

An Analysis of Consumer Protection in E-commerce Transaction in Bangladesh: Challenges and Legal Remedies

Shiffat Sharmin

*Professor, Department of Law, University of Chittagong,
Chattogram, Bangladesh.*

Ainun Jariah

*Assistant Professor, Department of Law, University of Chittagong
Chattogram, Bangladesh.*

Abstract

With the rapid growth of technology, a transition from physical commerce to e-commerce or online commerce has been observed globally in recent years. However, the protection problem of e-consumers' rights have impeded the development process. Despite several advantages of e-commerce like easy access, time saving, availability, wider choice etc., the legal and security risk, insufficient information, low customer service are still major threats in digitalized market. Therefore, a secure and reliable system is essential for e-commerce firms to work successfully. Laws governing consumer rights protection in e-commerce influence consumers' trust which is more necessary in e-commerce than in offline trade. Specific and separate law regulating electronic transactions will increase fair competition, healthy growth of market and most importantly, protect the rights and interests of e-consumers and merchants. Hence, an attempt has been made out in this paper to focus on the challenges as well as to analyze the legal environment and compliance regarding e-commerce. Also, the paper further endeavors to find out the possible ways for safeguarding e-consumers rights in general.

Keywords: e-commerce, information technology, security, e-consumer protection, dispute resolution.

Date of Submission: 11-03-2023

Date of Acceptance: 25-03-2023

I. Introduction

Over the last few years, ecommerce has become an integral part of the global retail framework and is rapidly growing as an impressive phenomenon of globalization. E-commerce's dominant role in the retailing industry is being re-illuminated in the Covid-19 pandemic era, which has substantially changed our everyday lives. Following the advent of the internet, most brick and mortars have been trying to transit their primary business channel into the network environment and thanks to the ongoing digitalization of modern life, consumers from virtually every country now profit from the perks of online transactions. As internet access and adoption are rapidly increasing worldwide, and with close to 5.16 billion global internet users, the number of people making purchases online is ever-increasing (DataReportal, 2022).

At present, online shopping is one of the highest global growth sectors. Global e-commerce sales are expected to rise to a total of \$6.3 trillion worldwide in 2023 and this upwards trend looks set to continue (Bernhardt, 2022). As per the report, of the total global retail sales in 2023, 20.8% is expected to come from online purchase and by 2026, it is estimated that overall e-commerce share of retail sales will hit 24%. The platform has come a long way from the first secure retail transaction in the mid-90's, and now traditional brick-and-mortar retailers are increasing their online presence in droves.

In recent times, Covid 19 has changed the way the world operates and made people more dependent on online shopping platforms as restrictions were imposed on public movement and social gathering. Contactless transactions are safer, and lockdowns have given people no choice but to use online platforms to purchase goods, which turned out to be a blessing in disguise for the e-commerce industry. Although the restrictions are eased now in many countries, including Bangladesh, the 'new normal' has seen dramatic reasons in online shopping trends for apparent reasons. A recent report by the Asian Development Bank (2022) predicts that e-commerce sector of Bangladesh will triple in size by 2023. The report also projects that the local e-commerce sector is expected to be worth tk. 26,000 crore or \$3 billion in 2023 from its current \$1 billion market size (Asian Development Bank,

2022). However, with such promising growth, the real concern is whether the numbers are sustainable to carry forward into the future and provide enough incentive for innovation.

E-commerce has introduced a new word of ease and convenience in shopping in Bangladesh. Customers won't find large queues near cash counter, the hassle of carrying heavy shopping bags, or traffic on the internet. Unlike local stores, online businesses are always open, customers can look for necessary products by using search engines, get an extensive range of products in front of them to explore and select from a wide variety after comparing the features, quality and cost of products shown on display. Thus, online stores give consumers an ability to make an informed purchase decision without wasting their energy, time and money commuting from one shop to another.

Although these facts may make online shopping look like the best course of action, there are many downsides and adverse effects too. On the one hand, ecommerce is more and more accepted by consumers in the competitive business world with its convenience, availability, affordability, plenty of choices, better competition, high speed of shopping and so on. On the other hand, it has introduced some challenges too in the form of intrusion to customer privacy, misuse of personal data, misrepresented products, long delivery period, return as well as refund issues and violation of consumers' variety of rights (Shaik & Poojasree, 2020). The increasing number of activities taking place in the e-commerce sector alarms about the protection of online consumers and their interests. Therefore, for the proper functioning of e-commerce sector, safety and security of e-consumers are of prime importance. If the issues of consumer rights and security are not adequately addressed with legal provisions and mechanisms, it may adversely affect the fair competition, healthy growth of ecommerce market and most importantly may lead to fraud and deception on consumers rights and interests in their dealings. Hence, this paper attempts to examine and discuss the interface between consumer protection and ecommerce activities under the legal perspective and the recent trends in ecommerce in Bangladesh. Furthermore, the paper focuses on the challenges faced by the e-consumers in digital transaction as well as analyzes how far the existing laws and policies can be applied to ensure the rights and mitigate the sufferings of e-consumers. Moreover, the paper further endeavors to find out possible measures for protecting e-consumers' rights and interests in general to ensure their safe electronic transaction in the virtual world.

Ecommerce trends in Bangladesh:

An abbreviated form for "Electronic Commerce", e-commerce mainly corresponds to commercial activities carried out through electronic mode and digital platforms. It is an expansive field and encompasses the exchange of goods and services with the help of online platforms, and the transfer of money and data to execute these transactions. E-commerce is often used to refer to the sale of physical products online, but it also covers any kind of commercial transaction that is facilitated through the internet (Bloomenthal, 2022). Whereas e-business refers to all aspects of operating an online business, e-commerce refers specifically to the transaction of goods and services which is carried out by electronic means. In its basic form, it involves placing orders and making payments via the internet. Thus, the internet has become a major instrument for e-commerce activities in advertising, identification, payment and exchange of assets and services.

The e-commerce sector in Bangladesh is expanding rapidly towards a digital first culture, driven by customers rising need for convenience. Ecommerce can take a variety of forms involving different transactional relationships between businesses and consumers, as well as different objects being exchanged as part of these transactions. Currently, in Bangladesh, e-commerce activities follow two types of business models. One is the "retail or inventory led" model, where e-commerce platforms buy products wholesale and caters to retail customers. Since the e-commerce space in Bangladesh is mostly teemed with ventures focusing on lifestyle products, there is a prevalence of the "retail or inventory led" model. Chaldal, Pickaboo and Bagdoom are doing business with this model. The other is the "marketplace or zero inventory" model, here e-commerce business acts as trustee between vendors and consumers. Popular e-commerce websites like Daraz, Bikroy.com follow this model. Besides these two models, some e-commerce sites operate in different modalities, known as "mercantile" model. Ajkerdeal.com one of the leading e-commerce ventures in Bangladesh follow this model. They merely act as an online marketplace, without having to maintain inventories. The merchants make the delivery in exchange for a small commission of 8% to 10% depending on the type of product (Industrial Development Leasing Company, 2018).

Another modality in e-commerce is discerned in Bangladesh. A handful number of e-commerce companies sell uncommon products like organic fruits and vegetables and local handicrafts items. Directfresh is an agri-tech startup, which trains the farmers on cultivation, procures products from them and sell to the customers via their online stores. Darpan, another e-commerce venture works with local handicrafts artisans.

E-commerce activities mainly took place on two different platforms, through websites and Facebook. F-business or Facebook based business has been growing steadily since FB introduced its 'LIVE' feature. Facebook pages did well with low investment because they could reach their targets easily; whereas websites needed more investment for advertising to reach the market and extra cost for website building etc. However, these F-commerce

frequently fail to fulfill the customer's order and customers cannot take any legal steps as the shops do not operate within any legal framework.

The evolution of ecommerce in Bangladesh can be traced back in late 90s, when only few non-residents Bangladeshi used ecommerce services to send gifts to their near and dear ones residing in Dhaka. During 2000-2008, ecommerce observed a slow growth here due to the lack of infrastructure, online transaction system and high cost of internet service (E-commerce in Bangladesh, 2021). The overall situation changed rapidly in 2009 with the approval of online payment system in the country by the Bangladesh Bank, and WiMax Internet was the first provider to launch the service (Islam, 2019). However, a decent growth has been observed in 2012-2013 when Akhoni and Ajkerdeal, the two ecommerce sites introduced themselves to the e-retailing sector. In the last couple of years ecommerce service providers have launched their own services. As an example, from 2012, rokomari.com started to sell books in Bangladesh following the basic structure of Amazon. Another one, Bikroy.com provides buying as well as selling options for the consumers in their platform. Chaldal made the mark in e-grocery space, being the first of its kind in Bangladesh. Two very well-known food delivery platform Food Panda and Hungry Naki are getting very positive response from food lovers. Independent freelancers, small businesses, and large corporations in Bangladesh have all benefited from ecommerce, which enables them to sell their goods and services at a scale that was not possible with traditional offline retail.

Ecommerce has become a bustling business in Bangladesh today. According to a report by the Ecommerce Association of Bangladesh (2021), there were more than 2500 ecommerce platforms in Bangladesh, of which 1% are large businesses, 4% medium, and 95% small businesses, while around 1600 ecommerce entrepreneurs were registered with e-cab as its members (The Dhaka Tribune, 2022). E-commerce has helped businesses; especially those with a narrow reach like small businesses gain access to and establish wider market presence by providing cheaper and more efficient distribution channels for their products or services. At present, this sector comprises over 40,000 individuals and more than 30,000 SMEs (Islam, 2020). E-commerce transactions increase the growth of GDP, lead to higher income, upgrade living standard for individuals, and boost market expansion, increased sales and exports possibilities; thus, rising production and tremendous growth in opportunities for jobs (Wahab, 2018).

A recent report of the International Trade Administration (2022) shows that the fast rate of internet adoption, improvement in logistic communications, continuous improvements in online banking, and mobile finance service (MFS) have played a crucial role in the growth of ecommerce. The spread of smart phones and a young vibrant generation brought more shoppers into this nascent e-commerce ecosystem. Also, the thriving mobile financial service (MFS) across all the parts of the country is reinforcing the e-commerce space of Bangladesh as the most popular payment method. According to e-commerce entrepreneurs, their customers are taking comfort in paying with bKash and pleased with its occasional cash back offers. Rocket by Dutch Bangla Bank Limited (DBBL) follows the path shown by bKash. Online payment platforms like iPay, uPay have already tagged with some major e-commerce companies.

Despite the benefits of e-commerce, some perceived disadvantages of ecommerce include limited customer service, the site may only provide support during certain hours, or its online service may be difficult to navigate. Limited product experience or examination of the product prior to purchasing is another drawback faced by consumers. Viewing images on a webpage can provide a good sense about a product, but it's different from experiencing it directly. The need for "trust" is even greater in ecommerce than in offline trade (Mandal, 2016). Businesses have not been successful in creating trust in ecommerce and in many countries consumer protection laws remain weak. Hence, the primary responsibility to protect e-consumer interests rests on the government. Legal regulations play a crucial role in building consumer confidence and safeguarding consumer rights thereby leading to greater e-consumerism, which will benefit the trio partners i.e., businesses, consumers and society.

Necessity of e-consumer protection:

Ecommerce is vibrant and an ever-expanding business model. The ecommerce transactions with its unique features of easy accessibility, wide availability and unboundedness serve several benefits. No doubt these features are supporting the immense growth of e-consumers but at the same time the risk factors for using the internet for e-shopping are also increasing. Commercial organizations are well organized, better informed and have a better dominating position over consumers in the market (Khare & Rajvanshi, 2013). This advantageous position leads them to exploit the consumers easily. Hence, the consumers need to be protected through adequate consumer protection mechanisms to uphold their rights.

Consumer protection is directly linked with the idea of 'consumer rights. At the global level, for the first time, former US President John F. Kennedy, in his speech in the US Congress (1962) extolled four basic rights of the consumers, known as "Bill of Consumer Rights", which include i) right to safety, ii) right to be informed iii) right to choose, and iv) right to be heard. Later, under the guidance of Consumers International, four more rights were added to the list, which are; i) right to satisfaction of basic needs, ii) right to redress, iii) right to consumer education, and iv) right to a healthy environment (Consumer International, 2010).

All these rights have been endorsed by the United Nations as well in the UN Guidelines for Consumer Protection. Following the UNGCP, Bangladesh enacted the Consumer Protection Act in 2009 with a view to provide protection to consumers who are shopping physically or on traditional modes. But, at present there is no similar legal framework that covers all situations where one purchase goods on the internet by electronic transactions.

Generally, the rights of a consumer as provided in the CPA can be availed by electronic consumers as no special stipulation has been framed in the enactment regarding applicability or non-applicability of electronic transactions. But due to differences in the nature and place of business or medium of business, some unique practical problems like place of business, delivery issues, insecurity, disclosure of information, non-availability of dispute resolution system are indispensable in case of electronic transactions, which certainly requires special measures that are not provided in the existing consumer legislation. This implies that the rights of consumer and e-consumer, though equal in theory, are different in operation and enjoyment. Ironically, “consumers rights” are not defined or listed in the CPA, it merely recognizes several ‘anti-consumer rights practices under sec 2(20), such as untrue and false advertisement of goods and services in terms of standard, quality, quantity etc., misleading public as regards the price at which they are fixed, manufacturing fake goods, selling goods after date has expired etc. But these issues arising in context of online or distance selling remain unanswered in traditional consumer protection law. Many organizations exploit consumers by supplying inferior quality goods at higher prices, others adopt unfair trade practices such as adulteration, hoarding, black-marketing, and so on. This practice deprives consumers of getting value for their money as well as puts them under the risk of economic exploitation by the big companies.

Consumer protection is vital, but often ignored issue in developing countries, and Bangladesh is no exception. In a country like Bangladesh, with a rapidly growing consumer base, protection mechanisms for e-consumers are of paramount importance. Such protective mechanism, in the broader sense, refers to the laws and regulations that ensure fair interaction between service providers and consumers. Protection of consumers empowers the consumers and makes them more confident. Thus, it helps competition among business sandspurs economic growth.

Hence consumer protection is crucial not only to fight the battle for providing adequate protection to consumers’ rights in the emergent global market but also to ensure social, ethical and professional responsibility of business organizations under the perspective of healthy business growth and success. Considering these aspects, a distinct and adequate set of rules and regulations are required to counter the challenges of consumer protection in e-commerce transaction, which will enhance consumer confidence and trust in online transaction and increase competitiveness among businesses so that consumers can avail quality goods and services at fair price. The next segment analyzes a few challenges faced by consumers while making any transaction virtually.

Challenges faced by e-consumers:

The e-commerce business in Bangladesh has multiplied in the past few years and changed the way consumers shop. People are relying more on online discount sales and schemes, with major companies launching their products exclusively on online shopping websites with huge cash back offers to lure people to shop online. Hence, with an increased number of e-commerce websites and frequent purchases from these portals, problems faced by consumers in e-commerce have also expanded. It is noteworthy that Bangladeshi customers are still reluctant to place complete confidence and trust in commercial online transaction. Compared to conventional offline customers, online customers face greater risk in cyberspace because they negotiate with unknown vendors and suppliers (Chawla &Kumar, 2021).

Consumer complaints on e-commerce continue to be on the rise each year. A culture of not reporting cases and the absence of any national data on how much the digital-era consumers are losing each year to frauds in Bangladesh has made any assessment difficult. With the rapid rise of Digital Financial Services (DFS), Mobile Financial Services (MFS), and use of debit and credit cards, more people have fallen into traps by fraudsters. In Bangladesh, 9.3% MFS users experience frauds, which are over 11% among the e-commerce consumers, reveal a study by the Cyber Crimes Awareness (CCA) Foundation(Babu, 2022). According to CCA report, 11.48% e-commerce customers in Bangladesh was deceived in 2020, up from 7.44% in 2019.The Policy Research Institute (2022) informed that nearly one in every ten MFS users reportedly suffered frauds, mostly due to compromised PIN, scams involving impersonation, hacked account, stolen data or e-money.

It is a matter of regret that 30,000 complaints have been lodged by customers to the Directorate of National Consumer Rights Protection over the last few years (Wardad, 2022). These complaints were filed between July 2017 to September 2022 against 47 e-commerce companies and a few hundred Face book-based entities, which reflects that service quality of e-commerce entities has regularly been deteriorating. Of the 30,000 or so complaints, nearly half of them are against two companies, namely Evaly and Eorange, while running businesses like Daraj, Food panda, Uber, Bikroy.com, othoba.com and others have a good number of complaints. The rising numbers of malpractices by these sites are taking a heavy toll on consumers particularly the middle

class. Some of the recurrent ethical and legal issues faced by the online consumers when indulged in purchasing products online are discussed as follows:

i) Phishing or security issue

Online identity theft, (commonly known as phishing) can be described as the practice of pretending to be someone else on the internet. It is a tactic that targets victims primarily through emails and SMS. Emails appear to be from a legitimate source, but the main objective is to steal the victim's personal information or log in credentials by using impersonation (Mandal, 2016).

In phishing technique, cyber criminals masquerade as legitimate business and send emails to clients to trick them into revealing personal sensitive information by simply presenting them with a fake copy of legitimate website or anything that allows the recipients to believe the request is coming from genuine business and to lure them into divulging personal information. A fake website for a fictional business can be created easily in a very short span and often not much contact information is provided, for example, the only contact information available could be just a free or web-based email address. If the victim falls prey to the scam and enters his credentials, identity theft is likely to occur, and money may be moved to the fraudster's account or used to make online transactions directly by the perpetrator. These links may also contain malware that can corrupt the victim's entire computer system.

Thus, phishing, an evolving form of cybercrime, mainly threatens data privacy and has the potential to cause devastating financial damage to both customers and businesses. Successful phishing attacks often lead to identity theft, credit card fraud, ransomwares attacks, data breaches, and huge financial losses for individuals and corporations (Rao, 2021). Apart from the exorbitant amount of financial damage, it also affects the market share, reputation of an organization and most importantly shakes the trust of the consumers. As people lose faith in the reliability of electronic commerce methods, companies lose their customer base.

ii) Hacking or online fraudulence

Data breaches through hacking incidents have become a significant phenomenon in the world of online shopping. With the rise in e-commerce, hackers are targeting more e-commerce websites with increasingly sophisticated methods of stealing data. In certain cases, major personal and financial information, bank details may be derived through insignificant level of hacking from unsecured websites. Data breaches can result in the loss of personal, sensitive data belonging to customers stored on millions of websites. Websites that allow customers to make transactions are the most targeted by hackers. Customer credit card information is the most stolen item during data breaches into the system of unsecured shopping websites. Once the hacker has enough information to impersonate someone's online persona, all sorts of fraud can be executed.

Upon improper access to such information, consumers become vulnerable to unapproved purchases. Information like mailing addresses also has the potential of being misused for exploitation. Often such exploitation can be harder to detect, and their effects can be felt by victims in the real world. Customers of online shopping are rarely given the option to choose what information they should provide to the website for the transaction. Often a transient piece of information for the completion of a transaction may be enough to put a customer at risk after a data breach. Customers may not engage in online shopping, if personal information might be at risk and monetary loss can be a potential outcome.

iii) Insufficient information disclosure

With online shopping, often consumers are left with unanswered queries due to lack of transparency in communication. Misinformation or non-information about business, goods, services, quality, description, features of product, uses, compatibility, full price including taxes, delivery costs, warranties and guarantees, after sales service and safety related information cause a huge detriment to consumers in online markets. E-commerce marketplaces often charge hidden costs after the purchase is finalized by the consumers. Websites hide tax charges, additional shipping and handling charges from consumers till purchases are confirmed.

Lack of information about ordering process, contract terms, at least about the technical steps to be followed to conclude a contact, expected delivery time and method, order tracking system, merchandise and delivery practices, transaction confirmation and cancellation policies have been primary consumer concern. Moreover, products are often lost or damaged while in transit, and order tracking systems are unable to accurately locate the product.

Website information remains inadequate on a significant proportion of sites and the number of complaint websites in terms of information is also low. Many shopping websites have no website policies at all or have unclear and confusing user, return and refund policy. Vague stipulations leave consumers confused about the return and refund of products. Some websites are also unclear with regards to warranty and guarantee on products and buyers often end up purchasing faulty products with no warranty or replacement option. With no defined policies, cancellation terms, exchange policies, sellers reject a consumer's claim to return the product or refund the money.

As internet companies are web shops that can be created in a couple of hours, can be operated from anywhere at distance, consumers need information that allows them to assess the reliability of the e-retailer. The e-retailer's identity, place of registration, physical location, contact details are often difficult to locate. E-mail domains, designation of websites, electronic address or home pages do not necessarily relate to the place of business of the supplier (Patil & Narayanan, 2014). Hence, lack of information or low quality or obscure information provided by the seller is a key issue which remains a challenge in online shopping.

iv) Lack of electronic payment system

Lack of payment options is another issue faced by consumers while purchasing online. There are times when options like cash on delivery are unavailable, or debit card they use is not acceptable as a payment option. Khan (2020) notes that even though there are several payment methods like Net Banking, Debit and Credit Card payments, often payment failure happens due to website's server error, payment gateway error or issues with One Time Payment (OTP). Technical glitches often deduct the payment from buyers account or card, but the website does not receive the payment (Priti, 2020). With increasing online frauds most customers want to choose cash on delivery option, many are skeptical about sharing bank or credit card details. Also, the non-availability of safe and secure payment options leads to consumers' dissatisfaction. The complicated payment process also bothers the consumers. Clarity of discounts, coupons, offers and different tax structure in bills also impact consumer shopping experiences.

The above discussion shows that e-commerce is intimidating the risk of violation of consumers' basic rights in e-commerce transactions. An analysis of the existing legal framework on the protection of e-consumers' rights are put forward in the next section which will depict the clear picture of present situation.

E-consumers' protection: Bangladesh legal perspective

In the legal arena of Bangladesh, on the one hand we have the Consumers' Right Protection Act of 2009, ensuring the protection of basic consumers rights and providing the mechanism to claim remedy under the specific forum system, and on the other hand, we have some provisions in the Contract Act of 1872, the Sale of Goods Act of 1930, the Digital Security Act of 2018, and the Information and Communication Technology Act of 2006 among others to encounter the challenges faced by the consumers in e-commerce transactions. These enactments provide the regulatory framework for commercial matters, but they all severely require modifications to include the different facets of e-transactions. Hence, it becomes imperative here to critically analyze the relevant legislations to examine their effectiveness in providing remedy to consumers' grievances.

The CPA, 2009 guarantees the consumer's interests and rights in the event of 'anti-consumers rights practices' under section 2(20), but the Act is silent about e-commerce or online consumers. There is neither any specific provision in the Act nor any separate law to regulate online commercial activities to protect the interests of online consumers. Ambiguity is still prevalent as to whether the CPA enacted specially for protecting consumers' rights will be applicable for online buyers and sellers engaging in online commercial activities.

The CPA, 2009 prohibits misleading people with false advertisements in order to sell a product and made it an infringement of consumer's right. (Consumer Protection Act, 2009). A buyer can only see the image of a product and read the description while shopping online. Sometimes the advertisements are false and misleading whereby consumers get only deceptive description about the product. Often it happens that after receiving the advance payment, the owner closes his business page without delivering the product or deliver damaged expired or unusable goods in the end. So, the question arises regarding the remedy available to consumers in case substandard products are delivered. The existing law, for example, sec 44 & 45 of the CPA deals with offences and punishments if the product is not up to the quality or if the buyer is cheated by the seller. Likewise, the Sale of Goods Act of 1932 ensures that a purchaser receives a certain quality of product and sets out their rights if the product is below standard. However, the crucial matter is that the above laws do not declare clearly whether these provisions will be applicable to the product which is bought virtually.

In online shopping, the virtual buyer engages into a contract with the virtual seller before purchasing any product. Such a contract entered electronically raises few valid questions, such as, whether an electronic contract is legally binding and to what extent it can be used as evidence in the event of a breach. However, under the Contract Act of 1872, there is no specific provision or solution relating to such virtual contract, although the elements of an offline contract (an offer, acceptance and consideration) are identical to those of a contract of online marketing. But the existing legal framework does not recognize such online transactions as contract for sale of goods. Ironically, the Sale of Goods Act is completely silent on online offers or descriptions or samples of a product or its similar acceptance. Moreover, the Act includes a provision for warranty and acknowledges that inspecting goods before purchasing is one of the consumers' rights, but there is no scope of such inspection while one is purchasing online (The Sale of Goods Act, 1930).

It is a common criterion of online shopping that one must give his or her phone number, address and other personal details while shopping. In the context of Bangladesh, there are no specific rules or code which will explain how the private information and data given to the seller will be protected. In other words, which law will

they follow respecting data protection or privacy policy of their valuable customers? In this regard the Information and Communication Technology Act (2006) provides offences, investigation, adjudication and penalties under Chapter 7 (Sections 54-67), among which only section 63 deals with the privacy policy that could be used as a protection regarding online shopping. Moreover, section 54 of the Act provides punishment where any person without due permission downloads, copies or extracts any data, computer database or information from any network, system or removable storage medium. 'Hacking' as per se is not defined in ICT Act of 2006, but section 56 is incorporated to deal with the offence of hacking with computer system where punishments are provided, if any person intentionally or knowingly, does any act of hacking. However, this remedy can be available only where it is proved that damage is being done to the public or any person either intentionally or knowingly. Correspondingly, there are no specific provisions in the CPA regarding issues of loss of personal privacy of the information revealed by the consumers in e-commerce transactions.

Under section 21 of the CPA, the Director General is empowered to receive and dispose of consumers' complaints and no individual complaint can be entertained without the written permission of the Director General of the Consumer Rights Protection Department. When complaints arise out of online transactions, the complainant hardly has any chance for remedy. Moreover, when the transactions are completed through digital payment methods and goods are delivered through courier service or deliverymen, there is no scope of compensation even if the goods get damaged or are not the same as described. This problem arises solely for the lack of specific provisions regarding the delivery and receipt of the goods sold through digital platforms. The CPA does not talk about the damages by way of compensation, where damages are being suffered by the insecure payment methods.

Though ICT Act of 2006 has provided for Cyber Tribunal (section 68) for addressing the matters relating to contravention of the provisions of ICT Act of 2006, matters of consumer protection are specifically to be enforced under the consumer redressal forum created under CPA. So, it creates confusion as to where one should plea the matter of the violation of consumers' interest in e-commerce transactions.

The ICT Act of 2006 has no specific provision which covers consumer protection in the e-commerce industry. Basically, the ICT Act secures commercial activities taking place in business to government and government to business in a larger environment. An ordinary person never enters such a big transaction through the electronic medium, rather engages in online banking, online shopping and such transactions. The ICT Act is silent with respect to protection of ordinary customers' interest in e-commerce industry. The protection of interests of these consumers is also vital for the progressive development of e-commerce industry.

With an object of ensuring digital security, identification and prevention of crimes committed through digital device, the Digital Security Act of 2018 declares 'digital or electronic fraud by using any digital or electronic medium' (sec23) and 'identity fraud or personation through computer network or system' (sec 24) as offences. Moreover, unauthorized use of identity and personal information of any person and transmission, publication of such data has been declared as punishable offences. These offences take place quite often on e-commerce platforms. Hence, remedies can be sought through liberal interpretation of sections 23 to 26 of the Digital Security Act of 2018, in case of breach of confidentiality and data privacy through digital device in online transactions.

In addition, in 2021, Ministry of Commerce issued Digital Commerce Operation Guidelines as a successor of National Digital Commerce Policy of 2018, which has created accountability in digital commercial operations by ensuring enhanced transparency in digital business practice. The Operation Guidelines of 2021 have detailed explanations about different aspects of online transactions. As per the guidelines, if any personal information of consumer needs to be stored and used, consumer's prior consent must be obtained (sec 3.1.7) which is a safeguard against identity theft. Unfortunately, the rules in the Digital Commerce Policy and the Operation Guidelines have no binding effect and no enforceability as these are not laws passed by the legislature. The most regrettable matter is that both e-commerce policy of 2018 and guidelines of 2021 lack redressal procedures. In the absence of dispute redressal mechanism, if anyone violates the directions, they will not be punished. Hence, the Operations Guideline of 2021 needs to be updated and revised to ensure the interests of e-consumers.

II. Suggestions:

It is apparent from the foregoing paragraphs that though existing legal provisions may help the e-consumers, they neither recognize online transaction exclusively nor have any direct provision protecting the rights and interests of online consumers. Hence, a consolidated and comprehensive law for regulating online transaction and protecting electronic consumers' rights is a crying need of the time. In the alternative government can insert new provisions under existing relevant Acts to deal with the issues or disputes arising out of e-commerce transactions. In this regard, the NDCP of 2018, has enormous potential to progress the sector, but the implementation will take a long time. Since the Policy will not be implemented immediately, the CPA and the ICT Act need significant amendments and modifications to expedite the uprising e-commerce platform. The assessment of the e-commerce legal arena of Bangladesh leaves some room for recommending quite a few steps

and measures that should be undertaken by the policy makers for full-fledged implementation of e-commerce. The recommendations are as follows:

- >The definition or list of the anti-consumer rights practices in the CPA is a narrow one which needs to be amended and a proper code of conduct should be outlined to address ill practices.
- > The phrase “online” should be inserted in the relevant laws which can assist to alleviate peoples’ sufferings in the virtual commercial world.
- > Under the CPA 2009, when dealing with complaints arising out of online transactions arises, the complainant has hardly any chance for remedy. So, if section 45 of the CPA, 2009 is amended to incorporate the phrase “online service or transaction”, it will be easier to provide remedy in complaints arising out of online business.
- >Amendment of the National ICT Policy and the ICT Act is required to address issues regarding electronic payment, anti-spamming and crimes committed through mobile phones.
- >There should be an EFT (Electronic Fund Transfer) Gateway, which will connect all finance and banking institutions, ATMs, POS and related websites and speed up the transactions among banks and commercial institutions.
- >The government should compel the banking sectors to automate their operation and go online within a specific period to improve banking mechanism. International credit cards should be issued in an easier and prompt way and control of foreign exchange should be liberalized gradually.
- >A timeline must be set for the online business to get enlisted on the commerce website which will require the owner’s details for keeping a record. After a certain time, no business will be allowed to be operated without being enlisted.
- >Digital proof of purchase should be introduced with assistance from current transaction mode so that an individual shall be able to file a complaint using the receipt as evidence through an app or a google doc form.
- >Both E-commerce Policy 2018 and Guideline 2021 lack redressal procedures. There should be provisions of ADR to resolve disputes between marketplace and supplier, carrier and consumers etc. And those mechanisms should be clearly stated and communicated properly to the stakeholders.
- >All sorts of online business enterprises be verified with personal national IDs of their admins and owners as well as consumers. The concerned government regulatory authority such as the BTRC should collaborate with online platforms to preserve the information of online business entities.
- > Awareness about the choice of portals, websites, privacy, digital financial literacy should be increased by introducing effective programs as that can help the consumers to assess the risks and benefits of entering into transactions.

III. Conclusion:

The practice of digital marketing is improving with the advancement of technology, which, in turn, fosters multifaceted opportunities and at the same time poses unprecedented challenges for the marketers. The prevalence of deceptive practices and irregularities in the market depicts that government must intervene to safeguard consumers’ rights by recognizing and upholding their rights in legal instruments. Consumer protection law enables consumers to obtain accurate, transparent information about business, transaction process, risks and prevents them from being misled by businesses as well as ensures that businesses can be held accountable. Consumer demand drives innovation and economic growth as businesses are required to maintain fair prices and good quality products. E-commerce can achieve its fullest potential only when online consumers are afforded the same level of protection as conventional consumers and have the confidence that if something goes wrong, they will have recourse to easy, cheap and quick redressal of their grievances. Hence, there is an urgency to enact separate and well-defined legal framework through a separate regulatory body and central complaint cell to ensure reliability and accountability in the marketplace. This will create a greater incentive for consumers to shop online more frequently and stimulate the overall economy by increasing productivity, encouraging innovation and creating job opportunities.

Reference:

- [1]. Asian Development Bank. (2022). ADB Working Paper Series. <https://www.adb.org/sites/default/files/publicatio/767786/adbi-wp1305.pdf>
- [2]. Babu, M. U. (2022, October 19). Digital Economy grows fast leaving consumers exposed to frauds. The Business Standard. <https://www.tbsnews.net/economy/digital-economy-grows-fast-leaving-consumers-exposed-to-frauds-516390>
- [3]. Bernhardt. (2022). Global E-commerce Sales Growth Report for 2021-2016. Shopify blog. <https://www.shopify.com/blog/global-e-commerce-sales-growth-report-2021-2026>
- [4]. Bloomenthal, A. (2022). E-commerce Defined: Types, History and Examples. Investopedia. <https://www.investopedia.com/terms/e/e-commerce.asp>

- [5]. Chawla, N. & Kumar, B. (2021). E-commerce and Consumer Protection in India: The Emerging Trend. *Journal of Business Ethics*, 180, 581-604. <https://doi.org/10.1007/s10551-021-04884-3>
- [6]. Consumer International. (2010). Consumer Rights. <https://www.consumerinternational.org/who-we-are/consumer-rights>
- [7]. DataReportal. (2022). Digital around the World. <https://datereportal.com/global-digital-overview>
- [8]. Industrial Development Leasing Company. (2018). E-commerce in Bangladesh: Shaping the Future of Shopping. *IDLC Monthly Business Review*, 14(8). <https://idlc.com/mbr/article.php?id=136>
- [9]. International Trade Administration. (2022). Bangladesh Country Commercial Guide. <https://trade.gov/country-commercial-guides/bangladesh-e-commerce>
- [10]. Islam, M. A. (2019). Impact of Covid-19 on E-commerce Industry of Bangladesh. (Volume 2). New Vision Solutions Limited. <https://newvision-bd-com/wp-content/uploads/2020/05/impact-of-covid-19-on-e-commerce-industry-of-bangladesh>
- [11]. Khare, R. & Kajvanshi, G. (2013). E-commerce and Consumer Protection: A Critical Analysis of Legal Regulations. *International Journal on Consumer Law and Practice*, 1(6). <https://repository.nls.ac.in/ijclp/vol1/issue1/6>
- [12]. Khan, S.S. (2020, January 11). E-commerce in Bangladesh: Where are we heading. *The Financial Express*. <https://thefinancialexpress.com.bd>
- [13]. Mandal, S.N. (2016). E-consumers' Protection in India. *Global Journal of Management and Business Research: E Marketing*, 16(6), 1-10. <https://globaljournal.org/item/6416-e-consumers'-protection-in-india>
- [14]. Patil, A.R.,& Narayan, P. (2014). Protection of Consumers in Cross-border Electronic Commerce. *International Journal on Consumer Law and Practice*, 2(4). <https://repository.nls.ac.in/ijclp/vol2/issue1/4>
- [15]. Policy Research Institute. (2022). The State of DFS Consumer Protection in Bangladesh. <https://www.pri-bd.org/economy/the-state-of-dfs-consumer-protection-in-Bangladesh>
- [16]. Priti, T.R. (2020, July 4). E-commerce and Protecting the Rights of Consumers and Sellers during Pandemic. *The Business Standard*
- [17]. Rao, S. (2021, August 19). Analyzing the Impact of Phishing on E-commerce Business. <https://blog.ipleader.in>
- [18]. Shaik, D. & Poojasree, M. V. (2020). Consumer Protection in E-commerce: Legal and Compliance Framework in the Digital Market. *Advances in Social Science education and Humanities Research*, 549, 18-23. <https://creativecommers.org/licenses/by-nc/4.0/>