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## E-COMMERCE COMPLIANCE UNDER INDIAN CONSUMER LAW VIS-À-VIS AMAZON AND FLIPKART

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### ABSTRACT

The rapid growth of e-commerce in India has made consumer lives more convenient, but it also brings with the risks of dark patterns, opaque pricing, fake reviews and inaccessible grievance mechanisms. This paper examines whether Amazon India and Flipkart comply with the Consumer Protection Act, 2019 and the Consumer Protection (E-Commerce) Rules, 2020, and whether the existing enforcement framework can secure that compliance. It first outlines the statutory framework, then assesses practice through an analysis of the platforms' websites, grievance redressal mechanisms and seller disclosures, finding formal compliance in some aspects but significant gaps in others. The paper further argues that fixed monetary penalties, complaint-driven enforcement and individualised remedies cannot deter large digital platforms such as Amazon and proposes turnover-driven penalties, suo moto investigations and digital compliance audits. It concludes that the consumer rights to be informed, to be heard and to seek redressal will remain largely theoretical in online markets unless enforcement evolves alongside them.

### INTRODUCTION

*“While the states were fighting with one another, trade found out and levelled the roads that lead from one nation to another, and established between them a relation of exchange of goods and ideas...”<sup>1</sup>*

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<sup>1</sup> Hina Kausar, *E-Commerce and the Rights in E-Consumers*, Manupatra Article 1, 1-2 (2015).

Perhaps this statement has only grown more relevant over time than when Rudolf Von Ihering – a German Jurist – first delivered it in the nineteenth century.<sup>2</sup> Activities at the global level are increasing at record rates, a phenomenon that got its second wind with the onset of globalisation and has only further snowballed with the growth of e-commerce. Ordering a package from Amazon or receiving a product off Flipkart are activities that have become far too commonplace — something no one bats an eye at anymore. Electronic or e-commerce refers to any commercial transactions that are carried out through electronic networks, such as the Internet. The Internet has become a powerful tool in the hands of consumers, for searching/buying goods and services — it has provided a platform for increased competition (and consequently, competitive prices), more choices in product services, and the convenience of shopping from global vendors anywhere and at any time. Today, thus, e-commerce has, for better or worse, become an inescapable part of everyday life.

India, with its teeming population, is one of the largest e-commerce markets in the world and is still expanding at an alarming, but unsurprising rate. Bill Gates, billionaire “philanthropist”, referred to the Indian market as a ‘laboratory to try things’;<sup>3</sup> while the statement itself was surrounded by controversy at the time, especially considering who said it, it isn’t entirely wrong — with its diverse population, rising economic/infrastructural development, and gradual shift towards availing more online services, any product (with the right marketing, of course) has a decent chance of garnering a humble consumer base, at the very least.

With a constantly increasing volume and consumer base for e-commerce platforms, there should, naturally, be a corresponding legal framework that is capable of efficiently regulating the functioning of the same — a system that offers accessible remedial measures for consumer grievances. This becomes extremely necessary when we consider the obvious disadvantages online purchases pose to consumers; they can’t physically examine the product themselves, they have to completely rely on the prices mentioned on the site, they cannot negotiate with the seller, and so on. While ‘unfair trade practices’ can be employed by sellers in a physical marketplace as well, the very set-up of online platforms, characterised by algorithmic pricing, anonymous seller identities, targeting advertising, dark patterns, fake reviews, et cetera, allows for such practices to be executed with greater efficiency, accurately tracing vulnerabilities and

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<sup>2</sup> *Ibid.*

<sup>3</sup> *Bill Gates faces backlash for calling India a ‘laboratory to try things’*, Times of India, 3<sup>rd</sup> December 2024, accessed at: <https://timesofindia.indiatimes.com/etimes/trending/bill-gates-faces-backlash-for-calling-india-a-laboratory-to-try-things-/articleshow/115934216.cms>.

consumer behaviour through constant data collection, thereby making consumer awareness, and regulatory mechanisms significantly more difficult than in a physical setting.

Some of the more basic rights of a consumer include the right to safety, the right to informed, the right to choose, the right to be heard, the right redress, et cetera.<sup>4</sup> The same have been incorporated into Indian Law under Section 2(9) of the Consumer Protection Act, 2019.<sup>5</sup> With a comparatively open market that allows for free exit/entry, and competitive prices, e-commerce platforms offer a certain resemblance to the ‘perfect market’, as laid out in macroeconomics. Furthermore, with a large array of products/services to choose from with similar prices, it fairly satisfies the consumer’s right to choose. But the real question, the one that this paper aims to deal with, is whether the other rights such as the consumers’ right to be heard, to redress, to be informed are satisfied in e-commerce markets.

Presently, Indian e-commerce is regulated by several regulatory bodies — the Reserve Bank of India was one of the first to apply regulations to e-commerce, and released guidelines for Internet banking in 2001 itself;<sup>6</sup> the Ministry of Electronics, Information and Technology similarly released the Information Technology (Intermediaries Guidelines) Rules, 2011, under the Information Technology Act, 2000;<sup>7</sup> E-commerce, currently, is governed by multiple entities such as the RBI, FSSAI, the Motor Vehicles Act, Consumer Protection Act, 2019, et cetera. However, this paper shall primarily refer to the Consumer Protection Act, 2019 (hereinafter, referred to as ‘the Act’)<sup>8</sup> the Consumer Protection (E-Commerce) Rules, 2019 (hereinafter referred to as ‘the Rules’)<sup>9</sup> and explore whether such e-commerce platforms comply with the provisions listed under the same, whether such provisions are strong enough to regulate these entities, and if the laws in place adequately protect consumers.

## **LAW ON PAPER — REGULATIONS GOVERNING INDIAN E-COMMERCE**

The E-commerce Rules, in keeping with its overarching aim to cover *all* kinds of e-commerce activities, has brought within its scope the following: (i) all kinds of goods and services that

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<sup>4</sup> Ewelina Cala Wacinkiewicz, *Consumer’s Rights as a Special Category of Human Rights*, 1 I.J.C.L.P 14, 18-19 (2013).

<sup>5</sup> The Consumer Protection Act, 2019, No. 35, Acts of Parliament, §2(9).

<sup>6</sup> Sushila, *Regulating E-Commerce Through Consumer and Competition Law Framework*, 64 Journ. I.L.I 492, 495-496 (2022).

<sup>7</sup> The Information Technology Act, 2000, No. 21, Acts of Parliament.

<sup>8</sup> The Consumer Protection Act, 2019, No. 35, Acts of Parliament.

<sup>9</sup> The Consumer Protection (E-Commerce) Rules, 2020.

are being bought/sold online, including digital products;<sup>10</sup> (ii) all models of e-commerce, *“including marketplace and inventory models of e-commerce”*<sup>11</sup> (the choice to adopt an inclusive definition for e-commerce models indicates the inclusion of the hybrid model of e-commerce as well, which would bring large-scale e-commerce platforms such as Amazon, etc, within its ambit); any kind of unfair trade practice carried out through any e-commerce model.<sup>12</sup> Furthermore, as under S.2(2), these Rules shall apply to e-commerce entities that were not established in India, but offer goods/services to Indian consumers,<sup>13</sup> again bringing platforms such as Amazon, Alibaba, eBay, etc, within its scope.

An ‘e-commerce entity’ refers to any person (corporeal person, body corporate, etc) who, *“owns, operates or manages digital or electronic facility or platform for electronic commerce”*,<sup>14</sup> but does not include sellers in a marketplace e-commerce entity. A ‘marketplace e-commerce entity’ refers to an e-commerce entity which provides an *“information technology platform”* to facilitate transactions between buyers and sellers.<sup>15</sup> Simply put, marketplace e-commerce entities merely provide the means or space for buyers and sellers to interact, strike deals, and carry out commercial activities; the entity itself does not own the products or services that have been offered for sale on its platform. Inventory e-commerce entities, on the other hand, own their inventory; as in, they *own* the very products that they directly sell to their consumers, and this includes, *“single brand retailers and multi-channel single brand retailers”*.<sup>16</sup>

Under the Consumer Protection Act, 2019, the term ‘consumer’ is defined as any person who buys goods/services for consideration, but excludes any person who makes a purchase for ‘commercial use’, with the exception of goods that have been brought for the purpose of earning via self-employment.<sup>17</sup> The Rules introduces the concept of a ‘user’, a term that has a wider connotation than consumer and includes any person who accesses or avails, *“any computer resource of an e-commerce entity”*.<sup>18</sup> Essentially, a ‘user’ would include any individual who browses, registers on, transacts through an e-commerce platform — even if all the person did was to interact with the website or app, as in, merely access it without purchasing

<sup>10</sup> The Consumer Protection (E-Commerce) Rules, 2020, §2(a).

<sup>11</sup> The Consumer Protection (E-Commerce) Rules, 2020, §2(b).

<sup>12</sup> The Consumer Protection (E-Commerce) Rules, 2020, §2(d).

<sup>13</sup> The Consumer Protection (E-Commerce) Rules, 2020, §2(2).

<sup>14</sup> The Consumer Protection (E-Commerce) Rules, 2020, §3(b).

<sup>15</sup> The Consumer Protection (E-Commerce) Rules, 2020, §3(g).

<sup>16</sup> The Consumer Protection (E-Commerce) Rules, 2020, §3(f).

<sup>17</sup> The Consumer Protection Act, 2019, No. 35, Acts of Parliament, §2(7).

<sup>18</sup> The Consumer Protection (E-Commerce) Rules, 2020, §3(l).

anything, they could still qualify as a ‘user’ under the Rules, but not as a ‘consumer’ under the Act.

Section 4 of the Rules enumerates the duties of an e-commerce entity; there are certain details that they would have to provide clearly, in an accessible manner to its users, such as the, “(a) *legal name of the e-commerce entity; (b) principle geographic address of its headquarters and all branches; (c) name and details of its website; and (d) contact details like e-mail address, fax, landline and mobile numbers of customer care as well as of grievance officer.*”<sup>19</sup> Essentially, these details have to be provided front-and-centre in order for these entities to ensure compliance under the Rules. Secondly, e-commerce entities are prohibited from adopting unfair trade practices, regardless of whether it occurs through their platform or not.<sup>20</sup> While the Rules don’t define “unfair trade practice”, the Act refers to it as a, “*trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice*”.<sup>21</sup> It includes within its ambit false representations of the good/service (passing off old products as new, lying about the standards they meet, making wrong declarations on its performance, lifespan and so on.

In the case of imported goods/services, the entity is required to mention the name, details of whom they imported from, or the seller.<sup>22</sup> They are restricted from imposing cancellation charges, unless they would have to pay out-of-pocket for the cancellation from their side.<sup>23</sup> When it comes to recording a consumer’s consent – such as when e-commerce websites ask consumers to accept their terms and conditions – it has to be explicit, and cannot involve the automatic recording of such consent, “*including in the form of pre-ticked checkboxes*”.<sup>24</sup> E-commerce entities should not manipulate the prices of the goods/services it offers on its platform, so as to unreasonably profit off it — such as when they increase the price of a product, just so that they could cut it down to the actual price during a sale in an attempt to increase its appeal to the average consumer. Furthermore, they cannot discriminate between consumers belonging to the same class for any arbitrary reason.

Under Rule 5, all marketplace e-commerce entities are to ensure sellers provide adequate/ accurate descriptions, images, et cetera, that directly correspond with the real features of the

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<sup>19</sup> The Consumer Protection (E-Commerce) Rules, 2020, §4(2).

<sup>20</sup> The Consumer Protection (E-Commerce) Rules, 2020, §4(3).

<sup>21</sup> The Consumer Protection Act, 2019, No. 35, Acts of Parliament, §2(47).

<sup>22</sup> The Consumer Protection (E-Commerce) Rules, 2020, §4(6).

<sup>23</sup> The Consumer Protection (E-Commerce) Rules, 2020, §4(8).

<sup>24</sup> The Consumer Protection (E-Commerce) Rules, 2020, §4(9).

good or service.<sup>25</sup> They are also required to clearly and accessibly provide requisite details of the sellers on their platforms, such as their geographic address, their ratings, etc.<sup>26</sup> All information related to the return, refund, exchange, as well as the grievance redressal mechanism must be provided to the consumers so that they may be able to make informed decisions.<sup>27</sup>

Sellers on marketplace e-commerce entities cannot adopt unfair trade practices, publish fake reviews or misrepresent the quality of their goods/services, cannot refuse to take back their goods or discontinue services if they aren't as they were advertised to be or if they turn out defective/deficient, etc. Furthermore, in line with the aforementioned liabilities of the entities, they have to mention the total price of their product along with its breakup price (delivery charges, conveyance charges, applicable tax, et cetera), all relevant details of their good or service, the contact details of the grievance officer, details of the importer — basically, all of the details that a consumer would need so as to make an informed decision.

Lastly, we're left with the duties and liabilities of inventory e-commerce entities — similar to the duties of general e-commerce entities, they have to provide accurate information related to the return, refund, exchange, grievance redressal mechanism; they cannot post false reviews about goods and services, cannot use misleading advertisements, cannot refuse to take back goods or discontinue services in case of defect or deficiency. If an inventory e-commerce entity which either expressly or impliedly vouches for the authenticity of its goods/services, they shall bear appropriate liability in case of problems regarding authenticity.

## **LAW IN PRACTICE — THE REALITY OF E-COMMERCE PLATFORMS**

While the previous chapter laid down the legal framework regulating e-commerce entities under the Act and the Rules, this Chapter shall attempt to examine whether leading marketplace platforms such as Amazon India and Flipkart meaningfully comply with such obligations in reality. This shall be done through an analysis of their website components, the grievance redressal mechanisms that they provide, publicly reported complaints, et cetera. Since, as under Rule 2, the Rules apply to all those goods and services bought/sold over digital networks as well as to all models of e-commerce, Flipkart and Amazon easily fall within its scope. Flipkart

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<sup>25</sup> The Consumer Protection (E-Commerce) Rules, 2020, §5(3)(a).

<sup>26</sup> *Ibid.*

<sup>27</sup> The Consumer Protection (E-Commerce) Rules, 2020, §5(3)(c).

was established in India, and since Amazon conducts business activity in India, they are included within the definition of an e-commerce entity as specified in Rule 4.

An e-commerce entity, of which Amazon is one, is primarily required to provide its legal name, its principle geographic address of its headquarters and its branches, the contact details of its customer care and grievance officer in a *clear* and *accessible* way. When it comes to Amazon, while the legal name is provided front-and-centre on its website, its principle geographic address, et cetera, are significantly harder to find. For one, there is no option to learn more about the company in the main side-bar meant for easy navigation; secondly, the next closest option a ‘user’ would have to learning more would be to scroll to the bottom of the page, where ‘About Amazon’ is mentioned in fine print under the heading ‘Get to Know Us’ — clicking on it, however, is useless, as it gives no actual information but only provides puff pieces of the company itself. The fine print under this page has a link for ‘Facts about Amazon’ — one might expect, reasonably, that this would contain something of weight, of value, but they would be disappointed as this page too would contain news pieces along the lines of, *‘How Amazon Air is transforming India’s delivery landscape’*, *‘How to sign up for a Prime membership ahead of Prime Day 2025’*, all of which are somehow trending.

Moving on to the details of the grievance officer and the customer care, one would have to again seek out the sidebar and scroll all the way down to the customer service section. The first few textboxes on the page would direct you to ‘Customer Service – Frequently Asked Questions’ which would have an exhaustive list of common questions that a customer could have; it is only after crossing it all, would you be able to reach the section of ‘Recommended Help Topics’ which would have ‘Support Options and Contact Us’ as an option. Finally, under the head, *‘How to get Customer Service support’*, there is a link that opens to a different page that provides a user with an option to either chat right now or have them call you. Basically, any user, in order to directly interact with either a chatbot, or have someone from the customer service contact you *after* first interacting with the chatbot, would have to first go through three different page changes. As for the grievance officer’s details, despite as thorough an inspection as the author could do, they couldn’t find any such information on the websites.

With Flipkart, there is mention of the legal name of the website, as well as geographical address of its headquarters, though it’s mentioned in small text at the very bottom of the page. Next to information about its registered headquarters is the link to the website’s ‘Grievance Redressal Mechanism’. When you click on the same, it redirects you to a page that clearly mentions the

name, contact number, and address of the grievance officer, Mr. Shremanth. So far, so good. However, when you attempt to simply reach 'Customer Service', it only lists frequently asked questions and the answers to those. Only when you click on the specific product you purchased from, would you be able to reach their chatbot. As the website mentions at the top of the page, *'Flipkart Help Centre Page lists out various types of issues that you may have encountered so there can be quick resolution and you can go back to shopping online'*.

Next, as a marketplace e-commerce entity, they are to mention details on the sellers offering goods and services, such as their geographic address, customer care number — basically, everything that a customer would need to make an informed choice. On Amazon, if one were to shop for say, L'oreal Paris Conditioner, while there would be adequate details about the manufacturer, there would be little to no information on the actual seller itself — there would be the sellers' ratings, their FSSAI license for example, but no geographic address. Same with Flipkart — on their website, there is no more than a basic description of the kind of products they typically sell, their quality rating, and the number of years they've been selling on that platform. Duties of sellers include not resorting to unfair trade practices or posting fake reviews — while the former can be dealt with on a case-by-case basis depending on consumer complaints, reviews, etc, the latter is fairly hard to detect practically.

Similarly, no inventory e-commerce entity can post false reviews, or provide misleading advertisements in the sense that they're inconsistent with the actual products or services themselves. Regarding the latter, it is a common experience amongst online shoppers of Amazon, Flipkart (amongst other e-commerce entities) to have products arrive at your doorstep that look entirely different to what they'd seen online when they bought it — such an occurrence can always be explained away as lighting issues, that the item looks better on the model, and if all else fails, that it's merely a bit of puffery.

## **STRENGTHENING ENFORCEMENT IN E-COMMERCE MARKETS**

While both the previous chapters dealt with the regulatory framework surrounding e-commerce compliance and the extent of its practical effect on the entities, the ultimate question remains whether the existing system of penalties under the Act is effective in deterring non-compliance in online markets. As under the Act, there is a three-tier structure for dispute resolution, at the District, State and National level, with Commissions at each level having a greater pecuniary

jurisdiction than the last. The Central Consumer Protection Authority, or the CCPA offers oversight over these bodies.

Sections 18 to 21 of the Act empower the CCPA to conduct investigations into instances where consumer rights have been violated or unfair trade practices have been carried out; they can issue directions for recalling goods or withdrawing services, they can order reimbursements for consumers and impose penalties for misleading advertisements. Section 21 specifically allows the CCPA to impose a penalty of up to 10 lakh rupees for the first instance of a misleading advertisement, and up to 50 lakh rupees for subsequent contraventions.<sup>28</sup> It may also prohibit endorsers from making endorsements for a certain period. To the average person, a sum of 10 or 50 lakh rupees may seem substantial, but to firms like Amazon that rake in profits worth a billion dollars, this would basically be petty change. These would not serve to be *actual* deterrents for such entities but would rather be considered the cost of doing business for them.

From Section 34 onwards to Section 73, the Act enumerates the powers and jurisdiction of the District, State and National commissions — they are essentially allowed to direct removal of defects/deficiencies, they can order for replacements or refunds, award compensation and discontinue unfair trade practices. While this may be a decently efficient system in some ways, these remedies are still extremely individualised — they don't provide a way to change a system that allows for disregarding or violating a consumer's right, but they merely improve it for one consumer at a time when it comes to one instance. The ways to seek redressal has been undeniably made more accessible – consumers can make online complaints, call, use WhatsApp, etc – but they're built on the assumption that an aggrieved consumer would go to the effort of complaining over a transaction that probably would not have crossed 10,000 rupees, instead of just accepting it and going about their way. There *is* compensation to those who move forward with their complaint, but the enforcement of the Act has always been isolated.

The Rules lay out comprehensive obligations for e-commerce entities to keep up with, but for penalties, it looks towards the Act.<sup>29</sup> There is no separate penalty mechanism under the Rules themselves. So, while the Act depends on broad issues such as misleading advertisements, consumer rights and so on, the Rules lay out specific digital wrongs such as price manipulation,

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<sup>28</sup> The Consumer Protection Act, 2019, No. 35, Acts of Parliament, §21.

<sup>29</sup> The Consumer Protection (E-Commerce) Rules, 2020, §8.

mandatory grievance redressal, prohibition of dark patterns and so on. All of these rules, enforcement mechanisms and penalties exist, but the truth remains that there have been few publicly documented examples where substantial penalties have been levied against major e-commerce entities — and even if they were, it would not have cost them much in terms of the larger picture. If the practice benefits them on a large scale, and only a few complain and fewer win, the profits will far outweigh the losses. Thus, the point remains — *how are the remedies provided under the Rules or the Act itself solving the bigger problem of non-compliance?*

When we look at the current consumer-centric model, it becomes obvious that the system is largely depending on the consumers to come forward with their low-value complaints — and that is not sustainable when it comes to large-scale corporate accountability. Secondly, when the Act maintains a fixed penalty, it provides no real deterrent to a corporate firm at the scale of Amazon, Flipkart, etc. The penalties must be based on the company's actual turnover, something that is calculated on a case-by-case basis for it truly have any effect at all. When it comes to issues such as price manipulation, it is harder to determine what the real price is of a product online, making it infinitely harder to determine if there has been tampering of the price in order to fool the consumer — more transparency on such subjects is sorely needed, as this is often a widely practiced trick. Authorities under the Act can be empowered to be preventative, to take more initiative rather than merely depending on consumers to come forward with the issues they've faced. They can conduct digital compliance raids, initiate investigation *not* based off a consumer complaint, et cetera.

## CONCLUSION

While the new Consumer Protection Act, 2019 and the Rules released underneath it are a step in the right direction when it comes to tackling the unique problems posed by online markets, there are still major gaps between statutory regulations and actual consumer protection. While there may be formal compliance in certain areas, there are a lot more aspects in which those details that are to be mentioned *clearly* are hidden, inaccessible — designed in a way that makes it harder for the average user go through with it. Purchasing anything online has become extremely easy — card details are pre-saved, UPI payments have become easier than ever, any purchase can be done at the click of a few buttons; but rightfully complaining has become inaccessible, with actual human interactions being hidden behind redirections, chatbots, and so on.

While the penalty infrastructure under the Act is, again, a step in the right direction, it struggles to meet the scale, and the economic power of the digital platforms of today. Fixed monetary penalties, complaint-driven enforcement and limited audits do not do anything towards deterrence. Thus, the challenge before Indian consumer regulation is not to merely provide obligations, but to carry through with the consequences so that the statutes may influence ground realities. Only when enforcement mechanisms evolve alongside online markets can consumer rights, such as the right to be informed, to be heard, to redressal, be realised in the digital age.