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## UNIT 4 CONSUMER PROTECTION IN CYBERSPACE

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### 4.1 INTRODUCTION

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Today cyberspace represents an e-marketplace. It has got e-shops, e-malls etc., selling all kinds of goods and services. If there are e-sellers, then there are e-buyers as well. These e-buyers, buying goods and/or availing services on the Internet should be treated as the consumers as defined under the Consumer Protection Act, 1986.

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### 4.2 OBJECTIVES

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After reading this unit, you should be able to:

- describe who is an e-consumer and how the general profile of e-consumer is different from that of offline consumer in many ways;
- explain the various kinds of support and service, which is being provided to the e-consumers by the e-commerce service providers; and
- explain the legal remedies and analyse whether the rights of e-consumers have been protected or not.

### 4.3 E-CONSUMERS

E-consumers are consumers who are buying, consuming or selling<sup>1</sup> goods or services using digital medium (Internet or any other electronic platform). It is interesting to note that the e-consumers are consuming both tangible (physical) goods as well as intangible (digital) goods. The digital medium helps e-consumers to place buy orders for physical goods using e-commerce business models, like business-to consumer (B2C), consumer-to-business (C2B) and consumer-to-consumer (C2C); it also helps them to download digital goods in the form of MP3 music files, data, databases, content, software etc.

Interestingly, the term e-consumer nowadays includes both e-commerce (electronic commerce) and m-commerce (mobile commerce) consumers.

#### E- consumer: A Profile

The general profile of e-consumer is different from that of offline consumer in many ways. An e-consumer is urban, young, technology savvy, educated, convenience shopper and multiple choices oriented. Moreover, he is smart; he knows where to look for discount on the Net. As compared to physical world, ease of price comparison and greater choices are the biggest plus points in favour of e-consumers.

It is thus important to compare a physical shopping experience with that of online shopping experience to understand the psyche of e-consumer – his wants and needs.

**Table 1: Comparison<sup>2</sup> between physical and online shopping**

Physical Shopping	Online Shopping
Shop/Supermarket/Mall	Website
Display windows	Home Page
Store layout	Frames, browse and search function, navigation buttons
In-store promotion/sales/discounts	Special offers, discounts
Store atmosphere	Interface consistency, graphics quality
Number of branches	Links to other similar sites
Product displays	Menu buttons
Look and touch of the merchandise	Look and feel of the merchandise
Footfalls (number of people entering the store)	Number of unique visits to the online store

As indicative from the aforesaid table, e-consumer shopping decisions are based on “look and feel” factors, i.e. products which require “low touch” (which consumers prefer to be able to see and feel before they buy). Nevertheless, the distinctions are blurring, e-consumers are now even going for goods, which require look and touch, for example dresses and diamond jewelry<sup>3</sup>.

Please answer the following Self Assessment Question.

<b>Self Assessment Question 1</b>	<i>Spend 3 Min.</i>
Who is an E-consumer? Are you an E-consumer?	
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### 4.4 E- CONSUMER SUPPORT AND SERVICE

E-commerce is more about personalised support and service. E-consumer is a seeker of information before he makes a buy decision. Hence, the ability to collect product information and make comparisons between the different product offerings from different providers is often viewed as one of the main competitive challenges of e-shopping and is therefore a key aspect of the online shopping experience. For example, price and product comparisons have been made easier by the development of “shopping bots”. Websites such as Mysimon.com and DealPilot.com enable buyers quickly to compare products, prices and availability. In other words, e-consumers are being assisted at every step by the technology.

Significantly, at e-marketplace, an e-consumer is not alone. There exists a community of e-consumers helping each other in every possible manner. For example, eBay, an auction site provides a platform for buyers to rank sellers on the basis of their business dealings. Bad reviews against a particular seller would mean no further business dealings with that seller on eBay platform. This is a self-regulating process. Similarly, a site called Epinions.com provides an “open source” style of review for products of all kinds, with visitor providing all the material. The company makes no attempt to edit any of this, but once posted, the reviews themselves are rated by other users.

Consumer support and service in the digital medium is one of the means to protect not only the organization reputation but also provide an opportunity to redress the consumer complaints and grievances. Consumer service is concerned with giving e-consumers the opportunity to talk to the organization and to receive personalised responses.

There are a number of different avenues through which consumer service and support can be delivered<sup>4</sup>: (a) E-mail support (b) Newsgroups, chat rooms, message boards, blogs (c) FAQs (d) Consumer service information (e) Feedback forms (f) Help desk support.

#### 4.4.1 E-mail Support

E-mails are the best means of communication between the consumer and the organization. If handled effectively, the consumer will be duly satisfied and the organization will learn more about the types of difficulties that consumers have with its products or services and evolve solutions to those problems.

E-mail services can be expensive to operate due to the personalised nature of the response to begin with. But by incorporating technology, the system may be so programmed to produce an answer from its databank automatically.

#### 4.4.2 Newsgroups, Chat Rooms, Message Boards, Blogs

These services allow consumers to communicate with one another. These are often being used to share knowledge and create a self-help group. In the present day environment, such services help in creating awareness among consumers. Blogs are the latest edition in this discussion centric online environment. Blogs<sup>5</sup> are a kind of personalised e-diaries carrying views of the blogger; others may join and post their views.

#### 4.4.3 FAQs

Frequently Asked Questions are common consumer-service resources. They are the most common questions posed by consumers, which are collected, together with their answers, and can be viewed online. The only disadvantages with FAQs are that they are not personalised.

#### 4.4.4 Consumer Service Information

It provides relevant information to the consumer, which may include product specifications, compatibility charts, pricing, warranty details etc. Such an information resource helps the consumer not only in arriving at a decision, but also safeguards him against any artificial price increase by a retailer.

#### 4.4.5 Feedback Forms

These are the forms through which customers can complain or provide valuable comments about the service and the products provided by the organization. These forms are valuable assets from the point of view of consumer trust and retention.

#### 4.4.6 Help Desk

Help desk support system in a form of toll free number, provides real time help to consumers. It works 24×7, wherein call center executives listen to complaints and grievances and try to solve problems.

It is thus imperative for any organization selling services or goods online to provide to its consumers a system of online help. Such a system would resolve initial disputes amicably, which may crop up between the consumers and the organization.

Please answer the following Self Assessment Question.

#### Self Assessment Question 2

*Spend 3 Min.*

Name the different avenues through which consumer service and support can be delivered.

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## 4.5 CAVEAT EMPTOR: CONSUMERS BEWARE!

E-consumers do have certain rights as consumers. But it is obligatory to note that the consumers have certain obligations as well. It is expected that e-consumer are aware! Any failure to protect their interests would be considered to be his own failing.

In the digital medium, it is natural for the consumer to read the privacy policy and terms of service conditions posted on e-tailer's website. Such policy statements constitute online contracts between the consumer and the service provider (e-tailer).

### 4.5.1 Privacy Policy

Privacy policy posted on the website provides details of ways and means of protecting users' *'personal'* and *'not-so-personal'* information. It provides details<sup>6</sup>, like:

- What kind of information is to be collected: e-mail address, name, phone number, postal address, age, gender, occupation, credit card number etc?
- What kind of technological tools will be used to collect information?
- How the information thus collected will be used and for what purpose?
- Whether information to be given to any third-party and for what purpose?
- Whether a choice will be given to the individual to *opt-out* from collection and distribution of online information.
- What will be the business transaction consequences of an individual who has refused to provide private information or has refused to accept a cookie or has opted out of a particular use of such information?
- How individually identifiable private information collected can be reviewed and, if necessary, corrected or removed?
  - How frequent the privacy policy will be reviewed?
  - Whether the site will be independently *verified* to ensure that its security adequately protects its customers from the risk of security breaches.

Privacy policy may exist in a form of 'Safe Harbor Agreement', which may provide for terms such as:

- (a) **Notice** – to the consumer, i.e., data subject about what information is collected, processed and used.
- (b) **Choice** – covers the ability for consumers to 'opt-out' from direct marketing.
- (c) **Onward Transfer** – choice for consumers about the way in which a third party could use their data.
- (d) **Security** – taking reasonable measures to protect data from loss, misuse etc.
- (e) **Data Integrity** – data to be kept accurate, current and complete etc.
- (f) **Access** – consumers to have reasonable access to information about them derived from non-public sources.
- (g) **Enforcement** – assuring compliance with data protection; also readily available and affordable independent recourse mechanisms by which consumers' complaints and disputes can be resolved.

## 4.5.2 Terms of Service

A posted term of service conditions is also an important statement on behalf of an e-tailer. It signifies that the user's use of this website constitutes user's agreement to be bound by these terms and conditions of use. It may contain following details:

### (a) Notice

Please review these Site 'terms of use' which govern your use and purchase of products and services from our website. By accessing, browsing or using the site, you signify your assent to these terms of use. If you do not agree to these terms of use then please do not use this site.

### (b) Membership Eligibility

Use of the site is available only to persons who can form legally binding contracts under applicable law. Persons who are "incompetent to contract" within the meaning of the Indian Contract Act, 1872 including minors, undischarged insolvents etc. are not eligible to enter and execute financial transactions with the site.

In consideration of the use of the service, the user agrees to provide true, accurate, current and complete information about himself as prompted by the User Registration Form. It is the user's obligation to maintain and promptly update the personal information as requested in the User Registration Form in order to make it true, accurate, current and complete.

### (c) Website Limited License

As a user of this site you are granted a nonexclusive, nontransferable, revocable, limited license to access and use this site and its content in accordance with these Terms of Use. Provider may terminate this limited license at any time for any reason.

### (d) Protecting Passwords

The user is responsible for maintaining the confidentiality of the password and user name and is fully responsible for all activities that occur under his password.

### (e) Price Offers

The prices advertised on this site are for Internet orders and is inclusive of all central/local taxes and delivery and handling charges. Prices and the availability of items are subject to change without notice.

### (f) Modifications to Site

The service provider reserves the right, for any reason, in its sole discretion, to terminate, change or suspend any aspect of the site, including, but not limited to, content, features or hours of availability. The service provider may impose limits on certain features of the site or restrict your access to part or the entire site without notice.

### (g) Disclaimer of Liability

This site is provided on an "as is, as available" basis. Provider expressly disclaims all warranties, including the warranties of merchantability, fitness for a particular purpose and non-infringement. Service provider disclaims all responsibility for any loss, injury, claim, liability, or damage of any kind resulting from, arising out of or any way related to the use of the site.

(h) **Indemnification**

You agree to indemnify, defend and hold harmless provider, its officers, directors, employees, agents, licensors, suppliers and any third party information providers to the site for and against all losses, expenses, damages and costs, resulting from any violation of these Terms of Use by you.

(i) **Governing Law and Jurisdiction**

The Terms of Use are governed by and construed in accordance with the relevant Indian laws. You agree that any action at law or in equity arising out of or relating to these terms shall be filed only in the courts / tribunals and forums located in Delhi and you hereby consent and submit to the personal jurisdiction of such courts and forums for the purposes of litigating any such action.

All provisions in this Agreement regarding representations and warranties, indemnification and disclaimers shall survive any termination of this Agreement.

Please answer the following Self Assessment Question.

<b>Self Assessment Question 3</b>	<i>Spend 3 Min.</i>
Explain the term Caveat Emptor?	
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**4.6 LEGAL REMEDIES**

It does not imply from the aforesaid discussion that e-consumers rights and obligations are confined to the privacy policy and term of service conditions only. Does he have rights if he gets defective goods or services?

Consumer protection in cyberspace can be understood with the help of the following statutes:

- (a) The Consumer Protection Act, 1986
- (b) The Specific Relief Act, 1963
- (c) The Sale of Goods Act, 1930

**4.6.1 The Consumer Protection Act, 1986**

Recourse to consumer protection under the Consumer Protection Act, 1986 is taken after the dispute has arisen. The Act applies to all goods and services unless specifically exempted by the Central Government. It covers all the sectors of the economy – private, public and cooperative. Further, it provides for adjudication process, which is simple, speedy and less expensive.

Consumer is defined under section 2(1)(d) of the Act as a person who buys any goods or services for a consideration, which has been paid or promised. Therefore any person buying goods and/or availing services on the Internet will be a consumer for the purposes of Act. It provides a very wide definition of “service” as service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service [section 2(1)(o)]. This definition is capable of including all online service providers since it is an inclusive definition.

According to section 2(1)(c) of the Act “complaint” means any allegation in writing made by a complainant that the goods or services hired or availed suffer from deficiency in any respect. The complainant can be a consumer or his legal representatives, any registered voluntary consumer association, Central or State Government [section 2(1)(b)].

But if a consumer in the digital medium faces any defects in goods or deficiency in services, who are the persons against whom he can lodge a complaint? The term “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service [section 2(1)(g)]. A consumer has every right to file a complaint against all such service providers, which may include information providers, websites owners, payment gateways etc. in a District Forum.

Further, section 2(1)(j) of the Act, further qualifies a manufacturer as a person who makes or manufactures any goods or parts thereof, or assembles them or puts his own mark on any goods manufactured by any other manufacturer. A trader is a person (including manufacturer) who sells or distributes any goods for sale. In other words, a complaint can also be made against manufacturer and trader selling goods online.

Please answer the following Self Assessment Question.

<b>Self Assessment Question 4</b>	<i>Spend 3 Min.</i>
Define consumer briefly.	
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### 4.6.2 The Specific Relief Act, 1963

A mature legal system endeavours to provide not merely a remedy for every right infringed, but also an adequate remedy. The Specific Relief Act provides that effective remedial action.

It provides preventive relief in the form of temporary and perpetual injunctions [sections 37 and 38] to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. For example, a person can move against any service provider, even an online service provider to a court and plead for issuing injunction against a service provider, if he feels that the service provider is not fulfilling his contractual obligations or preventing the breach of an obligation existing in his favour. The court can perpetually enjoin the defendant (service provider) from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Further, the plaintiff in a suit for perpetual injunction under section 38, or mandatory injunction under section 39 of the Act, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages [section 40].

#### 4.6.3 The Sale of Goods Act, 1930

Under Article 366 (13) of the Constitution of India, the expression “goods” includes all materials, commodities and articles. Different enactments over the years have further enlarged the definition of goods. For example, under the Sale of Goods Act, 1930, “goods” means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale [section 2(7)].

A contract of sale is made by an offer to buy or sell goods for a price and acceptance of such offer [Section 5 of Sale of Goods Act, 1930]. Now the question is – is it possible to make an online contract? Section 4 of the Information Technology Act, 2000 has accorded legal acceptance to electronic records. Therefore, an offer and an acceptance through an electronic record will form a contract for the purposes of the Sale of Goods Act, 1930. Thus a contract for sale of goods made online will have:

- (a) the same effects of contract;
- (b) would require same level of performance of contracts;
- (c) will give same rights and duties to the seller and buyer; and
- (d) will have same consequences for breach of contract as a contract in the physical world.

#### The Buyer’s Rights under the Sale of Goods Act, 1930

It is significant to note that the Sale of Goods Act has laid down a statutory provision with respect to implied condition as to quality or fitness, i.e., if the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, thereby relying on the seller’s skill or judgment, (except in case of sale an article under its patent or trade name) there is an implied condition that the goods shall be reasonably fit for such purpose [section 16]. Further, a buyer has a right to examine the goods, i.e. where goods are delivered to the buyer, which he has not previously examined, he cannot be said to have accepted them until he has had a reasonable opportunity of examining them. The seller is bound to give the buyer a reasonable opportunity of examining the goods, on buyer’s request. Moreover, where

goods have been delivered to the buyer and he intimates to the seller that he has rejected the goods due to some defect; he is not bound to return them to the seller [sections 41-43].

Also, the Act protects the buyer from any breach of contract arising out of sellers' actions, like where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. The buyer may also sue for specific performance, i.e., the buyer may apply to the Court to direct the seller to deliver the goods. In case of breach of warranty the buyer may sue the seller for damages for breach of warranty or set up against the seller the breach of warranty in diminution or extinction of the price [sections 57-59].

It is thus evident from the aforesaid discussion that legal remedies are available to the e-consumers in the form of statutory provisions. Nevertheless, e-consumer has to be careful and vigilant in exercising their legal rights.

Let us now summarize the points covered in this unit.

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## 4.7 SUMMARY

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- E-consumers are consumers who are buying, consuming or selling goods or services using digital medium (Internet or any other electronic platform).
- The digital medium helps e-consumers to place buy orders for physical goods using e-commerce business models, like business-to consumer (B2C), consumer-to-business (C2B) and consumer-to-consumer (C2C); it also helps them to download digital goods in the form of music files, data, databases, content, software etc.
- A proactive website is the one which provides consumer support and service functions in the form of e-mail queries, feedback forms, consumer service information etc.
- The knowledge of privacy policy and terms of use are also beneficial for e-consumers.
- From statutory perspective enactments, like the Consumer Protection Act, 1986, the Specific Relief Act, 1963 and the Sale of Goods Act, 1930 play a critical role in safeguarding the e-consumers interests in cyberspace.

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## 4.8 TERMINAL QUESTIONS

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1. Examine the role of 'privacy policy' and 'terms of use' statements vis-à-vis e-consumers.
2. Do you think that the enactments, like Consumer Protection Act, 1986, the Specific Relief Act, 1963 and the Sale of Goods Act, 1930 are adequate to safeguard the interests of e-consumers in online environment?

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## 4.9 ANSWERS AND HINTS

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### Self Assessment Questions

1. An E-consumer is one who buys, consumes or sell good or services using digital medium, Yes.

2. (a) E-mail support  
(b) News Groups, Chat Rooms, Message boards, Blogs  
(c) FAQs  
(d) Consumer service information  
(e) Feedback forms  
(f) help desk support.
3. The term ‘Caveat Emptor’ means consumer be aware.
4. Consumer is defined under section 2(1)(d) of the Act, as a person who buys any goods or services for a consideration, which has been paid or promised to pay.

**Terminal Questions**

1. Refer to sub-section 4.4.1 of the unit.
2. Refer to section 4.5 of the unit.

**4.10 REFERENCES AND SUGGESTED READINGS**

1. Auction sites. like [www.ebay.in](http://www.ebay.in) represents a consumer-to-consumer C2C model.
2. Adapted from Lohse. G.L. and Spiller. Electronic Shopping: “The Effect of Customer Interfaces on Traffic and Sales” Communications of the ACM, Page 1998.
3. The success story of [www.baazee.com](http://www.baazee.com) revolved around selling diamond jewelry to e-consumers. Interestingly [www.ebay.in](http://www.ebay.in) sells all kinds of physical goods like cameras. TVs. mobile phones. electronic devices and even automobiles.
4. Rowley Jennifer. “E-business: Principles & Practice” Palgrave. p. 130. 2002.
5. According to. [www.technorati.com](http://www.technorati.com) which tracks blogs on the Internet that there are 30 million blogs and there number is growing everyday!
6. Sharma Vakul. “Handbook of Cyber Laws” Macmillan. India. 2002.