The primary purpose of this chapter is to recapitulate and summarize some of the important points discussed throughout the research work and to highlight the emerging issues in the context of consumer protection in Cyberspace in India. As already mentioned in the introductory chapter, the present work is primarily a doctrinal, critical and an empirical study on the topic of “Jurisprudence of E-Commerce and Consumer Protection in India: A Critical Analysis with Special Reference to the Information Technology Act, 2000”. In a wide sense, ‘jurisprudence’ is used to describe the legal connections of any body of knowledge. Therefore, with a view to give effect to this aim of Jurisprudence, this research work is focused on the inter-disciplinary research of law with commerce wherein the role of law has been analysed in Internet e-Commerce for the protection of consumers. In the era of new spectrum of technological advancements, Information Technology has opened new vistas for modern day business transactions. As a result of modern Information and Communication technology, in the lap of Internet revolution, economy has revolutionized from B-Commerce (Bania Commerce) to e-Commerce (Electronic Commerce). The ‘e-Revolution’ has placed virtually the entire trading universe in Cyberspace which has posed new threats to humanity. As the facets of market have transformed from physical to digital market so as the modes of shopping have also been transformed wherein rights of consumers are under various threats. This research work is concentrated generally on the new challenges posed by e-Commerce and particularly on the frauds related to consumers in Internet e-Commerce at the time of online shopping, e-contracting and e-banking.

Besides various viewpoints, propositions of law and policy, the five basic themes run through the present research work. First, it has been highlighted that in India, in the third millennium, Internet revolution and Information technology has built inroads in all walks of human life. The most outstanding development in this area has been the geometric expansion of trade and commerce through the Internet or the web. As a

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result, consumers have also entered into new cyber-marketing via online shopping. *Secondly,* the study has demonstrated that exploitation of consumers in the cyberspace represents the largest generation of illegal activities whereby the electronic onslaught has narrowed down the legal latitude and the entire Consumer Protection Jurisprudence is facing legal, technical, political and operational challenges.\(^2\) Violations of rights of consumers in Internet e-Commerce; a 20\(^{th}\) century fetus of technological development, has grown to an epidemic and has become uncontrollable in the 21\(^{st}\) century. *Thirdly,* this research work has spotlighted modes of violation of rights of consumers in online shopping which can be termed as ‘old frauds in new bottles’. Issues concerning flaws in the validity of e-contract, fake e-advertisements, privacy of sensitive information and data protection in e-Banking have been described. *Fourthly,* an analysis of Indian legislations on Cyber law and Consumer Protection Laws has been made. It has been argued that the Information Technology Act, 2000 (2008) is like a skeleton legislation where all provisions are decorated in a very beautiful and systematic way, however, these are not worth for an ordinary Indian consumer who is not a lawyer or computer engineer or Cyber expert but a victim of online frauds. *Fifthly,* the present study is an empirical research. A ‘Short Survey’ has been conducted with the ‘Questionnaire Method’ to explore: (i) Awareness among people about e-Commerce and online shopping, (ii) Reasons of attraction towards online shopping, (iii) Trust pattern of consumers in web shops and quality of products (iv) Gravity of frauds with consumers in Cyberspace, (vi) Awareness among consumers about their rights in e-marketing and (vii) Security of personal sensitive information in e-Banking transactions.

The first chapter introduces the background in which the entire research has become matured. It highlights the novel topic in the field of ‘Cyber Law Jurisprudence’ as well as ‘Consumer Protection Jurisprudence’ that is–Protection to Rights of Consumers in Online Shopping. It reflects the synopsis of this thesis with adequate detail on statement of the research problem, review of literature, significance of this research, likely contribution of research towards Indian Cyber Jurisprudence, data base, and methodology and chapterisation plan. The journey of this research is undertaken with the fact that in present scenario human is active participant in the online transactions, e-

banking, online shopping and influenced by online advertisements. Every day one or another person is a victim of fraud, manipulations and misrepresentation in e-Marketing. Then the question arises where to go for justice? This is still a question before the Indian Jurisprudence as the consequences of online shopping and banking transactions in the borderless world of the Internet function differently from the offline world in various ways. The findings of this chapter are that though a lot of literature in the form of books, articles, journals and research papers is now available on Cyber law, however, in view of the rapid recent technological developments, there is hardly any research on consumer protection in Cyber-marketing (e-Commerce). Most of the literature available on this topic discusses the Information Technology Act, 2000 (2008) from criminal perspective like Cyber crime and its various dimensions. This Act is entirely silent on some upcoming challenges in e-Commerce like frauds in online shopping, violation of rights of online consumers and compensation to victimized consumers in e-marketing. It is need of the time to frame systematic and coherent legal mechanism to deal with this ignored aspect. Therefore, this chapter depicts that there is need for updated studies in this new and ever expanding area of law.

Chapter two sketches an orbit in which the entire Cyber marketing is carried out. It elaborates a crystal clear picture of footprints of emergence of new platform of online shopping in e-commerce for consumers. It gives a brief sketch of the history of Cyberspace and Internet; thereby setting the backdrop in which e-Commerce operates, history of e-Commerce, evolutionary phases of e-Commerce, types of e-Commerce, advantages of e-Commerce and most importantly entrance of consumers in borderless market or ‘e’ market in cyberspace. An overview of changing facets of Indian commerce from physical commerce to e-Commerce is reflected and it is found that consumers are also entered into borderless market. It explains that just as today’s economy is a mixture of old and new; most established companies are a hybrid of the old and the new. In just the same way consumers can now be viewed as liking this hybrid market. They take advantage of online shopping conveniences but still visit the stairs for human interaction and the ‘shopping experience’.\footnote{Richard Gay, Alan Charlesworth and Rita Esen, 
*Online Marketing: A Customer Led Approach*, Oxford University Press, New York, 2007, p. 83.} However, it is a reality that
in the global world, e-shopping has been well adopted by consumers wherein consumer is a not a King. In physical market, consumer uses his five sense organs like: Eyes, Ears, Skin (Feel), Nose and Tongue to examine a product. Internet is now capable of satisfying only two senses: Eyes and Hearing (reading comments and reviews posted by users). Due to lack of privacy, trust and security, this type of e-Commerce has chances to die a premature death. It is concluded that in the new digital economy there is direct relationship between ‘development of e-Commerce’ and ‘Consumer Protection’ in an online market for the ontogenesis of Indian economy. Therefore, in order to ensure sustainable growth of Indian ‘e’-economy it is prerequisite to actively address the issue of protection of rights of consumers in e-Commerce.

One of the major themes of the present research is to ponder upon the concept of ‘Consumerism’ in India and ignorance of its application in online market for the protection of consumers. It seems that the phenomenon of ‘Consumerism’ is popular only in physical commerce. Therefore, chapter three is devoted to reflect the journey of consumers from ‘Consumerism to e-Consumerism’ in India. It chalks out a detailed discussion on the origin of the concept of consumerism, nature of consumerism, historical background of the consumer movements in United States of America, Great Britain and its effect on Indian consumerism. After explaining the relevance of consumerism in India, the present study highlights the nature of new digital market, its impact on consumer index and consumer behavior. Besides this, it focuses on the origin of a novice term ‘e-Consumerism’ and relevance of ‘e-Consumerism’. In this chapter it has been concluded that ‘e-Consumerism’ is a movement of the consumer, by the consumer and for the consumers for the protection of their rights in online market which is an ignored concept. This research work has come up with a simple tool of the ‘e-Consumerism Policy Matrix’\(^4\) that attempts to evolve simple and common reference as well as standards for assessing the government policy that can put the concept of ‘Consumerism’ in an actionable matrix in e-Commerce. It involves three fundamental

doctrines: (i) Balancing of Interests between e-Commerce profits and e-Consumer satisfaction; (ii) Public Policy to provide platform for ‘Consumerism’ and ‘e-Marketing’ into an actionable matrix; (iii) Structured, Systematic and Adequate Indian Legal Mechanism for listening the voice of aggrieved consumers in online shopping. It is very important to give attention to public policy deliberations on ‘e-Consumerism’ as people of India have accepted the new change of Information technology. In India it is ripe time towards a movement of ‘e-Consumerism’ on the path of protection of rights of consumers in an online world. A strong platform for flourishment of e-Commerce can only be provided when consumers are safe in e-Commerce and online shopping.

Chapter four elaborates the Human Rights Jurisprudence in India and recognition of Rights of consumers therein. In this chapter the focus is moved from ‘e-Consumerism’ to threats to ‘e-Consumerism’ in practice. It reflects practical difficulties in implementation of the concept of ‘e-Consumerism’ in online shopping. This study enlists various Human Rights of consumers and their recognition in the Second Generation of Human Rights that is the International Covenant of Economic, Social and Cultural Rights. The important issue is to highlight threats to the Rights of consumers in an online–world; that can be termed as ‘Old Frauds in New Bottles’. This chapter contains pages that are dedicated to nature and scope of Human Rights, Rights of consumers namely; the Right to choice, Right to safety, Right to be informed, Right to be heard, Right to consumer education, Right to boycott and Right to basic needs. The major stress is laid on the violations of basic Rights of consumers in cyber-marketing or online shopping like: fake e-Advertisements, flaws in validity of e-contracts, frauds in e-banking and defective delivery of goods. It is submitted that in this online shopping, on one hand, consumers are tendered convenience, quicken and global choice in services, goods and, more importantly, prices. However, on the other hand, the Internet implies new hazards for consumers in the environment of e-marketing. The position of the consumer in an online environment is primarily weaker when it comes to issues concerning privacy, data protection, payments and security in online transactions.\(^5\) Consumers usually lack the opportunity to obtain sufficient

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information about the identity of the supplier, the terms and conditions of any transaction, details of delivery costs, the quality of the goods or services, fair, timely and affordable dispute resolution. The relevance of this chapter is that it provides an overview of violations of Human Rights of consumers in brief and an explanation of these violations is given in the next chapters. It is added to bridge the connection with further Chapters V and Chapter VI as chapter four highlights major threats to consumers in an online shopping in brief, however, an explanation of these threats and their legal ramifications are discussed in the next chapters.

As already mentioned in the earlier paragraph that the chapter four acts as a connecting chapter with chapter fifth and sixth, therefore, in the furtherance of this connection, chapter fifth of this research work elaborates one of the very important aspect of ‘e-Commerce’ or ‘Cyber-marketing’- that is ‘e-Contract’ and its legal validity. It concentrates on all the requirements of valid contract in physical world and its application on the contracts concluded in Cyber world. This chapter provides a detailed discussion on necessary ingredients for formation of contract in physical world (offline contracts) as well as in Cyberspace (online contracts) with relevant case laws. An analysis of authentication of e-Contracts by consumers in an online shopping under UNCITRAL Model Law, 1996, the Information Technology Act, 2000 and the Indian Contract Act, 1872 are made. The evidentiary value of e-Contracts under the Indian Evidence Act, 1872 and jurisdictional aspect of e-Contract are also spotlighted. Therefore, an effort has been made to portray all the essential elements of a legal contract in physical commerce and its application on contractual transactions in e-Commerce. Here, the focus is on the analysis of technical intricacies and plausible principles that govern online contract in Indian Law of Contract. It is observed that the essential ingredients of a valid contract have a distinct connotation in the context of online contract and if all the requirements of law are satisfied, a valid contract formation can be seen in all e-Commerce transactions. The analysis of nature of e-contract makes it clear that position of consumer is weaker in online shopping contract because customer has to abide by the terms and conditions postulated by the seller. Sometimes, e-shopping becomes optional for the customers either to accept or to quit the idea of shopping because of requirements of standardized online form and particular
mode of acceptance of payment. The validity of Click-Wrap Agreements and Shrink-Wrap Agreements is not yet fully established. The Information Technology Act, 2000 (2008) is silent on the validity of e-Contract entered under the situation of mistake, misrepresentation and fraud. Some lacunas or grey areas are highlighted in this chapter which vitiates the validity of online contract. In order to strengthen the position of consumers some suggestions are proposed. It is suggested that as the formation of a valid contract forms the corner-stone of e-Commerce, it is essential that sufficient attention must be paid to the formation of a valid online contract before finalizing any transaction in the click-world. Once the requirements of the law are complied with, online contracts will open up the multifarious opportunities for business.

Another core theme of this research work is detailed discussion on trust and security of consumers in e-Banking transactions during online shopping. Chapter six of this study, thus, focuses on the emergence of ‘e-Banking’ and its impact on e-Commerce transactions. It highlights threats to consumers in an online shopping, particularly at the moment, when they make payment through online banking or Internet banking. For the purpose of this chapter, electronic banking is considered to be the retail banking. Retail banking is banking in which banking institutions execute transactions directly with consumers, rather than corporations or other banks. This study sketches mainly the frauds to consumers in an online world as any contract or commercial transaction is invalid without movement of money (consideration). This chapter depicts that e-Commerce is a three-legged stool. If one company has two of the legs namely-(1) Infrastructure (Speed); (2) Valid contractual Software; but don’t have the very important one and that is (3) e-Banking facilities (price or consideration or effective e-transaction services), there is no way that stool will ever stand up. In the 21st century online banking or e-Banking has made inroads in the lives of every walk of human life.

The chapter outlines changing facets of payment mechanism from commodity money to plastic money, nature of e-banking, need of e-banking in e-Commerce, payment mechanism in e-Commerce and most importantly frauds in online payment mechanism. In addition to this, it also elaborates judicial response to frauds related to online banking

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and legal control mechanism to combat frauds in India. It is described in this chapter that in order to provide strong shield to consumers from Cyber money laundering, Phishing, Pharming, Credit Card Frauds, ATM Frauds and other online financial frauds, India needs specific stringent legislation. The Information Technology Act, 2000 (2008) has covered fraudulent financial activities indirectly. After a minute analysis of this Act, it is seen that most of the provisions are focused on penal provision for disclosing of personal information either by body corporate or otherwise. No mandatory protection has been provided against offences like Phishing, Pharming, Cyber Money laundering, ATM Frauds and other financial frauds wherein innocent consumers are cheated and defrauded. Guidelines provided by RBI are just precautionary measures. In order to make e-Banking safe and reliable, it is very important to add penal provisions in the Information Technology Act, 2000 (2008) expressly and clearly.

After having a detailed study of threats to consumers in online shopping or e-Commerce, the aim of this chapter is to examine Indian legislations on Consumer Protection and Cyber Law. Therefore, chapter seven is divided into two parts. Part -I entitled ‘Indian Law on Consumer Protection: Tracing the Footprints from Ancient India to 21st Century’ traces the roots of spirit of consumer deliberations in Indian Jurisprudence. It sketches the evolutionary footprints of consumer protection mechanism throughout the periods of Ancient, Medieval, Modern, British, Post-Independence and Post Modernist era in India. A reflection of bundle of legislative enactments containing consumer concern is highlighted in this chapter. The analysis of some consumer oriented legislations reveals that in India the concern for the protection of consumers is not a new phenomenon. Consumer protection has its deep roots in the rich soils of Indian civilization. After tracing the roots of consumer protection from ancient Jurisprudence to modern Jurisprudence, it is humbly submitted, in this part, that Indian Jurisprudence absorbs within its ambit ample of legislations for the protection of consumers in physical commercial transactions. However, it is also clear that not even a single legislation is available in legal text for the protection of rights of consumers in an online shopping.

Part-II of this chapter entitled ‘Indian Law on E-Commerce: A Critical Analysis of the Information Technology Act, 2000’ states that in 21st century India has been
experiencing rapid growth in Internet accessibility and e-Commerce. The arrival of the Internet and related technologies brought irreversible changes to the world today. The Internet implies new hazards for consumers in the environment of e-marketing. Since the Model Law on Electronic Commerce was completed, many countries including India have used it to update their commercial laws to accommodate the electronic medium. Therefore, keeping in view the need of time, on the basis of the UNCITRAL Model Law of Electronic Commerce 1996, India has enacted the Information Technology (IT) Act, 2000 for the regulation of activities on the Internet. The IT Act, 2000, a landmark in the legislative history of India, appears to have been drafted keeping in view the challenges posed by Internet, electronic commerce and electronic communications in Cyber space. Therefore, this part is based on the critical analysis of various provisions of e-Commerce law in India from the perspective of protection of consumers in e-Commercial transactions. In the present research a comparative study is also made between Model Law, 1996 and the IT Act, 2000. It is observed that the IT Act, 2000 (2008) is silent on the violations of Rights of consumers in online marketing.

Chapter eighth contains empirical study conducted on this research problem. It reflects the methodology used in this ‘Short Survey’. The aim of conducting empirical research lies in curiosity in the mind of researcher to know popularity of e-Commerce and online shopping among people, reasons of attraction towards online shopping, to get deep knowledge about consumer behavior towards online shopping and to observe trust of consumers in web-shops, quality of products and Internet banking. This field study uses the Questionnaire Method as a research model that aids to examine consumer trust and its determinants in the context of Internet shopping. Internet shopping involves trust, not simply between the Internet merchants and the consumers, but also between the

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consumer and online banking payment transactions. Since Internet-shopping is relatively a new phenomenon with enormous potential, therefore, there is impregnable need to re-examine the notion of trust of consumers in online shopping because the trust of consumers is the backbone to growth of e-Commerce in future. A Survey Questionnaire containing 50 statements has been administered to Convenient Sample of 600 Sample Units of University students and teachers from North India including (i) Law Department, Guru Nanak Dev University, Amritsar, Punjab, (ii) Dehradun Law College, Uttranchal University, Uttrakhand, and (iii) Delhi University Law Centre I, North Campus, New Delhi, Bank Managers and Businessmen. In this empirical study ‘Convenient Sample’ has been used rather than a random one. The objective as well as justification of using a ‘Convenient Sample’ is that in today’s Internet age all students surf the Internet, but they may not represent the entire population who are involved in an online shopping. In addition to this questionnaire, an informal interview (discussion) is also conducted with Bank Managers, Bank employees, experts in Cyber law on this topic of research. The conclusion of this field work is highlighted in the chapter.

Chapter ninth entitled ‘Conclusion and Suggestions’ reflects a brief picture of entire theme that runs behind this research. It highlights glimpses of eight chapters with their aim and conclusions laid down therein by researcher. This research owes its origin with the following hypotheses:

(i) The Information Technology Act, 2000 (2008) is not a comprehensive legislation to govern e-Commerce. No shield is provided to consumers in Internet e-Commerce.

(ii) In the era of ‘e’ revolution Indian Jurisprudence on consumer protection needs to be amended as it is not up to the mark to tackle the online frauds with consumers.

(iii) Lack of trust of consumers in online shopping and e-Banking transactions is the major hindrance in the growth of e-Commerce in India.

It is humbly submitted that the hypotheses of this doctrinal as well as empirical
research have proved partially right and partially wrong. It proves right in the sense that Indian Jurisprudence on consumer protection needs to be amended keeping in view the online frauds with consumers in e-Commercial transactions. It is also proved right in relation to the Information Technology Act, 2000 (that is the only e-Commerce law of India) which is not a comprehensive legislation to govern e-Commerce as no protection is provided to consumers in online shopping and e-Banking frauds. Moreover, the analysis of the Consumer Protection Act, 1986 makes it crystal clear that even in this Act, online consumers are not expressly protected. As the Consumer Protection Act, 1986 was enacted much before the advent of Information and Communication Technology when no one ever thought about innovation of Internet and Cyberspace in India. However, the Information Technology Act, 2000 is a potent weapon to deal with cyber challenges, therefore, it must have solutions for each and every challenge posed by Internet. The tentative generalization that lack of trust of consumers in online shopping and e-Banking transaction is the major hindrance in the growth of e-Commerce in India is proved wrong because from the empirical research it is observed that:

1. Respondents or online consumers enjoy online shopping. According to them, it is not a necessity, however, they prefer it because of huge discounts, offers, variety, comparison of prices, details about their ingredients and qualities, various brands and they can purchase products from far places very conveniently. It means most of people prefer it because they trust it.

2. According to many respondents online banking is perfectly secure and reliable if one is aware about advanced technology. Bank Managers and employees have also expressed that e-Banking during online shopping is safe provided payment must be made by Credit Card. Some Bank Managers have suggested not to leave Credit Card number on Internet web page as it can be easily hacked by opportunists.

3. The views of businessmen on this topic were that now-a-days, online shopping is in trend. People enjoy it as their hobby. It is not a necessity. According to them, web shops enjoy huge profits. The quality of products is poor and margin of profits is
much more. They have suggested not to prefer online shopping.

4. From the field study, it is explored that this novice style of online shopping has influenced the consumer behavior and choices. It has been well adopted by various people. Good web-sites have established perfect mechanism for sale and purchase with full satisfaction, transparency and reliability. Young respondents have named some reliable web sites like www.jabong.com, www.myntra.com, www.yehbi.com, www.homeshop18.com, www.justdial.com and www.amway.com. It means in India online shopping is enjoyed and e-Banking has made life very easy and it is not lack of trust of consumers in authenticity of e-Commerce web sites and e-payment portals that is major hindrance in the growth of e-Commerce in India but the actual reasons are notified as under:


II. No appropriate, systematic, transparent and reliable for online consumer dispute redressal mechanism.

III. Absence of awareness and education among consumers regarding remedy against violation of their rights in cyberspace. Most of the respondents do not prefer to go to court for frauds in minor amount of shopping.

IV. Lack of screening of registration, authenticity and documentation of e-Commerce web sites that are selling goods and products.

V. e-Banking frauds are very common in day to day transactions. However, reporting of these minor frauds that involves small amount is very less. Most of the time, frauds involving major amount are reported with police. As a result several respondents are silent victims of cyber financial frauds.

VI. Some strange responses were received by researcher during field study. Most of the law students were not aware about any remedy against cyber frauds. They had stated that it is matter of 500 ₹ to 5000 ₹ and for that amount of money there
is no reason for wasting time in courts. This attitude of youngsters towards judicial mechanism let the frauds in Cyber world to flourish rapidly because police also needs support from the public for dealing with such cases. Other respondents, who were not from law fields expressed that they are not aware about any remedy.

VII. It is realized that Internet has become part and parcel of our lives and people use it, cherish it and deeply involved with it without having any awareness about its side-effects, cheatings, frauds, offences, illegal activities, and violation of rights in the cyber-marketing. And when due to negligence of online shoppers anything wrong happens then people impose full responsibility on legal and judicial system. In the present research, researcher has proposed statutory amendments in Indian legislations, however, the power of knowledge, education, cooperation and awareness among consumers about their rights cannot be ignored.

VIII. It is well acknowledged by the researcher that legal and judicial mechanism alone cannot provide remedy to victims without co-operation of society. Society can co-operate only when it is well aware about procedural mechanism. But the sad part is that even if victimized consumers seek justice, he/she is denied justice because of lack of adequate legal mechanism for consumers in cyberspace. If that victimized consumer seeks justice under the Consumer Protection Act, 1986, then it is clear from the chapter seven that pre-Internet rules are very difficult to apply on the post-Internet cyber disputes. And if victimized online consumer seeks remedy under the Information Technology Act, 2000 (2008), then not even a single provision is available for acknowledging online consumers and their rights. Therefore, some suggestions are proposed by the researcher in the Information Technology Act, 2000 (2008) for the protection of rights of online consumers.