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E-Commerce Revolution: Contemporary Challenges of Legal Regulation

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Abstract---The rapid growth of e-commerce has created the need for vibrant and effective regulatory mechanisms, which would strengthen the legal infrastructure that is crucial to the success of e-commerce in India. It has always been the allegation that the weak cyber security laws in India and the absence of a proper e-commerce regulatory framework is the reason for what Indian people as well as the e-commerce industries face so many challenges in enjoying a consumer-friendly and business-confidant e-commerce environment in India. Legal community in India is required to the necessary expertise to guide entrepreneurs, consumers and even courts in a manner that the fast emerging business module is enabled to adhere to existing legislations normally applicable to business transactions in conventional modules. Simultaneously, it should ensure that the advantages of technology are availed of unhindered by judicious evolution of law through learned interpretation of court still a consensus emerges that a specialized law to govern and regulate certain aspects of e-commerce is imperative and an exclusive necessity.

Keywords---communication, contemporary, e-commerce, legal regulation, revolution.

Introduction

\$ 4.28 trillion is the total global e commerce sales in 2020. This figure is expected to grow to \$ 5.4 trillion till 2022. Thus, it can be seen that E commerce has been the most cherished digital revolution in contemporary times. On one hand it has revolutionized the market economy and made the access to markets the easiest it could be. However, on other hand it has opened new door of exploitation of common consumers and new issues before legal regulatory mechanisms. This conflict of interest has been in existence since long time and law has tried its best to balance these conflicting interested through several dynamic adaptations.

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The Government of India notified the Consumer Protection (E Commerce) Rules in 2020. These rules aimed at regulating the e-commerce entities in order to protect the consumers from undue exploitation and provided a grievance redressal mechanism. These Rules were reviewed in one year and amendments were proposed in June 2021. These amendments have kicked up the storm. This contemporary controversy has necessitated us to look at the concept of e-commerce in detail and understand it from legal point of view as well. The author has taken the same tread and has analyzed the concept of e-commerce along with its legal rules & implications. At the end, the author has attempted to summarize the contemporary development from legal analytical point of view and give some practical recommendations to be implemented in near future.

E-commerce

History of origin & meaning

Ecommerce actually goes back to the 1960s when companies used an electronic system called the Electronic Data Interchange to facilitate the transfer of documents. But it wasn't until 1994 that the very first transaction took place. This involved the sale of a CD between friends through an online retail website called NetMarket. The concept of e-commerce first formally came forth in 1991, a time when internet practically did not even exist in India. Even worldwide, very few could fathom that the act of buying and selling goods and services over the internet, would be as widely accepted a practice, as it is today. By the late '90s, people became aware of this thing called the internet, but for a majority of them, it remained a luxury they did not particularly need. In a truly Indian manner, it was only in 2002, when the IRCTC introduced an online reservation system, that the public widely accepted the internet as something fruitful, by which time a company named Amazon, was already beginning to create a few murmurs in the US. The first real stepping stone towards setting off the e-commerce juggernaut, was perhaps the creation of Flipkart, when two engineers from IIT Delhi decided to sell books online from an apartment in Koramangala area of Bengaluru.

These nascent developments grew thousand folds after the digital revolution and access to common man through smart phones. Today, India has become the powerhouse of e-commerce and the growth is still at exponential level. The term electronic commerce (ecommerce) refers to a business model that allows companies and individuals to buy and sell goods and services over the Internet. Ecommerce operates in four major market segments and can be conducted over computers, tablets, smartphones, and other smart devices. Nearly every imaginable product and service is available through ecommerce transactions, including books, music, plane tickets, and financial services such as stock investing and online banking. There is no universal definition of e-commerce. However, in Indian context following definitions are in use:

- Department for Promotion of Industry and Internal Trade (DPIIT), FDI Policy, 2017: "eCommerce" means buying and selling of goods and services, including digital products over digital and electronic network.
- Ministry of Electronics and Information Technology (MeitY): "e-Commerce" is a type of business model, or segment of a larger business model, that

enables a firm or individual to conduct business over an electronic network, typically the internet. Electronic commerce operates in all four of the major market segments: business to business, business to consumer, consumer to consumer and consumer to business.

- Consumer Protection Act, 2019: "e-Commerce" means buying or selling of goods or services including digital products over digital or electronic network.
- Central GST Act, 2017: "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network.

Scope

As noted above, ecommerce is the process of buying and selling tangible products and services online. It involves more than one party along with the exchange of data or currency to process a transaction. It is part of the greater industry that is known as electronic business (e business), which involves all of the processes required to run a company online. Ecommerce has helped businesses (especially those with a narrow reach like small businesses) gain access to and establish a wider market presence by providing cheaper and more efficient distribution channels for their products or services. Target (TGT) supplemented its brick-and-mortar presence with an online store that allows customers to purchase everything from clothes and coffeemakers to toothpaste and action figures right from their homes. Ecommerce operates in all four of the following major market segments. These are :

- Business to business (B2B), which is the direct sale of goods and services between businesses
- Business to consumer (B2C), which involves sales between businesses and their customers
- Consumer to consumer, which allows individuals to sell to one another, usually through a third-party site like eBay
- Consumer to business, which lets individuals sell to businesses, such as an artist selling or licensing their artwork for use by a corporation.

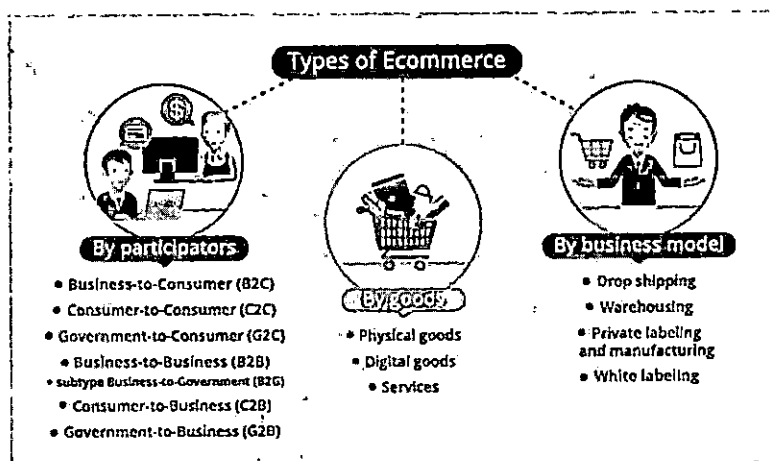


Figure 1. Type of e-commerce

Advantages and disadvantages of ecommerce

E-commerce offers consumers the following advantages:

- **Convenience:** E-commerce can occur 24 hours a day, seven days a week.
- **Increased selection:** Many stores offer a wider array of products online than they carry in their brick-and-mortar counterparts. And many stores that solely exist online may offer consumers exclusive inventory that is unavailable elsewhere.

But there are certain drawbacks that come with ecommerce sites, too. The disadvantages include:

- **Limited customer service:** If you shop online for a computer, you cannot simply ask an employee to demonstrate a particular model's features in person. And although some websites let you chat online with a staff member, this is not a typical practice.
- **Lack of instant gratification:** When you buy an item online, you must wait for it to be shipped to your home or office. However, e-retailers like Amazon make the waiting game a little bit less painful by offering same-day delivery as a premium option for select products.
- **Inability to touch products:** Online images do not necessarily convey the whole story about an item, and so e-commerce purchases can be unsatisfying when the products received do not match consumer expectations. Case in point: an item of clothing may be made from shoddier fabric than its online image indicates.

International comparative legal perspective

Technological developments are borderless. They have invisible repercussions universal in nature. This borderless spread has given enormous boost to e-commerce since its birth. Hence, in order to understand the legal mechanism in India, it is first necessary to understand the global approaches adopted by different countries across world. If we explore the legal system dealing with E-commerce in the U.S., there is no omnibus legislation in the United States that regulates business on the internet. The laws and regulations applicable to brick-and-mortar businesses will also apply to business on the internet (eg, obtaining necessary business licenses). Certain laws of general application may have greater significance for e-commerce businesses, such as formation of contracts electronically, protection of credit card data, export controls, among others (Dasih et al., 2019; Lukman et al., 2016).

Further, there is no single regulatory body that regulates e-commerce in the United States. The FTC is the principal federal consumer protection regulator and establishes regulations and institutes enforcement proceedings with respect to consumer protection, including activities on the internet. The Federal Communications Commission (FCC) is the federal regulator for internet access and carriage, as well as state public utility commissions. Consumer data privacy regulations are promulgated and enforced by the FTC. The State of California has enacted broad data privacy protections for consumers, and each of the states

have data breach laws. Generally speaking, the law and jurisprudence of contract formation applies equally to the formation of contracts online. The Uniform Computer Information Transactions Act (UCITA) codifies the formation of contracts through click wraps, but the Act has only been adopted in Maryland and Virginia. If we think of security of internet transactions, in the U.S., the Federal Communication Commission's Order FCC 16-148 requires ISPs to maintain reasonable data security practices, but does not set out a list of required activities or technologies. ISPs are required to 'take reasonable measures to protect customer personal information from unauthorized use, disclosure or access, appropriately calibrated to the nature and scope of its activities, the sensitivity of the underlying data, the size of the provider and the technical feasibility (Miller, 2003; Bizzini & Greub, 2010).

The electronic payment transfer is governed by multiple regulations in the U.S. Use of electronic payment systems for the purchase of goods or services is not restricted by statute. It is the provision of electronic payments services that is subject to a number of regulations. These include Regulation E under the Electronic Fund Transfer Act (15 USC 1693 et seq) that regulates electronic funds transfers and imposes substantial disclosure requirements on providers of electronic funds transfers. It applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account, including ATMs, direct deposit, gift cards, online banking, point of sale transfers, debit cards, electronic check conversion and telephone transfers. Regulation E, issued and administered by the Consumer Financial Protection Bureau, applies a number of protective measures to consumers, including access to data and rights to dispute transactions. Article 4A of the Uniform Commercial Code covers wholesale wire transfers that are expressly outside of the scope of the Electronic Fund Transfer Act . Apart from these broad provisions, the FTC regulates the consumer advertising regulations. There are plethora of rules and regulations dealing with defamation, shutdown and takedown, etc. Apart from these analytical explorations of the U.S. regulatory system, the following diagram depicts how other foreign jurisdictions have responded to e commerce revolutions.



Figure 2. Countries responded

Thus, the global scenarios are well developed and dynamic and adaptive to the emerging challenges put forth by e-commerce evolution (Bernstein et al., 2020; Mingaleva & Mirskikh, 2013).

Laws in India

Post liberalization era, e-commerce has grown in India exponentially and till date it is growing and developing. The first ever law enacted by the Government of India on e-commerce was Information Technology (IT) Act 2000. It facilitated e-commerce in the country. With the need of updating law, India incorporated Information Technology (Amendment) Act, 2008 to give implementation of the UNCITRAL Model Law on Electronic Signatures, 2001 in India. The IT Act of 2000 was amended to make it technology-neutral and recognized electronic signatures over restrictive digital signatures. The Act brought many changes such as introduction of the concept of e-signature, amendment of the definition of intermediary, etc. Besides, the state assumed specific powers to control websites in order to protect privacy on the one hand, and check possible misuse leading to tax evasions on the other hand. It is important to note that this act recognized the legal validity and enforceability of the digital signature and electronic records for the first time in India and also gave emphasis on the secure digital signatures and secure electronic records. These changes were brought in an attempt to decrease the incidence of electronic forgeries and to facilitate e-commerce transactions. From the point of view of contracts which is basis of e-commerce, it can be seen that all e-contracts entered online are to be governed by the Indian Contract Act, 1887 (Corbitt et al., 2003; Kshetri, 2007).

There is also Draft National Policy on E-commerce made in the year 2019. Draft National E-Commerce Policy prepared by Government of India addresses six broad areas of the e-commerce ecosystem viz. data, infrastructure development, e-commerce marketplaces, regulatory issues, stimulating domestic digital economy and export promotion through ecommerce. The Policy takes into account interests of all stakeholders including investors, manufacturers, MSMEs, traders, retailers, startups and consumers. The National e-Commerce Policy has been formulated with a vision to provide a level-playing field to all stakeholders, including the individual consumers and MSMEs and start-ups. Apart from the abovementioned statutory provisions, E-commerce companies are subject to various extant rules and regulations. Owing to the cross cutting nature of e-commerce, different laws and regulations across sectors govern the present ecommerce activities, some of which are Income Tax Act, 1961, Consumer Protection Act, 1986/2019, Information Technology Act, 2000, Foreign Exchange Management Act, 1999, Payment and Settlement Systems Act 2007, Companies Act, 2013 and laws related to Goods and Services Tax (Halinen & Törnroos, 2005; Hoen & Pink, 2002).

Section 94 of the Consumer Protection Act, 2019 deals with measures to prevent unfair trade practices in e-commerce, direct selling, etc. it states that for the purposes of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers, the Central Government may take such measures in the prescribed manner. To protect the consumers from unfair trade practices and to address their concerns, the Ministry of Consumer

Affairs, Food and Public Distribution on July 23, 2020, notified the Consumer Protection (E-Commerce) Rules, 2020. The salient features of the new rules are as under:

- The Rules are applicable to all goods and services bought or sold over digital or electronic networks including digital products; all models of e-commerce, including marketplace and inventory models of e-commerce; all e-commerce retail, including multi-channel, single-brand retailers and all forms of unfair trade practices across all models of E-commerce
- It is necessary for every e-commerce entity to appoint a nodal person of contact or an alternate senior designated functionary who is resident in India, to ensure compliance with the provisions of the Act or the rules made thereunder.
- It is the responsibility of every e-commerce entity to provide the information in a clear and accessible manner on its platform to its users, that is, legal name of the e-commerce entity; principal geographic address of its headquarters and all branches; name and details of its website; and contact details like email address, fax, landline and mobile numbers of customer care as well as of grievance officer.
- The entity shall establish a grievance redressal mechanism and display the name of the officer on its website. The complaint shall be acknowledged within 48 hours of receipt and resolved within one month.
- The E-commerce entity shall not charge any cancellation fees from consumers unless the e-commerce entity borne similar charges.
- If an e-commerce entity is selling imported goods and services, it shall mention the name and details of any importer from whom it has purchased such goods or services, or who may be a seller on its platform.
- Every e-commerce entity shall effect all payments towards accepted refund requests of the consumers as prescribed by the Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time, or as prescribed under applicable laws.
- No e-commerce entity shall manipulate the price of the goods or services offered on its platform to gain unreasonable profit. For justifying the price change, the factors like the essential nature of the good or service, any extraordinary circumstances under which the good or service is offered, and any other relevant consideration shall be taken into account.
- E-commerce entities shall require sellers through an undertaking to ensure that descriptions, images, and other content pertaining to goods or services on their platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such goods or service.

The Government of India has revisited the abovementioned Rules and it has published the draft of amendments to be included. These amendments can be analyzed in following terms:

- Government's original proposal indicated a blanket ban on all flash sales but a clarification later said it won't apply for 'conventional' flash sales. These are typically pre-decided sale events for new smartphones with limited stocks at a discount. It is not clear what a conventional flash sale is.

- E-retailers should not allow 'misleading' ads potentially on pricing, quality, guarantee. They shouldn't advertise sellers offering discounts. This could also impact the growing online advertising business of E-retailers.
- E-retailers have to ensure product listings have the details of country of origin (CoO)—an arduous task given Flipkart and Amazon has millions of products listed on their platforms. What could be really difficult to implement is recommending local alternatives each time a consumer looks at an imported good or service. Ranking local alternatives would be difficult to implement too. E-retailers and sellers both are not enthusiastic about maintaining these details.
- E-retailers typically highlight certain products as non-returnable at pre-purchase stage and generally offer free exchange or refunds to consumers. Explicitly asking consumer consent can only strengthen the online shopping experience for consumers.
- The likes of Flipkart and Amazon India operate the marketplace and they are not directly involved in selling goods. For platforms offering services, like food delivery, travel, they too act as a marketplace.
- E-retailers shouldn't mislead users by manipulating search results. The jury is still out on how these algorithms work on online marketplaces in India and abroad. In India, Flipkart and Amazon India are accused of promoting their brands, sellers by tweaking search results.
- E-retailers shouldn't permit usage of their name for brands—if such practices amount to unfair trade practice and impinges on the interests of consumers. Private brands of Flipkart and Amazon, who have the prefix of the e-commerce brand attached to them will be under scrutiny if it turns out to be anti-consumer interest and anti-competitive.
- On related parties not doing anything with the associated marketplace- This can have a major impact on operations of e-retailers like Amazon India if related parties are not allowed to sell on the marketplace. Amazon owns minority stakes in sellers such as Cludtail and Appario, which are prominent sellers on the company's India marketplace. The view among legal experts is still split.
- On 'fall back liability' with e-retailers and platforms providing service- E-retailers selling goods and services have maintained that the liability should be with sellers selling goods or services while they have their own internal checks.

Critical evaluation

The core elements of e-business are registering order, arranging delivery, and receiving e-payments. If and when such problems arise in such transactions, the setback can be irreversible and are to be addressed with expediency. Settlement of disputes in the B2C segment, particularly, is challenging. Disputes are traditionally settled within the physical territory where one or both of the disputants are located. Different principles are applied in different national jurisdictions in this regard. Jurisprudence in India with respect to issues relating to jurisdiction and enforcement issues in e-commerce is still nascent. In general a lot of local statutes provide for a 'long arm jurisdiction' whereby the operation of such local laws have extra-territorial application if an act or omission has

resulted in some illegal or prejudicial effect within the territory of the country. The IT Act by the force of its Section 75 is extend to the whole of India and thus it shall apply also to any or contravention there under committed outside India by any person and the Act shall apply to any offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India. Section 3 of the Indian Penal Code (IPC), 1869 provides that any person who is liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of the IPC for any act committed beyond India in the same manner as if such act had been committed within India. Thus, there does not seem too much jurisprudence in India on the issue of jurisdiction in cases of e-commerce (Ahmad, 2001; Malhotra, 2016).

In any e-commerce transaction, it is almost difficult to complete the online transaction without collecting some form of personal information of the users such as details about their identity and financial information. Apart from the collection of primary data from the users, e-commerce platforms may also collect a variety of other indirect but very valuable information such as users' personal choices and preferences and patterns of search etc. These issues of privacy are still point of contention. The provisions of the I.T. Act have limited application in terms of protection of privacy while doing e commerce. The Data Protection Bill is still pending in the Parliament and unless it sees light of the day, the right to privacy will not be safeguarded in true legal sense while consumers engage themselves into the luxury of e commerce (Mitra, 2013; Vladimir, 1996).

Intellectual Property concern is one of the foremost considerations for any company entering into business including e-commerce transactions. The internet is a boundless with minimum regulation and therefore the protection of intellectual property rights (IPR) is a challenge and a growing concern amongst most e-businesses. India has well-defined legal and regulatory framework for the protection of IPRs in the physical world. But, the efficacy of these laws to safeguard the rights in and out of an e-commerce transaction is not simple. Indian law is also silent on another important issue of the domain name disputes. A company that commences e-commerce activities would at first have to get its domain name registered. A domain name in simplistic terms is an address on the internet. In more technical terms a domain name is an easily recognizable and memorable name to the Internet Protocol resource. Domain names normally fall within the purview of trademark law. A domain name registry will not register two identical domain names but can register a similar domain name. This leads to a situation where deceptively similar domain names can be registered by a third party. There is no specific Indian law on domain names except the judicial pronouncements, which have reiterated the principles of law that domain names are valuable property and are entitled to trade mark protection (Loewenstein, 1979; Meltzoff, 1999).

Conclusion

Ecommerce has changed the way people shop and consume products and services. More and more people are turning to their computers and smart devices to order goods, which can easily be delivered to their homes. As such, it has

disrupted the retail landscape. Amazon and Alibaba have gained considerable popularity, forcing traditional retailers to make changes to the way they do business. But that's not all. Not to be outdone, individual sellers have increasingly engaged in e-commerce transactions via their own personal websites. And digital marketplaces such as eBay serve as exchanges where multitudes of buyers and sellers come together to conduct business.

The rapid growth of e-commerce has created the need for vibrant and effective regulatory mechanisms, which would strengthen the legal infrastructure that is crucial to the success of e-commerce in India. It has always been the allegation that the weak cyber security laws in India and the absence of a proper e-commerce regulatory framework is the reason for what Indian people as well as the e-commerce industries face so many challenges in enjoying a consumer-friendly and business-confidant e-commerce environment in India. Legal community in India is required to the necessary expertise to guide entrepreneurs, consumers and even courts in a manner that the fast emerging business module is enabled to adhere to existing legislations normally applicable to business transactions in conventional modules. Simultaneously, it should ensure that the advantages of technology are availed of unhindered by judicious evolution of law through learned interpretation of court still a consensus emerges that a specialized law to govern and regulate certain aspects of e-commerce is imperative and an exclusive necessity.

Every law has two sides. It can be used to the fullest benefit of the society or it can be abused to the detriment of society and for the breach of human rights. E commerce is such a phenomenon which if used wisely can lead any country to flourish economically along with global presence in successful ways. However, it must always remember that fundamental rights need to protected and balanced along with societal interests. If the Government regulates the e commerce industry in balanced manner, it can successfully capitalize the beneficial economic power of e commerce for the overall benefit of the nation and it can be boon, However, if it fails to recognize this fundamental truth then it will have to tackle the adverse consequences of revolution and it will prove to be bane. The e-commerce sector is expected to keep growing in future. Better enforcement policy as well as Rules and Regulations pertaining to e-commerce sector will contribute significantly to growth of this sector in long run .

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