
AN ANALYSIS OF LEGAL ACCOUNTABILITY OF E-COMMERCE PLATFORMS IN INDIA

Harini Krishnan, LLM, Christ University

ABSTRACT

Digitalisation has resulted in transition from brick-and mortar stores to e-commerce. It is convenient to purchase and sell varied products and services through e-commerce entities with the help of internet, mobile applications and digital networks. In India, the Information Technology Act, 2000, Consumer Protection laws are the primary legislations that govern e-commerce. While Information Technology Act, 2000 consists of provisions relating to e-contracts, electronic and digital signatures, safe harbour principle, the Consumer Protection Act and Rules governing e-commerce framed under the Act, are the consumer protection laws that safeguard consumers in e-commerce. Despite, the existence of these laws, there is a lacuna in establishing the legal accountability of e-commerce entities. The main issue is the safe harbour principle embodied in Section 79 of the IT Act, 2000 being extended to the e-commerce entities. Such protection against intermediary liability given to e-commerce entities is debatable as these entities are actively involved in pricing, product listing, packaging and delivery. Moreover, the existing consumer protection laws are not sufficient as consumers continue to face challenges like misleading advertisements, delayed refunds, faulty products, etc. Thus, laws have to be legislated in the manner that it provides for the duties and liabilities of e-commerce entities, so that there is a balance between legal compliance and growth of e-commerce entities.

Keywords: E-commerce, intermediary, liability, consumer, safe harbour

INTRODUCTION:

With the advent of technology and in this era of internet, there is a vast usage of the same for carrying out commercial activities. Post-millennial era, there is huge transition from brick-and-mortar mode of purchase and sale to e-commerce. We use internet, mobile applications and technology to buy and sell products at our convenience without the hassle of going to the stores and purchasing products. In common parlance, electronic commerce commercial activity through online platforms using internet.¹ There are various definitions of the term “e-commerce.” In India, e-commerce is governed primarily by Information Technology Act, 2000, Consumer Protection Act, 2019 and Consumer Protection (E-Commerce) Rules, 2020. While IT Act, 2000 focuses on aspects of e-contracts, digital signature and cyber security², the law relating to Consumer Protection defines e-commerce and deals with consumer related aspects of e-commerce.³ Though, e-commerce is advantageous to both businesses as well as to consumer by facilitating wider market access, reduced operational costs, availability, efficient inventory management, convenience and flexibility, product and price comparison, diverse product selection and faster transactions, it poses a lot of issues having legal implications.⁴ The major issue stems from the safe harbour principle as provided in the Information Technology Act, 2000, by which the e-commerce platforms escape liability. According to Section 79 of the Information Technology Act, 2000, which embodies the safe harbour principle, an intermediary cannot be made liable for any third-party information, data, or communication which is made available or hosted by him. However, this exemption from liability is applicable only if they observe due diligence and do not initiate or modify the transmission. If the intermediary does not remove unlawful information after receiving notification or knowledge of it from the government or a court, the exemption shall not be applicable.⁵ “Intermediary” is defined to include telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online marketplaces and cyber cafes⁶. In India, despite the fact that e-commerce platforms are

¹ Rishav Upadhyay & Pratishka Bharadwaj, *Legal Framework of E-Commerce in India*, 6 Int'l J. for Multidisciplinary Research (IJFMR) Vol. 6 Issue 1 Jan-Feb 2024.

² Subhajit Basu & Richard Jones, *E-commerce and the Law: A Review of India's Information Technology Act, 2000*, 12 Contemporary S. Asia 7, 7–24 (2003).

³ Navneet Chandra & Raj Kumar Yadav, *Evolution of E-commerce and Consumer Protection Laws in India*, M.D.U. L.J., Vol. XXXII (2024).

⁴ Jagdish H. Gojiya, *E-Commerce in India: Its Challenges, Advantages and Disadvantages*, JETIR, Vol. 7, Issue 12 (Dec. 2020).

⁵ Information Technology Act, 2000, § 79, No. 21, Acts of Parliament, 2000 (India).

⁶ Information Technology Act, 2000, § 2(w), No. 21, Acts of Parliament, 2000 (India).

included in the definition of intermediary, they have an active role in managing listings, pricing challenges and breach of consumer data. There is a lack of clarity in the existing legal regime regarding their legal accountability in matters relating to consumer protection, data privacy, and unfair trade practices, thereby creating a regulatory gap.⁷ Therefore, it is pertinent to analyse the sufficiency of the existing legal framework and relevance of Section 79 of the IT Act, 2000 in the current digital era.

LEGAL FRAMEWORK GOVERNING E-COMMERCE PLATFORMS IN INDIA:

OECD defines e-commerce transaction as “the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders.”⁸ However, there is no need for the payment and delivery to be conducted online. E-commerce does not include orders made by telephone calls, fax or manually typed e-mail.⁹ The UNCITRAL Model Law on E-Commerce (MLEC) was adopted on 12 June 1996. The main aim of MLEC is to enable and facilitate e-commerce by providing for a set of internationally acceptable rules which removes legal obstacles and increases legal predictability for e-commerce.¹⁰ The fundamental principles of e-commerce namely- principle of non-discrimination, technological neutrality and functional equivalence was first adopted in MLEC.¹¹ In India, E-commerce is primarily governed by the Information Technology Act, 2000, the relevant provisions of which are based on the UNCITRAL MLEC.¹² The Act accords legal recognition to electronic transactions and digital signatures. Section 10A of the Act accords legal recognition to e-contracts. Digital Signatures are recognised under Section 3 of the Act. Section 5 of the Act validates the use of electronic records and recognises electronic documents that are authenticated by digital signatures. Sections 17 to 35 which regulate certifying authorities are relevant for e-commerce, as e-commerce platforms usually engage with certifying authorities to enhance the credibility of their digital transactions. Section 43 of the Act penalises cybersecurity offenses like unauthorised access to computer systems and data. Section 79 provides for safe harbour protection to e-commerce platforms from their liability for third party content hosted on their platforms. However, it is subject to their adherence to

⁷ Chiranjil Lal & Harshit Kiran, *Laws Relating to E-Commerce in India: Issues & Challenges*, 6 Amity J. Computational Sci. (AJCS) 1 (2022).

⁸ Torbjörn Fredriksson, *Measuring the Environment for E-Commerce: A New Tool*, UNCTAD (Apr. 3, 2017).

⁹ Id.

¹⁰ UNCITRAL, Model Law on Electronic Commerce (1996) with additional art. 5 bis (1998).

¹¹ Id.

¹² *supra* note 2.

due diligence practices to avail this protection. However, this safe harbour protection is debatable, as e-commerce perform functions which are more than mere intermediaries. E-commerce entities must adhere to the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 and the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021. The Rules *inter alia*, require intermediaries to publish their rules and regulations, privacy policy and user agreement on their websites/applications and periodically inform users of the same, place hosting, storing, publishing, etc., prohibitions on intermediaries, and prescribe for an information retention period. The consumer aspects of e-commerce are brought under the purview of Consumer Protection Act, 2019, which aims to enhance consumer rights and tackle consumer issues in digital era. The Act has to be read with Consumer Protection (E-commerce) Rules, 2020. According to Consumer Protection Act, E-commerce means purchase and sale of goods or services including digital products over digital or electronic network.¹³ The Consumer Protection (E-Commerce) Rules, 2020 aims to regulate the operations of e-commerce entities and protect consumer interests in online marketplaces. These rules are framed to ensure transparency, fairness, accountability and efficient grievance redressal mechanisms across all types of e-commerce platforms. As e-commerce platforms involve sale and purchase of goods, the provisions of Sale of Goods Act, 1930 are applicable in this regard. While, it is not mandatory for the payments also to be done online, for a transaction to be regarded as e-commerce activity, payments done online are legally regulated under the Payment and Settlement Systems Act, 2007. Payment system has been defined in the Act as a system that enables payment to be made between a payer and a beneficiary, involving clearing, payment or settlement service either any of them or all of them. Payment settlement governs any platform that provides for money transfers. While, there are these many legislations in India to govern e-commerce, there is a dearth of a specific law that makes e-commerce platforms accountable for the issues related with e-commerce – data protection, product return and refunds, delivery of faulty goods, to name a few.

RELEVANCE OF SECTION 79 OF IT ACT AND INTERMEDIARY LIABILITY OF E-COMMERCE PLATFORMS:

Section 2(1)(w) of the IT Act, 2000 defines “Intermediary.” Intermediary, with respect to any particular electronic records, means any person who on behalf of another person receives,

¹³ Consumer Protection Act, 2019, § 2(16), No. 35, Acts of Parliament, 2019 (India).

stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online market places and cybercafé.¹⁴ The IT Act, 2000 provides for safe harbour principle which protects intermediaries from liability. Section 79¹⁵ of the IT Act encompasses the safe harbour principle by which the intermediaries are protected from liability for third-party content on their platforms. Though, sub-section (1) of Section 79 of the Act provides for safe harbour protection, there are limitations to the same as detailed under Section 79(2) and (3) of the Act. According to the limitations, the protection can be sought only if intermediary has a passive and technical role. Also, intermediaries will not be protected by the safe harbour principle, if they are involved in any unlawful activity. The intermediaries are required to follow due diligence to be immune from liability for third-party content. The due diligence involves the publication of rules and regulations, such as user agreements and privacy policies, warning users against uploading misleading or fake information, as well as content that violates intellectual property rights.¹⁶ In the digital era, where we mostly use e-commerce platforms, there is pressing need to consider the relevance of applicability of safe harbour principle to e-commerce platforms. Though, e-commerce plays the role of an intermediary between sellers and buyers, it has active role by doing activities like product listing, packaging, shipping, delivery and advertising products.¹⁷ There have been issues faced in e-commerce such as data protection, product returns and refunds, delivery of faulty goods, misleading advertisements, dark patterns, algorithmic pricing and so on. There have been such issues faced by many of us, but the e-commerce platforms cannot avail immunity from liability, by calling themselves as 'mere intermediaries' and escape liability through safe harbour principle. While, e-commerce platforms are considered as intermediaries under the IT Act, it cannot justify the safe harbour protection to the e-commerce platforms due to the active role of such entities. The Delhi High Court rightly opined a similar view in its decision in **Christian Louboutin SAS v. Nakul Bajaj and Ors.** ("**Louboutin Case**")¹⁸. The case was pertaining to the liability of the e-commerce platform-darveys.com. the Single Judge Bench held that in order to determine the liability of e-commerce platforms and their entitlement to safe harbour protection, it is necessary to

¹⁴ Information Technology Act, 2000, § 2(1)(w), No. 21, Acts of Parliament, 2000 (India).

¹⁵ Information Technology Act, 2000, § 79, No. 21, Acts of Parliament, 2000 (India).

¹⁶ Siddhant Samaiya, *An Analysis of Intermediary Liability in India and the European Union*, Manupatra Articles (2024).

¹⁷ Vasundhara Majithia, *The Changing Landscape of Intermediary Liability for E-Commerce Platforms: Emergence of a New Regime*, 15 Indian J. L. & Tech. (2019).

¹⁸ *Christian Louboutin SAS v. Nakul Bajaj & Ors.*, 253 (2018) DLT 728.

analyse the active or passive role of such platform. The Court took into account a set of factors such as identification of the seller and providing details of the seller; providing quality assurance, authenticity guarantees or storage facilities; assistance for placing a booking of the product (including call centre assistance); creating listing of the product; packaging of the product with its own packing; transportation; delivery; and advertising products on the platform, etc., and inferred that the entity was an active participant. It held that since the e-commerce platform was an intermediary having an active role, the safe harbour principle will not be applicable. However, the Division Bench of Delhi High Court in the case of *Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd. and Ors.* (“Amazon Case”)¹⁹ overruled its previous decision in Louboutin Case, as it held that restring the protection under Section 79(1) would be a misinterpretation of the provision. Therefore, the criteria to claim immunity under Section 79(1) is to fulfil the conditions as given under Section 79(2) and Section 79(3) of the IT Act. In *Kunal Bahl and Ors. v. State of Karnataka*²⁰, the Karnataka High Court held that Snapdeal, being an e-commerce entity could claim protection under Section 79(1) of the IT Act, if it satisfied the conditions under sub-sections (2) and (3). There is no settled jurisprudence which establishes intermediary liability. There is only jurisprudence that enables e-commerce platforms to escape liability. As the e-commerce platforms perform functions that are more than the functions of mere intermediaries, there is a need for laws that make e-commerce platforms liable for their activities and offences.

E-COMMERCE AND CONSUMER PROTECTION:

We belong to a time where we are able to purchase goods and services ranging from groceries to electronics through online marketplaces. While the shift from brick-and-stores to e-commerce mode has hastened sale and purchase and facilitated ease of access to goods and services, consumers usually face issues relating to faulty and defective goods, insufficient services, misleading advertisements, problematic shipping, inaccurate tracking, slow delivery, complex return policies, refusal of refunds and so on. Consumer Protection laws play a vital role in safeguarding consumer rights, preventing unfair trade practices and establishing robust grievance redressal mechanisms.²¹ As it can be observed that e-commerce has become an integral part of our daily lives, consumer protection laws have to adapt itself to the digital

¹⁹ *Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd. & Ors.*, 2020 (81) PTC 399 (Del.) (“Amazon Case”).

²⁰ *Kunal Bahl & Ors. v. State of Karnataka*, 2021 (2) Kar. L.J. 254.

²¹ *supra* note 4.

revolution.²² In India, the Consumer Protection Act, 2019 aims to protect consumer interests and safeguard consumers against unfair trade practices. The Act is applicable to consumers of e-commerce as well.²³ The term “consumer” is defined under Section 2(7) to include buyers using electronic means. Section 2(16) of the Act defines e-commerce as buying or selling of goods or services including digital products over digital or electronic network. The Act provides for framing of rules to facilitate consumer protection and accordingly the Consumer Protection (E-Commerce) Rules, 2020 has been framed, which lays down the functions and duties of e-commerce platforms.²⁴ The rules are applicable to all goods and services sold online, all types of e-commerce models and address unfair trade practices in e-commerce platforms. However, the rules are not applicable to those individuals who sell items occasionally for personal use, not as a part of business and to foreign e-commerce businesses selling goods and services to consumers outside India. The rules impose various duties and liabilities on e-commerce entities and sellers. The e-commerce entities are required to disclose information such as legal name of the company, main address of their headquarters and branches, website details and customer support contact information such as email and phone numbers. E-commerce entities have a duty to refrain from unfair trade practices and must ensure a robust grievance redressal mechanism to handle customer complaints, which has to be acknowledged within 48 hours and resolved within a month. If the e-commerce platform sells imported goods, the name of the importer should be disclosed. The e-commerce entities must cooperate with the National Consumer Helpline. Consumers cannot be charged for cancellation until the e-commerce entities also bear similar charges if they cancel. Refunds have to be processed quickly as per the rules of Reserve Bank of India. The e-commerce entities must not manipulate prices to make unfair profits. Moreover, the e-commerce entities are required to ensure legal compliance. Sellers must give accurate descriptions and images of the goods or services they offer on the platform. Sellers must refrain from posting fake reviews and avoid misrepresenting the quality or features of their products. Prompt returns and refunds have to be ensured unless the delay is due to unavoidable circumstances. The advertisements have to be accurate and the consumers should not be misled by the advertisements. These rules are framed with the intention of protecting consumer interests and any violation of these rules shall attract the

²² supra note 3.

²³ Kalpana Rani & Priyadarshini Tiwari, *A Legal Study Relating to Consumer Rights and Digital Marketplace in India*, 7 Int'l J. Legal Mix & Hum. (IJLMH) (2024).

²⁴ Krimul Malhotra & Anchit Nayyar, *Flipping the Cart: Consumer Protection (E-Commerce) Rules, 2020*, NLUJ L. Rev. (2020).

provisions of Consumer Protection Act, 2019.²⁵ With the rapid growth of e-commerce, these rules strengthen the trust between consumers and e-commerce platforms, thereby ensuring a reliable and trustworthy shopping environment. Therefore, consumer interests have to be safeguarded for the growth of e-commerce.

CONCLUSION:

Digitalisation and technological advancements have evolved the manner in which commercial transactions are conducted. A shift from brick-and-mortar stores to e-commerce can be observed as we can purchase essential and luxury products and services online. E-commerce has made it convenient for purchase and sale, thereby benefitting both consumers and businesses. Despite, e-commerce being characterised by speed, convenience and global connectivity, it has certain legal and regulatory complications pertaining to consumer protection, intermediary liability, data privacy and cyber security. In India, the current legal framework faces the challenge of sufficiency and adaptability in effectively dealing with the dynamic nature of e-commerce. Section 79 of the Information Technology Act, 2000 embodies the safe harbour principle. The applicability of this provision to e-commerce entities is debatable due to active role of such entities in product listing, pricing, packaging and delivery. There are differing interpretations by judicial decisions regarding the scope of intermediary liability. This emphasises the need for a clear position of law on intermediary liability. With respect to consumer protection in e-commerce, though there are consumer protection laws legislated to promote fairness, transparency and accountability, issues like misleading advertisements, delayed refunds, defective goods and privacy breaches persist. Such issues arise due to practical enforcement challenges of the consumer protection laws. Thus, a robust and effective legal framework has to be evolved to establish the duties and liability of e-commerce entities without shielding them under the safe harbour principle. Harmonisation of law and technological advancements is essential to ensure sustainable growth of e-commerce in accordance with principles of fairness and justice.

²⁵ Id.