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RESEARCH ARTICLE

Consumer Protection in Bangladesh's Social Commerce: Evaluating the Legal Framework and the Need for Reform

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ABSTRACT

Bangladesh, a state with one of the fastest-growing economies, has embraced the process of digitization quite well, following its significant and extensive involvement in the domain of social commerce. Recently, especially during the pandemic and post-pandemic period, people have become significantly accustomed to "online shopping". Online shopping is an informal synonymous term to "social commerce", which refers to buying goods on various social media platforms following several steps. In this regard, there has been a constant threat of a significant increase in cybercrime, selling counterfeit products, infringing consumers' data privacy, etc. The existing legal framework addressing consumer rights protection online is, in fact, quite inadequate and incompatible with the present situation. The study aims to explore the legal loopholes in the framework protecting consumer rights in the digital space of Bangladesh. It will also discuss the current challenges that are hindering the growth of the social commerce industry in Bangladesh. A comparative study between national and international laws has also been conducted to understand the current loopholes in the existing legal framework. Furthermore, the study aims to explore the challenges and vulnerabilities faced by consumers in digital platforms and discusses potential policy and legal recommendations.

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1. Introduction

Bangladesh is a developing country that is beginning to explore the world of social commerce driven by the widespread use of social media platforms. Given the surge in online shops, Bangladesh has a promising opportunity to establish itself as a frontrunner in the social commerce industry. The COVID-19 outbreak has significantly influenced consumers' purchasing of various goods and services online. From daily necessities to purchasing various services online, the sudden dependency on online shopping is quite noticeable. It is to be noted that, during the pandemic, the government of Bangladesh imposed restrictions on public movement, which is why the rate of online shopping significantly increased. However, when the situation eased over time and the restrictions were withdrawn,

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a large number of people still stuck to online shopping for a number of reasons.[2] During the pandemic, many people started to operate their small businesses on various virtual platforms, which not only reinforced the virtual business mechanism but also brought a revolution in the traditional marketing system .[3] The broad spectrum of the term "Virtual platform" also includes websites, social media (such as Facebook and Instagram), mobile applications etc., which have been significantly utilized for business and marketing of various goods and services. According to recent statistics regarding the increasing trend of cyber shopping in Bangladesh, there are approximately 2,500 e-commerce sites and around 150,000 Facebook pages operated for the purpose of business. [4]

However, with the significantly increased rate of online purchasing, the rate of social commerce fraud in the digital marketplace has also increased significantly, especially after the COVID-19 outbreak.[5] As a result, consumers who prefer online shopping have become more prone to scams due to misleading, fraudulent and unfair activities conducted by dishonest online businesspersons. According to the annual research report by the Cyber Crime Awareness (CCA) Foundation, it has been found that in 2020, more than 11.48% of Bangladeshi consumers were deceived by various e-commerce and social media platforms like Facebook. [6] Such scams and e-commerce fraud have become a serious hindrance to the overall growth of the e-commerce industry in Bangladesh. Moreover, the lack of an appropriate legal framework, national policy support, e-commerce development strategies, goods and services delivery channels, as well as the operational infrastructure[7] has particularly escalated the challenges and vulnerabilities of consumers in enjoying goods and services online. In addition to that, the current legal framework with regard to protecting consumers' rights in the digital space is inadequate, obsolete and lacks a specific statutory law regulating the e-commerce industry in Bangladesh. [8] Prior scholarship has highlighted the growing tension between digital commerce and consumer protection in Bangladesh. However,

[2]Md Shahnur Azad Chowdhury, Sultana Akter, Mustafa Manir Chowdhury, Syed Mohammad Hasib Ahsan and A B M Yasir Arafat, 'Is COVID-19 a Blessing for Ecommerce: A View from Bangladesh' (2021) 21(2) *Global Journal of Management and Business Research: B Economics and Commerce* 17, 19 <https://journalofbusiness.org/index.php/GJMBR/article/view/3366> accessed 17 October 2023

[3]Md Adnan Kabir, 'A Legal Analysis on Resolving Recently Growing Online Business Frauds in Bangladesh' (2022) 18(2) *Law Reform* 264, 265 <https://doi.org/10.14710/lr.v18i2.46636> accessed 16 October 2023

[4]Md Shahnur Azad Chowdhury, Sultana Akter, Mustafa Manir Chowdhury, Syed Mohammad Hasib Ahsan and A B M Yasir Arafat, 'Fraudulence Issues in E-commerce and Its Remedies: Cases during COVID-19 Pandemic in Bangladesh' (2021) 6(1) *Australian Journal of Business and Management Research* 120, 121 <https://doi.org/10.52283/nswrca.ajbmr.20210601a10> accessed 16 October 2023

[5] 'OECD Policy Responses to Coronavirus (COVID-19) Protecting online consumers during the COVID-19 crisis' <*https://www.oecd.org/*, 2 April 2020> <www.oecd.org/coronavirus/policy-responses/protecting-online-consumers-during-the-covid-19-crisis-2ce7353c/> accessed 17 October 2023

[6] Kabir (n 2) 265

[7]Md Kamrul Hassan, Md Abdul Momen and Seyama Sultana, 'Online Marketing in Bangladesh: A Descriptive Study in the Context of Some Selected Click and Mortar Businesses' (2010) 5(2) *Journal of Business and Technology (Dhaka)* 150, 152 <https://doi.org/10.3329/jbt.v5i2.9986> accessed 16 October 2023

[8]Mohayminur Rahman, 'Prevention of E-commerce Fraud in Bangladesh: A Critical Study on Legal and Institutional Framework' (2023) *SSRN Electronic Journal* <https://doi.org/10.2139/ssrn.4477507> accessed 16 October 2023

sufficient assessment regarding how far the current legal framework in Bangladesh addresses the specific risks faced by consumers within the social commerce context has not been discussed. This article therefore critically examines the adequacy of the existing legal regime and identifies the reforms needed to strengthen the protection of consumers in the social commerce marketplace.

2. The Rise of Social Commerce in Bangladesh

Compared to other countries of the world, it is worth noting that the concept of online shopping arrived at a later stage in our country; however, it experienced rapid growth.[9]

The prevalence of online transactions in Bangladesh has been increasing gradually throughout the years. As the standard of living has improved and livelihoods have become more secure, there has been a notable change in the purchasing habits of consumers. The e-commerce business in Bangladesh commenced in the late 1990s [10] but faced initial limitations in terms of growth. During the period from 2000 to 2008, it can be said that the E-commerce sector demonstrated deliberate and estimated advancements.[11] It's important to note that there existed a limited number of websites; however, a proper system was absent for conducting online transactions, which is an essential prerequisite for engaging in online shopping.

Over time, there has been a gradual improvement in banking, logistics, communications, and payment systems, which has led to the development of prospects in the e-business sector. The online payment system is being utilised by various sectors, including the financial sector. With the availability of credit, debit card services, and digital wallets, the cash-on-delivery method has become increasingly accessible to consumers. [12]

The rise of online shopping began in 2009 when Bangladesh Bank authorised internet payment.[13] Hence, the formal commencement of the E-commerce industry began.[14] It is worth noting that the year 2013 was a pivotal year in the history of E-commerce in Bangladesh. The Bangladesh Association of Software and Information Services (BASIS) and the Bangladesh Bank collaborated to host

[9]Md Mohiuddin, 'Overview the E-Commerce in Bangladesh' (July 2014) 16(7) *IOSR Journal of Business and Management* 1 <https://www.iosrjournals.org/iosr-jbm/papers/Vol16-issue7/Version-2/A016720106.pdf> accessed 15 October 2023

[10]Md Shafiqul Islam, 'E-Commerce in Bangladesh: Growth and Challenges' (March 2018) 20(3) *IOSR Journal of Business and Management* 10–15 <https://www.iosrjournals.org/iosr-jbm/papers/Vol20-issue3/Version-5/B2003051015.pdf> accessed 15 October 2023

[11]Nazia Wahab, 'Online Shopping and Consumer Rights Protection within Bangladesh: A Review of Current Laws and Regulations' (2018) 4 *South Asian Law Review Journal* 255

[12]Khandaker Al Moin, 'Online Shopping Fraud: An Elevated Form of Criminal Activity' *The Daily Sun* (10 October 2023) <https://www.daily-sun.com/printversion/details/716653/Online-Shopping-Fraud:-An-Elevated-Form-of-Criminal-Activity>

[13]Wahab (n 10) 256

[14]Wahab (n 10) 256

the inaugural "E-Commerce Week" in the country. The event was backed by the ICT Business Promotion Council. Online shopping became a subset of e-commerce that gained prominence at a later stage. [15] Another social commerce revolution started when Facebook launched 'Facebook Marketplace' for conducting social media commerce in 2016. [16]

In the years that followed, the demand for online shopping through various platforms such as Facebook, Instagram etc, rapidly grew. People became more inclined towards staying home and purchasing products online. COVID-19 has played a bigger role in terms of elevating the sudden popularity of online shopping. During COVID-19, people could not go out and therefore they chose online shopping to buy various necessary products from groceries to toiletries.

Currently, the e-commerce industry in Bangladesh has grown significantly, having approximately 2,000 officially registered e-commerce enterprises and over 50,000 social media pages and organisations solely focused solely on online sales. The e-commerce market was valued at Tk. 66 thousand crore in 2022, and it is projected to reach Tk. 1.5 lakh crore by 2026. [17] The rapid growth of e-commerce in Bangladesh has coincided with a significant increase in fraudulent behaviour. The frequency of online shopping frauds and client complaints is increasing. Many online marketplaces and retailers use deceptive strategies, showcasing appealing product photos and descriptions that sharply differ from the real low-quality items they send. Counterfeit customer evaluations intensify the deceit, leading to misleading purchasers. [18]

The e-commerce sector in Bangladesh is a booming industry. This industry consistently expands and achieves competence. Even though the concept of "online shopping" or "e-commerce" has existed for a long time in the Western world, this concept is quite new in Bangladesh. Moreover, the overall existing legal framework for consumer protection in the digital space in Bangladesh is also quite insufficient and antiquated. Besides that, whatever available laws are not strictly practiced for the protection of consumers in Bangladesh. As a result, consumers in Bangladesh are systematically denied their rights in all aspects of their lives. Consumers are exposed to a range of cybersecurity risks, including phishing assaults, malware, ransomware, and data breaches. These dangers have the potential to jeopardise critical personal and financial data, resulting in identity theft, fraudulent activities, and financial detriment.

[15] Wahab (n 10) 256

[16] Chingning Wang and Ping Zhang, 'The Evolution of Social Commerce: The People, Management, Technology, and Information Dimensions' (2012) 31 *Communications of the Association for Information Systems* 105 <https://doi.org/10.17705/1CAIS.03105>

[17] Moin (n 11)

[18] Moin (n 11)

3. Consumer Risks and Regulatory Challenges in Social Commerce

Social commerce is a growing subset of e-commerce and has become an accessible and increasingly favored method for consumers in Bangladesh to obtain a diverse array of items and services. Social commerce poses numerous problems and threats that customers must navigate while participating in online transactions. The online domain is quite filled with dangers that jeopardise consumer confidence, including financial stability and personal privacy, ranging from cybersecurity risks to fraudulent activities and privacy issues. In addition to that, gaining a comprehensive understanding of these issues and hazards is crucial to equip consumers to make well-informed decisions, shield themselves against online threats, and fight for more robust protections in the digital marketplace. The intricate difficulties and dangers encountered by consumers on the internet, emphasising the intricacies and consequences of navigating the digital realm, have been discussed below:

3.1. Fraudulent Activities

There is a rising trend in the occurrence of online shopping fraud and customer complaints. Several online marketplaces and retailers employ deceptive tactics by presenting appealing product photographs and descriptions that starkly differ from the real substandard items they deliver. Fraudulent customer assessments exacerbate deception, resulting in the misdirection of buyers. Consumers frequently encounter torn, damaged, rotten, or substandard products across a range of categories, such as clothing, electronics, and food items. The problem worsens when goods are delivered late or not delivered at all, as dishonest vendors may either disappear after receiving money or obstruct communication with buyers. Customers are unable to access after-sales service as a result of the lack of actual offices or showrooms. Certain organisations entice clients by providing substantial discounts, rewards, and incentives, only to abscond with their funds after confidence has been created.[19]

3.2. Cybersecurity Threats

Consumers are susceptible to cybersecurity dangers, alongside fraudulent activity. Consumers face many cybersecurity threats, such as phishing attacks, malware, ransomware, and data breaches. These hazards possess the capacity to endanger crucial personal and financial information, leading to identity theft, deceitful actions, and financial harm. Cybersecurity concerns, such as unauthorized access to sensitive data and the introduction of malicious software, can result in substantial monetary damages for individuals, erode trust in online commerce,

[19] Moin (n 11)

and tarnish the reputation of an internet-based entity.[20] Consumers' insufficient awareness and expertise regarding cybersecurity pose a serious concern, notwithstanding the risk of cybercrime. Consumer awareness and understanding of online purchasing safety are essential for safeguarding against cyber threats. [21]

3.3. Privacy Concerns

Consumers, while shopping online, frequently disclose personal information to e-commerce platforms and other online companies. Insufficient privacy safeguards and data management methods can lead to unauthorised entry, misuse, or exploitation of consumer data, violating individuals' rights.

3.4. Payment Risks

Online payment transactions have potential hazards, including unauthorised charges, payment processing failures, and unsecured payment gateways. Consumers may encounter obstacles to fraudulent transactions, contested charges, and the complexities of collecting refunds or chargebacks. Some companies have deceived clients by initially offering products to a limited number of customers, then closing their operations and running off with large sums of money. Accusations of such wrongdoing have already led to legal proceedings against several companies, including E-Orange, Dhamaka, and Evaly. In addition, unverified websites and retailers participate in illicit activities, such as stealing personal and financial data, or sending customers to fraudulent links, which leads to identity and data breaches.[22]

3.5. Delivery and Logistics Issues

The timely delivery of online purchases can be influenced by logistical obstacles such as transportation disruptions, shipment inaccuracies, and the theft of packages. Customers may encounter dissatisfaction and disruption as a result of delayed shipments, misplaced parcels, or compromised merchandise during transportation. In addition, the delivery expenses for the products are rather expensive when compared to the overall logistics cost. The seller charges a price that exceeds the predetermined fixed price of the goods. Besides that, the sellers project deceptive strategies by the practice of misleading marketing to promote and sell their lower-quality products. Furthermore, they are also unable to meet their obligations to sell or deliver the goods and services as promised within the agreed time frame between the consumer and seller. They provide low-quality or counterfeit goods or services contrary to their previously made promise and

[20]Mostofa Galib, Masoud Mohammadian and Abu Ullah, 'Key Factors Related to Cyber Security Affecting Consumer Attitude in Online Shopping: A Study in Bangladesh' (6th International Conference on Information Systems and Computer Networks (ISCON), Mathura, India, 3-4 March 2023).
[21]Frauke Mattison Thompson, Sven Tuzovic and Corina Braun, 'Trustmarks: Strategies for Exploiting Their Full Potential in E-Commerce' (2019) 62(2) *Business Horizons* 237 https://doi.org/10.1016/j.bushor.2018.09.004 accessed 9 December 2023 .
[22]Galib (n 19)

commitments to the consumer. The issue is quite significant and has an important aspect for consumers who engage in online shopping. [23]

To summarize, consumers in the digital space encounter a lot of complex issues and threats that need to be addressed as soon as possible. Cyberspace, all over the world, let alone in Bangladesh, is filled with many dangerous risks that may undermine the confidence, security, well-being etc. of the consumers. Furthermore, risks such as fraudulent schemes, privacy concerns, cybersecurity threats, and insufficient consumer protections also cause challenges to consumers in various ways.

4. Existing Domestic and International Legal Framework Dealing with Digital Consumer Rights Protection

In Bangladesh, similar to any other type of commercial enterprise, the domain of social commerce is obligated to comply with an array of statutes and regulations. Neglecting to fulfill these obligations may lead to legal complications and the possibility of litigation. Some laws and regulations are in place to establish and enforce a set of guidelines for ethical behavior within the e-commerce industry. These guidelines promote principles of honesty and fairness, while also outlining procedures for the resolution of disputes. Given the ongoing expansion and progress of the e-commerce industry in relation to its structure, trade, and technology, a multitude of novel and intricate legal matters have arisen, which the existing business regulations may lack the necessary provisions to adequately address.

Therefore, it is of utmost importance for online retailers to remain well-informed and take proactive measures in addressing these legal challenges, so as to guarantee the establishment of a robust and sustainable business environment. However, it is a matter of question whether these laws comply with the Digital Space, where consumers are very vulnerable and prone to risks in regard to purchasing various products. This chapter shall focus on various national and international legal instruments that provide a framework for addressing digital consumer rights protection risks and challenges.

4.1. National Legal Framework

Bangladesh has a series of legal instruments that protect consumer rights for in-person purchasing; however, very few instruments determine the consequences of consumers consuming products online. The establishment of e-commerce and online marketplaces in Bangladesh initially lacked a formal legal framework. The Bangladeshi government has implemented measures to establish a legal structure for conducting online business. There is no explicit legislation in Bangladesh that regulates transactions conducted online. These regulations can help enforce and

[23] Wahab (n 10) 256

guarantee the safety of consumers engaging in e-commerce if a seller on an e-commerce platform engages in any illegal activity. Penalization is only possible under these statutes if the offence falls within their scope. While there is a lack of specific international or national legal frameworks for e-commerce, some countries have enacted supplementary legislation or are in the process of doing so. The National Legal Framework, consisting of legal instruments that deal with consumer rights protection in the digital space have been discussed below.

4.1.1. The Constitution of the People's Republic of Bangladesh

It is to be noted that the Constitution of Bangladesh encompasses several fundamental rights. Among these, as per Article 15 of the esteemed Constitution, it is stipulated that certain fundamental necessities, including but not limited to sustenance, attire, shelter, education, and medical assistance, must be duly fulfilled.[24] Furthermore, it is worth noting that the Constitution also explicitly alludes to matters of morals and public health in a separate provision as per Article 18 of the Constitution. [25]

4.1.2. The Penal Code, 1860

The Bangladesh Penal Code 1860, encompasses a comprehensive set of provisions and guidelines about a wide range of offences. These offences include, but are not limited to, the fraudulent utilisation of weights, the adulteration of food or drink, the sale of noxious food or drink, the adulteration of drugs, the sale of adulterated drugs, the sale of drugs under the guise of a different drug or preparation, and the utilisation of a false trade or property mark.

Sections 264-267 of Chapter XIII of the Penal Code, 1860 pertain to the matter at hand, namely the fraudulent utilisation of weights. It is important to note that such conduct may lead to the imposition of a monetary penalty or even incarceration.[26] Pursuant to the aforementioned sections, any individual who knowingly and deceitfully employs a weighing instrument that they are aware is lacking in accuracy shall be subject to legal repercussions, including but not limited to monetary sanctions, a maximum period of incarceration of one year, or a combination thereof. [27] Under Section 272, the matter of adulteration of food or drink that is specifically intended for sale.[28] The aforementioned provision stipulates that any individual who, with the intention to sell or with the knowledge that it is likely to be sold, alters or contaminates any food or beverage item shall be subject to punitive measures, including imprisonment, a monetary penalty, or both. The potential penalty for the offence in question may include a period of

[24] The Constitution of the People's Republic of Bangladesh, art 15
[25]Constitution (n 23) art 18
[26]The Penal Code 1860, ss 264-267
[27]The Penal Code 1860 (n 25) ss 264-267
[28]The Penal Code 1860 (n 25) s 272

incarceration lasting no longer than six months, or a monetary fine not exceeding one thousand taka.[29]

Moreover, it should be noted that the act of selling noxious food or drink, the act of adulterating drugs, the act of selling adulterated drugs, and the act of selling drugs as a different drug or preparation are all considered offences that are subject to punishment under the Bangladesh Penal Code of 1860. Individuals who are determined to be culpable of the aforementioned transgressions may be subject to imprisonment, monetary penalties, or both thereof. [30]

4.1.3 The Contract Act, 1872

The definitions of "Agreement" and "Contract" as stipulated within the provisions of the Contract Act. Every promise and every collection of promises that function as the consideration for one another shall be deemed agreements pursuant to the provisions of this Act [31], and a contract shall be legally enforceable.[32] The aforementioned Act provides a comprehensive definition of the circumstances under which an agreement may be deemed voidable, as well as the conditions under which a contract may be considered void. [33] Herein, the prescribed protocol for executing a contractual agreement is also delineated within the provisions of this Act. [34] The aforementioned Act provides reparation for any loss or detriment incurred as a result of a breach of contract.[35] It further stipulates the provision of guaranteed compensation in instances of contract cancellation executed in good faith. [36] Chapter VIII hereby delineates the concept of contractual indemnification.

4.1.4 The Sale of Goods Act, 1930

The Sale of Goods Act 1930, hereinafter referred to as "the Act," is the governing legislation that regulates and governs contracts pertaining to the sale of goods within the jurisdiction of Bangladesh. The legal framework governing the sale of goods in Bangladesh is comprehensive and has a lengthy historical background. The Act explicitly delineates the term "buyer" as an individual or entity that engages in the act of purchasing or entering into an agreement to purchase goods. [37] Furthermore, the term "delivery" is precisely defined as the voluntary and intended transfer of ownership from one party to another. [38] According to the terms of the contract, goods are deemed to be in a state that is suitable for delivery

[29]The Penal Code 1860 (n 27) s 272
[30]The Penal Code 1860 (n 27) s 272
[31]The Contract Act, 1872, s 2(e)
[32]The Contract Act, 1872 (n 30) s 2(h)
[33] The Contract Act 1872 (n 30) s 2(h) Chapter II
[34] The Contract Act 1872 (n 30) s 2(h) Chapter IV
[35]The Contract Act 1872 (n 30) s 73
[36] The Contract Act 1872 (n 30) s 75
[37] The Sale of Goods Act, 1930, s 2(1)
[38] The Sale of Goods Act, 1930 (n 36) s 2(2)

when they are prepared for the buyer to assume possession of them. [39] The aforementioned Act explicitly delineates the term "fault" as an illicit act or omission[40], and further elucidates "Goods" as encompassing all forms of movable property, except for money and actionable claims.[41] The term "price" pertains to the monetary compensation associated with the transaction of a product. [42]

4.1.5 The Special Powers Act, 1974

The aforementioned Act explicitly establishes the precise definitions of the terms "black-market" [43] and "hoarding" [44] and unambiguously states that engaging in hoarding or participating in black-market activities, including but not limited to smuggling, as well as adulterating food, drink, pharmaceuticals, or cosmetics, constitutes a criminal offence as stipulated by this Act. [45]

4.1.6 The Consumer's Rights Protection Act, 2009

The Consumer Rights Protection Act, 2009 (hereafter referred to as the CPR Act, 2009) was enacted with the primary objective of safeguarding and upholding the rights of consumers. Pursuant to the aforementioned law. The aforementioned law has been enacted with the explicit purpose of safeguarding the rights of consumers. Pursuant to the provisions outlined in the Consumer Rights Protection Act of 2009, it is stipulated that an individual or entity classified as a "complainant" may include, but is not limited to, a consumer, a collective of consumers sharing a common interest, a consumer association duly registered under any applicable legislation, or a duly authorised government officer acting on behalf of consumers.[46] Sections 40-51 of Chapter IV of the CRP Act 2009 provide elucidation regarding the penalties imposed for engaging in any conduct that detrimentally affects the rights of consumers. [47] More precisely, the Act was enacted "to make provisions for the protection of the rights of the consumers, prevention of anti-consumer right practices and for matters connected therewith."The Act is the principal consumer-protection statute in Bangladesh and applies generally to consumer transactions, including online transactions where the facts fall within its scope. However, it was drafted before the rise of modern e-commerce; it does not expressly regulate several digital-commerce issues such as platform liability, cross-border sales, data misuse, escrow, or algorithmic advertising.

[39] The Sale of Goods Act, 1930 (n 36) s 2(3)
[40] The Sale of Goods Act, 1930 (n 36) s 2(5)
[41] The Sale of Goods Act, 1930 (n 36) s 2(7)
[42] The Sale of Goods Act, 1930 (n 36) s 2(10)
[43] Special Powers Act,1974, s 2(b)
[44] Special Powers Act 1974 (n 42) s 2(i)
[45] Special Powers Act 1974 (n 42) s 25C
[46] The Consumers' Right Protection Act 2009, s 2(3)
[47] The Consumers' Right Protection Act 2009 (n 45) ss 40-51

They include overpricing, adulteration etc., fraudulent weighing or measurement, misleading advertisement, sale of counterfeit goods and sale of expired goods or unsafe products.

There are also procedural safeguards and remedies embedded within the Act. A complaint is generally required to be made within 30 days of the cause of action, and the law also requires an appeal to the Sessions Judge within 60 days from such judgment/order in question.

The other significant feature is a performance-based incentive mechanism for complainants: if the allegation is backed by evidence, then the complainant can claim 25% of the fine. This is important because it would incentivize consumer reporting and enforcement.

In practice, the Directorate of National Consumer Rights Protection (DNCRP) is responsible for enforcing the Act through investigation of complaints and market surveillance. These reports also seem to corroborate statements on continued institutional strengthening and amending laws to enhance enforcement power and increase the actionability of e-commerce-related offenses.

4.1.7 Information and Communication Technology Act, 2006

The Information and Communication Technology Act, 2006 stipulates that it is unlawful for any individual to conceal or fabricate material facts from the Controller or Certifying Authority with the intent of obtaining a licence or Digital Signature Certificate.[48] This legal document provides a comprehensive explanation of the establishment and procedural aspects of the Cyber Tribunal. It covers various aspects such as the investigation of crimes, the decision-making process, and the procedures for lodging appeals.[49] In current practice, however, the newer Cyber Security Act, 2023 has partly overtaken the ICT Act in the cybercrime field, although the ICT Act remains relevant for electronic records and signature-related matters.[50]

4.1.8 Trade Marks Act, 2009

Another important aspect to be considered in the prevention of e-commerce fraud pertains to the complexities surrounding trademarks. The provisions outlined in Sections 71 to 78 of the Trademark Act of 2009 have been meticulously crafted with the explicit purpose of addressing fraudulent activities, specifically those involving the utilisation of deceptive trade names, trademarks, or exaggerated trademarks. [51]

[48] Information and Communication and Technology Act, 2006, s 26(1)(a)
[49] Information and Communication and Technology Act, 2006 (n 47) Chapter VIII
[50] Joydeep Chowdhury, 'Strengthening E-Commerce Consumer Protection in Bangladesh: Legal Challenges, Regulatory Gaps, and Reform Strategies' (2025) 9(1) *International Journal of Research and Innovation in Social Science* 2548
[51] Trade Marks Act, 2009, s 71-78

4.1.9 National Digital Commerce Policy 2018

The National Digital Commerce Policy 2018 assures Bangladeshi e-commerce platforms of secure digital transactions. The policy's central objective is to create an enabling environment for digital commerce by promoting trust, transparency, consumer protection, and innovation. This regulation increases e-commerce consumer rights. Mobile payments and digital transactions may grow safer as banks and mobile banking providers improve security. A large trade ministry unit will handle hacking and piracy. The Central Commerce Cell wants to promote e-commerce. Over several years, Bangladesh e-Commerce Association (e-CAB) reform initiatives were implemented. The government built an industry and promoted exports to produce long-term jobs for Bangladeshi youth. Trust in Internet commerce is established by this policy. E-commerce platforms and website designers must respect consumer rights. Copyright compliance matters. Cellular operators will defend net neutrality and digital rights. This rule will be promoted nationwide offline by the government to restore customer confidence in e-commerce. The ICT department will create and implement e-commerce customer satisfaction policies. eCommerce websites need digital signatures for transaction security.

4.1.10 Digital Commerce Operation Guidelines 2021

On the 4th day of July in the year 2021, the Ministry of Commerce, in accordance with the National Digital Commerce Policy of 2018 (as amended in 2020), issued the Digital Commerce Operation Guidelines, 2021. The purpose of these guidelines is to establish transparency and accountability within the digital commerce sector, foster employment opportunities, safeguard consumer rights, promote reliance on digital commerce through the implementation of regulatory measures, and cultivate a competitive market that facilitates entrepreneurial endeavors. The aforementioned Guidelines shall apply to all digital commerce enterprises engaged in commercial activities within the jurisdiction of the country. The guidelines establish specific regulations that must be adhered to by digital commerce enterprises. These regulations encompass the necessity of disclosing comprehensive terms and conditions pertaining to purchase and return, as well as the obligation to exhibit the quantity of goods, their composition, pricing, delivery fees, and any additional charges. Furthermore, the guidelines mandate the provision of visual representations, such as images or videos, of the goods intended for sale, with the intention of empowering the buyer to make a well-informed decision. In accordance with the Guidelines, it is mandated that digital commerce platforms must acquire the explicit consent of the purchaser prior to obtaining any personal data. This consent must be obtained by disclosing the specific purpose for which the data is being collected, the methods by which it

will be stored, the manner in which it will be processed, and the intended purposes for its utilisation.

4.2. International Framework for Protecting Consumers in Social Commerce

The rise of online trading has undeniably emerged as an indispensable facet of the international trade landscape, proffering incomparable degrees of convenience and unrestrained accessibility to demanding customers across the globe. Similarly. These challenges and risks have also emerged along with the rise of online trading. To address these issues, many legal instruments such as guidelines and treaties have been constructed under International Law. These legal instruments have been discussed below.

4.2.1. The United Nations Guidelines for Consumer Protection (UNGCP)

The United Nations Guidelines for Consumer Protection do not expressly contemplate the safeguarding of consumers in the digital domain. However, the guidelines have been established with the intention of guaranteeing that individuals across the globe are provided with access to products that are deemed safe, equitable treatment, and the promotion of economic development that is sustainable in nature. Through the promotion of ethical conduct, the curbing of abusive practices, and the encouragement of international cooperation, the objective of these guidelines is to empower consumers and foster the establishment of a more equitable marketplace.

4.2.2. United Nations Convention on Contracts for the International Sale of Goods (CISG)

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is a legal instrument that primarily centres its attention on the establishment of contractual agreements and the corresponding legal entitlements and responsibilities of purchasers and vendors involved in international sales transactions. For matters pertaining to electronic communications in international contracts, it is worth noting that the United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (referred to as the Electronic Communications Convention) can serve as a supplementary framework alongside the CISG. The aforementioned supplementary agreement aims to simplify the utilisation of electronic communications in the realm of international trade by guaranteeing that electronically executed contracts and correspondence hold the same level of validity and enforceability as their conventional paper-based counterparts.

4.2.3 Organisation for Economic Co-operation and Development (OECD) Guidelines for Consumer Protection in the Context of Electronic Commerce

The guideline emphasises the necessity of implementing strong consumer protection measures in the realm of electronic commerce, with the purpose of safeguarding the rights of consumers, fostering trust, and facilitating equitable and secure online transactions.

4.2.4 UN Human Rights Council Resolution, 2019

The aforementioned resolution explicitly asserts that all of the rights that individuals possess offline must likewise be safeguarded online, encompassing the fundamental right to privacy. Therefore, laws and regulations protecting consumers' rights that are applicable offline shall also be applicable online as per the UN Human Rights Council Resolution, 2019.

Bangladesh is currently in the early phases of its online purchasing and e-commerce journey. The jurisdictions discussed above are currently experiencing a notable surge in the number of online businesses, thereby affording Bangladesh a favourable opportunity to become a prominent position within the realm of digital commerce. Notwithstanding, in order to fully exploit and capitalise on this potential, it is of utmost importance to diligently rectify and address the prevailing deficiencies and imperfections in the relevant legal framework. By addressing and rectifying these legal loopholes, the nation of Bangladesh has the potential to establish a robust and flexible regulatory structure that nurtures confidence, safeguards the rights of consumers, and advances a secure and prosperous e-commerce environment.

5. Gaps in Bangladesh's Legal Framework for Consumer Protection in Social Commerce

Despite a number of consumer rights protection frameworks in Bangladesh, there is a lack of proper structure for regulatory statutes that pertinently point out and remedy the loopholes of the existing legal framework in regard to the aforementioned issue. There have been several policies imposed by the government; however, there is a lacuna in the legal system in terms of pertinently addressing the existing core issues. The loopholes and key legal deficiencies in the current legal framework have been discussed in the sections.

5.1. Limitations of the Penal Code, 1860

The Penal Code of 1860 is found to have some shortcomings concerning the matter of e-commerce fraud. The aforementioned Act gives particular emphasis on weights and measurements. [52] Furthermore, it is important to note that this Act specifically focuses on the issue of adulteration in relation to food, drink, and

[52] The Penal Code 1860 (n 25) ss 264-267

medicines.[53] Only in matters on business transactions, these Acts address the topics of weights and measurements. The Act in question does not involve the discussion of online shopping. Hence, the Penal Code encompasses a legal lacuna in regard to digital consumer rights protection for the citizens of Bangladesh.

5.2. Limitations of the Contract Act, 1872

The Contract Act, being one of the well-written statutes of Bangladesh, is duly acknowledged. In the jurisdiction of Bangladesh, it is customary and legally binding for a formal agreement to be established between the party acting as the customer and the party acting as the seller before the initiation of any transactions conducted over the internet. The aforementioned agreement is strictly limited to a virtual nature and does not extend to any physical or tangible aspects. The entirety of the Contract Act fails to make any reference to the method of contract creation via online means.[54]

5.3. Limitations of the Sale of Goods Act, 1930

The aforementioned Act precisely differentiates between the legal concepts of Sale and Agreement to sell and thoroughly elucidates the process of establishing a sales contract. Section 13 of the aforementioned Act defines the circumstances under which conditions shall be deemed warranties [55], whereas Section 15 pertains to sales made based on the description and Section 17 pertains to sales made based on sample.[56] In accordance with Section 37, the buyer possesses the legal entitlement to either accept or decline the goods if a wrong quantity is delivered.[57] Upon delivery of the goods to the buyer, it is important to note that the buyer shall not be deemed to have accepted said goods until a reasonable opportunity has been afforded to the buyer to thoroughly examine said goods for conformity with the terms and conditions of the contract, as clearly stipulated in Section 41.[58] The aforementioned Act bestows upon purchasers certain entitlements and delineates the courses of action available in the event of a contractual violation, as elaborated upon in Chapter VI. The seller possesses the legal entitlement to initiate legal proceedings in order to claim the agreed-upon price, whereas the buyer retains the legal entitlement to initiate legal proceedings seeking compensation for any losses incurred due to failure to deliver or breach of warranty. Both parties possess legal entitlements as stipulated by the Specific Relief Act, 1877. Furthermore, the buyer retains the prerogative to pursue specific performance as a viable remedy.

The further deficiencies regarding the aforementioned Act have been discussed below in key points:

[53] The Penal Code 1860 (n 25) ss 272-276
[54] Rahman (n 7)
[55] The Sale of Goods Act, 1930, s 13
[56] Ibid, S.17
[57] Ibid, S.37
[58] Ibid, S.41

a. The Act, as currently prepared, does not appear to explicitly encompass the area of online shopping. It is important to note that a sales agreement can be legally established through various means, including oral communication, written documentation, or a combination of both. Based on the actions of the parties involved, a determination can also be made. Notwithstanding, it is to be noted that the aforementioned law does not encompass or pertain to contracts entered into via online platforms. [59]
b. The aforementioned Act pertains to transactions that are predicated upon samples[60] or descriptions[61]. However, the aforementioned statement did not address the matter of descriptions within the context of a digital space.
c. The Sale of Goods Act, 1930, specifically describes the terms, conditions, and warranties.[62] However, it should be noted that these requirements are not legally obligatory in this jurisdiction
d. Under the provisions of the aforementioned Act, the buyer is granted the legal entitlement to inspect and examine the concerned products.[63] However, the aforementioned statement solely pertains to the act of verifying before making a purchase. It is not evident whether this pertains to the sphere of online shopping with respect to the methods by which customers may inspect items before purchasing via the Internet. When engaging in online transactions, it is expected that the customer relies solely on the visual representation of the product and its associated textual description.

5.4. Limitations of the Special Powers Act, 1974

The aforementioned statute pertains to the act of retaining products with the intention of selling it on the illicit market, as well as engaging in manipulating or selling consumable items such as food, beverages, pharmaceuticals, or cosmetics. Furthermore, it is important to note that this particular legislation primarily centres its attention on manipulating said products. Notwithstanding the aforementioned, it is important to note that the aforementioned policy does not extend its coverage to fraudulent activities that may occur within the realm of digital commerce, commonly referred to as online shopping.

5.5. Limitations of the Consumer's Right Protection Act, 2009

The Loopholes of the aforementioned Act are as follows:

a. The Act provides an expansive interpretation of the term "complainant." According to the provisions of this Act, it is hereby stipulated that any

[59] Mohayminur Rahman, 'Prevention of E-commerce Fraud in Bangladesh: A Critical Study on Legal and Institutional Framework' (2023) SSRN Electronic Journal <http://doi.org/10.2139/ssrn.4477507> accessed 16 January 2023
[60]The Sale of Goods Act, 1930 (n 36) s 17
[61]The Sale of Goods Act, 1930 (n 36) s 15
[62]The Sale of Goods Act, 1930 (n 36) s 17
[63] The Sale of Goods Act, 1930 (n 36) s 41

consumer, without exception, possesses the right to file a complaint regarding any matter falling within the purview of this legislation.[64] It, in its comprehensive explanation, provides a detailed clarification of the concept of a "consumer." The Act, as it is currently structured, has been established with the intention of safeguarding consumers and upholding their rights. However, it is important to note that certain challenges and concerns persist within this structure of law. The law primarily directs its attention towards food and medicine, with relatively less emphasis placed on other products.

b. The aforementioned Act does not specifically address the concept of "online shopping." The Act does indeed refer to deceptive advertising in various parts.[65] However, the mechanisms through which it can be proved that someone has incorporated deceptive advertising are not clarified.
c. The aforementioned Act clarifies the proper procedure for inspecting items that sustained damage. The Act explicitly references particular products that may undergo testing at a duly authorised laboratory.[66] Notwithstanding, it is to be noted that the aforementioned law lacks substantial explanation with regard to the process of returning items.
d. It is crucial to point out that the acceptance of digital evidence is still limited in Bangladesh. In the case of ***Major Md. Bazlul Huda (Artillery) vs. State, 2009*** [67] the honourable justice opined that in para 731,

"It is thus hoped that the country's outdated laws would be changed and new suitable laws will also be adopted to adapt to the needs of changing society in light of the remarks stated above. In view of the lack of proper law, I am unable to use the digital evidence produced by the prosecution in this case."[68]

This legal observation reflects the immediate need to reform and amend legislation in Bangladesh related to the admissibility and practical use of digital evidence in accordance with modern-day technological realities and also modern justice.

5.6. Limitations of Information and Communication Technology Act, 2006

The aforementioned Act mainly pertains to matters concerning information and communication technology, as well as cybercrime. The subject matter of online shopping is prominently missing from the Act in question. The primary emphasis of the legal framework pertains to electronic records and digital signatures.

[64] Consumers' Right Protection Act, 2009, s 2(3)
[65] Consumers' Right Protection Act, 2009 (n 62) s 2(20)(d), 44
[66] Consumers' Right Protection Act, 2009 (n 62) s 2(20)(d), 44
[67] *Major Md Bazlul Huda (Artillery) v State* (2009) 38 CLC (AD)
[68] *Major Md Bazlul Huda (Artillery) v State* (n 65)

5.7. Limitations of Trade Marks Act, 2009

The Trade Marks Act of 2009 may potentially provide certain individuals with the opportunity to engage in business practices that are deemed unethical, as the Act lacks a robust legal foundation to adequately safeguard intellectual property rights.

5.8. Limitations of the National Policies and Guidelines

There are national policies and guidelines such as the National Digital Commerce Policy 2018 and Digital Commerce Operation Guidelines 2021; however, these policies are not legally enforceable. They simply work as guidelines for the authorities to deal with and tackle probable issues regarding digital consumer rights protection. Therefore, due to the lack of legal enforceability, these guidelines and policies are not incorporated into legislation and into the daily practice of consumers and online businessmen. This is one of the very crucial issues that requires immediate attention from the respective authority.

Based on the findings of the study, it is evident that there is currently no specific code or regulation in place that establishes the rights of consumers in the context of online business. Current legislation has not undergone any modifications that would adequately address the concerns pertaining to online businesses. Therefore, it can be argued that the existing laws are being indirectly challenged in order to rectify any discrepancies or anomalies that arise in the context of social commerce.

6. Conclusion and Policy Recommendations

The current legal regime and institutional framework in Bangladesh possess certain limitations that hinder their ability to effectively prevent instances of e-commerce fraud.

The aforementioned circumstances give rise to incongruities and deficiencies in the realm of legal safeguards for individuals engaged in electronic commerce. Furthermore, it is evident that there is a dearth of adequate guidelines pertaining to the handling and presentation of digital evidence in matters concerning e-commerce fraud. E-commerce fraud, a detrimental occurrence, leads to substantial financial losses for both the buyers and merchants involved. Regarding the e-commerce sector, it is important to address the prevalent concerns surrounding privacy and confidentiality, which ultimately contribute to a lack of trust. The limited nature of product information, typically confined to mere descriptions and photographs, presents a notable disadvantage for customers, which influences their purchasing decisions.

It is to be noted that a multitude of e-commerce fraud instances have transpired within the jurisdiction of Bangladesh, encompassing but not limited to acts of identity theft, credit card fraud, and phishing scams. The study diligently examined and scrutinised the aforementioned types of fraudulent activities with

the intention of furnishing a thorough and all-encompassing comprehension of the inherent characteristics and prevailing frequency of digital scams within the jurisdiction of the country in question.

One major problem facing the e-commerce industry is that consumers are not aware of safe online shopping procedures. The lack of awareness makes people more susceptible to deceptive tactics and fraud. Furthermore, the lack of explicit return or post-purchase rules creates regulatory issues and exposes consumers to risk.

To effectively prevent e-commerce fraud, significant measures must be implemented. The study will explore various measures to address concerns in the e-commerce industry. These measures may include implementing more stringent regulations, strengthening consumer protection mechanisms, improving law enforcement procedures, and increasing awareness and education among e-commerce stakeholders. Bangladesh has the opportunity to gain advantages by implementing effective strategies based on international guidelines and legislation to combat e-commerce fraud.

6.1. Policy and Regulatory Recommendations

For the purpose of addressing the implementation of a successful e-commerce strategy, the following recommendations are suggested in light of the multiple obstacles and conditions that the e-commerce industry in Bangladesh is currently facing:

6.1.1 Enacting a Comprehensive Legal Framework for Social Commerce

Even though there are a number of specific acts that deal with consumer rights protection, there is no unique and specific act that pertinently deals with consumer rights protection regarding digital transactions. It is crucial to have well-rounded legislation that specifically focuses on the realm of online commerce. A clear set of guidelines for e-commerce should be established by this legislation.

6.1.2 Institutionalising Alternative Dispute Resolution for Social Commerce Disputes

The framework should also include provisions for resolving disputes that may arise during e-commerce transactions, such as mediation and arbitration, to ensure a fair resolution. Through ADR, the complicated court procedure may be avoided and thus, it shall be an effective method to bring remedy to the situation.

6.1.3 Strengthening Regulatory Obligations for Social Commerce Sellers

E-commerce platform owners must have a well-defined plan in place for effectively managing their businesses. There should be specific guidelines for data protection and privacy, as well as measures for preventing and combating fraud and other malicious activities for online businessmen or sellers, so that they can have a proper understanding of their own responsibilities regarding the guidelines and regulations.

6.1.4 Providing Statutory Recognition of Digital Evidence

It is imperative that the law clearly establishes the definition of "digital evidence." This will assist in guaranteeing that digital evidence can be utilized efficiently in court to pursue legal action against e-commerce fraud and other criminal activities.

6.1.5 Enhancing Consumer Awareness and Legal Literacy

As the citizens of Bangladesh, consumers have a duty to be aware of their own legal rights concerning their rights as consumers for online purchasing. As per the Digital Commerce Operation Guidelines 2021, a noteworthy inclusion is the section pertaining to the complaint and redress mechanism. Marketplaces must provide consumers with a way to contact them to file a complaint. It is imperative to document these complaints and promptly address them to ensure consumer satisfaction within 72 hours. Digital commerce platforms need to prioritise the implementation of a reliable rating and review system. This allows buyers to access valuable information and make well-informed decisions. It is crucial that these platforms do not have the ability to delete or manipulate these reviews. Consumers should be aware of such rights.

6.1.6 Improving Access to Effective Legal Remedies

Every citizen is entitled to seek legal assistance when faced with instances of fraud. To ensure their safety during online purchases, buyers should exercise caution. It is advisable to keep a record of the seller's contact information, including their address, mobile number, and website/page URL, when making a purchase. Additionally, it is recommended to take screenshots of the shop/page, payment and order confirmations, as well as any chat interactions for future reference. When you discover the fraud, it is crucial to take action by filing a General Diary (GD) or complaint with the relevant evidence at the nearest police station. Victims can also seek assistance from law enforcement agencies' Cyber Cells by providing a copy of the GD/complaint. If the culprits are identified, the victim has the option to take legal action to ensure that they are held accountable. They can choose to file a case against the culprits or file a complaint with the Directorate of National Consumer Rights Protection. Another option is to initiate a fraud case in court.[69] By taking immediate actions, it is possible to mitigate instances of fraud in regard to online shopping.

6.1.7 Aligning Domestic Law with International Standards

Bangladesh could benefit from following the effective strategies employed by international legislation and guidelines to combat e-commerce fraud. This involves the implementation of relevant technologies and regulations to enhance its own legal framework.

[69]Moin (n 11)

6.2 Concluding Remarks

In Bangladesh, the social-commerce industry is currently in its early stages and lacks a dedicated legal framework to regulate its operations. Consequently, a wide range of laws are employed depending on the unique characteristics of each conflict. This study discusses the operational aspects of e-commerce, including ordering, delivery, payment, refunds, and complaint handling, which are all closely connected to legal considerations. The expansion of e-commerce in Bangladesh hinges on the implementation of effective and adaptable regulatory processes to strengthen the existing legal structure. Consumers deserve to receive quality products and should not be exploited or deceived when making online purchases. Regrettably, in the absence of adequate regulations, certain individuals have taken advantage of consumer vulnerabilities for personal benefit.

It is crucial for the government to proactively establish a robust legal framework for e-commerce, ensuring consumer protection and fostering fairness and transparency for businesses. This will not only have a positive impact on the long-term growth of the e-commerce industry in Bangladesh, but it will also contribute to the overall improvement of the economy and the overall standard of living for its citizens.