

ONLINE SHOPPING AND CONSUMER RIGHTS PROTECTION WITHIN BANGLADESH: A REVIEW OF CURRENT LAWS AND REGULATIONS

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***Abstract:** In the 21st century online shopping is rapidly increasing day by day. Now-a-days, if a consumer asks for a pizza from Pizza Shop, he or she will get it at his or her door within few hours. If someone wants to buy a laptop or watch, several of the websites are available in Bangladesh now to provide the goods in a very reasonable price. There are many benefits of online shopping; this is the reason why online stores are a booming business today. The benefit of online shopping includes buying clothes, gadgets, shoes, appliances, or even daily groceries, it saves time- with just a couple of clicks of the mouse, you can purchase your shopping orders and instantly move to other vital things, which can save time, save fuel, because there is no need for vehicle, save energy, comparison of Prices, 24/7 availability, no waiting in queue, easy to search merchandise you want to buy. However, these experiences of online shopping have not been very pleasant for many of the consumers. Sometimes customers have complained too. The common criticisms of online shopping are lack of privacy and confidentiality, lack of enough information, lack of refund policy and aftersales policy. This paper is focusing on the vital problem of lack of proper laws and regulation in this respect. Bangladesh has a well-structured legal framework and number of laws that are related to but not directly focused on online shopping. The study will be conducted mainly on the basis of the analysis collected both from primary and secondary sources of data following both the qualitative and quantitative approach. Primary sources, for example, relevant laws, books, and secondary sources are newspaper clips, published articles, and other existing resources available will be explored for gaining access to the updated scholarship on the issue. The paper will try to analyze the existing laws and legal system for protecting the rights of online consumers/shoppers in*

Bangladesh. Subsequently, the author will attempt to find out some loopholes of existing laws and legal system in Bangladesh and will suggest some recommendation.

Keywords: Online Shopping, Consumer, Consumer Right, Protection.

1.1 Introduction:

In the 21st century online shopping under the e-commerce is rapidly increasing day by day. Now-a-days, if a consumer asks for a pizza from Pizza Hut, he or she will get it at his or her door within few moments. If someone wants to buy a laptop or watch, several of the websites are available in Bangladesh now to provide the goods in a very reasonable price. However, these experiences of online shopping have not been very pleasant for many of the consumers. There are many benefits of online shopping; this is the reason why online stores are a booming business today. Online shopping includes buying clothes, gadgets, shoes, appliances, or even daily groceries. Advantages of Online Shopping are many - with just a couple of clicks of the mouse, you can purchase your shopping orders and instantly focus/move on other vital works, which can save time, it saves fuel; there is no essential for cars, so purchase of fuel is not necessary, hence it saves energy, comparison of Prices, 24/7 availability, no need of waiting in lines, it becomes easy to search products/merchandise you want to buy and many other.

Sometimes customers have complains too. The common criticism of online shopping are lack of privacy and confidentiality, sometimes online stores are only showing product explanation and photos of the merchandise, which can be a disadvantage for many online shoppers, lack of refund policy and aftersales policy is the common problem of online shopping. The main problem is lack of proper laws and regulation in this respect.

As per the provisions of United Nations Guidelines for Consumer Protection¹, member states should improve, reinforce or uphold a durable consumer protection rule. For

¹ UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, United Nations Guidelines for Consumer Protection < https://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf > accessed on 18 October, 2018

these, each member state must establish its own significances for the protection of consumer's in accordance with the economic, social and environmental situations of the country and the needs of its population, and bearing in mind the costs and benefits of proposed measures². Member States should create consumer protection policies that encourages good business practice, clear and timely information regarding the goods or services offered, clear, concise and easy to understand contract terms that are not unfair, a transparent process for the confirmation, cancellation, return and refund of transactions, secure payment mechanism, fair, affordable and speedy dispute resolution mechanism, consumer privacy and data security and consumer and business security³. The research question is, whether existing legislation/s regarding online shopping is/are sufficient or not? This study finds that the current consumer rights protection Act of 2009 and other related legislations do not deal with the ecommerce and any kind of online business. Hence, the author would try in this research to find the main problems of the online shopping in Bangladesh and considering the qualitative and quantitative data some recommendations will be suggested for the making of a better regulation in this under-regulated area of law.

1.2 Historical Background and Current Status of Online Shopping in Bangladesh:

Compared to other countries of the world, the concept of online shopping came at a later stage in our country but it rose very quickly⁴. Online shopping is already quite popular in Bangladesh and it is increasing day by day. Online shopping was introduced in Bangladesh in the late 90s⁵. From 2000 to 2008 the E-commerce⁶ sector made deliberate progress⁷. There were few websites but there were no system for online transaction which is the first condition for online shopping. The actual variation arose

² *ibid*

³ *ibid*

⁴ Md. Mohiuddin, "Overview the E-Commerce in Bangladesh" (July, 2014) IOSR Journal of Business and Management (IOSR-JBM), Volume 16, Issue 7. Ver. II < <http://www.iosrjournals.org/iosr-jbm/papers/Vol16-issue7/Version-2/A016720106.pdf>> accessed on 15 October, 2018

⁵ Md. Shafiqul Islam, "E-Commerce in Bangladesh: Growth And Challenges" (March, 2018) IOSR Journal of Business and Management (IOSR-JBM), Volume 20, Issue 3. Ver. 5 < <http://www.iosrjournals.org/iosr-jbm/papers/Vol20-issue3/Version-5/B2003051015.pdf>>, acceded on 15 October, 2018

⁶ "Electronic commerce or e-commerce, is the buying and selling of goods and services on the Internet. The Same process may be defined as another term, not only e-commerce. The term e-commerce used to define the broader process of using the internet for changing ways of doing business. This process relates to their customers and suppliers, and of the way they think about such functions as marketing and logistics", *ibid*, PP 11

⁷ *ibid*

in 2009 when Bangladesh Bank permitted online payment. Thus, the official inaugural of the E-commerce sector happened⁸. This is mentionable here, that the year 2013 has been a significant year in the history of E-commerce in Bangladesh⁹. As, Bangladesh Association of Software and Information Services (BASIS) and Bangladesh Bank jointly observed “E-Commerce Week” for the first time in the country, supported by ICT Business Promotion Council¹⁰. The concept of online shopping is a narrower version of e-commerce which came into in focus later.

As per the information of Bangladesh Telecommunication Regulatory Commission (BTRC), at present the total number of Internet Subscribers has reached 80.829 million at the end of January, 2018¹¹. According to ANN Desk (Asia), Bangladesh has been ranked fifth largest internet using country in Asia¹². Bangladesh has a growing economy. Here, online transaction has been growing rapidly with the changing of business setting¹³.

In Bangladesh, people know about online shopping through different ways, i.e. websites, social media (like Facebook, Twitter, Instagram etc.), Newspaper/Magazine and so on¹⁴.

Now-a-days people prefer to purchase through online because, it saves time and a good source for gathering product information¹⁵. People in Bangladesh, purchase many things through online shopping; like apparels, online tickets, accessories, health care products, books and so on¹⁶.

⁸ Bangladesh e-Commerce sector, e-Commerce in Bangladesh < <http://e-cab.net/resource-center/bangladesh-e-commerce-sector/> > accessed on 15 October, 2018

⁹ *ibid*

¹⁰ *ibid*

¹¹ Bangladesh Telecommunication Regulatory Commission (BTRC), The People’s Republic of Bangladesh < <http://www.btrc.gov.bd/content/internet-subscribers-bangladesh-january-2018> > ,accessed on 15 October, 2018

¹² Asia News network , < <http://annx.asianews.network/agencies/ann-desk-asia> > , accessed on 15 October, 2018

¹³ *Supra*, 4 PP 11

¹⁴ Mohammad Toufiqur Rahman, Customers’ Attitude towards Online Shopping: The Case of Bangladesh (July, 2016) , World Journal of Social Sciences, Vol. 6. No. 2

< <http://www.wjsspapers.com/static/documents/July/2016/8.%20Toufiqur.pdf> > accessed on 15 October, 2018

¹⁵ Jubayer Suhan, Acceptance of Online Shopping in Bangladesh: Consumer’s

Perspective, IOSR Journal of Business and Management (IOSR-JBM), Volume 17, Issue 1.Ver. II (Jan. 2015), PP 14-24

¹⁶ *Supra*, 11, PP 88

1.3 Current Problems of Online Shopping in Bangladesh:

Mr. Mohammad Harisur Rahman Howladar and Mohammad Muzahidul Islam¹⁷ have mentioned in one of their studies that some people do not prefer online shopping. On behalf of this argument, they specified some reasons, i.e, financial insecurity, lack of human contact, failure of technology, poor design of interface; unfamiliar service encounter, information overload, static website and organizational constraints are the reasons for low acceptance of online shopping in different countries. This view is reflected in other studies also¹⁸.

According to one of the literatures¹⁹, online shopping is complicated, risky; cost of the product is high and time consuming of delivery time. Trustworthiness is one of the drawbacks of this system. The author conducted his survey among 106 of respondents²⁰. In his study, he tried to find out some negative and positive sides of online shopping. The author did not specify the legal issues on his study²¹.

The author also conducted a survey among 103 respondents. Surprisingly male customers purchase more products than female customers through online (more than 74%). The young aged purchasers purchase more than aged purchasers. Majority of the buyers are between 20-26 years of old. Most of the consumers are service holders (more than 35%). On the other hand students also love to purchase through online (around 19%). More than 57% of the customers purchased products through online for a long time. They said, they are purchasing for more than one year.

The customers purchase different types of products by this way. The major products are clothing (62%), electronic products (45%), jewelry (10%) and other products.

¹⁷ Mohammad Harisur Rahman Howladar, Madya Dr. Md Golam Mohiuddin, Mohammad Muzahidul Islam, Developing Online Shopping Intention Among People: Bangladesh Perspective, (No.9, 2012) Developing Country Studies www.iiste.org, ISSN 2224-607X (Paper) ISSN 2225-0565 (Online), Vol 2, < file:///C:/Users/law%2010/Desktop/2969-5003-1-PB.pdf >

¹⁸ Shankar, V., Smith, A. K., and Rangaswamy, A. (2003), "Consumer satisfaction and loyalty in online and off line environments", International Journal in Marketing, 20, pp 153-175

¹⁹ Jubayer Suhan, Acceptance of Online Shopping in Bangladesh: Consumer's Perspective, (Jan. 2015) IOSR Journal of Business and Management, Volume 17, Issue 1. Ver. II, PP 14-24

²⁰ *ibid*

²¹ *ibid*

A number of the customers (31%) think that, the delivery time of the product is time consuming. Bulk of the purchasers (more than 42%) opined that delivery cost of the product is high. More than 48 % consumers agreed that delivery charge is higher than the fixed price under any Act or rules. 45.6 % purchaser opined that they deceive consumers by untrue or false advertisement for the purpose of selling any goods or service. A good number of the buyers (26.2%) agreed that they don't deliver properly on time any goods or services promised to sell or deliver. 44.7 % shoppers think that, they deliver less quality goods or services than the one promised to sell or deliver.

Return/refund policy is important. Majority of the consumers (76.7%) agreed that, every online shop should have return/refund policy. Interestingly, 56.3% consumer opined that, they do not know where to get remedy, in case of fraud by online shop. Mainstream buyers (69.9%) agreed that, there should be a comprehensive regulation for regulating online shopping.

This is positive that, most of the consumers (71.3%) are interested to purchase again through online. 65% agreed that they will recommend others to use online shopping.

After analyzing the above fact, the major findings are-

- a) Delivery cost of the products is high.
- b) The seller's charge higher price than the fixed price under any Act or rules.
- c) The sellers deceive consumers by untrue or false advertisement for the purpose of selling any goods or service.
- d) They don't deliver properly/on time any goods or services promised to sell or deliver.
- e) They deliver less quality goods or services than the ones promised to sell or deliver

Majority of the respondents agree that-

- a) Online shops should have return/refund policy.
- b) There should be a comprehensive regulation for regulating online shopping.

The author thinks that, evidential procedure is one of the major drawbacks in Bangladesh. The virtual evidence is still unpopular in Bangladesh. There is no clear legislation in this regard. If the sellers changes the image of the products and deny the quality of the products, it is difficult to prove the authenticity by digital evidence.

1.4 Current status of the regulations dealing with online shopping

The Constitution of People's Republic of Bangladesh

The Constitution of Bangladesh said about some basic rights. Article 15 of our Constitution said about some basic necessities like food, clothing, shelter, education and medical care etc. In addition to these, in another article, the Constitution says about Public health and morality²².

Consumers' Right Protection Act, 2009:

According to the Consumers' Right Protection Act, 2009²³ the term "complainant" means any consumer, one or more consumers having same interest, any consumer association registered under any Act or the National Consumers' Right Protection Council 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 retailer²⁴. So, the Act provides a broad definition of complainant.

The Act clarifies the term "Fake". Here "Fake" means production or manufacturing of alike/similar things without authorization imitating the goods authorized for advertising whether the properties, ingredients, elements or quality of the goods authorized exist or not in such fake goods²⁵.

The Act also explains some basic terms, which are discussed as follows:

"Goods" means any movable commercial commodities which the buyer purchases or pacts to buy from any seller in exchange of money or price²⁶.

²² The Constitution of People's Republic of Bangladesh, Art. 18

²³ The Consumers' Right Protection Act, 2009 ((Act No. 26 of 2009))

²⁴ *Ibid*, S 2(3)

²⁵ *Ibid*, s2(9)

²⁶ *Ibid*, s2(11)

“Seller” indicates any manufacturer, maker and supplier of any goods and also includes wholesaler and retailer²⁷.

“Consumer”²⁸ means any person, who, without resale or commercial purpose buys any goods for a consideration which has been paid or promised to be paid, buys any goods for a consideration which has been partly paid and partly promised; or buys any goods for a consideration under any system of deferred payment or installment basis;

Who uses any goods bought under clause (a) with the consent of the buyer;

Who buys any goods and uses it commercially for the purpose of earning his livelihood by means of self-employment; Who hires or in any other means avails of any service for a consideration which has been paid or promised to be paid; or hires or in any other means avails of any service for a consideration which has been partly paid and partly promised; or hires or in any other means avails of any service for a consideration under any system of deferred payment or installment basis; or who enjoys any service under clause (d), with the consent of the person who hires or avails it.

The Act explains “anti-consumer right practice²⁹”. It means- to sell or offer to sell any goods, medicine or service at a higher price than the fixed price under any Act or rules; to sell or offer to sell adulterated goods or medicine knowingly; to sell or offer to sell any goods containing any ingredient which is extremely injurious to human health and the mixing of which with any food item is prohibited under any Act or rules; to deceive consumers by untrue or false advertisement for the purpose of selling any goods or service; not to sell or deliver properly any goods or services promised to sell or deliver in consideration of money; to sell or deliver less quantity of goods than the weight offered to the consumers while delivering or selling any goods; to show more than the actual weight by the weight stone or any other weight measuring instrument used for measuring weight in selling or delivering goods in a commercial enterprise; to sell or deliver less quantity of goods than the promised amount while delivering or selling any goods; to show more than the actual length by the length measuring gauge or anything else used for measuring length

²⁷ *Ibid*, 2(15)

²⁸ *Ibid*, 2 (19)

²⁹ *Ibid*, S2(20)

in selling or delivering goods in a commercial enterprise; to make or manufacture any fake goods or medicine; to sell or offer to sell goods or medicine the date of which has expired; or to do an act which may endanger life or security of the consumer and which is prohibited by any Act or rules.

Punishable offences under this are as follows:

Not using cover of goods etc³⁰, Not showing price list³¹ Not preserving and displaying price-list of services³², selling goods, medicine or service at higher price than fixed price³³, selling adulterated goods or medicine³⁴, mixing prohibited materials in food stuff³⁵, manufacturing or processing goods in illegal process³⁶, deceiving buyers by false advertisement³⁷, not selling or delivering properly any goods or service promised³⁸, deceiving in weight³⁹, deceiving in weight stone or weight measuring instrument⁴⁰, deceiving in measurement⁴¹, deceiving in measuring gauge or anything used for measuring length⁴², making or manufacturing fake goods⁴³, selling any date expired goods or medicine⁴⁴, doing any act detrimental to life or security of service receiver⁴⁵, damaging money, health or life etc. of service⁴⁶, receiver by negligence etc⁴⁷, filing false or vexatious cases⁴⁸, reoccurring offence⁴⁹

³⁰ *Ibid*, S37

³¹ *Ibid*, S 38

³² *Ibid*, S 39

³³ *Ibid*. S 40

³⁴ *Ibid*, S41

³⁵ *Ibid*, S42

³⁶ *Ibid*, S43

³⁷ *Ibid*, S44

³⁸ *Ibid*, S45

³⁹ *Ibid*, S46

⁴⁰ *Ibid*, S47

⁴¹ *Ibid*, S48

⁴² *Ibid*, S49

⁴³ *Ibid*, s 50

⁴⁴ *Ibid*, S 51

⁴⁵ *Ibid*, S52

⁴⁶ *Ibid*, S53

⁴⁷ *Ibid*, S54

⁴⁸ *Ibid*, S55

⁴⁹ *Ibid*, S56

Offences under this Act shall be tried by a Magistrate of the first class or a Metropolitan Magistrate⁵⁰, the offences also are triable in the summary trial⁵¹. The Act also provides for some civil remedies in some cases⁵².

The highest punishment under this Act is 3 (three) years, or with fine not exceeding Taka 2 (two) lacs, or with both for selling adulterated goods or medicine⁵³, mixing prohibited materials in foodstuff⁵⁴ and making or manufacturing fake goods⁵⁵.

The Sale of Goods Act, 1930

Bangladesh has a very comprehensive and old Sale of Goods law.

In the definition clause the Act clarifies some terms. According to this Act, "buyer" means a person who purchases or agrees to purchase goods⁵⁶; "delivery" means voluntary transmission of possession from one person to another⁵⁷; goods are said to be in a "deliverable state" when they are in such a state that the buyer would under the contract be bound to take delivery of them⁵⁸; "fault" means unlawful act or default⁵⁹; "goods" means all kinds of moveable property other than actionable claims and money; and includes electricity, water, gas, stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale⁶⁰; "price" means the monetary consideration for a sale of goods⁶¹; "quality of goods" includes their state or condition; "seller" means a person who sells or agrees to sell goods⁶²; "specific goods" means goods identified and agreed upon at the time a contract of sale is made⁶³.

⁵⁰ *Ibid*, s57

⁵¹ *Ibid*, S 58

⁵² *Ibid*, S 66

⁵³ *Ibid*, S 41

⁵⁴ *Ibid*, S 42

⁵⁵ *Ibid*, S 50

⁵⁶ The Sale of Goods Act, 1930 (Act No III of 1930), S 2(1)

⁵⁷ *ibid*, S 2(2)

⁵⁸ *ibid*, S 2(3)

⁵⁹ *ibid*, 2(5)

⁶⁰ *ibid*, S 2(7)

⁶¹ *ibid*, S 2 (10)

⁶² *ibid*, S 2(12)

⁶³ *ibid*, S 2(14)

The Act differentiates the concept of Sale and Agreement to sell⁶⁴. In addition to these, the Act also describes how a contract of sale is made⁶⁵. According to this section, a contract of sale is made by an offer to buy or sell goods for a consideration and the acceptance of such offer. The contract may deliver for the immediate transfer of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed. Moreover, the Act also said Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by words of mouth, or partly in writing and partly by words of mouth or may be implied from the conduct of the parties.

This Act explains the concept of condition and warranty⁶⁶. According to the Act, condition and warranty means, a condition in a contract of sale with reference to goods which are the subject thereof, which is essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated. Section 13 describes when condition to be treated as warranty.

Section 15 says about Sale by description. According to this section, in case of contract for the sale of goods by description, there is an implied stipulation that the goods shall resemble with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description⁶⁷. Section 17 says about details of sale by sample. Section 37 describes the consequences of delivery of wrong quantity. The buyer's right to wrong quantity is to accept or reject the goods⁶⁸.

Section 40 says about the risk where goods are delivered at distant place. 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

⁶⁴ *ibid*, S4

⁶⁵ *ibid*, S5 (1)(2)

⁶⁶ *ibid*, S 12

⁶⁷ *ibid*, S 15

⁶⁸ *ibid*, S 37

had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract⁶⁹.

The Act gives a right to the buyers⁷⁰. It says, 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 had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. The Act also says, unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

The Act also gives rights to the seller. It states⁷¹, When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request takes delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. In its proviso, this section says, nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

Chapter VI describes the remedies of breach of contract to sale. The seller's rights are right to sue for price⁷², damages and non-acceptance⁷³. One of the remedies is specific performance⁷⁴ under Specific Relief Act, 1877.

Buyer's rights are to suit for the damages for non-delivery⁷⁵, breach of warranty⁷⁶.

Both parties have a right under this Act⁷⁷. Any Party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting

⁶⁹ *ibid*, s 41

⁷⁰ *ibid*, S 43

⁷¹ *ibid*, S 44

⁷² *ibid*, S 55

⁷³ *ibid*, S 56

⁷⁴ *ibid*, S 58

⁷⁵ *ibid*, 57

⁷⁶ *ibid*, S 59

⁷⁷ *ibid*, S 60

or wait till the date of delivery, or he may treat the contract as rescinded and use for damages for the breach.

Information and Communication Technology Act, 2006

This Act clarifies the basic concept of “Information and Communication Technology”. According to this Act, "internet" means such an international computer network by which users of computer, cellular phone or any other electronic system around the globe can connect through one another and exchange information and can surf the information existing in the websites⁷⁸. "Website" means document and info kept in computer and web servers which can be surfed or seen by the users through internet⁷⁹. "computer" means any electronic, magnetic, optical or other high-speed data processing device or structure which does rational, arithmetical and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network⁸⁰. "Computer network" means the interconnection of one or more computers through the use of satellite, microwave, terrestrial line, wireless equipment, wide area network, local area network, infrared, WiFi, bluetooth or other communication media; and terminals or a multifaceted containing of two or more interconnected computers whether or not the interconnection is continuously maintained⁸¹.

In its section 57, the Act says publishing fake, indecent or insulting information in electronic form is a punishable offence. The Act states, If someone intentionally publishes or conveys or causes to be published or transmitted in the website or in electronic form any material which is fake and indecent or its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, or causes to depreciate or make risk to deteriorate law and order, prejudice the image of the State or

⁷⁸ Information and Communication Technology Act, 2006, S (8)

⁷⁹ *Ibid*, s 2(12)

⁸⁰ *Ibid*, S 2(13)

⁸¹ *Ibid*, S 2(14)

person or causes to hurt or may hurt religious belief or instigate against any person or organization, then this activity of his will be regarded as an offence⁸².

In another section, the Act says, whoever involves in any falsification to, or suppresses any substantial fact from the Controller or the Certifying Authority for obtaining any license or Digital Signature Certificate shall be regarded as an offence⁸³.

The Act says in details about Establishment of Cyber Tribunal, investigation of offences, adjudication, appeal etc⁸⁴.

The Contract Act, 1872

The Contract Act defines the terms “Agreement” and “Contract”. According to this Act, every promise and every set of promises, forming the consideration for each other, is an agreement⁸⁵ and an agreement enforceable by law is a contract⁸⁶. The Act also discusses about the formation of contract⁸⁷. The Act clarifies when a contract can be voidable and an agreement became void⁸⁸. Here, it is stated how a contract can be performed⁸⁹. The Act provides compensation for loss or damage caused by breach of contract⁹⁰. The Act also ensures compensation when the party rightfully rescinded contract⁹¹. The concept of indemnity of contract is stated in chapter VIII.

Penal Code, 1860

Offences related to weight and measures are discussed in section 264-267 of Penal Code, 1860. It is said, whoever deceitfully uses any device for weighing which he

⁸² *Ibid*, s 57

⁸³ *Ibid*, S 62

⁸⁴ *Ibid*, S 68-84

⁸⁵ The Contract Act, 1872, 2 (e)

⁸⁶ *Ibid*, S 2 (h)

⁸⁷ *Ibid*, Chapter I

⁸⁸ *Ibid*, Chapter II

⁸⁹ *Ibid*, Chapter IV

⁹⁰ *Ibid*, ibis, S 73

⁹¹ *Ibid*, S 75

knows to be incorrect, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both⁹².

Section 272 says about adulteration of food or drink intended for sale. According to this section, “whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same 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 both”.

Sale of noxious food or drink⁹³, adulteration of drugs⁹⁴, sale of adulterated drugs⁹⁵, sale of drug as a different drug or preparation⁹⁶ are also punishable offences under Penal Code, 1860. Using a false trade mark or property mark is also punishable offence under this Code⁹⁷.

Special Powers Act, 1974

The Act clarifies the concept of “black-market”⁹⁸, and “hoarding”⁹⁹.

Hoarding or dealing in black-market¹⁰⁰, smuggling, adulteration of¹⁰¹, or sale of adulterated food, drink, drugs or cosmetics are punishable offences under this Act¹⁰².

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

The Act provides provisions for the control of supply and distribution of, and trade and commerce in, certain limited number of essential commodities.

⁹² Penal Code, 1860, S 264

⁹³ *Ibid*, 81, S 273

⁹⁴ *Ibid*, S 274

⁹⁵ *Ibid*, S 275

⁹⁶ *Ibid*, S 276

⁹⁷ *Ibid*, s 482

⁹⁸ Special Powers Act, 1974, S 2(b)

⁹⁹ *Ibid*, S 2(i)

¹⁰⁰ *ibid*, S25

¹⁰¹ *Ibid*, S 25 B

¹⁰² *Ibid*, S 25 C

According to this Act, “the Government may, from time to time, by notification, fix the maximum prices at which an essential article may be sold by a retailer, wholesaler or any other person and for this purpose may fix different prices for different areas of the country”¹⁰³. The Act also prohibits, purchase, sale, etc, at prices exceeding the maximum price¹⁰⁴.

Control of Essential Commodities Act, 1956

The Act states the powers to control the production, treatment, keeping, storage, movement, transport, supply, distribution, disposal, acquisition, use or consumption of, and trade and commerce in, certain commodities. According to this Act, the Government has the power to control production, supply, distribution, etc, of essential commodities¹⁰⁵.

In addition to above mentioned legislations, there are other laws which is indirectly applicable for online shopping, i.e. The Trademark Act 1940, The Standards of Weights and Measures Ordinance 1982 , The price and distribution of Essential Commodities Ordinance 1970 , The Bangladesh Telecommunication Act, 2001 .

Consumer Association of Bangladesh (CAB)¹⁰⁶

Bangladesh has a non-governmental, non-political, non-profitable and voluntary consumer organization Consumers Association of Bangladesh (CAB), which was founded in February 1978. Initially CAB started as a social group to protect consumers from commodity adulteration and artificial price-hike it has gradually widened its scope to establish and safeguard consumers’ rights and interests in social, economic, health and environmental issues.

¹⁰³ The Essential Articles (price control and Anti-Hoarding) Act, 1953, S 3

¹⁰⁴ *Ibid*, S 4

¹⁰⁵ Control of Essential Commodities Act, 1956, S 3

¹⁰⁶ Consumer Association of Bangladesh (CAB) < Consumer Association of Bangladesh (CAB)> accessed on 8 October, 2018

Bangladesh has also a national body, named Directorate of Consumers Right Protection (DCRP)¹⁰⁷. The Act also made the additional National Consumer Right Protection Council. Nevertheless, these two organizations are unknown to the general people, who have purchased a small amount of products through online shopping. In some cases they are not active for their task.

1.5 Major Loopholes in Bangladeshi Legislations:

Consumers' Right Protection Act, 2009:

The Act provides a broad definition of complainant¹⁰⁸. Any consumer can be complainant against any issue arising under this Act. The Act also gives a narrative definition of consumer¹⁰⁹. Anti-consumer Right practice¹¹⁰ is apparently described very well, but still there are some issues. Hence, the Act only emphasis on food, medicine. Other goods are almost ignored. Moreover, this section¹¹¹, similarly puts emphasis on quantity not quality. The concept of "Online Shopping" is also missing here.

In several sections, the Act says about false advertisement¹¹², but there is no clear indication, how to prove that.

It is worth mentioning here that in Bangladesh still digital evidence is not popular. In the case Major Md. Bazlul Huda (Artillery) vs. State¹¹³, the honorable justice said- *"It is thus hoped that the obsolete laws prevailing in the country will be amended and new suitable laws will also be enacted to respond to the needs of changing society in the light of the observations made above. In view of the lack of proper law, I am unable to use the digital evidence produced by the prosecution in this case."*

Even the Act described the process of examination of defective goods. It specifies only specific goods which can be examined in appropriate laboratory¹¹⁴.

¹⁰⁷ Bangladesh has also a national body, named Directorate of Consumer Right Protection (DCRP) < <https://dncrp.portal.gov.bd/site/page/37a81e20-ed27-48eb-a4cf-709676909443/Head-Office> >accessed on 8 October, 2018

¹⁰⁸ *Supra* 1, S2(3)

¹⁰⁹ *Supra* 1, S 2(19)

¹¹⁰ *Supra* 1, S2(20)

¹¹¹ *Supra* 1

¹¹² *Supra* 1, S2(20)(d), 44 etc.

¹¹³ Major Md. Bazlul Huda (Artillery) vs. State (19.11.2009 - BDAD),LEX/BDAD/009/2000

¹¹⁴ *Supra* 23, s62

The return policy is almost absent in this Act.

The Sale of Goods Act, 1930

Apparently, this Act does not cover the virtual shopping. In this regard, section describes the way of contract to sale¹¹⁵. The ways are, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties¹¹⁶. The online mode of making contract is absent here.

The Act says about sale by the description¹¹⁷ or sample¹¹⁸. Besides, the concept of description on the virtual world is not mentioned here. Nevertheless, sale by the sample is speciously for “bulk selling”. There is no indication for individual sale.

The Act gives the provisions of conditions and warranty¹¹⁹. But, these are not mandatory. The Act provides buyer’s right of examining the goods¹²⁰. However, the Act indicates only previous examination. There is no clarification, where a buyer will purchase the product through online. How he/she can examine the goods before in real? In case of online shopping, a buyer can only see the image of the products and read the description.

Information and Communication Technology Act, 2006

It seems that, the Act, emphasis only the means and method of Information and Communication Technology and cybercrime. The concept of online shopping is totally absent here.

The Act, mostly emphasis on digital signature and electronic records. Only section 57 can be indirectly applied for online shopping. It is mentionable here that publishing fake, indecent or insulting information in electronic form is a punishable offence under this section. Nevertheless, this section is one of the controversial sections of this Act. It has a huge criticism on national, popular news and print media¹²¹. The claim is, this

¹¹⁵ *Supra* 56, S 5

¹¹⁶ *Supra* 56, S 5

¹¹⁷ *Supra* 56, S 15

¹¹⁸ *Supra* 56, S 17

¹¹⁹ *Supra* 56, S12

¹²⁰ *Supra* 56, S 41

¹²¹ Tuhin Shubhra Adhikary, The trap of Section 57, The Daily Star, (Dhaka, July 07, 2017)
< <https://www.thedailystar.net/frontpage/bangladesh-ict-act-the-trap-section-of-57-1429336> >

section is used only for political assessment. Moreover, it does not have any authentic proof.

The Contract Act, 1872

The Contract Act is one of the well drafted legislation in Bangladesh.

In Bangladesh, in case of online shopping the purchaser enters into agreement with the seller before purchasing the product. But, the nature of the agreement is virtual. In the entire Contract Act this virtual method of forming the contract is absent.

Penal Code, 1860

Penal Code also emphasis only on the weights and measures¹²². In addition this Act also puts importance only on the adulteration of food, drink and drugs¹²³. These Act only talks about weights and measures when it comes to business transaction. The concept of virtual shopping is not discussed here.

Special Powers Act, 1974

This Act talks about hoarding or dealing in black-market, smuggling, adulteration of, or sale of adulterated food, drink, drugs or cosmetics. It seems that the Act has highlighted on adulteration. The concept of deception in virtual selling is not discussed here.

Recently, the Government of Bangladesh approved the Digital Security Act-2018. This is one of the controversial legislation so far. The sole aims of this legislation are, to ensure digital security, to detect digital crimes and other related issues.

The draft of Digital Security Act-2018 provides minimum punishment for three years and maximum ten years' term. The proposed statute states certain crimes are “non-bailable” and allows a police official to search or arrest anyone without a warrant in special circumstances. The draft was approved preserving a rule for repealing sections 54, 55, 56, 57 and 66 of the ICT Act.

¹²² *Supra* 92, S264-267

¹²³ *Supra* 92, S272-276

In addition to the legislative lacuna, implementation, monitoring and awareness are also major drawbacks for ensuring the rights of online shoppers.

1.6 Conclusion

As a developing country, Bangladesh is still in its infant stage in online shopping or E-commerce. A good deal of online shops is developing. We can hope that Bangladesh will be forerunner in this sector in the coming future. But before that they need to fill in the gaps and lacking's which are present. There are some basic requirements to be fulfilled to achieve the satisfaction of the consumers.

- i. There should be a comprehensive legislation which will be exclusively dealt with online shopping. At first, online shop owners need a proper guideline for continuing their own business.
- ii. Evidential matters should be clear.
- iii. The concept of Digital Evidence should be clarified in our legislations.
- iv. Existing Laws should be amended: Existing legislation can be amended with the latest issues of online shopping. The rights of the online consumers and duties of shoppers should be clear.
- v. Quick delivery to the consumer: People depend on online shopping when they have limited time. Thus, quick delivery should be ensured by legal instruments.
- vi. Developed/Development of return policy: In the e-commerce sites, the pictures of the products are shown. Customers have certain level of expectation about the product. Sometimes the apparent value may not match. One of weaknesses of Bangladeshi online shops is that they (majority of them) do not offer any option to return the product. Bangladeshi online shops should adopt the return policy. Otherwise, a huge market will phase out with remarkable prospective.

This is not a comparative study, yet for the development of law regarding online shopping in Bangladesh we can consider Malaysian legislation. The author tries to refer Malaysian law, since both the countries have same geographical location. Both of them are Asian countries. They have the common origin of law, both have booming economy.

It is mentionable here that, Malaysia has high rates of e-commerce usage. Malaysia assertions 15.3 million online shoppers (50 percent of the population) and 62 percent of mobile users their devices to shop online¹²⁴. In addition to this, Malaysia revenue in the e-commerce market amounts to US\$3,144m in 2018¹²⁵. The revenue is assessed to appearance an annual progress amount (CAGR 2018-2022) of 14.8%, resulting in a market volume of US\$5,457m by 2022¹²⁶.

The main statute governing e-commerce transactions in Malaysia is the Electronic Commerce Act 2006 (ECA) under the jurisdiction of the Ministry of Domestic Trade, Cooperatives and Consumerism.¹²⁷ The ECA basically delivers the legal acknowledgment of electronic messages in commercial transactions, the use of the electronic messages to fulfill legal needs and to permit and enable commercial transactions through the use of electronic means. The common rule of law on contracts and a sale of goods contracts can be found in the Contract Act 1950 and the Sale of Goods Act 1957. The main statute on consumer protection in Malaysia is the Consumer Protection Act 1999 (CPA)¹²⁸. The CPA was initially inapplicable to any trade transactions by electronic means but the law has been amended in 2007¹²⁹. The protection for e-consumers has been further strengthened recently by the enactment of the Consumer Protection (Electronic Trade Transactions) Regulations 2012¹³⁰.

In this respect, Bangladesh can enact legislation like Malaysia, Consumer Protection (Electronic Trade Transactions) Law or amendment the existing laws by focusing the online transaction.

¹²⁴ Malaysia Country Commercial Guide, Malaysia – eCommerce <
<https://www.export.gov/article?id=Malaysia-E-Commerce>> accessed on 17 October, 2018

¹²⁵ The Statistics Portal, eCommerce, Malaysia
<<https://www.statista.com/outlook/243/122/ecommerce/malaysia>> accessed on 17 October, 2018

¹²⁶ *Ibid*

¹²⁷ Naemah Amin and Roshazlizawati Mohd Nor, Online shopping in Malaysia: Legal Protection for E-consumers (2013) , European Journal of Business and Management, Vol.5, No.24, 2013 <
file:///C:/Users/law%2010/Desktop/8034-10285-1-PB.pdf > accessed on 17 October, 2017

¹²⁸ *ibid*

¹²⁹ *ibid*

¹³⁰ *ibid*