



DISSERTATION

ON

**Digital Scams in Online Market-Place: A Critical Analysis of Legal
Implication**

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DECLARATION

I, Marufa Islam, bearing Student ID: 2017-2-66-007, do hereby solemnly declare and affirm that this research paper is original and my own work and is not copied from anywhere or from anyone's view and has neither been published in any journal, newspaper or article nor been submitted to any of such publications. It is completed during my academic education as a requirement for my academic degree of LL.B. Information from works of others used in this research is duly acknowledged and referred to accordingly, and a list of references has also been included.

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LIST OF ABBREVIATIONS

AD	Appellate Division
BASIS	Bangladesh Association of Software and Information Services
CRP	Consumer's Right Protection
ECAB	E-Commerce Association of Bangladesh
NCRPC	National Consumers' Right Protection Council
NRB	Non-Resident Bangladeshi

ABSTRACT

Bangladesh is a developing country that has just started its e-commerce and online shopping journey. There are an increasing number of online shops. Bangladesh may take the lead in the e-commerce sector. However, it is first necessary to fill in the existing gaps and weaknesses in the relevant law. There is currently no specific statutory law in Bangladesh governing the e-commerce industry, hence various laws are applied depending on the circumstances and the type of dispute. Concerning the legislation of e-commerce Scams has been mostly supplanted by other unique laws and is therefore out of date and hasn't been changed to fit the current era. Scam in the area of internet commerce includes a number of criminal activities. E-commerce fraud can take many different forms. The e-commerce sector is anticipated to grow in the future. The long-term development of this industry will benefit enormously from strengthened e-commerce-specific legislation and enforcement procedures. Dynamic and efficient regulatory procedures are urgently needed to strengthen the legal framework that is crucial to the growth of e-commerce in Bangladesh.

Chapter – 1

1.1 Introduction

E-commerce is utilized extensively throughout the world, and it is also becoming more popular in Bangladesh on a daily basis. E-commerce, also called electronic commerce, describes business conducted online. E-commerce is the buying and selling of goods and services through the internet by people and businesses. In Bangladesh, e-commerce is booming and rising quickly. Meanwhile, certain barriers are limiting this expansion, and business owners are finding it challenging to conduct their operations. Although the majority of e-commerce business owners would prefer to conduct their operations in a quiet and honest manner, Internet technology has drawn the attention of dishonest businesses, highlighting some potential hazards and necessary precautions. This paper examines a number of E-Commerce schemes, methods employed in the schemes, and data scope of e-fraud for the inadequate legal framework.

1.2 Methodology

This research paper is based on qualitative research that relies on content analysis. Laws of Bangladesh, regulations, policies, and international guidelines are used as the primary data and article, journal, newspaper and blog are utilized as the secondary sources. Referencing system is conducted by the OSCOLA referencing style. This paper of research examines a variety of issues to identify legislative reforms & point out the lacking of the existing laws.

1.3 Object of the Study

The objectives of this study are -

- To examine the reason for digital scams in online marketplace and finding the loopholes for implementation of law.

- To develop a legal framework of deterrence, prevention, detection and remedies in terms of against Digital Scams.
- To analyze the effectiveness of the legal provisions regarding E-commerce scams.
- To analyze points on some potential threats and countermeasures regarding digital scams.

1.4 Research Questions

- Whether the current laws are adequate to prevent this scam or not?
- Where are the barriers to the enforcement of the legislation intended to stop digital scams in online marketplace?

1.5 Limitations

The lack of resources is a limitation for this study. Additionally, the absence of case laws from DLRs and the internet, and perhaps most significantly the absence of specific books. If there were case laws to debate, the research into this matter might be able to produce greater results.

Chapter – 2

Current Scenario of E-commerce Scams in Bangladesh

2.1 Introduction

In Bangladesh, almost all e-commerce frauds are a prime determinant of the platform's fraudulent activities. The digital commerce sector is currently fighting to repair the harm caused by the dishonest business practices of approximately a few more platforms.¹ There are several avenues for scam in e-commerce platforms. The chance of distribution and sales fraud has increased as remote working options become more common in entities. To meet the increasing demand, devious businesses frequently distribute fake and faulty goods. Scam may occasionally result through third-party dealers and online resales. The great majority of firms have shifted from offline to online operations since the outbreak of the outbreak. Participants in these businesses who lack sufficient cyberspace understanding are more susceptible to fraud and cyberattacks.² Additionally, a lot of entrepreneurs hire new employees without doing adequate background checks.

2.2. Revolution of E-commerce marketplaces in Bangladesh

In Bangladesh, e-commerce first emerged in the late 1990s. Prior to the advent of e-commerce, gift-focused websites catered to NRB residing abroad. All of the websites had branches in Bangladesh but were headquartered elsewhere.³ The e-commerce sector experienced moderate growth from 2000 to 2008 throughout this period. The absence of an online transaction system was the first requirement for e-commerce, despite the fact that there weren't many websites dedicated to it. The crucial turning point occurred in 2009 when Bangladesh Bank officially opened up the E-Commerce sector by allowing online payments. The launch of WiMax internet in Bangladesh was another significant event in 2009. It gained considerable traction domestically. 2013 had been a noteworthy year in Bangladesh's history of e-commerce. First, with support from the ICT Business Promotion Council, BASIS and Bangladesh Bank jointly observed "E-

¹ "Bangladesh's e-commerce players reel from scams" bdnews24.com (Dhaka, 5 Oct 2021)

² "Economics Study Center"

³ "Assignment on E-Commerce Bangladesh" (February 8, 2017)

Commerce Week" for the first time in the nation⁴. It contributes significantly to the country's GDP and general development.

2.3 Concept of digital scams in online market-place and current situation

Now-a-days in Bangladesh the e-commerce industry had a difficult time as it had expanded in recent years before suffering a significant setback as a result of scams by several e-commerce businesses that destroyed the public's faith in the enterprises. The failure of the scam-affected firms to return customer money and the closing of operations led to government action to simplify the industry. In Bangladesh, there are already more than 1,000 registered online platforms, according to the E-CAB.⁵ Every day, these websites deliver more than 50,000 items. Due to the Corona pandemic, the number of this deception has increased considerably. People were forced to rely on online resources during the lockdown because there were none available. Numerous internet stores offer home delivery, which is incredibly convenient for many customers who don't want to leave their houses. A class of scammers, however, is spinning a web of deceit in the name of commerce. There have been numerous allegations that the providers are given false or incorrect merchandise. Along with large corporations, hundreds of Facebook-focused e-commerce businesses defraud customers every day. E-commerce is now expanding in Bangladesh, according to analysts.⁶ People are growing more and more reliant on online shopping as a result of their diminished ability to physically visit stores, and by taking advantage of this trend, a vicious circle is utilizing it to scam consumers. Any type of malicious behavior intended to take advantage of internet stores is considered ecommerce scam. Such include credit card scams, deceptive advertising, denial of service, refund fraud, product fraud, phony profiles, false buyer and seller closed loop accounts, triangulation scams, among many others.

⁴ "Assignment on E-Commerce Bangladesh" accessed 17 August 2022

⁵ "Online fraud: An obstacle to digital Bangladesh" daily-sun (19th July, 2020)

⁶ "E-Commerce Goes Haywire in Bangladesh; Tech Observer" (Tech Observer, September 7, 2021)

2.4 Prevailing issue of E-commerce Scams in Bangladesh

This emerging landscape in Bangladesh started to take shape about 2013. Bangladesh is adopting online purchasing at a rapid rate, much like other modern nations. The most recent Statista figures show that Bangladesh's e-commerce business was worth 1648 million USD in 2019. The market size is anticipated to be close to 3077 million USD in 2023.⁷ Our reliance on online shopping is growing every day. And by taking advantage of this chance, a vicious loop of individuals is defrauding the customers. By purchasing products with glitzy ads and tempting incentives online, many regular consumers are falling victim to this fraud in a variety of ways. The fundamental charge is that they consistently fall short of client expectations and, even when they do, produce inferior goods. Meanwhile, Evaly's managing director Mohammad Rassel and his wife Shamima Nasrin were arrested. Evaly's managing director Mohammad Rassel and his wife Shamima Nasrin are currently incarcerated, and the business owes its clients and suppliers more than Tk 5.4 billion.⁸ Due to fraud on several e-commerce sites, customers in Bangladesh have lost faith in online buying. By running an unlicensed and unregulated digital payment wallet, platforms like Evaly, Dhamaka Shopping, Alesha Mart, and a number of others have lately appeared have blatantly broken the law and the Payment Systems Guidelines of Bangladesh Bank.⁹

2.5 Limitations of e-commerce organizations

Security is one of the key drawbacks of e-commerce. A vulnerable e-commerce implementation may lead to a lack of system security, dependability, or standards. Because sometimes the website is operated by an anonymous, anonymous merchant, users may not trust it. Because of this mistrust, it is difficult to convince regular clients to switch from physical to online businesses. Customers are also restricted from trying before they acquire. Further limitation is the inability to deliver at the scheduled time due to the overseas buyers, traders, and dealer's tardy shipments.¹⁰

⁷ Economics Study Center

⁸ "Bangladesh's e-commerce remains unhinged" The Financial Express (Dhaka, September 29, 2021)

⁹ "Stop the Steal in E-Commerce: Shut down Evaly, Dhamaka, and Alesha Mart" (The Business Standard, August 29, 2021)

¹⁰ Nicole Martins Ferreira, '20 ECOMMERCE ADVANTAGES AND DISADVANTAGES YOU NEED TO KNOW' (OBERLO, 20 December 2019) accessed 19 August 2022

2.6 Conclusion

E-commerce in Bangladesh is still a young and emerging industry. E-commerce is expanding quickly in the market as a substitute for traditional channels with the development of digital media. Some of Bangladesh's emerging e-commerce companies have received outstanding valuations as a result of the enormous potential market there and encouraging signs of ecosystem development. E-commerce brings convenience, but it also has certain drawbacks.

Chapter – 3

Emerging form of E-commerce Scam

3.1 Introduction

The widespread use of the internet has led to new technological advancements. The internet has evolved into a tool for conducting numerous transactions online. Its accessibility and ease of use made it the most effective marketing and sales instrument in history. The development of Internet-related technology has made it possible for businesses to expand their marketing and communication efforts as well as their ability to offer goods and services globally. E-commerce allows it greater extensive access to the worldwide base market. Whereas the majority of e-commerce businesses aspire to operate honestly and legitimately, Internet technology has drawn the attention of dishonest business practices. The rise in Internet access, which is the result of a rise in the demand for services and goods, has resulted in a large number of fraudulent operations being carried out.

3.2 The widespread methods employed in e-commerce scams

Scams in the e-commerce industry include a wide range of criminal activities. Many different types of e-commerce scams exist, including product fraud, refund fraud, account takeover fraud, friendly fraud, card testing fraud, deceptive ratings, triangulation fraud, false advertising, service denial, and many more. Scammers are using increasingly advanced techniques to bypass fraud standard precautions implemented by some entities and are improving their impersonation of real customers. The most common sort of e-commerce fraud is identity theft. Con artists are interested in personal information such as names, addresses, email addresses, credit card numbers, and account numbers. The personal data is utilized to commit later fraud.¹¹ Friendly fraud can happen intentionally or accidentally. The fundamental tenet is that a purchaser, whether legitimate or not, will pay for a service or commodity they say was never provided or was damaged upon delivery.¹²

¹¹ Dr Padmalatha N a “E-Commerce Frauds and the role of fraud Detection Tools in managing the risks associated with the fraud” International Journal of Advanced Science and Technology Vol. 29, No. 4s (2020) page 38-42

¹² “5 Types of Fraud That Is Used to Target E-Commerce Retailers” accessed August 22, 2022.

E-commerce brands use promotion, affiliate, and loyalty programs to interact with their existing clients and attract new ones. Promotions, however, draw fraudsters who drain the funds through fraud using a variety of techniques because of their popularity. Refund fraud is the fraudulent request for a refund on a transaction, followed by the fraudulent transfer of the funds to another account or alternative payment method. As a result, the scammer gets the refund without really making the purchase.¹³

Fake reviews on various e-commerce websites are an ongoing issue. These online marketplaces have a large number of vendors who promote their products unfairly. The algorithms of e-commerce sites emphasize products with more positive evaluations, providing them an advantage over rival products. When a customer makes a valid purchase on a third-party marketplace (such as Amazon or Sears.com), but receives an item that was unlawfully stolen from the website of another retailer. All types of enterprises are harmed by this behavior.¹⁴

3.3 The effect of succumbing for e-commerce scams

In E-commerce scams, there is only one probable indication: the house of cards collapses, the perpetrator is taken to jail, and the victims are left unfinished. Schemes are financial frauds that use money obtained from new investors to pay off old investors. Insiders have long since accepted the somber realization that the victims can only be provided table scraps amidst the flurry of hurried activity by the government.¹⁵ A regular customer may lose out if they come upon a huge bargain that seems unreal. This might happen. When a customer visits an online store or marketplace to purchase a certain good or service, or when a con artist places an ad for the same good or service on a social media site. The buyer starts sending money to the con artist via an online platform after he makes a delivery guarantee. In these frauds, they are never handed the goods. In some instances, scammers will use the following strategies: After the initial payment for duties or delivery fees has been made, they will demand additional payments, making excuses that the payment was made to the wrong bank account, claiming that the money hasn't been received,

¹³ Karlee Onstad, “7 Types of Ecommerce Fraud - Evolve Systems” (Evolve Systems, February 25, 2020)

¹⁴ “Triangulation Fraud - Fraud.Net” (August 17, 2022)

¹⁵ “Ecommerce Scam Victims: Majority Would Never Get Their Money Back (The Daily Star, March 14, 2022) accessed August 24, 2022

and requiring the buyer to transfer additional payments into different bank accounts. In the end, the victim was never given the products.¹⁶

3.4 The Consequence of E-commerce Threat

The prosecution of e-commerce fraud cases is difficult. This makes it much more difficult to stop, recognize, and prosecute such crimes, which is one of the causes of the rise in e-commerce scam incidents. When someone uses the internet unlawfully with the intention of stealing, engaging in fraud, or breaching security, e-commerce dangers result. There are many different shapes and sizes of e-commerce risks. Some are unintentional, some are caused by human error, and some are deliberate. In reality, in order to take the initiative in the fight against ecommerce fraud, retailers must utilize the most advanced technology tools and knowledge. Sadly, this isn't always possible, especially for small businesses that lack the tools and expertise necessary to successfully battle online fraud. Law enforcement organizations are often ill-prepared to handle the cases, which is another obvious gap that makes it difficult to combat internet fraud. Sometimes, law enforcement officials are unable or unwilling to look into e-commerce issues. This is typically because gathering proof in these situations is challenging. In addition, higher equipment and technical expertise are needed, which the majority of law enforcement authorities lack.¹⁷

3.5 Conclusion

E-commerce has emerged as a brand-new method for conducting business online. In the years to come, the e-commerce sector will dominate the electronic commercial world. The e-commerce revolution has profoundly altered the transactional economy by opening up new prospects and making cross-border trade simple. However, the distinctive features of social commerce are likely to present possibilities for scammers to deceive innocent consumers. E-commerce marketplace may adopt the best practice set out by anti-scams guidelines.

¹⁶ “E-Commerce Scams Prevention Tips, accessed August 24, 2022

¹⁷ “What Is Fraud? What Does Fraud Mean?” (Ecommerce Platforms, August 18, 2022) accessed August 24, 2022.

Chapter – 4

A Synopsis of Bangladesh's E-Commerce Scam Laws & Countermeasures

4.1 Introduction

The legal issues that impact the online retail sector collectively are known as e-commerce law. Like any other form of business, every kind of E-Commerce sector is subject to a number of laws and regulations, and breaking them can lead to legal difficulties and litigation. Laws create standards of conduct that encourage honesty and fair play and offer procedures for resolving disputes in e-commerce, just like in traditional companies. The organizational, commercial, and technological advancements of e-commerce have also created new legal issues that current business regulations cannot address.

4.2 Legal and liability Issues

A set of legal concerns known as "e-commerce law" have an effect on the online retail market. Like any other sort of business, each kind of ecommerce platform is subject to a number of laws and regulations that must be followed in order to avoid legal problems and litigation. Conflicts between parties in a business engagement are quite common. There may be disputes regarding the terms of the contract and the discussions, as well as conflicts that are both inside and outside of the contract and may be of a contractual or non-contractual nature.¹⁸ The initial problem is lack of proper laws and regulation in this respect.

4.3 Laws in Bangladesh pointing out scams in e-commerce

E-commerce and online marketplaces in Bangladesh started without any kind of legal structure. The government of Bangladesh has made some steps to provide a legal framework for online commerce. In Bangladesh, there is no specific legislation governing online commerce. These rules

¹⁸ Hussein Riyadh Khudura, Ali Abdulrazzaq Muslimb, Eyad Mutshr Sayhod, "Electronic Commerce: Legal Perspective (Comparative Study)" International Journal of Innovation, Creativity and Change. Volume 8, Issue 5, 2019

can aid in regulating and ensuring the protection of e-commerce customers if a seller on an e-commerce site commits any act that is punishable by law¹⁹. It is only feasible to penalize under these statutes if the offense is covered by them. Even though there are no explicit international or national legal frameworks for e-commerce, many nations have passed additional legislation or are working to do so.

4.3.1 The Constitution of People’s Republic of Bangladesh

The Bangladesh Constitution lists a few fundamental rights. In Article 15 of our Constitution, it is stated that some fundamental needs must be met, including those for food, clothes, shelter, education, and healthcare. In addition to this, the Constitution also mentions public health and morality in another article²⁰.

4.3.2 Penal Code, 1860

Sections 264–267 of Chapter XIII of the Bangladesh Penal Code 1860 provide directions for the use of weights fraudulently, which is punishable by a fine or even jail²¹. It is specified whoever fraudulently uses any weighing instrument that he knows to be inaccurate will be penalized with either a fine, a term of any type of imprisonment up to one year, or both.²² In addition, Section 272 says about adulteration of food or drink intended for sale. According to this section, "Whoever adulterates any article of food or drink, making such article noxious as food or drink, intending to sell such article as food or drink, or knowing it is likely that such article will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand taka, or with both²³. Sale of noxious food or drink²⁴, adulteration of drugs²⁵, sale of adulterated drugs²⁶, sale of drug as a different drug

¹⁹ “E–Business in Bangladesh: Need for a Legal Framework | The Daily Star” (The Daily Star, July 19, 2021)

²⁰ The Constitution of People’s Republic of Bangladesh, Art. 18

²¹ Penal Code 1860, s. 264

²² Ibid, S. 265

²³ Ibid, S. 272

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

or preparation are also punishable offences under Penal Code, 1860. Using a false trade mark or property mark is also punishable offence under this Code²⁷

4.3.3 The Contract Act, 1872

In the Contract Act, the terms "Agreement" and "Contract" are defined. According to this Act, every promise and every set of promises, forming the consideration for each other, is an agreement²⁸ and a contract is an arrangement that is legally binding²⁹. The Act clarifies when a contract can be voidable and an agreement becomes void³⁰. Here, it is stated how a contract can be performed³¹. The Act provides compensation for loss or damage caused by breach of contract³². The Act also guarantees compensation when a party rescinds a contract in good conscience³³. The concept of indemnity of contract is stated in chapter VIII.

4.3.4 The Sale of Goods Act, 1930

The Sale of Goods Act 1930 dictates the contract related to the sales of goods. In Bangladesh, the law on sale of goods is very extensive and long-standing. This Act defines "buyer" as a person who makes a purchase or agrees to make a purchase of goods.³⁴ Delivery refers to the voluntary transfer of ownership from one person to another.³⁵ Goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them³⁶, "fault" means unlawful act or default,³⁷ "Goods" refers to all types of movable property, excluding money and actionable claims, and includes things like power, water, gas, stocks and shares, growing crops, grass, and anything that are agreed to be severed from the land before sale or under the sale contract³⁸. "The term "price" refers to the financial compensation for a product

²⁷ Ibid

²⁸ The Contract Act, 1872, S. 2(e)

²⁹ Ibid, S. 2(h)

³⁰ Ibid, Chapter II

³¹ Ibid, Chapter IV

³² Ibid, S. 73

³³ Ibid, S. 75

³⁴ The Sale of Goods Act, 1930, S. 2(1)

³⁵ Ibid, S. 2(2)

³⁶ Ibid, S. 2(3)

³⁷ Ibid, S. 2(5)

³⁸ Ibid, S. 2(7)

sale³⁹. The Act differentiates the concept of Sale and Agreement to sell⁴⁰. In addition to these, The Act also outlines the creation of a sales contract⁴¹. Section 13 of the same Act describes when conditions to be treated as warranty. In addition, Section 15 says about Sale by description. Section 17 says about details of sale by sample and Section 37 describes the consequences of delivery of wrong quantity. The buyer's right to wrong quantity is to accept or reject the goods described in the Section 37 of the following Act. Section 41 describes the situation where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract⁴². The Act grants buyers a right⁴³. Chapter VI describes the remedies of breach of contract to sale. The seller's rights are right to sue for price⁴⁴. Specific performance is one of the cures. ⁴⁵ under Specific Relief Act, 1877. Buyer's rights are to suit for the damages for non-delivery⁴⁶, warranty breach⁴⁷, both parties have a right under this Act⁴⁸.

4.3.5 Special Power Act, 1974

The Act clarifies the concept of "black-market"⁴⁹, and "hoarding"⁵⁰. Hoarding or dealing in black-market⁵¹, smuggling, adulteration of⁵², Adulteration of food, drink, pharmaceuticals, or cosmetics is a criminal offense under this Act.⁵³

4.3.6 The Consumer's Right Protection Act, 2009

The Consumer Rights Protection Act, 2009, was enacted to protect the rights of consumers. In addition to this law, several other laws provide consumer protection mechanisms on occasion.

³⁹ Ibid, S. 2(10)

⁴⁰ Ibid, S. 4

⁴¹ Ibid, S. 5(1)(2)

⁴² Ibid, S. 41

⁴³ Ibid, S. 43

⁴⁴ Ibid, S. 55

⁴⁵ Ibid, S. 58

⁴⁶ Ibid, S. 57

⁴⁷ Ibid, S. 59

⁴⁸ Ibid, S. 60

⁴⁹ Special Powers Act, 1974, S. 2(b)

⁵⁰ Ibid, S. 2(i)

⁵¹ Ibid, S. 25

⁵² Ibid, S. 25B

⁵³ Ibid, S. 25C

According to the Consumers' Right Protection Act, 2009,⁵⁴ the term “complainant” means any consumer, one or more consumers having same interest, any consumer association registered under any Act or the NCRPC or any officer authorized to file any complaint on its behalf; the Government, or any Government officer authorized by the Government in this behalf; the concerned wholesaler and retailer⁵⁵. Sections 40–51 of Chapter IV of the CRP Act 2009 provide guidelines on the punishment for any act that threatens the rights of consumers.

4.3.7 Information and Communication Technology Act, 2006

Online shopping systems sometimes contain cyber threats. In its section 57, of this Act says publishing fake, indecent or insulting information in electronic form is a punishable offence.⁵⁶ The Act states in another provision that it is unlawful for anybody to conceal or fabricate any material information from the Controller or the Certifying Authority in order to obtain a license or Digital Signature Certificate⁵⁷. This Act says in detail about Establishment of Cyber Tribunal, investigation of offences, adjudication, appeal etc⁵⁸.

4.3.8 Trade Marks Act, 2009

Another crucial factor in preventing e-commerce fraud is trademark difficulties. The Trademark Act of 2009⁵⁹ Sections 71 to78 have been clearly written to combat fraud including the use of fraudulent trade names, trademarks, or overblown trademarks.

4.4 Regulatory Authority's Supervisions & Challenges

The initial formation and guideline provided by E-CAB. E-CAB is committed to the growth of the country's e-Commerce sector. Since the late 90s, e-commerce has existed in Bangladesh.

⁵⁴ The Consumers' Right Protection Act, 2009

⁵⁵ Ibid, S. 2(3)

⁵⁶ Information and Communication Technology Act, 2006, S. 57

⁵⁷ Ibid, S. 62

⁵⁸ Ibid, S. 68-84

⁵⁹ Trade Marks Act, 2009

Initially, it had moderate growth, but in the current scenario, the popularity of e-commerce has significantly increased. In Bangladesh, e-commerce is flourishing and rising quickly. However, several barriers are limiting this progression, and business owners are finding it challenging to conduct their operations because there isn't enough multi - modal transport infrastructure, and online dealers can't grow their businesses. E-CAB has been created to address the existing problems of e-Commerce to ensure its growth. E-CAB aims to serve as a common platform for companies involved in the Bangladeshi e-Commerce industry. E-CAB will serve as their voice. In Additions, the Digital Commerce Operation Guidelines, 2021 has been formulated this year. As per the guideline, the Commerce Ministry can deal with the problems related to e-commerce but it is not sufficient to control the corruption and deceitful activities of e-commerce sites.⁶⁰

4.5 Conclusion

It is expected that the e-commerce industry will expand going forward. Long-term growth of this sector will be greatly aided by improved enforcement policies and laws and regulations applicable to e-commerce. In order to reinforce the legal framework that is essential to the development of e-commerce in Bangladesh, there is an urgent need for dynamic and effective regulatory systems.

⁶⁰ Legal Framework for e-Commerce needed (Legal framework for e-commerce needed - Bangladesh Post) accessed August 30, 2022.

Chapter – 5

Lacking in the Sections of Law in Addressing E-Commerce Scams

5.1 Introduction

Bangladesh's e-commerce sector has experienced rapid expansion, yet it did not have any legal foundation when it first began operating there. The components of an offline contract and those of an online marketing contract are the same. However, Bangladesh's current legal system does not acknowledge such internet transactions. The law is naturally out of date and hasn't been updated to meet the present period; it's been largely replaced by other special laws.

5.2 Barriers & Lacking in the Bangladeshi Law

Since Bangladesh currently lacks a statutory legislation that regulates the e-commerce sector, several laws are applied on an as-needed basis while taking the nature of the dispute into account. In this regard, an outdated statute has been used to settle e-commerce-related disputes, but the primary issue is that because it did not fully address the E-commerce system, scammers have been given the chance to conduct their schemes successfully. Here, describe some of key loopholes of Bangladeshi Law for addressing E-commerce scams –

The Sale of Goods Act, 1930

- Apparently, online buying is not covered by this Act. A term of selling can be created in a number of ways, including verbally, in writing, partially in writing and partially verbally, or it might be determined from the actions of the parties.⁶¹ Here, there is no use of the online contracting method.
- The Act specifies the sale by description⁶² or sample⁶³. Moreover, the idea of description in a virtual environment is not covered here.

⁶¹ The Sale of Goods Act, 1930, S. 5

⁶² Ibid, S. 15

⁶³ Ibid, S. 17

- The Act lays up the terms conditions and warranties⁶⁴. Here, they are not obligatory.
- The Act grants the buyer the right to inspect the products⁶⁵. The Act, however, merely mentions prior examination. Where a customer will purchase the product online is not made clear. How can he or she inspect the things before buying them? When purchasing online, a customer can simply view the product image and read the description.

Consumers' Right Protection Act, 2009

- The Act gives the term "complainant" a broad scope⁶⁶. Any consumer may file a complaint on any problem created by this Act. The Act includes a detailed definition of "consumer"⁶⁷ as well. Consumer-favoring Right practice⁶⁸ appears to be pretty clearly detailed, yet there are still some problems. The Act therefore solely emphasizes food and medicine. Nearly all other products are ignored.
- Additionally absent from this is the idea of "online shopping." The Act makes reference to deceptive advertising in a number of provisions⁶⁹. However, it is unclear how to establish that.
- The Act outlined the procedure for inspecting damaged items. It only lists specific products that can be analyzed in a certified laboratory⁷⁰. This Act almost completely lacks a return policy.

It is important to note that digital evidence is still not widely accepted in Bangladesh. In this case *Major Md. Bazlul Huda (Artillery) vs. State*⁷¹ the honorable justice remarked that "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," I am unable to use the

⁶⁴ Ibid, S. 12

⁶⁵ Ibid, S. 41

⁶⁶ Consumers' Right Protection Act, 2009, S. 2(3)

⁶⁷ Ibid, S. 2 (19)

⁶⁸ Ibid, S. 2(20)

⁶⁹ Ibid, S. 2(20) (d), 44

⁷⁰ Ibid, S. 62

⁷¹ Major Md. Bazlul Huda (Artillery) vs. State 38 CLC (AD)

digital evidence provided by the prosecution in this instance due to a lack of sufficient legal framework.

The Contract Act, 1872

- One of Bangladesh's well-written legislative acts is the Contract Act. In Bangladesh, prior to making a transaction when buying online, the buyer and seller enter into an agreement. However, the agreement is just of a virtual kind. The fictitious manner of contract formation is not present in the entire Contract Act.

Penal Code, 1860

- Penal Code exclusively emphasizes weights and measurements⁷². Moreover, this Act exclusively emphasizes the adulteration of food, drink, and medicines⁷³. Only when it comes to business transactions do these Acts discuss weights and measurements. It is not covered in this Act to talk about online shopping.

Information and Communication Technology Act, 2006

- The Act appears to focus solely on the tools and techniques used by information and communication technology and cybercrime. There is no mention of online buying at all. The emphasis of the Act is primarily on electronic records and digital signatures.
- Online shopping can only be indirectly governed by section 57. It should be noted that violating this section's penalties for publishing false, offensive, or indecent information online. Nevertheless, this section is one of the Act's most debatable clauses.

⁷² The Penal Code, 1860, S. 264-267

⁷³ Ibid, s 272-276

Special Powers Act, 1974

- This Act addresses the stockpiling of goods or dealing in them on the black market, as well as the adulteration of, or sale of, food, drink, pharmaceuticals, or cosmetics. It appears that the Act has made adulteration a priority. Here, the idea of scam in online sales is not covered.

Trade Marks Act, 2009

- The Trade Marks Act of 2009 gives space for individuals willing to engage in unethical business operations; it lacks a strong legal foundation to safeguard intellectual property rights.

5.3 International Guidance for Combating E-commerce scams

People use computers to buy a wide range of goods and services all across the world. Additionally, because the World Wide Web is international, as its name implies, businesses who sell online can access billions of customers worldwide. Websites allow businesses to reach a customer base that was previously unattainable. Processing orders from the next continent as well as the town or state over is a great way for many people to discover just how truly global the Online is. For merchants who have never shipped internationally and may not be familiar with the pertinent taxes, fees, and customs laws, this presents new challenges.

New international regulations are assisting in preventing this kind of scam. New standards have been adopted by the United States and 28 other nations operating as members of the Organization for Economic Cooperation and Development⁷⁴.

The guidelines are:

- Define the guiding principles for voluntary "codes of conduct" for companies engaged in electronic commerce⁷⁵.

⁷⁴ "Electronic Commerce: Selling Internationally A Guide for Businesses (Federal Trade Commission, March 2, 2000)

⁷⁵ Ibid

- promote greater guidance on how to assess their customer protection legislation for online trade⁷⁶
- Instructions on what to anticipate and what to look for when shopping online should be provided to customers.⁷⁷

The guidelines also urge participating countries to take action to increase public trust in online commerce. In order to ensure that consumers have redress if they are disappointed, they encourage governments to review their consumer protection laws to make sure they apply to online buying.

5.4 Conclusion

Bangladesh is a developing nation and is only at the beginning of its online buying and e-commerce journey. There are growing to be many internet stores. Bangladesh has a chance to lead the way in the E-commerce industry. But first must close the gaps and flaws in the applicable law that are already there.

⁷⁶ Ibid

⁷⁷ Ibid

Chapter – 6

Findings, Recommendations, and Conclusion

6.1 Introduction

This research paper is focusing on the required problem of lack of proper laws and regulation and the barrier of implementation of law in this place. Bangladesh has a comprehensive legal system and a variety of regulations that are connected to internet commerce but are not specifically directed at it.

6.2 Findings the Study

The government has not implemented any specific regulations to safeguard the legal rights of users of online platforms. The current trademark protection system does not have a strong enough legal foundation to safeguard sellers and buyers. It is the lack of interest shown by our nation's policy makers. The benefit of policymakers to virtual customers appears to be nonexistent. It is embarrassing for our nation's lawmakers. The elements of an offline contract and those of an online marketing contract are the same. However, Bangladesh's current legal system does not acknowledge such a process. The government is necessary to hold stakeholder discussions, create a thorough legislative framework for e-business regulation, and safeguard the rights of E-commerce parties.

Almost all e-commerce frauds are a direct outcome of the platform's fraudulent activities. Here, the primary losers are the buyers and the merchants. Lack of privacy and confidentiality are frequent complaints about the E-commerce sector. Additionally, many online stores only exhibit product descriptions and product photos, which can be a drawback for many customers. Another issue with online shopping is that there is typically no refund or after-sales policy regarding the E-commerce platforms business model, this creates serious regulatory concerns. Additional significant obstacles to protecting online shopper's entitlement include legislation gaps, implementation challenges, monitoring difficulties, and awareness concerns.

6.3 Recommendations

Above all of the issues and circumstance, initially point out the execution matter of E-commerce strategy the following recommendation is going throw that -

- i. There needs to be comprehensive law that only addresses online commerce.
- ii. creation of appropriate institutional and legislative frameworks for regulating e-commerce, ensuring their enforceability and accessibility to resolve conflict
- iii. Ecommerce platform owners initially need a suitable roadmap for maintaining their own business.
- iv. Existing laws should be refreshed & current online shopping issues can be included into existing laws.
- v. Our laws should make clear about "digital evidence" in a wide range.
- vi. Establishing a regulatory organization or authority to control virtual platforms.
- vii. Online stores in Bangladesh should implement the return policy.
- viii. The Evidential matters should be clear in sort of E-Commerce.
- ix. There needs to be considerable reform in the judicial and technical sectors.
- x. Online buyers and purchasers should be aware of their responsibilities and their rights.
- xi. Raising awareness among consumers to prevent them from being easily misled
- xii. Create some conditions and limitations for purchasing products from online to the aspect of well-mannered business for not being deceived.
- xiii. Established the coordination among the state and the regulatory authority.

6.4 Conclusion

Currently in Bangladesh, there is no special statutory legislation for the e-commerce sector and so a number of laws are being used considering the kind of dispute on a basis from case to case. This outline has briefly discussed a variety of operational operations, including order placement, delivery, payment, refunds, and complaint handling, all of which are connected to a number of legal issues. E-commerce in Bangladesh is still a young and emerging industry.

Dynamic and efficient regulatory procedures are urgently needed to strengthen the legal framework that is crucial to the growth of e-commerce in Bangladesh. Everyone has the right to obtain high-quality goods. People put in a lot of effort to obtain money, and they spend it on necessities. No one has the right to be deceived as a citizen of an independent state. However, the survey revealed that consumers were susceptible to fraud when shopping online. Due to the absence of regulations, scammers have taken advantage of this vulnerability and profited by deceiving others.

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