

INTERMEDIARY LIABILITY OF E-COMMERCE COMPANIES IN INDIA

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ABSTRACT

1. INTRODUCTION

E-commerce (electronic commerce) companies such as Flipkart, eBay, Snapdeal, Amazon *et al.* have become a byword for shopping these days. Because of its relative cheapness and convenience, online retailing has become so

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popular (primarily in urban centers) that it is giving stiff competition to traditional brick-and-mortar stores.¹

But it is undoubted that this booming section of the economy is in need of regulation.² Transactions carried out by e-commerce companies operate in a grey area (legally). For instance, e-commerce sites are able to offer steep discounts. It is alleged that these discounts are probably funded by foreign investments. However, FDI is not allowed in online multi-brand retail. This kind of back-door funding would suggest illegal transactions.³ *Secondly*, many e-commerce sites use warehouses to stock goods. Goods tax and VAT is payable on this. Additionally, inter-state sale of goods is also liable to taxation. But till now, only Tamil Nadu and Karnataka have taken note of this.⁴ The fact that e-commerce sites can offer lower prices without complying with the restrictions which ordinary retailers have to comply with has led to allegations of predatory pricing and anti-competitive practices.⁵

¹ Ashwini K. Sharma, *Clicks overtake footfalls in realty*, Livemint (January 22, 2015), available at

<http://www.livemint.com/Money/TwEw39IsEAW9hC7F76gz7L/Clicks-overtake-footfalls-in-realty.html> Last visited on May 25, 2015.

² Mihir Dalal, *India's e-commerce boom*, Livemint (June 20, 2014), available at <http://www.livemint.com/Industry/Z5LsukiJKgjfdbU3oiTDBO/Indias-ecommerce-boom.html> (Last visited on May 25, 2015).

³ Dhanya Ann Thoppil, *India is one of the Least E-commerce Friendly Markets*, Wall Street Journal (March 30, 2015), available at <http://blogs.wsj.com/indiarealtime/2015/03/30/india-is-one-of-the-least-e-commerce-friendly-markets-says-u-n-body/?KEYWORDS=e-commerce+india> (Last visited on May 25, 2015). See Mihir Dalal and Shrutika Verma, *How Flipkart, Amazon and Snapdeal fund discounts*, LIVEMINT (October 21, 2014), available at <http://www.livemint.com/Industry/boWA7iCWJ2sa6eDrNh4YdL/How-Flipkart-Amazon-and-Snapdeal-fund-discounts.html> (Last visited on May 25, 2015).

⁴ Prashant Deshpande, *E-commerce needs a fair tax deal*, BUSINESS LINE (February 16, 2015), available at <http://www.thehindubusinessline.com/opinion/ecommerce-needs-a-fair-tax-deal/article6902289.ece> (Last visited on May 25, 2015).

⁵ MM Sharma, *India: Do Online Markets Effect Competitions?*, Mondaq (November 14, 2014), available at <http://www.mondaq.com/india/x/353986/Trade+Regulation+Practices/Do+Online+Markets+Effect+Competition> (Last visited on May 25, 2015).

Another regulatory head-scratcher is the intellectual property rights (“IPR”) violations taking place due to the content hosted by e-commerce sites. Content is created by third-party users, and in the absence of a specific agreement between them and copyright-owners regarding trademark, copyright and patent rights, there is an ever-present threat of infringement.⁶The issue is further exacerbated by the fact that there are numerous business models in the e-commerce space. The multiplicity of business models makes it difficult for regulators and government to regulate these companies and ascribe liability particularly in cases where e-commerce companies claim immunity on the basis of the intermediary liability regime in India. A large percentage of the disputes that concern e-commerce companies in the recent past have involved them as intermediaries in some respect or another. They are able to escape liability due to the generic nature of the intermediary liability regime in India which fails to account for the plurality in the business models of e-commerce companies. Consequently, then, this paper will propose an alternative intermediary liability regime to achieve a greater balance between the interest of e-commerce companies on one hand and the aggrieved parties particularly the consumers on the other. The first part of the paper will describe the various business models and try to understand their working. The second part will elucidate the current intermediary liability regime in India. Subsequently, the authors will analyze the problems with the current regime in the third section. Lastly, the fourth part will be devoted to solutions where the authors will propose solutions to the problems with the current system.

2. BUSINESS MODELS OF E-COMMERCE SITES: HOW DO THEY WORK?

It is important to *firstly*, describe what constitutes e-commerce, and *secondly*, to discuss the existing business models in the e-commerce sector.

⁶ Neeraj Dubey, *India: Legal Issues in E-Commerce-Think Before You Click!*, Mondaq (March 14, 2014), available at <http://www.mondaq.com:80/india/x/299686/IT%20internet/Legal%20Issues%20In%20Ecommerce%20Think%20Before%20You%20Click> (Last visited on May 25, 2015).

Though there exists no universally accepted definition of e-commerce, it is generally used to denote a method of conducting business through electronic means than through conventional physical means. The OECD defines it as “*commercial transactions occurring over open networks, such as the Internet.*”⁷The European Commission has more expansively defined it as “*...doing business electronically. It is based on the processing and transmission of data, including electronic trading of goods and services, online delivery of digital content, electronic fund transfers, electronic share trading, electronic bills of lading, commercial auctions, online sourcing, public procurement, direct consumer marketing, and after-sales service.*”⁸

Thus, it is clear that ‘e-commerce’ takes into account not just the sale of goods and services on an online platform, but other related transactions such as delivery, payment facilitation, supply chain and service management.⁹

The following business models have emerged as popular ones in the e-commerce sector: B2B, B2C, C2C, C2B and B2B2C (where: B-business, C-customer, 2-to).¹⁰

The B2B e-commerce model has enabled businesses to connect to new businesses, thus allowing them to perform their commercial functions (distribution, procurement, locating an online marketplace etc.) more efficiently. For instance, IndiaMART.com provides a platform for businesses to find

⁷ *Measuring Electronic Commerce*, Committee For Information, Computer And Communications Policy, OCDE/GD(97)185 (1997), available at [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD\(97\)185&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD(97)185&docLanguage=En) (Last visited on May 25, 2015).

⁸ *A European Initiative in Electronic Commerce*, Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, COM (97) 157 (April 15, 1997), available at <ftp://ftp.cordis.europa.eu/pub/esprit/docs/ecomcom.pdf> (Last visited on May 25, 2015).

⁹ Nishith Desai Associates, *E-Commerce in India: Legal, Tax and Regulatory Analysis*, 1(March 2015), available at http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/E-Commerce_in_India.pdf (Last visited on May 24, 2015).

¹⁰ *Id.*, at 2.

competitive suppliers; Ariba provides access to a digital electronic market.

B2C e-retail entails manufacturers selling directly to consumers, thereby eliminating the middleman (the retailer). To circumvent FDI-related restrictions in India, many e-commerce sites have adopted the marketplace model, i.e. providing a *platform* for business transactions between buyers and sellers.¹¹ The e-commerce company earns commission from the sellers. Most popular e-commerce sites like Flipkart, Snapdeal, Jabong, follow this model. Amazon in the US follows a hybrid marketplace model, but because of the restrictive FDI norms in India, it has to follow a marketplace model like other companies.

A variant of the B2C model is the B2B2C model, where there is an additional intermediary business to assist the first business transact with the end consumer.¹² For instance, several online platforms are tying up with payment gateway facilitators, like Paytm. In this case, Paytm is acting as an intermediary.

C2C enables customer-to-customer transactions by providing a platform for strangers to trade with one another. Portals like eBay and Quikr are perfect examples of this. Quikr, for instance, allows people to sell off goods possessed by them on the site; negotiations on price, quality, and place of exchange can be conducted by the parties themselves.

The C2B model is an interesting reversal of the traditional business models. The consumer in this relationship could be “*any entity who has something to offer a business, either a*

¹¹ Atreyee Sarkar, *India: FDI In B2C E-Retail*, Mondaq (July 4, 2014), available at <http://www.mondaq.com/404.asp?action=login&404;http://www.mondaq.com:80/india/x/325224/international%20trade%20investment/FDI%20in%20B2C%20eretail> (Last visited on May 24, 2015). See Shreeja Sen and Shrutika Verma, *Delhi high court asks govt to consider FDI parity plea by retailers*, Livemint (May 20, 2015), available at <http://www.livemint.com/Politics/ppNjwffGLtKXKZp6Drb4ML/Delhi-HC-asks-govt-to-consider-feud-over-FDI-in-ecommerce-a.html> (Last visited on May 25, 2015).

¹² Desai Associates, *supra* note 9, at 2.

*service or a good.*¹³ Consumers or bloggers reviewing a product, someone answering a poll through a survey site etc. are examples. Intermediary services like PayPal and Google Wallet ease the financial and legal processes involved in this model.

3. INTERMEDIARY LIABILITY FRAMEWORK IN INDIA

Liability for online intermediaries exists in India. It is governed primarily by the Information Technology Act, 2000 (“the IT Act”), supplemented by the IT Amendment Acts of 2006 and 2008 and the IT (Intermediaries Guidelines) Rules, 2011 (“the IT Rules”). The RBI has also given directions in 2009 for electronic payments through intermediaries.¹⁴

Section 2(1) (w) of the IT Act, as amended in 2008, defines ‘intermediary’ *“with respect to any particular electronic records, means any person who on behalf of another person receives, 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 cyber cafes.”* (Emphasis supplied) This definition squarely identifies e-commerce companies named in the first section as intermediaries.

Section 79 of the IT Act, as it stands today (having been amended in 2006 and 2008), debars an intermediary from being held liable for any third party information, data or communication link hosted by him/her in certain cases. If an intermediary is a mere *conduit* to information (by *“providing access to a communication system over which information*

¹³ Katherine Arline, *What is C2B?*, Business News Daily (January 2, 2015), available at <http://www.businessnewsdaily.com/5001-what-is-c2b.html> (Last visited on May 24, 2015).

¹⁴ Reserve Bank of India, *Directions for opening and operation of Accounts and settlement of payments for electronic payment transactions involving intermediaries*, RBI/2009-10/231 (2009), available at <https://www.rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=5379#M> (Last visited on May 24, 2015).

made available by third parties is transmitted or temporarily stored"¹⁵, or merely *hosts* the content without initiating, or modifying the content in, the transmission, or without selecting the receiver,¹⁶ and the intermediary generally observes *due diligence* while discharging his duties,¹⁷ such an intermediary cannot be held liable. However, this exemption does not apply if the intermediary has played a part in the commission of the unlawful act (by conspiring, abetting, inducing or otherwise)¹⁸ or had knowledge of the said unlawful information, and failed to expeditiously remove it/disable access to it.¹⁹ An important clarificatory provision is the Explanation to this section, which states that 'third party information' means any information dealt with by an intermediary in his/her capacity as intermediary. Section 81 of the IT Act gives overriding powers to the provisions of the IT Act over those of other existing legislations, except for the Copyright Act, 1957 and the Patents Act, 1970.

The above provisions lay down a *notice-and-takedown* regime of intermediary liability for India. Simply put, this mandates that to avail of *safe harbor* provisions, a host must comply with takedown notices expeditiously, by removing the illegal content or disabling access to it. This puts India in the same category as the EU²⁰ and the USA²¹ who also espouse a notice-and-takedown regime, as opposed to Canada which prefers a unique notice-and-notice regime.²²

Rule 3 of the IT Rules lays down the specific measures which intermediaries must comply with, to meet the 'due diligence' standard (given in Section 79(2) (c) of the IT Act). Publication of the privacy policy, rules and regulations and user agreement is necessary for access to the intermediary's resources,²³ contravention of which can lead to the termination of user's

¹⁵ S. 79(2)(a), IT Act, 2000.

¹⁶ S. 79(2)(b), IT Act, 2000.

¹⁷ S. 79(2)(c), IT Act, 2000.

¹⁸ S. 79(3)(a), IT Act, 2000.

¹⁹ S. 79(3)(b), IT Act, 2000.

²⁰ Articles 12-14, the E-Commerce Directive 2000 (Directive 2000/31/EC).

²¹ S. 512(c), Digital Millennium Copyright Act, 1998.

²² Ss. 41.25, 41.26 and 41.27(3), Copyright Modernization Act, 2012.

²³ Rule 3(1), the IT (Intermediaries Guidelines) Rules, 2011.

rights to access.²⁴Certain kind of information (that which is harmful, libelous, violative of IPR, contains viruses etc.) must not be hosted, uploaded, transmitted or shared.²⁵Violations are not constituted by the temporary storage of such information, if there is no human editorial control.²⁶When an intermediary is informed (i.e. given notice) by the affected person that his/her computer system is storing or hosting such information, he/she must remove or render inaccessible such information within 36 hours of receiving the notice.²⁷

A rather dangerous position was adopted by the Delhi High Court in the case of *Super Cassettes v. Myspace*,²⁸ when it assumed that an intermediary held a *reasonable ground of belief* in respect of the infringing activity on his/her site.²⁹ While such an assumption holds true in the physical world, it breaks down in virtual space; intermediaries have little monitory control over the dissemination of information on their site. However, the High Court used this faulty line of reasoning to hold the defendant liable for running a website that facilitated the sharing of media content by users/subscribers.

4. CRITICISM OF THE EXISTING INTERMEDIARY LIABILITY FRAMEWORK

There are several criticisms of the current intermediary liability framework in India. *Firstly*, holding intermediaries responsible for third-party violations would have a chilling effect on user-privacy and freedom of expression, as intermediaries would be more likely to pre-emptively take down content which they think

²⁴ Rule 3(5), the IT (Intermediaries Guidelines) Rules, 2011.

²⁵ Rule 3(2), the IT (Intermediaries Guidelines) Rules, 2011.

²⁶ Rule 3(3), the IT (Intermediaries Guidelines) Rules, 2011.

²⁷ Rule 3(4), the IT (Intermediaries Guidelines) Rules, 2011.

²⁸ *Super Cassettes Industries Ltd. v. Myspace Inc.* [2011] (48) PTC 49 (Delhi High Court).

²⁹ AnanthPadmanabhan, *Give Me My Space and Take Down His*, 9 Indian Journal of Law and Technology 8 (2013), available at <http://www.ijlt.in/archive/volume9/Ananth%20Padmanabhan.pdf> (Last visited on May 25, 2015).

might constitute a violation.³⁰ An empirical study conducted actually proves this to be true.³¹ Moreover, the requirement of *pre-censorship*, as embodied in Rules 3(2) and 3(3) of the IT Rules, is permissible within certain circumstances only, which were laid down in *Prakash Jha Productions v. Union of India*.³² These are not met by the existing IT Rules. Also, Rules 3(2) and 3(3) envisage an unrestrained degree of prior-censorship,³⁴ as is clear from a bare reading of the provisions. Moreover, the terms listed in Rule 3(2) are *vague* and subjective, due to which there is a definite threat of *over-censorship*.³⁵

Secondly, the redressal mechanism (carried out by the designated Grievance Officer),³⁶ seems prone to the filing of frivolous complaints and possible misuse of the process. The complaining party, who claims to be affected, is not required to show any grounds for his/her complaint. The complainant has no fear of repercussions and can thus end up suppressing legitimate expression.³⁷ No opportunity to be heard is given to the third party creator/provider of information. Lastly, there is no procedure to get information which has been removed wrongly restored by filing a counter notice or by appealing to a higher authority.

Thirdly, there is no substantive requirement to distinguish between the different kinds of intermediaries which emerge as

³⁰ Margot Kaminski, *Positive Proposals for Treatment of Online Intermediaries*, 28 American University of International Law Review 203, 206 (2013).

³¹ *Intermediary Liability in India: Chilling Effects on Free Expression on the Internet*, Centre for Internet & Society, 29 (2011), available at cis-india.org/internet-governance/chilling-effects-on-free-expression-on-internet/intermediary-liability-in-india.pdf (Last visited on May 25, 2015).

³² *Prakash Jha Productions v. Union of India* (2011) 8 SCC 372.

³⁴ Ujwala Uppaluri, *Constitutional Analysis of the Information Technology (Intermediaries' Guidelines) Rules, 2011*, Centre for Internet and Society, available at <http://cis-india.org/internet-governance/constitutional-analysis-of-intermediaries-guidelines-rules> (Last visited on May 25, 2015).

³⁵ *Id.*

³⁶ Rule 3(11), the IT (Intermediaries Guidelines) Rules, 2011.

³⁷ *Intermediary Liability & Freedom of Expression*, Centre for Internet and Society, available at <http://cis-india.org/internet-governance/intermediary-liability-and-foe-executive-summary.pdf> (Last visited on May 25, 2015).

a result of diverse e-commerce business models. Despite carrying out miscellaneous operations, they have been lumped into one category for the purposes of the IT Rules. For instance, intermediaries which act as 'mere conduits'³⁸ are entirely exempt from liability for copyright infringement by virtue of Section 52(1) of the Copyright Act, 1957. Section 79(2) of the IT Act also provides such an exemption, in the opinion of the researcher. However, a contrary decision was given in *R.K. Productions v. BSNL and Others*.³⁹ The complainant filed for the removal of its song (which was widely accessible on torrent and video-sharing sites, prior to the release of the film). The defendants were unknown 'John Does' (third-party users/creators were unidentified) as well as ISPs (Internet Service Providers). The Court accepted the contention that the ISPs must necessarily be parties to the suit, as the act of piracy occurs on the network provided by them.⁴⁰ By doing so, the researcher believes that the use of the *reasonable grounds of belief* argument in the *Myspace* judgement, faulty as it is, has been over-extended here.

Fourthly, there is also a strong public choice problem. There is always an asymmetry between private benefits from recognizing IPR and denying IPR.⁴¹ The highest stakeholders in intermediary liability (the potential plaintiff and defendant) have a greater interest in designing liability laws, than Interest users whose interests are diffuse.⁴² Thus, intermediaries' interests may not entirely be aligned with those of their users.⁴³

5. EXAMINING POSSIBLE SOLUTIONS

It is not uncommon to hear pornographic and sexually explicit material, prescription drugs, sex determination tests etc. being

³⁸ A conduit is an entity which solely facilitates the technical process of electronic transmission or communication of information. See Article 12, E-Commerce Directive 2000 (Directive 2000/31/EC). Speaking footnote.

³⁹ *R.K. Productions v. BSNL and Others* (2012) 5 LW 626

⁴⁰ Padmanabhan, *supra* note 29, at 10-11.

⁴¹ William M. Landes and Richard A. Posner, *The Political Economy of Intellectual Property Law*, 15-16 (2004). (Volume number and full name of the journal missing)

⁴² Kaminski, *supra* note 30, at 206.

⁴³ Kaminski, *supra* note 30, at 206.

offered on these websites.⁴⁴ There have also been instances of infringement of intellectual property rights (IP) as counterfeits and fake products are bought and sold on these platforms.⁴⁵ Further, there are occasions where goods remain undelivered, empty boxes were delivered or warranties were not honored. In all these cases, the question that comes for debate is who is responsible? While on one hand, placing an absolute liability on the intermediaries would amount to a restriction on their fundamental right to carry on trade or business,⁴⁶ exonerating them from any liability whatsoever will have significant ramifications for the interest of consumers and copyright holders. Hence, it is essential to find a solution that balances the rights of all concerned parties.

In contrast to other intermediaries on the internet, the activities of e-commerce companies have deeper ramifications for consumer protection. Hence, manual filtering or automatic screening requirements should be imposed on them in order to prevent copyright infringement, sale of counterfeit products, prescription drugs, obscene material *et al.* Since intermediaries are the *cheapest cost avoiders*, they are best placed to effectively protect the interest of consumers.⁴⁷ To put it simply, such a requirement needs to be accepted by e-commerce companies as a balancing act among rights exercised by different stakeholders.⁴⁸

⁴⁴ Alok Deshpande, *Snapdeal faces heat over sale of prescription drugs*, The Hindu (April 18, 2015), available at <http://www.thehindu.com/news/national/snapdeal-faces-heat-over-sale-of-prescription-drugs/article7114960.ece> (Last visited on May 25, 2015).

⁴⁵ RasulBailay, *Saree distributor Shree Meena Creations drags Flipkart, Amazon, eBay, others to court for selling replicas of products*, The Economic Times (May 1, 2015), available at http://articles.economictimes.indiatimes.com/2015-05-01/news/61723933_1_amazon-india-flipkart-spokesperson-sarees (Last visited on May 25, 2015).

⁴⁶ Art. 19(1)(g), The Constitution Of India.

⁴⁷ Stephen G. Gilles, *Negligence, Strict Liability and the Cheapest Cost-Avoider*, 78(6) Virginia Law Review 1291, 1306 (1992).

⁴⁸ Lilian Edwards and, Charlotte Waelde, *Online Intermediaries and Liability for Copyright Infringement*, 19 (Workshop Keynote Paper, WIPO, 2005) available at <http://www.era.lib.ed.ac.uk/bitstream/1842/2305/1/wipoonlineintermediaries.pdf> (Last visited on May 25, 2105).

At this juncture, it might be argued that allowing e-commerce companies to judge the legality of the good being sold will amount to private censorship. A similar question was considered by the apex court in the recent case of *Shreya Singhal v. Union of India*.⁴⁹ Section 79(3) (b) of the IT Act was read down to mean that the requirement of “knowledge” in the section will be fulfilled only if it is acquired in pursuance of a court order. This concern regarding private censorship also provides a counter to the proponents of manual filtering.

Admittedly, such a position is desirable as the general position of law. However, the same is likely to give a free ride to the e-commerce companies as well as the spurious sellers to continue selling the good unless the hapless consumer or IP holder manages to get an interim order of the court in his favor. It is absurd to require a court order in cases such as sale of prescription drugs or where the owner of IP can produce the IP certificate declaring his ownership. Hence, in the opinion of the authors, the ideal position of law in this regard should be to provide for a general rule of non-removal unless directed by the court. In addition, a list of specific items or situations should be provided where access to a particular item can be disabled even without a court order.

It is surprising to note that most of the e-commerce companies neither carry out any physical verification nor authenticate the credentials or past record of a vendor or a seller before it is allowed to list its product on their websites. Admittedly, verification will involve cost and time. However, at the same time, it will help in improving the overall consumer experience and satisfaction in the long run.⁵⁰ E-commerce companies can take assistance from independent professional agencies in this regard. Hence, it is proposed that B2C and B2B2C companies should be required by law to verify a seller before it is allowed to list its products in order to introduce a modicum of authenticity.

⁴⁹ *Shreya Singhal v. Union of India*, 2015 SCC OnLine SC 248.

⁵⁰ PayalGanguly, *How e-retailers such as Flipkart, Amazon are keeping fake products at bay*, *The Economic Times* (January 8, 2015), available at http://articles.economictimes.indiatimes.com/2015-01-08/news/57791521_1_amazon-india-sellers-mystery-shoppers (Last visited on July 25, 2015).

When it comes to C2C models, the major distinction between this and the B2C/B2B2C model is the fact that the C2C model provides a much greater scope for physical interaction between the buyer and the seller and hence, a real opportunity to discuss terms, negotiate, inspect the product and conduct due diligence. The e-commerce company only provides a platform for establishing the link between the prospective buyer and seller. The isolated nature of transactions means that the verification procedure suggested for B2C/B2B2C model cannot be made applicable here. Therefore, placing any additional liability apart from the takedown requirement on C2C companies will not serve any utility.

For companies like Airbnb, Uber, Ola Cabs, Taxi For Sure *et al.*, the company is merely providing access to a transmission channel which automatically selects the nearest available cab and hence are exempted under Section 79(2) of the IT Act.⁵¹ It is clear that the notice and takedown requirement and the due diligence conditions will not be of any utility here. Hence, such services offer unique challenges to the intermediary liability regime as there is virtually no provision in the current law to regulate their activities. The same was visible quite recently in the infamous Uber rape case in Delhi.⁵² Consumers are increasingly dependent on such services and hence, a suitable approach to reduce the potential of harm is to provide for a mandatory background check and verification of the driver in case of cab companies. Similar measures should be adopted with respect to other aggregator services too.

However, it is evident that with the growth of the internet in future, new business models will continue to test the manner in which law interacts with technology. Unfortunately, experience shows that law fails to keep pace with technology. A suitable remedy to address the same could be the establishment of flexible guidelines to regulate future business models on the lines of U.S. Federal Communications Commission's future

⁵¹ S. 79(2)(a), IT Act, 2000.

⁵² *India woman sues Uber over driver rape allegation*, BBC News (January 30, 2015), available at <http://www.bbc.com/news/world-asia-india-31052849> (Last visited on May 25, 2015).

conduct standard for determination of new practices' compliance with net neutrality principles.⁵³

6. CONCLUSION

In this paper, the authors have examined the boom of the e-commerce sector. This has formed the backdrop for the discussion on the various business models which e-commerce companies are following today. This initial discussion paved the way for examining the existing intermediary liability regime in India, mainly with regard to the IT Act and the IT Rules of 2011.

It is clear that the intermediary liability regime in India is far from satisfactory. International and national media's reaction to the IT Rules of 2011 is particularly telling. The New York Times reported it as "*India Puts Tight Leash on Internet Free Speech*",⁵⁴ the Washington Post as "*India and China anger webizens with new Internet laws and government censorship*"⁵⁵ and the Economic Times as "*New internet rules open to arbitrary interpretation*".⁵⁶ These perfectly encapsulate all of the problems that the existing intermediary liability framework is beset with and which have been enumerated here.

The authors themselves identified four criticisms for the existing regime. There are both ideological and theoretical issues, such as those of chilling effect and the public choice problems.

⁵³ *Net neutrality rules let FCC police future ISP conduct*, cio.in (March 20, 2015), available at <http://www.cio.in/analysis/net-neutrality-rules-let-fcc-police-future-isp-conduct> (Last visited on May 25, 2015).

⁵⁴ Vikas Bajaj, *India Puts Tight Leash on Internet Free Speech*, The New York Times (April 27, 2011), available at http://www.nytimes.com/2011/04/28/technology/28internet.html?_r=0 (Last visited on May 25, 2015).

⁵⁵ *New Internet Laws Crackdown in India and China anger webizens*, Washington Post (2011), available at http://www.washingtonpost.com/blogs/worldviews/post/new-internet-laws-crackdown-in-india-and-china-anger-webizens/2011/08/01/gIQAazFQnl_blog.html (Last visited on May 25, 2015).

⁵⁶ ManojMitra and JavedAnwer, *New internet rules open to arbitrary interpretation*, THE ECONOMIC TIMES (April 27, 2011), available at http://articles.economictimes.indiatimes.com/2011-04-27/news/29479039_1_intermediaries-internet-user-rules (Last visited on May 25, 2015).

There are also practical considerations such as the glitches within the redressal mechanism. The lumping together of all e-commerce companies for liability purposes, without regard for the fine distinctions among different business models is also quite problematic.

Thus, the authors sought to provide more differentiated solutions, keeping in mind the varying business models of the companies. Because grouping them together will lead to violation of laws on one front or another as one or more will slip through the wide meshes of a broad liability regime. The measures suggested appear to be stop-gap or short-term solutions. But these are the need of the day, as violations by the e-commerce sector are mounting. These do not preclude the urgent need for legislative deliberation, discussion and codification in this sphere. Reformation must also seek to provide necessary infrastructure for further growth and better sustenance of e-commerce companies.