



## **Commerce In India-Challenges And Legal Issues**

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### **Abstract**

India is witnessing a digital revolution with internet becoming an integral part of its population and availability of internet in the mobile phones. With the decrease in the prices for using internet, change in lifestyle in urban areas and the convenience that internet has brought has supported this revolution. The business activity conducted through electronic means falls within e-commerce. The services that are offered does not begin or end with providing an online platform but involves efficient delivery system, proper payment facilitation and an effective supply chain and service management. Running a successful e-commerce business can be very rewarding, yet challenging at the same time. Even if you sell a great product, it can become difficult to get the word out about your business if you don't have a well-designed website or marketing strategy. In addition to the challenges of running an online business, there are many legal challenges to be faced. The objective of this paper is to discuss major challenges faced by E-commerce in India. It also throws light on the various legal issues that troubles business in online environment.

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### **Introduction**

Over the last two decades, rising internet and mobile phone penetration has changed the way we communicate and do business. E-commerce is relatively a novel concept. It is, at present, heavily leaning on the internet and mobile phone revolution to fundamentally alter the way businesses reach their customers. It encompasses all business conducted by means of computer networks. Advances in telecommunications and computer technologies in recent years have made computer networks an integral part of the economic infrastructure. More and more companies are facilitating transactions over web. There has been tremendous competition to target each and every computer owner who is connected to the Web.

For developing countries like India, e-commerce offers considerable opportunity. Ecommerce in India is still in nascent stage, but even the most-pessimistic projections indicate a boom. It is believed that low cost of personal computers, a growing installed base for Internet use, and an increasingly competitive Internet Service Provider (ISP)



market will help fuel E-commerce growth in Asia's second most populous nation. Indian middle class of 288 million people is equal to the entire U.S. consumer base. This makes India a real attractive market for E-commerce.

To make a successful e-commerce transaction both the payment and delivery services must be made efficient. There has been a rise in the number of companies' taking up E-

commerce in the recent past. Major Indian portal sites have also shifted towards E-commerce instead of depending on advertising revenue. Many sites are now selling a diverse range of products and services from flowers, greeting cards, and movie tickets to groceries, electronic gadgets, and computers. With stock exchanges coming online the time for true E-commerce in India has finally arrived. On the negative side there are many challenges faced by e-commerce sites in India. The relatively small credit card population and lack of uniform credit agencies create a variety of payment challenges unknown in India. Delivery of goods to consumer by couriers and postal services is not very reliable in smaller cities, towns and rural areas. However, many Indian Banks have put the Internet banking facilities. The speed post and courier system has also improved tremendously in recent years. Modern computer technology like secured socket layer (SSL) helps to protect against payment fraud, and to share information with suppliers and business partners. With further improvement in payment and delivery system it is expected that India will soon become a major player in the e-commerce market. 9 While many companies, organizations, and communities in India are beginning to take advantage of the potential of e-commerce, critical challenges remain to be overcome before e-commerce would become an asset for common people. India's ecommerce industry is on the growth curve and experiencing a spurt in growth. The Online Travel Industry is the biggest segment in E-commerce and is booming due largely to the Internet-savvy urban population. The other segments, categorized under online nontravel industry, include e-Tailing (online retail), online classifieds and Digital Downloads (still in a nascent stage). The online travel industry has some private players such as Makemytrip, Cleartrip and Yatra as well as a strong government presence in terms of IRCTC, which is a successful Indian Railways initiative. The online classifieds segment is broadly divided into three sectors; Jobs, Matrimonial and Real Estate. Mobile Commerce is also growing rapidly and proving to be a stable and secure supplement to E-Commerce due to the record growth in mobile user base in India, in recent years. Growth drivers and barriers are present in equal measures for new E-Commerce ventures. A report by the Internet and Mobile Association of India has revealed that India's E-commerce market is growing at an average rate of 70 percent annually and has grown over 500 percent since 2007.

## **OBJECTIVE**

The objective of this paper is to discuss major challenges faced by E-commerce in India. It also throws light on the various legal issues that troubles business in online environment.

## **REVIEW OF LITERATURE**

An attempt has been made to put forward a brief review of literature based on few of the related studies undertaken worldwide in the area of e-commerce as follows. Priyanka Pandey in the study titled “E-commerce: Challenges and Opportunities has concluded that With the development of computer technology, the World Wide Web has become the connection medium for the networked world. E-commerce creates new opportunities for business; it also creates new opportunities for education and academics. It appears that there is tremendous potential for providing E-business education. Andrew D. Mitchell (2001) examined the key issues that electronic commerce poses for Global trade, using as a starting point the General Agreement on Trade in Services (GATS), the World Trade organization (WTO) agreement most relevant to E-commerce. Elizabeth Goldsmith and Sue L.T. McGregor (2000) analyzed the impact of e-commerce on consumers, public policy, business and education.. Young Jun Choi<sup>1</sup>, Chung Suk Suh(2005) examined the impact of the death of geographical distance brought about by e-marketplaces on market equilibrium and social welfare. Neeraj Dubey(2014) examined E-commerce players should ensure reasonable efforts to prevent unauthorized transaction. E-commerce business is in nascent stage but the growth has been exemplary. It is crucial for E-commerce players to work towards capacity building by training employees and alarming them against the various risks associated,

## **CHALLENGES FACING E-COMMERCE**

Running a successful e-commerce business can be very rewarding, yet challenging at the same time. Even if you sell a great product, it can become difficult to get the word out about your business if you don't have a well-designed website or marketing strategy. The major challenges faced by E-commerce are as discussed below:

1. Indian customers return much of the commodities they purchase online

E business in India has many first time buyers. This means that they have not yet made up their mind about what to expect from e-business websites. As a result, buyers sometimes fall prey to hard sell. But by the time the product is actually delivered, they reveal remorse and return the goods. Though consumer remorse is a global problem,



but it is all the more prevalent in a country like India, where much of the growth comes from new buyers. Returns are expensive for e-business companies, as reverse logistics presents unique challenges. This becomes all the more complex in crossborder e-business.

## 2. Cash on delivery is the preferred payment mode

Low credit card access and low trust in online transactions has led to cash on delivery being the preferred payment choice in India. Unlike electronic payments, manual cash collection is painstaking, risky, and expensive

## 3. Payment gateways have a high failure rate

As if the preference for cash on delivery was not bad enough, Indian payment gateways have an unusually high failure rate by global standards. Ecommerce companies using Indian payment gateways are losing out on business, as several customers do not reattempt payment after a transaction fails.

## 4. Internet penetration is low

Internet penetration in India is still a small fraction of what you would find in several western countries. On top of that, the quality of connectivity is poor in several regions. But both these problems are fast disappearing. The day is not far when connectivity issues would not feature in a list of challenges to ecommerce in India.

## 5. Feature phones still rule the roost.

Though the total number of mobile phone users in India is very high, a significant majority still use feature phones, not smartphones. So, for all practical purposes this consumer group is unable to make ecommerce purchases on the move. Though we are still a couple of years away from the scales tipping in favor of smartphones, the rapid downward spiral in the price of entry-level smartphones is an encouraging sign. I expect that the next few quarters will witness announcements of new smartphones in India at the \$30-40 price point. That should spur growth in smartphone ownership.

## 6. Postal addresses are not standardized.

If you place an online order in India, you will quite likely get a call from the logistics company to ask you about your exact location. Clearly your address is not enough. This is because there is little standardization in the way postal addresses are written. Last mile issues add to ecommerce logistics problems.

7. Logistics is a problem in thousands of Indian towns.

The logistics challenge in India is not just about the lack of standardization in postal addresses. Given the large size of the country, there are thousands of towns that are not easily accessible. Metropolitan cities and other major urban centers have a fairly robust logistics infrastructure. But since the real charm of the Indian market lies in its large population, absence of seamless access to a significant proportion of prospective customers is a dampener. The problem with logistics is compounded by the fact that cash on delivery is the preferred payment option in India. International logistics providers, private Indian companies, and the government-owned postal services are making a valiant effort to solve the logistics problem. If someone could convert the sheer size of the problem into an opportunity, we might soon hear of a great success story coming out of the Indian logistics industry.

8. Overfunded competitors are driving up cost of customer acquisition.

The vibrancy in the Indian startup ecosystem over the past couple of years has channeled a lot of investment into the ecommerce sector. The long-term prospects for ecommerce companies are so exciting that some investors are willing to spend irrationally high amounts of money to acquire market share today. Naturally the Indian consumer is spoiled for choice. However, this trend has reversed as investors are getting worried about slipping further down a slippery slope, and I expect more rational behavior in 2014.

## **LEGAL ISSUES**

The various legal issues that troubles business in online environment and also solutions if available to those problems can be discussed below:

### **1. E-contracts:**

Electronic contracts are governed by the basic principles provided in the Indian Contract Act, 1872 ("ICA"), which mandates that a valid contract should have been entered with a free consent and for a lawful consideration between two adults. Section 10A of the Information Technology Act, 2000 ("IT Act") provides validity to e-contracts. So, both ICA and IT Act needs to be read in conjunction to understand and provide legal validity to e-contracts. Further, section 3 of the Evidence Act provides that the evidence may be in electronic form. The Supreme Court in *Trimex International FZE Ltd. Dubai v. Vedanta Aluminum Ltd.* has held that e-mails exchanges between parties regarding mutual obligations constitute a contract.

In an online environment, the possibility of minors entering into contracts increases, more so with the increasing usage of online medium among teenagers (read minors here) and their preference to shop online or purchase online goods/services. It becomes crucial for an online business portal to keep such possibility in consideration and qualify its website or form stating that the individual with whom it is trading or entering into the contract is a major.

Stamping of contracts is yet another issue. An instrument that is not appropriately stamped may not be admissible as evidence unless the necessary stamp duty along with the penalty has been paid. But payment of stamp duty is applicable in case of physical documents and is not feasible in cases of e-contracts. However, as the payment of stamp duty has gone online and e-stamp papers are available, it can become a possibility later that stamp duty might be asked on e-contracts as well.

2. Data Protection: Security of the information provided during the online transaction is a major concern. Under section 43A of the IT Act the "Reasonable practices and procedures and sensitive personal data or information Rules, 2011" have been proposed, which provide a framework for the protection of data in India. Data can be personal, which has been defined as "any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person." The data can also be sensitive and a sensitive personal data consists of password, financial information, physical, physiological and mental health condition, sexual orientation, medical records and history and biometric information. The entity collecting data should have a privacy policy in place, should always obtain consent from the provider of sensitive information and maintain reasonable security practices and procedures. Unauthorized access to personal information and any misuse of such personal information should be checked by the online goods/service providers.

Interface with payment gateways is yet another challenge in online transactions. In 1995, the EFT, a retail funds transfer system enabling customers to transfer funds from one account to another and from one region to another, without any physical movement of instruments was introduced. The banks were permitted to offer internet banking facilities based on the Board-approved internet banking policy without prior RBI approval. As a step towards risk mitigation in the large value payment systems, the RTGS was made operational by the RBI in March 2004, which enabled settlement of transactions in real time, on a gross basis. The RTGS System is operated by the RBI. In 2005, NEFT was introduced which was a more secure, nation-wide retail electronic payment system to facilitate funds transfer by the bank customers, between the networked bank branches in the country. The enactment of the Payment and

Settlement Systems Act, 2007 empowered the RBI to regulate and supervise the payment and settlement systems in the country, give authority to permit the setting up/continuance of such systems and to call for information/data and issue directions from/to payment system providers. The IT Act provided legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly known as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information.<sup>2</sup> Some of the initiatives taken so far to a secured e-transaction include: The IT (Amendment) Act 2008, RBI's guidelines on Mobile Banking and pre-paid Value Cards, Guidelines on Internet Banking and Mobile banking guidelines. Essentially, the IT Act has laid the foundation for strengthening cyber security and data protection in India with introduction of section 43A that mandates body corporate to implement "reasonable security practices" for protecting "sensitive personal information".<sup>3</sup> The IT Act formally introduces the concept of data protection in Indian law, ushers in the concept of "sensitive personal information" and provides for fixation of liability on a body corporate to preserve and protect such sensitive personal information.<sup>4</sup> It also provides for civil and criminal liability for failure to protect personal data and information.<sup>5</sup> Further, the RBI has mandated a system of providing additional authentication based on information encrypted on the cards but not visible for all online transactions. Banks have also to put in place alert systems to keep a tab on online activity

3. Intellectual Property Rights ("IPR"): There are enormous possibilities of trade mark, copyright or patent infringements in online medium. E-commerce websites are designed and made by other parties and often the content is also created by third parties. Unless the agreements between the parties specifically provide the IP rights, there can be serious ownership issues of IPR. Any usage of third party IPR should have valid approvals in place. In interactive websites, the disclaimer and IPR policy should clearly spell out these issues and goods/service providers should also keep a watchful eye on the usage of their websites regularly. Domain names have trade mark protection and deceptively similar domain names can give rise to disputes. In *Satyam Infoway Ltd v. Sifynet Solutions Pvt Ltd.*, the Supreme Court had held that "a domain name may pertain to the provision of services within the meaning of section 2(z) of the Trade Marks Act."

4. Efficient delivery system and an effective supply chain and service management:

It is important to always keep consumer protection issues in consideration in e-commerce. The Consumer Protection Act, 1986 ("CPA") governs the relationship between consumers and goods & service providers and there are no specific provisions



related to online transactions. Liability for a goods/service provider arises when there is "deficiency in service" or "defect in goods" or occurrence of "unfair trade practice". The CPA specifically excludes from within scope any service rendered free of cost. So, if only the actual sale is taking place in the online medium, the users will be considered as consumers under the CPA. The goods/service providers may be asked to remove defects/deficiencies, replace the goods, return the price already paid, compensate and discontinue the unfair trade practice or the restrictive trade practice and not repeat them.

#### 5. Advertising:

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 off 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.

#### 6. Competition:

E-commerce has already generated a lot of competition with ever increasing players and acquisition of several old players in the market and has enabled development of new services, new distribution channels, and greater efficiency in business activities. Creation e-hubs where significant market share lies can lead to certain competition issues if they appear to have developed sustainable market power resulting from





network effects and/or engaging in strategic acts to preserve or maintain their market power. Potential issues for e-commerce players would be price fixing or tacit collusion or anti-competitive discrimination or refusal of access to third parties. E-commerce players should refrain from collusion and excessive pricing. Options for parties to use same web platform for different kinds of products/services can give rise to different intermediaries and that can lead to collusive behavior. Market transparency should be encouraged.

## **STRATEGIES FOR SUCCESS?**

In order to improve their chances for success companies are learning and adopting certain strategies. The successful companies in India are focusing on strong customer service and establishing trust with buyers. This leads to repeat buyers, lowers the customer acquisition and retention costs and improved profitability. In addition, some companies are differentiating themselves by focusing on niche product categories and market segments. To outlast their competition companies will also need to build a strong brand. This is what Amazon was able to do in the USA, and probably what Flipkart and some of the other larger players are emulating and trying to do in India. There are bound to be further acquisitions and consolidations and many more brutal shakeouts as the market matures.

Companies that hope to take advantage of these opportunities will need to do everything possible to reduce costs, remain financially viable and adopt smart strategies to outlast their competition and survive. It is clear though that the growth of the internet and online e-commerce is on a fast track to transform India's economy in the 21st century. With the great potential and opportunities, there are many pitfalls and challenges along the way.

## **Conclusion**

From the above discussion it can be concluded that the major challenges faced by E-commerce in India are like high rate of return among Indian customers regarding commodities purchased online, preference, cash payment on delivery, high failure rate of payment gateways, low internet penetration, lack of standardization in postal addresses and driving up cost of customer acquisition on account of overfunded competitors while there are legal issues in regard to E-contracts, data protection, intellectual property rights, efficient delivery system and an effective supply chain and service management, advertising and competition. But in order to improve the chances for success companies are learning and adopting certain strategies. The successful companies in India are focusing on strong customer service and establishing trust with

buyers. This leads to repeat buyers, lowers the customer acquisition and retention costs and improved profitability.

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