

E-COMMERCE INDUSTRY IN INDIA

An exclusive guide on the e-commerce sector in India.



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PREFACE

The dawn of the internet era opened up amazing possibilities and e-commerce has emerged as a perfect amalgamation of technology and marketing acumen. India has joined the bandwagon and the numbers themselves do all the talking. The latest statistics reveal that India has been reported to have 70 million active Internet users, the count rising exponentially by the minute.

The number of internet connections in 2021 increased significantly to 830 million, driven by the 'Digital India' program. Out of the total internet connections, 55% of connections were in urban areas, of which 97% of connections were wireless. The smartphone base has also increased significantly and is expected to reach 1 billion by 2026. This has benefited India's digital sector, which is expected to be worth \$1 trillion by 2030.

This growth has been triggered by increasing internet and smartphone usage. However, markets in the present day involve a variety of business and organizational facts and general economic and social trends, and the actual scope of growth in e-commerce cannot be evaluated without taking into consideration the aforementioned factors.



The rapid increase in internet users, coupled with rising incomes, has assisted the growth of India's e-commerce sector. India's e-commerce sector has transformed the way business is done in India and has opened up various segments of commerce ranging from business-to-business (B2B), direct-to-consumer (D2C), consumer-to-consumer (C2C), and consumer-to-business (C2B).

MARKET DYNAMICS

The Indian e-commerce market is expected to reach \$120 billion by 2026 from a low of \$38 billion in 2022, and this exponential rise in retail and e-commerce businesses will fuel the economic growth of the warehousing and logistics sector in the country.

This improved trend has provided an impetus to the warehousing and logistics sector beyond tier I cities. The constant push and ambitions for infrastructure development and policy support provided by the government are expected to ride the next wave of growth for the industrial, warehousing, and logistics sectors in India.



The Reserve Bank of India recently issued new guidelines for internet banking. E-commerce was also recognised under the Information Technology Act by the Ministry of Electronics, Information and Technology, which introduced intermediary guidelines. Prescriptive regulatory frameworks based on an understanding of present business models stifle the development of more innovative models. Business-to-business (B2B) refers to e-commerce transactions between companies. Suppliers, distributors, and agents are all possible partners for an e-commerce business.

Additionally, COVID-19-led lockdowns across the globe highlighted the need for a "China plus one" strategy for manufacturing as the supply chain for various companies was disrupted at the time of forced lockdowns in China. Several companies are now looking to shift their base away from China, or are keen to open a new manufacturing facility in other countries, and India too is a top contender. The National Logistics Policy is in the draft stage and is expected to change the face of the logistics sector in India.

E-commerce has made it easier for top American brands to reach Indian customers and has emerged as one of the fastest-growing trade channels available for the cross-border trade of goods and services. There is a growing appetite for international brands and better-quality foreign products among digitally connected Indian shoppers due to rising income levels and increased awareness.

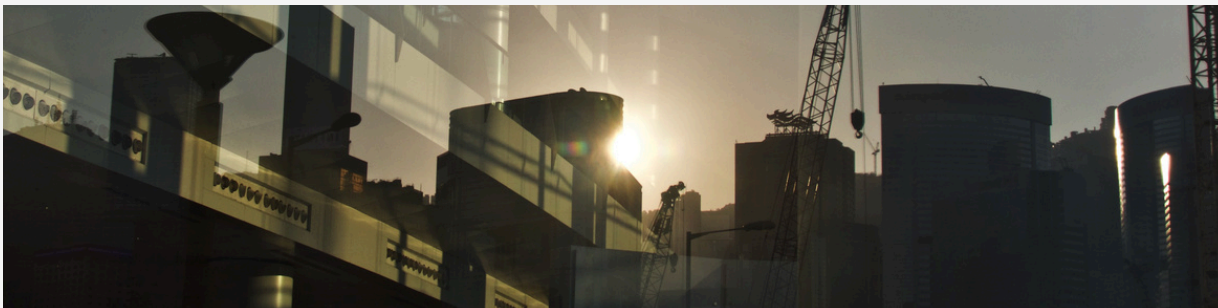
MAJOR DEVELOPMENTS

Electronic commerce, most commonly known as e-commerce, has been transforming the way business is done in India for the last decade. Domestic and international, B2B and B2C, inventory-based and marketplace e-commerce can be broadly classified in India. The country's e-commerce market is expected to grow to US\$ 200 billion by 2026, up from US\$ 38.5 billion in 2017. Currently, electronics are the biggest contributor to online retail sales in the country with a share of 48%, followed by apparel at 29%.

The industry's growth can be attributed to the increasing use of the internet and smartphones among the public and, most importantly, to the initiatives taken by the government to promote digitisation. Propelled by the ongoing digital transformation, India is expected to witness a significant increase in its total internet user base from 604.21 million as of December 2018 to 829 million by 2023.

Some of the major developments in this sector can be classified as follows:

- India is witnessing the emergence of online retail eco-systems, led by Flipkart, Reliance, Alibaba, Amazon, and Future Group.
- Flipkart acquired Israeli analytics firm Upstream Commerce in September 2021. The move helped Flipkart to price and position its products more efficiently.
- Paytm Payments Bank launch helped attract online buyers. It is India's first bank that enables online transactions with zero charges and no minimum balance and provides free virtual debit cards to customers.
- Tata Trust and Google are working together to improve internet penetration among rural women through the project "Internet Saathi."
- Due to increased awareness and rising income levels, the appetite for international brands among Indian online shoppers is growing rapidly, which is attracting more foreign retailers to invest in the Indian e-commerce market.



Since 2014, the government of India has introduced several new programs, including Start-up India, Skill India, Digital India, and the Innovation Fund. It is anticipated that the timely and efficient execution of these programmes will contribute to the expansion of e-commerce in the country. The following are the primary steps the government has taken over the years to foster the growth of e-commerce in India:

- By June 8, 2022, 4.56 million registered sellers and service providers had fulfilled 10.35 million orders totaling Rs. 258,359 crore (US\$ 33.07 billion) for 60,632 buyers via the Government e-Marketplace (GeM) platform.
- Under the Consumer Protection (e-commerce) Rules 2020, unveiled by the Consumer Affairs Ministry in July, e-commerce companies must list the country of origin next to each product listing. The criteria for selecting which products appear on the companies' platforms must also be disclosed.
- The government established multiple initiatives as part of the Digital India movement to encourage digitalization, including Umang, Start-up India Portal, Bharat Interface for Money (BHIM), etc.
- The former minister of commerce and industry, Piyush Goyal, encouraged startups to sign up on GeM, the website for public procurement, and offer their products and services to PSUs and government organizations.

LEGAL COMPLIANCES

The trend toward e-commerce has been rapidly increasing since the last decade. Many players with new business ideas have entered the market, for example, Zomato or Swiggy delivering food from various restaurants, Flipkart or Amazon delivering products, or Grofers delivering groceries. The swift development of the e-commerce industry has called for the attention of the government towards forming regulations and policies with respect to the same. India has various laws that monitor e-commerce businesses in terms of data privacy, consumer security, and settlement transactions.

Foreign Direct Investment

Foreign Direct Investment ("FDI") means the investment made by foreign entities in companies situated in India. The same can be done either by opening a subsidiary or associate in a foreign country, acquiring controlling interest in an existing foreign company or by means of a merger or joint venture with a foreign company.

The Department of Industrial Policy and Promotion, Government of India frames policy pronouncements on FDI. The FDI policy allows Foreign Direct Investment to the extent of 100% in the marketplace model of e-commerce by way of the automatic route. A single brand retail trading entity operating through brick-and-mortar stores is allowed to carry on retail trading through e-commerce. However, many e-commerce businesses have disguised their inventory-based model as a marketplace model through a complex structure.

Information Technology Act, 2000

E-commerce sellers conduct business in the same manner as physical sellers, with the only distinction being the non-availability of the physical body in order to sell things. Through e-commerce, the vendors are required to generate bills, file returns, pay taxes, prepare ledgers, and maintain records.

The Information Technology Act, 2000 (IT Act) is the primary legislation that governs the use of the internet, cybercrime, and digital business in India. The IT Act governs online behaviour and related aspects of e-commerce and recognises electronic contracts and digital signatures.

The Information Technology Act, 2000, is based on the Model Law of e-commerce adopted by the United Nations Commission on International Trade Law (UNCITRAL) and acts as a developing e-commerce enabling legislation in India.



Payment and Settlements Systems Act, 2007

As per the Payment and Settlements Systems Act, the e-commerce business shall succeed as a payment system if it follows the rules specified by the Reserve Bank of India ("RBI") for online transactions and payments. Further, it is compulsory for an intermediary that is receiving payments through digital modes to have an active Nodal Account for settling the payments of the sellers on its e-commerce platform.

Consumer Protection Act, 2019

The e-commerce industry is also monitored by the Consumer Protection Act, 2019 as it is working to protect the interests of consumers. In order to safeguard the consumers from unfair trade practices and further to address and solve their problems, the Ministry of Consumer Affairs, Food and Public Distribution on May 17, 2021, has notified the Consumer Protection (E-Commerce) Rules, 2021.



ESTABLISHMENT OF THE BUSINESS

Company Registration

Every e-commerce business is required to be registered with the Ministry of Corporate Affairs under the applicable laws. Such a business shall either be incorporated under the (Indian) Companies Act, 2013 or be a foreign company or an office, branch, or agency outside India and necessarily be owned or controlled by an Indian resident.

While establishing an e-commerce business, it is suggested to have a company or Limited Liability Partnership ("LLP") in place to relish the limited liability protection and, at the same time, run the business with ease. Such registration ensures that the bank account is opened in the name of the company or LLP, which in turn makes the process of GST registration convenient and quicker.



E-commerce broadly means a commercial activity conducted with the support of electronic devices. Under e-commerce, there are digital business transactions or trades that are wholly or partially performed by using the internet. As e-commerce has evolved and become more feasible and a safer way of shopping and trading, it has become an industry that requires a well-built regulatory framework in order to ensure accountability and consumer protection.

GST Registration

For a successful establishment of an e-commerce business, Goods and Service Tax ("GST") registration is mandatory. Every E-commerce business irrespective of its turnover is required to be compulsorily registered under the Central Goods & Service Tax (CGST) Act.

Bank Account

Opening a bank account in the name of the business is a convenient process. In case of a Proprietorship firm, the first step is to obtain a GST registration in the name of the business in order to open a bank account. An active bank account is the bare minimum requirement to be able to list a business on an e-commerce marketplace or to obtain a payment gateway for a proprietary e-commerce website.



Payment Gateway

A payment gateway is mandatory for a proprietary e-commerce website to process the payments. It allows the website to accept payments through credit card(s), debit card(s), net banking, internet banking from multiple banks. Therefore, one payment gateway is sufficient to accept various forms of online payments. Further, once the payment is received by the customer or by the website, such payment is sent to that respective business's bank account through the payment gateway.

In the event, where the business runs through the online marketplaces, the marketplace would accept the payment through their payment gateway and directly credit such an amount to the bank account of the seller. Hence, a bank account shall be in place for smooth transactions.

Legal Documents

While selling any product on the internet, it is important to safeguard the business and the promoters by adhering strictly to the terms and conditions and the privacy policy of such businesses. In the case of a proprietary e-commerce website, the terms and conditions, disclaimer, and privacy policy would have to be drafted as per the business, keeping in mind the nature of its activities and products it sells online.

If any business operates through online marketplaces, then the marketplace provides the seller with a legal document or seller's agreement, and the seller must abide by it. It is important for any e-commerce business to go through the seller's agreement(s) in detail before execution as it is the legally binding agreement between the seller and the marketplace.

Other Requirements

There are a few additional requirements such as cyber law due diligence, compliance under the Competition Laws of India, the laws related to data protection, and the appointment of a Nodal Officer in the case of an international e-commerce business setup in India that are important to always be complied with.

TAXATION REGIMES



There are many taxation provisions affecting e-commerce transactions in the Income Tax and GST. The government is introducing various sections in both the direct and indirect taxation regimes in order to avoid non-taxation of transactions and obtain tax benefits.

Previously, when there were no provisions on e-commerce transactions, small sellers selling their goods or providing services through E-Commerce Operators engaged in transactions that were outside of the tax nets, allowing taxes to be avoided. So, the government introduced the following provisions in the GST and Income Tax.

Income Tax Act, 1961

Section 194-O (introduced by the Finance Act, 2020): TDS on payments of certain sums by the e-commerce operator to e-commerce participants.

- E-commerce operators should deduct TDS @1% on the gross amount of such sales or services or both at the time of credit of the amount of the sale of goods, services, or both to the account of an e-commerce participant or at the time of making payment to an e-commerce participant by any other mode, whichever is earlier.
- If the gross amount of sales of goods, services, or both during the previous year did not exceed Rs 5 lakh and the e-commerce participant provided his PAN or Aadhaar, e-commerce operators are not required to deduct TDS. However, if the e-commerce participant does not furnish his PAN or Aadhaar, TDS must be deducted at the rate of 5%, as per provisions under Section 206AA of the Income Tax Act of 1961.

The Central Goods and Services Tax Act, 2017 (GST Act)

Section 52 of the CGST Act, 2017–

- Every electronic commerce operator shall collect an amount calculated at such a rate not exceeding one percent, as may be notified by the government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Section 24(ix) of the CGST Act, 2017–

- Persons who supply goods or services or both, other than supplies under Section 9(5), via an electronic commerce operator required to collect tax at source under Section 52 of the Act are required to register under this clause.
- As per section 52 of the CGST Act 2017, an electronic commerce operator shall collect TCS at the rate of 1% (0.5% CGST and 0.5% SGST) on the net value of taxable supplies.



DISPUTE RESOLUTION MECHANISMS

In India, the consumer court and consumer redressal forum take active charge and help consumers launch their complaints online.



Consumer Protection Act, 2019

In India, the Consumer Protection Act, 2019, is one of the important legislations enacted by the Parliament in order to safeguard and enforce the rights of "consumers." The Act provides for provisions relating to jurisdiction, which primarily encapsulate pecuniary jurisdiction and territorial jurisdiction. A complaint, inter alia, can be filed before the District Forum, State Commission, and/or National Commissioner, per their respective pecuniary jurisdictions.

The Act also provides that in case of any complaint before the District Forum and State Commission, the same can also be filed within the local limits of whose jurisdiction the opposite party or any of the opposite parties actually and voluntarily resides, carries on business, has a branch office, or personally works for gain, or the place where the cause of action arises, wholly or in part. However, nothing in the said act specifically refers to e-commerce consumers.

In light of the new models of business in e-commerce, it is vital to remember consumer security issues. In India, the Consumer Protection Act 1986 (CPA) governs the relationship between the consumer and administration or merchandise suppliers. There is no different purchaser assurance law that is particular to and manages online exchanges. The Consumer Protection Act of 1986 specifically prohibits the rendering of any complimentary administration within its ambit. If actual sales are taking place on the online platform, the users will be considered "consumers" under the CPA, and its provisions will apply to the sale of products by the online platform.

Major consumer issues raised by internet transaction systems include security, privacy, terms and conditions, access, dispute resolution, fees and charges, and fraud. However, the jurisdiction issue is the most important issue in the case of e-commerce; depending upon who is actually selling the goods or rendering services, liability may trigger.



Competent Forum

One of the most important barriers faced by a consumer while having his grievance redressed, and which also forms the basis of any legal recourse to be adopted by the consumer, is choosing the correct forum that has the "jurisdiction" to hear and try the matter at hand. Unless the complaint of an online consumer is filed before a competent forum, the complaint is prima facie.



Consumer Court

Consumers can file complaints online via a link, and then track the status of their complaints until they are resolved. Consumers can use the Consumer Court to file complaints and suggestions about any product, company, bank, business, company, government, or non-government organisation in India or abroad.



Consumer Redressal Forum

A right-based approach Society is a non-profit, non-governmental organisation registered under the Societies Registration Act, 1860, and is a voluntary organisation working for the rights of people at the national and international level. It is founded on an implicit, explicit, and forward-thinking vision of the "Rights-Based Approach" programs, with centralised advocacy built in.

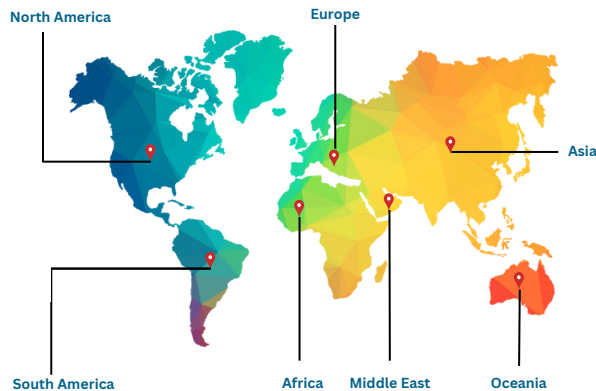
HOW WE CAN HELP?

Companies and individuals seek our advice on the e-commerce practises and policies required to establish and operate commercial websites. We represent e-commerce companies in a variety of industries throughout the lifespan of their businesses, from initial formation and funding to the implementation of an exit strategy. We guide through the applicable legal requirements for selling online to both consumers and other businesses. We can help you draft and advise you on:

- setting up and running a new e-commerce business;
- website terms and conditions;
- privacy and cookie policies;
- website acceptable use policies;
- website licensing;
- software licence agreements;
- data protection and intellectual property rights and;
- terms and conditions of sale.



SERVING CLIENTS WORLDWIDE



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