recognized the legal validity and enforceability of digital signatures and electronic records for the first time in India and also gave emphasis on secure digital signatures and

secure electronic records. These changes were brought in an attempt to decrease the incidence of electronic forgeries and to facilitate e-commerce transactions.

E-COMMERCE

E-commerce has received huge popularity because of the automation technique used by it. Due to ease in transactions, the number of e-consumers is growing at a high rate and within a very short period it will defeat physical consumers. Today, e-commerce is affecting business. Electronic business not only exchanges information between buyers and sellers of goods but also provides support and services to consumers. More consumer demands appear on the Internet than any other medium today. It demonstrates that the internet has a huge potential to grab many customers in a short amount of time, which in turn can become a target market for growing firms.¹² The Internet has changed the economy so much that most of the business activities today are carried out online.

LEGAL VALIDITY OF E-COMMERCE

Electronic contracts are governed by the basic principles elucidated in the Indian Contract Act, 1872, which mandates that a valid contract¹³ should have been entered with free consent¹⁴ and for a lawful consideration¹⁵ between two adults. It also finds recognition under the Information Technology Act, 2000 that provides validity to e-contracts.¹⁶ Accordingly, both Indian Contract Act, 1872 and Information Technology Act, 2000 need to be read in consonance to understand and provide legal validity to e-contracts. Further, provisions of the Evidence Act, 1872 also provide that the evidence may be in electronic form.¹⁷ The Indian Contract Act, 1872 provides that where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will

¹¹ Dr. Jyoti Rattan, "Law Relating to E-commerce: International and National Scenario with Special Reference to India" 1(2) IJSSEI 7 (2015).

¹² Mr. Yasir Zafar Khan, 'Challenges and Issues with e-commerce and the role of government in the development 1 of e-commerce in India', Journal of

Information Sciences and Management, Jan-Jul. 2013.

¹³ The Indian Contract Act, 1872, S.2(h).

¹⁴ The Indian Contract Act, 1872, S.14

¹⁵ The Indian Contract Act, 1872, S.23

¹⁶ The Information Technology Act, 2000, S.10(A).

¹⁷ The Indian Evidence Act, 1872, S.3

of the other.¹⁸ Information Technology Act only explains and clarifies, inter alia, when the dispatch and receipt of electronic records take place and is meant purely for ascertaining the time of dispatch and receipt of information, which is a relevant factor in many contracts.¹⁹ The Supreme Court of India, recognizing the distinction between 'postal rules' and 'receipt rules' as elaborated in *Bhagwandas v. Girdharilal*,²⁰ following the English decision in *Etores Ltd v. Miles Far East Corporation*,²¹ had held that Section 4 is applicable only in non-instantaneous forms of communication and does not apply to instantaneous forms of communication. Therefore, it may be noted that this method is useful only for non-instantaneous forms of communication like contracts concluded by E-mail and may be inapplicable in instantaneous forms like 'web click' contracts. In the case of instantaneous forms of communication, it has been held that a contract is formed when the offeror receives the acceptance. Therefore, in the virtual world, an offer or acceptance is complete when the addressee receives the electronic record²² as defined in Section 13(2) of the Information Technology 12 Act, 2000.²³

E-COMMERCE DISPUTE

Disputes are usually settled within the physical territory where one or both of the parties are located. However, with an online enterprise, customers could be located anywhere in the e cope with such broad exposure. Verifying the consumer's location is virtually impossible. A consumer may even be able to pay for services anonymously using the digital equivalent of cash e.g. E-Cash. It is pertinent to note that where goods require physical delivery, an online enterprise can restrict its customer base to those jurisdictions where it is delivered but with digital goods and services that are delivered online, this is almost impossible, and the enterprise may have to rely on the truthfulness of the customer's information regarding their location.

Types of e-commerce Disputes

Electronic commerce brings both comfort and discomfort to its users. The comforts include on-the-spot sales and purchases, competitive costs, convenience, saving time, etc. The discomforts include fraud and cyber crimes committed against e-commerce users. At times there are disagreements and dissatisfactions as well among buyers and purchasers that cannot be resolved using traditional litigation methods.²⁴ Thus, it can be said that disputes are inevitable in the course of the life of a business, whether online or offline. The business disputes which the enterprise may encounter in e-commerce are:

A. Contractual Disputes:

Disputes that arise out of some non-fulfillment of any contractual obligation are said to be known as Contractual disputes. There are numerous kinds of contractual disputes existing in the corporate arena, some of which are:

1. Disputes between the enterprise and the Internet Service Provider: These are the dispute that arises between the enterprise and the Internet Service Provider or web-hosting services provider, including disagreements over interruptions in service, the breach in data security, etc.
2. Business-to-business disputes: These kinds of disputes usually take place between the enterprise and its suppliers such as non-performance of contractual obligations, misrepresentations, and complaints from customers regarding services provided by suppliers.
3. Business-to-consumer disputes: These disputes are common between the enterprise and its customers such as non-payment for goods or services, non-performance of contractual obligations, the poor performance of a contract, misrepresentations, breach of the privacy policy, and breach of security of confidential information. It is between the enterprise and its customers that lies the greatest possible scope for disputes.²⁵

¹⁸ The Indian Contract Act, 1872, S.16(3)

¹⁹ The Information Technology Act, 2000, S.13

²⁰ AIR 1966 SC 543.

²¹ (1955) 2 QB 327.

²² The Information Technology Act, 2000, S.2

²³ Dr. Ramesh Moturi, 'Catalytic Role of E-Commerce And Consumer Protection In India', *International Journal of Academic Research*, Vol.2, Issue-4(3), October-December 2015.

²⁴ Sadat Mulongo Lunani, 'E-commerce and Consumer Rights: Applicability of Consumer Protection Laws in 14 Online Transactions in East Africa', *International Journal of Scientific Research and Innovative Technology*, Vol. 4 No. 1; January 2017.

²⁵ Praveen Kumar Mall, 'Emerging Trends Of E-Consumers & Determining Jurisdictional Disputes In India', *15 International Journal Of Legal Insight*, ISSN: 2456-3595, Volume I, Issue 1.

B. Non-contractual disputes:

Non-contractual disputes are those disputes that arise due to non-observance of any statutory obligation on part of the parties to the transaction. These are the common kinds of non-contractual disputes that may arise in an online enterprise.²⁶

1. Dispute over Copyright: The enterprise might be liable for copyright infringement if it uses copyrighted material over fair use and without permission.
2. Failure in Data Protection: The enterprise may be liable for sharing or revealing confidential data of customers, as discussed in the segment on Privacy.
3. Right of Free Expression: The enterprise may be subject to defamation suits for defamatory material posted online.
4. Competition law, Domain Name Disputes: The enterprise may be subject to trademark infringement suits if it infringes a registered or otherwise legally recognized trademark. Henceforth, it is significant to note that although many of the issues such as jurisdictional issues, choice of law issues and high cost of a cross-jurisdictional litigation issue, which arise concerning the different categories of disputes, are similar, the difficulties are perhaps more pronounced in respect of business to consumer dispute transactional disputes which are often of small monetary value. Traditional methods of resolving cross-jurisdictional commercial disputes, such as international commercial arbitration, are often too costly, inconvenient and burdensome in the context of consumer disputes.

FUNDAMENTAL JURISDICTIONAL ISSUES
IN E-COMMERCE

Jurisdiction in E-Commerce and the Information Technology Act, 2000

In deciding the jurisdiction of courts in contractual disputes, the place where the –cause of action^{||} has arisen plays an important role. The place where the contract is formed is considered a place where the part of the cause of action^{||} has arisen. In the case of the non-instantaneous mode of communication, a contract is formed at a place where acceptance of the offer is dispatched. Whereas, in the case of an instantaneous mode of communication, a contract is formed at a place where the acceptance of the offer is received. Section 13 of the Information Technology Act 2000 (hereinafter referred to as the IT Act^{||}) incorporates provisions to identify

the place of despatch and receiving of electronic communication, which helps in identifying the place of formation of e-contact and decides the place of cause of action^{||} and jurisdiction of courts. Section 13(3) of the IT Act reads as:

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business and is deemed to be received at the place where the addressee has his place of business.

Further, section 13(5)(b) of the IT Act provides the following provision which reads as:

(5) For the purposes of this section,— (a) (b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;^{||}

Hence, in applying the principles of section 13 of the IT Act and the principles of contract law, it may be concluded that in e-commerce, a contract is formed at the place of business or the place of residence of a consumer, the place where the consumer receives acceptance to his offer in e-commerce. Thus, the cause of action partly arises at the place of business or residence of the consumer (where the consumer makes the offer and the e-trader accepts that offer), in the event of any consumer dispute in e-commerce. Therefore, under the provisions of section 13 of the IT Act, principles of contract law and rules of the cause of action^{||}, the consumer may knock on the door of the court having territorial jurisdiction over his place of business or residence. However, the provisions under section 13 of the IT Act are subject to the contract between the parties, which gives an upper hand to the e-trader to override the default rules laid down in section 13 of the IT Act. So far as exercising jurisdiction over foreign e-traders is concerned, the IT Act provides for the extraterritorial application of the Act. Section 75 of the IT Act expands its applicability outside the country. Section 75 of the IT Act reads as:

– Act to apply for offences or contraventions committed outside India.—(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention

²⁶ Ibid

committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.^l

However, it has been observed that the above provision is applicable concerning the offences and contraventions as provided under the IT Act. Since the IT Act is an industry-based law, hence it does not address the issues of local consumer grievances. Secondly, whether the authority established under the IT Act would have power over foreign e-traders who enter into a contract with consumers over the internet is not clear under the existing provisions of the IT Act. Further, presuming the e-traders would be bound by the authority, yet, foreign e-traders may simply ignore such authority.⁴³ It has been argued that the extraterritorial application of the IT Act is —only self-claimed. This provision of the IT Act cannot compel foreign courts to enforce judgments passed by Indian courts based on the provisions laid down in the IT Act.⁴⁴

Apart from the above provisions, courts in India may also follow the Principles of International Law to exercise jurisdiction over foreign websites. The following are the four principles recognised as a principle of International Law for deciding jurisdiction:⁴⁵

1. Passive personality test: As per this theory, any act in foreign nation which is harmful to the national of the forum state, the foreign national may be punished for such act.
2. Protective principle: According to this principle, if the act of aliens, which is done from abroad affects the security of the state, the state can assume jurisdiction over aliens.
3. Extra territoriality principle: As per this

principle, if the acts occurring abroad have an effect within the forum state, the courts in the forum state can interfere with the acts occurring in a foreign state.

4. Universal principle: According to this principle, it is a matter of international public policy to suppress any criminal activities like trafficking, hijacking. Therefore, exercising jurisdiction in such cases is justified.

In civil matters, it has been recognised that by the agreement between the parties, parties may determine applicable law and jurisdiction. Yet, in the absence of such terms in the contract, the jurisdiction can be decided based on the following objective principles:⁴⁶

1. Place of business or habitual residence of the person who has to perform the contract.
2. For the performance of the contract, the place where the necessary step was taken.
3. A place where an invitation to enter into a contract or an advertisement was received.
4. A place where an agency or a branch is located.

However, in the case of a consumer contract, it has been recognised that mandatory rules of national law shall apply irrespective of the choice of law.⁴⁷ Thus, in an internet dispute, each party and service provider may come from different jurisdictions and the effect of its transaction might be felt altogether in a different jurisdiction; therefore, it is justifiable for the state to assume jurisdiction over internet-based disputes. The internet allows everyone to deal with the people of every country in the world. Even without soliciting any customer in any state, simply with a website, one can receive an order for illegal goods, and bets for any prohibited services

⁴³ Pratima Narayan, "Jurisdiction Concerns in E-Consumer Contracts" in Ashok R Patil (ed) 25 Years of Consumer Protection Act: Challenges and the Way Forward (Chair on Consumer Law and Practice, National Law School of India University 2014).

⁴⁴ PD Sebastian, "Governance of Cyberspace: Some Reflections on Jurisdiction" in Vimlendu Tayal (ed), Cyber Law Cyber Crime Internet and E-Commerce (Bharat Law Publications 2011).

⁴⁵ Sarla Gupta and Beniprasad Agrawal, Cyber Laws: Law Relating to Information Technology, Hacking, Intellectual Property Rights, Trademarks, E-Commerce, Computers, Computer Software, Internet and Cyber Crimes etc (2nd edn Premier Publishing Co 2016) 976.

⁴⁶ Sarla Gupta and Beniprasad Agrawal, Cyber Laws: Law Relating to Information Technology, Hacking, Intellectual Property Rights, Trademarks, E-Commerce, Computers, Computer Software, Internet and Cyber Crimes etc (2nd edn Premier Publishing Co 2016) 976.

⁴⁷ Reed C, The Internet Law, Text and Materials cited in Sarla Gupta and Beniprasad Agrawal, Cyber Laws: Law Relating to Information Technology, Hacking, Intellectual Property Rights, Trade Marks, E-Commerce, Computers, Computer Software, Internet and Cyber Crimes etc (2nd edn Premier Publishing Co. 2016) 976.

or behavior from any jurisdiction. Due to the pervasiveness of the internet, without really trying, it may be everywhere. Thus, without accepting the burden of being held liable wherever they do business, one cannot take the benefit of the convenience of the internet.⁴⁸ Though in absence of a specific provision in the IT Act, the Delhi High Court in the *Banyan Tree*⁴⁹ case tried to evolve principles to determine the jurisdiction of the court in internet-related activities, however, the following issues remain unanswered: (a) the issues concerning jurisdiction to regulate foreign e-commerce platforms doing businesses in India; (b) use of legality of jurisdiction exclusion clause or choice of law clause (by foreign e-traders) in e-commerce consumer contracts; (c) the issue concerning anonymity in internet resulting in lack of clarity about the geographical location of e-commerce platforms; (d) the issue of enforcement of Indian court's judgment in a foreign nation. Thus, the Indian legal position is ambiguous and unclear without any specific principle for the court concerning the jurisdiction of courts in e-commerce. Hence, concrete principles are needed to determine the jurisdiction of Indian courts in the virtual world.⁵⁰

Issues of Jurisdiction in E-Commerce and the Consumer Protection Act, 2019

In determining the jurisdiction of the consumer forums, it is important to identify and define complainant, business, place of business, mode of business and transaction between consumers and traders. The Consumer Protection Act, 2019 (hereinafter referred to as –the CP Act 2019) expanded the meaning of all the indicators, which may determine the jurisdiction of consumer forums.

⁴⁸ Property Rights, Trade Marks, E-Commerce, Computers, Computer Software, Internet and Cyber Crimes etc (2nd edn Premier Publishing Co. 2016) 976.

⁴⁹ *Banyan Tree Holding (P) Limited v A Murali Krishna Reddy* [2009] MANU/DE/3072.

⁵⁰ Mrinali Komandur, "Jurisdiction and enforcement of E-Commerce Contracts" [2017] *International Journal on Consumer Law and Practice* 91.

⁵¹ The Consumer Protection Act 2019, s 2(7) explanation (b).

⁵² Satvik Verma, "Consumer Protection Act, 2019: Enhancing Consumer Rights" (Bar & Bench, 2 September

The CP Act 2019 recognises e-commerce as a form of business within the definition of consumer. The scope of the ways of transactions, which a consumer is required to enter into to become a consumer is extended by the CP Act 2019 by incorporating new words in the definition of consumer, which read as: –the expressions –buys any goods' and –hires or avails any services' includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.⁵¹

Further, the CP Act 2019 enlarges the definition of the term –goods' under section 2(21). The term –food, as defined by the Food Safety and Standard Act, 2006, is incorporated within the definition of –goods' under the CP Act 2019. Section 2(21) of the CP Act reads as:

–goods means every kind of movable property and includes –food' as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006;

The implication of this change is to bring the food delivery platforms in e-commerce within the purview of the CP Act 2019.⁵²

The CP Act 2019 defines the term –product liability, which reads as:

–product liability means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by a deficiency in services relating thereto;

Thus, under the CP Act 2019, a manufacturer or a seller of any defective product or service relating thereto will be required to pay compensation to the consumer.⁵³ Further, the CP Act 2019 specifically defines the terms –product manufacturer,⁵⁴

2019) <<https://www.barandbench.com/columns/consumer-protection-act-2019-enhancing-consumer-rights>> accessed 6 January 2023.

⁵³ The Consumer Protection Act 2019, s 2(34).

⁵⁴ Section 2(36) of the Consumer Protection Act 2019 defines "product manufacturer", which includes a maker, assembler, a person who puts his mark on the product, designer, fabricator, producer, constructor, remanufacturer, a maker who sells, distributes, installs, leases, packages, prepares, markets, labels, maintains, repairs or otherwise involve in placing the product for commercial purpose.

-product seller⁵⁵ and -product service provider.⁵⁶ Thus, these provisions have expanded the scope of consumer protection under the CP Act 2019. The CP Act 2019 incorporates new criteria to determine the jurisdiction of the District Commission. The new provision provides that the District Commission shall have jurisdiction if within the local limits of its jurisdiction, *inter alia*, -a complainant resides or personally works for gain.⁵⁷ A similar provision has also been incorporated concerning the jurisdiction of the State Commission.⁵⁸ This provision provides an added benefit to consumers in e-commerce. This provision would enable consumers to conveniently seek redressal of their grievances against the e-traders who do not, generally, have any branch or office in their district or state.⁵⁹ This provision also makes the affair simpler, as due to the scattered nature of e-commerce transactions, it is complicated to determine the place of business of e-commerce traders who operate over the internet.⁶⁰

The CP Act 2019 also brings convenience in filing

⁵⁵ The term “product seller” is defined in section 2(37) of the Consumer Protection Act 2019, which includes a person, in the course business, sells, imports, installs, distributes, prepares, leases, labels, packages, repairs, markets, maintains, or a service provider or in involve in placing the product for commercial purpose; but does not include a seller of immovable property, unless such person sells constructed house, homes or flats; person involve only in a financial capacity, or leases a product, or an electronic service provider.

⁵⁶ Section 2(38) defines “product service provider” as “product service provider, in relation to a product, means a person who provides any service in respect of such product”.

⁵⁷ The Consumer Protection Act 2019, s 34(2)(d).

⁵⁸ The Consumer Protection Act 2019, s 47(4)(d).

⁵⁹ Gaurang Kanth and Divjot Singh, “The Consumer Protection Act, 2019: An Overview” (*Mondaq*, 18 December 2019) < <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/876600/the-consumer-protection-act-2019-an-overview> > accessed on 5th March 2020.

⁶⁰ Soumya Shekhar, “All that you need to know about the new consumer protection law” (*Citizen Matters*, 30 October 2019) < <https://citizenmatters.in/faq-consumer-protection-amendment-act-14404> > accessed on 5th March 2023.

⁶¹ The Consumer Protection Act 2019, s 35(1) proviso.

a complaint before the District Commission by giving the option to file a complaint -...electronically in such manner as may be prescribed.⁶¹ Further provision is also made in the CP Act 2019 concerning the filing of a complaint in case a consumer is a minor. In such a case, the minor’s parent or legal guardian can be a complainant as per the new definition -complainant.⁶² Further, the CP Act 2019 enlarges the responsibility under the product liability action. The provisions under this Act impose obligations under product liability actions on the product service providers in addition to the manufacturers and the sellers of the product.⁶³ The CP Act 2019 incorporates and defines the term -consumer rights.⁶⁴ The CP Act 2019 incorporates detailed provisions to give power to the Central Consumer Protection Authority (CCPA) to investigate, take action or other measures for the protection of consumer rights.⁶⁵

Further, the CCPA has been empowered under section 18 of the CP Act 2019 with the following powers to protect consumers’ rights:

⁶² The Consumer Protection Act 2019, s 2(5)(vii).

⁶³ The Consumer Protection Act 2019, s 2(6)(vii).

⁶⁴ The Consumer Protection Act 2019 under section 2(9) expressly defines six categories of “consumer rights”. The definition reads as: “consumer rights include, —

1. the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
2. the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practice;
3. the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
4. the right to be heard and to be assured that consumer’s interest will receive due consideration at appropriate fora;
5. the right to seek redressal against unfair trade practice or restrictive trade practice or unscrupulous exploitation of consumers; and
6. the right to consumer awareness;”

⁶⁵ The Consumer Protection Act 2019, s 18-22.

(1) The Central Authority shall—

- (a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;
 - (b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
 - (c) ensure that no false or misleading advertising is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;
 - (d) ensure that no person takes part in the publication of any advertisement which is false or misleading.
- (2) Without prejudice to the generality of the provisions contained in sub-section (1), the Central Authority may, for any of the purposes aforesaid, —
- (a) inquire or cause any inquiry or investigation to be made into violation of consumer rights or unfair trade practices, either *suo motu* or on a complaint received or on the direction from the Central Government;
 - (b) file complaints before the District Commission, State Commission or the National Commission, as the case may be, under this Act;
 - (c) intervene in any proceedings before the District Commission, the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;
 - (d) review the matters relating to, and the factors inhibiting the enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;
 - (e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
 - (f) undertake and promote research in the field of consumer rights;
 - (g) spread and promote awareness of consumer rights;
 - (h) encourage non-governmental

organisations and other institutions working in the field of consumer rights to cooperate and work with consumer protection agencies;

- (i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;
- (j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
- (k) advice the Ministries and Departments of the Central and the State Governments on consumer welfare measures;
- (l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

The CCPA is further authorised to conduct a preliminary inquiry to find out a *prima facie* case of unfair trade practice or false or misleading advertisement or any violation of consumer rights. In furtherance of its inquiry, if it finds any preliminary case, the CCPA is required to cause the full investigation to be made by the District Collector or the Director General.⁶⁶ However, if the CCPA believes that the issue should be dealt with by a concerned Regulator established by law, it may refer the issue to that regulator with its report.⁶⁷

Moreover, if after the investigation, the CCPA finds that any advertisement is false or misleading or against the interests or rights of a consumer, it may direct the advertiser or the trader or the manufacturer or the publisher or the endorser to discontinue such practice or to modify in the manner and within time as may be prescribed in the order.⁶⁸ Further, the CCPA may also impose a penalty for false or misleading advertisements.⁶⁹ Thus, the CCPA will fill the institutional void in regulating traders for consumer protection.

Apart from dispute settlement through consumer forums, the CP Act 2019 introduces mediation as a form of settlement of consumer disputes. The State Governments are obliged to establish –District Consumer Mediation Cell, which is to be attached to the District Commission in each district and a Consumer Mediation Cell to be attached to the State Commission.⁷⁰ Further, the Central Government is obliged to establish a –National Consumer

⁶⁶ The Consumer Protection Act 2019, s 19(1).

⁶⁷ The Consumer Protection Act 2019, s 19(2).

⁶⁸ The Consumer Protection Act 2019, s 21(1).

⁶⁹ The Consumer Protection Act 2019, s 21(1).

⁷⁰ The Consumer Protection Act 2019, s 74(1).

Mediation Cell to be attached to the National Commission.⁷¹

Thus, among many new welcoming provisions in the CP Act 2019, two provisions that may provide relief to consumers to a greater extent are (a) the provision which enables consumers to file a complaint in the District Commission or the State Commission within whose local jurisdiction the complainant resides or personally works for gain; and (b) empowering the CCPA as an administrative body to protect consumers' rights and interests. However, the following questions remain unanswered under the existing provisions of the CP Act 2019: (a) Will consumer forums be able to exercise jurisdiction over foreign e-traders? (b) Will the CCPA be able to regulate foreign e-traders for the protection of consumers in India? (c) Whether foreign e-traders are required to comply with consumer protection laws in India? (d) Will the decisions of the consumer forums be enforceable in the foreign nation against the foreign e-traders? (e) Will the consumer forums still be able to exercise jurisdiction in the presence of an arbitration clause, choice of forum clause, or choice of law clause in the consumer contract? (f) How will the consumer forums and enforcement agencies trace the location of e-traders of anonymous or fraudulent characters? Answers to these questions are vital for the effective protection of consumers in e-commerce. It has been argued that the internet is fundamentally global and the challenges brought about by it have global implications. Hence, e-commerce cannot be sustained in an atmosphere of legal uncertainty. Legal principles must be developed recognising the global character of e-commerce.⁷² Thus, it has been observed that considering the unequal bargaining power and the difference in economic

resources between the consumer and the seller, the burden should not be imposed upon consumers to sue the defendant in a foreign state.⁷³

Further, for protecting consumers from cross-border e-commerce frauds, it has been suggested that governments, representatives of consumers and business players across the world should develop a common legal framework similar to the EU Directives on E-commerce in the form of commonly applying principles for addressing jurisdictional issues in e-commerce. As a first step, a common regulatory framework should be developed among the South Asian Countries similar to the EU directives.⁷⁴ Further, it has been recommended that for the protection of consumers in cross-border transactions, India should join the international network, such as the International Consumer Protection and Enforcement Network (ICPEN), which collects and shares international consumer complaints and also provide help to consumers in resolving their disputes.⁷⁵ Technologically enabled abuses can be checked through technological innovations. Hence, in dispute resolution in e-commerce, technology-based tools such as – video conferencing or –software-based mediation can help in resolving disputes in e-commerce. Additionally, this method may especially help e-consumers as e-consumers are familiar with the technology.⁷⁶

The recent e-Commerce Policy of the Government of India realised the importance of electronic redressal of consumer grievances in e-commerce. The Policy promised that a system of electronic grievance redressal mechanism will be established, which will further enable the mechanism to award compensation to the aggrieved consumer electronically.⁷⁷

The recent Draft Model Guidelines on e-

⁷¹ The Consumer Protection Act 2019, s 74(2).

⁷² Farooq Ahmed Mir, „Legal Aspects of E-Commerce in India“ in Vimlendu Tayal (ed), *Cyber Law Cyber Crime Internet and E-Commerce* (Bharat Law Publications 2011).

⁷³ Jaokim ST Oren, „International Jurisdiction over Consumer Contracts in e-Europe“ (2003) *The International and Comparative Law Quarterly* 669.

⁷⁴ Pratima Narayan, „Jurisdiction Concerns in E-Consumer Contracts“ in Ashok R Patil (ed), *25 Years of Consumer Protection Act: Challenges and the Way Forward* (Chair on Consumer Law and Practice, National Law School of India University 2014).

⁷⁵ M Mahindra Prabu and P Rajadurai, „The Ways to Empower the E-Consumer in the Alarming Field of Online Shopping“ in Ashok R Patil (ed), *25 Years of Consumer Protection Act: Challenges and the Way Forward* (Chair on Consumer Law and Practice, National Law School of India University 2014).

⁷⁶ Jyoti Maheshwari and Pragma Vats, „E-Consumers: Protection and Solutions“ in Ashok R Patil (ed), *25 Years of Consumer Protection Act: Challenges and the Way Forward* (Chair on Consumer Law and Practice, National Law School of India University 2014).

⁷⁷ Department for Promotion of Industry and Internal Trade, Ministry of Commerce

Commerce has proposed a little step, in realising the importance of regulating e-commerce entities, by bringing them within the purview of the Indian legal system. The Draft Model has proposed compulsory registration of e-commerce entities carrying or intended to carry business in India and mandatory submission of a self-declaration to the Department of Consumer Affairs stating that entities comply with the requirements under the Guidelines.⁷⁸

CONCLUSION

The IT Act has extraterritorial jurisdiction. Hence, if any person contravenes any provision of the IT Act, which involves any computer network, computer or computer system in India, the courts in India may exercise jurisdiction in such case. The Delhi High Court in *Banyan Tree*⁷⁹ has accepted the –effectll test along with the –sliding scalell test of the US Courts for determining jurisdiction in internet-based disputes. Apart from these tests, several other tests have also been accepted in deciding jurisdiction over foreign nationals in general, such as the passive personality test, protective principle, extraterritoriality principle and universal principle.

The Civil Procedure Code, 1908 (hereinafter referred to as –the CPC) also provides provision for deciding the jurisdiction of civil court in contractual disputes in general. However, the provisions are similar to the provision for deciding jurisdiction in the CP Act 1986.

Thus, from the perspective of consumer protection in e-commerce, the existing legal framework of India is inadequate concerning the jurisdictional issues in e-commerce, particularly, the issues concerning personal and territorial jurisdiction; ousting jurisdiction clause in a consumer contract; and the jurisdiction to regulate and prescribe standards for foreign-e-commerce businesses.

Though many provisions are incorporated in the CP Act 2019 which expand the jurisdiction of consumer forums, yet, the issues concerning the power to regulate foreign e-commerce websites, the practices of ousting jurisdiction of consumer forums or laws of residence of consumers by e-commerce traders remain untouched under the existing provisions of the CP Act 2019.

In the UK, the CR Act does not give validity to any consumer contract, which excludes the applicable law of the European Economic Area (EEA), if the contract has a close connection with the UK.

and Industry, Draft National e-Commerce Policy: India's Data for India's Development (2019) para 4.16.

⁷⁸ Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution,

Government of India, Model Framework for Guidelines on e-Commerce for Consumer Protection (2019) 2.

⁷⁹ *Banyan Tree Holding (P) Limited v A Murali Krishna Reddy* [2009] MANU/DE/3072.