

CONSUMER EMPOWERMENT

FORTIFYING CONSUMER PROTECTION IN E-COMMERCE



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CONSUMER PROTECTION IN E-COMMERCE

E-commerce has transformed the way business is done in India. The sector in India is on a growth trajectory and is projected to cross USD103 billion by 2020 at an impressive CAGR of 41%¹. Anchored on accelerating internet penetration and smartphone sales, E-commerce in India is set to expand and expected to surpass the US to become the second largest E-commerce market in the world, after China, by 2034. With the cost of servicing smaller cities going down, most of growth is going to come from tier II & tier III cities. Overall, online shoppers in India are expected to reach 220 million by 2025².

The potential of E-commerce to touch and transform the lives of diverse stakeholders, whether be it consumers, entrepreneurs, SMEs or generate a whole host of employment opportunities, is enormous.

E-commerce: Potential driver of growth for MSMEs

With higher revenues and profits, E-commerce has helped MSMEs in building efficiencies across their operations and in expanding their boundaries and scale while attracting significant FDI inflows in sector, thereby boosting investor confidence. This, besides benefiting the economy and consumers, has helped Indian organizations imbibe the best practices from their global competitors. Amazon's huge investments and Walmart's acquisition of Flipkart in India is testimony to the potential of E-commerce with respect to foreign investments. The ability of technology to transcend geographies also opens possibilities for Indian brands to go global, tapping into a much larger market no longer confined by physical boundaries.

Such growth has potential for transforming impact on employment opportunities across the country. Both E-commerce and allied ecosystem are expected to create ~1.45 million employment opportunities by 2021³, led primarily by more than 1 million jobs projected to be created by logistics and warehousing sector. Online seller base is projected to grow to 1.3 million by 2020 and is expected to add more than 10

million net new jobs. With about 70% of the online sellers expected to come from smaller towns by 2018-19, E-commerce is also creating a noticeable socio-economic impact by reaching the interiors of the country³.

E-commerce is well positioned to help grow the ancillary ecosystem that is necessary to support business through online platforms. Major segments such as e-tail stand to benefit by accelerating their growth, dovetailing with a growth in E-commerce. Among all the E-commerce segments, e-tail comprises of the largest share at USD 23 billion³ and is also the fastest growing segment. The other segments collectively contribute only USD 18 billion. E-tail is expected to grow to USD 68.8 billion by 2020 accounting for a share of 67% of the whole E-commerce sector¹.

Apart from the direct employment contribution that has been made by E-commerce, what is noteworthy is the indirect/adjacent employment generated in the allied industries like logistics, warehousing, IT/ ITes, sellers and SMEs, and other support industries (like payment solutions, marketers, and advertisers).



¹Goldman Sachs, India: Technology: Internet Report, E-commerce growth on the fast track as ecosystem improves, October 2015

²IBEF Report on E-Commerce, August 2018

³KPMG, Snapdeal: Impact of e-Commerce on employment in India

Enabling consumer empowerment and a transformative buyer experience

The biggest benefit that E-commerce delivers is immersive empowerment to consumers. Now for many, it's become a way of life. Buying goods and services online saves time, offers greater selection, allows for independent research and often saves the consumer money. It's hard to beat the internet for convenience. Online shopping is not only convenient but saves time. The internet is open 24/7 and with e-commerce, normal time constraints are no longer an issue. It enables consumers to engage in shopping without being constrained by time or geography, allowing them to manage their life productively.

Apart from convenience, E-commerce is also allowing consumers a plethora of choices and the best use of their money. No store, no matter how huge, can match the internet for variety and selection. Instead of being confined to stores in an immediate geographical area, consumers can shop from stores and web sites located one state over or halfway around the world. They can buy from big national chains or small home businesses, putting them in the driver's seat.

Consumers in India are shopping online more frequently, and they prefer marketplaces.

The frequency with which consumers shop online is accelerating. Study by Pitney Bowes states that globally, 35% of online shoppers make an online purchase at least weekly. In India, 68% of the online shoppers are purchasing from a marketplace, as opposed to shopping with an online brand.

Generally, planned online purchases indicated a year-over-year increase for most product categories. These results signal a higher willingness to buy new product categories online, particularly those that have been traditionally sold in shops. For example, greater options for shipping and delivery have made it easier and more common to buy bulkier products online - including furniture, appliances and even vehicles. In general, categories which do not need trial and/or where consumers can have relatively more faith in product quality are expected to grow faster, implying promising potential for such industries to scale up faster.

For E-commerce to realize its true potential, among business, logistical and regulatory enablers, the overriding driver remains fast and reliable internet connectivity.

Challenges in consumers' adoption of E-commerce

Growing technological convergence and embracement of it by consumers is a foregone conclusion, yet there remain certain challenges that can slow down, if not prevent, the growth of E-commerce. As per statistics from the National Consumer Helpline, the share of e-commerce in overall grievances stood higher than in sectors such as telecom and banking. These challenges range from deficiency in services, misleading advertisements, fake products to

payment issues and more.

The Consumer Protection Act 2019, the Draft E-commerce policy and the e-commerce guidelines, have also stressed upon the need for a consumer redressal mechanism to exist. An analysis of the buying cycle that a consumer goes through reveals some essential challenges that need to be addressed for E-commerce to grow at an accelerated pace.

CHALLENGES



Pre-purchase

Information asymmetry enhances vulnerability of consumers towards misleading advertisements and deceptive products.

Unfair commercial practices hamper consumer's trust in digital markets.



Purchase

Lack of watertight security mechanisms for online transactions deter consumers from conducting business online

Liability of data breaches, lack of knowledge on how data is used online by platforms and third parties deters digital consumerism



Post-purchase

Refunds, return of goods and dispute resolution especially in cross-border transactions are plagued by challenges.



Redress

Lack of accountability in the event of multiple providers and perforated access to easy and affordable redress hinders consumer empowerment.



Pre-Purchase

Information requirements - Information asymmetry in E-commerce due to the nature of the internet and complexity of terms and conditions lends consumers being vulnerable online to misleading and deceptive conduct. A common challenge consumers face is the difficulty in establishing the identity and location of the entity selling products online.

Unfair Commercial Practices - The web-based environment is susceptible to unfair commercial practices such as providing misleading information and using aggressive marketing techniques, creating confusion between the trade names or trademarks of competitors and false representation as consumers and posting reviews in their name, for instance on online accommodation booking platforms. Such practices prevent consumers from making informed choices and create a significant lack of trust in digital markets thereby hampering the growth of E-commerce.



Purchase

Frequent challenges during the purchase stage include unfair contract terms, online payment security and data protection and privacy, including non-monetary transactions. It is important that businesses share "complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to take informed decisions".

Online Payment Security - Online and mobile payment systems present challenges for consumers in relation to security risks while making online payments. Consumer data can be accessible to unauthorized third parties without the knowledge and consent of the consumer.

Data Privacy and Protection - The use of credit and debit cards leads to sharing of consumers' personal information, opening it up to being collected and traded by providers and subsidiaries to enable personalized and targeted marketing. Challenges related to privacy and data protection include a lack of knowledge of how data collected is used online, liability for data breaches, data sharing among third parties and applicable law and jurisdiction



Post-Purchase

Issues around liability and potential return of goods and refunds when goods are not delivered or delivered in an unsatisfactory condition or being different from the goods ordered are pressing issues at a post purchase stage. During this phase, consumers inability to access the seller through convenient channels for communication can create adverse consumer experiences.

Dispute resolution is a major issue, especially in cross-border transactions. There exist difficulties in terms of applicability of law and jurisdiction, particularly in E-commerce disputes. Such challenges could be addressed by developing alternative dispute resolution mechanisms, which offer easier, faster and less expensive out-of-court solutions. These could take different forms and names, such as mediation, arbitration, conciliation, ombudsmen and complaints boards.



Redress

Challenges at this stage are centered around the lack of accountability, especially in instances where multiple service providers are involved. Lack of access to easy and effective redress and enforcement is also a major area of concern.

Cross Border - Cross-border E-commerce transactions present myriad of challenges such as the risk around receiving a product not as described or ordered, hidden costs related to customs duties and currency conversion, as well as shipping or delivery. Other issues could include conformity of products to local standards and lack of clarity on protections within a seller's jurisdiction, that are available to consumers in the event of any potential dispute.

These diverse challenges have created the need for a policy framework for consumer protection in E-commerce that helps develop an ecosystem that supports the industry, boosts investment and protects consumer interest. With an eye on regulations, there needs to be a focus on balancing the E-commerce economy with public interest. The evolution of various upcoming regulations that facilitates the growth of E-commerce will be key to the acceleration with which this promising sector can grow and sustain itself.



CONSUMER PROTECTION: REGULATORY ECOSYSTEM IN INDIA

In India, until recently, the Consumer Protection Act, 1986 regulated the consumer market for both goods and services and issues arising thereunder. However, this market has undergone profound transformation due to complexity of products and services dealt with, rise in the international trade and business models and rapid encroachment of E-commerce on the market. While these transformations are a welcome change for the present world, same has greatly challenged the Act and its ambit. The Consumer Protection Bill 2019 was proposed owing to the pertinent need to address the constantly emerging vulnerabilities of the consumer in the global economy. The Bill was passed by the Parliament during the monsoon session of 2019 and became an Act on August 9, 2019.

Salient Features of the Consumer Protection Act, 2019

E-commerce

The 2019 Act has widened the scope of the application of consumer law by modifying the definition of 'consumer' as per Clause 2(7) of the 2019 Act. Clause 2(7) states that the expressions 'buys any goods' and 'hires or avails any services' shall include offline transaction or online transaction by way of electronic means. Further, it shall also be extended to buying any goods or hiring or availing any services by teleshopping or direct selling or multi-level marketing. Further, E-commerce and electronic service providers have also been provided clear definitions to avoid ambiguity.

Product Liability

The 2019 Act provides for distinctive liability of a product manufacturer, product service provider and product seller. The product liability on a manufacturer can be considered to be of stricter nature to that of service provider and seller as the manufacturer shall be liable even if he proves that he was not negligent or fraudulent in making the express warranty of a product.

Unfair Trade Practices

The 2019 Act states that practices such as not issuing of bill, refusing to withdraw defective product, refusing to refund and disclosing of personal information shall be considered as unfair trade practices.

Unfair Contracts

The 2019 Act provides for six types of unfair contracts and any complaint against such kind of contracts can be filed with the State or National Commission.

Alternate Dispute Redressal Mechanism

The 2019 Act provides for setting up of a consumer mediation cell at the Commissions for speedy and amicable disposal of the matters.

Central Consumer Protection Authority

The Act sets up the Central Consumer Protection Authority (CCPA) to promote, protect, and enforce the rights of consumers as a class. It will be headed by a Chief Commissioner and comprise other Commissioners. It will have an investigation arm headed by a Director General

Penalties

The Act increases the penalty for non-compliance from INR Twenty five thousand to One Lakh from the earlier penalty that ranged from INR two thousand to ten thousand. This change has been brought in to increase the deterrence among the defaulters.



VOLUNTARY GUIDELINES FOR CONSUMER EMPOWERMENT

While E-commerce platforms have certainly ushered in a phase of positive transformation, it has also concurrently expanded the complexity of challenges and risks for consumers. This translates into a pertinent need for a watertight consumer protection framework that is capable of addressing the dynamic consumer disputes and concerns that arise out of the E-commerce realm. Therefore, there is a pressing need for concerted efforts between the government, consumer organizations and the E-commerce industry at large, in developing governing principles that safeguard consumer interests at every stage of their online transactions.

In that context, with the objective of creating a safe and secure online experience for digital consumers, Chase India and Consumer VOICE have put together the following set of voluntary guidelines for each of the three integral stakeholders in the sector viz. E-commerce industry, government and voluntary consumer organizations. Implementing the guidelines would contribute towards achieving a comprehensive consumer protection framework.

Guidelines for E-commerce Industry



1. Online disclosures

Consumers in developing countries often face difficulty in establishing the identity and location of a provider of who sells products online. Information asymmetry is more prominent in E-commerce due to the nature of the internet and complexity of terms and conditions to which consumers may not always have timely access to. Therefore, consumers who engage in online transactions are more vulnerable to misleading and deceptive conduct. Consumers need access to accurate information that can help them in making informed decisions in e-commerce transactions.

1.1 Information about the Platforms

- E-commerce platforms should provide consumers with the name of the legal entity under which the business is registered and also the name under which the business trades, the principal geographic address for the business; e-mail address or other electronic means of contact, or telephone number; and where applicable, an address for registration purposes and relevant government registration or license number.
- The information should be accurate, transparent and readily accessible so that prompt, easy and effective consumer communication with the

E-commerce platform is facilitated.

- E-commerce platforms should make efforts to make the information available in the regional languages as well.
- If the E-commerce platform is a participating member of any self-regulatory authority, industry association, dispute regulation organization or any certification body, such as "the Convergence program of the National Consumer Helpline", the e-commerce platform should provide the consumer with relevant information of such membership/ association.

1.2 Information about Goods and Services

- E-commerce platforms should provide information that describes how a product works, its applications and elaborate upon the actions or procedures that enable the efficient usage of the product.
- E-commerce platforms should work with their sellers to ensure they comply with all legal obligations for the display of standard quality marks such as ISI, Hallmark, Agmark, ISO, FSSAI, as appropriate and relevant.
- Information pertaining to the safe usage of the product, and the potential risks from using the product incorrectly should be provided to consumers.

- E-commerce platforms should make available information clarifying the quality, quantity, potency, purity and pricing of the product.
- Product listings must carry information about the warranty/ guarantee as applicable.
- E-commerce platforms should provide online warranties and invoices in order to promote digitization and reducing use of paper.
- E-commerce platforms should take measures to provide information about all possible comparative options of products along with pricing, that align with the consumer's search requirements, thereby allowing them to exercise their right to choose products as per individual requirements.
- In case of medicines, the description must clearly specify the full name of the medicine along with its brand name and its active ingredients.
- E-commerce platforms should encourage the vendors to supply and upload good quality photos of the products.
- Provide grading of age, as per relevance and use for children's products
- The platform should maintain a 'do not sell' list as notified by the government.
- The platforms should clearly specify the terms of delivery, with the consumer being allowed the option of choosing the date and time for its delivery.
- Clearly highlight restrictions, limitations or conditions of purchase such as parental/guardian approval requirements and any restrictions in terms of geography or time.
- Provide information relating to availability of any after-sales service.
- Provide information relating to costs in the domestic currency (Indian Rupees).
- Details for and conditions related to the withdrawal, termination, return, exchange, cancellation and/or refund policy information should be displayed in a transparent manner and could be made available in regional languages.
- In case of perishable products such as fruits, vegetables, meat etc., the platform should specify information regarding its quality and the timeframe within which it should be consumed.
- E-commerce businesses should make use of standardized terms which are uniform for same class of products/ services wherever possible, in order to facilitate easy comparison

1.3 Information about the transaction

- Consumers should be notified about any other routinely applicable costs such as delivery and packing charges etc., collected and/or imposed by the business.
- Information about terms, conditions and methods of payment should be accurate, easily accessible and provided in a manner that allow consumers an adequate opportunity to review prior to entering into the transaction and maintain an adequate record of the same.
- Information about the conditions and process for refund should be provided in a lucid manner while also specifying the timeframe within which refunds shall be processed.

2. Confirmation process

- E-commerce platforms should precisely display the goods or services that a consumer wishes to purchase in the summary section of the order, prior to its billing.
- Consumer should be able to easily identify the selected products and their prices, correct any errors or modify the order, as well as its shipping and billing address. The consumer should be able to cancel the transaction before concluding the purchase.
- Data relating to card number and other financial instruments should be stored for enabling smoother transactions in the future only after seeking and obtaining the necessary permissions from the consumer.

3. Payments

- Consumers should be provided with an easy-to-use and secure payment mechanism.
- E-commerce platforms should make efforts to provide consumers the liberty to use any payment method, as per their choice, such as credit/debit cards, net-banking, cash on delivery, prepaid cards, mobile wallets, reward points etc.
- E-commerce platforms should make efforts to allow consumers to buy and pay for products without being obligated to sign up for an account.
- E-commerce platforms should ensure that checkout pages/payment gateways do not feature any advertisements that risk distracting the consumer, leading to potential errors during transactions.
- Provide a clearly demarcated flow of required actions for the consumer, which guides them through each step of the payment process.
- Ensure that the payment systems offered on the platform are in compliance with the stipulations of the RBI.
- Provide information related to the security measures employed for the encryption of data.

4. Dispute resolution and redress

- Consumers should be provided meaningful access to fair and timely alternative dispute resolution and redressal without an undue cost or burden.
- Businesses should aim to settle disputes and provide necessary redress within a timeframe of 45 days.
- E-commerce platforms should make efforts to strengthen existing mechanisms for dispute resolution and mention the names and contact details of grievance officers and any other special points of contact for escalation of complaints and other requests.

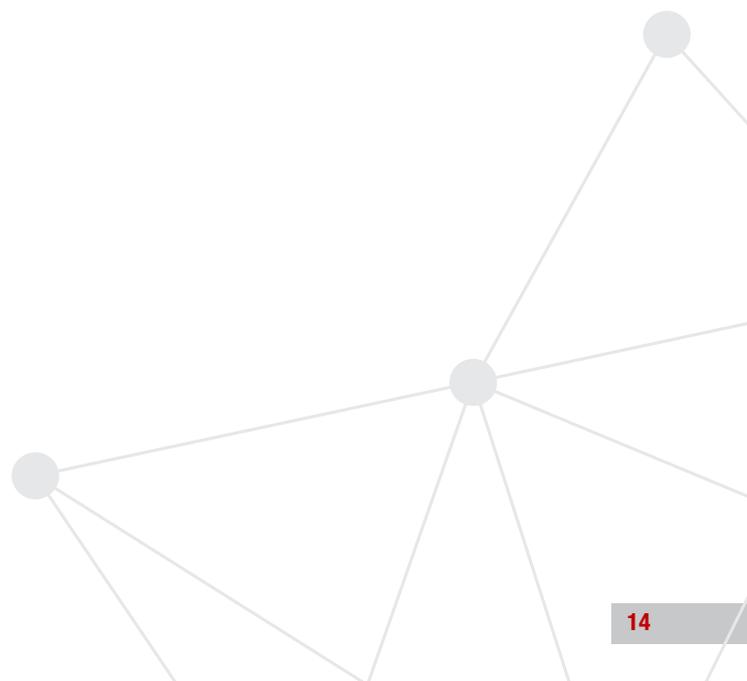
5. Privacy and security

- E-commerce operations should be conducted in accordance with the applicable data protection regime in the country, to provide appropriate and effective protection for consumer's privacy and security.
- E-commerce platforms should enhance consumer awareness on privacy and security through specific questions in 'frequently asked questions' section aimed at educating and reassuring consumers about the level of security mechanisms and how they can best protect themselves.

- E-commerce platforms should set clear ownership for the consumer data that is collected. Consumers should be informed if the platform has engaged third-party aggregators to collect and store data. Due respect should be accorded to the consumer's consent.
- To reduce fraudulent transactions, E-commerce platforms should enable authentication process as defined by RBI.
- E-commerce platforms should encourage consumers to frame stronger passwords by mandating a minimum number of characters along with the use of numbers, characters and symbols.
- E-commerce platforms should send alerts to the consumers for each transaction that uses their account/ credentials pertaining to their financial instruments.
- E-commerce platforms should set system alerts for multiple orders placed by the same individual using different credit cards or phone numbers that are from areas that are markedly different than the billing address, or orders where the recipient name is different than the card holder name.
- Organizations should have definitive written protocols and policies to encourage employees to adhere to the mandated security practices.
- To mitigate and address any payment/ refund frauds, every order that is shipped out should be assigned a unique tracking number.
- E-commerce businesses should avoid collection and storage of collateral data which is not essential for the transaction

6. Advertising and Promotions

- On E-commerce platforms, consumers should be able to view why they receive particular advertisements or notifications.
- E-commerce platforms should implement easy-to-use mechanisms that empower consumers to indicate whether or not they wish to receive commercial messages.
- Advertisements targeted towards children and the elderly should be sensitive towards their ability to capture and comprehend information and in sync with the guidelines prescribed by the government.



Guidelines for Voluntary Consumer Organizations



Voluntary Consumer Organizations should aim to:

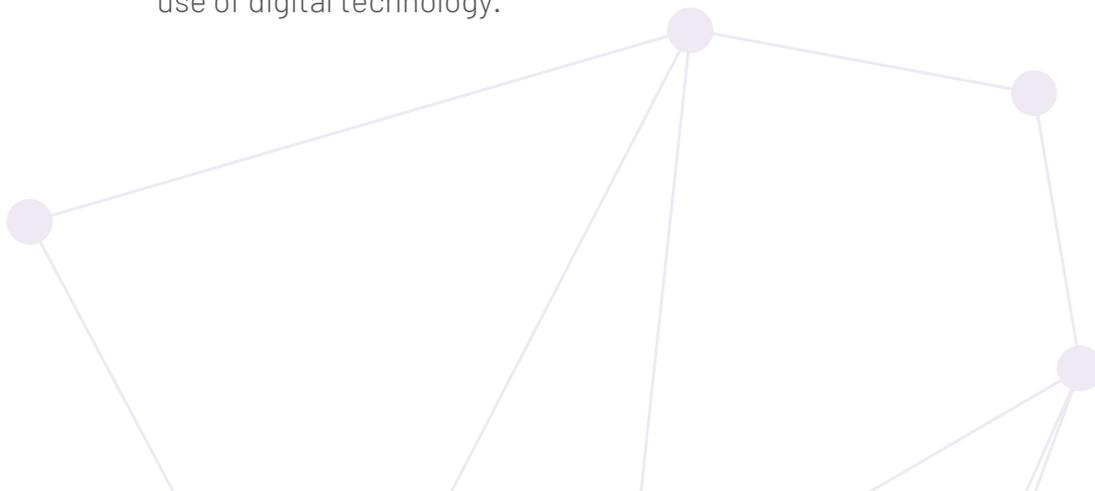
- Make use of all effective means and promote the existence, purpose and contents of the Consumer Protection Act to educate consumers and businesses, leveraging innovative tools and techniques from the global networks, where applicable.
- Act as knowledge hubs and share information with consumers and businesses relating to consumer protection laws and remedies, in an easily accessible and understandable form.
- Educate the consumers about standard practices for E-commerce transactions and promote its adoption through the use of digital tools.
- Conduct independent research such as product surveys/tests to verify and promote relevant standards for products & services.
- Sensitize consumers through digital campaigns for sharing their experiences and grievances with the respective government authorities
- Initiate public interest litigation on behalf of the consumers wherever prescribed model of grievance redressal hasn't led to any results
- Participate and offer inputs to dispute resolution bodies to provide guidance on behalf of individual consumer complaints, with a view to facilitate redressal.
- Engage in dialogue with the government and business ecosystem to inform, persuade or negotiate on behalf of consumers.
- Organize workshops and seminars on particular issues and highlight alternative views on these issues to policy-makers, business and media, that contribute positively to protection of consumer rights.
- Conduct surveys and research to study problems faced by consumers including the impact of government policies on consumers and highlight the findings to consumers, policy-makers and the media. Develop joint initiatives among businesses, consumer representatives and governments for building consensus on core consumer issues related to E-commerce.

Guidelines for the Government



The Government should aim to:

- Meet requirements as set out in international guidelines, as also regulations such as the UN Guidelines on Consumer Protection, with a view to effectively address the complexity of digital markets and the experience of consumers on online platforms.
- Make regulations relevant to the type and variety of digital services and products that safeguard consumers' rights and responsibilities.
- Provide consumers with an equitable level of protection regardless of the location of the transaction.
- Strengthen existing institutional mechanism for effective and easily accessible legal or supervisory mechanisms to protect consumers from fraud and unfair treatment online.
- Create additional regulatory framework under the existing legislation addressing the challenges such as security, liability, complex terms and incompatibility arising from consumers' use of digital technology.
- Encourage continued private sector leadership, also including participation by consumer representatives towards the development of effective self-regulatory mechanisms containing specific and substantive rules for dispute resolution and compliance mechanism. This should also include a focus on leveraging technology as a tool to protect and empower consumers.
- Encourage businesses and institutions to develop robust institutional mechanisms for enforcing consumer protection laws.
- Create an exclusive composite Working Group that has equal representation from the government, industry and civil society to meet and address the dynamic changes required in the consumer protection framework and contribute to the evolution of the regulatory ecosystem so as to include emerging products and services.



About Chase India

Chase India is India's leading public policy research and advisory firm with growing practices in healthcare, food and beverage, technology and the development sector. The firm provides advisory services to organisations for mitigating business risk through insight-based policy advocacy campaigns.

The team at Chase India comprises experts with extensive experience spanning across regulatory and industry bodies, government organisations, academia, and media, in roles engaged at various levels of public policy. 'Chase Dialogue' is the flagship policy discussion platform that brings together experts from the field of technology, health, sustainability, environment and climate change to discuss issues of pressing concern. Chase India is a WE Communications Group company



Kaushal Mahan (Group Business Director: Technology Practice)

📞 M: +91 9999975119 | D: +91 11 46625548

✉️ kaushal@chase-india.com



Robin Saji (Associate | Public Policy)

📞 M: +91 8128673833 | D: +91 11 46625666

✉️ robin@chase-india.com

About VOICE

Voluntary Organisation in Interest of Consumer Education (VOICE) is a consumer protection group set up by teachers and students of Delhi University in 1983 and our mission is Consumer Empowerment, Awareness, Redressal and Advocacy. In 1986, it was registered as a Trust. When the activities of VOICE increased manifold and became multi dimensional, VOICE Society was registered in the year 1999 under Societies Registration Act of 1860. Consumer VOICE has strong network of Voluntary Consumer Organizations (VCO's) across India in 24 states and we are operating across the Nation. We have successfully implemented projects across India through our VCO networks and through our strong linkages with Civil Society Organizations and Universities as we work on Education and Empowerment. Consumer VOICE does not publish any commercial advertisements and does not accept commercial donations to be free from corporate pressures and obligations.



Ashim Sanyal (COO)

📞 M: +91 9350998460

✉️ coo@consumer-voice.org



Hemant Upadhyay (Advisor IT & Telecom)

📞 M: +91 9811101961

✉️ hupadhyay@consumer-voice.org

A network diagram consisting of numerous grey circular nodes connected by thin grey lines, forming a complex web-like structure. The nodes are scattered across the page, with a higher density in the lower right quadrant. The overall background is white, and the network lines are light grey.

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