



# CONSUMER CONCERNS IN ONLINE SHOPPING

MAROOF BASHIR

PHD\*LLM,SLET,MA ENGLISH.

PRESENTLY WORKING AS LECTURER AT SOPORE LAW COLLEGE

## CHAPTER I

### INTRODUCTION

#### Genesis

Consumer protection is a socio-economic programme to be pursued by the government as well as the business. Since the satisfaction of the consumer is in the interest of both, in this context, the government, however, has a primary responsibility to protect the consumers' interests and rights through appropriate policy measures, legal structure and administrative framework. Some of the laws which were passed during the British regime concerning consumer interests are: the Indian Contract Act of 1872, the Sale of Goods Act of 1930, the Indian Penal Code of 1860, the Drugs and Cosmetics Act of 1940, the Usurious Loans Act of 1918, and the Agriculture Procedure (Grading and Marketing Act) of 1937. These laws provided specific legal protection for consumers. For fifty-five years, the Sale of Goods Act of 1930 [Herein after referred to as 'SGA'] was the exclusive source of consumer protection in India. The main protection for the buyer against the seller for defective goods is found in Section 16 of the Act. It provides exceptions to the principle of *Caveat emptor* (let the buyer beware) and the interests of the buyer are sufficiently safeguarded. Phrases such as "skill and judgment of the seller", "reliance on sellers' skill", and the test of "merchantable quality" provide effective remedies to buyers. Courts interpreted these rules in the consumer's favour. The SGA was the exclusive consumer legislation until 1986, with the passage of the Consumer Protection Act of 1986 [Herein after referred to as 'CPA'], designed to supplement the remedies already provided under the SGA. Consumer protection was also provided within India's criminal justice system. The Indian Penal Code of 1860 has a number of provisions to deal with crimes against consumers. It deals with offenses related to the use of false weights and measures, the sale of adulterated food or drinks, the sale of noxious food or drink, and the sale of adulterated drugs.

The Indian legal system experienced a revolution with the enactment of the Consumer Protection Act of 1986, which was specifically designed to protect consumer interests. The CPA was passed with avowed objectives. It is intended to provide justice which is "less formal, and involves less paper work, less delay and less expense". The CPA has received wide recognition in India as poor man's legislation, ensuring easy access to justice. However, the CPA simply gives a new dimension to rights that have been recognized and protected since the ancient period. The Consumer Protection Act, 1986 was enacted with an objective; to provide better protection of the interests of the consumer; to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes; to provide effective and efficient safeguards to the consumer against the exploitations and unfair dealings. The Act confers various rights to the consumer including; the right to be protected against the marketing of goods which are hazardous to life and property; the right to be informed about the quality, potency, and purity, standard,

price of goods so as to protect the consumer against unfair trade practices; the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumer and many more rights.

The state of Jammu and Kashmir enacted, the Jammu and Kashmir Consumer Protection Act, 1987 in the next following year after the center. The state Act has been passed on the same lines, in consonance with the central Act. Both the legislations are mainly traditional and were intended to deal with offline mercantile transactions.

Modern technological developments have made a great impact on the quality, availability, and safety of goods and services. Technology has fundamentally changed the way the businesses are handled by society including consumers. The impact of the new technological advancements and the massive convergence of e-commerce transactions, have caught the attention of individual consumers, business enterprises, governments and international organizations. Over the past decade, e-commerce has increasingly provided an alternative for buyers and sellers to transact. The global presence of internet has enabled such businesses to bypass the traditional intermediaries in the domestic jurisdictions, while being able to access global markets. The wider use of internet (increase in internet users) has grown at exponential rates, which has encouraged the growth of online shopping a form of e-commerce. Online shopping is the process whereby consumers directly buy goods or services from a seller in real-time, without an intermediary service, over the Internet. It is a form of electronic commerce. The act of buying or selling goods, service or information is preferred by almost everyone who has access to internet. It allows a consumer to place an order for goods or services from the comfort of his living room and certainly is more convenient than driving to a store, while offering a virtually array of choices and the ability to compare prices. Since 1991, with the advent of economic reforms in India and the consequent opening of the economy with a view to integrate with the global economy, the need to facilitate international trade both through policy and procedure reforms became the foundation stone of India's trade and fiscal policies. E-commerce as part of the information technology became widely used in the world trade in general and Indian economy in particular. In all of this advancement, however, consumer protection can't be overlooked, the fact that, in addition, with revolution in information technology newer kinds of challenges are thrown on the consumer like cyber- crimes, plastic money etc., which affect the consumer in a bigger way. Hence without a confident consumer, there can't be no e-commerce.

Consumer protection Acts has been in operation for about 30 years. A number of deficiencies and short comings in respect of its operation have come to light, thereby requiring amendments twice, still leaves scope for further improvements. Because Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1987. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. There is, therefore, a need to modernise the said Act to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.

### **Statement of problem**

There is a growing concern over the safety of the consumer products. There is no law governing the online shopping, which is growing at the tremendous pace leaving the consumers at the whims of the sellers/manufacturers. There is no protection provided in the Act of 1987 against the daily challenges faced by the consumer while shopping online. The daily trade, domestically or globally happened to be through electronic data interchange (EDI), transactions through e- contracts. Hence the transactions, reports and the issues generated by the automatic data process, having considerable bearing on the smooth and extensive growth of trade. Information Technology (Amendment) Act, 2008 recognizes the legal validity of electronic contracts. But the IT Act, does not provide the protection for the consumer while shopping online, there is ambiguity in terms of jurisdiction in case of the dispute arising out of the transaction while shopping online, there is a privacy concern with every likelihood of exploitation of the consumer, other

problems include complex contractual terms, delayed delivery, insecure payment method, weak feedback, phishing and many more other possible concerns.

### Objectives of the study

The main objectives of the study are:

1. To study the impact of online shopping on the consumer.
2. To investigate, whether the existing law is adequate to meet the problems, consumers face while buying online.
3. To suggest the changes, the law requires to keep pace with the evolving challenges in mercantile transactions.

### Research Methodology

The research relating to “**Consumer concerns in online shopping: A socio-legal study of Kashmir region**” is both doctrinal as well as empirical.

**Primary sources include:** Data collected through: Questionnaires.

**Secondary sources include:** Statutory provisions in J&K., India and elsewhere relevant to the study have been analysed. The case laws laid down by the courts and quasi-judicial bodies in India. The journals, surveys both national and transnational have been consulted. Wherever required the laws relevant to issue in the foreign countries and position therein are referred.

### Design of the study

The study is divided into following chapters:

**Chapter I..... Introduction.** The chapter is introductory in nature. It contains the statement of problem, the objectives of the study, the research methodology adopted, and the design of study.

**Chapter II..... Development of online shopping in India with special reference to Kashmir region.** The chapter traces the development of the online shopping in India and particularly of the Kashmir region.

**Chapter III.... Online shopping and consumer: New challenges.** The chapter includes the discussion on the challenges faced by the consumer while shopping online.

**Chapter IV.....Law and online shopping.** The chapter includes the discussion on the relevant law, governing online shopping.

**Chapter V..... Impact of online shopping on consumer: An empirical study.** The chapter is based on the empirical study done in the university campus. The data has been collected through questionnaires.

**Chapter VI..... Conclusion and Suggestions.** The chapter includes the conclusion of the whole project assignment and the suggestions based on the study.

## Chapter II

### Development of online shopping in India with special reference to Kashmir

Online shopping is the process whereby consumers directly buy goods or services from a seller in real-time, without an intermediary service, over the internet. It is a form of electronic commerce. An online shop, e-shop, e-store, internet shop, web store evokes the physical analogy of buying products or services at shopping store such as mall. The process is called business to consumer (B2C) online shopping. When a

business buys business from another business, it is called business to business (B2B) online shopping. The online shopping system is very helpful for where the customer can directly buy the products or items from home through internet connection on mobile or system. By this online shopping items is directly delivered to buyer home. This system helps to choose products faster and easier at one place, this system can also help for saves time of travelling to the sellers place.

## 2.1 Historical Background

It all began when Michael Aldrich 'invented' online shopping in 1979. Using videotex, a two way message service, it revolutionised businesses. We now know this as e-commerce<sup>1</sup>. In 1990, Tim Berners-Lee created the first World Wide Web server and browser in UK. It opened for commercial use in 1991. In 1994 other advances took place, such as online banking and the opening of an online pizza shop by Pizza Hut. During that same year, Netscape introduced SSL encryption of data transferred online, which has become essential for secure online shopping. Also in 1994, the German company Intershop introduced its first online shopping system. In 1995, Amazon launched its online shopping site, and in 1996, eBay appeared. Originally, electronic commerce was identified as the facilitation of commercial transactions electronically, using technology such as Electronic Data Interchange (EDI) and Electronic Funds Transfer (EFT). These were both introduced in the late 1970s, allowing businesses to send commercial documents like purchase orders or invoices electronically. The growth and acceptance of credit cards, automated teller machines (ATM) and telephone banking in the 1980s were also forms of electronic commerce. Another form of e-commerce was the airline reservation system typified by Sabre in the USA and Travicom in the UK. From the 1990s onwards, electronic commerce would additionally include enterprise resource planning systems (ERP), data mining and data warehousing.

In 1990, Tim Berners-Lee invented the World Wide Web browser and transformed an academic telecommunication network into a worldwide everyman everyday communication system called internet/www. Commercial enterprise on the Internet was strictly prohibited by NSF until 1995. Although the Internet became popular worldwide around 1994 with the adoption of Mosaic web browser, it took about five years to introduce security protocols and DSL allowing continual connection to the Internet. By the end of 2000, many European and American business companies offered their services through the World Wide Web. Since then people began to associate a word "ecommerce" with the ability of purchasing various goods through the Internet using secure protocols and electronic payment services.

## 2.2 Timeline

**1979:** Michael Aldrich invented online shopping in UK.

**1981:** Thomson Holidays, UK is first B2B online shopping.

**1982:** Minitel was introduced nationwide in France by France Telecom and used for online ordering.

**1984:** Tesco is first B2C online shopping and Mrs Snowball, 72, is the first online home shopper.

**1985:** Nissan UK sells cars and finance with credit checking to customers online from dealers' lots.

**1987:** Swreg, an online payment processor that is the best PayPal alternative for global businesses begins to provide software.

**1990:** Tim Berners-Lee writes the first web browser, World Wide Web, using a NeXT computer UK.

**1992:** Terry Brownell launches first fully graphical, iconic navigated Bulletin board system online shopping using RoboBOARD.

**1994:** Netscape, US Computer Services Company releases the Navigator browser in October under the code name Mozilla. Pizza Hut offers online ordering on its Web page. Netscape 1.0 is introduced in late.

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<sup>1</sup> <http://purple.ai/the-history-of-online-shopping> (visited on Feb 21, 2017)

**1994** SSL encryption that made transactions secure.

**1995:** Jeff Bezos, CEO of Amazon Inc., USA launches Amazon.com and the first commercial-free 24 hour. Internet-only radio stations, Radio HK and Net Radio in US start broadcasting. EBay is founded by computer programmer Pierre Omidyar as Auction Web in US.

**1998:** Electronic postal stamps for people residing in US can be purchased and downloaded for printing from the Web.

**1998:** Alibaba Group is established in China. Alibaba Group is a family of Internet-based businesses which makes it easy for anyone to buy or sell online anywhere in the world

**1999:** Business.com sold for US \$7.5 million to e-Companies, which was purchased in 1997 for US \$149,000. Business.com helps small-to-medium enterprises discover, compare and purchase products and services to run their businesses.

**2000:** The dot-com bust.

**2001:** Alibaba.com achieved profitability in December 2001.

**2002:** eBay acquires PayPal for \$1.5 billion. PayPal is the faster, safer way to send money, make an online payment, receive money or set up a merchant account.

**2003:** Amazon.com posts first yearly profit.

**2004:** DHgate.com, China's first online b2b transaction platform, is established, forcing other b2b sites to move away from the "yellow pages" model.<sup>2</sup>

**2007:** Business.com acquired by R.H. Donnelley for \$345 million.<sup>3</sup>

**2009:** Zappos.com, an online shoe and apparel store acquired by Amazon.com for \$928 million Retail Convergence, operator of private sale website RueLaLa.com<sup>4</sup>, acquired by GSI Commerce for \$180 million, plus up to \$170 million in earn-out payments based on performance through 2012<sup>5</sup>. GSI Commerce is an eBay company specializing in creating, developing and running online shopping sites for brick and mortar brands and retailers.

**2010:** Groupon reportedly rejects a \$6 billion offer from Google. Instead, the group buying websites plans to go ahead with an IPO in mid-2011<sup>6</sup>. Groupon, is a deal-of-the-day website that features discounted gift certificates or discount coupons usable at local or national companies.

**2011:** US e-Commerce and Online Retail sales projected to reach \$197 billion, an increase of 12percent over 2010. Quidsi.com, parent company of Diapers.com, acquired by Amazon.com for \$500 million in cash plus \$45 million in debt and other obligations<sup>7</sup>. GSI Commerce, a company specializing in creating, developing and running online shopping sites for brick and mortar businesses, acquired by eBay for \$2.4 billion.<sup>8</sup>

### 2.3 Online shopping in India with special reference to Kashmir region

Online Shopping in India has emerged as one of the fastest growing market and now-a-days a most common trend which people is using to buy any assets. With the growth of Internet over the last decade, most of the Businesses have now shifted online and the most successful among them are those who have invested huge amount for opening an Online Shopping Site in India.

1. Amazon.in
2. Filpkart
3. Myntra
4. Snapdeal
5. Jabong
6. Tradus.in
7. Homeshop 18
8. Yebhi.com

<sup>2</sup> [http://www.zwgl.com.cn/article\\_info.asp?nid=4243](http://www.zwgl.com.cn/article_info.asp?nid=4243) (visited on Feb 21,2017 )

<sup>3</sup> <http://domainnamewire.com/2007/07/26/rh-donnelley-acquiresbusinesscom-for345m> (Visited on Feb 21,2017)

<sup>4</sup> <http://techcrunch.com/2009/07/22/amazon-buys-zappos> (visited on Feb 21, 2017)

<sup>5</sup> <http://www.reuters.com/article/idUSBNG538820091027> (visited on Feb 22 , 2017)

<sup>6</sup> [http://www.msnbc.msn.com/id/40499923/ns/business-us\\_business](http://www.msnbc.msn.com/id/40499923/ns/business-us_business) (visited on Feb 22, 2017)

<sup>7</sup> [www.marketwatch.com/story/amazon-buy-diaperscom-parent-in-545mindeal-2010-11-08](http://www.marketwatch.com/story/amazon-buy-diaperscom-parent-in-545mindeal-2010-11-08) (visited on Feb 23, 2017)

<sup>8</sup> <http://techcrunch.com/2011/03/28/ebay-to-acquire-gsi-commerce-for-2-4-billion> (visited on Feb 23, 2017)

9. Shopclues

10. Infibeam

Online shopping in India, saw 128% growth in interest from the consumers in the year 2011 to 2012 in comparison to only 40% growth in 2010 to 2011, making 2012 the tipping point for online shopping in India. In terms of product categories, consumer interest on Google search for apparels & accessories (30%) emerged as the second biggest product category after consumer electronics (34%). As mobile internet user base grows in India, mobile phones is also becoming a contributor in the surge for online shopping with Google witnessing 2X growth in number of queries from mobile phones in the year 2011 to 2012. Currently, 30% of all shopping queries in India come from mobile phones. These trends were also validated with the help of an online research conducted by TNS Australia of the internet users in the age group 18 to 50 from Delhi, Mumbai, Kolkata, Bangalore, Ahmedabad Region, Hyderabad & Pune<sup>9</sup>. Online shopping in India is an emerging trend for marketers to promote their merchandise in wide geographical area using internet and the trend looks likely to grow upwards over the coming decade. India is the 5th country in world ecommerce and 2nd country in Asia. India seems to have grasped the ability to shop merchandise through internet. Mobile internet is being enormously responsible for opening up the online world to Indian consumers. There are reports suggesting that by the end of 2013 over 300<sup>10</sup> million Indians will have access to the internet through mobile phone technology and other platforms, about the same amount of people in USA to put that into context. Reports show that out of the millions accessing the internet in India, over 8 million regularly shop through internet. This figure is set to grow exponentially as well. Google is the internet search engine that is predominately used throughout India.

Online shopping, particularly, has assumed tremendous significance in the overall e-commerce in India. It has, in the recent years, gained a huge momentum. The internet has made possible for a seller to open a shop through a web portal, which can be even run from his home, and a consumer to place an order right from his home. The government of India has also long before recognised the need for development of IT industry and information infrastructure as these are indispensable to the growth of an economy. As a corollary, the government, over the last two decades, formulated liberal policies, substantially successful, for the development and growth of IT industry. It is estimated that India will have 100 million online shoppers and the country's e-tailing sector will become a \$15 billion market by 2016, a study said. The annual online shopping growth report was compiled by Forrester Consulting and Google search trends. The number of online shoppers in India is projected to be 35 million in 2014 and it was 8 million in 2012, said Nitin Bawankule, Google India industry director for e-commerce, local and classifieds. "Online shopper's base will grow three times by 2016, and over 50 million new buyers will come from tier I and tier II cities. The confidence to shop online was on the rise as 71% non-buyers from tier I and tier II cities said they plan to shop online in the next 12 months," the study said. The report also projected that 40 million women are estimated to shop online in India by 2016. "India is adding 6 million new internet users every month," said Rajan Ananda, Google India vice president and managing director. A recent study revealed that the number of internet users in India would reach 302 million by December 2014, registering a year-on-year growth of 32% over last year. According to the Google Forrester report women buyers in tier I cities were more engaged in online shopping and outspend men. While 65% of the buyers shop online due to convenience, 64% use online platforms for the range of variety of products and 60% take online buying route to improve social status, Bawankule said. He said the key sectors which will drive the future growth of the e-commerce are baby care products, skincare and cosmetics products and home furnishing. Bawankule, however, mentioned that 66% of the respondents felt that internet speed is acting as a barrier to online shopping. The speed is only 0.5mbps in India compared to 4mbps in China. There are also various key challenges that lie in front of the Indian e-commerce players — 62% of the respondents are not satisfied with the customer services, 67% said they find the current product return process was complicated and expensive and 55% of non-buyers said they have doubts about the products. "The e-tailing industry needs to act now to cater to this strong user growth trend. Improved customer experience

<sup>9</sup> <http://yourstory.com/2013/01/google-india-study-about-online-shopping/> (visited on Feb 23, 2017)

<sup>10</sup> <http://www.mbaskool.com/business-articles/marketing/7695-is-online-shopping-booming-in-india-an-empirical-study.html>

across all touch points, easy to use mobile apps can create a strong pull for non-buyers to shop online in tier I and tier II cities.<sup>11</sup>

There are various factors responsible for the boom in online shopping in India and they are as:

- Large percentage of population subscribed to broadband Internet, burgeoning 3G internet users, and a recent introduction of 4G by Reliance JIO in India.
- Explosive growth of Smartphone users, soon to be world's second largest smartphone user base.
- Rising standards of living as result of fast decline in poverty rate.
- Availability of much wider product range (including long tail and Direct Imports) compared to what is available at brick and mortar retailers.
- Competitive prices compared to brick and mortar retail driven by disintermediation and reduced inventory and real estate costs.
- Increased usage of online classified sites, with more consumer buying and selling second-hand goods.
- Evolution of Million-Dollar start-ups like Jabong.com, Saavn, Makemytrip, Bookmyshow, Zomato Etc.

There are many hosting companies working in India but most of them are not suitable for e-Commerce hosting purpose, because they are providing much less secure and threat protected shared hosting. E-Commerce demand highly secure, stable and protected hosting. Cyber security issues of e-commerce business in India would be required to be managed by Indian e-commerce stakeholders in the near future. In fact, Indian government is planning to introduce cyber security breach disclosure norms in India very soon. Recently Target Corporation suffered a cyber-attack that has put it under litigation threat in multiple jurisdictions. Trends are changing with some of e-commerce companies starting to offer SaaS for hosting webstores with minimal onetime costs. There could be various methods of ecommerce marketing such as blog, forums, search engines and some online advertising sites like Google ad words and Ad roll. India has got its own version Cyber Monday known as Great Online Shopping Festival which started in December 2012, when Google India partnered with e-commerce companies including Flipkart, HomeShop18, Snapdeal, India times shopping and Makemytrip. "Cyber Monday" is a term coined in the USA for the Monday coming after Black Friday, which is the Friday after Thanksgiving Day. Most recent GOSF Great Online Shopping Festival was held during Dec 10 to 12, 2014. In early June 2013, Amazon.com launched their Amazon India marketplace without any marketing campaigns. In July, Amazon had said it will invest \$2 billion (Rs. 12,000 crore) in India to expand business, after its largest Indian rival Flipkart announced \$1 billion in funding. Amazon has also entered grocery segment with its Kirana now in Bangalore and is also planning to enter in various other cities like Delhi Mumbai and Chennai and faces stiff competition with Indian Start-ups like onedaycart.com, bazaar cart, big basket etc. Flipkart is also planning to enter grocery segment soon.<sup>12</sup>

Although the trend of e-Commerce has been making rounds in India for 15 years, the appropriate ecosystem has now started to fall in place. The e-Commerce market in India has enjoyed phenomenal growth of almost 50% in the last five years. Key factors driving the growth story of e-Commerce in India include:

- Considerable rise in the number of internet users;
- Growing acceptability of online payments;
- Proliferation of internet-enabled devices;
- Favourable demographics.

The number of users making online transactions in India is expected to grow from 11 million in 2011 to 38 million in 2015. Venture capitalists (VC) and private equity players have demonstrated their faith in the

<sup>11</sup> <http://www.gadgetsnow.com/tech-news/Online-shoppers-in-India-to-cross-100-million-by-2016-Study/articleshow/45217773.cms> ( both 10 & 11 visited on Feb 23, 2017 )

<sup>12</sup> <http://devmantra.com/2015/09/01/e-commerce-and-its-evolution-in-india/> (visited on Feb 24, 2017)

growth of e-Commerce in the country. This is amply substantiated by the significant increase in the total investments (US\$305 million in 2011 against US\$55 million in 2010).<sup>13</sup>

The segment of online retail has evolved and grown significantly over the past few years. Cash-on-delivery has been one of the key growth drivers and is touted to have accounted for 50% to 80% of online retail sales. Players have adopted new business models including stock-and-sell, consignment and group buying; however, concerns surrounding inventory management, location of warehouses and in-house logistics capabilities are posing teething issues.

### 2.3.1 Online shopping in Kashmir

In the state of Jammu and Kashmir, with the increase in the number of internet users, the state from last six or seven years has witnessed the boom in online shopping particularly in the urban areas including the Srinagar city, Jammu city with its main hubs. The people belonging to other district headquarters and the tehsil headquarters whether rural or urban are transacting through online either for shopping goods or services and or for any other payment like the booking of railway tickets, banking, air tickets, DTH recharge and mobile phone recharges. The state is the northern most part of the India and the internet is still new to this region, only people belonging to education sector, banking, and other business persons are using internet frequently and the other people belonging to other professions are still hesitant towards the use of internet. And resultantly only the younger generations used to buy online few years back. But due to the uncertainties in the Kashmir because of strikes and markets being shut the people prefer to buy online products. Dozens of online stores have been opened by the young entrepreneurs ranging from selling of clothes to selling of dry fruits and even the saffron is available on the online stores of Kashmir. For instance the **Kashmir box**, this is the first social impact market place from Kashmir. This is a community with more than 10,000 artisan families associated to it with a mission to create **BRAND KASHMIR** and to make the local artisans of Kashmir a proud and economically sound artist. Other stores like **Kashmir villa** and **Jammu and Kashmir State online shopping store Helloshoppee.com**. The opening of these kind of online stores in the region of the Kashmir is witness to the fact that the sellers and buyers in Kashmir, shows more or less inclination towards the online shopping.

In 2015, the online shopping from major e-commerce companies like Snapdeal and Amazon was made available for rural areas of Kashmir which otherwise was confined to few areas in Srinagar only. However, the companies dispatch the product to customers in the rural areas in Valley through only postal department. "We want to ship our products to each corner of the world with the free return option," said a senior Amazon official over phone. Presently, electronic and clothing items are accessible for shipping in rural areas of Kashmir. "We will make more products accessible to rural areas very soon," said a Snapdeal, customer care executive. The Amazon official said the move has been taken jointly by e-commerce companies and Indian Postal Service.<sup>14</sup>

Online shopping in the state has contributed in many ways inter alia the courier service is one of them. Before introduction of online shopping in Kashmir, courier companies were not doing well and at that time only few courier companies were working in the Valley. Booming online shopping in Kashmir has given impetus to the courier business creating job avenues for thousands of unemployed youth in the Valley. As per estimates the courier service is making Rs 20 crore business per annum while it has created job avenues for more than 1000 youth in Kashmir. Currently, 25 courier companies are operating in the Valley.<sup>15</sup>

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<sup>13</sup> <http://devmantra.com/2015/09/01/e-commerce-and-its-evolution-in-india/> (visited on Feb 24, 2017)

<sup>14</sup> Editorial, "Online shopping facility now available in rural Kashmir" *Rising Kashmir*, Oct 07 2015.


<sup>15</sup> Editorial, "Online shopping boosts courier services in Kashmir" *Greater Kashmir*, Feb 14 2015.



To mention, the online shopping has become a centre of attraction for Kashmir netizens in Kashmir, with people in offices, public places, homes discussing about the best offers available on various online shopping sites. President, Kashmir Courier Association, Zahoor Qari states that Kashmir valley each day receives 700 shipments ordered by online shoppers. "On an average 450 orders using Cash on Delivery (COD) option and 250 orders via (prepaid payment mode) are received by courier companies to be distributed across the Kashmir region. The advent of technology has further helped the sector to grow and expand. The courier companies state that with online shopping gaining publicity in Kashmir through word of mouth, as a result now people in rural areas are also not shying away to do online shopping. "A year ago, our business was mainly central Kashmir mostly Srinagar centric, but now within a year it has expanded to rural areas of the Valley with people in those places opting for online shopping," said Abid Ahmad, an employee of a courier company.<sup>16</sup>

According to the Boston Consultancy Group digital influence study 2013-14<sup>17</sup>, online shopping is expected to rise to 14 per cent by 2016 from 6 per cent in 2013. It also said already 25 per cent of travel and tourism-related sales are digitally driven in the country currently.

According to market observers, a fair percentage of young Kashmiris is now-a-days purchasing via internet. Online shopping is on the rise, showing fabulous potential growth throughout the world. Due to the availability of convenience in online shopping youth of Kashmir valley are getting highly attracted toward this modern method of shopping. In today's era of internet proliferation, the prevalence of e-shopping has increased worldwide. Internet has made the transactions smoother, quicker, faster and easier and both the buyers and sellers get benefited by this technology. The growing use of internet in Kashmir valley has created a basis for tremendous prospects for online retailers. A study published in 2016<sup>18</sup> shows that (63.89%) male and 36.11% female online customers were satisfied in Kashmir valley. This research explicitly indicates that online marketer should give more importance on quality, price factor and after sale factor. In this competition era all the online marketers should have to concentrate on the customer's satisfaction to retain the existing customers and have to offer new scheme day by day to attract the new customers. The overall results the study prove that the respondents have perceived online shopping in a positive manner despite the fact that Kashmir is a place where there are continuous disturbances. Despite there is a boom in the online shopping in the region, its phenomenal growth is accompanied by certain challenges:

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- Absence of e-Commerce laws.
  - Low entry barriers leading to reduced competitive advantages.
  - Rapidly changing business models.
  - Urban phenomenon.
  - Shortage of manpower.
  - Customer loyalty.

Despite being trendy, allowing ease and quickness and received with a huge response by consumers both in urban as well as rural areas, online shopping cannot be said to be done. Rather it has become an easy target for the evildoers. Online shopping poses a wide range of challenges from the consumer protection perspective, ranging from invasion of privacy to insecure payments, and to jurisdictional issues.

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<sup>16</sup> Ibid;

<sup>17</sup> Editorial, "Online shopping to more than double by 2016: Study" *BGR (ESSEL GROUP)* June 30, 2014

<sup>18</sup> Bhat et al, "CONSUMER BEHAVIOUR TOWARDS ONLINE SHOPPING: AN EMPIRICAL STUDY FROM KASHMIR VALLEY" Available at <http://www.cibtech.org/jet.htm> 2016 Vol. 6 (3) July-September, pp.62-69/Bhat et al

## Chapter III

### Online Shopping and Consumer: New Challenges

#### 3.1 Consumer

The word consumer is self-explanatory and the literal meaning is "one who consumes" but as against a customer in the market place, a consumer has a wider and broader meaning. In traditional theory the consumer is considered to be well-informed about costs, price and quality of goods. Consumers are individual members of the general public, purchasing or using goods, property or services for private and not for professional purpose.

Consumer can be defined as, an individual who purchases and uses products and services in contrast to manufacturers who produce the goods or services and wholesalers or retailers who distribute and sell them. Adam Smith observed that, "Consumer is the sole end and purpose of all production and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer<sup>19</sup>." Anyone who spends money or exchanges articles for goods and services may be called a consumer. He must be protected from unfair trade practices, in order to seek a healthy economy of the country and welfare to the consumer<sup>20</sup>.

Section 2 (d) of the J&K Consumer Protection Act, 1987 defines Consumer means any person who; (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised, or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.<sup>21</sup>

Section 2(d) of the Indian Consumer Protection Act 1986 defines consumer as ; "consumer" means any person who,— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires [or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires [or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

[Explanation. —for the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]<sup>22</sup>

Upon cursory reading, it is clear that, both the definitions are same but, in case of central Act there is an explanation appended to the section and the phrase "*or avails of*" has been added to subsection II of the section 2 (d).

<sup>19</sup> Wealth of nations pg. 172

<sup>20</sup> P. Sivaprakasam, "Recent Trends that Reflect the Consumer Protection in India", Indian Consumer Co-operator, Vol.22, No.1, January-March, 1995,

<sup>21</sup> J&K Consumer Protection Act, 1987 available at [http://kashmirdivision.nic.in/PdfDocs/acts\\_rules/jk\\_consumer\\_act\\_1987.pdf](http://kashmirdivision.nic.in/PdfDocs/acts_rules/jk_consumer_act_1987.pdf)

<sup>22</sup> Consumer Protection Act, 1986 available at [www.wipo.int/edocs/lexdocs/laws/en/in/in076en.pdf](http://www.wipo.int/edocs/lexdocs/laws/en/in/in076en.pdf)

There is no doubt about the fact that Indian legal system experienced a revolution with the enactment of the Consumer Protection Act of 1986 and subsequently the state of Jammu and Kashmir in 1987. The consumer protection Act at the central level and at the state level were passed by the respective legislatures with avowed objectives. These legislations were intended to provide justice which is; less formal, and involves less paper work, less delay and less expense. The consumer protection law has received wide recognition in India as poor man's legislation, ensuring easy access to justice. However, the legislation simply gives a new dimension to the rights that have been recognised and protected since the ancient period.

The definitions provided by the said legislations benefit the traditional consumer only. While now we are having technocrat consumers who prefer electronic transactions over manual and traditional transactions.

### 3.1.2 Changing trend from consumer to e-consumer

The most important fact required to be recognised is that the impact of Information technology, particularly internet, has exponentially changed the business. The CPA is mainly traditional and intended to deal with the offline transactions. The impact of the new technological advancements and the massive convergence of e-commerce transactions, have caught the attention of individual consumers, business enterprises, governments and international organizations.<sup>23</sup> Online shopping is a new trend in today's world which is a part of e-commerce and is preferred by almost everyone, who is having access to the internet through mobile or system. It is preferable rather useful because of numerous reasons, say for example, access to the products, availability of diverse products on a single web store which is otherwise not the case in common traditional shopping malls. Now a day's furniture can also be brought by the consumer by placing an online order like the [peperfry.com](http://peperfry.com), the gadgets of any brand can be easily sold and bought on an online web shop, which may not be accessible otherwise, becomes quite convenient. It acts as an effective mode of entering into transactions, for consumers as well as retailers and has made possible low value cross-border transactions to an extent that could have been unthinkable previously.<sup>24</sup>

Few developments have altered India's lifestyle more quickly and more completely than the Internet. Online access has enabled people from all walks of life to bring entire libraries, entertainment venues, post offices and financial centres to a workplace, to a desktop or to a shirt pocket. The Internet's largest and most meaningful impact may very well be on the way consumers shop from everything from gifts, gadgets and groceries to clothing, cars, and cruises. The ease and selection that the Internet provides to shoppers has changed the face of retailing. More and more, consumers visit a store's Web site to make their choices before traveling to the store itself; and in a rapidly swelling tide, many shoppers are bypassing the store altogether and ordering online directly from the Web sites of their favourite brands and outlets. Because online stores are open 24 hours a day, seven days a week, and their inventories are often more complete than those of their brick-and-mortar counterparts, the Internet makes it easy for shoppers to compare products within or between stores, to read product reviews from other customers, to access vendor return policies and to find warranty information. Hence a shift from the traditional consumer to the online consumer.

Roger Clarke <sup>25</sup>defines e-commerce as —the conduct of commerce in goods and services with the assistance of telecommunications and telecommunications-based tools. However, there exists no standard definition for the term and different organizations have defined it differently. Yet, nonetheless, a very useful definition is the one by A.R. Lodder<sup>26</sup> who defines e-commerce as —commercial activities concerning goods and services as well as any business transaction, where participants are not necessarily at the same physical location and therefore do apply telecommunication means. As said before, e-commerce is, in fact, the act of buying or selling goods, services, or information over an electronic network.

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<sup>23</sup> Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International journal of law and policy review vol.2 no.1 2013

<sup>24</sup> Ibid.

<sup>25</sup> Clarke, "Electronic Commerce Definitions," available at <http://www.anu.edu.au/people/Roger.Clarke/EC/ECDefns.html>

<sup>26</sup> Lodder, "Legal Aspects of Electronic Commerce," available at <http://www.rechten.vu.nl/~lodder/enlist/ec.pdf>

On the Internet, it pertains to a website, which sells products or services directly from the site using a shopping cart or shopping basket system and allows credit card payments. It involves conducting business with the help of the electronic media, making use of the information technology such as Electronic Data Interchange (EDI). The Indian Information Technology Act, 2000, whose object is to offer legal recognition to transactions carried out by electronic means, refers electronic commerce 'to transactions carried out by electronic data interchange and other means of electronic communication which involve the use of alternatives to paper-shaped methods of communication and storage of information. The scope of electronic commerce is wide enough to include not just the actual buying and selling of products, but includes pre-sale and post-sale activities.<sup>27</sup>

### 3.2 Challenges

The development in the sphere of internet connectivity has led to the development of e-markets and e-commerce offers consumers products and goods at their doorstep and more consumer exploitation in the form of cyber-crimes and further harassment. These concerns are new challenges that are thrown on the consumer with the revolution in information technology. Consumer protection Act has been in operation for about 30 years. A number of deficiencies and short comings in respect of its operation have come to light due to the change in the business structure to e-commerce, thereby leaving scope for further improvement of the law in order to keep pace with the changing dimensions. The challenges include;

#### a. Jurisdictional issue

The benefits of e-commerce, for consumers and business alike, have been oft-recognized. The public policy trend in India both at central and state level has been to digitize India, and has been to encourage the growth of e-commerce. Public policy also recognizes the dangers associated with electronic commerce, and to consumers in particular, and there are commensurate initiatives to seek to modernize consumer protection laws. One of the distinctive characteristics of electronic commerce is its borderless nature. Although mail-order and telemarketing transactions have been employed for some time, the rise of electronic commerce has exponentially increased the number of cross-border transactions. International trade, once largely the preserve of businesses, has now come to the consumer. The ability to market and sell products and services from a single site to an unlimited geographic market, and to do so at a low cost, is one of the great advantages flowing from online commerce. It is also one of the major challenges it poses to businesses, consumers and policy-makers. For policy makers, the challenge is therefore to restore a measure of certainty to the marketplace,

And to do so in a way that properly balances the interests of consumers and businesses. One of the key issues in this regard is developing a practicable and reasonably predictable set of rules to determine what jurisdiction's laws will apply to consumer contracts and what courts will have the authority to adjudicate and enforce disputes in this regard.

The connectivity and transmission of data may take place within multiple jurisdictions, and computer servers on which information is hosted or from which it emanates or is received may be located separate from the actual parties to a particular dispute, the parties themselves ultimately are always located in some real, territorially-defined location. Difficulties in ascertaining that particular location, in general or at any particular time, do create practical obstacles. These difficulties cannot, however, either legally or practically justify abdication of regulators' role and authority to protect consumers within their jurisdiction. Clearly, the "real and substantial link" test for the proper assertion of prescriptive jurisdiction will often result in more than one, and perhaps many, jurisdictions being capable of properly asserting authority over conduct that has effects in more than one jurisdiction. It is this fact that suggests the need for clearer prescriptive jurisdictional rule.

#### b. privacy concerns

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<sup>27</sup> Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International journal of law and policy review vol.2 no.1 2013

Roger Clarke presents a useful definition of privacy. He defines it as the interest that individuals have in sustaining a personal space', free from interference by other people and organizations.' Privacy expert Alan Westin defined information privacy as —the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others. It is this form of privacy that new technologies such as the Internet have the potential to threaten the most. Privacy is notoriously difficult to define. Smith et al<sup>28</sup> outline four dimensions of consumer privacy concerns: collection of personal information, unauthorized secondary use of personal information, errors in personal information, and improper access to personal information<sup>29</sup>. In online marketing, these dimensions of concern have been interpreted to refer to the collection of personal information, control over the use of personal data, and awareness of privacy practices and how personal information is used<sup>30</sup>. Other consumers' concerns focus on unauthorized secondary use and errors in personal information. When those concerns are elicited by the merchant's behaviour, the individual may lose trust in the merchant. Milne and Gordon refer to the proper treatment of consumer information as an "implied social contract" with the customer<sup>31</sup>. When a breach of confidentiality between the organization and the individual occurs, the violation of trust may entitle the victim to compensation. Through the increasing sophistication of data mining tools, consumer database creation and management has become a growing and profitable enterprise. Personal data is now a tradable commodity in capitalist societies, and thus, the free market economy and privacy are inherently at odds with one another. Because digitally stored data can have an indefinite life span, public concern over the ability to control our own information is evident in consumer reluctance to provide personal data to online businesses. With any kind of analogy, the challenge presently applies to countries like India as well. The vast network of computers that makes up the Internet has brought people closer which have facilitated greater communication and commercial activity. It has also made many behaviours actions and communications that were once considered private, less so. This is a new phenomenon created by technology. There is no blanket view of what personal information individuals regard as private. Financial details, sexual preferences and medical histories, for example, may be regarded by most consumers as personal information that should be kept private at all costs. Shopping patterns, address details and family details may be on the next tier and so on. The fact that an organization constructs a detailed personal profile of a user as a result of activity on the Internet may not be a concern for a user as long as they get something for it in return.

While shopping online the consumers shopping history and passwords could be compromised by countless prying eyes. Very few things in life are truly private anymore. Online merchants have employed number of different technologies designed to make the shopping experience more pleasant and efficient, with the goal of boosting sales. For example, many online retailers have the option of remembering your credit card information and collect information to get a pretty good idea of what other products you may like to buy. But this typically means you have to give something up in return, usually some amount of privacy. When you return to a website where you may have done business in the past, even just to browse, it often "remembers" your last session. This is done using something known as "cookies," which are pieces of code left on your computer's browser that track the consumers shopping and Web surfing habits. The consumer may also see advertisements on unrelated websites that closely track to search inquiries and other purchases consumer might have made. It's one thing if a consumer is purchasing a pair of sneakers, but someone buying a self-help book on depression may not want that information shared. Also, privacy advocates worry that targeted ads may lead to marketing profiles of online shoppers that reveal too much about us, including personally identifiable data (such as our name, address, Social Security Number, etc.). Any attempt to protect e-consumer's privacy must aim that data collection as little as possible takes place and the data that necessarily must be collected ought to be non-personal, wherever possible. Further,

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<sup>28</sup> Smith, H. J., Milberg, S., and Burke, S. 1996. Information privacy: Measuring individuals' concerns about organizational practices. *MIS Quarterly*, 20(2): 167-196.

<sup>29</sup> Stewart, K. A. and Segars, A. H. 2002. An empirical examination of the concern for information privacy instrument. *Information Systems Research*, 13(1): 36-49.

<sup>30</sup> Malhotra, N., Kim, S. S., and Agarwal, J. 2004. Internet Users' Information Privacy Concerns (IUIPC): The Construct, the Scale, and a Causal Model. *Information Systems Research*, 15(4): 336-355.

<sup>31</sup> Milne, G. R. and Gordon M. E. 1993. Direct mail privacy-efficiency trade-offs within an implied social contract framework. *Journal of Public Policy Marketing*, 12(2): 206-15.

data protection schemes must ensure that where personal data is collected, the data subject is made aware of the collection, its purpose and uses, and has the right to access and correct that data. The data collector must also make sure that the data is kept safe, and is only used and disclosed for the purpose it was collected for. Finally, scheme aiming at providing useful protection of e-consumers must adequately protect e-consumers engaging in cross-border trade and should provide particular protection for sensitive data. For example, when a person buys a product or a good online, he is required to visit a particular website where he is asked to fill in his/her name, address, phone number, date of birth etc. But what is the guarantee to this person against sharing this personal information with a third person. It is said that privacy is not something you realize you have until you have lost it. With rapid changes in technology and e-commerce infrastructure currently being developed, it is important to make decisions today, to ensure our privacy for tomorrow.

### **c. Insecure on-line payments**

With the unassuming growth of internet commerce across the globe including India, a range of new Internet-based payment mechanisms have been invented in the recent times. Almost each of these mechanisms demands the involvement of a third party to serve as an intermediary to the transaction. The intermediary may have a contractual relationship with the buyer, the seller, or both depending on the mechanism of the transaction. In some cases, one party may not even have the knowledge that an intermediary is being used. The chief advantages of online payment mechanism lie in the fact that they are convenient and efficient as it enables a buyer to purchase goods even at his home, using his credit card. However, consumerism requires these e-retailers to give consumers an immediate confirmation of the transaction when an order is placed. The confirmation should contain an acknowledgment of the order; details about the payment made and expected delivery time, and information regarding applicable cancellation rights and procedures. The confirmation should also be printable and able to be stored in an electronic form. These kinds of protective measures become indispensable owing to the fact that online payment services remain largely unregulated and the rights of buyers and sellers are generally controlled by the terms of each provider rather than by law.

### **d. Delayed delivery**

Delay in the delivery of goods continues to remain one of the most common grievances in the consumers, especially when we talk about online shopping. Online business houses do not give any guarantee about the time of delivery. Thus regarded, these web shops should be fixed with responsibility in the context of the services they are supposed to render under the consumer protection laws.

### **e. complex contractual terms**

Another concern, again with regard to the online shopping, is the complexity of contractual terms, which contain terms and conditions favouring the seller. The language used to write these terms and conditions is highly technical and complex, which an ordinary person cannot help understand. They are also tedious which are humanly impossible to read for a common consumer. The buyer is only given an option to agree or not to, thus put in a weak bargaining position. In an online environment, the possibility of minors entering into contracts increases, more so with the increasing usage of online medium among teenagers (read minors here) and their preference to shop online or purchase online goods/services. It becomes crucial for an online business portal to keep such possibility in consideration and qualify its website or form stating that the individual with whom it is trading or entering into the contract is a major.

### **f. Weak Feedback System**

Feedback should be the heart and soul of business, both offline and online. In the online business world, particularly online shopping, hardly has any shopping house a strong complaint redressal mechanism. What happens is that these shops only provide an Email Id or a telephone number on their websites. And worse, when it comes to the practicability, most of these web shops fail to respond, thus putting the consumer in trouble.

### **g. phishing**

Phishing, a word produced from 'fishing', refers to the act through which an attacker allures users to visit a fake Website by sending them fake e-mails (or instant messages), and stealthily gets victim's personal information such as user name, password, and national security ID, etc. This information, then, is used for future target advertisements or even identity theft attacks (e.g., to transfer money from victim's bank account)<sup>32</sup>. In India, especially in online shopping, phishing, which in other words means a criminal activity of stealing someone's personal information for his or her own financial gain, continues to remain one of the most dreaded threats in e-commerce transactions. And perhaps, phishing has made e-commerce distrusted and less attractive to normal consumers.

### **h. other challenges**

- Other challenges include the lack of full disclosure with regards to the total cost of purchase is one of the concerns of online shopping. While it may be easy to compare the base price of an item online, it may not be easy to see the total cost up front as additional fees such as shipping are often not be visible until the final step in the checkout process. The problem is especially evident with cross-border purchases, where the cost indicated at the final checkout screen may not include additional fees that must be paid upon delivery such as duties and brokerage.
- One of the hardest areas to deal with in online shopping is the delivery of the products. Most companies offer shipping insurance in case the product is lost or damaged; however, if the buyer opts not to purchase insurance on their products, they are generally out of luck. Some shipping companies will offer refunds or compensation for the damage, but it is up to their discretion if this will happen. It is important to realize that once the product leaves the hands of the seller, they have no responsibility (provided the product is what the buyer ordered and is in the specified condition).
- It has been also seen that people often order a product from an online store against the payment of cash on delivery. But when the company sends the product to the buyer they refuse to take the product and sometimes ignore the phone calls from the company in response to the order made.
- Recently, one of the new challenge has been added to the list is that, the credibility of the courier boys who are engaged for the delivery of products. It has come to the notice that sometimes they replace the product with other less expensive products, or even they replace the product with the stones or bricks, for their personal gains in order and results in fraud with the consumer.
- Last but not least, the consumers face the challenge of double standard by the web shop while displaying the images of the products on their web shops

<sup>32</sup> e <http://research.microsoft.com/en-us/um/people/chguo/phishing.pdf>

## Chapter IV

### Law and Online Shopping

Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1987. There has been a shift from the old brick-mortar store to the online shop (online shopping). It is because of the boom in e-commerce. The existing consumer protection law is almost 30 years old and hence does not cover the new challenges thrown to the consumer. Unfortunately there is no express statute available which could have provided the protection for such modern consumer. However, there are other provisions of law available in India including the State of Jammu and Kashmir that comes to rescue consumer, but no express provision of law while, buying goods and services online. There are number of challenges that are faced by the consumer while transacting online (discussed in chapter IV).

#### 4.1 Existing law in India

##### E- Contracts

In common parlance the act of buying and selling goods or services for a price through electronic means of communication amounts to e-contract between the seller and the buyer. Since the consumer enters into the e-contract while buying goods or services from the online seller. Electronic contracts are governed by the basic principles of the contract. The Information Technology (amendment) Act 2008 was enacted with one of the objects and reasons is to legalise e-commerce. Section 10 A of the IT Act validates the electronic contracts but that does not mean that such contracts are exclusively dealt under the IT Act.<sup>33</sup> So both the Contract Act and the IT Act needs to be read in conjunction to understand and provide legal validity to e-contracts.

Stamping of contracts is yet another issue. An instrument that is not appropriately stamped may not be admissible as evidence unless the necessary stamp duty along with the penalty has been paid. But payment of stamp duty is applicable in case of physical documents and is not feasible in cases of e-contracts. However, as the payment of stamp duty has gone online and e-stamp papers are available, it can become a possibility later that stamp duty might be asked on e-contracts as well. The other crucial issue is the consent and the way offers are accepted in an online environment. In a click wrap and shrink wrap contract, the customers do not have any opportunity to negotiate the terms and conditions and they simply have to accept the contract before commencing to purchase. Section 16(3) of the Contract Act<sup>34</sup> 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 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 of the other. So, in cases of dispute over e-contracts the entity carrying out the e-commerce will have the onus to establish that there was no undue influence. Further, section 23<sup>35</sup> of the Contract Act provides that the consideration or object of any agreement is unlawful when it is forbidden by law, or is of such a nature that if permitted, it would defeat the provisions of any law; or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as

<sup>33</sup> Dr Farooq Ahmad, Cyber law in India (New Era Publications 5th edn., reprint 2015). pg.215.

<sup>34</sup> Indian Contract Act, 1872.available at lawcommissionofindia.nic.in/1-50/report13.pdf  
Ibid;



immoral or opposed to public policy. Since there is jurisdictional dilemma while transacting online, the mere principles of contact is not sufficient. There has to be clear provision governing the e-contracts.

## Data Protection

Security of the information provided during the online transaction is a major concern. Under section 43A of the IT Act the “Reasonable practices and procedures and sensitive personal data or information Rules, 2011<sup>36</sup>” have been proposed, which provide a framework for the protection of data in India. Data can be personal, which has been defined as “any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person.” The data can also be sensitive and a sensitive personal data consists of password, financial information, physical, physiological and mental health condition, sexual orientation, medical records and history and biometric information. The entity collecting data should have a privacy policy in place, should always obtain consent from the provider of sensitive information and maintain reasonable security practices and procedures. Unauthorized access to personal information and any misuse of such personal information should be checked by the online goods/service providers. Also, the intermediary must not knowingly host or publish any prohibited information and if done, should remove them within 36 hours of its knowledge. *In Consim Info Pvt. Ltd v. Google India Pvt. Ltd*<sup>37</sup>, the Delhi Court Google had extended the argument that being search engine, they cannot control the fact whether some website, any advertisement given on their site is genuine or fraud. The court then observed that though the intermediary, Google, cannot be made liable for infringement arising out of a third party’s actions since it is not possible to always check every advertisement posted online; however, it was said that as per section 3(4) of the aforesaid Intermediaries Guidelines, Google had to act upon it within 36 hours of receipt of such complaint, failing which it may be held liable. This issue is also in no way different from the issues time and again raised by the public at large in other than e-commerce when their phone numbers are given by banks etc. for tele marketing and other unwanted calls and SMS from business groups. This issue can very well be handled alleging the wrong doer for deficiency in services and unfair trade practices under Consumer Protection Act.

## Delivery of goods and services management

It is important to always keep consumer protection issues in consideration in e-commerce. The Consumer Protection Act, 1986 governs the relationship between consumers and goods & service providers and there are no specific provisions related to online transactions. Liability for a goods/service provider arises when there is “deficiency in service” or “defect in goods” or occurrence of “unfair trade practice”. The CPA specifically excludes from within scope any service rendered free of cost. So, if only the actual sale is taking place in the online medium, the users will be considered as consumers under the CPA. The goods/service providers may be asked to remove defects/deficiencies, replace the goods, return the price already paid, compensate and discontinue the unfair trade practice or the restrictive trade practice and not repeat them

## Advertisement

Advertising is an important and legitimate means for a seller to awaken interest in his products. For long, advertisements were regulated by the courts, government, tribunals, or police that depended upon the nature of each case. Additionally, absence of a single comprehensive legislation created a lot of confusion in terms of a proper code to follow by the industry and the authority to regulate or guide the pattern of advertising. In 1985, the Advertising Standards Council of India (“ASCI”), a non-statutory tribunal, was

<sup>36</sup> Govt. of India, Notification 11th April, 2011 (Ministry of information technology: Department of Information Technology)

<sup>37</sup> 2013 (54) PTC 578 (Mad)

established that created a self-regulatory mechanism of ensuring ethical advertising practices. ASCI entertained and disposed of complaints based on its Code of Advertising Practice ("ASCI Code"). On certain occasions, however, the ASCI orders were set aside by courts as ASCI being a voluntary association was considered usurping the jurisdiction of courts when it passed orders against non-members. Gradually, the ASCI Code received huge recognition from the advertising industry. The warnings issued by ASCI to the advertisers against the misleading advertisements were gradually being accepted by the advertisers and the advertisements were actually stopped being aired or were modified significantly to comply with the prescribed ASCI Code. The advertisements should make truthful and honest representations and avoid false and misleading claims, should not be offensive to public decency or morality, not promote products which are hazardous or harmful to society or to individuals, particularly minors, observe fairness in competition keeping in consumer's interests and avoid obscene or harmful publication and indecent representation of women.

But this does not have authority to punish anyone. Amendment in the consumer protection act 2002<sup>38</sup> had added a clause unfair trade practice which is specifically meant for misleading ads and works well on e-commerce purchases also.

## Jurisdiction

The other crucial issue is the consent and the way offers are accepted in an online environment. In a click wrap and shrink wrap contract, the customers do not have any opportunity to negotiate the terms and conditions and they simply have to accept the contract as is offered to them before commencing to purchase. Section 16(3) of the Indian Contract Act provides that where a person proposes certain terms to the other and other part accepts the same by clicking on it, is bound by all the terms so proposed by the proposer. It is said and argued by some groups that under these online environments, party offering is in a position to dominate the will of another, and the transaction appears on the face of it to be unconscionable. Hence this is a disadvantageous position of a person who accepts. But we must not forget that the basic principal of contract act is that acceptance should be unconditional even if both the parties are present face to face. So it hardly makes any difference as far as acceptance of proposal is concerned. One can always avoid clicking if not satisfied. The only point while dealing the matter under Consumer Protection Act shall have to be decided is the jurisdiction of the court keeping in view the question –where the cause of action arises. In net purchasing, since proposal and acceptances are made on computer sitting at their places, jurisdiction at both the places has been considered by the forums /commissions under Consumer Protection Act as practiced by now and supported by various judgments too. Hence consumers can easily reach to consumer forums in cases of default on the part of seller or service provider.

## 4.2 Initiatives at the global level

### 4.2.1 Organisation for economic co-operation and development OCED<sup>39</sup>

E-commerce has evolved dramatically since 1999, when the OECD Council adopted the first international instrument for Consumer Protection in the Context of Electronic Commerce ("1999 Recommendation") (see also<sup>40</sup>). On 24 March 2016, the OECD Council revised this instrument and the Recommendation of the Council on Consumer Protection in E-commerce ("the revised Recommendation") now addresses new and emerging trends and challenges faced by consumers in today's dynamic e-commerce marketplace. As called for in the 1998 OECD Ministerial Conference on The Borderless World: Realising the Potential of Global Electronic Commerce, the 1999 Recommendation set forth the core characteristics of consumer

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<sup>38</sup> Consumer protection (amendment) Act, 2002 available at [consumershelpline.info/CPA-1986.pdf](http://consumershelpline.info/CPA-1986.pdf)

<sup>39</sup> The OCED's committee on consumer policy represents the main forum for regulation of e-commerce at global level.

<sup>40</sup> Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International journal of law and policy review vol.2 no.1 2013

protection for electronic commerce: fair and transparent business and advertising practices, information about businesses, goods and services, transactions, as well as adequate dispute resolution and redress mechanisms, payment protection, privacy, and education. Responding again to the invitation of Ministers at the 2008 Ministerial on the Future of the Internet Economy, the OECD undertook a review of the 1999 Recommendation to consider how to further encourage consumers to embrace the opportunities of e-commerce. Beginning with a conference held in 2009 in Washington, D.C., on Empowering E-Consumers: Strengthening Consumer Protection in the Internet Economy, the OECD Committee on Consumer Policy (CCP) researched and analysed trends and policy challenges arising in mobile and online payments, the purchase of intangible digital content products, and participative e-commerce. This work outlined the many benefits that e-commerce had brought over a decade to consumers, including wider choices at competitive prices, as well as easy-to-use and more secure payment options. The work however also pointed to the higher complexity of the online environment and related risks for consumers. It showed that, for example, consumers' understanding of their rights and obligations was often challenged when they make purchases through non-traditional payment mechanisms, such as mobile phone bills or pre-paid cards, or when they acquire digital content products, such as apps or e-books. The OECD Consumer Policy Toolkit further highlighted that when consumers use mobile devices for e-commerce in an "on the go" context, their tendency to take decisions based on heuristic techniques is exacerbated. Unauthorised charges, misleading and fraudulent commercial practices also remain problematic. Following its thorough review, in 2014, the Committee agreed to revise the 1999 Recommendation to address the challenges identified and achieve effective consumer protection while stimulating innovation and competition in the market. Key new developments in e-commerce addressed by the revised Recommendation include:

**Non-monetary transactions.** Consumers increasingly acquire "free" goods and services in exchange for their personal data and these transactions are now explicitly included in the scope of the Recommendation. Governments and stakeholders are called upon to consider ways to provide redress to consumers experiencing a problem with such transactions.

**Digital content products.** Transactions involving digital content often come with technical or contractual access or usage limitations and many consumers have difficulty understanding their rights and obligations. New language has been added to clarify that consumers should be provided with clear information about such limitations, as well as on functionality and interoperability.

**Active consumers.** Current e-commerce business models increasingly blur the boundaries between consumers and businesses, with consumers playing a participatory role in product promotion and development, and entering into transactions with other consumers. The scope of the Recommendation has therefore been broadened and it now encompasses business activities that facilitate consumer-to-consumer transactions. A new provision is added to ensure that consumer endorsements are truthful and transparent.

**Mobile devices.** The growing use of mobile devices for e-commerce brings a number of technical challenges to making information disclosures effective (e.g. on small screens) and can constrain record keeping by consumers. Two new provisions are included to highlight the need to account for the technological limitations or special characteristics of the device used.

**Privacy and security risks.** Consumer data is at the core of many e-commerce services and elevates privacy and security risks. The Recommendation recalls the need to address these risks consistent with other OECD instruments and includes two new provisions highlighting specific protections of particular importance for B2C e-commerce.

**Payment protection.** Recognising that the level of payment protection can vary depending on the type of payment mechanism used, the Recommendation calls on governments and stakeholders to work together to develop minimum levels of consumer protection across payment mechanisms.

**Product safety.** In a number of countries, a range of unsafe products, which have been prohibited from sale or recalled from the offline retail market, are available in e-commerce. A new provision is added to ensure that unsafe products are not offered to consumers online, and that businesses cooperate with the relevant authorities to address the problem. In addition, the Recommendation updates several other provisions. One relates to the essential role of consumer protection authorities and the need to enhance their ability to protect consumers in e-commerce and to exchange information and co-operate in cross-border matters.

## A. Transparent and Effective Protection

1. Consumers who participate in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.
2. Governments and stakeholders should work together to achieve such protection and determine what changes may be necessary to address the special circumstances of e-commerce, including for children and vulnerable or disadvantaged consumers. In so doing, they should take into account the insights from information and behavioural economics.

## B. Fair Business, Advertising and Marketing Practices

3. Businesses engaged in e-commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices as well as the general principle of good faith.
4. Businesses should not make any representation, or omission, or engage in any practice that is likely to be deceptive, misleading, fraudulent or unfair. This includes the general impression likely conveyed to consumers by the representation or practice as well as implied factual misrepresentations conveyed through features such as the good or the service's name, words, pictures, audio and/or video and the use of disclaimers that are hidden, hard to notice or to understand.
5. Businesses should not misrepresent or hide terms and conditions that are likely to affect a consumer's decision regarding a transaction.
6. Businesses should not use unfair contract terms.
7. If contract terms stipulate monetary remedies in the case of a consumer's breach of contract, such remedies should be proportionate to the damage likely to be caused.
8. Businesses should not engage in deceptive practices related to the collection and use of consumers' personal data.
9. Businesses should not permit others acting on their behalf to engage in deceptive, misleading, fraudulent or unfair practices and should take steps to prevent such conduct.
10. Businesses should be able to substantiate any express or implied representations for as long as the representations are maintained, and for a reasonable time thereafter.
11. Businesses should comply with any express or implied representations they make about their adherence to industry self-regulatory codes or programmes, privacy notices or any other policies or practices relating to their transactions with consumers.
12. Businesses should not attempt to restrict a consumer's ability to make negative reviews, dispute charges, or consult or file complaints with government agencies and other complaint bodies.
13. Advertising and marketing should be clearly identifiable as such.
14. Advertising and marketing should identify the business on whose behalf the marketing or advertising is being conducted where failure to do so would be deceptive.
15. Businesses should ensure that any advertising or marketing for goods or services are consistent with their actual characteristics, access and usage conditions.
16. Businesses should ensure that advertised prices do not misrepresent or hide the total cost of a good or a service.
17. Endorsements used in advertising and marketing should be truthful, substantiated and reflect the opinions and actual experience of the endorsers. Any material connection between businesses and online endorsers, which might affect the weight or credibility that consumers give to an endorsement, should be clearly and conspicuously disclosed.
18. Businesses should take special care in advertising or marketing that is targeted to children, vulnerable or disadvantaged consumers, and others who may not have the capacity to fully understand the information with which they are presented.
19. Even where not obligated to do so, businesses should consider offering consumers the possibility to withdraw from a confirmed transaction in appropriate circumstances.
20. Businesses should take into account the global nature of e-commerce and consider the various regulatory characteristics of the markets they target.

21. Businesses should not exploit the special characteristics of e-commerce to hide their true identity or location, or to avoid compliance with consumer protection standards and/or enforcement mechanisms.

22. Businesses should develop and implement effective and easy-to-use procedures that allow consumers to choose whether or not they wish to receive unsolicited commercial messages, whether by e-mail or other electronic means. When consumers have indicated, at any time, that they do not want to receive such messages, their choice should be respected.

23. Businesses should not offer, advertise or market, goods or services that pose an unreasonable risk to the health or safety of consumers. Businesses should co-operate with the competent authorities when a good or a service on offer is identified as presenting such a risk.

24. Businesses should consider the needs of persons with disabilities when designing e-commerce platforms and online payment systems.

### **C. Online Disclosures**

#### **General Principles**

25. Online disclosures should be clear, accurate, easily accessible and conspicuous so that consumers have information sufficient to make an informed decision regarding a transaction. Such disclosures should be made in plain and easy-to-understand language, at a relevant time, and in a manner that enables consumers to retain a complete, accurate and durable record of such information.

26. When more than one language is available to conduct a transaction, businesses should make available in those same languages, all information necessary for consumers to make an informed decision regarding a transaction. All information that refers to costs should indicate the applicable currency, unless it is apparent from the context.

27. Businesses should take into account the technological limitations or special characteristics of a device or platform, while providing all necessary information.

#### **Information about the Business**

28. Businesses engaged in e-commerce with consumers should make readily available information about themselves that is sufficient to allow, at a minimum:

- i) Identification of the business;
- ii) Prompt, easy and effective consumer communication with the business;
- iii) Appropriate and effective resolution of any disputes that may arise;
- iv) Service of legal process in domestic and cross-border disputes; and
- v) Location of the business.

29. This information should include the legal name of the business and name under which it trades; its principal geographic address; an e-mail address, telephone number or other electronic means of contact; appropriate domain name registration information for web sites that are promoting or engaging in commercial transactions with consumers; and any relevant government registration or license information.

30. When a business publicises its membership in any relevant self-regulatory programme, business association, dispute resolution organisation or other body, the business should provide sufficient information to enable consumers to easily contact such body. Businesses should provide consumers with easy methods to verify that membership, access the relevant codes and practices of the organisation, and take advantage of any dispute resolution mechanisms offered by the organisation.

#### **Information about the Goods or Services**

31. Businesses engaged in e-commerce with consumers should provide information describing the goods or services offered that is sufficient to enable consumers to make informed decisions regarding a transaction.

32. Depending on relevant factors, including the type of good or service, this should include information such as:

- i) Key functionality and interoperability features;
- ii) Key technical or contractual requirements, limitations or conditions that might affect a consumer's ability to acquire, access or use the good or service;

- iii) Safety and health care information; and
- iv) Any age restrictions. Information about the Transaction.

33. Businesses engaged in e-commerce should provide information about the terms, conditions and costs associated with a transaction that is sufficient to enable consumers to make an informed decision regarding a transaction. Consumers should be able to easily access this information at any stage of the transaction.

34. Businesses should provide consumers with a clear and full statement of the relevant terms and conditions of the transaction.

35. Where applicable and appropriate given the transaction, such information should include the following:

- i) Initial price, including all fixed compulsory charges collected and/or imposed by the business;
- ii) Information on the existence of variable compulsory and optional charges collected and/or imposed by the business when they become known by the business and before consumers confirm the transaction;
- iii) Notice of the existence of other routinely applicable costs to the consumer that are collected and/or imposed by third parties;
- iv) Terms, conditions, and methods of payment, including contract duration, recurring charges, such as automatic repeat purchases and subscription renewals, and ways to opt out from such automatic arrangements;
- v) Terms of delivery or performance;
- vi) Details of and conditions related to withdrawal, termination or cancellation, after-sales service, return, exchange, refunds, warranties and guarantees;
- vii) Privacy policy; and
- viii) Information on available dispute resolution and redress options.

#### **D. Confirmation Process**

36. Businesses should ensure that the point at which consumers are asked to confirm a transaction, after which time payment is due or they are otherwise contractually bound, is clear and unambiguous, as should the steps needed to complete the transaction, especially for new payment mechanisms.

37. Businesses should provide consumers with an opportunity to review summary information about the good or service, as well as any delivery and pricing information before consumers are asked to confirm a transaction. They should enable consumers to identify and correct errors or to modify or stop the transaction, as appropriate.

38. Businesses should not process a transaction unless the consumer has provided express, informed consent to it.

39. Businesses should enable consumers to retain a complete, accurate and durable record of the transaction, in a format compatible with the device or platform that the consumers used to complete the transaction.

#### **E. Payment**

40. Businesses should provide consumers with easy-to-use payment mechanisms and implement security measures that are commensurate with payment-related risks, including those resulting from unauthorised access or use of personal data, fraud and identity theft.

41. Governments and stakeholders should work together to develop minimum levels of consumer protection for e-commerce payments, regardless of the payment mechanism used. Such protection should include regulatory or industry-led limitations on consumer liability for unauthorised or fraudulent charges, as well as chargeback mechanisms, when appropriate. The development of other payment arrangements that may enhance consumer confidence in e-commerce, such as escrow services, should also be encouraged.

42. Governments and stakeholders should explore other areas where greater harmonisation of payment protection rules among jurisdictions would be beneficial and seek to clarify how issues involving cross-border transactions could be best addressed when payment protection levels differ.

#### **F. Dispute Resolution and Redress**

43. Consumers should be provided with meaningful access to fair, easy-to-use, transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress, as appropriate, without incurring unnecessary cost or burden. These should include out-of-court mechanisms, such as internal complaints handling and alternative dispute resolution (hereafter, “ADR”). Subject to applicable law, the use of such out-of-court mechanisms should not prevent consumers from pursuing other forms of dispute resolution and redress. Internal complaints handling

44. The development by businesses of internal complaints handling mechanisms, which enable consumers to informally resolve their complaints directly with businesses, at the earliest possible stage, without charge, should be encouraged.

45. Consumers should have access to ADR mechanisms, including online dispute resolution systems, to facilitate the resolution of claims over e-commerce transactions, with special attention to low value or cross-border transactions. Although such mechanisms may be financially supported in a variety of ways, they should be designed to provide dispute resolution on an objective, impartial, and consistent basis, with individual outcomes independent of influence by those providing financial or other support.

## Redress

46. Businesses should provide redress to consumers for the harm that they suffer as a consequence of goods or services which, for example, are defective, damage their devices, do not meet advertised quality criteria or where there have been delivery problems. Governments and stakeholders should consider how to provide redress to consumers in appropriate circumstances involving non-monetary transactions.

47. Governments and stakeholders should work towards ensuring that consumer protection enforcement authorities and other relevant bodies, such as consumer organisations, and self-regulatory organisations that handle consumer complaints, have the ability to take action and obtain or facilitate redress for consumers, including monetary redress.

## G. Privacy and Security

48. Businesses should protect consumer privacy by ensuring that their practices relating to the collection and use of consumer data are lawful, transparent and fair, enable consumer participation and choice, and provide reasonable security safeguards.

49. Businesses should manage digital security risk and implement security measures for reducing or mitigating adverse effects relating to consumer participation in e-commerce.

## H. Education, Awareness and Digital Competence

50. Governments and stakeholders should work together to educate consumers, government officials and businesses about e-commerce to foster informed decision making. They should work towards increasing business and consumer awareness of the consumer protection framework that applies to their online activities, including their respective rights and obligations, at domestic and cross-border levels.

51. Governments and stakeholders should work together to improve consumers’ digital competence through education and awareness programmes aimed at providing them with relevant knowledge and skills to access and use digital technology to participate in e-commerce. Such programmes should be designed to meet the needs of different groups, taking into account factors such as age, income, and literacy.

52. Governments and stakeholders should make use of all effective means to educate consumers and businesses, including innovative techniques made possible by global networks.<sup>41</sup>

### 4.2.2 International Chamber of Commerce (ICC)

ICC is the world’s largest, most representative business organization. Its member companies come from 130 countries. Companies from all sectors and from all parts of the world have issued universal standards

<sup>41</sup>OECD Recommendation: “Consumer Protection in E-commerce: OECD Publishing, Paris,” 24 March, 2016.

for international advertising practices through ICC since 1937. ICC's rules are regularly reviewed and adjusted to meet public sensitivities and the demands of new technologies. In 1996, the ICC released —Guidelines on Advertising and Marketing on the Internet<sup>42</sup>. These guidelines were meant to serve as a recommendation and, in light of experience acquired, the ICC presented hereafter an updated version of the 1996 Guidelines due to new developments in this area in 1998. Those guidelines apply to all marketing and advertising activities on the Internet for the promotion of any form of goods or services. They set standards of ethical conduct to be observed by all involved with advertising and marketing activities on the Internet<sup>42</sup>.

The guidelines intend to fulfil, inter alia, the following objectives:

- a. to improve the public confidence in advertising and marketing provided over the new interactive systems;
- b. to safeguard optimal freedom of expression for advertisers and marketers;
- c. to minimize the need for governmental and/or inter-governmental legislation or regulations;
- d. to meet reasonable consumer privacy expectations.

In 2011, the International Chamber of Commerce (ICC) has published updated Guidelines on Marketing and Advertising using Electronic Media that address recent developments in the field of digital media and other technologies. The guidelines, which were prepared by the ICC Commission on Marketing and Advertising, cover the use of telephone, SMS/MMS, digital radio and television as new marketing vehicles for selling products worldwide<sup>43</sup>.

The new guidelines include important guidance on advertising to children — a rapidly expanding market on the Internet — and uphold the basic principle that advertisers and marketers in general should not exploit the inexperience or credulity of children. ICC's expanded guidelines aim to:

- increase public confidence that marketing and advertising material provided over the new interactive systems is legal, decent and honest;
- safeguard an optimum of freedom of expression for advertisers and marketers;
- provide practical and flexible solutions;
- minimize the need for governmental and/or inter-governmental legislation or regulations;
- Meet reasonable consumer privacy expectations.

Contents include:

- Responsible advertising to children
- Respect for public groups
- Data collection
- Unsolicited commercial communications
- Respect for the potential sensitivities of a global audience

The Guidelines on Marketing and Advertising using Electronic Media, formerly called ICC Guidelines on Advertising using the Internet, were first issued in 1996 and revised in 1998 with the growth of the Net.

#### 4.2.3 International Consumer Protection and Enforcement Network (ICPEN)

<sup>42</sup> Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International journal of law and policy review vol.2 no.1 2013

<sup>43</sup> <https://iccwbo.org/media-wall/news-speeches/icc-issues-new-guidelines-on-marketing-and-advertising-using-electronic-media/>



An organization composed of consumer protection authorities from over 60 countries, whose aim is to: Protect consumers' economic interests around the world, Share information about cross-border commercial activities that may affect consumer welfare, encourage global cooperation among law enforcement agencies.

ICPEN is a global network of consumer protection authorities which engages in dispute resolution and encourages cooperation between law enforcement agencies for disputes arising from commerce across international borders. ICPEN does not handle individual consumer Complaints; however, consumers may report their complaints about cross-border transactions with foreign companies using a specially devised website [www.econsumer.gov](http://www.econsumer.gov). The complaints are then accessible to certified government agencies in ICPEN member countries, which may use this information to investigate suspect companies and individuals, uncover new scams, and spot trends in fraud<sup>44</sup>. The [econsumer.gov](http://econsumer.gov) website may also help consumers who choose to resolve their disputes by means of ADR mechanisms. [Econsumer.gov](http://econsumer.gov) is a portal for consumers to report complaints about online and related transactions with foreign companies. At [econsumer.gov](http://econsumer.gov), you can report international scams and learn about other steps you can take to combat fraud. Your complaints help consumer protection agencies around the world spot trends and work together to prevent international scams<sup>45</sup>.

Today, consumer protection agencies in 36 countries participate in [econsumer.gov](http://econsumer.gov). To respond to the challenges of internet fraud and improve consumer confidence, [econsumer.gov](http://econsumer.gov) began in April of 2001 to gather and share cross-border e-commerce complaints. The total no. of [Econsumer.gov](http://Econsumer.gov) complaints received from January 01 through Dec 31 2016 = 14,431<sup>46</sup>.

The project has two components:

A public website that allows consumers to make cross-border fraud complaints. It's currently available in English, French, German, Korean, Japanese, Polish, Spanish, and Turkish.

A secure [econsumer.gov](http://econsumer.gov) website that allows law enforcement around the world to share and access consumer complaint data and other investigative information. The secure website is hosted through the Consumer Sentinel Network platform by the U.S. Federal Trade

The mandate of the ICPEN Network is to share information about cross-border commercial activities that may affect consumer interests and to encourage international cooperation among law enforcement agencies in this scope. Thanks to its global reach the Network is able to better target the problems faced nowadays by consumers around the world. The long term goals of the Network are<sup>47</sup>:

- a) To generate and share information and intelligence on consumer protection issues;
- b) To share best practices in legislative and enforcement approaches to consumer protection;
- c) To take action to combat cross-border breaches of consumer protection laws;
- d) To facilitate effective cross-border remedies;
- e) To identify and promote measures for effective consumer protection enforcement;

<sup>44</sup> Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International journal of law and policy review vol.2 no.1 2013

<sup>45</sup> <https://www.econsumer.gov/AboutUs#crnt> ( last modified on Mar 13, 2017)

<sup>46</sup> <https://www.econsumer.gov/en/FileAComplaint#crnt> ( last modified on Mar 13, 2017)

<sup>47</sup> <https://www.icpen.org/for-consumer-experts/what-we-do> (last modified on Mar 13, 2017)

f) To promote and encourage wider participation and cooperation with other consumer protection enforcement organisations.

#### 4.2.4 United Nations and Consumer Protection

The United Nations Guidelines for Consumer Protection are a valuable set of principles that set out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems. Furthermore, the Guidelines assist interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their economic, social and environmental circumstances; they also help promote international enforcement cooperation among Member States and encourage the sharing of experiences in consumer protection. The Guidelines were first adopted by the General Assembly in resolution 39/248 of 16 April 1985, later expanded by the Economic and

Social Council in resolution 1999/7 of 26 July 1999, and revised and adopted by the General Assembly in resolution 70/186 of 22 December 2015. The United Nations Conference on Trade and Development promotes the Guidelines and encourages interested Member States to create awareness of the many ways in which Member States, businesses and civil society can

Promote consumer protection in the provision of public and private goods and services.

Member States should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements A level of protection for consumers using electronic commerce that The protection of consumer privacy and the global free flow of information. Besides this it was also laid down that; Businesses should provide complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to take informed decisions. Businesses should ensure easy access to this information, especially to the key terms and conditions, regardless of the means of technology used. Another guideline was laid down in context of the privacy is that, the Businesses should protect consumers' privacy through a combination of appropriate control, security, transparency and consent mechanisms relating to the collection and use of their personal data.<sup>48</sup>

#### 4.3 Position in European Union, United Kingdom and United States of America

In order to improve and support the growth of the electronic market in European Union, a need was felt to build trust and confidence among businesses on one hand, and most importantly, among consumers on the other hand. In order to see e-consumers enjoy the full benefits of the internet technology, it was imperative to avoid inconsistencies in the overall regulation. Thus, to ensure a sound legal and regulatory framework for electronic commerce, the European Union framed rules and policies in the form of directives to protect the e-consumer in electronic contracts. The Directives passed from time to time concern Distance Selling, E Commerce Data Protection etc. These directives have proved very effective in protecting the consumer in the digitalized market, not only within the Union but pertaining to cross-border transactions also. For cross border disputes outside European Union, it joins hands with the international network ICPEN to ensure the safety of its e-consumers.

Moreover, the Union encourages the litigants to resolve disputes through the Alternative Dispute Resolution Mechanisms (ADR). In United Kingdom, e-consumers are both protected by the traditional laws and some exclusive online regulations. The traditional laws include the sale of Goods act, 1979, Consumer Protection Act, 1987, Consumer Credit Act, 1974 etc. and the Unfair Terms in Consumer Contract Regulations, 1999. Online regulations are largely based on the European Union Directives which include the 2002 Electronic Commerce Regulations, the Consumer Protection (Distance Selling) Regulations 2000 and the Electronic Signatures Regulations 2002 and the Data Protection Act 1998. In the United States of America (USA), a range of laws both at the federal and state levels regulate consumer affairs. Among them are the Federal Fair Debt Collection Practices Act, the Fair Credit Reporting Act, Truth in Lending Act, Fair Credit Billing Act, and the Gramm-Leach-Bliley Act. Federal consumer protection laws are mainly enforced by the Federal Trade Commission and the U.S. Department of Justice. USA being a developed country is

<sup>48</sup> [http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf)

quite advanced in remedying the online consumer problems. USA being a member of econsumer.gov has, to a great extent, succeeded in providing its e-consumers protection from a number of threats which are imminent on e-commerce.<sup>49</sup>

#### 4.4 Consumer Protection in Jammu and Kashmir and India: a comparative analysis.

In India the Consumer Protection Act of 1986 was enacted with an objective

1. To provide better protection of the interests of the Consumers;
2. To make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes;
3. To provide effective and efficient safeguards to the consumers against various types of exploitations and unfair dealings;

The Indian Consumer Protection Act, 1986 simply enshrines the following rights apart from the objectives mentioned above and they are as:

- (a) The right to be protected against the marketing of goods which are hazardous to life and property;
- (b) The 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;
- (c) The right to be assured, wherever possible access to variety of goods at competitive prices;
- (d) The right to be heard;
- (e) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumer; and
- (f) The right to consumer education.

Consumer Protection Act has been in operation for about 30 years. A number of deficiencies and shortcomings in respect of its operation have come to light thereby requiring amendments thrice, still leaving scope for further improvements.

The state of J&K enjoys the special status under the Indian Constitution and by virtue of this status, the state enacts its own Act in 1987. The Jammu and Kashmir Consumer Protection Act, 1987. The Act was enacted with an intent to safeguard the consumer and protect the consumer from the unfair trade practices and exploitations which assumes numerous forms such as adulteration of food, spurious drugs, dubious hire purchase plans, high prices, poor quality, deficient services, hazardous products, black marketing and many more. This is indeed a highly piece of social welfare legislation. Unlike other laws, which are basically punitive or preventive in nature, the provisions of the Act are compensatory. The Act was enacted in consonance with the Indian Consumer Protection Act, 1986. Hence there is no distinction between the two, apart from the scope.

The state Act of 1986, despite being in verbatim with the central legislation is not at par with the central legislation. For instance, the central Act sets out to protect the consumer through a hierarchy of quasi-judicial bodies at district, state and central level, the State Act provides for only at two levels i.e. the divisional and state level. Even after the amendment in 2011 there is no clear mention of the pecuniary jurisdiction when the claim of valuation lies over 50 lacs, the definition of "service" was included by virtue of the amendment in 2002, however there is no mention of word 'service' in the important explanations appended to section (2). The most important fact to recognise the impact of information technology, particularly internet, has exponentially changed the business. The Act 1987 is mainly traditional and intended to deal with the offline transactions. Undoubtedly not the least, there is a plethora of errors in the drafting of various provisions of the Act. That becomes visible on plain reading. Examples of the provisions can be section 2(1) (d), section 10 (a) and many more. The Act is in need of radical change. So as to meet the requirements in order to protect the consumer.

The development in the sphere of internet connectivity has led to the development of e-markets and e-commerce offering consumer's products and goods at their doorstep and more consumer exploitation in the form of cyber-crimes and further harassment. The state has the primary responsibility to protect the consumer's interests and rights through appropriate policy measures, legal structure and administrative framework by virtue of being a welfare state. The consumer protection Act, 1986 at the central level and

<sup>49</sup> Burhan Majid, "Consumer protection concerns in e-commerce: an Indian perspective" International journal of law and policy review vol.2 no.1 2013

the J&K consumer protection Act 1987 were enacted to provide protection of the interests of the consumers and for the purpose of establishment of consumer councils and forums and other authorities for the settlement of the consumer disputes and for the matter connected therewith. The central Act was amended three times and the State Act was amended two times to make the acts more effective but even that there were a few lacunas and nuances that were not incorporated. Several short comings have been noticed while administering the various provisions of the said Acts. However at the central level the new consumer protection Bill 2015 that has been introduced in the monsoon session of the parliament seeks to replace the old Act. The primary motivation to replace the old law with a new one is to modernise the law with respect to the development of new markets and to further widen the ambit and scope of the law to incorporate nuances so that the big companies cannot use them as loopholes to exploit the consumers and to further increase the accountability of the companies. The new bill seeks to make manufacturers liable for any injury attributed to the consumer or death of a consumer or property damage and get them sentenced for life. The new law assumes significant focus as there is growing concern over the safety of consumer products especially after Maggi controversy where in the consumers were duped for a considerable amount of time. The key feature of the bill includes the establishment of an exclusive agency called the Central consumer protection Authority, which will protect and enforce the rights of consumers. The authority will intervene wherever necessary to prevent consumer exploitation arising from unfair trade practices, the authority has conferred the power of *Suo moto* on the agency of starting the proceedings against the manufacturers on its own which is otherwise not provided in the old Act. The bill envisages imposing a fine of up to Rs 10 lacs on those who issue misleading advertisements of food products. Minister of consumer affairs, Ram Vilas Paswan explains the rationale behind the new bill that *"misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing pose a new challenges to the consumer protection hence, there was a need to modernise the act to address the situation effectively."*

Unfortunately there is no such thing in the state of J&K. the Act in the state if not obsolete but definitely is an archaic law that is purely anachronistic full of lacunas. There is no law governing the online shopping which is day by day growing at the tremendous pace leaving the consumers at the whims of the sellers/manufacturers. There is no protection provided, neither in the old Act nor same has been included through the amendments and no efforts like that of bill of 2015 at the central level has been tabled in the state of J&K. Information technology (Amendment) Act 2008 somehow governs the contracts which are electronic in nature and the act has been made applicable to the state of J&K. But the IT Act does not provide the protection for the consumer while shopping online, there is ambiguity in order to determine the jurisdiction in case of the dispute arising out of the e- contract, and there is privacy concern and every likelihood of the exploitation of the consumer, there is a complexity which required to be brought in the ambit of law. So as to provide the protection, safety and proper safeguards to the consumer preferring the online shopping. The law will in turn encourage the growth of e-commerce, which is well established across the globe. The fact that the world is a global village is one the attributes of the E-commerce, the distinctive feature of globalization. The daily trade across the globe happened to be through electronic data interchange (E-contracts). Hence the transactions, reports and the issues generated by the automatic data process, having considerable bearing on the smooth and extensive growth of international trade and the domestic trade.

Briefly highlighting the short comings in the J&K Consumer Protection Act,1987 there is the utmost need to review the Act and brought the changes accordingly. So that there will be no ambiguity in the jurisdiction as to where to file the complaint and against whom, there will be no more privacy violations and there will be no more complexities while shopping online.

## Chapter V

### Impact of online shopping on consumer: An empirical study

Consumer protection is a socio-economic programme to be pursued by the government as well as the business. Since the satisfaction of the consumer is in the interest of both, in this context, the government, however, has a primary responsibility to protect the consumers' interests and rights through appropriate policy measures, legal structure and administrative framework.

The state of Jammu and Kashmir enacted, the Jammu and Kashmir Consumer Protection Act, 1987 in the next following year after the center. The state Act has been passed on the same lines, in consonance with the central Act. Both the legislations are mainly traditional and were intended to deal with offline mercantile transactions.

Modern technological developments have made a great impact on the quality, availability, and safety of goods and services. Technology has fundamentally changed the way the businesses are handled by society including consumers. The impact of the new technological advancements and the massive convergence of e-commerce transactions, have caught the attention of individual consumers, business enterprises, governments and international organizations. Over the past decade, e-commerce has increasingly provided an alternative for buyers and sellers to transact. The global presence of internet has enabled such businesses to bypass the traditional intermediaries in the domestic jurisdictions, while being able to access global markets. The wider use of internet (increase in internet users) has grown at exponential rates, which has encouraged the growth of online shopping a form of e-commerce. Online shopping is the process whereby consumers directly buy goods or services from a seller in real-time, without an intermediary service, over the Internet. It is a form of electronic commerce. The act of buying or selling goods, service or information is preferred by almost everyone who has access to internet. It allows a consumer to place an order for goods or services from the comfort of his living room and certainly is more convenient than driving to a store, while offering a virtually array of choices and the ability to compare prices. Since 1991, with the advent of economic reforms in India and the consequent opening of the economy with a view to integrate with the global economy, the need to facilitate international trade both through policy and procedure reforms became the foundation stone of India's trade and fiscal policies. E-commerce as part of the information technology became widely used in the world trade in general and Indian economy in particular. In all of this advancement, however, consumer protection can't be overlooked, the fact that, in addition, with revolution in information technology newer kinds of challenges are thrown on the consumer like cyber- crimes, plastic money etc., which affect the consumer in a bigger way. Hence without a confident consumer, there can't be no e-commerce.

Consumer protection Acts has been in operation for about 30 years. A number of deficiencies and short comings in respect of its operation have come to light, thereby requiring amendments twice, still leaves scope for further improvements. Because Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1987. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. There is, therefore, a need to modernise the said Act to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.

There is a growing concern over the safety of the consumer products. There is no law governing the online shopping, which is growing at the tremendous pace leaving the consumers at the whims of the sellers/manufacturers. There is no protection provided in the Act of 1987 against the daily challenges faced by the consumer while shopping online. The daily trade, domestically or globally happened to be through

electronic data interchange (EDI), transactions through e- contracts. Hence the transactions, reports and the issues generated by the automatic data process, having considerable bearing on the smooth and extensive growth of trade. Information Technology (Amendment) Act, 2008 recognizes the legal validity of electronic contracts. But the IT Act, does not provide the protection for the consumer while shopping online, there is ambiguity in terms of jurisdiction in case of the dispute arising out of the transaction while shopping online, there is a privacy concern with every likelihood of exploitation of the consumer, other problems include complex contractual terms, delayed delivery, insecure payment method, weak feedback, phishing and many more other possible concerns.

### Participants and Sample Size

I randomly selected 80 students from various departments of the Central University of Kashmir to respond to the questions with respect to the study. The students were mostly from Srinagar, Anantnag, Baramulla, Ganderbal, Shopian, Budgam and Kupwara. The students were of the age group between 18-24 years including both females and males.

### Materials

Questionnaire was used as a material to know the response and suggestions from the participants.

### Design

The design was mixed model with type of information requested, type of preferences, type of concerns, type of websites and type of recommendations including the suggestions.

### Procedure

Participants were given a questionnaire, designed in accordance with the study. Each participant was required to fill the questionnaire according to their experience and understanding while buying online.

### Results of the study

- 1. People who prefer to shop online:** The majority of the people (85%) prefer to shop online over the (15%) people who doesn't prefer to shop online. This simply shows that people are inclining more and more towards the e-commerce. Fig.1 and table.1 given below represents the study:

Fig.1

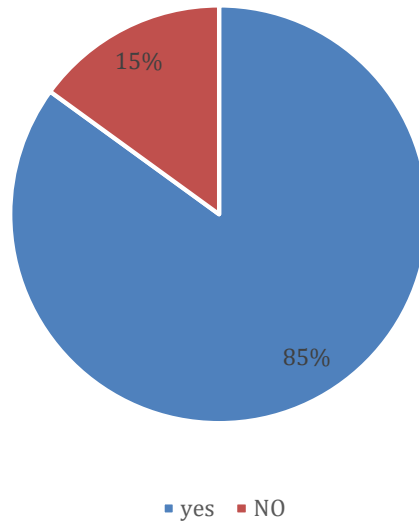


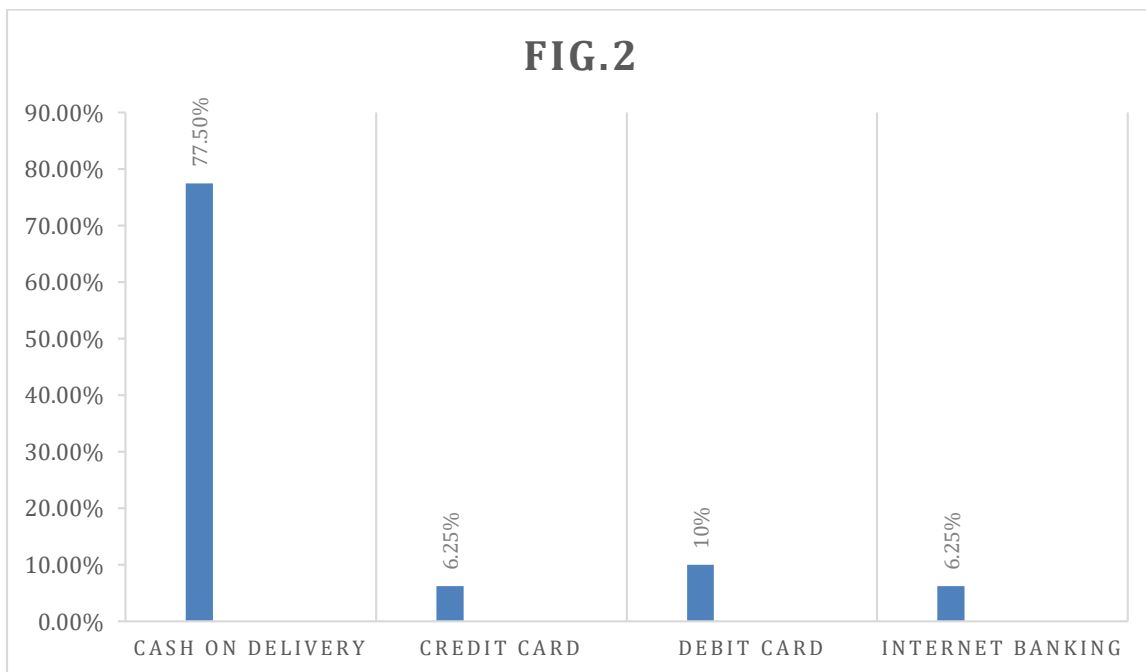
Table. 1

Response	No. of people	Percentage
Yes	68	85%
No	12	15%
<b>Total</b>	<b>80</b>	<b>100%</b>

**2. Methods used by the people while buying online:** People use a variety of means for payment of price while buying online, which includes debit card, credit card, internet banking and cash on delivery. It is clear from the study that most of the people prefer the mode of cash on delivery (77.5%), followed by debit card (10%), credit card (6.25%) and internet banking by (6.25 %) Fig.2 and table.2 represents the study.

Table.2

Response	No. of People	Percentage
Debit Card	08	10%
Credit Card	05	6.25%
Cash on delivery	62	77.50%
Internet Banking	05	6.25%
<b>Total</b>	<b>80</b>	<b>100%</b>



**3. Trust of the people while buying online:** The study reveals that people are sceptical about online shopping because of many concerns. Most of the people does have a kind of trust but they keep being careful while buying online (72.50%), followed by the people who are confident enough to buy online, they accounts for (10%), and (8.75%) are the people who are fully confident while buying online and (8.75%) are those people who don't trust at all. Fig.3 and table.3 represents the study.

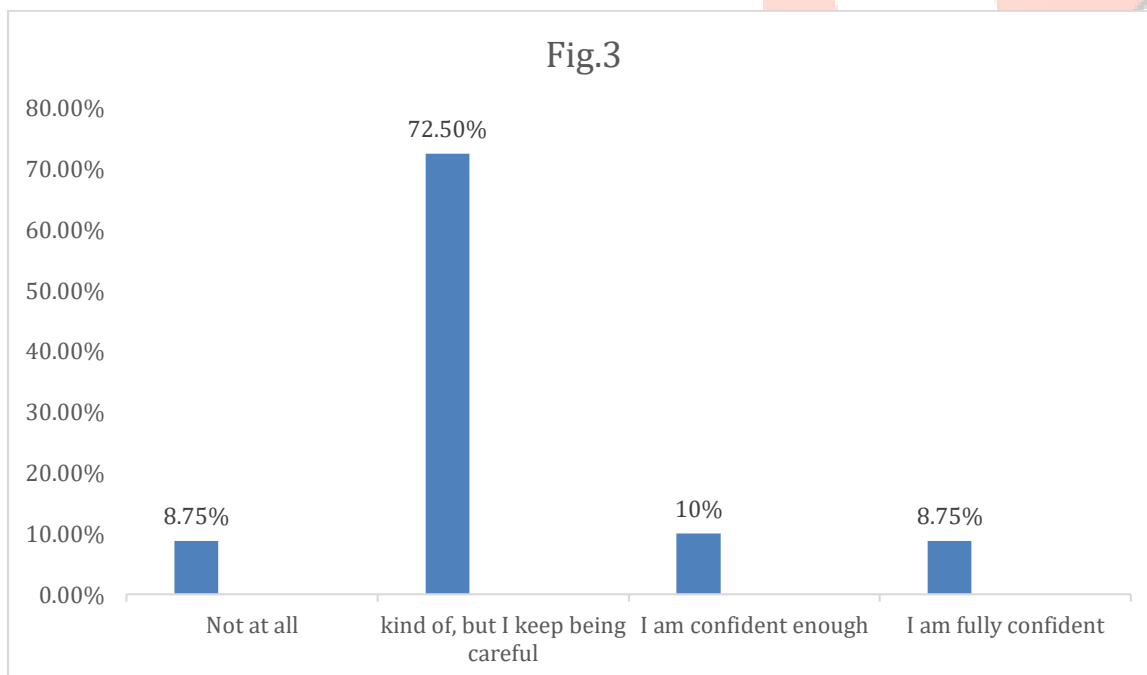


Table.3

Response	No. of people	Percentage
Kind of, but careful	58	72.50%
Not at all	07	8.75%
I am confident enough	08	10%
I am fully confident	08	8.75%



<b>Total</b>	<b>80</b>	<b>100%</b>
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**4. Online stores preferred by people for shopping:** the participants were asked to name the website/online store from which they prefer to shop. The study revealed that Flipkart and amazon are the top most online store where from people of Kashmir love to buy, with an equal share of (31.25%) and followed by Snapdeal (21.25%) and Myntra (16.25%). Fig.4 and table.4 given below represents the study.

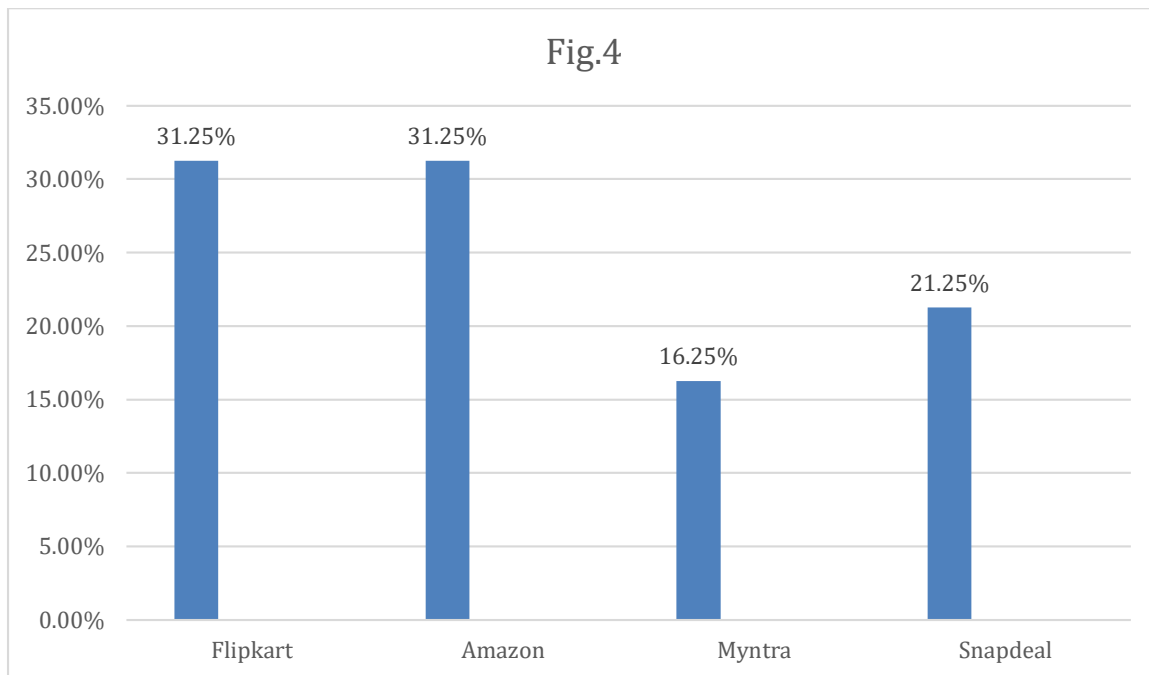


Table.4

Response	No. of people	Percentage
<b>Flipkart</b>	25	31.25%
<b>Amazon</b>	25	31.25%
<b>Snapdeal</b>	17	21.25%
<b>Myntra</b>	13	16.25%
<b>Total</b>	<b>80</b>	<b>100%</b>

**5. Key concerns while buying online:** There are many key concerns that sometime stops a buyer from buying online. People feel different concerns, such as insecure payment of method is felt by (8.75%) as a concerns that stops them from buying online, likewise (6.25%) of the people expressed that there is no legal protection under J&K Consumer Protection Act, 1987. (12.5%) of the people expressed the delayed delivery as a concern that stops them from buying online and (10%) of the people reflected that there is no guarantee that goods would correspond to that of the description given on the website. However there was unanimity among 62.5% people who opted all of the above. Fig.5 and table.5 given below represents the study.

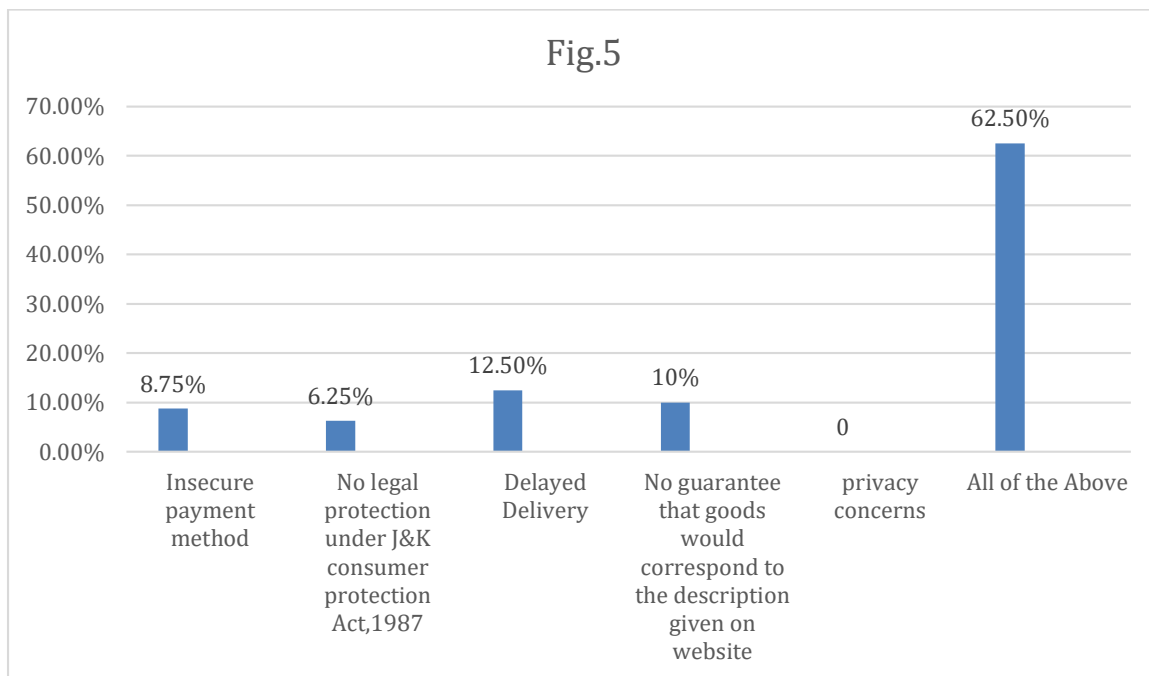


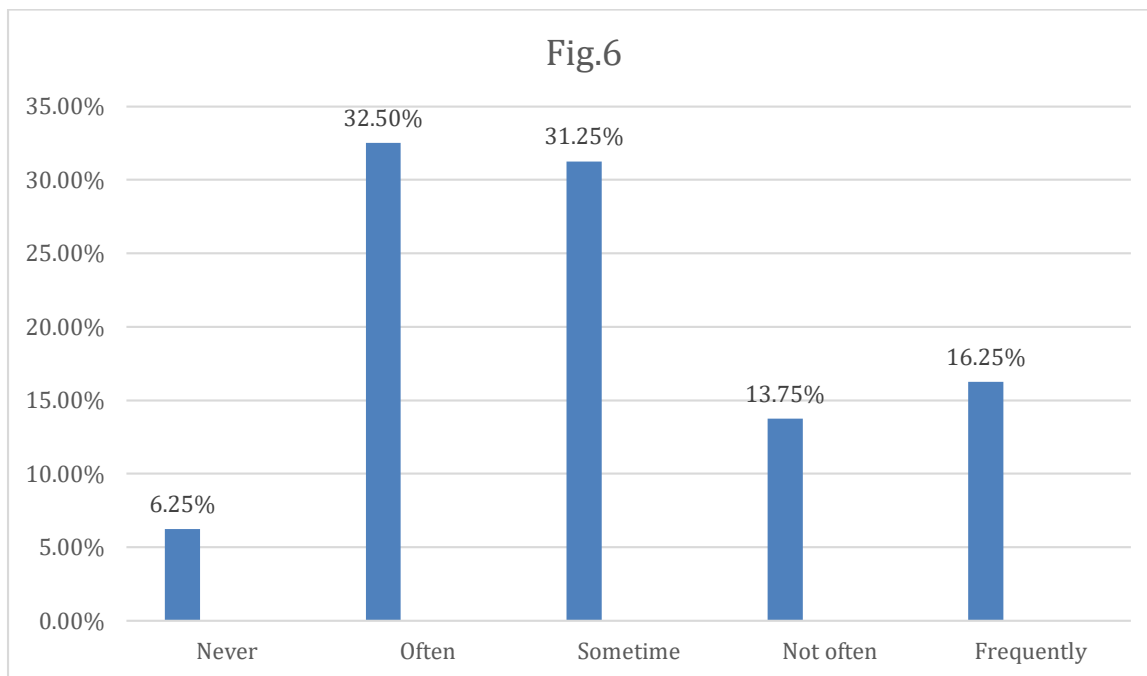
Table.5

Response	No. of people	Percentage
Insure payment method	07	8.75%
No legal protection in J&K	05	6.25%
Delayed Delivery	10	12.50%
No guarantee of correspondence with description	08	10%
Privacy concerns	0	0
All of the above	50	62.50%
<b>Total</b>	<b>80</b>	<b>100%</b>

6. **Delivery of goods** : When asked do you agree that the delivery of goods is on time, different people expressed divergent views, (32.5%) of the people agree that there are 'often' delivery of goods on time followed by (31.5%) people who agree that 'sometime' there is the delivery of goods on time and (13.75%) are those people who feel that the delivery of goods on time are 'not often' and (16.75%) are those people, who feel the delivery of goods on time is 'frequently'. Whereas (6.25%) are those people who feel that the delivery of goods is 'never' on time. Fig.6 and table.6 given below represents the study.

Table.6

Response	No. of people	Percentage
Never	05	6.25%
Often	26	32.50%
Sometime	25	31.25%
Not often	11	13.75%
Frequently	13	16.25%
<b>Total</b>	<b>80</b>	<b>100%</b>



**7. Contract should be based on negotiations:** Usually there is a standard form of contract while transacting online, the ecommerce lacks the option of bargain between seller and the buyer, in order to arrive at the consensus. (63.75%) of the people are in favour of traditional contract based on negotiations, whereas (36.25%) of the people favours the standard form of contract while buying online. Fig.7 and table.7 given below represents the study.

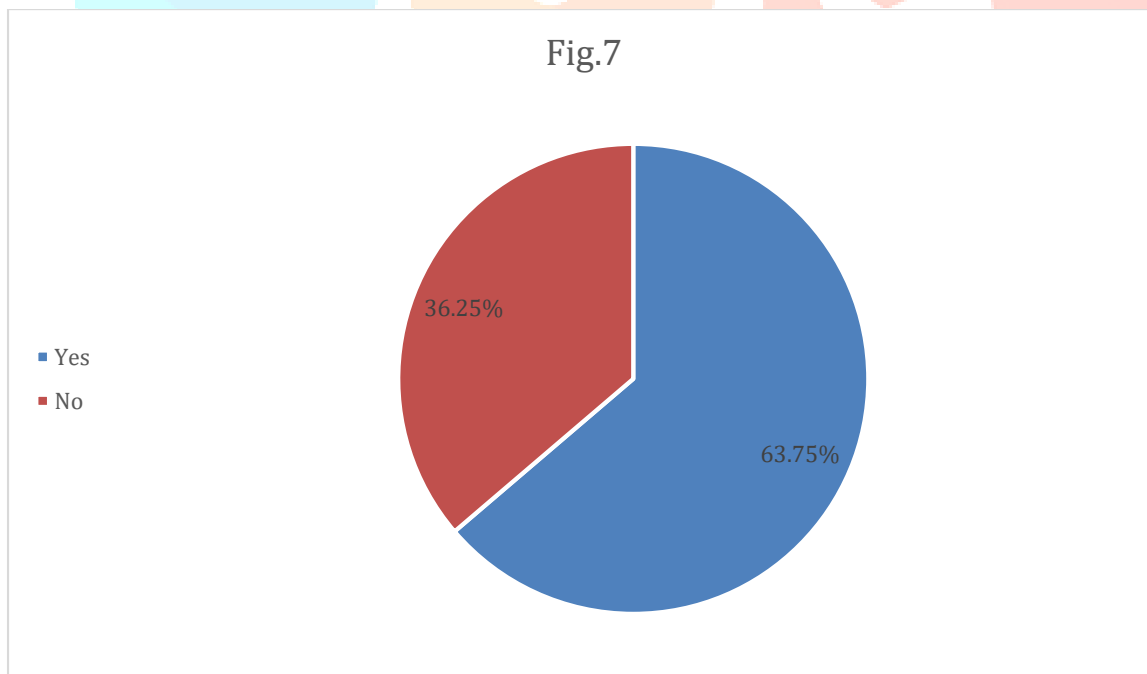


Table.7

Response	No. of people	Percentage
Yes	51	63.75%
No	29	36.25%
<b>Total</b>	<b>80</b>	<b>100%</b>

**8. Jurisdiction in case of dispute:** There is a jurisdictional dilemma in case there is a dispute because transactions happen to be from computers through internet. The server may be located in one country and the buyer and seller in two different countries. The people hold different opinions with

respect to jurisdiction. 52.50% people expressed that the dispute resolution body should be located in buyers place (where the delivery takes place) followed by the 25% people who feel that there should be agreed jurisdiction between the parties in the contract and 21.25% people hold the view that the dispute resolution body should be located at anywhere the law is applicable and 1.25% people believe that it should be the sellers place. Fig. 8 and table.8 given below represents the study.

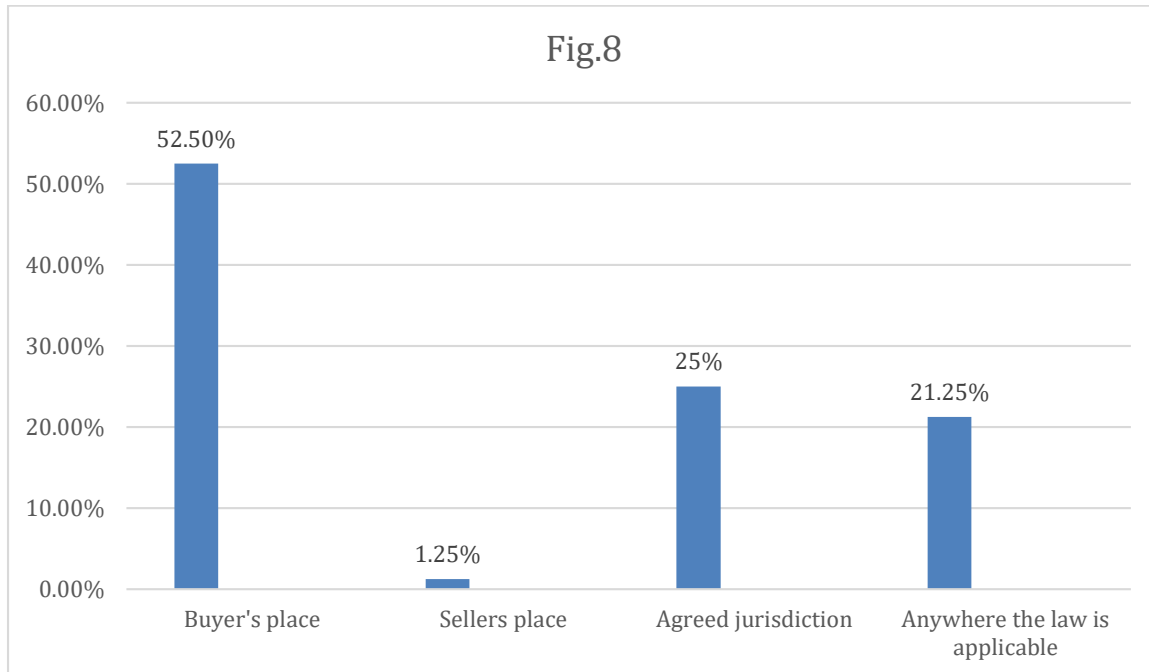


Table.8

Response	No. of people	Percentage
Buyer's place	42	52.50%
Seller's place	01	1.25%
Agreed jurisdiction	20	25%
Anywhere the law is applicable	17	21.25%
<b>Total</b>	<b>80</b>	<b>100%</b>

**9. Disclosure of personal information:** There is a growing concern of privacy, it is believed that in coming years the data information will be the valuable asset in the world driven by information and technology. Online stores require from the buyers to submit the personal information like the gender, email ID's, phone numbers etc. before purchasing any product. (66.25%) of the people feel that disclosure of personal information should not be a prior condition for purchasing online, whereas (33.75%) of the people don't bothers. Fig.9 and table.9 given below represents the study.

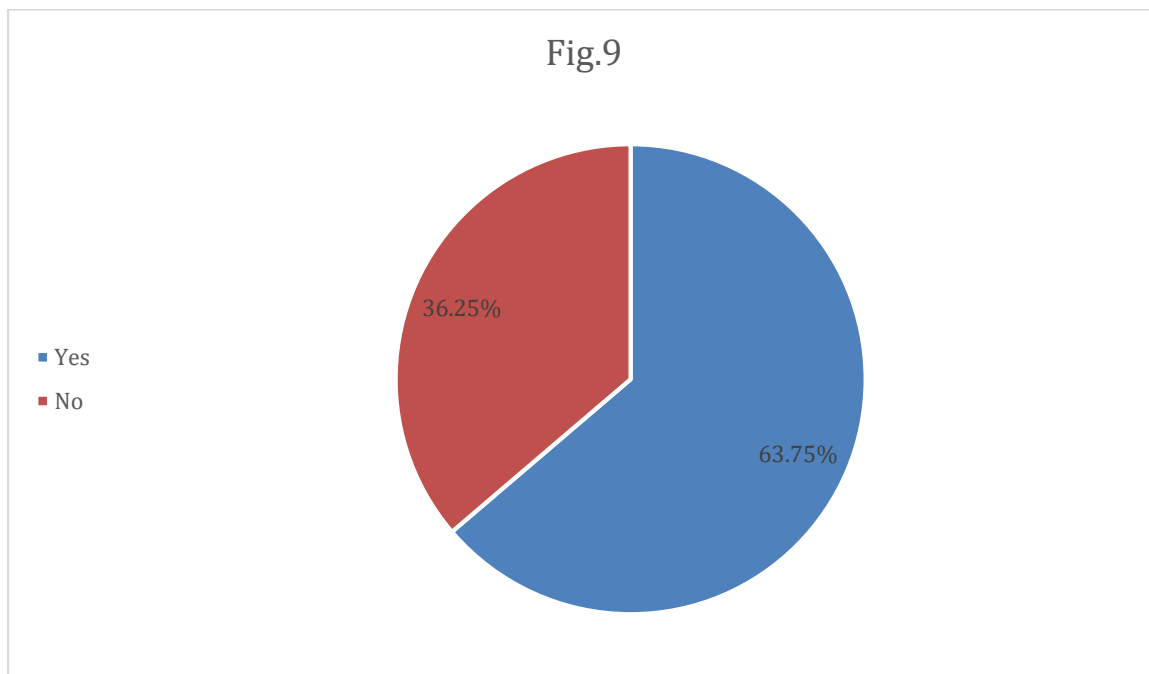


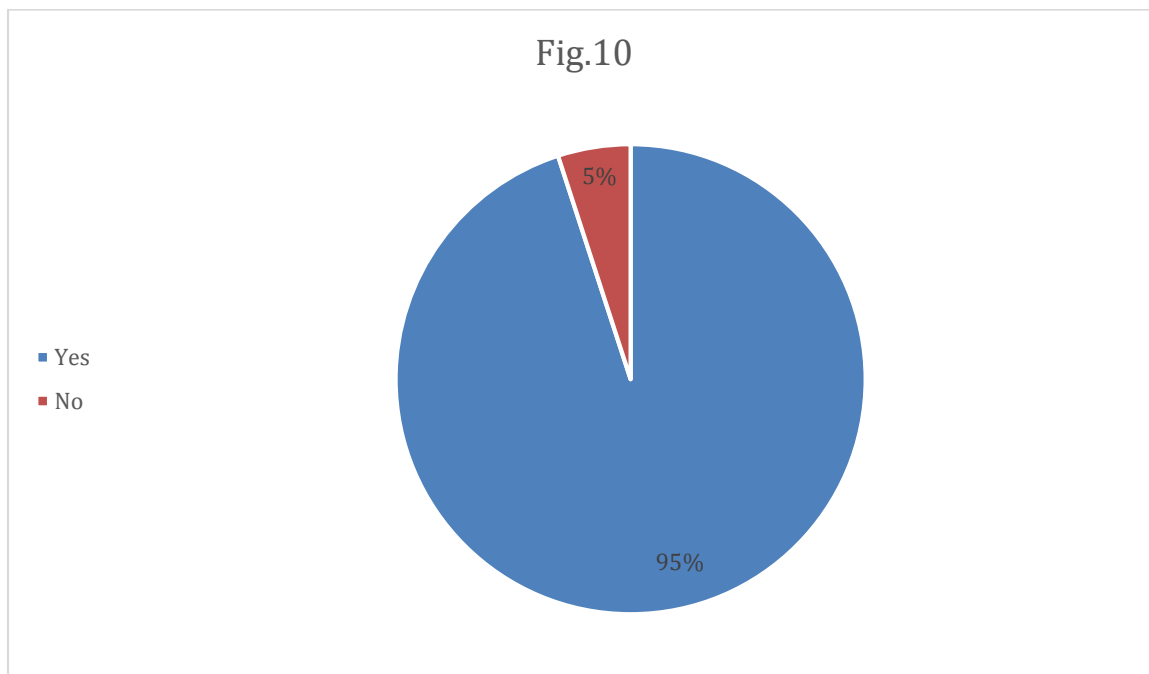
Table.9

Response	No. of people	Percentage
Yes	53	63.75%
No	27	36.25%
<b>Total</b>	<b>80</b>	<b>100%</b>

**10. Tracing of information by online stores:** It has been highlighted that the information of the buyers are sold to the companies and no room of privacy are being left. For instance the company from U.S.A knows the tastes and preferences of the consumers here in Kashmir. The information tracing is evident from the auto fill mechanism, which means that the information is being transferred from one web portal to other. 95% of the people believe that the web store shall not trace the information without the permission of the consumers, whereas 5% of the people have no issues with respect to the tracing and sharing of information by the online web stores. Fig.10 and table.10 given below represents the study.

Table.10

Response	No. of people	Percentage
Yes	76	95%
No	04	5%
<b>Total</b>	<b>80</b>	<b>100%</b>



**11. Consumer satisfaction while buying online:** The satisfaction is the subjective hence differs from person to person. (42.5%) of the people are sometimes satisfied while shopping online, followed by (30%) of the people who are often satisfied and (11.25%) are frequently satisfied followed by (11.25%) who are not often satisfied while buying online and (5%) are those people who are never satisfied while shopping online. Fig.11 and table.11 given below represents the study.

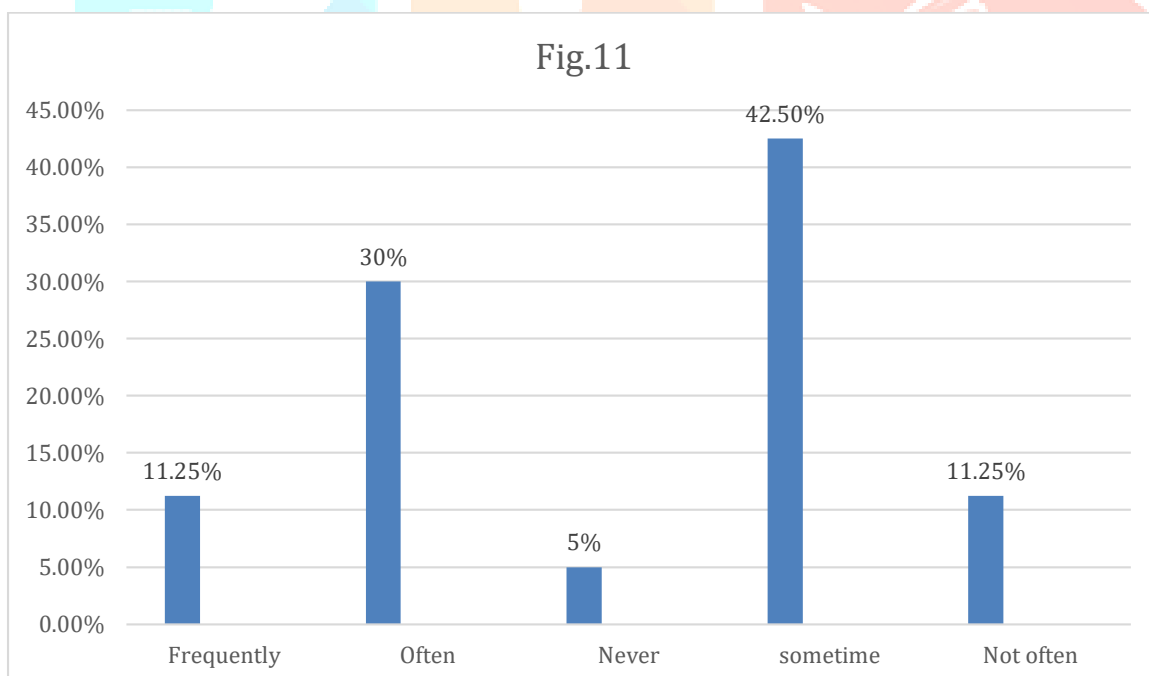


Table.11

Response	No. of people	Percentage
Frequently	09	11.25%
Often	24	30%
Never	04	05%
Sometime	34	42.5%
Not often	09	11.25%
<b>Total</b>	<b>80</b>	<b>100%</b>

**12. Responsibility for alluring advertisements:** Alluring advertisements is a growing concerns which are used to entrap the innocent consumers. These are used as a means to sell the products which are not

of merchantable quality. (76.25%) of the people are of the view that online stores should be held liable for alluring advertisements, whereas (23.75%) of the people hold the view that the online stores should not be held liable for alluring advertisements. Fig.12 and table.12 given below represents the study.

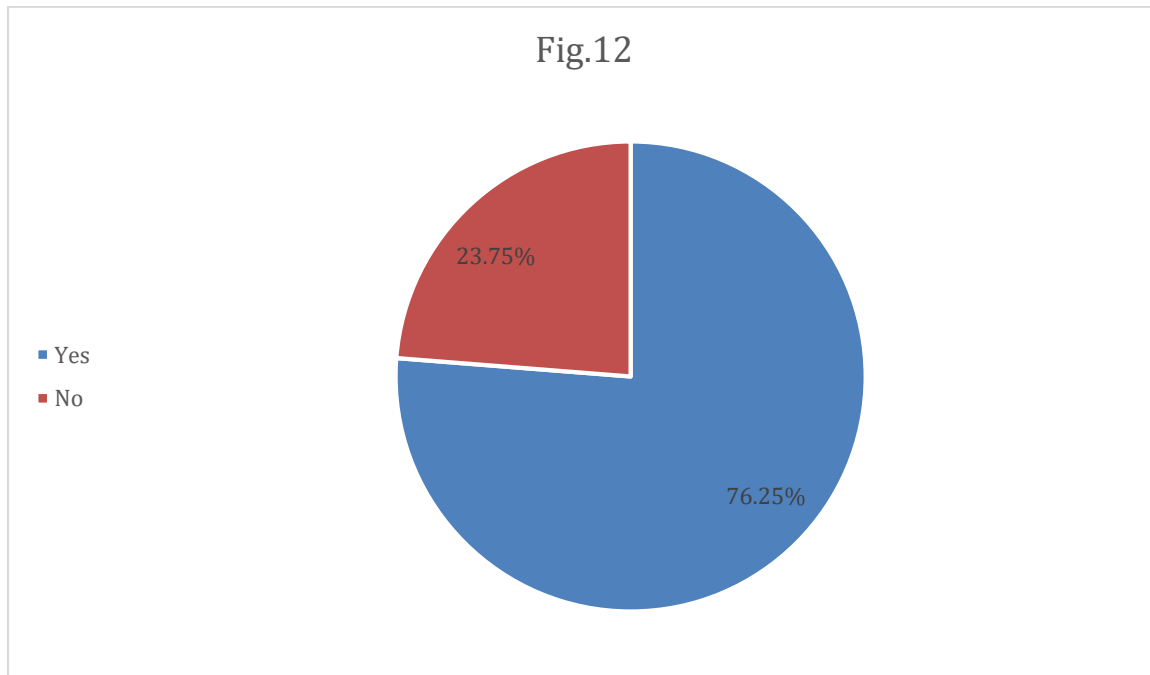


Table.12

Response	No. of people	Percentage
Yes	61	76.25%
No	19	23.75%
<b>Total</b>	<b>80</b>	<b>100%</b>

**13. In case of default by delivery boy:** It has been witnessed that on many occasions the delivery boys deliver the fake goods instead of the goods ordered, even stone and bricks have been wrapped into the packaging material and delivered to the consumers. In this kind of default, who shall be held responsible? (52.5%) of the people hold the view that both the online store and courier company shall be held responsible, whereas (16.25%) people are of the opinion that it should be the personal liability of the delivery boy followed by the people (13.75) who favoured that courier company shall be held responsible and (17.5%) people wants online store to be held responsible in case of default by delivery boy. Fig.13 and table.13 given below represents the study.

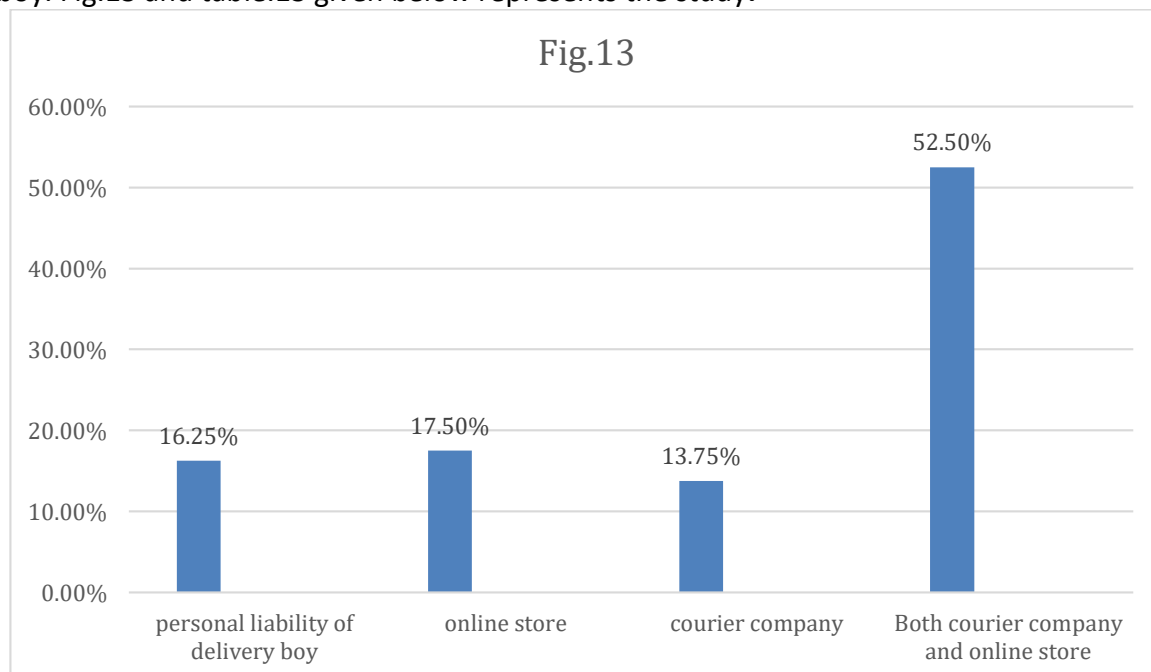


Table.13

Response	No. of people	Percentage
Liability of delivery boy	13	16.25%
Online store	14	17.50%
Courier company	11	13.75%
Both B&C	42	52.50%
<b>Total</b>	<b>80</b>	<b>100%</b>

**14. Online stores play discriminatory in terms of availability of goods:** it has been witnessed that Online stores play discriminatory for the availability of goods. For instance, when a consumer intends to buy a specific good, so he tries to order that product and he gets the response “that seller doesn’t deliver this item to your location” whereas the same good can be ordered from a big city. This is a kind of discrimination, which makes a distinction between consumers (city consumer and small town consumer) and even the villages in rural areas don’t have access to the service provided by the online stores because of the approach of keeping available goods to certain specific locations. (87.5%) of the people believe that online stores play discriminatory in terms of keeping the goods available to certain specific location. On the contrary a minimal of (12.50%) of the people believe that there is no such case. Fig.14 and table.14 given below represents the study.

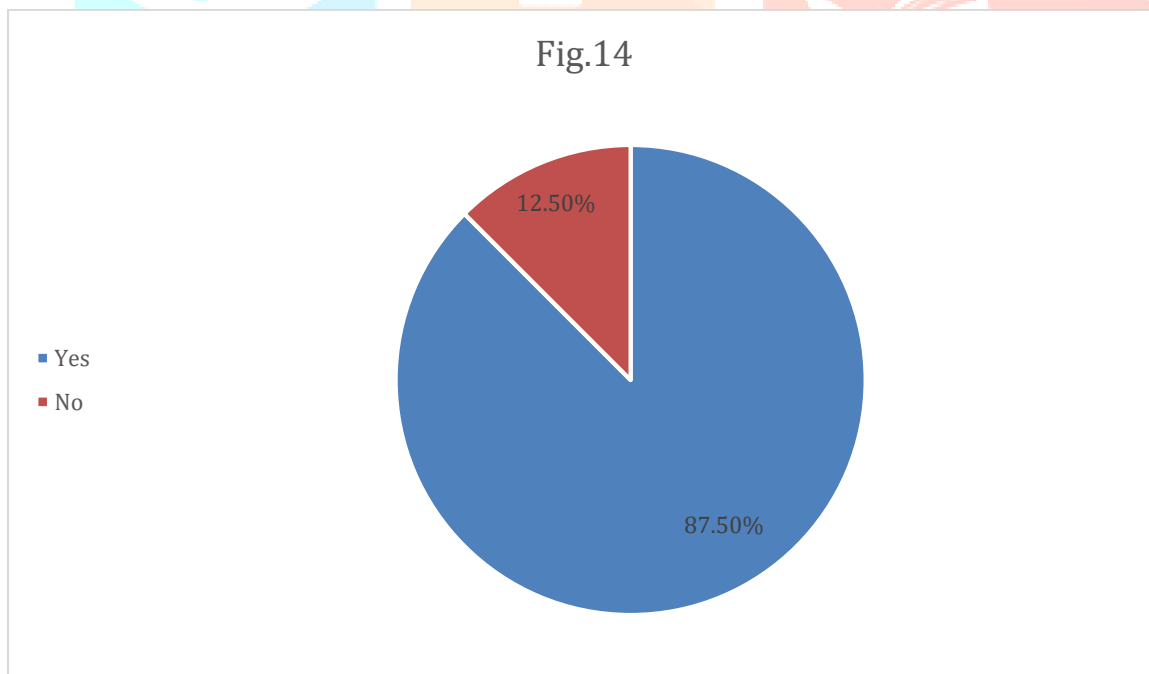


Table.14

Response	No. of people	Percentage
Yes	70	87.50%
No	10	12.50%
<b>Total</b>	<b>80</b>	<b>100%</b>

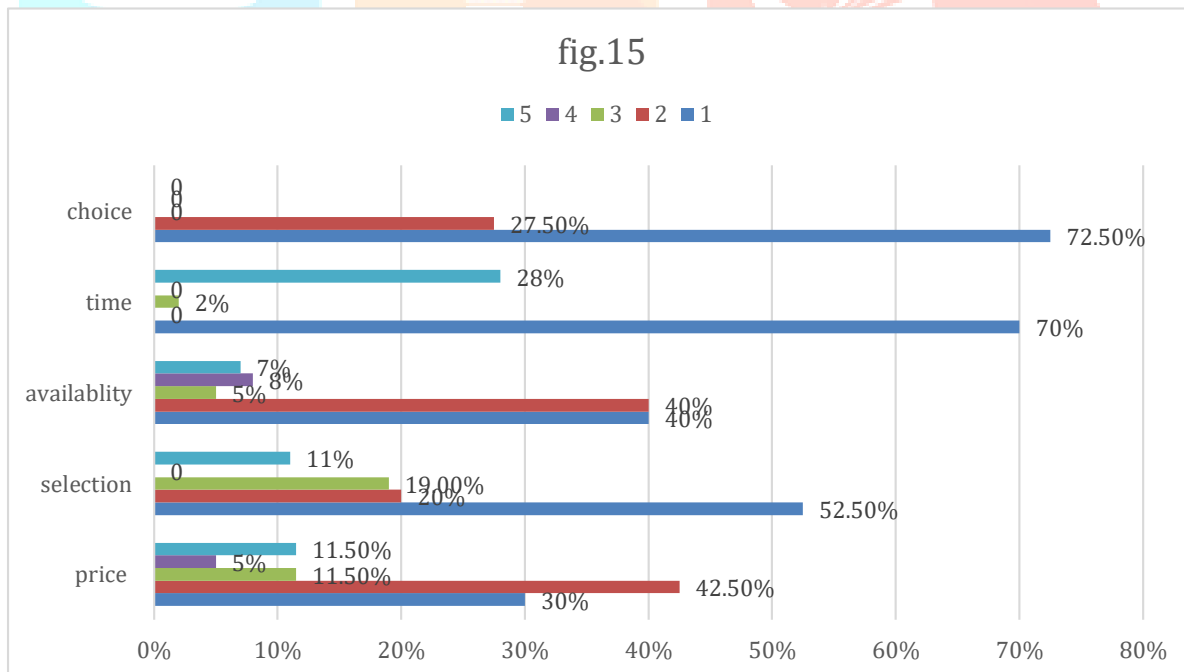
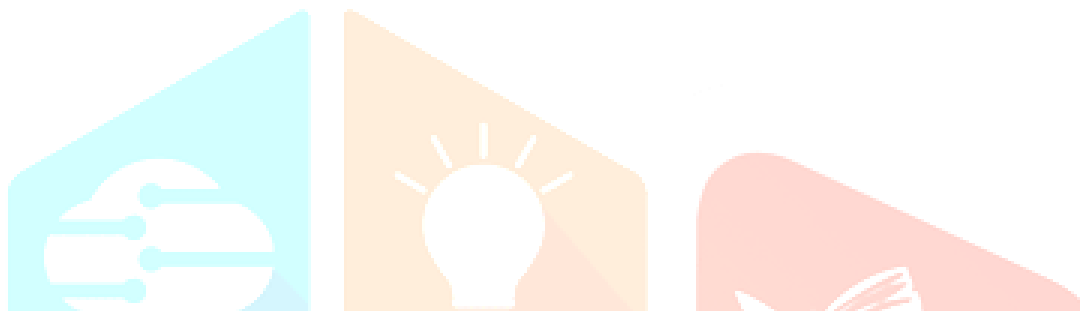
**15. Factors that attract people towards online shopping:** There are a number of factors that attracts people towards the online shopping. The factors include the wide range of price available on different web portals provides consumer an opportunity to compare the price. The choice available on the web



stores is also a factor that drives people to shop online. Last but not least the time factors, online shopping provides an opportunity to the consumer to buy from any seller with his bedroom, it saves the time of the consumer, which otherwise gets wasted while buying offline. The selection of products while buying offline is a hectic process, which is not the case in online shopping. Fig.15 and table.15 and table.15.1 given below represents the study.

**Table. 15**

Factors	Preference (1)	Preference (2)	Preference (3)	Preference (4)	Preference (5)	Total
Price	24	34	09	09	04	80
selection	42	16	15	0	09	80
Availability	32	32	04	07	05	80
Time	56	0	01	0	23	80
Choice	58	22	0	0	0	80



It is clear from the graph that choice (72.5%), time (70%), selection (52.5%) are the factors that attract the people towards the online shopping.

**Table 15.1**

Factors	Preference (1)	Preference (2)	Preference (3)	Preference (4)	Preference (5)	Total
Choice	72.50%	27.50%	0	0	0	100%
Time	70%	0	2%	0	28%	100%
Availability	40%	40%	5%	8%	7%	100%
Selection	52.50%	20%	19%	0	7%	100%

<b>Price</b>	30%	42%	11.50%	5%	11.50%	<b>100%</b>
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## Chapter VI Conclusion and Suggestions

Online shopping, certainly has assumed tremendous significance in the overall e-commerce across the globe and the state of J&K is no exception to it. Online shopping is preferred by almost everyone who is having access to the internet, because of its convenience, information and reviews, price comparison and selection available on the online web shop. This has become trendy, because of the availability of multi brand products under one banner and the delivery of products on the doorstep. It is time saving and offers a consumer to bypass the intermediaries while shopping. It's one of the most distinctive feature is that it remains 24 hours a day and 7 days a week open and provides an opportunity to everyone shop anytime. Online shopping is part of the e-commerce and e-commerce enables us to engage in a great number of transactions that otherwise would not be possible. On a close analysis of overall e-commerce particularly online shopping, the effect is that it is quite susceptible to e-commerce harms including fraud and security concerns, privacy concerns, lack of full cost disclosure and while transacting online there is no guarantee of secure online payment because of phishing concerns. Unlike EU, US and UK, little attention has been paid to the e-commerce protection in India and in the state of J&K. That gets substantiated by the challenges faced by the consumer and only a modicum of e-commerce problems have been brought before courts so far. But that does not mean all is well in the field. The reason simply is, there are no adequate laws, protecting the e-commerce consumer, in place in India particularly in J&K.

The OECD guidelines should act as beacon for countries like India and J&K.

The state of J&K should also come up, in the form of legislative intervention, to fix challenges, inter alia, like privacy invasion, phishing and insecure payment methods. Concerning cross-border consumer disputes, time has come for India to join hand with the organizations like ICPEN. The EU and US approach should form the basis of the shift in strengthening the legal framework in India and J&K. when many countries in the world has considered and provided, in their domestic laws, provisions for out-of-court settlements, adjudication methods like arbitration, mediation to solve consumer disputes should also be brought under the statute book in J&K and India.

Last but not least 'consumer is sovereign' and 'customer is king' should not remain mere more than myths in the present scenario. In this context, the government however, has a primary responsibility to protect the consumer's right and interests through appropriate policy measures, legal structure and administrative framework. There is, therefore, a need to modernise the said Act to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.

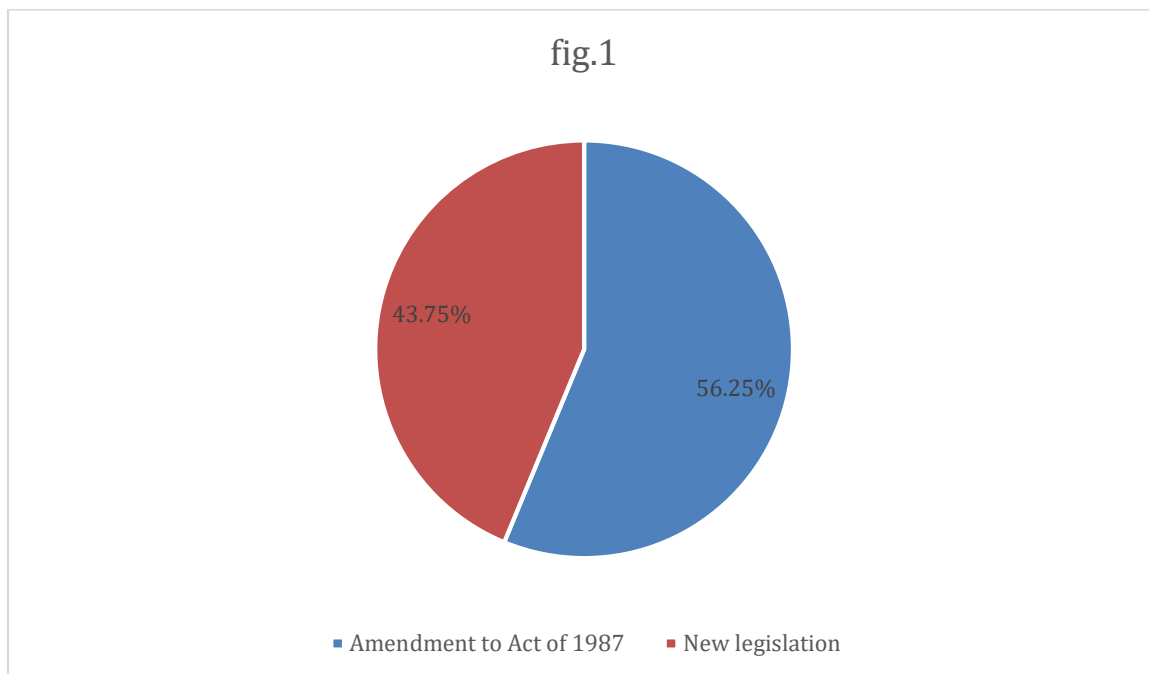
Based on the doctrinal study I am able to suggest the following:

- To bring the required changes in the existing law in order to safeguard the consumers privacy's and should be protected against phishing by proper law;
- To remove the ambiguity by defining the e-consumer;
- To define the jurisdiction in case that is a consumer dispute while making transactions online;
- To bring the online shopping expressly with in the ambit of the consumer protection Act, 1987;
- Keeping in view the basic principles of the contract such as *consensus ad idem* there is no such thing in e-contracts. Standard form of contract should be removed, the law should be made clear on this point;
- Proper time limit should be framed for the delivery of products, no delay in the service must be ensured
- Return of products which are damaged should be, in time, taken care of, so that neither the time nor the tender of consumers gets wasted;
- Misleading advertisers should be held liable for befooling the common consumers;
- Double standard while displaying the products by web shoppers on the web shop should be taken care of;
- Provisions for "product Liability" action for or on account of person's injury, death, or property damage caused by or resulting from any product has been added. The basis for product liability action and the liability of a manufacturer to a claimant have been provided.
- The provision of "Mediation" as an Alternate Dispute Resolution Mechanism has been added. This is aimed at giving legislative basis to resolution of consumer disputes through mediation, thus making the process less cumbersome, simple and faster. This will be done under the aegis of the consumer courts.
- To enhance the pecuniary jurisdiction of the Consumer Grievance Redressal Agencies; increasing minimum number of Members in the consumer courts to facilitate fast disposal of complaints;
- Provisions for power to review their own orders by the State and District Commission;
- Provisions for consumers to file complaints electronically;

Consumer markets for goods and services have undergone drastic transformation, since the enactment of the J&K Consumer Protection Act, 1987. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practises. Misleading advertisements, tele marketing, multi-level marketing, direct selling and e tailing pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent the consumer detriment. There is therefore, a need of a change in the Act or the enactment of the new Act.

One of the questions in the questionnaire was to know from the people, what kind of change they want in law, so that the online shopping will be regulated by law and the consumers will be protected and people will be more and more attracted towards the online shopping and in turn there will be the growth of economy, creation of jobs and the consumer satisfaction will be achieved as well. The views of people with respect to the change in law is divided, but a total of (56.25%) of the people expressed that there should be amendment to the J&K Consumer Protection Act, 1987. They want, that the e-consumer should be brought within the ambit of definition of consumer provided within the Act. Similarly, other provisions for the dealing with the key concerns should be brought into the legislation. So the consumer buying online should not only feel secure but protected as well under the law.

On the other hand a total of (43.75%) people expressed that there should be a separate legislation for consumer protection while buying online like that of law governing offline shopping. Following fig.1 and table.1 illustrates the study:



Response	No. of people	Percentage
<b>Amendment to the J&amp;K consumer protection Act,1987</b>	45	56.25%
<b>Enactment of the new Act</b>	35	43.75%
<b>Total</b>	<b>80</b>	<b>100%</b>

The study reveals that people are inclining towards the online shopping but the concerns while buying online keeps them being sceptical. People want that online web stores must ensure that the advertisement of the goods should ensure that the goods are in consonance with the advertisement. Some of the people raised that the web stores should provide the sufficient information with respect to the products. Which will help in making the rational choice while buying online.

Almost everyone has raised the concern of the privacy, the people wants from the web store that the provision of disclosure of personal information should be erased and if it is not possible then the information should not be misused.

I am personally not in the favour of the enactment of new Act, as there are already the number of legislations available within the state. There are laws, which provides an umbrella protection to the consumers while buying online, including other than, the Consumer protect Act, are the Contract Act, Sale of Goods Act, Information technology Act. The problem with these legislations is that they don't provide any specific law dealing with the consumer buying online, which results in the ambiguity and confusion. Because people are not aware of the laws or these laws provide a long route to the remedy. The other factor which keeps people at the bay is the lack of proper implementation of the laws.

The Consumer Protection Act 1987 is in need of the amendment, in order to deal with the challenges faced by the consumer. The people should be made aware of the laws and proper education of laws should be provided to the consumers. The people have the right to know, they should be aware of the laws dealing with a particular field. The people should be made aware of the remedies in case there is the violation of laws.

Since the Consumer protection is a socio-economic programme to be pursued by the government as well as the business. The satisfaction of the consumer is in the interest of both, in this context, the government.

By bringing the change in the Act of 1987, the responsibility which lies on the government to protect the consumers' interests and rights through appropriate policy measures, legal structure and administrative framework may be achieved.

## Bibliography

## Chapter II

16. <http://purple.ai/the-history-of-online-shopping/>
17. [http://www.zwgl.com.cn/article\\_info.asp?id=4243](http://www.zwgl.com.cn/article_info.asp?id=4243)
18. <http://domainnamewire.com/2007/07/26/rh-donnelley-acquiresbusinesscom-for345m>
19. <http://techcrunch.com/2009/07/22/amazon-buys-zappos>
20. <http://www.reuters.com/article/idUSBNG538820091027>
21. [http://www.msnbc.msn.com/id/40499923/ns/business-us\\_business](http://www.msnbc.msn.com/id/40499923/ns/business-us_business)
22. [www.marketwatch.com/story/amazon-buy-diaperscom-parent-in-545mindeal-2010-11-08](http://www.marketwatch.com/story/amazon-buy-diaperscom-parent-in-545mindeal-2010-11-08)
23. <http://techcrunch.com/2011/03/28/ebay-to-acquire-gsi-commerce-for-2-4-billion>
24. <http://yourstory.com/2013/01/google-india-study-about-online-shopping/>
25. <http://www.mbaskool.com/business-articles/marketing/7695-is-online-shopping-booming-in-indiaan-empirical-study.html>
26. <http://www.gadgetsnow.com/tech-news/Online-shoppers-in-India-to-cross-100-million-by-2016-Study/articleshow/45217773.cms>
27. <http://devmantra.com/2015/09/01/e-commerce-and-its-evolution-in-india/>
28. <http://devmantra.com/2015/09/01/e-commerce-and-its-evolution-in-india/>
29. <http://www.risingkashmir.com/news/online-shopping-facility-now-available-in-rural-kashmir>
30. <http://www.greaterkashmir.com/news/business/online-shopping-boosts-courier-services-in-kashmir/1015.html>
31. <http://www.greaterkashmir.com/news/business/online-shopping-boosts-courier-services-in-kashmir/1015.html>
32. <http://www.bqr.in/news/online-shopping-to-more-than-double-in-india-by-2016-study/>
33. Online International Journal Available at <http://www.cibtech.org/jet.htm> 2016 Vol. 6 (3) July-September, pp.62-69/Bhat et al. titled as [CONSUMER BEHAVIOUR TOWARDS ONLINE SHOPPING: AN EMPIRICAL STUDY FROM KASHMIR VALLEY]

## Chapter III

19. Wealth of nations pg. 172
20. P. Sivaprakasam, "Recent Trends that Reflect the Consumer Protection in India", Indian Consumer Co-operator, Vol.22, No.1, January-March, 1995, p.4.
22. J&K Consumer Protection Act, 1987
23. Consumer Protection Act, 1986
24. International journal of law and policy review vol.2 no.1 2013 Burhan Majid (Consumer protection concerns in e-commerce: an Indian perspective)
25. Clarke, "Electronic Commerce Definitions," available at <http://www.anu.edu.au/people/Roger.Clarke/EC/ECDefns.html>
26. Lodder, "Legal Aspects of Electronic Commerce," available at <http://www.rechten.vu.nl/~lodder/enlist/ec.pdf>
27. International journal of law and policy review vol.2 no.1 2013 Burhan Majid (Consumer protection concerns in e-commerce: an Indian perspective)
28. Smith, H. J., Milberg, S., and Burke, S. 1996. Information privacy: Measuring individuals' concerns about organizational practices. MIS Quarterly, 20(2): 167-196.
29. Stewart, K. A. and Segars, A. H. 2002. An empirical examination of the concern for information privacy instrument. Information Systems Research, 13(1): 36-49.
30. Malhotra, N., Kim, S. S., and Agarwal, J. 2004. Internet Users' Information Privacy Concerns (IUIPC): The Construct, the Scale, and a Causal Model. Information Systems Research, 15(4): 336-355.
31. Milne, G. R. and Gordon M. E. 1993. Direct mail privacy-efficiency trade-offs within an implied social contract framework. Journal of Public Policy Marketing, 12(2): 206-15.
32. <http://research.microsoft.com/en-us/um/people/chquo/phishing.pdf>

## Chapter IV

33. *Cyber law in India*. Dr Farooq Ahmad pg.215.

34. *Indian Contract Act, 1872*.

35. *MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (Department of Information Technology) NOTIFICATION New Delhi, the 11th April, 2011 2013 (54) PTC 578 (Mad)*

36. *Recommendations of the OECD Council concerning Guidelines for Consumer Protection in the context of electronic commerce, approved on 24 March, 2016....OECD (2016), Consumer Protection in E-commerce: OECD Recommendation, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264255258-en>*.

37. *International journal of law and policy review vol.2 no.1 2013 Burhan Majid (Consumer protection concerns in e-commerce: an Indian perspective*

38. <https://iccwbo.org/media-wall/news-speeches/icc-issues-new-guidelines-on-marketing-and-advertising-using-electronic-media/>

39. *International journal of law and policy review vol.2 no.1 2013 Burhan Majid (Consumer protection concerns in e-commerce: an Indian perspective*

40. <https://www.econsumer.gov/AboutUs#crnt>

41. <https://www.econsumer.gov/en/FileAComplaint#crnt>

42. <https://www.icpen.org/for-consumer-experts/what-we-do>

43. [http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf)

44. *International journal of law and policy review vol.2 no.1 2013 Burhan Majid (Consumer protection concerns in e-commerce: an Indian perspective*

