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**CONSUMER RIGHTS EXPLOITATION ON CYBER CRIME OFFENCE -
WITH REFERENCE TO FOREIGN AND INDIAN CONTEXT**
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Abstract

Consumer rights and welfare are now an integral part of the life of an individual and we all have made use of them at some or the other point in our daily routine. Now it is universally accepted that the consumer has a right to be provided with all relevant information in order to avoid exploitation and make a considered choice in availing of products and services from the market. Computer crimes encompass unauthorized or illegal activities perpetrated via computer as well as the theft of computers and other technological hardware. As firms of all sizes, industrial orientation, and geographic location increasingly rely on computers to operate, concerns about computer crime have also risen, in part because the practice appears to be thriving despite the concerted efforts of both the law enforcement and business communities to stop it. But computer experts and business consultants alike note that both international corporations and modest family-owned businesses can do a great deal to neutralize computer "Viruses" and other manifestations of computer crime. The Right to Information Act (RTI), which has opened up governance processes of our country to the common public also, has far-reaching implications for consumer protection.

Key Words: *International recognition, Preventive approach, Service for a consideration, guarantee, grievances, non-commercial, cyber space, evidences*

Meaning and Concept

Every individual is a consumer, regardless of occupation, age, gender, community or religious affiliation. Consumer rights and welfare are now an integral part of the life of an individual and we all have made use of them at some or the other point in our daily routine.

Every year 15th March is observed as "World Consumer Rights Day". It commemorates a historic declaration (1962) by former US President John F. Kennedy of four basic consumer rights:

- The right to safety
- The right to be informed
- The right to choose
- The right to be heard

This declaration eventually led to the international recognition of the fact that all citizens, regardless of their incomes or social standing, have basic rights as consumers.

Another significant day is 9 April 1985, when the General Assembly of the United Nations adopted a set of guidelines for consumer protection and the Secretary General of the United Nations was authorized to persuade member countries to adopt these guidelines through policy changes or law. These guidelines constituted a comprehensive policy framework outlining what Governments need to do to promote consumer protection in the following areas:

Physical safety

- Protection and promotion of consumer economic interests
- Standards for safety and quality of consumer goods and services
- Measures enabling consumers to obtain redressal
- Measures relating to specific areas (food, water, and pharmaceuticals) and
- Consumer education and information programme

Now it is universally accepted that the consumer has a right to be provided with all relevant information in order to avoid exploitation and make a considered choice in availing of products and services from the market. These rights are well-defined, both on international and national platform and several agencies like the Government as well as voluntary organisations are constantly working towards safeguarding them.

In India, 24th December is celebrated as "National Consumer Rights Day", since the Consumer Protection Act, 1986 was enacted on this day. The Consumer Protection Act was enacted in 1986 based on United Nations guidelines with the objective of providing better protection of consumers' interests. The Act provides for effective safeguards to consumers against various types of exploitations and unfair dealings, relying on mainly compensatory rather than a punitive or preventive approach. It applies to all goods and services unless specifically exempted and covers the private, public and cooperative sectors and provides for speedy and inexpensive adjudication.

The rights under the Consumer Protection Act, 1986 flow from the rights enshrined in Articles 14 to 19 of the Constitution of India. The Right to Information Act (RTI), which has opened up governance processes of our country to the common public also, has far-reaching implications for consumer protection.

As per the Act, a 'Consumer' has been defined as:

- Any person who buys goods for consideration, and any person who uses goods with the approval of the purchaser.
- Any person, who hires any service for a consideration and any beneficiary of such services, provided the service is availed with the approval of the person who had hired the service for a consideration.

Moreover, the consideration for either the goods or services may be either paid or promised, or partly paid or promised, or provided under a system of deferred payment.

The Act envisages the promotion and protection of the following rights of consumers:

Right to Safety

Means right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services availed of should not only meet their immediate needs, but also fulfill long term interests. Before purchasing, consumers should insist on the quality of the products as well as on the guarantee of the products and services. They should preferably purchase quality marked products such as ISI, AGMARK, etc.

Right to be Informed

Means right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices. Consumer should insist on getting all the information about the product or service before making a choice or a decision. This will enable him to act wisely and responsibly and also enable him to desist from falling prey to high pressure selling techniques.

Right to Choose

Means right to be assured, wherever possible of access to variety of goods and services at competitive price. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. This is because unrestricted right of the minority to choose can mean a denial for the majority of its fair share. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices.

Right to be Heard

Means that consumer's interests will receive due consideration at appropriate forums. It also includes right to be represented in various forums formed to consider the consumer's welfare. The consumers should form non-political and non-commercial consumer organizations which can be given representation in various committees formed by the Government and other bodies in matters relating to consumers.

Right to Seek Redressal

Means right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer. Consumers must make complaint for their genuine grievances. Many a times their complaint may be of small value but its impact on the society as a whole may be very large. They can also take the help of consumer organisations in seeking redressal of their grievances.

Right to Consumer Education

Means the right to acquire the knowledge and skill to be an informed consumer throughout life. Ignorance of consumers, particularly of rural consumers, is mainly

responsible for their exploitation. They should know their rights and must exercise them. Only then real consumer protection can be achieved with success.

Thus, the concern of consumer protection is to ensure fair trade practices; quality of goods and efficient services with information to the consumer with regard to quality, quantity, potency, composition and price for their choice of purchase. Such a consumer protection policy creates an environment whereby the clients, customers, and consumers receive satisfaction from the delivery of goods and services needed by them.

Cyber Crime

Proliferation of Information technology has brought with itself a chequered scenario in society. It has assumed a very significant position in our life. The unending quest to get better in Technology has impregnated various vices in the society. The face of criminal activities has got a new dimension and outlook with the advent of latest technology. For sure, we cannot rule out the contribution of such fascinating technologies in our life, both personally and professionally. However, on the weighing scale, we find it difficult to balance both the situations.

When we talk of the word 'cyber', it automatically takes us to the thought of internet, technology and virtual world. For a lawyer or a technician it brings within its nuances various other things as well. They include computer, networks, data storage, software, cell phones, ATMs, other peripherals. In a nut shell they include anything and everything which has its roots in technology or is somewhere related to the generic term 'computer' and its offshoots. All these things are collectively and generically called 'cyber space'.

Use of Cyber Forensics in Various Aspects of Law

Criminal prosecution - Use electronic evidences in variety of crimes where incriminating evidences can be found. Homicide, financial fraud, drugs and embezzlement, harassment, recordkeeping and child pornography are some of the illustrations in criminal prosecution. **Civil prosecution** - Can make use of electronic evidences in unearthing business and personal records. Contracts, divorce, claims, harassment, defamation cases are some examples.

Insurance cases - Insurance companies may be able to successfully defend themselves from any claim by furnishing electronic records of possible fraud in accident and arson cases.

Corporations - They also make use of these evidences to ascertain any possible linkups in blackmails, frauds, trade secret, misappropriation and other internal and external information.

Revenue/Enforcement/Regulation - Frequently used in post seizure precautions of computer assets.

Electronic Evidences: Considerations, Care and caution

It is very important to understand the nature of electronic evidences. Unlike any other form of evidences, it is quite easy to tutor electronic evidence, much less for an expert who deals with them on regular basis. Therefore, special care and caution must be attributed to handling such sensitive pieces of evidence. Primary threats to electronic evidence include virus, electromagnetic or mechanical damages.

Position in Federal Law of Evidence

In order for the 'electronic evidence' to be admissible, it must comply with the 'best evidence rule' and 'chain of custody' must be so that rules out any tampering. In most simplistic understanding 'best evidence' is considered to be in the original form. "(if) data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original."

"A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original."

Position in India

Information and Technology Act, 2000 was enacted to cater to the growing demand of legislation in cyber space. For the first time it introduced the concept of 'digital signatures', 'encryption', 'electronic evidences' etc. These terms were foreign to the then law of evidence. No provision was there to adduce them as evidences in courts of law. Inevitably, certain changes were made in the Indian Evidence Act, 1872 to make it more contemporary and in tune with the changing times. The Indian Evidence Act, 1872 and Information Technology Act, 2000 grants legal recognition to electronic records and evidence submitted in form of electronic records. According to section 2(t) of the Information Technology Act, 2000 "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. The Information Technology Amendment Act, 2008 has recognized various forms of communication devices and defines a "communication device" under section 2 (ha) of the Act "communication device" means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image.

Cases filed on Cyber Crime with various issues by public

Years	Foreign Countries (in numbers)			India (in numbers)		
2003-2004	7,844	5,486	2,358	1,176	323	852
2004-2005	7,983	6,774	1,209	1,437	1,078	349
2005-2006	8,020	4,594	3,426	722	516	206
2006-2007	8,024	3,822	4,212	884	591	293
2007-2008	8,459	6,706	1,753	1,184	526	658
2008-2009	1,0008	7617	2391	954	787	167
2009-2010	11,572	8,397	3,175	1,942	1,139	803
2010-2011	15,602	1,2276	3,226	12,473	1,581	892
2011-2012	13,557	8,973	4,584	2,511	1,167	1,344
2012-2013 (upto31.10.2013)	11,264	5,651	5,613	3,215	1,062	2,153

Conclusion

It is quite notable achievement for law enforcement agencies and legislators that India has kept pace with the changing technological trends and introduced extremely important amendments in its laws to cater to the demands of technology. The only thing which needs a special and urgent attention is the training imparted to the implementing authorities so that the provisions are adequately enforced. Hopefully in years to come this problem will also be redressed and the country will witness a totally new, refreshed and technologically sound legal and enforcement framework with regards to eradication of cyber crime.

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