REGULATING ONLINE TRANSACTIONS: AN ANALYSIS OF CHALLENGES AND OPPORTUNITIES IN THE DIGITAL COMMERCE AND SALE OF GOODS ACT, 1930

Falguni Sharma[*] Darsheen Kaur Thapar[*]

ABSTRACT

In recent years, digital commerce has become more and more integrated into our daily lives. Billions of dollars worth of business transactions are carried out through this rapidly expanding new industry. Because the steps necessary to conclude and form an e-contract are different and may even be considered more technical than those required to conclude and form traditional contracts, this technological advancement has led to faster methods of conducting online transactions. This is in contrast to traditional transactions. This paper examines the opportunities and challenges that digital commerce presents in the context of regulating online transactions under the Sale of Goods Act (SOGA). The swift growth of e-commerce has completely changed the way that products are purchased and sold. It has opened up new markets and provided convenience, but it has also complicated existing legal regulations. The SOGA, which originally intended to regulate face-to-face transactions, has loopholes adapting to regulate online purchases. Important concerns include applying implied requirements, such as adequate quality, to intangible items like software or digital content, and defining terms like "delivery" in a digital context. Cross-border transactions can create jurisdictional challenges that make it more difficult to enforce seller responsibilities and consumer rights in a variety of regulatory regimes. There are opportunities for legal progress in spite of these hurdles. Legislative frameworks are being updated by jurisdictions to better accommodate digital commerce. Reforms might concentrate on defining the statutory status of electronic contracts, addressing privacy and data protection issues, and putting in place effective online dispute resolution methods.

Keywords: Digital Commerce, Sale Of Goods Act – SOGA, Jurisdictional Challenges, Online Transaction, Data Protection.

[*]LLB, FIRST YEAR, MANAV RACHNA UNIVERSITY.
[*]LLB, FIRST YEAR, MANAV RACHNA UNIVERSITY.

INTRODUCTION

The opportunities and challenges of regulating online transactions in the realm of digital commerce, particularly in the context of the Sale of Goods Act, 1930, present a dynamic landscape that requires a comprehensive understanding of legal frameworks and consumer protection. As e-commerce continues to transform the economic environment, strong rules to protect consumer rights, enforce fair practices, and manage cross-border transactions become increasingly vital. Balancing the increasing potential of online commerce with the need for legal compliance and effective dispute-resolution methods is critical to building confidence and sustainability in the digital marketplace. This research paper intends to delve into the intricate interplay of regulatory frameworks, technical improvements, and the developing nature of online transactions to reveal the essential aspects of opportunities and problems in regulating digital commerce under the Sale of Goods Act, 1930.

E-commerce, or digital commerce, refers to the online purchase and sale of goods and services. It has changed dramatically over time, from the early days of online shopping in the mid-1990s with platforms like eBay to the emergence of mobile commerce in the mid-2000s, and the continuous development of e-commerce platforms to support different business models such as business-to-business (B2B), business-to-consumer (B2C), and direct-to-consumer (D2C). The Sale of Goods Act, 1930 is an Indian mercantile law that is mostly modelled after the United Kingdom's Sale of Goods Act 1893. The act allows for the creation of contracts in which the seller transfers or promises to transfer title to the goods sold to the buyer for a predetermined fee and period.

DIGITAL COMMERCE and SOGA,1930

Digital commerce, also known as e-commerce, involves the buying and selling of goods and services electronically. It encompasses a wide range of activities, which include digital marketing, electronic payments, online shopping, etc. E-commerce websites have also evolved over time, from simple text-based catalogues of products with limited functionality to rich and interactive shopping experiences with high-quality images, video content, personalized product recommendations, streamlined navigation, and responsive design for mobile devices. The future of e-commerce is likely to focus on personalization, automation, and the expansion of omnichannel strategies, with advances in artificial intelligence, virtual reality, and the Internet of Things enabling retailers to create highly personalized shopping experiences tailored to individual customers. The ongoing expansion of social commerce, voice commerce, and new payment methods such as digital wallets and cryptocurrencies will also contribute to the ongoing evolution of e-commerce.

The Sale of Goods Act, 1930 defines a contract of sale as an agreement between a buyer and a seller where there is an offer to buy or sell for a cost and the approval of said proposal. A contract may provide for immediate delivery of the goods, immediate payment of the price, or both, or for the delivery or payment or both to be postponed. A contract of sale may be made in writing, by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties. The act defines goods as any type of moveable property other than actionable claims and money, and it includes stock and shares, growing crops, grass, and anything attached to or forming part of land that are agreed to be severed prior to sale or under the contract of sale. The Sale of Goods Act, 1930 has been applied to e-commerce transactions in recent years. The Indian government published e-commerce guidelines in 2018 stating that all online retailers need to abide by the rules set forth in the Sale of Goods Act, 1930.

EVOLUTION of TRADITIONAL MODE OF TRANSACTION

For centuries, traditional transactions have remained the foundation of the financial system. The barter system was a part of traditional transactions. The term "traditional payment methods" refers to the ordinary techniques used to exchange cash or cheques for goods and services between seller and buyer. Cash used to be the most common form of transaction among people. These payment methods have been in use for millennia which include:

- cash,
- cheques, and
- credit transfers.

For decades, these methods have served as the foundation for financial transactions, providing users with ease and familiarity. A move toward more effective banking operations emerged in the 1990s with the advent of computers, electronic databases, and ATMs. Beyond regular banking hours, ATMs enabled users to acquire cash and carry out basic banking functions. The advent of mobile phones and the internet in the early 2000s brought a digital revolution in banking. The ability to monitor accounts, transfer money, and pay bills remotely was made possible by banks' introduction of online banking. Mobile banking use was hastened by the proliferation of smartphones. To make it easier for customers to complete transactions from anywhere, banks developed user-friendly apps. Financial inclusion programs such as the Jan Dhan Yojana have enabled the banking sector to grow and attract more individuals into the official financial system. The demonetization initiatives of 2016 were a crucial trigger, resulting in an increase in the use of digital payment systems like as mobile wallets, UPI, and online banking as physical cash became scarce.

TRADITIONAL TRANSACTION

PERKS	LIMITATIONS
Familiarity and Trust: People are accustomed to traditional payments and have more trust in using methods that have been long on the market.	**Lack of Transparency:** Traditional systems may lack transparency, making it difficult for companies to trace payments precisely due to various intermediaries engaged in the transaction process, raising the risk of errors and fraud.
Wide Acceptance: Traditional payments are widely accepted globally, providing convenience and ease of use to the majority of consumers.	**Slow Processing Time:** Traditional payments can be complex to process, taking several days for money to clear after a client makes a payment.
Regulation and Consumer Protection: Traditional payments are frequently regulated by government authorities and banks, offering a certain amount of consumer protection.	**Limited Accessibility:** Traditional payments can be limited in terms of accessibility, as not all businesses take particular payment methods, limiting their potential to reach a larger client base.

In recent years, there has been a shift from traditional payment towards digital methods of payment, which are electronic and do not require physical or actual currency. This shift has not only made transactions faster, safer and more convenient, but it has also increased financial inclusion by bringing more individuals into the fold of digital payments. Digital payment methods include:

- mobile payments
- online banking
- digital wallets
- UPI – Unified Payments Interface
- Internet Banking

Online transactions are the buying and selling of goods and services over the internet. These transactions can occur between individuals, between businesses, or between individuals and businesses. This shift towards online transactions was significantly influenced by the growing use of technology. The use of technology in business is becoming increasingly important, with technology being used in the majority of corporate activities and transactions. The emphasis of traditional companies is shifting to e-business, which requires comparatively less capital and yields higher returns, as a result of programs like Digital India. Even though this trend has been there for 15 years, the industry has had incredible growth in the last 5 years, up over 50%. This Act has a variety of effects on e-commerce and grants it legal legitimacy. The Sale of Goods Act, 1930 was intended only for traditional businesses prior to the e-commerce boom. However, in order to ensure legal sanctity, this Act is now applied to virtual firms as well. The Indian Contract Act of 1872 establishes the principles that govern the enforcement of all electronic contracts.

EMERGENCE of DIGITAL COMMERCE

The emergence of online transactions and digital commerce has revolutionized the way businesses operate and consumers shop. Traditional stores in person are increasingly experiencing stiff competition from online sellers. Consumers now have the convenience of purchasing goods and services from the comfort of their own homes, with access to unlimited resources and information. Online shopping has become a popular choice due to its accessibility, convenience, and the ability to compare prices and read reviews before making a purchase. Overall, online transactions, and digitization have revolutionized how commerce is conducted by commercial entities or consumers, which seamlessly offer something that old retail can never deliver. The emergence of online transactions and digitization has given limitless resources, availability, and accessibility to consumers, thereby making shopping and doing business patterns change significantly. The fast growth of the internet infrastructure has promoted the average appearance of e-commerce as a regular activity in the modern world.

The Sale of Goods Act, 1930, has also made suitable provisions to regulate the sale of goods in digital commerce. This act critically ensures and secures that transactions occur transparently. Considering that digital commerce is an evolving phenomenon, businesses must account for the legal frameworks that they fall under, and customers should also be kept aware of all. Online transaction presents both opportunities and challenges and understanding the legal aspects is crucial for businesses to thrive in this dynamic environment.

Global figures suggest that e-commerce sales are gradually expanding, with the global e-commerce business valued at $4.9 trillion in 2021 and predicted to reach $7.4 trillion by 2025. India's e-commerce industry is expected to grow to $200 billion by 2026, thanks to a population that is youthful, tech-savvy, and increased smartphone usage.

SALE OF GOODS ACT,1930 – Performance of Contract in Relation to Digital Commerce

The Sale of Goods Act of 1930 established righteousness, and Sections 32 to 40 are easily applicable to the E-commerce industry. We cannot limit its operations because of the diversified nature of trade simply because new provisions are not yet available to counter the allegations made by either party. The IT Act, 2000 serves as the foundation for e-commerce, and as a result, e-contracts are becoming increasingly important. Delivery is the fundamental challenge for any e-commerce company, and since it's only the beginning, additional regulations will inevitably be created over time to address issues that may arise in the future as a result of the way these businesses operate. Laws must be flexible enough to be changed as circumstances and time dictate. The Sale of Goods Act of 1930 may see a few amendments in the future in respect to E-commerce. Until then, the safeguards appear to be adequate and in place to protect the rights of both buyer and seller.

Section 33 states- "Delivery of the goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any other person authorised to hold them on his behalf". The delivery mode is covered in the first part of this section. It can be made by doing anything that both sides agree will be accepted as long as delivery is simple. In regards to e-commerce, the following example could help: A buys books from B's merchant site, and the entire cost of the item has been paid for using net banking. He requests that the merchant site retain his product exclusively because A was not in the city at the time of delivery.

This delivery will fall under "made by doing anything which the parties agree shall be treated as delivery".

Section 34 says- "A delivery of part of goods, in the progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole, but a delivery of part of the goods, with intention of severing it from the whole, does not operate as a delivery of the remainder". This section can be understood in the context of any E-commerce operation. For example, A puts an order for five books from merchant site B. Due to stock delays and other factors, A receives three books within the first week of placing the order and the remaining two within the following week. A's acceptance of the first three books indicates that part delivery has been allowed. If he does not want to receive part deliveries, he can cancel the order at any moment.

Section 36 must be understood in the context of E-commerce transactions. In most e-commerce transactions, the seller ships the products to the customer after getting the order. The location of delivery for online purchases is governed by an express contract. The customer receives the items from the company's warehouse, where they were previously stored. Section 36 is silent on the mode of delivery of the products and any reasonable mode can be adopted by the company. Sub-section (2) – "Where under the contract of sale the seller is bound to send the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time" deals with the time of delivery and says that the seller must deliver the items in a reasonable period of time, and where a deadline is set, the seller must adhere to it. Various factors, such as the type of goods, transportation infrastructure, and associated concerns, may influence this. If the deadline is missed, there will be a breach of the agreement. For the convenience of its customers, the majority of e-commerce websites offer a seven-to-ten-day delivery window, although frequently they deliver earlier. A few more e-commerce companies, such as Alibaba and eBay, have requested a longer time frame, which may go up to one month, due to the location of their business.

Section 40 of the Sale of Goods Act, 1930 says "Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit." It talks about risk when goods are delivered to distant places. In the realm of e-commerce, huge corporations like Amazon and Flipkart have limited their operations to certain Ghaziabad areas due to product mishandling and cases of courier theft, including battery charges. These incidents have forced these companies to blacklist those areas and only deliver orders with a minimum value. Using Section 40, the corporation can avoid obligation if the buyer receives damaged goods.

These Sections are sufficient for establishing accountability with regard to e-commerce. Without these safeguards, it would be challenging to give the virtual business environment legitimacy. However, because of the quick advancements in business and technology, it has limitations and loopholes.

WHAT ARE THE KEY CHALLENGES FACED IN REGULATING ONLINE TRANSACTIONS?

Regulating online transactions presents several challenges that hinder the regulation and proper functioning of digital commerce. Factors such as customers' preference for the use of the home/local currency when shopping are a challenge. Poor online security, ineffective electronic payment mechanisms, delays in product shipment, and poor return policy are some of the obstacles to the regulation of online transactions. These obstacles are some of the reasons for the lack of confidence in electronic payment modes and continue to impact the e-commerce sector. The issue of online fraud contributes to these challenges, with hackers targeting personal and financial information, resulting in instances of fraud in online trading, evidenced by the increasing number of cross-border fraud cases and financial losses reported on ecommerce.gov.

Additionally, adhering to data protection regulations like the GDPR is essential for safeguarding customer privacy during online transactions and imposes hefty expenses on e-commerce businesses. In an effort to address these issues, legislation like the Consumer Protection Act of 2019 and the Consumer Protection (E-commerce) Rules of 2020 have been introduced. These laws aim to improve online transaction security and consumer protection while also reducing the lack of trust and insecurity among internet and online customers brought on by insufficient laws and regulations. Online transaction regulation is made more difficult by issues with digital payment security, consumer protection in e-commerce, and unfair trading practices. These challenges, in addition to the legal ones, highlight the need for improved security measures and dependable customer care services in order to foster trust in online transactions.

Key challenges faced in regulating online transactions under the Sale of Goods Act (SOGA) include:

1. **Complexity of Ownership Transfer -** The traditional rules governing ownership transfer under SOGA, which are based on the Sale of Goods Act of 1893, are deemed outdated and unfit for purpose in today's consumer environment, particularly in the context of online transactions. The intricacy arises from the fact that ownership ("title") of commodities and goods flows to the buyer on multiple occasions, depending on the contractual circumstances. Determining when ownership truly flows for things purchased online, orders for production, or requiring more action before delivery or pickup can be difficult, particularly for a buyer in an insolvency situation.
2. **Timing of Ownership Transfer -** Another challenge with online transactions is the timing of ownership transfers. According to the SOGA, ownership ("title") to goods passes to the buyer at the latest when the items are in a "deliverable state," fully and irrevocably appropriated to the contract, and the buyer expresses or impliedly agrees to both of those conditions. However, for things purchased online, ordered for manufacture, or requiring more action prior to delivery or pickup, determining when true ownership passes can be difficult, generating confusion for both the buyer and seller.
3. **Impact of Insolvency on Ownership Rights -** The impact of insolvency on ownership rights is a serious challenge in online commerce. If a buyer has paid the purchase price for things that have not yet been delivered, there is a chance that they will only have an unsecured claim in the case of the seller's bankruptcy, leaving them at risk of receiving a low or no dividend payment on their debt. This challenge highlights the significance of precise regulations governing ownership transfer in online transactions, especially in the context of insolvency.
4. **Jurisdictional Issues and Cross-border Transactions** – Online transactions usually involve parties from multiple countries, each with its own legal framework and rules. Regulators are under pressure to navigate the complexities of cross-border transactions and harmonize laws across nations. A lack of international cooperation and uniform

laws can result in monitoring and enforcement gaps that facilitate online fraud and other illegal activities.

5. **Privacy and Data Protection –** Data and privacy protection is a major problem in an era where personal data is being gathered, processed, and disseminated widely. During online transactions, sensitive personal data, like addresses, phone numbers, and financial information, are regularly transmitted. To prevent identity theft, cybercrimes, and data breaches, regulatory bodies must establish robust data protection protocols and strictly enforce adherence to them. Regulators find it extremely challenging to strike a balance between the requirements of data privacy and the needs of online transactions.
6. **Fraud and Cybersecurity Threats –** The number of online transactions increases the danger of fraud and raises cybersecurity concerns. Cybercriminals are constantly on the lookout for new methods to exploit vulnerabilities in online systems in order to steal money or private data. Regulators must remain vigilant and proactive in identifying and removing these threats. Strong defences must be put in place to stop fraud, such as the use of encryption technology, the enforcement of secure authentication protocols, and public education about hacking and other common frauds.
7. **Consumer Protection and Dispute Resolution** - Online consumers could be more vulnerable to dishonest sellers, fake products, or fraud. Procedures for consumer protection and dispute resolution must be put in place if customers are to continue trusting online purchases. Regulators are expected to ensure that consumers have access to equitable settlement procedures and redress in the case of a dispute or an unsatisfactory transaction. This necessitates the development of comprehensive consumer protection laws, effective enforcement protocols, and readily available mechanisms for reporting concerns.

To address these issues, the Law Commission has proposed changes to the Sale of Goods Act 1979 (SOGA) and the Consumer Rights Act, 2015, that would bring them into the twenty-first century and make them more relevant to today's consumer climate, particularly in the context of online transactions. The purpose of these proposed changes is to safeguard buyers' rights in the case of insolvency, expedite ownership transfer processes, and make ownership timing clearer. These modifications include making the ownership transfer regulations more straightforward, making it clear when ownership transfers, and making sure that buyers' interests are safeguarded in the case of insolvency. The SOGA and CRA would be better suited for the contemporary consumer environment and brought into the twenty-first century with these recommended changes.

WHAT OPPORTUNITY SHOULD THE ACT PRESENT FOR THE DIGITAL COMMERCE SECTOR?

SOGA must use a multifaceted strategy that takes into account both technological and human variables in order to properly solve the issues that arise during e-payments.

First and first, it's critical to make sure that security measures are strong. To protect transactions from fraud and hackers, this entails putting encryption techniques, multi-factor authentication, and continuous monitoring systems into place.

Second, SOGA ought to give user awareness and education a top priority. Many problems arise from individuals unintentionally sharing sensitive information or falling for phishing attempts. SOGA can enable users to defend themselves against fraud by teaching them safe account management techniques and identifying any security risks.

Furthermore, SOGA needs to set up effective and transparent conflict resolution procedures. Even with precautions taken, miscommunications or technical issues could still lead to conflicts. By offering consumers easily accessible avenues for reporting problems and swiftly and fairly resolving disputes, SOGA can continue to strengthen confidence in its online payments platform.

In order to guarantee dependability and effectiveness, SOGA needs also to make investments in ongoing system improvements and maintenance. To reduce downtime and avoid disruptions to e-payment systems, regular vulnerability testing and performance optimization are crucial.

Collaboration with industry stakeholders and regulatory agencies is also essential. By keeping up with changing industry standards and regulatory regulations, SOGA can guarantee compliance and promote a reliable and safe e-payment ecosystem.

For example, the General Data Protection Regulation (GDPR) was put into effect by the European Union to safeguard appropriate security measures and customer data privacy. Like the Indian Contract Act, 1872, which regulates contracts executed electronically, the GDPR offers legal status to digital signatures and electronic contracts.

The Federal Trade Commission (FTC) of the United States has put laws into place to stop anti-competitive behaviour and the misuse of dominant market positions. These laws also apply to some areas where e-commerce is conducted. In order to create a worldwide framework for digital trade, the United States also takes part in international trade discussions, such as the WTO e-commerce negotiations.

China passed a specific e-commerce law in 2018 with the goals of preserving market order, protecting the rights and interests of legal e-commerce businesses, and encouraging the industry's steady growth. The law encourages the combined growth of online and offline businesses and mandates that they be treated equally.

While India announced the Draft E-commerce Policy in 2018–19 to close the gap in the country's e-commerce regulatory landscape, Saudi Arabia and Indonesia also have legislation specifically pertaining to e-commerce.

Finally, SOGA needs to put flexibility and scalability first in order to handle rising transaction volumes and new technologies. Future-proofing its e-payment platform and remaining competitive in the quickly changing digital payments landscape can be achieved by SOGA through investments in scalable infrastructure and remaining flexible in response to technological breakthroughs.

CONCLUSION

The convergence of digital commerce with traditional legal frameworks like the Sale of Goods Act presents opportunities and difficulties for regulators, firms, and consumers in the fast-expanding digital commerce sector. The present study has investigated the intricacies involved in implementing extant laws in the context of virtual transactions, revealing significant perspectives on the efficiency and constraints of such regulatory frameworks.

The Sale of Goods Act, which dates back to a time before the Internet, is a fundamental component of both consumer protection and business operations. This legislation, in spite of its historical background, provides a solid structure that, with thoughtful consideration, can be updated for the digital era. The Sale of Goods Act could be updated to specifically address electronic contracts and transactions in order to close the gap between customary legal practices and the particular difficulties presented by Internet sales. This adjustment may help to define terms that are unclear, like "delivery" and "acceptance," when referring to virtual goods and services.

There are challenges in enforcing online purchase regulations under the Sale of Goods Act. The global aspect of e-commerce, which frequently crosses national borders, is one of the main obstacles. Because of this worldwide reach, there may be differences in how different legal systems handle consumer protection and contract law. Enforcing common norms in the digital economy poses a significant problem for regulators, which involves harmonizing these frameworks. Emerging technologies like blockchain and artificial intelligence-driven transactions present new legal problems that may not fit neatly into traditional regulations.

Regulators must adopt technologies that improve consumer choice and convenience while working to uphold core legal norms. To achieve this balance, legislators, business stakeholders, and legal professionals must have constant interaction in order to create flexible regulatory frameworks that change as technology advances.

Regulators may create the framework for a secure and sustainable digital marketplace that benefits both firms and consumers by capitalizing on existing legislation's opportunities while tackling the inherent challenges.

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