

LEGAL ASPECTS OF E-COMMERCE IN EMERGING ECONOMY AND CONSUMER PROTECTION: ISSUES AND CHALLENGES

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INTRODUCTION

Electronic commerce or e-commerce refers to a wide range of online business activities for products and services. It also pertains to “any form of business transaction in which the parties interact electronically rather than by physical exchanges or direct physical contact.” A more complete definition is: E-commerce is the use of electronic communications and digital information processing technology in business transactions to create, transform, and redefine relationships for value creation between or among organizations, and between organizations and individuals.

The fast development of telecommunications technology in the past few decades is changing many aspects of our lives how we search for information, how we travel and not at least how we buy products or services. Although classic shop-based retail is still preferred, e-commerce or electronic commerce, namely the buying and selling of products and services exclusively through electronic channels, is gaining ground. The most well-known form of e-commerce or electronic commerce is online shopping, also known as business to consumer e-commerce (B2C), where private customers can order various products which they then receive by courier or postal mail. Another category of e-commerce focuses on transactions between companies, such as manufacturers and a wholesalers or wholesalers and retailers and is called business to business e-commerce (B2B). The third category of e-commerce

involves transactions from consumer to consumer (C2C), as in the example of eBay or other similar websites’. E-commerce businesses may employ some or all of the following:

- Online shopping web sites for retail sales direct to consumers
- Providing or participating in online marketplaces, which process third-party business-to-consumer or consumer-to-consumer sales
- Business-to-business buying and selling
- Gathering and using demographic data through web contacts and social media
- Business-to-business electronic data interchange
- Marketing to prospective and established customers by e-mail or fax (for example, with newsletters)

E-commerce has boomed in India over the past couple of years primarily due to the rise in mobile Internet access and improvements across payment and delivery infrastructures. Another study by Deloitte earlier this year pegged the value of the E-commerce market in India at \$16 billion for 2015 - that's a staggering 300% increase from \$4 billion in 2010. It is expected that E-commerce in India will grow from today's' \$16 billion to a \$50-\$70 billion market by 2020. With no doubt that E-commerce is going to drive growth for India's economy, here are five digital marketing trends that we feel every E-commerce marketer should watch out for in 2016. A

surge in the number of smartphones and Internet users is boosting E-commerce, and the rise in content marketing is directly linked to this trend. A recent study conducted by Outbrain shows that Indians are consuming 41% of their content through smart phones, 76% of which is consumed on Android phones.

Android-based platforms, even low-income segments are able to afford a smart phone, which acts as the Internet device of choice. Brands are increasingly using content marketing to engage with their audiences on mobile, and convert readers into buyers. As part of this trend, m-commerce will swiftly take over E-commerce with many predicting that by the end of this year more than 50% of total online orders will already come from mobiles instead of desktops. Myntra, a leading Indian fashion retailer, has declared that they will be shifting their marketing efforts from desktop to mobile-only by the end of this year. Another leading Indian E-commerce player, Snapdeal, has experienced a 90% growth in 2015 with 65% of its orders delivered through mobile.¹

The present would be based on the method of doctrinal and observational, in addition to descriptive, exploratory, historical analytical research methods shall be applied in accordance with the need of prospective study. Where the things are of introductory and observatory in nature, the method to be applied would be descriptive. Regarding the analysis of the legal provision and judicial decisions, the method to be applied will be analytical.

HISTORY OF E-COMMERCE IN INDIA

In India the year 1991 noted a new chapter in the history of the online world where e-commerce became a hot choice amongst the commercial use of the internet. At that time nobody would have even thought that the buying and selling online or say the online trading will become a trend in the world and India will also share a good proportion of this success. India first came into interaction with the online *E-Commerce via the IRCTC*. The government

of India experimented this online strategy to make it convenient for its public to book the train tickets. Hence, the government came forward with the IRCTC Online Passenger Reservation System, which for the first time encountered the online ticket booking from anywhere at any time. This was a boon to the common man as now they don't have to wait for long in line, no issues for wastage of time during unavailability of the trains, no burden on the ticket bookers and many more. The advancements in the technology as the years passed on have been also seen in the IRCTC Online system as now one can book tickets (tatkal, normal, etc.) on one go, easy payments, can check the status of the ticket and availability of the train as well. This is a big achievement in the history of India in the field of online E-Commerce.

In 2007 the acceptance of the ecommerce on a large scale by the Indian people influenced other business players also to try this technique for their E-businesses and gain high profits. Though online shopping has been present since the 2000 but it gained popularity only with deep discount model of Flipkart. In a way it re-launched online shopping in India. Soon other portals like Amazon, Flipkart, Jabong, etc. started hunting India for their businesses.

In 2014 *Online shopping* in its early stage was a simple medium for shopping with fewer options. The users can just place an order and pay cash on delivery. But, in last few years this field has been renovated to a high extent and hence fascinated many customers. Today, the online shopping has become a trend in India and the reason behind the adoption of this technique lies in the attractive online websites, user friendly interface, bulky online stores with new fashion, easy payment methods (i.e. secure pay online via gateways like paypal or cash-on-delivery), no bound on quantity & quality, one can choose the items based on size, color, price, etc.

CONSUMER AND E-COMMERCE

The growing interdependence of the world economy and international character of many business practices have contributed to the development of universal emphasis on consumer rights protection and promotion. Consumers, clients and customer's world over, are demanding value for money in the form of quality goods and better services. Modern technological developments have no doubt made a great impact on the quality, availability and safety of goods and services with revolution in information technology newer kinds of challenges are thrown on the consumer like cyber crimes, plastic money etc., which affect the consumer in even bigger way. 'Consumer is sovereign' and 'customer is the king' are nothing more than myths in the present scenario particularly in the developing societies. However, it has been realized and rightly so that the Consumer protection is a socio-economic programme to be pursued by the government as well as the business as the satisfaction of the consumers is in the interest of both. In this context, the government, however, has a primary responsibility to protect the consumers' interests and rights through appropriate policy measures, legal structure and administrative framework.

For customers, there is no distance limit using E-Commerce right now. When you take it something online you are already home on your bed or couch or where ever you feel comfortable and can visit an unlimited number of shops because they all are close to you, in the cyber world. All the clients like to be well treated and become polite answers to their requirements about the products for sale which is not exactly what happens in the real marketing world where you get a superficial answer as though it would not be their job to tell you kindly about the products for sale. The development of electronic commerce poses a number of legal and consumer challenges. In India, we are seeing a convergence of new technologies and the deregulation of the financial sector. At a time of great change consumers need to be protected, and the law is struggling to keep up.

ISSUES IN E-COMMERCE

Globalization offers businesses a vastly larger market and consumers more choice, but it also presents complexities and greater risks. The dilemma can be stated quite simply: Major consumer issues raised by Internet transaction systems include:

- Security
- Privacy
- Access
- Dispute resolution
- Fraud
- Jurisdiction issue is most important issue in E-commerce

RECENT POSITION OF E-COMMERCE AND CONSUMER IN INDIA

E-commerce in recent times has been growing rapidly across the world. According to Report of Digital- Commerce, IAMAI-IMRB (2013), e-commerce industry in India has witnessed a growth of US\$ 3.8 billion in the year 2009 to US\$ 9.5 billion in 2012. By 2013, the market is expected to reach US\$12.6 billion, showing year to year growth of 34%. Industry sources indicate that this growth can be sustained over a longer period of time as ecommerce will continue to reach new geographies and encompass new markets². E-commerce means sale or purchase of goods and services conducted over network of computers or TV channels by methods specifically designed for the purpose. Even though goods and services are ordered electronically, payments or delivery of goods and services need not be conducted online. The bookings done through electronic communication could be Business to Business (B2B) or Business to Consumer (B2C). Business to Business i.e. B2B is e-commerce between businesses such as between a manufacturer and a wholesaler or between a wholesaler and a retailer. As per the WTO report³, global B2B transactions comprise 90% of all e-

commerce. According to research conducted by USA based International Data Corporation, it is estimated that global B2B commerce, especially among wholesalers and distributors amounted to US\$12.4 trillion at the end of 2012. In comparison, according to a NASSCOM report, by 2020, the IT-BPO industry is expected to account for 10% of India's GDP, while the share of telecommunication services in India's GDP is expected to increase to 15 percent by 2016. With enabling support, the e-commerce industry too can contribute much more to the GDP. 4.4 Around 90% of the global e-commerce transactions are stated to be in the nature of B2B, leaving meagre 10% as B2C e-commerce. Case of India is no different where most of such transactions are in the nature of B2B.

E commerce industry continues to be a darling of investors. In 2016, the e-commerce landscape promises to get bigger and wider, as Reliance and the Tata group plan to launch their own e-commerce platform to take on global and large Indian players. Almost 15 billion dollar of investments was committed to this sector in 2015 alone but 2016 is not likely to see easy money days of 2015. Investments in 2016 are going to be accompanied by a lot more thought and deliberation than in 2015 with expectations of a correction in the hyper-funded and hyper-valued e-commerce market, which is likely to trigger consolidation in the space Technology has been something always very close to my heart and e commerce very fascinating.⁴

In the upcoming years, e-commerce is expected to boom in the Asian region. The number of digital buyers in Asia Pacific is projected to pass the one billion mark for the first time in 2018, which will account for 60 percent of all internet users in the region. In line with the regional growth, India, a fast-growing emerging Asian market, shows optimistic projections for the e-commerce industry. Current active e-commerce penetration in India stands only 28 percent, with lots of room for improvement - India's retail e-commerce CAGR is projected to reach 23 percent from 2016 to 2021. Close to 329.1 million people are projected to buy goods and services online in India by 2020. This means that about 70.7

percent of internet users in India will have purchased products online by then. The majority of digital shoppers in India are male. This growth in volume of digital buyers has a reflection on revenue as well. Retail e-commerce sales in India are forecast to grow tremendously, with projections to jump from around 16 billion U.S. dollars in 2016 to just over 45 billion U.S. dollars in 2021. In 2016, Amazon.in was the leading online store in India with net e-commerce sales of 437.7 billion U.S. dollars, followed by local competitors Flipcart and Snapdeal.

OBJECTIVES OF THE STUDY

The objective of the study evaluates the law and policies of e-commerce and consumer protection, point out the lacunas of the law and policy regarding proposed study and suggest better law to plug in concern lacunas. In view of all above facts the following objectives of the proposed study are being framed-

The paper has following objectives:

- To explain the concept of e-commerce and consumer issues.
- To discuss the major limitations of e-commerce.
- To study the various trends in e-commerce.
- To study the challenges before recent trends of e-commerce on consumer protection.
- Analyzing the effects and the desirability of the different breach of consumer rights, and providing plausible rationale in e-commerce issues.
- Discuss legal and other implementation issues.

ISSUES AND CHALLENGES

Internet is boundary less service uses the website hosted in a particular country can be accessed from any part of the world. Thus, compliance with the laws of the principal country as well as those

countries where such e-commerce websites targets audience and customers is of prime importance.

In view of the new models of business in e-commerce, it is important to keep in mind consumer protection issues. There is no separate consumer protection law that is specific to regulate online transactions. The concept of privacy and data protection are not addressed in any Indian legislation. Internet frauds and cyber crimes are growing much a faster than ever. Misleading advertising is a tool to disseminate wrong information in order to influence the buyer seller transactions. Misleading advertising is growing fast in e-commerce. There is lack of a single comprehensive legislation for industry and the authority to regulate or guide the pattern of advertising.

The legal requirements for undertaking e-commerce in India also involve compliance with other laws like contract law, Indian penal code, etc. Further, online shopping in India also involves compliance with the banking and financial norms applicable in India. The present litigation system of India is not conducive for the growth of e-commerce in India and online dispute resolution in India is more appropriate for such purposes. Cyber crime is a big issue in e-commerce transactions. In e-commerce transactions very few consumers are aware of cyber fraud and others do not know about genuine websites, fake mobile calls and operate computer and ATM card in safe mode.

E-commerce law frameworks at the national level vary by country. In some countries, such as Japan, India, Malaysia, South Africa and Columbia, most of the e-commerce law and policy initiatives come from the national government. The United States and Canada use a dual approach whereby both the federal and state/provincial governments play a role, while in the European Union; directives applicable in all Member States are often the most important source of legal guidance. In India there is no such type of law and regulation.

E-commerce companies like Snapdeal, Amezan and flipcart are trying much to attract the

consumers in festival seasons. When the product is delivered to the consumer, it is found that the product is not like which was ordered. The company mention a note that 'Sorry, the product is sold out'. In India large number of consumer do not know the return policy of company, term and condition and law because the lack of computer literacy, absence of law, lack of awareness and not direct authority to complain like police station, lokpal etc.

In India many companies do not give warranty on those products which was purchased through e-commerce Company because the E-commerce company was not authorised to sell company product. The consumer cannot know that which E-commerce company is authorised to sell that product. Maximum internet users do not know about authenticity of websites. There are challenges of hacking which means hackers can deface websites and steal valuable data from systems. Phishing is another challenge which refers to creation of e-mail messages referencing web pages that are replicas of existing sites to make users believe that they are authentic sites.

Cyber crime is a big issue in e-commerce transactions. Cyber crimes take several forms sabotage, revenge, vandalism theft, data diddling, credit card and ATM card fraud, counterfeiting, bank embezzlement and the theft of secret document. Introducing worms or virus is other form of cyber crime. Today maximum consumers are cheated by cyber fraud. In e-commerce transactions very few consumers are aware of cyber fraud and others do not know about genuine websites, fake mobile call and operate computer and ATM card in safe mode.

Advertising is an important and legitimate means for a seller to awaken interest in his products. For long, advertisements were regulated by the courts, government, tribunals, or police that depended upon the nature of each case. Additionally, absence of a single comprehensive legislation created a lot of confusion in terms of a proper code to follow by the industry and the authority to regulate or guide the pattern of advertising. In 1985, the Advertising Standards

Council of India (“ASCI”), a non statutory tribunal, was established that created a self regulatory mechanism of ensuring ethical advertising practices. ASCI entertained and disposed of complaints based on its Code of Advertising Practice (“ASCI Code”). On certain occasions, however, the ASCI orders were set aside by courts as ASCI being a voluntary association was considered usurping the jurisdiction of courts when it passed orders against non-members. Gradually, the ASCI Code received huge recognition from the advertising industry. The warnings issued by ASCI to the advertisers against the misleading advertisements were gradually being accepted by the advertisers and the advertisements were actually stopped being aired or were modified significantly to comply with the prescribed ASCI Code. The advertisements should make truthful and honest representations and avoid false and misleading claims, should not be offensive to public decency or morality, not promote products which are hazardous or harmful to society or to individuals, particularly minors, observe fairness in competition keeping in mind consumer’s interests and avoid obscene or harmful publication and indecent representation of women.

LIMITATIONS AND FAILURES OF E – COMMERCE

Technical Limitations

- Lack of universally accepted standards for quality, security, and reliability.
- Insufficient telecommunications bandwidth.
- Still-evolving software development tools.
- Difficulties in integrating the Internet and EC software with some existing (especially Legacy) applications and databases.
- Need for special Web servers in addition to the network servers.
- Expensive and/or inconvenient Internet accessibility for many would-be users.

Non Technical Limitations

- Unresolved legal issues
- Lack of national and international government regulations and industry standards.
- Lack of mature methodologies for measuring benefits of and justifying EC.
- Many sellers and buyers waiting for EC to stabilize before they take part.
- Customer resistance to changing from a real to a virtual store. People do not yet
- Sufficiently trust paperless, faceless transactions.
- Perception that EC is expensive and unsecured.
- An insufficient number (critical mass) of sellers and buyers exists for profitable EC Operations.

CONCLUSIONS

We are witnessing a paradigm shift in the way business is conducted in the current economy. EC is one of the more significant changes that are sweeping across the business landscape, redefining it in entirely novel fashions. Global EC is significantly altering the contours of space and time, reshaping the meaning of value, shifting the power to consumers, and reinventing the nature of management. In this dynamic environment, traditional institutions need to redefine their roles and reposition themselves. Though EC is in its formative stages of development, its extraordinary growth over the past years is a clear indication of its enormous potential for influencing the way business will be conducted in the future. These new opportunities, however, come accompanied by a large number of concerns and questions that need to be resolved⁵.

In the paper have discussed some of the challenges that face organizations embarking upon

this new path.⁶ E-commerce is widely considered the buying and selling of products over the internet, but any transaction that is completed solely through electronic measures can be considered e-commerce. Day by day e-commerce and m-Commerce playing very good role in online retail marketing and peoples using this technology day by day increasing all over the world. E-commerce security is the protection of e-commerce assets from unauthorized access, use, alteration, or destruction. Dimensions of e-commerce security; Integrity: prevention against unauthorized data modification, No repudiation: prevention against any one party from reneging on an agreement after the fact. Authenticity: authentication of data source. Confidentiality: protection against unauthorized data disclosure.

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