



DISSERTATION

ON

**E-commerce and Protection of Consumer Rights in the Legal
Perspective of Bangladesh**

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Declaration

I, Mir Shafaet Ullah proclaim that the thesis on **E-commerce and protection of consumer rights in the legal perspective of Bangladesh**, has been solely completed by me, wherever any quote from others job has been mentioned, the source is provided every time. Except those quotations, this thesis is wholly worked of my own.

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Abstract

This research is focused on identifying consumer legal rights and determining whether existing laws in Bangladesh involving online marketplace consumers protect those rights. The goal of this academic study is to analyze and investigate the current legal framework protecting consumer rights in order to determine the current state of virtual consumers. This article also attempts to determine whether e-commerce customers' rights are protected by laws, as well as to identify the gaps in such regulations in Bangladesh that are connected to consumers. This thesis paper is based on qualitative content analysis study with the goal of defining the status of virtual customers in Bangladesh under current legislation and assessing the amount of conformity with UNCTAD's UN Guidelines on Consumer Protection (UNGCP). This thesis paper looked at various countries' perspectives and attempted to do a comparative analysis in terms of protecting virtual customers' rights. It also proposes changes to rules and regulations to ensure that necessary procedures be made for virtual consumers and that their rights and safety are ensured fairly.

List of Abbreviations

CRP	Consumers' Right Protection
CEC	Control of Essential Commodities
CAB	Consumers Association of Bangladesh
DCRP	Directorate of Consumers Right Protection
EA	Essential Articles
ICT	Information and Communication Technology
SG	Sale of Goods
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNGCP	United Nations Guidelines on Consumer Protection
UK	United Kingdom

Chapter I

1.1. Introduction

In this era of digitalization, people have been enabled to get their everyday necessities in the palm of their hands by the grace of the internet. Nowadays, people because of their melancholic lifestyle try to save time from their daily activities like shopping, entertainment, and many other things. E-commerce is the most convenient and effective form of shopping for people to save time. E-commerce sites have given access to people to get clothing, electronics, food, daily groceries, and many other things delivered at their doorsteps. E-commerce in Bangladesh is helping a huge number of jobless people to become self-sufficient. Despite having many advantages of e-commerce, it also has some drawbacks and most noteworthy issues among them are online fraudulent and incapability of protecting consumer rights. Sometimes privacy and data of consumers are also compromised through online shopping. The e-commerce sites trade their client details to other sites or companies without permission.¹

1.2. Scopes

The scope of this research is limited to a review of existing laws in Bangladesh that safeguard consumer rights in the digital marketplace. It assesses how consumer rights laws are applied and ineffective in the digital realm, as well as how they should be implemented and amended at the national level to protect consumers' rights.

1.3. Objectives of the study

- A. To examine the laws and rules governing the protection of consumer rights in the digital marketplace
- B. To analyze the laws and provisions' application and inefficacy

¹ Md. Mohiuddin "Overview the E-Commerce in Bangladesh" (July, 2014) IOSR Journal of Business and Management (IOSR-JBM), Volume 16, Issue 7. Ver. I <<http://www.lostjournals.org/iosr-jomupapers/Vol16-issne7/Version-2/A016720106.pdf>> accessed 16 March, 2022

C. To find serious flaws in present statutes

D. To assess the provisions in both the international treaties and national legislations that protect consumer rights

E. To provide some recommendations for e-commerce or online marketplace consumer rights protection

1.4. Methodology

This thesis can be described as qualitative research that depends on content analysis and focuses on the existing legislation in Bangladesh regarding the rights of online marketplace users, including its applicability and inefficacy. This thesis explains what already exists while also aiming to find a fresh strategy to reforming laws to defend the rights of online marketplace customers. The current status of online marketplace users in Bangladesh is examined using a descriptive manner. As a result, this thesis relies on main sources like national statutes, case law, rules, and regulations, as well as secondary materials like blogs, online journals, newspapers, articles, magazines, and reports, as well as other internet sources.

1.5. Limitations

The lack of resources, Bangladesh's case rules, and time constraints are all limitations of this study. I was unable to uncover enough materials about the protection of the rights of online marketplace consumers due to the nature of the study topics and restricted resources. As a result, this research is solely dependent on relevant journal publications, web materials, and other academic resources.

1.6. Research Question

Whenever it is the matter of the protection of e-commerce consumer rights, there are a number of questions that might arise. However, this research was limited to the following question. The following question will be alluded in order to achieve the research's goal:

- (a) Are the existing laws in Bangladesh capable enough to protect the rights of the consumers in the online marketplace?
- (b) Do the existing laws in Bangladesh which deal with e-commerce consumers need to be amended to protect the rights of e-commerce consumers?

Chapter II

Current Scenario of Virtual Shopping in Bangladesh

2.1. Introduction

The concept of a virtual marketplace was introduced a lot later in Bangladesh compared to other countries. Despite the late market acquisition, the virtual marketplace spread its operation very rapidly.² The concept of virtual shopping was introduced in Bangladesh in the late 90s and its popularity since then is increasing very fast.³

2.2. Concept of virtual shopping and current situation

The E-commerce industry saw good progress between 2000 and 2008.⁴ A lot of websites are there, but there is a great lack of a good online transaction system, some extent this may be the first requirement of web site based shopping. When Bangladesh Bank allowed online payment in 2009, the actual virtual market appeared. As a result, the E-commerce sector was officially launched.⁵ It is worth mentioning that the year 2013 was a watershed moment in Bangladesh's e-commerce history.⁶ As part of the ICT Business Promotion Council's assistance, the Bangladesh Association of Software and Information Services (BASIS) and Bangladesh Bank jointly observed "E-Commerce Week" for the first time in the country.⁷ Online shopping is a more limited version of e-commerce, which came into prominence later.

² Ibid

³ Md. Shafiqul Islam, "E-Commerce in Bangladesh- Growth and Challenges" (March, 2018) IOSR Journal of Business and Management (IOSR-JBM), Volume 20, Issue 3. Ver. 5 <<http://www.iosrjournals.org/iosr-jibm/papers/Vol20-issue3/Version-5/B2003051015.pdf>> accessed on 20 March, 2022

⁴ Ibid, PP 11

⁵ Bangladesh e-Commerce sector, e-Commerce in Bangladesh <<http://e-cab.net/resource-center/bangladesh-e-commerce-sector/>> accessed 20 March 2022

⁶ Ibid

⁷ Ibid

2.3. Role of regulatory authorities

The e-business or virtual shopping was started a decade ago in Bangladesh since then there were some regulatory shortages. Because of those lacking, fraudsters got a chance to take advantage of the situation. In recent times some incidents have compromised the image of virtual marketplace and shopping. When the customers have been cheated by many e-commerce sites, they started to complain against them to the regulators under the ministry of commerce responsible for dealing with the issues related to e-commerce. The Directorate of National Consumer Right Protection (DNCRP) mainly regulates the e-commerce sector in Bangladesh. DNCRP monitors the issues and unusual matters consumers face.⁸

2.4. Revolution of E-commerce marketplaces in Bangladesh

People in Bangladesh are aware of online shopping through a variety of sources, including websites, social media (such as Facebook, Twitter, and Instagram), newspapers/magazines, and so on.⁹ According to e-Cab sources, this industry has grown by 100% in Bangladesh during the last three years.¹⁰ To put it another way, this company is virtually tripling in size every year. Alibaba, a Chinese company, is currently the market leader in Bangladesh's e-commerce business. Bangladesh is also appealing to Amazon, the world's largest e-commerce giant. With the acquisition of Daraz, Alibaba had already penetrated the Bangladeshi e-commerce market. Alibaba Group purchased Daraz Group, one of Bangladesh's biggest e-commerce enterprises, in 2018. In June 2020, a projection of Daraz said that by 2021, it will invest \$59 million in Bangladesh to improve its e-commerce logistics infrastructure, including its warehouse and sorting facility.¹¹

⁸ 'Move to regulate e-commerce' The Financial Express (Dhaka, 24 September 2021)

⁹ Mohammad Toufiqur Rahman, 'Customers' Attitude towards Online Shopping: The Case of Bangladesh' (July, 2016) World Journal of Social Sciences, Vol. 6. No. 2

¹⁰ Abir Hasan, 'The growth of e-commerce during the pandemic in Bangladesh' New Age (Dhaka, 23 August 2020)

¹¹ Md Swaid Sameh, 'The Emergence of E-commerce in Bangladesh And Its Growth' (2021) RG

<https://www.researchgate.net/publication/354997107_The_Emergence_of_E-commerce_in_Bangladesh_And_Its_Growth> accessed 27 March 2022

2.5. Conclusion

Customers now like virtual shopping because it saves time and customers get many categories of products and can buy product of their choice from this virtual platform.¹² Generally customers buy different types of products from virtual platform, including garments, online tickets, accessories, health care products, books, and other items.¹³ Finally taking all the aforementioned information into account it can be said that people in Bangladesh have become dependent on the virtual shopping system to a great extent.

¹² Jubayer Suhan, 'Acceptance of Online Shopping in Bangladesh: Consumer's Perspective' IOSR-JBM, Volume 17, Issue 1. Ver. II (Jan. 2015), PP 14-24

¹³ Ibid

Chapter III

Prevailing Issues of Virtual Shopping in Bangladesh

3.1. Introduction

Taking the circumstances into account till this date, virtual marketplace or shopping has proven its reliability.¹⁴ Despite those numerous issues have arisen in the process of virtual shopping. Digital forgery or fraudulent, unorganized websites and transaction methods, errors in deliveries, and many other issues have become quite visible in the sector of virtual trading and shopping, which is giving consumers unpleasant experiences in recent days.

3.2. Issues and insecurities of virtual shopping

Various reasons have demotivated consumers to be involved in virtual shopping. Financial uncertainty, a lack of human interaction, technological failure, unorganized interface design, unexpected service encounters, information overload, a static website, and organizational limits are prime reasons behind virtual shopping disinclination of people and they are also causes of online shopping's low adoption in Bangladesh and many other nations.¹⁵ Online shopping is difficult and risky, with high product costs and lengthy delivery times. One of the system's flaws is its lack of trustworthiness.¹⁶ A number of customers believe that the product's delivery time is excessive. The majority of customers thought the product's delivery fee was excessive. Many customers agreed that under any Act or rule, the delivery charge is more than the predetermined price. Some buyers believe they defraud customers by making false or misleading claims in order to sell products or services. A large majority of buyers acknowledged that they do not deliver any items or services promised to sell or deliver in a timely manner. Some customers believe that the items or services they sell or deliver are of lower quality than what they

¹⁴ Ana Maria, 'Top 10 E-commerce Websites in Bangladesh' MyBangla24.Com (13 June 2021) <<https://mybangla24.com/ecommerce-websites-bangladesh>> accessed 26 March 2022

¹⁵ Shankar, V., Smith, A. K., and Rangaswamy, A., 'Consumer Satisfaction and Loyalty in Online and Offline Environments' (2003) IJM, 20, pp 153-175

¹⁶ Jubayer Suhan, 'Acceptance of Online Shopping in Bangladesh: Consumer's Perspective' (2015) IOSR Journal of Business and Management, Volume 17, Issue 1.Ver. II, PP 14-24

promised to sell or deliver.¹⁷ It is critical to have a return or refund policy. The majority of customers believe that every online store should have a return or refund policy. Surprisingly, a big proportion of customers claim they are unsure where to seek redress in the event of an online store's fraud. The majority of buyers feel that internet purchasing should be governed by a detailed set of rules.¹⁸

3.3. Limitations of e-commerce organizations

There are several issues and limitations e-commerce organizations contain at this moment. The E-commerce website development and maintenance process is the most noteworthy issue. Because of poor web design and maintenance consumers most of the time fail to understand product lineups, their specifications and quality. Poor internet connectivity is also one of the limitations those organizations have. But this issue is less mentioned in most of the study. Most of the time dial up, broadband and office automation is seen as a mode of internet usage. There is no separate mode of connectivity for e-commerce sites to conduct their business seamlessly.¹⁹ Another limitation e-commerce sites have is consumers cannot try or examine anything before they buy. Another limitation is inability to deliver at the promised time because of late shipment from the international buyers, traders, and dealers.²⁰ The most essential issue expected in this regard is payment system agreement. People has trust issues as most of the e-commerce sites preserves the bank details of the consumers and there are high risks of getting the bank accounts hacked and most of the times those websites in their terms and conditions deny to take liabilities of these kind of problems as they write the terms and conditions in very small fonts which are hardly visible, so people show reluctance to read those.²¹

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ohidujjaman; Hasan, M., Huda, M.N., 'E-commerce Challenges, Solutions and Effectiveness Perspective Bangladesh' (2013) IJCA (0975 – 8887) Vol 70

²⁰ Nicole Martins Ferreira, '20 ECOMMERCE ADVANTAGES AND DISADVANTAGES YOU NEED TO KNOW' (OBERLO, 20 December 2019) <<https://www.oberlo.com/blog/20-ecommerce-advantages-and-disadvantages>> accessed 5 April 2022

²¹ Ohidujjaman; Hasan, M., Huda, M.N., 'E-commerce Challenges, Solutions and Effectiveness Perspective Bangladesh' (2013) IJCA (0975 – 8887) Vol 70

3.4. Conclusion

Despite a rapid growth of virtual shopping and marketplace the aforementioned issues and limitations are being the reason for people's disinterest in virtual shopping. Data privacy and transaction insecurities are demotivating people from doing virtual shopping. E-commerce organizations are losing people's trust gradually for not being able to fix the issues and limitations they have and not being able to secure the shopping and transaction modes of the consumers.

Chapter IV

An Overview of Laws Protecting the Rights of E-commerce Consumers in Bangladesh and International Obligations

4.1. Introduction

This Chapter discusses the definitions of e-commerce consumers to identify and also discusses the rights of the consumers which actually they have as consumers and understand who actually they are and are the existing laws in Bangladesh are capable of protecting the rights of e-commerce consumers, as there is a very less systematic empirical study that has been carried out in Bangladesh to give an in-depth insight of e-commerce consumers rights protection, and also about their legal rights under the Constitution and the Consumers' Right Protection Act 2009 (CRP) in Bangladesh.

4.2. The Existing Rights of the E-Commerce Consumers and Protection of E-commerce Consumers under the CRP Act, 2009 in Bangladesh

The rights of consumers are the initial human rights in general. E-commerce consumers are considered as consumers and a large part of the consumers are e-commerce consumers and the law is actually designed to protect the rights of the consumers so that consumers are not deceived²². The rights of consumers are stated in Articles 15 and 18 of the People's Republic of Bangladesh Constitution, which covers the field of citizens' general rights²³. The right to food security is a key concept of public policy for sustainable lifestyles, according to Article 15²⁴. According to Article 18, public order must promote public health and nutrition while also preventing alcohol and drug misuse²⁵. So, after analyzing the constitution we can see the Constitution of Bangladesh has given some rights to the consumers which I have discussed

²² Anika Mardiha Chowdhury, 'Analysis of the Consumer Rights Protection Act, 2009' (Jural Acuity, 28 December 2021) <<https://juralacuity.com/analysis-of-the-consumer-rights-protection-act-2009/>> accessed 5 April 2022

²³ Constitution of Bangladesh, a 15&18

²⁴ Ibid, a 15

²⁵ Ibid, a 18

above. Article 15 and 18 basically covers the rights of the consumers so what rights consumers have, I have discussed above.

The Constitution of Bangladesh has recognized and established the rights of the consumers so that the other laws discuss the protection of consumers rights. Other laws are working on the protection of the rights of the consumers²⁶.

The Consumer Rights Protection Act of 2009, on the other hand, was enacted to address consumer issues. The law is a supplement to a number of other related laws that deal with consumer rights and protection mechanisms on a sporadic basis and The Consumer Rights Protection Act of 2009 was enacted to safeguard customers' rights, prevent anti-consumer rights behaviors, and address other issues related to consumer rights²⁷.

The term "complainant" is defined as any consumer, one or more consumers with a common interest, any consumer association registered under any Act, the National Consumers' Right Protection Council, or any officer authorized to file a complaint on its behalf, the government or any government officer authorized by the government in this behalf, the concerned wholesaler and retailer, according to the CRP Act, 2009.²⁸ As a result, the Act defines the term "complainant" broadly.

The term "fake" is defined under the Act. "Fake" here refers to the fabrication or manufacture of identical/similar items without authorization, whether or not the properties, materials, elements, or quality of the authorized goods exist in such fake goods.²⁹

The Act also defines a few key terms, which are detailed below:

Any movable commercial commodities that the buyer purchases or agrees to buy from any seller in exchange for money or price are referred to as "Goods."³⁰

²⁶ Anika Mardiha Chowdhury, 'Analysis of the Consumer Rights Protection Act, 2009' (Jural Acuity, 28 December 2021) <<https://juralacuity.com/analysis-of-the-consumer-rights-protection-act-2009/>> accessed 5 April 2022

²⁷ Ibid

²⁸ The Consumers' Right Protection Act 2009, s 2(3)

²⁹ Ibid, s 2(9)

³⁰ Ibid, s 2(11)

The term "Seller" refers to any producer, maker, or supplier of goods, as well as wholesalers and retailers.³¹

"Anti-consumer right practice" is defined under the Act. It means: selling or offering to sell any goods, medicine, or service at a higher price than the fixed price under any Act or rule; selling or offering to sell adulterated goods or medicine knowingly, selling or offering to sell any goods containing any ingredient that is extremely harmful to human health and whose mixing with any food item is prohibited under any Act or rule; deceiving consumers through untrue or false advertisement for the purpose of selling any goods or medicine. while delivering or selling any goods, to sell or deliver less quantity of goods than the weight offered to the consumers; to sell or deliver less quantity of goods than the promised amount by the length measuring gauge; to make or manufacture any fake products or medicine; to sell or offer to sell goods or medicine that have passed their expiration date; or to engage in any activity that may threaten the consumer's life or security and is forbidden by any Act or rule.³²

The following are the offenses that are punishable under this law:

Not using any cover of goods etc.³³, not showing price list³⁴, not preserving and displaying price-list of services³⁵, selling goods, medicine, or service at a higher price than the fixed price³⁶, selling adulterated goods or medicine³⁷, mixing prohibited materials in foodstuff³⁸, manufacturing or processing goods in illegal process³⁹, deceiving buyers by false advertisement⁴⁰, not selling or delivering properly any goods or service promised⁴¹, deceiving in weight⁴², deceiving in weight stone or weight measuring instrument⁴³, deceiving in

³¹ Ibid, s 2(15)

³² Ibid, s 2(20)

³³ Ibid, s 37

³⁴ Ibid, s 38

³⁵ Ibid, s 39

³⁶ Ibid, s 40

³⁷ Ibid, s 41

³⁸ Ibid, s 42

³⁹ Ibid, s 43

⁴⁰ Ibid, s 44

⁴¹ Ibid, s 45

⁴² Ibid, s 46

⁴³ Ibid, s 47

measurement⁴⁴, deceiving in measuring gauge or anything used for measuring length⁴⁵, making or manufacturing fake goods⁴⁶, selling any date expired goods or medicine⁴⁷, doing any act detrimental to life or security of service receiver⁴⁸, damaging money, health or life, etc. of service⁴⁹, a receiver by negligence, etc.⁵⁰, filing false or vexatious cases⁵¹, reoccurring offense.⁵²

Offenses under this Act are tried by a Magistrate of the First Class or a Metropolitan Magistrate, and they can also be tried in a summary trial. In some situations, the Act also provides for civil remedies.

For selling contaminated goods or medication, mixing forbidden elements in foodstuff, and creating or manufacturing false goods, the maximum penalty under this Act is 3 (three) years in prison or a fine of not more than Taka 2 (two) lacs, or both.

As I mentioned earlier e-commerce consumers are considered as the consumers and the rights of the consumers are ensured by the constitution⁵³. But it is a matter of sorrow that the CRP Act, 2009 does not mention any medium or mode of transaction or any remedy for irregularities taken place because of those newly introduced modes of transaction like e-commerce. So, the rights of the consumers using e-commerce platforms are not being completely protected because of this. If we amend the law and insert a provision for ‘Modes of transaction’ in the CRP Act, 2009 and add remedies for unusual activities happening in e-commerce platforms in that provision the rights of consumers in the e-commerce platform may be protected.

4.3. Additional statutes and regulations dealing with e-commerce consumer rights

Besides the CRP Act, 2009 there are some other enactments Bangladesh have which are being used to support, provide, and protect the rights of the consumers. Though they are not

⁴⁴ Ibid, s 48

⁴⁵ Ibid, s 49

⁴⁶ Ibid, s 50

⁴⁷ Ibid, s 51

⁴⁸ Ibid, s 52

⁴⁹ Ibid, s 53

⁵⁰ Ibid, s 54

⁵¹ Ibid, s 55

⁵² Ibid, s 56

⁵³ Anika Mardaha Chowdhury, ‘Analysis of the Consumer Rights Protection Act, 2009’ (Jural Acuity, 28 December 2021) <<https://juralacuity.com/analysis-of-the-consumer-rights-protection-act-2009/>> accessed 10 April 2022

exclusively introduced to protect e-commerce consumer rights but some of the relevant provisions of those laws are currently in use to protect e-commerce consumer rights, among them The Sale of Goods Act, 1930, Control of Essential Commodities Act, 1956, The Essential Articles (price control and Anti-Hoarding) Act, 1953, The Contract Act, 1872, Penal Code, 1860, Special Powers Act, 1974, Information and Communication Technology Act, 2006 are mentionable. And in the later part I will show some amendments which I actually suggest that can help e-commerce consumers to protect their rights.

Generally, there are no specific laws to regulate online shopping in our country. If a seller of an e-commerce site can make any offense which is considered as a crime under this statute, then these laws can help to regulate and ensure the safety of the e-commerce consumers. The offense must fall under these statutes or else it is not possible to punish under these statutes.

4.3.1. The Sale of Goods Act, 1930

Bangladesh has an extensive and long-standing Sale of Goods Law. The Act clarifies various terminology in the defining clause. Aside from these, the Act also explains how a contract of sale is formed.⁵⁴ A contract of sale is formed by an offer to buy or sell items for a consideration and the acceptance of such an offer, according to this clause. The contract may provide for immediate delivery of the products or prompt payment of the money, or both, or for delivery or payment in installments, or for delivery or payment to be delayed. A contract of sale may be made in writing or by words of mouth, or partially in writing and partly by words of mouth, or may be implied from the conduct of the parties, subject to the provisions of any law currently in force. The buyer has the right to accept or reject the products if the quantity is incorrect.⁵⁵ Section 40 deals with the risk of products being delivered to a remote location. When items are supplied to the buyer that he has not previously examined, he is not assumed to have accepted them unless and until he has had a reasonable opportunity to inspect them for the purpose of determining whether they are in compliance with the contract.⁵⁶ The Act gives buyers certain rights.⁵⁷ It provides that when a buyer is given things he has not seen before, he is not deemed to

⁵⁴ The Consumers' Right Protection Act 2009, s 5(1)(2)

⁵⁵ Ibid, s 37

⁵⁶ Ibid, s 41

⁵⁷ Ibid, s 43

have accepted them until he has had a reasonable opportunity to examine them to see if they are in compliance with the contract. It says⁵⁸, The buyer is liable to the seller for any loss caused by his neglect or refusal to take delivery, as well as a reasonable charge for the care and custody of the goods, if the seller is ready and willing to deliver the goods and requests that the buyer take delivery within a reasonable time after such request. The remedies for breach of contract to sale are discussed in Chapter VI. The right to litigate for price⁵⁹, damages, and non-acceptance⁶⁰ are all rights that the seller has. Specific performance⁶¹ is one of the remedies available under the Specific Relief Act of 1877. For non-delivery, the buyer has the right to sue for damages⁶² and warranty breach⁶³. Under this Act⁶⁴, both parties have a legitimate claim. If one of the parties to a sale contract backs out before the delivery date, the other party has two options: accept the contract as continuing and wait for delivery, or treat the contract as canceled and seek damages for the breach.

If we buy something from a virtual platform and get deceived and if the deception goes under this statute, then e-commerce consumers can take action under SG Act, 1930 and can get justice. But one thing must be mentioned that the breach must fall under this SG Act, 1930 or else it is not possible to deal with the dispute under this statute. If we amend it and insert 'online buyer' with the 'buyer' in section 2(1) of the Sale of Goods Act, 1930 then the rights of the e-commerce consumers will be protected.

4.3.2. Control of Essential Commodities Act, 1956

The Act establishes the authority to regulate the production, treatment, storage, transportation, transport, supply, distribution, disposal, purchase, use, or consumption of certain commodities, as well as trade and commerce in them. This Act gives the government the authority to regulate

⁵⁸ Ibid, s 44

⁵⁹ Ibid, s 55

⁶⁰ Ibid, s 56

⁶¹ Ibid, s 58

⁶² Ibid, s 57

⁶³ Ibid, s 59

⁶⁴ Ibid, s 60

the production, supply, and distribution of critical commodities⁶⁵. In addition to the aforementioned laws, the Trademark Act 1940, the Standards of Weights and Measures Ordinance 1982, the Price and Distribution of Essential Commodities Ordinance 1970, and the Bangladesh Telecommunication Act, 2001 are all indirectly applicable to online buying. As far as we have seen there is no law in Bangladesh that can actually help to ensure the rights of the e-commerce consumers. But if consumers of e-commerce get deceived and the deception goes under this CEC Act, 1956 then consumers can take action against the offender under this statute. The offense must fall under this Act or else it is not possible to punish under this statute. To ensure the rights of the e-commerce consumers, if we insert 'essential commodities for the e-commerce consumers' in section 2 of the CEC Act, 1956 then the e-commerce consumers rights will be protected.

4.3.3. The Essential Articles (Price Control and Anti-Hoarding) Act, 1953

The Act regulates the supply and distribution of a limited number of vital commodities, as well as trade and commerce in them. "The Government may, from time to time, by notification, determine the maximum prices at which an essential article may be sold by a retailer, wholesaler, or other person, and may fix different prices for various sections of the country"⁶⁶, according to this Act. The Act also forbids the acquisition, sale, and other activities at prices that are higher than the maximum price.⁶⁷ As the Act deals with essential commodities and online platform sales essential commodities in their sites so it also the consumers of the virtual platform⁶⁸. If a seller of an e-commerce site can make any offense which is considered as a crime under this EA Act, 1953 then this law can help to regulate and ensure the safety of the e-commerce consumers. But the offense must fall under this Act or else it is not possible to punish under this statute. To ensure the rights and safety of e-commerce consumers, if we insert 'essential commodities for online consumers' in section 2 of the Essential Articles (Price Control and Anti-Hoarding) Act, 1953.

⁶⁵ Control of Essential Commodities Act 1956, s 3

⁶⁶ The Essential Articles (price control and Anti-Hoarding) Act 1953, s 3

⁶⁷ Ibid, s 4

⁶⁸ Dr, Sayeda Anju, 'E-Business in Bangladesh: Need for a Legal Framework' The Daily Star (Dhaka, 20 July 2021)

4.3.4. The Contract Act, 1872

The terms "Agreement" and "Contract" are defined under the Contract Act. Every promise and every combination of promises that form the consideration for each other is an agreement⁶⁹, and an agreement enforceable by law is a contract⁷⁰, according to this Act. The Act also talks about how contracts are formed.⁷¹ When a contract is voidable and an agreement becomes void⁷², the Act specifies the situation. It is mentioned here how a contract can be carried out.⁷³ The Act compensates people who have suffered losses or damages as a result of a breach of contract.⁷⁴ When a party has the right to terminate a contract, the Act assures that they get compensated.⁷⁵ In Chapter VIII, the notion of contract indemnity is explained.

4.3.5. Penal Code, 1860

Sections 264-267 of the Penal Code, 1860, deal with offenses involving weights and measures. It is stated that whoever deceitfully employs any weighing instrument that he knows to be wrong will be punished with either imprisonment of any sort for duration up to one year, or a fine, or both.⁷⁶ Adulteration of food or drink intended for sale is prohibited under Section 272. Under the Penal Code, 1860, selling noxious food or drink⁷⁷, adulterating drugs⁷⁸, selling adulterated drugs⁷⁹, and selling a drug as a separate drug or preparation⁸⁰ are all serious offenses. This Code⁸¹ also makes it illegal to use a fraudulent trade mark or property mark.

⁶⁹ The Contract Act, 1872, s 2(e)

⁷⁰ Ibid, s 2(h)

⁷¹ Ibid, Chapter I

⁷² Ibid, Chapter II

⁷³ Ibid, Chapter IV

⁷⁴ Ibid, s 73

⁷⁵ Ibid, s 75

⁷⁶ Penal Code 1860, s 264

⁷⁷ Ibid, s 273

⁷⁸ Ibid, s 274

⁷⁹ Ibid, s 275

⁸⁰ Ibid, s 276

⁸¹ Ibid, s 482

4.3.6. Special Powers Act, 1974

The Act defines terms like "black market"⁸² and "hoarding".⁸³ Under this Act⁸⁴, hoarding or dealing in the black market⁸⁵, smuggling, adulteration⁸⁶, or the selling of adulterated food, drink, pharmaceuticals, or cosmetics are all serious offenses.

4.3.7. Information and Communication Technology Act, 2006

The essential idea of "Information and Communication Technology" is clarified by this Act. The Act states that broadcasting false, obscene, or insulting information in electronic form is a punishable offense in section 57. As Section 57 of the ICT Act, 2006 has repealed but this section plays an important role for protection rights of the consumers⁸⁷. I think this amendment needs not to be done but unfortunately it was repealed. It is entirely the fault of our lawmakers that they cannot make or amend appropriate laws at the right time⁸⁸. According to the Act, if someone intentionally publishes, conveys, or causes to be published or transmitted in the website or in electronic form any material that is false and indecent, or if its effect is such that it tends to deprave and corrupt persons who are likely, given all relevant circumstances, to read, see, or hear the matter contained or embodied in it, or causes to depreciate or put at risk law and order, prejudice the image of the State or person, this activity of his will be regarded as an offense⁸⁹ if it causes or may cause religious belief to be harmed, or if it incites against any person or organization. The Act further states that anyone who falsifies or conceals any substantial truth from the Controller or the Certifying Authority in order to obtain a license or Digital Signature Certificate is guilty of an offense⁹⁰. The Act specifies the establishment of a Cyber Tribunal, as well as the investigation of offenses, adjudication, and appeal procedures⁹¹. If someone publishes

⁸² Special Powers Act, 1974, s 2(b)

⁸³ Ibid, s 2(i)

⁸⁴ Ibid, s 25(C)

⁸⁵ Ibid, s 25

⁸⁶ Ibid, s 25(B)

⁸⁷ UNB, 'Repeal Section 57, review Digital Security Act: TIB' The Daily Star (Dhaka, 2 May 2018)

⁸⁸ Faisal Mahmud, 'Bangladesh Enacts New Law That Could Silence Dissenters' The Diplomat (Dhaka, 10 October 2018)

⁸⁹ Ibid, s 57

⁹⁰ Ibid, s 62

⁹¹ Ibid, s 68-84

false advertisement to deceive a consumer on a virtual platform then this Act may cover the area and the offender may get punished under this Act.

4.4. State Organizations Working for Protection of Consumer Rights

Consumers Association of Bangladesh (CAB)⁹² is a non-governmental, non-political, non-profit, and voluntary consumer body created in February 1978 in Bangladesh. CAB began as a social organization to defend consumers from commodities adulteration and false price increases, but it has since expanded its mission to include the establishment and protection of consumers' rights and interests in social, economic, health, and environmental issues. Bangladesh also has a national consumer protection agency known as the Directorate of Consumers Right Protection (DCRP).⁹³ The National Consumer Right Protection Council⁹⁴ was also established as a result of the Act. Nonetheless, the general public is unaware of these two institutions, even if they have purchased a tiny number of things through online shopping. They are not always engaged in their work.

4.5. International Obligations for Protecting Consumer Rights

Bangladesh is a member state of the United Nations (UN), being a member Bangladesh has to comply with the resolutions and regulations implemented by the UN. The UN introduced a conference named United Nations Conference on Trade and Development (UNCTAD) with a view to promote the interests of developing states in world trade. UNCTAD was established on 30 December 1964 and Bangladesh is a member of both UNCTAD and Trade and Development board.⁹⁵ United Nations Guidelines for Consumer Protection (UNGCP), 2016 lays that, Member States should adopt, strengthen, or maintain a solid consumer protection policy that takes into account the guidelines outlined below as well as applicable international agreements. In doing so, each Member State must determine its own priorities for consumer protection, taking into account the country's economic, social, and environmental realities, as well as the requirements

⁹² Consumers Association of Bangladesh, < <https://consumerbd.org/>> accessed 15 April 2022

⁹³ The Consumers' Right Protection Act 2009, s 18

⁹⁴ Ibid, s 5

⁹⁵ United Nations Conference on Trade and Development,< <https://unctad.org/>> accessed 15 April 2022

of its population, as well as the costs and advantages of proposed policies.⁹⁶ To assist consumers to make best decisions, businesses should provide complete, accurate, and non-misleading information on the goods and services, terms, conditions, applicable fees, and ultimate charges. Regardless of the technology used, businesses should ensure that essential information, particularly the key terms and conditions, is easily accessible.⁹⁷ Businesses should initiate a combination of proper control, security, transparency, and consent processes to protect their customers' privacy when collecting and using their personal data.⁹⁸

4.5.1. United Nations Guidelines for Consumer Protection Regarding Electronic Commerce

UNGCP also described that member States should continue to create transparent and effective consumer protection policies, offering a degree of protection comparable to that provided in other forms of commerce, in order to boost consumer trust in e-commerce.⁹⁹ Where needed, member States should evaluate current consumer protection policies to suit the unique characteristics of electronic commerce and ensure that consumers and businesses are informed and aware of their rights and responsibilities in the digital marketplace.¹⁰⁰ Member States also may wish to consider relevant international e-commerce guidelines and standards, as well as revisions to those guidelines and standards, and, where appropriate, adapt those guidelines and standards to their economic, social, and environmental circumstances so that they can adhere to them and collaborate with other Member States in their implementation across borders. Member States may want to consider the Organization for Economic Cooperation and Development's Guidelines for Consumer Protection in the Context of e-commerce when doing so.¹⁰¹

So, Bangladesh being a member of this conference, should implement UNGCP complying with UNCTAD.

⁹⁶ United Nations Guidelines for Consumer Protection 2016, c iii(4)

⁹⁷ Ibid, c iv(c)

⁹⁸ Ibid, c iv(e)

⁹⁹ Ibid, c v(I)(63)

¹⁰⁰ Ibid, c v(I)(64)

¹⁰¹ Ibid, c v(I)(65)

4.6. Conclusion

The aforementioned discussion gives a clear insight that Bangladesh has numerous laws to punish and ensure rights protection of consumers provided by UNCTAD. Bangladesh has laws which help to protect the consumers rights. But what about the e-commerce consumers rights. Bangladesh has some laws which also partially deal with the issues virtual shoppers have but these statutes are not strong enough to get the e-commerce consumers protection. So, I suggest some amendments in some of the laws to ensure the rights of the e-commerce consumers. CRP Act, 2009 basically focuses on the rights of the consumers. As CRP Act, 2009 is silent about e-commerce consumers so their rights are not protected. Bangladesh is a member of UNCTAD but its guidelines are seen to have a lesser reflection in the CRP Act, 2009. UNCTAD is updating UNGCPs frequently to deal with the new trading challenges like e-commerce but Bangladesh is still absent in amendment of CRP Act, 2009 following UNGCPs to ensure a well-designed resolution to protect the rights of e-commerce consumers. And as a result of not updating CRP Act, 2009 DCRP is also failing to take the complaints of e-commerce consumers and giving them an effective solution. To ensure the rights of the e-commerce consumers and to follow the guidelines of the UNCTAD the CRP Act, 2009 needs to be amended and I have suggested some amendments above. By doing this DCRP also can take complaints of the e-commerce consumers and give them proper solutions.

Chapter V

Current Scenario of E-commerce Consumers Rights in Bangladesh and Its Comparison

5.1 Introduction

As we already know in our country the journey of the e-commerce marketplace begins without any legal framework¹⁰². In the Covid-19 pandemic situation most of the consumers in the world actually depend on virtual platforms. As a result, consumers of Bangladesh do their shopping on the online platform¹⁰³. Bangladesh has introduced consumer rights under the Consumer Right Protection Act, 2009¹⁰⁴. But it is a matter of sorrow that Bangladesh still did not ensure any specific rights for the consumers of the virtual platforms¹⁰⁵. The current scenario of the e-commerce platform is very unsatisfactory in our country¹⁰⁶. Most of the e-commerce business has been shut down indefinitely, some of them escaped and the rest of the ecommerce business has been run without any regulations¹⁰⁷. As a result, the virtual platform has become a very unsafe place nowadays. People now fear buying anything from the ecommerce marketplace. As a result, people are now losing interest in virtual shopping in our country¹⁰⁸.

¹⁰² Dr, Sayeda Anju, 'E-Business in Bangladesh: Need for a Legal Framework' The Daily Star (Dhaka, 20 July 2021)

¹⁰³ Ibid

¹⁰⁴ Anika Mardiha Chowdhury, 'Analysis of the Consumer Rights Protection Act, 2009' (Jural Acuity, 28 December 2021) <<https://juralacuity.com/analysis-of-the-consumer-rights-protection-act-2009/>> accessed 22 April 2022

¹⁰⁵ Dr, Sayeda Anju, 'E-Business in Bangladesh: Need for a Legal Framework' The Daily Star (Dhaka, 20 July 2021)

¹⁰⁶ Sunera Saba Khan, 'E-commerce in Bangladesh: Where are we headed?' The Financial Express (Dhaka, 10 January 2020)

¹⁰⁷ Dr, Sayeda Anju, 'E-Business in Bangladesh: Need for a Legal Framework' The Daily Star (Dhaka, 20 July 2021)

¹⁰⁸ Ibid

5.2 E-Commerce Consumer Rights in Bangladesh

Consumer rights has been successfully established in Bangladesh through CRP Act, 2009¹⁰⁹. But it only deals with physical shopping not virtual shopping. A lot of suits of violation of contract for the trading of products have been formed in the factor of online platform business. For the contravention of contract a lot of people are ostentatious and as a result, there have been a wave of payment discrepancies on all sides of the country. Persons can start their ecommerce company by generating a personal account and utilizing the many features of digital media sites. In addition, Facebook pages are getting a lot of traction in comparison to private profile and credit goes to unique attributes which supports customers and merchants discover each other.¹¹⁰ These platforms are gaining much popularity because they are easy to use. This kind of popularity sometimes leads to the loss of the customers. Owners do not have to provide their own information when a page is opened on Facebook for business purpose. This increases the risk of customers being easily deceived. As a result, the chances of consumer rights being violated increase. The sellers who want to take loan from the bank, only they aware of the trade license and the rest do not wish to get a trade license. They don't have any interest in getting a trade license. They do business without it¹¹¹. The elements of offline contracts such as offer, acceptance, and consideration is similar in the web based marketing but although, under Bangladesh's current legal framework, such internet transactions are not recognized as contracts for the sale of commodities. For example, the SG Act of 1930 defines the legal structure of sale transactions in the country.¹¹²

The law is out of date by its very nature, having been largely replaced by other special laws, and no changes have been made to bring it up to date in the current time. Surprisingly, online product offers, descriptions, or samples, as well as comparable acceptance, are not covered by the law.¹¹³

¹⁰⁹ Anika Mardiha Chowdhury, 'Analysis of the Consumer Rights Protection Act, 2009' (Jural Acuity, 28 December 2021) <<https://juralacuity.com/analysis-of-the-consumer-rights-protection-act-2009/>> accessed 22 April 2022

¹¹⁰ HM Murtuza, 'E-commerce in Bangladesh faces rough ride in 2021 as scams shatter growth' NEW AGE Business (Dhaka, 28 December 2021)

¹¹¹ Ibid

¹¹² Dr, Sayeda Anju, 'E-Business in Bangladesh: Need for a Legal Framework' The Daily Star (Dhaka, 20 July 2021)

¹¹³ Ibid

Another statutory law, named "The Consumer Rights Protection Act, 2009," was enacted specifically to defend consumer rights. However, similar to the Sale of Goods Act of 1930, this Act is mute on virtual business, with no statutes addressing virtual services. The Director General is responsible for receiving and resolving consumer complaints under the Consumer Rights Protection Act of 2009. A huge number of complaints are received by the authorities. When it comes to dealing with consumer complaints stemming from online transactions, however, the complainant has very little options. It has been observed that amending section 45 of the Consumer Rights Protection Act of 2009 to include the phrase "online service" will make it easier for concerned authorities to offer remedies¹¹⁴.

From the above discussion one thing is to be noted that Bangladesh has not introduced any legal provision or any rights regarding online consumer protection.

5.3 E-Commerce Consumer Rights in Other Countries

Consumers rights in the online platforms is successfully introduced in the neighboring countries of Bangladesh. In India the rights of the consumers are appropriately introduced¹¹⁵. They are extremely serious about their virtual platform consumers. A new Act titled Consumer Protection Act, 2019 was enacted to defend the interests of consumers. In new legislation, the phrase "online" has been included. "The expressions "buys any goods" and "hires or avails any services" include offline or online transactions using electronic means, direct selling, or multi-level marketing," according to explanation (b) of Section 2(7) of the Act¹¹⁶.

India also introduced another statute regarding protection of the consumer in the virtual arena. The name of the statute is Consumer Protection Rules, 2020. It actually secures the rights of the consumers by providing cash on delivery facilities under regulations. And it is a preferred method of payment for online purchases; website information and effective customer service offerings help to earn a customer's trust¹¹⁷. They have improved the online transaction method.

¹¹⁴ HM Murtuza, 'E-commerce in Bangladesh faces rough ride in 2021 as scams shatter growth' NEW AGE Business (Dhaka, 28 December 2021)

¹¹⁵ Department Consumer Affairs India, <<https://consumeraffairs.nic.in/en/organisation-and-units/division/consumer-protection-unit>>

¹¹⁶ Consumer Protection Act 2019, s 2(7)(b)

¹¹⁷ Chawla N. & Kumar B., 'E-Commerce and Consumer Protection in India: The Emerging Trend' (2021) <<https://link.springer.com/article/10.1007/s10551-021-04884-3>> accessed 25 April 2022

The transaction system has been properly regulated by their government. They have introduced a multi-functionary transaction system which regulates the payment method. The payment is done after three days of the delivery of the goods. So, the safety of the consumer is properly protected by them. They also have regulatory authority to regulate any fraudulent activity the arena of virtual platform¹¹⁸.

In a nutshell India has properly ensured the rights of the consumers and the protection of consumers in the virtual arena properly. So online shopping is steadily becoming popular in India.

When we compare it to the UK, they are extremely serious about the rights of the consumers in the virtual arena. They have introduced several laws and regulations regarding protection of the consumers in the virtual arena. The E-Commerce Regulations 2002 (E-Commerce Regulations) impose a number of requirements on commercial website operators, including the statutes of certain information about the operator and its services to users¹¹⁹. They have a strong regulatory body and whenever a complaint has been filed to them it is easy for them to provide the online platform consumers safety as they have a strong regulatory body¹²⁰. This is the greatest part of their system.

5.4 Conclusion

It is not so wise to compare the UK with Bangladesh regarding the rights of the consumers in the virtual platform. They have advanced in this field long ago. But it is our duty to ensure the rights of the consumers as many of our neighbors have already ensured it. Our neighbor country India has achieved a huge success in consumer safety in the virtual platform. They are ensuring the rights of the consumers and providing consumers protection in every way. But despite being their neighboring state we are unable to ensure the rights of the consumers in the virtual platforms. It is a great failure for us.

¹¹⁸ Department Consumer Affairs India, <<https://consumeraffairs.nic.in/en/organisation-and-units/division/consumer-protection-unit>>

¹¹⁹ Giles C. & Deller W., 'Digital Business in the UK (England and Wales): Overview' TRPL <[https://uk.practicallaw.thomsonreuters.com/7-618-4909?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/7-618-4909?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 28 April 2022

¹²⁰ Ibid

Chapter VI

Findings, Recommendations and Conclusion

6.1 Introduction

The core objective of this study was to determine whether current laws can protect the legal rights of the consumers in the virtual arena via an analysis of publications, case law, and journals. This is the main focus of the study.

6.2 Findings of the Study

The core objective of this study was to determine whether current laws can protect the legal rights of the consumers in the virtual arena by analyzing journals, case laws, and articles from the perspective of Bangladesh. It is found out that:

- I. The Consumer Right Protection Act protects the rights of the consumers but still it has some limitations. The e-commerce consumer's rights are also protected under this Act but as the e-commerce platform is not a physical marketplace so there are less chances of examining the products and as the form of transaction is new in that platform there are no dedicated cell of Directorate of National Consumer Rights Protection to observe the activities of e-commerce companies.
- II. In article 15 and 18 of the constitution rights of all kinds of consumers have been ensured. All the consumers have their right to protect under the Constitution of Bangladesh but virtual consumers are not getting protected effectively under any of the existing laws in our country. Moreover, they are partially protected by the laws so their rights are not going to be properly guaranteed.
- III. Bangladesh has successfully established the Consumers Right Protection Act, 2009 to protect the rights of the consumers but it is a matter of sorrow that section 2(20) of the Act talks about 'anti-consumer right practice' and it is not possible to identify in e-

commerce sites while buying that whether the platforms are practicing anti-consumer right or not.

- IV. There are no particular policies introduced by the government to protect the legal rights of the online platform consumers. It is the indifference of the policy makers of our country.
- V. It seems that the policy makers have no value to the virtual consumers. Which is an embarrassment for the lawmakers of our country.

6.3 Recommendations

Based on the foregoing conversations, I propose the following ideas for improving the provisions on this subject:

- I. Amending Consumers Rights Protection Act, 2009 and inserting some important provision regarding virtual shopping to protect the rights of the consumers.
- II. Modifying inconsistent laws and policies to protect the rights of the consumers in the virtual arena and it is to prevent fraudulent activity in the virtual arena and to protect the rights of the consumers in this field.
- III. Directing lawmakers to enact laws to protect consumers rights on online platforms.
- IV. Creating a regulatory body or authority to regulate the virtual platforms.
- V. Creating awareness among the consumers so that they do not get deceived easily.
- VI. A digital payment gateway system should be introduced and it must be directly regulated by the government authority.
- VII. Amending the Constitution of Bangladesh and inserting a special provision regarding consumer protection which will take the consumers right to a stronger position.
- VIII. Amending the Company Law of Bangladesh and inserting some provisions regarding e-commerce sites. Here, to open an e-commerce company one fulfills some conditions and registered the e-commerce company separately so that the government can regulate it flexibly.
- IX. Undertaking extensive public awareness programs about safety of the consumers in the virtual arena.

6.4 Conclusion

From the above study we get the Constitution of Bangladesh has recognized the protection of the consumer rights properly. From e-commerce consumers to all types of consumers everyone has the right to get protection under law. The rights Right not to be deceived is a universal fundamental right. Everyone has the right to avail good products. People work hard to earn money and with the money they buy essential goods. As a citizen of an independent country no one has the right to be deceived. But in the study, we have seen that people were easily deceived while shopping in the virtual arena. Existing laws partially protect the rights of the consumers in the virtual arena but it failed to protect the rights of the e-commerce consumers properly. It is a disgrace that Bangladesh has not introduced any new law regarding protection of the rights of the consumers in the virtual arena. I have suggested some amendments in the existing laws which may secure the rights of the virtual consumers properly. Moreover, we do not have any specific regulatory body to regulate the e-commerce sites so that consumers are deceived regularly by shopping from here. The findings of our study are that the rights of all types of consumers including e-commerce consumers rights have been recognized by the constitution and CRP Act, 2009 and other existing laws can partially protect the e-commerce consumers right not fully. Now the major issue is ensuring the safety of the consumers in the virtual arena. So, I suggested some amendments in the laws which may help to ensure the rights of the e-commerce consumers. According to our findings the laws related to the protection of the rights of the consumers in the online platform need to be amended and to ensure the rights properly for the e-commerce consumers a new law needs to be enacted for the consumers of the virtual platform. Public awareness needs to be created to stop fraudulent activity in the virtual shopping platform. Only then can we buy goods in peace on the virtual platform and not be deceived.

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