



Policy creep

Overregulation risks retarding growth and job creation in the e-commerce sector

Highlights:

1. Barely 11 months after the Government notified the Consumer Protection (E-Commerce) Rules, 2020, the Department of Consumer Affairs has mooted a set of sweeping amendments, ostensibly to protect the interests of consumers and encourage free and fair competition in the market.
2. Among them is a norm stipulating the appointment of a chief compliance officer, a nodal contact person for 24x7 coordination with law enforcement agencies, and another requiring e-commerce entities offering imported goods or services to 'incorporate a filter mechanism to identify goods based on country of origin and suggest alternatives to ensure a fair opportunity to domestic goods'.
3. A third mandates a fall-back liability on online marketplaces in the event of non-delivery of goods or services to the consumer.
4. Registration has also been made mandatory for all e-commerce players; specific 'flash sales', including 'back-to-back' ones, are set to be banned; and all entities must provide information within 72 hours on any request made by an authorised government agency probing any breach of the law including cybersecurity issues.
5. While on the face of it none of these new rules appears exceptionable, especially when e-commerce tops the National Consumer Helpline's complaints chart, there is still a distinctly discernible pattern to the changes.
6. Following on the heels of the recent IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, the draft e-commerce amendments show the Government's increasing keenness to exercise greater oversight over all online platforms.

Controlling e-commerce:

1. The Centre also appears to be signalling its intent to dig in its heels in an intensifying standoff with Walmart's unit Flipkart, and Amazon, which is both now in court battling an attempt by the Competition Commission of India to reopen a probe into their business practices.



2. The two large e-commerce players have had to contend with accusations that their pricing practices are skewed to favour select sellers on their platforms and that their discounting policies have hurt offline retailers.
3. The fact that the latest changes expressly seek to ensure that none of an e-commerce entity's 'related parties and associated enterprises is enlisted as a seller for sale to consumers directly' could also impact several platforms that retail products supplied by vendors with arm's length ties.
4. The enforcement of many of these norms is bound to spur protracted legal fights. Asserting that the amendments were not aimed at conventional flash sales, the Government said it was only targeting certain entities engaged in limiting consumer choice by indulging in 'back-to-back' sales wherein a seller does not have the capability to meet an order.
5. In trying to address shortcomings in its rules from last year, the Government appears to be harking back to an era of tight controls. Overregulation with scope for interpretative ambiguity risks retarding growth and job creation in the hitherto expanding e-commerce sector.

Countering a political act that has a legal garb

Lessons from history

1. The offence of sedition under Section 124A of the Indian Penal Code (IPC) was inserted in the Code in 1870. In the great trial of 1922, Mahatma Gandhi, charged with sedition, described the provision as perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen.
2. Gandhiji, who himself was a lawyer, made two points in his statement given on March 18, 1922. One, he admitted the charge of preaching disaffection towards the then existing regime. Two, he justified his act and said that it was his duty to do so as it is a sin to have affection for the system (under the British Raj).
3. He explained that Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection so long as he does not contemplate, promote, or incite to violence.

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4. This statement is not only political but also legal. Curiously, this assertion that Gandhiji made in the court was indirectly laid down as the law by the Constitution Bench of the Supreme Court of India in Kedar Nath Singh (1962) which said that incitement to violence is the gist of the offence of sedition.
5. This proposition was followed by the top court consistently where the Court said that a journalist cannot be booked for sedition for expressing dissent.
6. The law was clear even when Gandhiji was convicted and sentenced. Evidently, the charge and the conviction were political, not legal. Even today, the very registration of crimes against political opponents under the draconian laws is essentially a political act, though it takes a legal form.
7. According to the report by the National Crime Records Bureau (NCRB), between 2016 and 2019 there was a 160% increase in the registration of sedition cases whereas the conviction rate during this period fell from 33.3% to 3.3%. Thus, the process itself becomes the punishment.