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## Emerging artificial intelligence and its cascading effects on consumer protection in India: An analytical study

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### Abstract

This Chapter consists of the interface between artificial intelligence and consumer protection law with respect to Indian legal framework. Artificial intelligence is increasingly becoming a part of our daily lives. This has given birth to plethora of issues that concern consumers. There are both pros and cons to the use of artificial intelligence for consumers. On the one hand, it purports to multiplicity of choices, efficiency, dynamic pricing and on the other hand, it triggers issues like privacy, security, discrimination, lack of transparency for consumers to make an informed decision about products or services that surrounds them. It does not just reside in bots around us, but is present in technology that drives cars, facial recognition, stock trading, health care and wellbeing. India recently enacted the Consumer Protection Act, 2019 and Consumer Protection (E Commerce) Rules, 2020. In this backdrop, it is relevant to conduct an analytical study about legal protection that is available for consumers in a cobweb of AI based technologies.

**Keywords:** Artificial Intelligence; Consumer Harm; Consumer Protection; Emerging Technology

### 1. Introduction

Artificial intelligence (AI) is no more a thing of science fiction movies. It has touched almost every aspect of our life. AI is being used to solve the modern day problems with innovative solutions in order to make our life easy, cost effective and time saving. It is evident in matters of security, travel, social media, curing of diseases, availability and accessibility of goods and services. This is a brief overview, of the various ways in which AI is assisting the welfare of consumers and efficiency. Moreover, the use of algorithms in AI is now reducing time spent on such activities and increasing the profits made by business entities. Hence, there exists a close inter- relationship between welfare of consumers and artificial intelligence. It aims at maximum utility for consumers by solving issues regarding access to the above resources.

However, the modern day challenges posed by artificial intelligence are not only relating to technology, but extend to law and social problems like ethics.

This chapter purports to address the contours of consumer protection in artificial intelligence scenario with respect to India. India has recently rolled out its Consumer Protection Act, 2019 along with Consumer Protection (E Commerce) Rules, 2020. Hence, this study is an insight into the nascent legal paradigm and its preparedness for a fast paced and dynamic technologically advanced world for consumers.

#### 1.1. Artificial intelligence and its uses in emergent technology in India

Artificial intelligence has made the decision making of technology more intelligent and advanced. It is taking the society forward in multiple ways and means. This advancement has been achieved with algorithms and various kinds of them. Most importantly, a category of algorithms known as the machine learning algorithms are better equipped to handle

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complex situations and hence alter decision making of consumers. It is apt to have a kaleidoscopic view as to how far has AI extended its tools in a consumer's life. This is necessary before the regulations are analyzed.

Before venturing into that, one must keep in mind that there are divergent definitions of artificial intelligence. One that simplistically describes is

In India, artificial intelligence is being deployed in certain key sectors as highlighted below.

Firstly, in agriculture, the concept of precision farming is quite pertinent in use. In India, like many other countries, the issue of food insecurity is crucial for the regulators. To target the same, AI tools like this are being used to assess the yield, crops, managing the risks associated with it. The incumbent technology encompasses AI and Internet of Things (IoT) sensors, in order to ensure that the crop and soil thereby receive precise level of irrigation and requisite nutrients for optimal production. Secondly, in the energy sector, AI has monitored grey areas in energy distribution and consumption patterns. This has led to making informed predictions and analytical inputs to provide for workable solutions in the energy domain. This is bound to improvise on energy efficiency and strengthening of networks that supply energy. Keeping in mind that India is hit by huge losses in electricity transmission as well as distribution (T&D), AI can develop robust energy delivery systems and reduce leakages. Thirdly, regarding flood monitoring in India, it may be noted that the Central Water Commission (CWC) is working in partnership with Google to develop early warning systems for floods in India. CWC is first such government alliance for Google regarding active monitoring of floods in India. This is a welcome step for the use of smart technology to address disaster management by bringing timely and correct information to authorities and to the people who need it the most during natural disasters.

### **1.2. Advancing ai and consumer concerns**

The consumers are faced with intricate challenges through AI based applications. With the use of algorithms, data regarding their individual preferences is being collected. This provides a clear picture to the business entities regarding their consumer's behavior and patterns. But there exists no such reciprocal clarity for the consumer. This is affecting pricing, advertising and a breeding ground for consumer bias and exploitation. For example, The European Union has recently come out with the AI Act, 2022 that caters to possible risks that come with AI and automated processes including certain high-risk AI applications.

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## **2. Foresight of the consumer protection act,2019 and consumer rights**

It is indicated by existing literature that consumers are likely to face unique challenges with artificial intelligence. These problems are not easy to define or to solve with unilateral solutions. Consumer welfare refers to the individual benefits derived from the consumption of goods and services. In theory, individual welfare is defined by an individual's own assessment of his/her satisfaction, given prices and income. Exact measurement of consumer welfare therefore requires information about individual preferences.

Below is an attempt to list various changes that have been carefully introduced in the Consumer Protection law in India, encompassing needs of the consumer in the given technologically advancing framework.

### **2.1. Transforming the entire consumer law**

In India, the Consumer Protection Act, 2019 has replaced the erstwhile Consumer Protection Act, 1986. The new legislation brings with it penalties that are stringent and a revival of the entire dispute settlement mechanism. It widens horizons for rights of consumers. Furthermore, it encompasses concepts involving digital age, like tele-shopping, direct sale, marketing etc.

### **2.2. Redefining a consumer and the basis of jurisdiction**

According to Section 2(16) of the Consumer Protection Act,2019 a "consumer" has been defined to mean any person who buys any goods for a consideration which has been partly paid or partly promised but does not include a person who obtains such goods for resale or any commercial purpose. Likewise, any person who hires or avails of any service for a consideration. The fold of law also extends to offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing, in the Explanation to the abovementioned Section. This is an innovation in the law concerning consumer protection and indicates the embedded thought of advanced technology and E commerce.

The Act has balanced the provisions concerning jurisdiction. It allows a consumer complaint to be filed where the complainant resides or works, any of the opposite parties reside or work, the cause of action arises partially or fully. This has removed a bottleneck in jurisdiction from the previous Act that allowed such a complaint to be filed only where the opposite party resided or carried out business. Moreover, now the complaint is to be filed based upon consideration paid for goods and services. It is a stark departure from the previous position of the law, that decided jurisdiction based upon the compensation claimed.

There exists provision for filing an e-complaint by the consumer. Alternatively there exists provision for Consumer Mediation Cell at district, state and central level

### **2.3. Listing consumer rights**

The Act further lays down “consumer rights” under Section 2(9) to include the right to be protected against marketing of goods that are hazardous to life and property. Further, in order to safeguard and protect the consumer against unfair trade practices, the right to be informed about the standard, quality, purity, potency, quantity and price of goods and services. Thirdly a right to be assured of access to services and goods at competitive prices. Fourthly, including the right of natural justice, the right of a consumer to be heard and duly considered at appropriate forum. Further, is the right to redressal. It is guaranteed against restrictive and unfair trade practices or more importantly any exploitation that is unscrupulous as against consumer. Lastly, the right to consumer awareness.

### **2.4. Supervision by a central consumer protection authority**

The third chapter lays down provision of establishing a Central Consumer Protection Authority by the Central Government. The authority is under a mandate to safeguard rights of consumers as a class. Non-compliance with the directions of the Authority, misleading advertisement, adulterated products’ manufacturing, storing, selling and importing will entail stringent penalty starting from Rupees Ten Lakh and imprisonment starting from one to three years depending upon supervening contravention.

### **2.5. Liability for misleading advertisements**

It may be noted here that the concept of false and misleading advertisement is a new feather in the cap of this nascent legislation. Under Section 2(28) of the Consumer Protection Act, 2019, “misleading advertisement” has been defined to mean an advertisement that gives a false description, guarantees, misleads the consumers regarding the nature, substance, quality or quantity of a service or product. Furthermore, any implied or express representation made by the seller, service provider or manufacturer would amount to an unfair trade practice, as under the Act. It even goes on to include the deliberate concealment of important information. It may be apt to add here, that the Authority is empowered to issue directions, penalties against false and misleading advertisements. Even the endorser of any such misleading or false advertisement can be prevented by the Authority from endorsing any such service or product for a duration of one year.

### **2.6. Product liability action**

Another novice concept in the Act is that of product liability under Chapter VI. It facilitates a consumer to bring an action for product liability against any manufacturer, service provider or seller of a product in case of a defective service or defective product.

In the given situation, a product manufacturer will incur liability for evading responsibility under Section 84 of the Act in case the product has a defect in manufacturing, design, non-compliance with product specifications, lacks requisite instructions or usage of the same.

Hence, the accountability of manufacturer here extends not just towards the consumer, but to the seller as well. Similar liability exists for a service provider for providing deficient service, inadequate instructions to prevent harm or providing service that is in contradiction to the contractual terms.

Furthermore, a seller has been brought under the ambit of product liability provisions. If a seller has exercised substantial control over the testing, manufacturing, labelling, packaging of a product and there exists substantial alteration to the harm caused. Moreover, the warranty given by the seller does not correspond to the warranty provided by the manufacturer. It further lays down that the liability will also be incurred if the seller of product failed to take reasonable care in assembling, maintaining or inspecting the product. This dispute can be raised by the means of filing a complaint before either of the Commissions at district, state or national level as per the new legislation.

There exists exceptions to the abovementioned provisions. In case the consumer is thereby a party to the misuse, alteration or modification of product, then it cannot file the claim of product liability harm.

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### **3. Overview of the consumer protection (e commerce) rules, 2020**

The abovementioned Rules were notified by the Ministry of Consumer Affairs, Food and Public Distribution to address the interest of consumers in a digitalized era by regulating online sale, marketing and purchase on online platforms. These Rules apply to all the models of e commerce. However, they do not apply to natural persons entering into transactions in non-commercial or personal capacity. These rules are extra territorial in terms of jurisdiction and apply to e-commerce entities that are supplying goods or services to consumers in India.

The Central Consumer Protection Authority is constantly monitoring the consumer protection scenario in India. To safeguard rights of consumers during their online shopping, the Authority has also placed an Advisory for all the e-commerce business entities so that they ensure that the detail of sellers has been displayed legibly on their respective platforms. This includes provision of the name, the contact details of the grievance officer.

There have been amendments proposed to these rules to harness more transparency and curb unfair trade practices on e-commerce platforms. The key changes include a registration number of every e commerce entity, provided by the Department of for Promotion of Industry and Internal Trade. This will add to the authentication of data and presence of such entities on online platforms. Secondly, explicit use before or best before date is to be mentioned such that the consumer can make an informed decision before purchasing. To ensure that equal and fair treatment to domestic entities, such platforms are directed to ensure filtering mechanism on the basis of country of origin and suggest alternates. All of this is secured with provision of fallback liability in case if the seller does not follow its duties.

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### **4. Other legislations**

#### **4.1. Information technology Act, 2008 and e- contracts**

The Indian Contract Act, 1872 is competent to deal with all forms of contract. Also, under Section 10 of the Information Technology Act, 2008 e – contracts have been given a legal status and hence protection under both the legislations. Basically, when the essential elements of a contract have been expressed electronically, or in electronic record form, they will not be deemed invalidated merely because the means utilized was electronic for the respective purpose. Hence, a consumer is protected by the letter of law irrespective of the fact that it entered into a paper transaction or electronic one. This is more so relevant in the age of smart contracts and Fintech systems.

#### **4.2. Competition Act, 2002**

One of the key objectives of the Competition Act,2002 is to promote the interest of consumers. The Competition Commission of India (CCI) has been established as the key watchdog for not just promoting free and fair competition in the country, but also prevent practices that effect competition adversely. All types of anti-competitive agreements of such a nature are covered under Section 3 of the Act. Section 4 of the Act deals with abuse of dominant position by a market player and prohibits the same. Furthermore, Section 5 of the Act, regulates combinations like mergers or amalgamations.

The Hon'ble Supreme Court of India in the landmark case of Competition Commission of India v Steel Authority of India Ltd. laid down that the Act requires not only protection of trade but also protection of consumer interest. The Commission has supplemented the same reasoning in many cases, interlinking the sustainable markets to ultimately consumer benefit.

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### **5. Regulatory suggestions**

After traversing through the legal framework above, it is suggested for the regulators and stakeholders, that the marketplace of the future is a thick grid of products, applications, services and sophisticated agreements. Sometimes, the consumer may be able to read between those lines to make a well-informed choice, sometimes the lack of transparency and complexity of technology may act like a hindrance for them to do so. It will be a myth to behold that artificial intelligence will completely replace human intelligence. What needs to be advocated, is cogent information about evolving technology and AI not just for business entities, especially for the consumers.

Economy needs to align towards a financial market that coalesces the interests of all stakeholders in consumer interest for economic progress and sustainable development. In this context, it is essential that public discussion and discourse is taken into account regarding setting up of standard code of ethics in AI. It will open the platform for consumers to participate meaningfully and serve as an in- depth assessment regarding needs of society. After all, what separates a good policy from a bad one is its foresight towards wellbeing of consumers.

It is suggested that the regulators constantly understand the technology involve and then understand its impact on consumers whether it may be economic, social or ethical. That may lead to subsequent rolling out of disclosure norms by industries specifically. These steps logically determine the liability and accountability of stakeholders.

And as regards the protection of consumers, India may draw inspiration from the AI Act and the principles of AI ethics that are enshrined in it. The primary responsibility rests upon the state to incorporate the possible consumer harms that may spring up in the Indian AI system scenario.

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## 6. Conclusion

The future of consumer laws lies in increasing the transparency in the convoluted framework that governs AI. This in turn also will enhance fairness and privacy of consumers at large. Hence, it may be concluded that the existing laws at hand will continue to apply to consumer issues. However, the applicability of AI must ensure commensurate enablement of consumers on one hand and service providers or business enterprises on the other. The research paper highlights the need for apprising of consumer education, along with simplification of the terms that the e commerce world entails. This study provides a kaleidoscope of regulations that support consumer law in India in the emerging realm of AI. It is useful for extrapolating cogent and AI sustainable consumer protection laws.

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