

Study of the E-Commerce Rules, 2020 of Ed-Tech Companies under the Consumer Protection Act, 2019

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Abstract

On 23rd July 2020 the government under powers conferred by the Consumer Protection Act, 2019 enacted the Consumer Protection (E-Commerce) Rules, 2020 which aimed at regulating the e-commerce sector of our country. The need for such rules was mainly twofold. First, our country's e-commerce sector has witnessed exponential growth in the last decade in terms of both revenue and size, making our nation one of the fastest expanding E-commerce marketspaces in the world. Second, the Covid-19 pandemic had bolstered the growth of e-commerce platforms over the physical markets. Before these rules, the Ed-tech industry was largely unregulated, so the importance of such regulations cannot be overstated. These rules will organise the industry and bring the online consumers at par with the conventional consumers. However, Ed-tech companies will now be required to select either of the two e-commerce models, as recognised by the rules, to comply with these rules.

Keywords: Consumer Protection Act, E- Commerce, E-Commerce Rules 2020, Ed-tech companies.

INTRODUCTION

E-Commerce refers to placing orders for products and services using computer networks, however both online and offline transactions may be used for payment and final delivery **Eurostat (2019)**.

The OECD defines E-commerce as a new way of conducting business, qualifying it as business occurring over networks that use non-proprietary protocols established through an open standard-setting process such as the Internet.

In the last ten years, this online market channel has rapidly expanded; **Orendorff (2019)**. Ecommerce sales are anticipated to increase by 19.5% from the previous year to \$4.891 trillion in 2021; **Oberlo (2021)**.

The beginnings of e-commerce can be traced to the 1960s, when businesses started using Electronic Data Interchange (EDI) to share

business documents with other companies. In 1979, the American National Standards Institute developed ASC X12 as a universal standard for businesses to share documents through electronic networks. E-commerce is conducted using a variety of applications, such as email, online catalogs and shopping carts, EDI, File Transfer Protocol, and web services. This includes business-to-business activities and outreach such as using email for unsolicited ads (usually viewed as spam) to consumers and other business prospects, as well as to send out e-newsletters to subscribers. More companies now try to entice consumers directly online, using tools such as digital coupons, social media marketing and targeted advertisements.

Around 2010, the country's education sector witnessed the entry of many Ed-tech start-ups into the market. The Ed-tech companies in India follow diverse business models. For instance, sub-licensing of Ed-tech platforms to Indian subsidiaries or supplying services directly to the

customers, etc. The monetisation strategies followed by these companies also vary. For instance, a company may monetise through advertisement revenue or subscription revenue or franchisee income, or a combination of all.

The Consumer Protection Rules, 2020 were brought in by the government on July 23rd, 2020, to control the unfair trade practices in e-commerce. Though the 2020 Rules were primarily devised to regulate the conventional e-tail businesses, the broad definition of the expression "e-commerce entity" has advertently or inadvertently covered Ed-tech companies within its ambit. Before these rules, the Ed-tech industry was largely unregulated, so the importance of such regulations cannot be overstated. These rules will organise the industry and bring the online consumers at par with the conventional consumers.

Since the last decade, online education in India has already been a booming industry; however, due to the Covid-19 pandemic, the Ed-tech sector has witnessed unparalleled growth in a very short period. Universities and schools worldwide had no alternative but to acclimatise to deliver lectures/classes by utilising Ed-tech tools. Consequently, the world witnessed an upsurge in educational applications, hardware, and software solutions targeting remote learning. In March 2019, Byju's added 6 million new users in a single month. Other Ed-tech platforms like Unacademy, Udemy, Vedantu experienced a massive rise in their subscriber base due to the pandemic.

The 2020 Rules will apply to those Ed-tech companies only that charge a fee for their courses/services/products offered. Therefore, an Ed-tech platform which offers courses for free on its website, will not have to comply with the 2020 Rules.

REVIEW OF LITERATURE

According to Hargreaves & Fullan (2015), online system of teaching has been emerged due to e-learning and online coaching classes. In recent years technological advancement has taken place and various major changes in the learning of students and teaching pedagogy has been changed in relation to online platform.

Seldon & Abidoye (2018) in their study emphasized that Ed tech companies needs to create awareness and to work hard to for fulfilling the requirements of customers.

Kishore & Shah (2019) in their study highlighted that in today's scenario parents have focused on ed-tech platforms as an alternative method of education apart from the schooling of their child.

The study of Nicola, Alsafi, & Sohrabi, 2020, highlighted the issues and challenges faced by the students during COVID-19 and they emphasized on the government role regarding up on-scale related to student participation through e-learning approaches. The problem which has been occurred due to lockdown related to education, online education proved to be beneficial for the uncertain future of education and students in India.

According to Behler (2020) The EdTech firms of India showing significant increases in their user registration and engagement since the lockdown. The platforms of EdTech companies leading to an increase in the registration process and time spent on social networking sites and platforms.

Mukherjee (2020) in the study emphasized that before COVID 19 parents and students were using limited E-learning, but after lockdowns they are forced to increase the usage of E-learning platforms.

According to Nagar (2020), after the lockdown as the date of lockdown was getting extended, education institutes realized they needed to

switch their teaching methods to continue the education of students and so, they went online.

Rajkumar&Ganapathy (2020) in their study emphasized that EdTech startups are seeing their numbers grow by the minute. In March alone, Byju's saw 6 million new students' access free lessons on its platform, while unacademy recorded 1 billion watch minutes. Another EdTech Topper saw 100% growth in free engagement in March.

Raj Dev Singh &Yash Raj (2020) in their study emphasized that the growth of Ed-tech companies are much in recent years and number of customers have also increased. The research concluded that Ed-tech companies which are considered e-commerce entity have to comply with the Rules to prevent any untoward liability in the future.

BalachandranVishawanathan&Arunima K.V. (2021)in their study concluded that the Consumer protection Act 2019 in relation to rules and regulations of Ed-teach companies leads to safeguard the consumers to very much extent, no doubt, but has the capacity to create serious implication on various channels of business.

Malaya Joshi (2021) concluded that the 2020 Rules have created a more rigid and robust framework for protecting the rights of consumers and the interest of all the stakeholders by modulating the activities of the e-commerce entities. Though the 2020 Rules were primarily devised to regulate the conventional e-tail businesses, the broad definition of the expression "e-commerce entity" has advertently or inadvertently covered Ed-tech companies within its ambit. Before these rules, the Ed-tech industry was largely unregulated, so the importance of such regulations cannot be overstated. These rules will organise the industry and bring the online consumers at par with the conventional consumers.

Aniket A. Panchal&Gauransh Gaur (2021) concluded that Ed-tech companies operating as private coaching institutes would be subject to consumer protection laws under the Rules. However, when they are operating on a freemium model, they will be amenable to the Rules but only for those aspects which are being provided for a fee. Secondly, these companies would also be required to comply with the Rules when they would be operating in the form of a marketplace e-commerce model by acting as an intermediary between students and private coaching centres. Lastly, educational institutes providing online courses or educational training, or any Ed-tech company providing online courses and training, would not be subject to the Rules owing to the ratio propounded in the P.T. Koshyjudgement.

RuchiMehrotra Joshi et al. (2021)analyzed a number of Indian laws to protect consumers in the Cyber world. The authors would also discuss the relevance of the Consumer Protection Act, 2019, UNCITRAL established by the United Nations General Assembly in 1996 adopted the Model Law of Electronic Commerce in 1996. The legislations and regulations have helped strengthened the e-commerce industry both operations and customer satisfaction. The Consumer Protection Act has helped in enhancing the consumer rights and satisfaction and even curtail the unfair trade practices both in B2C and B2Bsegments.

SahanaPriyaSatish&RaghaviRajagopalan(2022) in their study concluded that the introduction of the e-commerce rules places an increased responsibility on the conduct of business by EdTech companies that have grown and profited tremendously, especially during the coronavirus pandemic.

According to Abhishek Gupta (2022)The past few years has seen a fast increase in the number of clients on the platforms of Ed-tech companies. India Ed-Tech Consortium (IEC), a self-regulatory group founded a few days ago,

has pledged to “adhere to the Code of Conduct and develop a two-tier Grievance Redressal Mechanism” following the flurry of advisories and warnings. It can be said that an effective data protection laws, definite consumer protection laws, and effective functioning of the IEC is needed to ensure sector’s long-term viability as well as safety of the users of such Ed-Tech Platforms.

According to Sanchit Gupta & Vaibhav (2022) The education sector in India has been regulated by the Government. The governments both in the centre and in states have brought in various schemes and guidelines to encourage safe and ethical growth of these online sources of learning.

OBJECTIVES OF THE STUDY

- To review the scope of Consumer Protection (E-Commerce) Rules, 2020.
- To study the compliances required under the Consumer Protection (E-Commerce) Rules, 2020.

RESEARCH METHODOLOGY

Research methodology shows the set-up of the research, the design of the research and the pattern of the research. It is blue print and planning sheet of the whole research.

RESEARCH DESIGN

In the present research study researcher used exploratory research method to review the scope of Consumer Protection (E-Commerce) Rules, 2020, to review the compliances required under the Consumer Protection (E-Commerce) Rules, 2020.

SCOPE OF CONSUMER PROTECTION (E-COMMERCE) RULES, 2020

The Act extends to:

1. All the goods and services are bought or sold online and also includes digital products.
2. To keep checks on all forms of unfair trade practices across all e-commerce channels.

The scope of this Act extends to the e-commerce entities that are based abroad but offer their services for the buyers and sellers in India.

Disclosure of information

Under the new Rules of 2020, every e-commerce entity must provide information such as:

1. Entity name;
2. Address of every branch and main headquarters;
3. Details of its website;
4. Contact details.

This will help the consumer in knowing about who he/she is dealing with and ensure absolute transparency. The 2020 Rules will apply to those Ed-tech companies only that charge a fee for their courses/services/products offered. § 2 (42) explicitly states that "service does not include a service rendered free of charge". Therefore, an Ed-tech platform, say X, which offers courses for free on its website, will not have to comply with the 2020 Rules. Now, a pertinent question arises as to how the rules will apply to Ed-tech companies that follow a freemium model, whether the rules will be applicable only for their paid services or for all the services. For example, an ed-tech platform like Unacademy follows this type of model to increase its customer base.

Unacademy is a platform that provides preparation material for various educational entrance and professional exams. On the platform, a student can access most of the material free of charge. However, to learn from an expert in a field, attend their online classes

and gain access to the best material, one needs to purchase a Plus Subscription from Unacademy. A person who utilises the free services offered by the platform cannot file a complaint against Unacademy, broadly for two reasons: The free service available by the person is not a service under § 2 (42), as mentioned earlier. Since free service is not a service under the COPRA, the person cannot file for deficiency of service. The person using free service will not be a consumer under § 2 (7) (ii) of the COPRA, as a consumer is a person who "hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment" Since, there exists no quid pro quo in the transaction, a contract was never entered between the person and the platform. Without paying or promise to pay or partly paying the consideration, a person will not come under a 'consumer' definition.

COMPLIANCES REQUIRED UNDER THE CONSUMER PROTECTION (E-COMMERCE) RULES, 2020

1. Applicable to all e-commerce entities

There are certain compliances which are applicable to all e-commerce entities. Some of the key compliances are:

- (a) Nodal officer: The Rules also require e-commerce entities to appoint nodal officers or an alternate senior designated functionary who is resident in India, to ensure compliance with the Act.
- (b) Explicit consent for purchase: As per the Rules, recording consent of a consumer's purchase of any goods or services should only be by way of an explicit and affirmative action. Consent cannot be recorded automatically (including in the form of pre-ticked checkboxes).
- (c) Grievance redressal mechanism: Entities must establish an adequate grievance

redressal mechanism and appoint a grievance officer for consumer grievance redressal. Name of the entity with its address of its headquarters and branches, designation and contact details (email, phone etc.) of the grievance officer and customer care must be displayed prominently on the platform. This can be achieved by updating the website terms. Obligation to appoint grievance officer already exists under rules framed under the Information Technology Act, 2000. What is important to know is that e-commerce entities are required to ensure that the grievance officer acknowledges the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint.

Additional compliances pertaining to levy of cancellation charges after purchase, refunds, price manipulations, differentiation between class of customers etc. are also provided in the Rules.

2. Applicable to marketplace and inventory e-commerce entities

Some common compliances for both marketplace and inventory e-commerce entities include providing the following information in a clear and accessible manner to the customers:

- (a) Information on returns, refunds etc.: It is now mandatory to provide information on return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, any other similar information which may be required by consumers to make informed decisions.
- (b) Payment methods: Necessary information on payment methods and security of those payment methods must be provided to consumer.
- (c) Other information required to be provided includes any fees or charges

payable by users, the procedure to cancel regular payments under those methods, charge-back options, if any, and the contact information of the relevant payment service provider.

3. Applicable to inventory e-commerce entities

- (a) No fake reviews: Inventory e-commerce entity cannot falsely represent itself as a consumer and post reviews.
- (b) Return and refund in case of defect: Platforms are required to provide refunds if services are defective, or if the goods or services are not of the characteristics or features as advertised;
- (c) Advertising standard: Advertisements need to be honest and consistent with actual characteristics, access and usage of goods or services offered.

Inventory based platforms who vouch for the authenticity of goods or services (explicitly or impliedly) can be liable for actions taken in relation to authenticity of goods or services sold through the platform.

4. Applicable to marketplace e-commerce entities:

- (a) Undertaking by sellers: Entities must ensure that sellers provide an undertaking to the entity to the extent that all descriptions, images and other content pertaining to the goods or service provided are accurate and correspond directly to the appearance, nature, quality, purpose and other general features specified in the undertaking;
- (b) Information: The following information must be provided in a clear and accessible manner on the platform:
 - Details about the sellers
 - An explanation of the main parameters which are most significant in determining the ranking of goods or sellers on its platform

- (c) Terms and conditions: The terms and conditions of the entity with its sellers must provide a description of any differentiated treatment which it gives or might give between goods or services or sellers of the same category.

In addition to the above, the Rules also provide duties for sellers on marketplaces. Some such duties include:

- (a) Written contract: Sellers must have a prior written contract with the entity;
- (b) Information from sellers: Sellers must provide certain information to the e-commerce entity for display on its platform including total price with breakup of all charges, all mandatory notices and information provided by applicable laws; information on the goods/services offered, name and other details of the seller's grievance redressal officer;
- (c) No fake reviews: Similar to the inventory model, sellers also are prohibited from posting fake reviews on the platform;
- (d) Return and refund in case of defect: Sellers are required to provide refunds if services are defective, or if the goods or services are not of the characteristics or features as advertised.

CONCLUSION

With such a huge demand in society, regulation of these companies seems vital. However, with various provisions given the consumer protection rules seem to have answered questions on the regulation of these to a large extent. These rules aim to bring transparency and accountability and provision for a grievance redressal mechanism to the consumers. However, some areas are yet to be filled and only time will tell whether they will be or not. The Consumer Protection (E-Commerce) Rules 2020 have created a more rigid and robust

framework for protecting the rights of consumers and the interest of all the stakeholders by modulating the activities of the e-commerce entities. Though the 2020 Rules were primarily devised to regulate the conventional e-tail businesses, the broad definition of the expression "e-commerce entity" has advertently or inadvertently covered Ed-tech companies within its ambit. Before these rules, the Ed-tech industry was largely unregulated, so the importance of such regulations cannot be overstated. These rules will organise the industry and bring the online consumers at par with the conventional consumers. The wide scope of the e-commerce definition has advertently or inadvertently covered Ed-tech companies within its ambit. Now, the Ed-tech companies will have to comply with § 4 of the 2020 Rules, which provide for duties, such as, entities should not impose any cancellation charges on the consumers cancelling after confirming purchase unless the entity itself incurs similar charges; appoint a grievance officer for consumer grievance redressal etc. that an e-commerce entity shall fulfil. The 2020 Rules recognise two types of E-commerce models - Marketplace E-commerce and Inventory based E-commerce. Companies will have to decide their business models, as both models accompany different liabilities with them, and any violation of those would attract the provisions of the COPRA.

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