

A STUDY ON ROLE OF LEGISLATURE AND JUDICIARY FOR GROWTH OF E-COMMERCE IN INDIA

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BEST CITATION – ISHIKA GOEL, A STUDY ON ROLE OF LEGISLATURE AND JUDICIARY FOR GROWTH OF E-COMMERCE IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (4) OF 2025, PG. 1105-1108, APIS – 3920 – 0001 & ISSN – 2583-2344.

OVERVIEW

In the era of digitalization, e-commerce has emerged as a dominant force reshaping the traditional modes of business transactions. This research paper explores the pivotal role played by the Legislature and Judiciary in fostering the growth of e-commerce in India. The study delves into various legislative frameworks including the Information Technology Act, 2000, Consumer Protection (E-Commerce) Rules, 2020, and other relevant laws that regulate digital transactions and ensure consumer protection. Additionally, the research highlights landmark judicial decisions that have contributed to shaping the legal contours of e-commerce, ensuring accountability, data protection, and fair-trade practices. The paper also analyses the challenges posed by the rapid evolution of technology and the need for adaptive legal mechanisms. By evaluating the synergy between legislative enactments and judicial pronouncements, the study underscores the importance of a robust legal ecosystem to support the sustainable growth of e-commerce in India.

There is a wide variety of methods which can be utilized to conduct such transactions such as computer means i.e. 'click & buy' method utilizing the computers as a medium or the 'm-commerce' method which makes use of various mobile devices or smart phones. The method of buying and selling of goods and services through e-commerce

does not merely include the act of procuring goods and / or availing services through an electronic medium but also all other activities which are directly or indirectly connected with any type of business such Storage of goods.

- Logistics.
- Packaging.
- Transport.
- Payment facilitation including Electronic Payments.
- Supply chain and service management.
- Customer Care etc.

Though the masses were sceptical of E-commerce industry in the early years of its existence, however, this industry has defied the conventional structure of how business-houses traded goods and services with their customers. Not only this, the e-commerce industry has also introduced many new and innovative business models which have empowered consumers by providing them with ease of access, accountability and a better sense of consumer awareness.

Over the last two decades, there has been an ever-rising trend of internet, computer and mobile phone infiltration into the lives of common-men which has altogether changed not only the way we communicate but also how we conduct our business activities. E-commerce, though being a relatively a novel concept in the present day, heavily relies on the support of the internet and mobile phone revolution and with their help has the virtually unlimited potential to profoundly alter the way business-houses deal with their customers,

including introduction of several new methods of customer acquisition, marketing, sales, payment processing and customer care.

Even though in the developed nation such as the United States of America and the United Kingdom, e-commerce has taken noteworthy advances to achieve sales of over 150 billion USD in revenue, the e-commerce industry in India is, till date at its infancy. Even though a majority of our developing nation lacks access not only to internet but also to education, in the past few years, the sector has grown by almost 35% from 3.8 billion USD in 2009 to an estimated 12.6 billion USD in

As per some of the estimates of Internet and Mobile Association of India (IAMAI), the e-commerce market in India has maintained a regular growth of almost 35% since 2010. The total e-commerce market of India was valued at INR 53,301 Crores during December 2013 and grew almost 53% through 2014. The e-commerce market of India had reached INR 81,525 Crores by the end of December 2014. The e-commerce industry further grew at a rate of 33% eventually crossing the landmark threshold of INR one lakh crores by the end of 2015.³

Studies have indicated that the online travel sector in e-commerce dominates the e-commerce industry with an anticipated 70% share of the whole market. According to a report from Price Water house Coopers, E-retail on the other hand, in both its forms i.e. the online retail and marketplace models, has become the fastest-growing section, almost doubling its share from 10% in 2009 to an estimated 18% in 2013⁴. According to the industry standards, it can be estimated that the total number of check-outs i.e. orders processed by the e-commerce companies surpassed the astounding mark of one hundred million in 2013. Even though, this share signifies a fairly insignificant proportion (less than 1%) of India's total retail market, the e-commerce industry is poised for continued growth in the upcoming years. If this vigorous growth continues over the next few years, the size of the e-commerce

industry can be quite rightly projected to be 10 to 20 billion USD by 2017-2020. These projections of growth can be attributed mainly to the increased consumer-led purchases in durables and electronic items, apparels and accessories, apart from the traditional products such as books and movies.

Considering how rapidly the e-commerce industry is growing and the wide variety of goods and services that they deal in, it is quite natural for them to come under the purview of several central and state legislations such as the Companies Act, 2013, the Competition Act, 2002, the Information Technology Act, 2000, the various Legislations related to intellectual property rights etc. However, the legislature has till date not amended even a single legislation to bring into their purview the activities of e-commerce. This is a major cause for concern as due to their dormant attitude, the whole burden of this gigantic task is shifted to the shoulders of the judiciary which unfortunately, due to the current judicial procedure of the country, can only solve this problem on a case-to-case basis.

Electronic commerce functions in all four major market sectors:

1. Business to Business:

In the cyber space, a B2B (business to business) transaction, also known as electronic business(e-biz) transaction can be explained as the process of interchange of goods, services, or information between two businesses such as between a manufacturer and a wholesaler, or between a wholesaler and a retailer. E.g.: <http://www.bazara2z.com/> etc.

2. Business to Consumer:

A B2C i.e. a Business to Customer transaction is the process of exchange of goods, services, or information that takes place between a business/company and a consumer. In the e-commerce industry, this is probable the most popular model adopted by most of the e-commerce companies. E.g.: amazon.com, flipkart.com, snapdeal.com, fabfurnish.com etc.

3. Consumer to Consumer:

The Consumer-to-consumer (C2C) electronic commerce involves the electronically enabled transactions between consumers through some third party website where one party can create a window and the other party can browse and find the first party. A common example is the online auction, in which a consumer posts a particular item for sale and other consumers bid to purchase it; the third party generally charges a flat fee or commission. An important ingredient of these transactions is that the seller must not be a habitual trader of goods on such a portal otherwise it will become a business to consumer model. E.g.: ebay.com, quikr.com etc.

4. Consumer To Business:

In the e-commerce, a consumer to business model is one through which consumers decide the amount that they want to pay, and the sellers decide whether or not to accept. When a customer writes appraisals, or when a customer provides a useful idea for new product development, then this customer is creating value to the firm, if the company adopts the input. E.g.: online content writing jobs offered online.

OVERVIEW OF THE LEGAL ISSUES IN E-COMMERCE

According to the general perspective of a layman the E-Commerce activities are regulated by limited number of laws such as the Information Technology Act, 2000 and the allied rules. No matter how much one tries to defend this opinion, problems related to Labour Laws, Tax Laws, Competition Laws and Intellectual Property Laws etc. are faced by the e-commerce companies daily.

● Disputes relating to E-contracts

The e-commerce contracts are executed not in the traditional paper form but in the electronic form. There are several methods of executing such contracts such as the click-wrap, shrink-wrap and browse wrap contracts. Even though the Information Technology Act, 2000⁶ (by virtue of its 2008 amendment), along with several judgements of the Supreme Court and the State

High Courts have given formal recognition to e-contracts, many disputes regarding their validity, excitability as well as legal enforceability arise every now and then.

● Cyber Security Issues

E-commerce, just like any other element of the electronic and cyber space is prone to data theft and manipulation. Considering the quantum of wealth that these e-commerce companies deal with daily and also the sensitivity of the data that they have access to such as the debit / credit card numbers of their customers they are an ideal target for cyber-attacks such as hacking, cracking, data alteration etc.

● Compliances required to start and run such businesses

Just like any other company or business, the e-commerce companies also have a legal obligation to comply with the various laws and are required to file annual, half-yearly and quarterly returns of such compliances. A detailed account of the compliances required from the e-commerce companies is given in chapter 6 of this dissertation.

● Issues related to Privacy of personal information

The data shared by the customers with the e-commerce companies, among other things includes their addresses, phone numbers, credit / debit card numbers and bank account numbers. The nature of this data is quite sensitive in nature and unauthorized disclosure of such data can not only cause harm to the customers but can also invite legal action against the e-commerce companies.

● Issues related to Jurisdiction of Courts

The jurisdiction issue is probably one of the most widely debated issues pertaining to e-commerce. Whenever there arises a dispute between the e-commerce companies and their customers, it is highly probable that the company and the customer may be situated at places which fall under different jurisdictions.

Sometimes, the company or the customer can even be situated in different countries. The Indian courts are prevented to exercise their jurisdiction in such cases as they cannot enforce their orders in other countries. A detailed account of this problem and the solutions is given in Chapter 3 of this Dissertation.

- Taxation Issues

There are several different kinds of taxation issues which arise in e-commerce transactions such as in the case of cross border transactions, which country should be considered as the country where the income has originated. Other issues include whether value added tax or service tax should be included in the bills given to the customers.

- Labor law issues

E-commerce companies employ many workforces at different levels performing different nature of tasks. In order to prevent unwanted legal exposure, these companies have to comply with a wide variety of Labor laws and it is also expected from them to resolve any of their disputes with their workmen quickly because stoppage of work by them for even one day means permanently losing a customer.

- Anti-Competitive practices

In this age where cut-throat competition is prevalent in almost every sector, the e-commerce companies often engage in anti-competitive activities not only to prevail over the retail sector, but also to drive the other e-commerce companies out of business. The past decade has witnessed multiple instances of these e-commerce companies engaging in anti-competitive activities such as price wars and abuse of dominant position.

- Issues related to violation of intellectual property rights

By the virtue of several judgments of the Supreme Court of India, the software and the code on which it runs can be copyrighted. Apart

from this, the trademarks, tradenames of the e-commerce companies also have protection under the intellectual property laws of the nation. These rights are often infringed by the competing e-commerce companies and in certain instances, they also end up in violating the intellectual property rights of other companies which are not in the e-commerce industry.

- Issue of Content Regulation

Content regulation is another very pressing issue which needs to be dealt with by the concerned authorities. The E-commerce companies follow a model of providing a virtual window to individuals where they can list the products that they wish to sell and upload the relevant content. As per the laws of the nation, there are several statutes that provide for regulations relating to obscenity. Some of them include the Indian Penal Code, 1860 (IPC), The Indecent Representation of Women (Prohibition) Act, 1986 (IRWPA) and The Information Technology Act, 2000.