

## E-commerce laws and regulations in India

Saher Owais Talib

Director, Sharvani Private ITI, Nagpur, India.

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### Abstract

E-commerce has forever revolutionized the way business is done. Retail has now a long way from the days of physical transactions that were time consuming and prone to errors. E-commerce services are about transactions, and transactions are very largely driven by money. This attracts hackers, crackers and everyone with the knowledge of exploiting loopholes in a system. Once a kink in the armor is discovered, they feed the system with numerous bits of dubious information to extract confidential data (phishing). This is particularly dangerous as the data extracted may be that of credit card numbers, security passwords, transaction details etc. Also, Payment gateways are vulnerable to interception by unethical users. Cleverly crafted strategies can shift a part or the entire amount being transferred from the user to the online vendor. Hackers often gain access to sensitive information like user accounts, user details, addresses, confidential personal information etc. It is a significant threat in view of the privileges one can avail with a false identity. Viruses, worms, Trojans are very deceptive methods of stealing information. Unless a sound virus protection strategy is used by the e-commerce Solutions firm, these malicious agents can compromise the credibility of all e-commerce web solution services. Often planted by individuals for reasons known best to them alone, viruses breed within the systems and multiply at astonishing speeds. Unchecked, they can potentially cripple the entire system.

**Keywords:** E-Commerce law, viruses, rules and regulations, Cyber Law, Security, Cash on Delivery, Jurisdiction, Foreign Direct Investment (FDI), Foreign Exchange Management Act (FEMA), Enforcement directorate (ED), UNCITRAL (United Nations Commission on International Trade Law), IT Act, Bitcoins, Quasi-Judicial Machinery, Confederation of All India Traders (CAIT)

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### 1. Introduction

As truly said nothing comes without a cost in business, on-line shopping is not an exception to this. As customer has unlimited choice, he/she can fall a victim to over choice. Customer may spend a good amount of time without taking any final decision. One of the major options to purchase from Internet is through credit cards. It is quite possible that customers may fall victim due to security and privacy problems on the Internet. However, with the emergence of COD (Cash on Delivery) option the issue of security and privacy has been solved to a great extent as the customers opting for COD option are not required to disclose any personal details. Still there are many threats involved in an online purchase transaction.

Very recently internet has emerged as the component of quick and rapid purchase revolution making inroads in the busy life of the consumers. Be it for communication or explorations, connecting with people or for any official reasons. 'Internet' has become the central-hub for all. Resultantly, internet growth has led to a host of new developments, such as consumers turning more and more to the internet for buying goods at an affordable pricing. Internet has truly been a catalyst in changing the basic fundamentals of doing business over the web.

Net-savvy customers are going online like never before to buy goods and services. Until recently, it was to reserve hotel rooms and buy air, rail or movie tickets, books and gadgets and gizmos, but now clothes - saris, kurtis, T-shirts - shoes, and designer lingerie as well. This is due to people realizing the convenience and more importantly the time saving factor and the deals available at online retail stores. More people are now moving from traditional 'brick and mortar' stores to shopping at

online retailers. There are literally millions of items available online.

Today clothing, technology, beauty products, furniture even groceries can be purchased via internet. The idea of not having to wait in long serpentine queues or in traffic, shift through racks of clothing looking for the item you need or being able to shop at any time with technical specifications which are not misleading by nature has caused more people to turn online for all their shopping needs.

Many people are choosing to skip the trip down the lane and purchase their sofas and other home furnishing items from the comfort of their home.

It is therefore very evident to target the tech savvy person. There has been tremendous competition to target each and every computer owner who is connected to the Web.

E-Commerce has its roots from foreign jurisdictions. The concept has evolved in developed nations like United States. These jurisdictions have appropriate laws and adequate infrastructure to cater the needs of online stakeholders. This has helped these stakeholders in not only complying with the laws of these countries but also in contributing towards the GDP of these nations.

E-Commerce in India is a totally different class. It has all the advantages of profit making and commercial viability but is neither regulated by any dedicated e-commerce law, although we have IT Act, 2000, which happens to be the first Cyber Law in India. It is based on UNCITRAL (United Nations Commission on International Trade Law) model law. It provides treatment for users of electronic communications & paper based communication.

There are many other legal avenues like foreign direct investment (FDI), foreign exchange management act (FEMA),

national taxation laws, cyber security due diligence, e-commerce due diligence, etc are openly ignored in India. In some instance, enforcement directorate (ED) has also initiated investigation against big online retail operators like Myntra, Flipkart and many more e-commerce websites operating in India. Many stakeholders have also protested against the quality, purity, potency, price, unfair trade practices and predatory pricing tactics of Indian e-commerce websites. However the Consumer Protection Act gives consumer the right to be protected against unscrupulous exploitation of consumers.

Very recently a series of dharna were held under the umbrella of the Confederation of All India Traders (CAIT) demanding investigation into business modules of on-line retail platforms and their pricing mechanism and formation of a regulatory authority to regulate and monitor all sorts of retail trade in India.

Speaking on the occasion, B C Bhartia, National President of Confederation of All India Trader said, "We are neither against on-line retail format of trade nor against any on-line retailer but the business practices of on –line retailers are dicey having no Government check, unfair, unhealthy and against all business norms thereby creating an uneven level playing field which is badly affecting the off line trade and that is why they are demanding Rules and regulations for entire retail spectrum of the country.

CAIT Secretary General Pravin Khandelwal said that business of off-line retail was down by at least 45 percent because of the predatory pricing mechanism and non-transparent and unchecked business practices adopted by e-retailers. There has to be a law for conducting any format of trade in the country and therefore like US, UK, China and European countries where they have established rules and regulations for e-retail, India too must have specific Act, rules and regulations for e-commerce business in India.

"Brick and mortar stores have to pay numerous taxes and undertake large scale paper work, while e-retailers are registered in one state and making deliveries across the country, causing revenues losses to states, where they are not registered," he said. Under the present structure, the business executed through on-line retail remains unchecked. "No tax authority of any state could firmly say up to what extent the goods are being consumed in their respective state through online retail. Therefore, a check of taxation authorities is more necessary like off-line trade." The on-line retail business should not be allowed to prosper at the cost of off-line business.

The matter has reached to the level of Indian government that has also promised to look into the matter and draft suitable e-commerce law of India, if required. The objects are to promote and to protect Consumer Protection Councils established at the Centre and State level. Quasi-Judicial Machinery has been set up at district level state and centre levels. The alternative approach that can be adopted by Indian government is to amend the Information Technology Act, 2000 (IT Act 2000) to accommodate e-commerce related issues.

I firmly believe that a dedicated e-commerce law of India is the need of the hour and Indian websites must be suitably monitored and regulated. Indian government must also formulate a techno legal framework to take care of complicated technology related legal issues in India. Amending the IT Act

2000 to accommodate e-commerce related issues is not a very good option in this regard and must be the last choice.

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