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NAVIGATING THE MAZE: ADDRESSING THE EVOLVING LANDSCAPE OF CONSUMER CONTRACTS

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Abstract

Consumer contracts play a pivotal role in the global marketplace, regulating the relationship between consumers and businesses. In the context of India, a country experiencing rapid economic growth and increasing consumerism, safeguarding the rights of consumers has emerged as a crucial concern. This article explores contemporary issues in consumer contracts and examines the challenges and opportunities in protecting the rights of Indian consumers. One significant contemporary issue addressed in this article is the prevalence of unfair contract terms and practices in consumer agreements. Various abusive clauses, such as excessive penalty charges, unilateral modifications, and unfair arbitration clauses, often go unnoticed by consumers. The article delves into the challenges faced by Indian consumers in negotiating fair and balanced contracts, exploring the role of consumer awareness, education, and empowerment in mitigating these challenges. Moreover, the article sheds light on the emerging field of e-commerce and its impact on consumer contracts. With the growing popularity of online shopping platforms, new issues such as data privacy, cybersecurity, and dispute resolution mechanisms have arisen. The article examines the legal framework surrounding these issues and explores potential solutions to ensure the protection of Indian consumers in the digital sphere. Lastly, the article highlights notable initiatives and best practices employed by businesses and regulators to protect the rights of Indian consumers. It explores the role of self-regulatory mechanisms, voluntary codes of conduct, and consumer redressal agencies in promoting fair practices and improving consumer experiences. The article touches upon the role of technology in consumer contracts and the challenges associated with emerging areas like artificial intelligence, digital transactions, and data protection. It emphasizes the need for comprehensive legislation and robust regulatory frameworks to ensure transparency, accountability, and consumer trust in these evolving domains.

Keywords : Consumer Contracts, Contemporary Issues, Protecting Rights, Indian Consumers, Consumer Protection, Contractual Obligations, Legal Framework, Data privacy, Dispute Resolution, Digitalization, Technology

I. Introduction

Consumer contracts form an integral part of our daily lives, as they govern transactions ranging from purchasing goods and services to engaging with online platforms and subscribing to various agreements. In today's dynamic and fast-paced world, it is crucial to examine the contemporary issues surrounding consumer

contracts, particularly when it comes to safeguarding the rights of Indian consumers. As the Indian market continues to witness exponential growth and technological advancements, it is essential to ensure that consumers are adequately protected within the realm of contractual agreements.

Consumer protection has gained significant attention in recent years, with an increasing emphasis on empowering consumers and creating a fair and transparent marketplace. The Indian government, recognizing the importance of consumer rights, has introduced comprehensive legislation such as the Consumer Protection Act, 2019⁴⁴¹, which aims to address the evolving challenges faced by consumers in the digital age. This article will explore some of the pressing issues faced by Indian consumers in the context of consumer contracts, while also shedding light on the measures taken to protect their rights.

One of the primary concerns in consumer contracts is the unequal bargaining power between consumers and businesses. Oftentimes, consumers find themselves in a disadvantageous position, lacking the necessary information, resources, or expertise to negotiate contract terms effectively. This power asymmetry can lead to unfair terms and conditions, hidden charges, and exploitative practices, ultimately compromising consumer rights. It is crucial to examine how Indian consumer protection laws have evolved to counterbalance this inequality and provide a level playing field for consumers⁴⁴².

Moreover, the proliferation of e-commerce platforms and digital services has revolutionized the way consumers engage in commercial transactions. However, this digital landscape brings forth its own set of challenges. Issues such as online fraud, data privacy breaches, and misleading advertisements have become more prevalent, necessitating stronger safeguards to protect Indian consumers. This article will delve into the specific challenges posed by digital consumer contracts and explore the measures being implemented to

mitigate risks and ensure consumer trust in the online marketplace.

II. The Rise of Consumer Contracts

Consumer contracts have become an integral part of our daily lives, shaping the way we interact with businesses and service providers. These agreements are legally binding documents that govern the terms and conditions under which consumers purchase goods and services. In recent years, we have witnessed a significant shift in consumer-provider dynamics, as consumers have become more empowered, and businesses have adapted to meet changing demands⁴⁴³. The factors contributing to the rise of consumer contracts and how they are reshaping the relationship between consumers and providers.

A. Increased Consumer Awareness: In recent years, consumers have become more informed and conscious about their rights and the terms of the agreements they enter into with service providers. As a result, there is a growing demand for greater transparency and fairness in consumer contracts.

B. Proliferation of Digital Services: With the rise of the internet and digital technologies, there has been a significant increase in online transactions and interactions between consumers and service providers⁴⁴⁴. This has led to a surge in digital contracts, where the traditional face-to-face negotiation and agreement processes have shifted to online platforms.

C. Complexity of Contractual Language: Consumer contracts often contain complex legal jargon and lengthy terms and conditions that may be challenging for the average consumer to understand fully. The lack of plain language in contracts can lead to confusion

⁴⁴¹ The consumer Protection Act,2019

⁴⁴² Jehirul, Islam. "Jurisprudence of Delivery in Consumer Contract in ECommerce: A Critical Appraisal of The Consumer Protection Law in India." (2020)

⁴⁴³ Tang, Zheng Sophia. "Electronic consumer contracts in the conflict of laws." *Electronic Consumer Contracts in the Conflict of Laws* (2009): 1-348

⁴⁴⁴ Bar-Gill, Oren. "The behavioral economics of consumer contracts." *Minn. L. Rev.* 92 (2007): 749

and disputes, necessitating a deeper understanding of these agreements.

D. Consumer Protection Concerns: Consumer contracts have been the subject of numerous controversies, with some service providers accused of exploiting consumers through unfair contractual terms⁴⁴⁵. Understanding the dynamics of consumer contracts is essential to identify potential areas of abuse and ensure adequate consumer protection.

E. Impact of Technology: The advent of technology has not only changed how contracts are formed but also opened up new areas of concern, such as data privacy, consent to data usage, and implications of automated decision-making in consumer contracts.

F. Shift in Legal Landscape: Many countries have updated their consumer protection laws and regulations to adapt to the changing nature of consumer contracts⁴⁴⁶. Understanding the current legal framework is crucial for both consumers and service providers to ensure compliance and fair dealings.

G. Growth of Subscription and Membership Services: Subscription-based models have become increasingly popular across various industries, including media streaming, software, and e-commerce.⁴⁴⁷ Consumers need to understand the terms of these recurring contracts to avoid unexpected charges and know how to cancel such services when needed.

H. Importance of Informed Consent: Informed consent is a vital aspect of consumer contracts, especially in cases where consumers provide personal information or agree to automatic renewals. Understanding the concept of

informed consent is essential to protect consumer privacy and rights.

III. Key Elements of Consumer Contracts: Unraveling the Fine Print

Consumer contracts often contain various key elements that are essential for understanding the terms and conditions of the agreement. Unraveling the fine print refers to the process of carefully examining and comprehending these critical elements to ensure that consumers are aware of their rights and obligations⁴⁴⁸. Some of the key elements found in consumer contracts include:

A. Offer and Acceptance: Like any contract, a consumer contract in India starts with an offer made by the service provider to the consumer. The consumer then accepts the offer, forming a legally binding agreement.

B. Identification of Parties: The contract should clearly identify the parties involved—the consumer and the service provider—with their legal names and contact details.

C. Description of Goods or Services: The contract should provide a detailed description of the goods or services being offered, including specifications, quantities, quality standards, etc.

D. Consideration: Consideration refers to the price or payment that the consumer agrees to provide in exchange for the goods or services.

E. Terms and Conditions⁴⁴⁹: This section outlines the terms and conditions that govern the contractual relationship, including payment terms, delivery timelines, warranties, and other relevant provisions.

F. Duration and Termination: For contracts with a specific duration or subscription-based services, there should be clear provisions

⁴⁴⁵ Ohlhausen, Maureen K., and Alexander P. Okuliar. "Competition, consumer protection, and the right [approach] to privacy." *Antitrust LJ* 80 (2015): 121

⁴⁴⁶ Brill, Julie. "The intersection of consumer protection and competition in the new world of privacy." *Competition policy international* 7.1 (2011): 7-23

⁴⁴⁷ Riefa, Christine. *Consumer protection and online auction platforms: Towards a safer legal framework*. Routledge, 2016

⁴⁴⁸ Paterson, Jeannie Marie. "The elements of a prohibition on unfair terms in consumer contracts." *Australian Business Law Review* 37.3 (2009): 184-198

⁴⁴⁹ Burton, Steven J. *Elements of contract interpretation*. Oxford University Press, 2009.

regarding the contract's duration and conditions for termination or renewal.

G. Consumer Rights and Remedies: Consumer contracts in India should address the rights of consumers and the remedies available to them in case of breach or dissatisfaction with the goods or services provided⁴⁵⁰.

H. Limitation of Liability: This section may outline the extent of liability of the service provider in case of damages or losses incurred by the consumer.

I. Dispute Resolution: The contract should specify the mechanism for resolving disputes, which could include arbitration, mediation, or the jurisdiction of the courts.

J. Governing Law: The contract should state the applicable law that governs the agreement, which is usually the law of the state or union territory where the contract is formed.

K. Data Privacy and Consent: If the contract involves the collection or processing of personal data, it should include provisions related to data privacy and consent in compliance with relevant Indian laws and regulations⁴⁵¹.

It's important for consumers to carefully read and understand these key elements before entering into any contract. Additionally, businesses should ensure that their contracts comply with the consumer protection laws in India, such as the Consumer Protection Act, to avoid any legal issues and to maintain fair and transparent dealings with their customers.

IV. How Digitalization is Changing Consumer Contracting

Digitalization, the process of incorporating digital technologies into business operations, has significantly transformed the way consumers and businesses engage in contractual agreements. Here are some key reasons how digitalization is changing consumer contracting⁴⁵²:

A. Ease of Access: Digitalization has made it easier for consumers to access a wide range of goods and services from the comfort of their homes. Online platforms and e-commerce websites allow consumers to browse and purchase products and services with just a few clicks. This convenience has led to an increase in digital contracts between consumers and service providers.

B. Speed and Efficiency: Digital contracts facilitate faster and more efficient transactions. With electronic signatures and online payment methods, contracts can be executed and payments processed quickly, reducing the time-consuming paperwork and administrative processes associated with traditional contracts.

C. Global Reach: Digitalization has removed geographical barriers, enabling consumers to engage with service providers from around the world. Consumers can access products and services that were previously unavailable or difficult to obtain locally, resulting in a more diverse range of consumer contracts⁴⁵³.

D. Personalization: Digital platforms collect vast amounts of data on consumer behavior and preferences, enabling businesses to personalize their offerings and tailor contracts to individual consumers. This personalization enhances the overall customer experience and strengthens the consumer-provider relationship.

⁴⁵⁰ Micklitz, Hans-W. "The expulsion of the concept of protection from the consumer law and the return of social elements in the civil law: a bittersweet polemic." *Journal of consumer policy* 35.3 (2012): 283-296

⁴⁵¹ Flavián, Carlos, and Miguel Guinalú. "Consumer trust, perceived security and privacy policy: three basic elements of loyalty to a web site." *Industrial management & data Systems* 106.5 (2006): 601-620

⁴⁵² Kerber, Wolfgang. "Digital markets, data, and privacy: competition law, consumer law and data protection." *Journal of Intellectual Property Law & Practice* (2016): jpw150

⁴⁵³ Zech, Herbert. "A legal framework for a data economy in the European Digital Single Market: rights to use data." *Journal of Intellectual Property Law & Practice* 11.6 (2016): 460-470

E. Automation and AI⁴⁵⁴: Digitalization has integrated automation and artificial intelligence (AI) into various aspects of consumer contracting. AI-powered chatbots and virtual assistants can handle customer inquiries and provide support, while automated systems can process and analyze contracts more efficiently.

F. Transparency and Information Sharing: Digital platforms allow consumers to access a wealth of information about products, services, and contract terms before making a decision. This increased transparency empowers consumers to make more informed choices and reduces the information asymmetry often present in traditional contracts⁴⁵⁵.

G. Recurring Billing and Subscription Models⁴⁵⁶: Digitalization has popularized subscription-based services and recurring billing models. Consumers can enter into ongoing contracts with service providers, granting access to products or services for a specified period, with automatic renewals. These models offer convenience for consumers but also require careful attention to contract terms and cancellation procedures.

H. Challenges of Digital Contracts: Digital contracts come with their own set of challenges, such as data privacy concerns, cybersecurity risks, and potential issues with electronic signatures' validity⁴⁵⁷. The legal and regulatory landscape surrounding digital contracts is still evolving, and both consumers and businesses must stay informed and compliant.

I. Remote Collaboration: Digitalization facilitates remote collaboration between consumers and

service providers. This is particularly significant during situations like the COVID-19 pandemic, where physical interactions may be restricted. Digital contracts have allowed business operations to continue despite challenging circumstances.

V. The Role of Consumer Protection Laws

Consumer protection laws are designed to regulate the relationship between consumers and businesses, ensuring fairness, transparency, and accountability in the marketplace⁴⁵⁸. Here are some key aspects of their role:

A. Ensuring Fairness and Equity: Consumer protection laws aim to create a level playing field between consumers and businesses by prohibiting unfair and deceptive practices. They prevent businesses from taking advantage of consumers' lack of knowledge or bargaining power.

B. Providing Information and Disclosure: These laws often require businesses to provide clear and accurate information about their products and services to consumers⁴⁵⁹. This includes details about pricing, terms, conditions, warranties, and any potential risks associated with the purchase.

C. Reducing Information Asymmetry: Consumer protection laws address information asymmetry, where businesses possess more knowledge about products and services than consumers⁴⁶⁰. By mandating disclosure and transparency, consumers can make informed decisions based on complete and accurate information.

⁴⁵⁴ Ebers, Martin, Cristina Poncibò, and Mimi Zou, eds. *Contracting and Contract Law in the Age of Artificial Intelligence*. Bloomsbury Publishing, 2022.

⁴⁵⁵ Mengay, Adrian. "Digitalization of work and heteronomy." *Capital & Class* 44.2 (2020): 273-285.

⁴⁵⁶ Staudenmayer, Dirk. "The Directives on digital contracts: first steps towards the private law of the digital economy." *European review of private law* 28.2 (2020).

⁴⁵⁷ Giliker, Paula. "Implementing Directive 2019/770/EU on Contracts for the Supply of Digital Content and Services: A common law perspective." *EU Private Law and the CISG*. Routledge, 2021. 15-36.

⁴⁵⁸ Prasad, A. Rajendra. "Historical evolution of consumer protection and law in India." *Journal of Texas Consumer Law* 11.3 (2008): 132-136.

⁴⁵⁹ Verma, D. P. S. "Developments in consumer protection in India." *Journal of Consumer Policy* 25.1 (2002): 117-123.

⁴⁶⁰ Nathani, Suhail, and Pinar Akman. "The interplay between consumer protection and competition law in India." *Journal of Antitrust Enforcement* 5.2 (2017): 197-215.

D. Regulating Unfair Contract Terms: Consumer protection laws often prohibit or regulate unfair contract terms that may be one-sided and disadvantageous to consumers. Such terms may include excessive penalties, automatic renewals without consent, or limitations on consumer rights.

E. Establishing Consumer Rights and Remedies: These laws define consumer rights and provide legal remedies in case of breaches or disputes. This may include the right to cancel contracts within a cooling-off period, the right to seek compensation for damages, or the right to refund for defective products⁴⁶¹.

F. Product Safety and Quality: Consumer protection laws set standards for product safety and quality, ensuring that goods sold to consumers meet certain safety requirements. They may also hold businesses liable for selling defective or hazardous products.

G. Regulating Unfair Trade Practices: These laws address various unfair trade practices, such as false advertising, misleading claims, bait-and-switch tactics, and aggressive sales techniques. Businesses are prohibited from engaging in practices that deceive or coerce consumers.

H. Online Consumer Protection: With the growth of e-commerce, consumer protection laws have adapted to address online transactions, data privacy, cybersecurity, and electronic contracting.

I. Promoting Consumer Education and Awareness: In addition to regulating businesses, consumer protection laws may promote consumer education and awareness programs to empower individuals with the knowledge to make informed decisions and protect their rights⁴⁶².

Businesses must be aware of and comply with these laws to maintain a positive reputation, build customer loyalty, and avoid legal consequences. Meanwhile, consumers can rely on these laws to assert their rights and seek redress when facing issues with products or services they purchase.

VI. Addressing Cross-Border Consumer Contracts

Cross-border consumer contracts refer to contractual relationships between consumers and businesses located in different countries. These contracts can present unique challenges and require careful attention to legal and practical aspects to ensure fairness, compliance, and successful interactions. Here are the key considerations:

A. Applicable Laws and Jurisdiction: One of the primary challenges in cross-border consumer contracts is determining which country's laws apply and which courts have jurisdiction in case of disputes.⁴⁶³ Businesses must be aware of and comply with consumer protection laws in both their home country and the consumer's country.

B. Choice of Law and Forum Selection Clauses: To address jurisdiction and law concerns, businesses may include choice of law and forum selection clauses in the contract. These clauses specify the governing law and the chosen court or arbitration venue to resolve disputes.

C. Language and Communication: Clear and accurate communication is crucial in cross-border consumer contracts. Businesses must ensure that the contract terms are translated into the consumer's language to avoid misunderstandings and disputes arising from language barriers.

⁴⁶¹ Sahoo, Sheetal, and Aman Chatterjee. "Consumer Protection-Problems and Prospects." *Available at SSRN 1452526* (2009)

⁴⁶² Venugopal, Pulidindi, P. Vijayakumar, and M. Varun Kumar. "CONSUMER AWARENESS AND ROLE OF EDUCATIONAL INSTITUTIONS." *A Journal of Radix: International Educational and Research Consortium* 1.5 (2012)

⁴⁶³ Wulf, Alexander J. "Who would Use the Common European Sales Law? An Empirical Analysis of Cross-Border Consumer Contracts in the European Internal Market." *Wulf, AJ" Who would Use the Common European Sales Law* (2016): 31-50

D. Currency and Payment Mechanisms: Businesses should consider the currency in which payment will be made and any associated exchange rate implications. Providing multiple payment options can make it easier for consumers to transact across borders.

E. Compliance with International Trade Regulations⁴⁶⁴: Cross-border consumer contracts may involve the import and export of goods or services, necessitating compliance with international trade regulations, customs duties, and tariffs.

F. Data Protection and Privacy: When personal data is involved in the contract, businesses must comply with data protection and privacy laws in both their home country and the consumer's country.

G. Consumer Rights and Remedies: Businesses should understand the consumer rights and remedies provided by consumer protection laws in different jurisdictions. This includes rights to cancellation, refunds, and warranties.

H. Dispute Resolution Mechanisms: Consideration should be given to the most suitable dispute resolution mechanism for cross-border consumer contracts. Arbitration or mediation may be preferred to avoid complex and costly litigation across borders.

I. Shipping and Delivery: For contracts involving physical goods, businesses must address shipping, delivery, and customs clearance to ensure a smooth and timely delivery process.

J. Cultural and Business Practices: Understanding the cultural norms and business practices in the consumer's country can help businesses tailor their offerings and communications to better serve the consumer.

K. Customer Support and Service: Providing accessible and responsive customer support can instill trust and confidence in cross-border consumers.

L. Contract Termination and Renewals: Clearly define the conditions for contract termination and renewal to avoid disputes and ensure consumer rights are protected.⁴⁶⁵

Engaging legal experts with expertise in international contracts and consumer protection laws can help businesses navigate these complexities and build successful and mutually beneficial cross-border relationships with consumer.

VII. Conclusion

The evolving landscape of consumer contracts presents businesses, consumers, and policymakers with a complex and dynamic maze to navigate. As explored in the subtopics, various factors are shaping this landscape, including the rise of consumer contracts and the shifting dynamics between consumers and service providers. Understanding the key elements of consumer contracts, such as fine print and standard form agreements, is essential to promote transparency and fairness in the contracting process. Furthermore, the impact of technology, particularly digitalization, is revolutionizing how consumer contracts are formed and executed. While this provides convenience and accessibility, it also brings new challenges, such as data privacy concerns and the need for informed consent. Amidst these changes, the role of consumer protection laws remains paramount. These laws act as a safeguard to ensure fairness, equity, and consumer rights in contractual agreements. Businesses must remain compliant with such laws to build trust with consumers and avoid legal consequences. Selecting the appropriate dispute resolution mechanism is critical in

⁴⁶⁴ Rühl, Giesela. "Alternative and Online Dispute Resolution for Cross-Border Consumer Contracts: A Critical Evaluation of the European Legislatures Recent Efforts to Boost Competitiveness and Growth in the Internal Market." *J. Consumer Policy* 38 (2015): 431

⁴⁶⁵ Rühl, Giesela. "Alternative and online dispute resolution for cross-border consumer contracts: a critical evaluation of the European Legislature's recent efforts to boost competitiveness and growth in the internal market." *Journal of Consumer Policy* 38 (2015): 431-456

addressing contract-related conflicts effectively. Choosing between arbitration and litigation, for instance, can significantly impact the efficiency and finality of the resolution. Moreover, as e-commerce and online shopping become increasingly prevalent, businesses must address the unique challenges posed by digital contractual agreements. Data privacy, cybersecurity, and ensuring secure online transactions are vital aspects to consider in this context. The complexity of the global marketplace introduces the need to address cross-border consumer contracts. Legal and practical considerations, including jurisdiction, choice of law, language, and cultural norms, play a pivotal role in establishing successful cross-border relationships.

Hence navigating the maze of consumer contracts demands a comprehensive understanding of the evolving dynamics, legal frameworks, and technological advancements. By addressing these challenges head-on, businesses can foster positive relationships with consumers, while consumers can make informed decisions and assert their rights in an increasingly complex contractual landscape. Through collaboration, transparency, and proactive strategies, stakeholders can collectively shape consumer contracts for a more equitable and sustainable future.

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