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Impact of Current Regulations on E-Commerce in India: With Special Reference to Amazon

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ABSTRACT

India currently is in its prime phase in terms of growth in the e-commerce sector and is a very crucial expansion market of the American e-commerce giant, Amazon. Hence, the author aims to examine the current regulations governing ecommerce in the country, specifically the newly introduced guidelines by the government in the Foreign Direct Investment policy, 2018 and how the new set of regulations have affected the online markets of massive businesses, such as Amazon and Flipkart. These two e-commerce giants are the two major variables taken into consideration as they encapsulate the issues and challenges faced by e-commerce businesses in conducting their business in compliance with current internet regulations.

This circular by the Indian government placed an effective ban on Amazon and its local competitor, Flipkart from conducting the sale of products from companies in which they have an equity stake, such as in case of Amazon which has massive equity stake in Cloudtail. Therefore, it is pertinent to underline as to how these changes might affect the core business models of these e-commerce entities, this being the overall research goal of this paper. This paper is based on a doctrinal research methodology and is analytical as well because this is an extensive study on present day examples of businesses that have been benefited or have been affected by the current regulations on e-commerce in India. The author also underlines the various challenges that may arise through electronic data interchange, disputes that cover B2C segment and Copyright and data protection issues and gives solutions for the same. The lacunae of this paper is that it only deals with the relevant challenges faced by only two e-commerce businesses i.e., Amazon and Flipkart in the Indian Scenario and its scope is limited to the new rules and regulations introduced by the FDA on e-commerce in India. References have been made to the old laws governing the framework in order to measure and compare the actual outputs, difficulties and challenges of the e-commerce sector.

Keywords: *E-commerce, Law, Amazon, Flipkart, Foreign Direct Investment, Equity stake,*

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I. INTRODUCTION

The potential on expansion of e-commerce will depend on a number of factors, the most necessary of which will be infrastructure, both physical (the telecommunication network) as properly as the financial and legal framework, along with a business and trade environment conducive to e-commerce.² It will also depend on the availability and fee of hardware (computers, routers, switches, etc.) and software, and the human resource and educational requirements and policies of the country.

Diligence in this regard is required at every stage of e-business, right from the initial set-up stage to its phase of operation which will intensify with doses of feedback. Such diligence is particularly required—as apart from the applicability of stringent provisions of **IT Act 2000**³, the existing laws of the land applicable to conventional module of businesses are applicable in an environment of fast-paced technological changes that are impacting the e-commerce landscape.⁴ Other than the IT Act of 2000, the author will be analyzing the new rules of 2018 given by the current government in **Foreign Direct Investment** (“FDI”) in India that is regulated under the Foreign Exchange Management Act 1999 (“FEMA”), and how it affects the two massive e-commerce giants, Amazon and Flipkart in India. Such a situation would require innovation in interpretation and applicability of such laws until a consensus is achieved for enacting a dedicated legislation to overcome certain deficiencies in the existing legal framework.

Through these segments the author has highlighted the fast increase of e-commerce has created the need for brilliant and high quality regulatory mechanisms, which would fortify the legal infrastructure that is necessary to the success of e-commerce in India. Here, the author underlines the evolution of the internet and subsequently of e-commerce and how this sector has witnessed a gigantic increase in consumer growth rate in the current years. In this part of the paper the duty on the legal community is underlined so as to develop necessary skills and insight to guide entrepreneurs on the one hand, and assist the courts in arriving at harmonious interpretations accommodative of technological impact on the mode of business on the other hand. The author will make extensive analysis on online business giants of the likes of Amazon and Flipkart in order to under the effect of the current guidelines set out by the FDI Policy of 2018. All this is followed by conclusion and suggestion given by the author.

² Trends In India’s e-Commerce Market’: Report provided by Forrester Research for ASSOCAM’s 2nd National Conference on e-Commerce 2012.

³ Information Technology Act, 2000

⁴ Nishith Desai Associates (2013), E-commerce in India, Legal, Tax and Regulatory Analysis, August, 2018.

II. BACKGROUND OF THE STUDY

E-commerce is the businesses transaction of shopping for and promoting of merchandise and services by and clients completely through a digital medium, without the usage of any paper documents. The Organization for Economic Cooperation and Development (OECD) defines E-commerce as a new way of conducting business, qualifying it as business occurring over networks which uses nonproprietary protocols that are established through an open standard setting process such as the Internet. E-commerce is already appearing in all areas of business and customer services.⁵

E-commerce structures such as **Flipkart**, **Myntra** and **Amazon** formerly used to purchase products at bulk from producers at a heavy bargain price and offered them at a decrease cost to entities where they had stakes and these sellers would again promote it on the respective e-commerce platforms. The Indian authorities introduced new guidelines for India's e-commerce industry through the **FDI policies of 2018** that may result in grave new implications for how overseas online shops figure out to do enterprise in the country. Specifically, the government banned on-line outlets Flipkart and Amazon from sourcing more than 25 percentage of their inventory from a single vendor -- many of them in which these retailing giants also hold massive stakes. The new rules underlined by the above policy also avoided these two e-commerce biggies from coming into exclusive or separate deals.

The e-commerce revolution has simply begun in India, and will embody a tons wider variety of goods and offerings on a pan India basis in just a few years from now. Ecommerce is spawning lots of entrepreneurs every year, and that range ought to swell to tens of hundreds annually within a year or two. In India e-commerce has huge achievable having middle type greater than 288 million humans in India. However the perpetual regulatory challenges have been limiting the increase of electronic commerce in India. It would be a pity if regulatory haze and maze brings this emerging vivid commercial enterprise and social ecosystem to atrophy.⁶ The predominant trouble generally faced by using creating economies like India is that with a completely one of a kind financial as well as technological set up, the acceptable and a replica of the implementation of the laws as envisaged by means of the Model law will become very difficult. Even if the legislature fulfils the act of enacting a law, it becomes hard to put in force and put in force in Indian scenario. Thus, an integral evaluation of the existing legal guidelines

⁵ Rajendra Madhukar Sarode, "Future of E-Commerce in India Challenges & Opportunities" 1(12) IJAR 646 (2015).

⁶ ET Bureau, "Don't let regulatory issues hamper ecommerce in India; Constitute an 'informed' empowered committee" The Economic Times Sep. 21, 2014.

and regulations suggests that various legal issues such as jurisdiction, taxation, intellectual property rights and domain names in E-commerce continue to be untouched. We want extra regulations for making E-commerce transactions fairer and accomplishing greater consumer-friendly Ecommerce surroundings in India.

III. RESEARCH OBJECTIVES

The conceivable of e-commerce is no greater than that of a debate. From the world of hype and delusion it has moved to that of digital reality.

Some of the objectives of this study are:

- To describe the current regulations governing ecommerce in the country and examine the challenges and opportunities of e-commerce under the present legal regime in India.
- To study how the new set of regulations have affected the online markets of massive businesses, such as Amazon and Flipkart.

IV. RESEARCH METHODOLOGY

This research paper is analytical and explorative in its nature because there is an extended analysis on *“Impact on Current Regulations on E-Commerce in India: With Special Reference to Amazon”*. Moreover, the author has analyzed the impact on the variables taken in the study based on general themes on the e-commerce platform. The approach in this research is doctrinal as well because this is an extensive study on present day examples of businesses that have been benefited or have been affected by the current regulations and laws on e-commerce in India.

These two e-commerce giants are the two major variables taken into consideration as they encapsulate the issues and challenges faced by e-commerce businesses in conducting their business in compliance with current internet regulations. The sources used in this research study are secondary such as books, case laws and journals. Other secondary sources are online research papers and articles. Classroom lectures have also contributed majorly in the writing of this paper.

Introduction Chapter from books such as *“E-Business”* by Parag Kulkarni, Sunita Jahirabadkar and Pradip Chande along with *“E-Commerce: Fundamentals and Applications”* by Henry Chan, Raymond Lee and Tharam Dillon have been referred to that underline the meaning and essentials of e-commerce. The author has referred to various legal provisions of the UNCITRAL Model Law on Electronic Commerce, The Foreign Direct Investment Policy, 2018, the Indian Contract Act, 1872 and The IT Act. Moreover, the author has referred to six articles and nine case laws as mentioned in the bibliography of this paper.

LIMITATION: The scope of the study is limited to the new rules and regulations introduced by the FDA on e-commerce in India. References have been made to the old laws governing the framework in order to measure and compare the actual outputs, difficulties and challenges of the e-commerce sector.

V. LITERATURE REVIEW

Today e-commerce has become a necessary section of our daily lives. Accessibility to e-commerce systems is now not a privilege but a substitute for the necessity for most people, specifically in the urban areas. There are alternative e-commerce structures accessible (instead of the traditional physical platforms) for nearly each issue of our lives, starting from purchasing of daily household objects to online brokerage. Mail order or catalogue buying has been in existence in the United States given that 1980. This was once the predecessor of online commerce, which started out in India post 2000.

- The author has heavily depended on the book “*E-Business*”, by **Parag Kulkarni** as it has extensively covered the regulating authority of the IT Act of 2000 in India and how it affects the current business modules that inculcate e-commerce.

Shortcomings: It only addresses the mechanism as how the IT Act, 2000 operates and does not underline the challenges and effects of such a regulation on e-commerce businesses.

- **The Indian Council for Research on International Economic Relations** article on “*Electronic Commerce: Issues of Policy and Strategy for India*”, addresses specific cases of huge business like Amazon and Flipkart and analyses their way of operation in compliance with the current e-commerce laws in India such as the *IT Act, 2000* and the new *FDI Policies of 2018*.

Shortcomings: Although this article underlines the challenges faced by e-commerce led businesses in dealing with the current legal guidelines specifically the new FDI rules of 2018, it does not propose any solution for the same.

- Moreover, “*E-commerce Laws and Regulations in India: Issues and Challenges*” by **Aijaj Ahmed Raj** and **Wazida Rahman** aims to find the effectiveness the present laws and regulations in dealing the legal issues of e-commerce in the present legal system and tries to suggest if any improvements required for a better legal and regulatory framework for ensuring a just, fair and consumer-friendly e-commerce environment in India.

Shortcomings: It does not adequately address how the current rules that pose to be a threat to the growth of e-technology and as a result hinder the growth of e-commerce in India.

- The author has also explicitly referred to the “*Draft on e- Commerce Policy*”, published by the **Foreign Direct investment (FDI)** in 2018 to properly understand the purpose served by the policies mentioned in the rules therein.

Significance: The E-commerce Policy of 2018 presented by DIPP (Department of Industrial Policy and Promotion) under the Ministry of Commerce is one such approach which oversees foreign direct investment (FDI) in E-trade area. This has helped the author to analyze how the online retail goliaths like Amazon, Walmart owned Flipkart and so forth and forces them into revamping their trade methods.

- Furthermore, books such as “*E-Business and E-Commerce Management: Strategy, Implementation and Practice (4th Edition)*” has been referred by the author to gather a general and more enhanced understanding of the topic and this article serves as an overview. It also covers the interpretations of the U.S courts and analyses how the French courts interpreted the Yahoo case in relation to their e—commerce regulation.

Various other relevant policies and legal provisions have been inculcated in this research paper so as to make it more comprehensive and analytical.

VI. PENETRATION OF E-COMMERCE MODEL – AN INDUSTRY BASED ANALYSIS

The development of the online business industry in the course of the past couple of years is unquestionably undisputable. Simultaneously, it’s pertinent to understand that success stories of overcoming the adversities of a web based business model have only been seen in certain particular industries. Truth be told, the fate of e- commerce has fundamentally changed the mechanisms in varied industries. The ever growing influence of the e- tailing industry on the consumers of online shopping is not affected by the attribute of having a relatively small market share.⁷ Presently, business engaged in e- tailing are embracing various technological advancements for the creation of a virtual world that would help in overcoming the obstacles, the major one being the immediate connection a consumer has with the goods.⁸ In the earlier years of e commerce, it appeared to be more in demand for the purchasing of computer products but, in the recent years, lifestyle shopping has taken a front foot with internet users. These e-commerce based businesses have “capitalized on the convenience factor that online trading

⁷ Dr. Jyoti Rattan, “Law Relating to E-commerce: International and National Scenario with Special Reference to India” 1(2) IJSSEI 7 (2015).

Chauhan, Abha (2013), “Evolution and Development of Cyber Law, A Study with Special Reference to India,” Social Science Research Network.

⁸ Pragya Singh, Using tech to make e-tail as real as retail, DNA, 2012.

http://www.dnaindia.com/analysis/COLUMN_USING-TECH-TO-MAKE-E-TAIL-AS-REAL-AS-RETAIL_1745323

offers to customers and this has been the success mantra not just for Flipkart but host of other websites.”

“Monetary administrations have additionally observed a sizeable growth in the utilization of e-commerce model. The Foreign direct investment (“FDI”) in India is regulated under the Foreign Exchange Management Act 1999 (“FEMA”). The Department of Industrial Policy and Promotion (“DIPP”), Ministry of Commerce and Industry, Government of India makes policy pronouncements on FDI through Press Notes and Press Releases which are notified by the Reserve Bank of India (“RBI”) as amendments to Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.”

The consolidated FDI policy issued by the DIPP (“FDI Policy”) lays down two entry routes for investment:

“i. Automatic Route where foreign investments do not require prior approval of the government and

ii. Government / Approval Route where prior approval of the Government of India through Foreign Investment Promotion Board (“FIPB”) is required.”

VII. CURRENT LEGISLATIONS ON E-COMMERCE IN INDIA

- ***Information Technology Act, 2000***

The Information Technology Act of 2000, historically, was the first law that was enacted by the Indian government in pursuance of E-commerce in India and for the effective implementation of the UNCITRAL Model Law on Electronic Commerce, 1996. The principle objective of the IT Act was to establish legitimate recognition of all the exchanges carried on any electronic commerce platform.

This Act along with encouraging e-governance and e-commerce in India, lays down provisions for the legal acknowledgement of any digital signature or electronic record for attribution of the e-record, for mode and way of affirmation, for deciding time and spot of dispatch and receipt of electronic records. It further establishes regimes for punishment for various cyber offences.⁹ It additionally made the offenses like hacking, breaching of privacy and confidentiality, use of fraud digital signatures and damaging the computer source code as punishable offences and crimes. It also established Cyber Regulatory Appellate Tribunals and

⁹ M.M.K. Sardana, “Evolution of E-Commerce in India: Challenges Ahead (Part 2)” 3 available at: <http://www.isid.org.in/pdf/DN1408.pdf>

Adjudicating Authority in lieu of providing for civil liability in cases of cyber violations¹⁰.

- ***The Information Technology (Amendment) Act, 2008***

India consolidated the Information Technology (Amendment) Act, 2008 in order to implement the UNCITRAL Model Law¹¹ on Electronic Signatures, 2001 in the country and therefore facilitated the recognition of electronic signatures. This particular Act holds great significance in the e-commerce space as not only is introduced the idea of e-signatures, but it also altered the meaning of intermediaries. In addition to this, the State has assumed explicit powers for the controlling of websites with an aim to protect and secure privacy of individuals and also to prevent any tax evasions.¹² For the first time in India, digital signatures were given a legal enforceability by the virtue of this Act and the Act consequently also gave accentuation of any forgeries on electronic medium and encouraged smooth e-business transactions.¹³

- ***Foreign Direct Investment Policy***

The BJP Government introduced an enactment in the e-commerce space which is a Point Blank hit to online Retail Giants such as Flipkart and Amazon. This is the Era of E-business as from garments to staple goods, from furniture to gadgets, people purchase everything on the web because of which, Jeff Bezos Founder, CEO, Chairman of Amazon is one of the most rich persons in the World while small vendors and retailers in the neighborhood locales are disappearing step by step as they can't adapt up to the strong offers and elite deal understanding of these top companies.

The Policy: The retail sectors in India is one of the most controlled divisions and because of the inclusion of a gigantic populace, it is additionally politically sensitive. And owing to this reason the legislature has regularly looked for and attempted to make strategies which will in general confine retail exchange by foreign organizations. The E-commerce Policy of 2018 presented by DIPP (Department of Industrial Policy and Promotion) under the Ministry of Commerce is one such approach which oversees foreign direct investment (FDI) in E-trade area and along these lines limits online retail goliaths like Amazon, Walmart owned Flipkart and so forth and forces them into revamping their trade methods.

¹⁰ Dr. Jyoti Rattan, "Law Relating to E-commerce: International and National Scenario with Special Reference to India" 1(2) IJSSEI 7 (2015).

¹¹ UNCITRAL Model Law on Electronic Commerce (1996), United Nations Commission on International Trade Law, http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html

¹² Prakash, Pranesh (2009), "Short Note on IT Amendment Act, 2008," The Centre for Internet & Society.

¹³ Rajendra Madhukar Sarode, "Future of E-Commerce in India Challenges & Opportunities" 1(12) IJAR 646 (2015).

Who faced the Impact?

This policy has impacted three main groups, i.e. the online retailers themselves, the small brick and mortar retailers which compete with the online retailers and finally, the end consumers. The small, local retailers have welcomed this policy as they will benefit from it, whereas the online retailers have labeled it as authoritarian. End consumers will not be able to make use of flash sales, high discounts which seems to be a prima facie loss to them. It is also pertinent to underline that, Amazon or Flipkart owing to their dominant positions are barred from insisting on exclusive tie ups with brand owners.¹⁴ Also, the private labels launched by Amazon and Flipkart now need to cede space to other players in the same category and cannot be indiscriminately promoted at the expense of other players.

Main Features of the E-commerce Policy of 2018¹⁵

- *“Any organization or company associated with online business in the commercial market will not practice possession or power over the inventory it offers to sell.*
- *Furthermore, any such possession or ownership over the inventory will convert it into inventory based model from marketplace based model, which is not entitled to FDI.*
- *The entity will also be prohibited from selling products of vendor companies over which it has equity interest.*
- *Further, the entity cannot enter into exclusive sales agreements with the vendors, pushing them to sell their products only on one platform.*
- *The deep discounts offered by these online retailers will no longer be available, and they will have to make new business models to continue business in India.”*

Effects of the policy on online retailers: The online retail goliaths like Flipkart, Amazon, E-Bay had to totally patch up and change their plans of action to follow the policy. They no longer have the option to promote sales or deals of their favoured vendors as they are currently required to make a level playing field for all sellers on the ecommerce platform.¹⁶ They will also not be able to sell products of brands in which they have direct or indirect equity interest involved. The main objective of this policy is to clamp down huge online retailers and provide

¹⁴Hosanagar, Kartik, “Flipkart’s Big Billion Sale Fiasco Hands Edge to Competitors like Amazon, Snapdeal,” The Economic Times, October 9, 2014.

¹⁵ Foreign Direct Investment (FDI) Policy of 2018, Government of India, Ministry of Commerce & Industry Department For Promotion of Industry and Internal Trade.

¹⁶ Jayanth Pattanshetti Associates, “Ecommerce Laws In India: Foreign Investment And Retail Trade” 2-3 available at: <https://pattanshettiassociates.wordpress.com/2015/01/02/Ecommercelawsinindiaforeigninvestmentandretailtrade/>

strength to small retailers and encourage them to sell goods by using their own label. In response to this move of the government, online retail biggies like Amazon and Flipkart plan on discussing their concerns with the government with the help of industry bodies like Confederation of Indian Industry (CII) and & Industry FICCI, other e-commerce firms, and investment giants such as SoftBank, Tiger Global, Sequoia and Naspers.

Impact on End Consumers: End customers of the products are the most affected group of people by the virtue of this policy as they are restricted from availing offers and discounts put out by online retailers for their basic needs, inclusive of clothing and groceries. Moreover, as the local and online retailers will offer no different facilities, and the discounts offered by online retailers will reduce substantially, they will be forced to switch to local retailers and look into more options to find the best price. The end of exclusive deals also affects the customers, *for example*, there is no and exclusive partnership between One Plus and Amazon any longer which enabled One Plus to give away earphones for free.

VIII. LEGAL ISSUES AND CHALLENGES OF E-COMMERCE

In the business equation amongst parties, disputes may arise on contractual obligations or they may even be based on issues covering copyrights and data protection. Other non-contractual issues within the legal framework include disputes in the B2C segment over monetary glitches or problem of jurisdiction and trans border litigation. Some of the main legal issues apart from the ones underlined above in the analysis of the effects of the new FDI policy introduced by the Modi government are discussed below:

1) *Privacy and Security Issues in E-Commerce*

When there is any transaction taking place on an online platform there is certain amount of personal information of the customer that is collected which is inclusive of details about their identity and financial data in order to successfully complete the business exchange process. Aside from gathering of primary data from the users, online business platforms may also assort other indirect sourced information which may include the user's preferences and search patterns. Thus, it is very essential for all e-commerce platforms to protect the privacy of its users by keeping two important primary concerns in mind:

i. Unauthorized access to personal data

ii. Abuse of such personal information

On an historical note, the idea of privacy and security was not taken by any India legislation for the longest of time and because of such absence of a proper enactment of legislations, the

Apex Court of India in the cases of *Kharak Singh v State of UP*¹⁷ and *People's Union of Civil Liberties v. the Union of India*¹⁸ held the “right to privacy” to be subset of the larger “right to life and personal liberty” under Article 21 of the Constitution of India. The IT Act presently also deals with concept of infringement of privacy but only in a constrained scenario, whereby it states that only when a person has her private body parts captured or published without consent, would it be considered as a violation of her right to privacy and imprisonment of up to 3 years and/or fine of up to INR 2 lakhs will be charged on the offender.¹⁹

2) *Issues of Validity of the E-Contracts*

All e-contracts entered online are to be administered by the Indian Contract Act, 1887. Acceptance and acknowledgement of the terms and conditions preceding any purchase made online establishes an implied or a suggested agreement between the buyer and the seller. These kinds of contracts are popularly known as ‘click-wrap’ contracts wherein a contract is created between the buying and selling parties as and when the buyer clicks on the ‘I Accept’ button.²⁰ Because of the creation of a legitimate agreement, all provisions under the Contract Act²¹ are to be complied with along with the fulfillment of all the pre requisites as laid down by the abovementioned Act, for the agreement to be construed as valid contract. If the free will of the parties to enter into the contract is missing or is induced by misrepresentation or fraud online then the validity of such a contract of e-commerce can be easily defeated. The terms and conditions related with an e-contract needs to stay in congruity with the Indian Contract Act, independent of the method of ‘clickwrap’ agreement so as to enter into a valid contract or use any other mode as specified under the IT Act. Sometimes, an e-commerce contract may also be held to be unconscionable for not rendering any option for negotiation. The U.S courts have struck down these standard contracts by the virtue of them being unconscionable basing their judgments on the facts and circumstances of each case. In India, still, the jurisprudence of the issue surrounding the standard form online agreements being unconscionable is still under developed. Consequently, Indian law on e-commerce has little guidance to offer on these serious issues.

3) *Intellectual Property Issues*

The e-commerce space is increasingly facing growing intellectual property concerns with

¹⁷ *Kharak Singh v State of UP*, AIR 1963 SC 1295 1997

¹⁸ *People's Union of Civil Liberties v. the Union of India*, 1997 (1) SCC 318

¹⁹ Section 66-E of the IT Act

²⁰ M.M.K. Sardana, “Evolution of E-Commerce in India: Challenges Ahead (Part 2)” 3 available at: <http://www.isid.org.in/pdf/DN1408.pdf>

²¹ The Indian Contract, 1872

minimum to almost nil regulation for the protection of intellectual property rights. Unlike for the physical world, India has failed to establish a well-defined legal regulatory framework for the protection of IP rights. But it is also important to emphasize that the efficacy of these laws to safeguard the rights in and out of an e-commerce transaction is not easy. In terms of copyright issues, the U.S courts have underlined that linkage to another website would constitute a copyright infringement in the respective cases of *Ticketmaster v. Tickets.com*²² and *Batesville Serv. Inc. v. Funeral Depot Inc.*²³ and have also observed that usage of a competitor's trademark in the meta tags would constitute an infringement of such trademarks in the cases of *Playboy Enterprises Inc. v. Calvin Designer Lab*²⁴, *Institution Technologies Inc. v. Nat'l Envirotech Group L.L.*²⁵ The UK courts have also likewise declared a similar view on account of *Roadtech Computer Systems v Mandata Ltd*²⁶, whereas the Indian courts have failed to deal with these issues in detail.

4) Domain Names

“A company that commences e-commerce activities would at first have to get its domain name registered. A domain name in simplistic terms is an address on the internet like www.ebay.in and www.google.com. In more technical terms a domain name is an easily recognizable and memorable name to the Internet Protocol resource (which is typically a set of numbers) of a website.” Domain names typically fall within the purview of trademark law. In India the Trademarks Act of 1999 is followed to regulate the system of domain names. Domain names normally fall within the purview of trademark law. A domain name registry will not register two identical domain names but can register a similar domain name. This leads to a situation where deceptively similar domain names can be registered for example www.goooooogle.com by a third party. As a result, this creates a lot of confusion as the individual who visits www.goooooogle.com might think that the content on this website belongs to or it has been sponsored by Google.²⁷ In such cases of deceptive similarity, the individual or company is held liable for cybersquatting. Indian courts have been massively active in allowing orders against the use of infringing domain names.⁴⁹ The major take away from all these cases is that domain name serves its function in the capacity of what a trade mark does, and is not a mere address or

²² Ticketmaster v. Tickets.com, CV 97-3055 RAP (C.D. Cal., filed April 28, 1997).

²³ Batesville Serv. Inc. v. Funeral Depot Inc, No. 1:02-CV-01011-DFH-TA, 2004 WL 2750253 (S.D. Ind. Nov. 10, 2004).

²⁴ Playboy Enterprises Inc. v. Calvin Designer Lab, 1997 U.S. Dist. Lexis 14345 (D. Cal. Sept. 8, 1997).

²⁵ Institution Technologies Inc. v. Nat'l Envirotech Group L.L., Civil Action 97-2064 (E.D. La.)

²⁶ Roadtech Computer Systems v Mandata Ltd, [2000] ETMR 970.

²⁷ V.K.Unni “Trade Marks & Emerging Concepts of Cyber Property Rights”, 1st ed. 2002, Eastern Law House, p. 15-16.

like finding number on the internet, and therefore, it is entitled to equal protection as a trademark. In fact in the case of *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.*,²⁸ the Supreme Court had also held that “a domain name may pertain to the provision of services within the meaning of section 2(z) of the Trade Marks Act, 1999.

IX. CONCLUSION AND INTERPRETATION

The fast and ever growing expansion of the e-commerce space not only underlines the growing receptiveness of the society in general but has also empathized on the issues in the legal framework within India. From the underlying years, when the internet had exploded as a phenomenon to becoming a necessity in every metropolitan city, the e-commerce industry has had a massive emergence. The legal system has also tried to consistently match its pace through enactments under the IT Act and by introducing rules under the FDI policies for adequate governance. Additionally, the IP issues in online business transactions have taken another structure with users finding various loopholes which again adds to the issues dealt under e-commerce.²⁹ Therefore, there is an urgent need of an in depth understanding of the e-commerce regime along with idea for risk management, for businesses to thrive in this industry.

There always have been consistent claims that owing to the weak cyber security laws in India there is a perpetual need of an effective regulatory framework in order to overcome the challenges in the e-commerce space in India. India, at present has no committed e-commerce administration other than the IT Act for the controlling of internet based transactions and hence, the government requires establishing various legal provisions for the protection of basic rights relating to consumer protection intellectual property and prevention of fraud in the web based business structure. Simultaneously, it should ensure that the advantages of technological innovation are benefited of unhindered by judicious evolution of legal pronouncements through learned interpretation of courts. For better establishment the author suggests a creation of **Permanent e-commerce** (PE) in India which requires the enterprise to carry out an income generating business in the other contracting state. In the context of e-commerce, due to the intangible nature of transactions, it is difficult to determine the existence of a PE based on the existing tests laid down for determination of a PE.³⁰

²⁸ *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.*, AIR 2004 SC 3540.

²⁹ Rajendra Madhukar Sarode, “Future of E-Commerce in India Challenges & Opportunities” 1(12) IJAR 646 (2015).

³⁰ *ITO v. Right Florists Limited*, I.T.A. No.: 1336/ Kol/ 2011

X. RECOMMENDATIONS/SUGGESTIONS

1. The policies or and other regulations on e- commerce must focus o on data protection, the State's paternalistic attitude towards the use of the citizen's data and cross border transactions.
2. The current FDI policies, although are beneficial for the local retailers they affect major e-commerce industries like Amazon and Flipkart drastically, along with curbing the option of the end consumers. The FDI policies should also take into consideration ways to inculcate the growth of e- commerce companies, both Indian and foreign so as to provide customers with more information and varied products.
3. The Government of Indian must try and regulate some things beyond e-commerce i.e. it proposes to regulate technologies like AI, IoT, Cloud computing and Cloud-as-a-Service etc. On a holistic level it is understood that these technologies empower e-commerce industry currently and are integral to its growth.
4. Further to curb piracy a body of industry stakeholders will be created that shall identify “**rogue websites**”, whose most essential work would be to remove or disable these websites, ultimately curtailing the payment that these websites are making.
5. Many of the ecommerce services in India are currently not subject to any standards and rules, and that leads to limited information disclosure to consumers. For this it must be ensured by the government that all e- commerce companies must be registered and subjected to the same rules.

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