

**THE INCORPORATION OF E-COMMERCE PLATFORMS IN THE DIRECT
SELLING BUSINESS: A COMPREHENSIVE ANALYSIS OF IT'S SIGNIFICANCE,
LEGAL LOOPHOLES & SCOPE OF IMPROVEMENTS**

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ABSTRACT

Direct selling, a traditional business model, has been present in numerous countries around the world for many years. In India, direct selling businesses have been established since the 1980s, with recent developments involving their integration with e-commerce entities. This paper examines various types of direct-selling businesses, traces the evolution of current direct-selling regulations, and identifies the gaps in the current regulatory framework. The paper explores the enforceability of guidelines and rules in the court of law, similar to statutes, and recommends dedicated legislation for direct selling businesses in India. The integration of direct-selling businesses with e-commerce platforms has several benefits for both parties. The paper also highlights the importance of artificial intelligence (AI) and technological advancements in streamlining various aspects of direct selling to provide a better, faster, and more customised experience for customers. The use of AI-powered software facilitates the concept of social selling, which is a relatively new phenomenon. The paper compares the new technology with traditional methods, emphasising the advancements made thus far. However, the paper also identifies the drawbacks of this integration, including legal loopholes in the current system that impact the entire ecosystem. The paper advocates for a comprehensive definition of direct-selling businesses to prevent innocent individuals from being unnecessarily prosecuted. Overall, the integration of direct selling with e-commerce platforms has significant potential for growth and development, but it is essential to address the legal and regulatory challenges to ensure a sustainable and equitable business environment. This paper differentiates itself from others by not only identifying the gaps in the current framework but also suggesting solutions by incorporating best practices from other nations and their experiences in addressing these issues. After conducting a thorough analysis of the evolution, benefits, and drawbacks of the existing framework by examining precedents, the paper

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concludes, underscoring the significance of these measures for both customers and the nation as a whole.

Keywords: Direct Selling, E-Commerce, Integration, Social Selling, Automation, Guidelines, Rules.

INTRODUCTION

The Federation of Indian Chambers of Commerce and Industry defines Direct Selling as a sales and distribution channel whereby, based on specific rules, direct sellers can earn income not only from personal sales but also from ongoing sales and consumption of the people they have connected with the business and invested in their training and capacity building. There are two types of Direct Selling formats one is Single Level Market Selling (SLM) and other is Multi Level Market Selling (MLM) in SLM the seller is solely rewarded through the purchase made, neither he can refer anyone, nor help gain commission from others sell. In the MLM system, the seller earns both from his sales as well as commission from the sale of others¹.

The concept of Direct Selling has been prevalent in the past and has evolved over centuries. Although it originated in the United States of America, it flourished in other continents throughout history. In 1855, the Southwest Company was established to sell books through mail. After the Civil War ended, it began selling books door-to-door, making it the first and oldest direct-selling company.

In India, direct-selling companies can be traced back to the 1980s, and the industry grew significantly after liberalization with many global players entering the market. Amway was one of the first major companies to enter the Indian market in 1995, followed by Avon, Oriflame², and Tupperware in 1996. Medicare was among the first Indian companies to adopt the concept of direct selling, and it is currently growing at a tremendous rate. Since the development of e-commerce platforms, direct selling companies have had to update themselves in order to sustain themselves, these platforms offer chances to the direct selling platforms the chance to expand their business through online platforms on the one hand and immersive experience to the

¹ Aniket Piyush, 'All you need to know about Direct Selling in India', (ipleaders ,18 February 2017) available at <https://blog.ipleaders.in/need-know-direct-selling-laws-india/> accessed 25/6/24.

² Jay Parikh, Varun Kumar, Saranya Lal, 'Regulating Direct Sells in India,The Road to Consumer Protection (Direct Selling) Rules , 2021', (mondaq , 7 March 2022) available at <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/1168786/regulating-direct-selling-in-india-%7C-the-road-to-the-consumer-protection-direct-selling-rules-2021>, accessed 25/6/24.

customers through the use of artificial intelligence and automation tools. The Direct selling business is projected to reach an annual market size of ₹645 billion by 2025. The first attempt to regulate the market began in 2012 with a Gazette Notification dated 5.10.12, which aimed to regulate the Direct Selling Entity. The regulation of Direct Selling Business has evolved significantly, and this paper will discuss the evolution of the regulatory mechanism in India, the integration of e-commerce capabilities in the Direct Selling Business, the consequences of such integration, and regulatory loopholes that need to be addressed.

EVOLUTION OF THE DIRECT SELLING BUSINESS REGULATION IN INDIA

Before the enactment of the Direct Selling Rules, one of the main complaints of the Direct Selling Industry was the misapplication of the Prize Chits and Money Circulation Scheme (banning) PCMCS Act. Due to the lack of Specific Legislation, an increasing number of criminal proceedings have been made against the Direct Selling Business entities. The main ground of contention was “*The Requirement of any event and contingency relative to the entry of new members in the scheme*” resulting in the prosecution of the genuine direct selling business companies. Following this, in 2010, the inter-ministerial group under the Central Economic Intelligence Bureau was formulated to address issues related to direct selling entities. The group concluded that the Department of Consumer Affairs should create a repository for all complaints made by individuals. In 2012, the Inter-ministerial Committee recommended that the PCMCS Act be amended to provide a clear distinction between direct selling activities and the Ponzi scheme. In 2013, a High-Level Committee headed by DFS was formed, which recommended doing away with the existing PCMCS Act and creating separate legislation on Direct Selling, all of which culminated in the formation of the Direct Selling Guidelines 2016³. Following the advent of the guidelines, it is argued that they are not enforceable owing to their position as a guideline and mere advisory in nature. Article 19(1)(g) of the Indian Constitution states that guidelines do not trace their origin to the statutes, and thus, it is not legally enforceable as a law. The nature of the argument can be countered by a plethora of judgments of the Hon’ble Court, which held that a law to be exercised does not need to originate from the statutes. It can also be argued that many times the executive needs to implement guidelines to adapt to the changing circumstances for which no law has been passed by the legislative. The government is fully capable of conducting its business via executive order provided such guidelines don’t infringe anyone’s fundamental rights. Though one can say Fundamental rights

³ Direct Selling Guidelines , Department of Consumer Affairs, (9/9/2016)

can only be curtailed by valid law as per Article 13 of the Indian Constitution but are enforceable as long they are conducive to everyone's fundamental rights, here the cases of Bijoe Emmanuel⁴ and Navin Jindal⁵ can be looked upon as precedents. The essence of the entire argument is to secure accountability of the E-commerce entities and prevent the entities from selling the product of Direct Selling Businesses without their prior consent.

Clause 7(6) of the said guidelines applies to any person who sells or offers for sale, thus by virtue E-commerce entities also fall under this said criterion and thus E-commerce entities will be held liable if they sell any product without prior consent and cannot claim a Fundamental right to sell products which are only meant to be sold through direct selling.

In the year 2020, The Consumer Protection E-commerce rules came into Existence, which defined an inventory E-commerce entity as an entity that includes an inventory of goods and services that sell directly to the customer, which includes single-brand retailers and multi-channel single-brand retailers.

To prevent any ambiguity in the year 2021 the Government came up with the current regulatory regime Direct Selling Rules 2021⁶ Guidelines. The rules cleared away the ambiguity of the previous guidelines. Rule 10 of the Consumer Protection Direct Selling Rules states categorically, that any person or e-commerce platform that displays or sells any product must obtain the prior consent of the Direct Selling Business entity in a written format to initiate such sell or offer. Other than that the Rules prescribe many guidelines conducive to the Direct selling business eco-system in the country, but there are many loopholes in the existing Rules which need to be addressed subsequently.

AN OCEAN OF OPPORTUNITIES: THE SIGNIFICANCE

The cohesion between direct selling business and e-commerce platforms proved its prowess when the entire world was engulfed in the life-threatening COVID-19 pandemic. The interrelation between the direct selling business and e-commerce changes the face of business in the 21st century, creating an interactive interface between salespersons and consumers.

⁴ Bijoe Emmanuel v. State of Kerala (1986) 3 SCC 615.

⁵ Union of India v Naveen Jindal and Anr (2004) 2 SCC 510.

⁶ Draft Consumer Protection (Direct Selling) Rules, Department of Consumer Affairs , (30/6/21).

The term social media means a group of Internet applications that build on the foundations of ideology and technology from Web 2.0, which allows the creation and exchange of data. The integration of social media with marketing tools helps the business promote its products and recruit distributors efficiently. Social media help the audience reach a broader customer base, and successfully tapping leads significantly increases the conversion rate. Social media applications have been meticulously used to generate leads and create brand presence among customers by direct selling entities. In today's time, social media has become such a viable medium because it allows users to freely share information and allows subscribers to freely communicate and interact; furthermore, it provides an opportunity for direct selling business entities to gauge the likes, dislikes, and opinions of their users, and analyzing this data helps uncover trends, popularity, or disapproval of a product. One of the major benefits of e-marketing is that it gives a brand the opportunity to create goodwill among its target audience. The marketing channel includes short message service⁷, multimedia message service, mobile e-mail, and mobile advertising.

Short-message service is the quickest and most economical way to send messages to target customers. It is extensively used by businesses to send text-based messages to customers with links attached to a specified website or contact number. Furthermore, the success rate in this form of marketing is quite high because the customers themselves have given their consent to receive the message via SMS, and thus customers are more likely to positively react than in any form of unsolicited messaging. Similar to the multi-media message service, it allows specific brands to promote their products or services in a more versatile, expressive, and targeted manner. Mobile application relevance is growing with the increasing population of mobile users. Apps offer unlimited possibilities in terms of expanding business opportunities and improving personal connections. Other forms of connecting are via mobile email marketing, which is an inexpensive way to reach customers who have willingly registered as users on the e-commerce platforms. It's an efficient way to reach new customers while staying in touch with existing ones. Mobile advertising, with the growing number of mobile users, is widely becoming popular as a scope of marketing. Mobile marketing can bring great results

⁷ Monaliz Amirhanpour, Demetris Vrontis, Alkis Thrassou, 'Mobile marketing : a contemporary strategic perspective , 9 (3) , Int. J. Technology Marketing' ,(2014) available at https://www.researchgate.net/publication/263808178_Mobile_Marketing_A_Contemporary_Strategic_Perspective , accessed 25/6/24.

with cooperation with other online and offline platforms in order to tap leads and generate revenue.

Lead generation, in common parlance, is known as the means to attract potential customers and draw their attention towards the products and services of a brand. Direct selling businesses are increasingly cooperating with e-commerce platforms to promote their products and services; furthermore, much multi-level marketing software is available in the market with automated lead management systems to increase the sales of the businesses. Potential customers can be reached through calls, social media advertising, e-mail marketing, and SMS.

E-commerce platforms use search engine optimisation, pay-per-click, and conversion rate optimisation, which are crucial in converting random viewers into committed customers, benefiting both the direct selling business entity by increasing its sales and the e-commerce platform by increasing traffic. Moreover, many e-commerce entities provide inventory and packaging services to direct-selling business entities, further improving their operations.

The cohesion of direct-selling business entities and e-commerce platforms has further hastened the process of disintermediation. Disintermediation⁸, in simple terms, means the removal of intermediaries so that the customer gets the product or services at the cheapest possible rate. Further, it streamlines the distribution process, making it more efficient. Customer-specific technologies link customers with the seller, removing the need for any intermediaries. This technology was developed with the goal of enabling customers to buy goods without the assistance of any salesperson, which benefits the customers in many ways. First, it permits the customers to increase their consideration set of products and services; second, it allows customers to transact without the help of any salesperson; and lastly, it allows the customer to buy products or avail services at any time of his convenience. Recent studies have suggested that technologies like sales force automation technology enable tracking of every interaction between the salesperson and the consumer, and similarly, customer-related management systems enable the organisation to track potential customers and maintain the current customer base, further improving customer retention.

⁸ Michael Ahearne, Adam Rapp, THE ROLE OF TECHNOLOGY AT THE INTERFACE BETWEEN SALESPERSON AND CONSUMERS, 30(2), *The Journal of Personal Selling and Sales Management*, (2010), available at <https://www.researchgate.net/publication/228216729> *The Role of Technology at the Interface Between Salespeople and Consumers*, accessed 25/6/24.

The synergy between DSB and e-commerce made the payment mechanism far more convenient for the users, further streamlining economic operations. Per the newest regulation, an e-commerce platform can sell products of a DSB entity with prior consent and can also act as an intermediary. As a result, an increasing number of customers using the e-payment mechanism further bolsters sales. E-payment can be defined as a transfer of value from the payer to the recipient. E-payment services come with a web-based user interface that allows the user to manage their transactions remotely. The faceless, paperless, and cashless mechanisms are widely used by consumers because of their economic benefits, convenience, and seamless transition.

Economic benefits include a higher interest rate for the creditor and a lower interest rate for the debtor; moreover, the transaction costs of financial service providers are far higher than those of e-wallet platforms. E-wallet platforms oftentimes provide cash back, coupons, and vouchers to their users for using their platform for transactions, making them a far more attractive alternative to conventional service providers. Convenience can be highlighted by the fact that users can access and transact through e-wallet platforms at any point in time and place. Furthermore, the E-wallet platform allows its users to send remittances, avail banking services, check balance amounts, and use a plethora of other services, making it a convenient option for all. E-wallet platforms are providing one-stop processing for all operations, facilitating seamless transactions.

Gauging the technological advancements and development of crypto currency, many e-wallet platforms allow crypto currency payment; for instance, Apple Pay allows customers to transact through a crypto debit card. The platform converts the crypto currency into a dollar at the current market value and facilitates the purchase of products or services. By offering crypto currency transactions, the DSB entities are becoming more appealing to tech-savvy customers and offering more flexible payment options. The benefits of integrating the DSB system into crypto currency are many. First, the DSB network transcends global boundaries, unlike traditional MLM, which is restricted to its local boundaries. Second, the blockchain technology that underpins the crypto currency provides security and safety to the transactions, which enhances its credibility

The integration of a unified payment interface into e-commerce platforms revolutionised digital payments. payments. The UPI provides high security to its users with two-step authentication and a PIN verification system, which ensures the crucial details of the consumer remain

protected. UPI provides a real-time payment option and allows the consumer to transact seamlessly from any preferred bank account, which account, which facilitates interoperability. Oftentimes, the e-commerce platforms tie up with UPI service providers to give exciting deals and discounts to their customers. These offers not only increase the revenue of the e-commerce platforms but also ensure customer loyalty and subsequent purchases. With the technological improvements in the UPI system, like integrating voice-based assistance and facilities like invoice payment and overdraft facilities and quick redressal of disputes, the UPI system simplifies the procedure by directly refunding the payer's bank account. In case of any discrepancies, the user can access streamlined channels for lodging complaints and getting remedies. remedies. As a result, consumers are increasingly favouring e-commerce over the traditional retail industry, benefiting the DSB operating on e-commerce platforms. Furthermore, the rapid development of Internet technology has facilitated Internet banking. Internet banking enables users to pay in a simple, effective, faster, and easier manner. Internet banking is preferred over conventional banking services because it provides information services; every piece of every piece of information pertaining to the user can be simply accessed with a click, whereas conventional banking provides only financial services. Secondly, internet banking can be accessed at any time and anywhere, allowing the user to pay at his convenience. convenience. lastly, availability of the banking services 24 hours, furthermore the chatbots on the internet banking applications assist the user whenever needed, allowing the user to communicate effectively.

Language is the most effective means of communicating and persuading. As a result, e-commerce platforms are integrating with AI-based translation software by adapting words to convey the same emotion, furthermore, it facilitates cultural awareness, cultural sensitivity, creativity, and responsiveness. The scope of activities goes beyond just translating words; localising websites enhances accessibility and the overall experience of the users. Direct-selling business entities working with an e-commerce platform can foster cross-border transactions and expand their businesses.

The rapid development of artificial intelligence capabilities in recent times has made the incorporation of direct selling businesses into e-commerce platforms far more efficient and effective, equally benefiting both buyers and sellers. Previously, DSB platforms found it harder to reach customers, making it difficult to generate sales for the company. Furthermore, this process involves more cost, labor, and investment with a substantially lesser return on the

investment, but in today's time, due to the presence of AI, a wide array of facilities are available, providing a more personalised experience to the buyers and increasing the chances of sale. Using AI to introduce social selling and increase rapport with the customers, persuading them to stay loyal to the brand. Social selling is far from conventional advertising, which is all about attracting crowds by spamming customers, blasting them with special discounts, and continuously sending links to the webpage; rather, it's all about catering to customer's needs and concerns before they even realize it. As a Direct Selling Business is dependent upon its network of agents (who many a time buy products from the DSB and with their consent further sell) and customers to run its business, social selling further facilitates this effort through real-time conversation, sharing accurate information at the correct time. Trust and credibility are two main factors in the minds of customers while buying products from e-commerce platforms. Social selling addresses these concerns by maintaining a strong brand presence over various social media platforms, ensuring seamless experiences through omnichannel publishing, engaging with customers at regular intervals, promptly addressing their grievances, and satisfying customers with personalised services that gradually build faith and credibility among customers. The domain of social selling includes marketing strategies, brand awareness, cost-effectiveness, securing customer data, customer support, and an integrated system. Social selling is not primarily concerned with targeting customers to buy the products but more with providing a personalised experience through real-time campaigns, social media interactions, chatbots, and converting prospects into loyal customers. It also includes taking feedback and reviews from the customers, using social media to answer customer queries, and integrating with various components to give a complete holistic experience to the customers.

Automation has brought revolutions in this field, from calculating commissions online to on-hand real-time inventory to providing logistical support and customer service. For instance, CloudOffix⁹ is a cloud-based consumer relationship management software that integrates online and offline channels for ensuring effective management, boosting sales, and engaging customers across multiple platforms in an online-offline hybrid mode. CloudOffix streamlines the sales process of DSB entities by integrating with an e-commerce platform and aiding in the management of the sales funnel. It also provides comprehensive tools for efficient distribution network monitoring and specialised features for warehouse management, inventory handling, purchasing, sales, CRM, and invoicing, ensuring a smooth flow of goods throughout the supply

⁹ 'Revolutionize Direct Selling and E-Commerce Management', (CloudOffix), available at <https://www.cloudoffix.com/integrated-direct-sales-and-e-commerce>, accessed on 25/6/24.

chain. It has a shared database on a single platform, which comes in handy for managing inventory and sales. It manages real-time inventory by allowing both the customer and the distributor to access the same system, facilitating sales and online purchases. The integrated system aids in recording transaction details, sales records, invoice amounts, updates when new stock arrives, sending notifications when the stock level drops, and keeping track of the entire inventory, which simplifies and streamlines the entire distribution system of the DSB.

The core areas of automation include Bonus and Commission Automation, Business Intelligence (BI)¹⁰, Business Process Automation, Distributor Engagement Automation, Genealogy Management, Notification automation, Agent retention automation, Social media automation, Forgery identification, and Sales automation. The roles of each AI-based automation tool will be explained subsequently. The function of every AI-based automation tool will be discussed subsequently.

Commission automation tools make the difficult job of maintaining spreadsheets and calculating incentives much easier and more accurate, ensuring timely payment of commissions to the agents and also fostering transparency. Furthermore, it provides a mechanism for tax calculation and generates reports based on real-time insights. Business intelligence tools assist the user in making smarter decisions by giving insights into buyer's preferences and buying patterns and helping to make sound decisions. It also provides actual time data insights and location-based data analysis, aiding the user in making informed decisions. The Business Process (BPA) automated the repetitive tasks. One can create a custom work schedule in the BPA, and the BPA will automatically give a notification when a specific criterion is fulfilled as per the custom work schedule of the user. Distributor Engagement Automation (DEA) is crucial for tracking the performance of each distributor and dispatching commissions accordingly. DEA enjoys the same features as the dashboard management system, making it an ideal fit for the modern workplace. A genealogy management system is used to track the hierarchy of the distributors and the new agents adding up in the downline. As the team grows, it becomes difficult to manage each member separately. This system is crucial to managing the team and executive projects smoothly; furthermore, it comes in handy in the training and development of the recruits. Notification automation helps generate traffic by sending notifications in bulk to the mobile devices of consumers. Agent Retention

¹⁰'Top 10 Network Marketing Automation Tools (2024)', (Global MLM Software), available at <https://www.globalmlmsolution.com/blog/top-network-marketing-automation-tools>, accessed on 25/6/24.

Automation helps in creating separate profiles for the agents and can be used to track each agent's performance; moreover, it facilitates a personalised touch with the agent and helps in retaining them in the network. Social media automation is used to generate creative content for posts and analyse the return on investment, engagement on each post, and data collection, which are crucial for improving leads and connecting with prospective customers. Forgery detection tools are crucial for detecting possible security threats. It can track and verify each order placed through physical and IP address certification. Sales automation tools are the most crucial mechanism; they automate the entire process of sale and fast-track the entire procedure after the order is placed by the customer to prevent the customer from cancelling the order.

It's the speed and convenience provided by these AI-powered automation tools that more and more orders are being placed every day on E-commerce websites, Direct Selling Businesses who are integrating with E-commerce portals are also reaping the benefits. Currently, many specialised AI power software is available in the market which are being used by the DSB entities who are not integrated with E-commerce platforms but at least to say it comes with additional cost, thus making the E-commerce DSB cohesion the most economical option benefitting all the stakeholders.

THE OTHER SIDE OF THE COIN: THE COMPLICATIONS

Issues Pertaining Jurisdiction

Section 20 of the Civil Procedure Code¹¹, governs the jurisdiction of the parties where no express agreement regarding the jurisdiction of the contracting parties exists. The fundamental issue with section 20 of CPC is that in online transactions it's difficult to determine the cause of action, when or where the offer has been accepted.

The IT Act's flaw is its combination of contract formation location and place of business, which limits the application of the cause of action-place of business test. Furthermore, section 13 of the IT Act says that jurisdiction must be determined by the place of the business of the opposite party which essentially contradicts section 11¹² of the Consumer Protection Act, which says that the consumer can approach the district court even where just the branch office of the opposite party function. Then there is an issue regarding the enforceability of judgments in

¹¹ The Civil Procedure Code, 1908, s 20. Other suits to be instituted where defendant reside or cause of action arise.

¹² S.11, The Consumer Protection act, 2019.

foreign courts, section 44A¹³ of the CPC talks about reciprocal agreements with foreign territories, where judgments are enforced but no remedy has been provided in the absence of similar reciprocal agreements.

Intellectual Property Infringement

In the case of Amway India Pvt. Ltd. vs 1 Mg Technologies Pvt. Ltd. & Anr¹⁴, the petitioner DSB entities Amway, Oriflame and Modi Care filed complaints against E-commerce platforms including Amazon, Flipkart, Snapdeal, IMG and Healthkart for selling their products on their respective platform without consenting with the petitioners. Clause 7(6) of the Direct Selling 2016 guidelines specifically lays down that the E-commerce platforms must obtain prior consent from the Direct seller before selling their product on their E-commerce platform which makes them liable for the misconduct. Furthermore, during the investigation, it was found by the Hon'ble Court that the products sold were being tampered the quality was being compromised, and inadequate return policy and flawed redressal mechanism tarnished the image of the brand and infringed their trademark. But later the earlier judgement of the Hon'ble single bench was overturned by stating that guidelines being statutory in nature cannot be enforced, as a result, it concluded it's not obligatory for the e-commerce platforms to take prior consent of the DSB entities, but it emphasis the importance of securing consent for using Trademark in context of advertising, promotion, etc. In the year 2021 the Government came up with the current regulatory regime Direct Selling Rules 2021 Guidelines. Rule 10 of the Consumer Protection Direct Selling Rules states categorically, that any person or e-commerce platform that displays or sells any product must obtain the prior consent of the Direct Selling Business entity in a written format to initiate such sale or offer, but passing a new Act would definitely be a better option, furthermore even after passing of the new Direct Selling Consumer Protection Rules 2021 still today counterfeit products of registered companies are being sold on third-party intermediaries.

Existing Ambiguities

The case of PayPal Payments Pvt. Ltd. ('PayPal') Vs. Financial Intelligence Unit India & Anr.¹⁵ highlight the effect of existing ambiguity in the legal system. In this case, the FIU urged PayPal to register as a "reporting entity", but PayPal refused to do so stating it acts as a service

¹³ S.44(A), The Civil Procedure Code, 1908

¹⁴ Amway India Pvt. Ltd. vs 1 Mg Technologies Pvt. Ltd. & Anr AIR (2019) DEL 1322.

¹⁵ PayPal Payments Pvt. Ltd. ('PayPal') Vs. Financial Intelligence Unit India & Anr [W.P.(C)] 138/2021].

provider and at no stage Funds are handled by PayPal. PayPal submitted that the definition of payment system in the Payment and Settlement System(PSS) Act 2007 is pari materia with the Prevention of Money Laundering Act (PMLA) and as PayPal is just a mere Online Payment Gateway Service Provider (OPGSP) thus it is not a reporting entity. The Hon'ble Delhi High Court denied this contention and said that the definition of the payment system in the PMLA must be widely construed to include OPGSP. Digital Wallets are crucial for the growth of the E-commerce ecosystem but ambiguities as such and lack of clear legal position hinder the growth.

Determining the intermediaries' liability is a persistent issue in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Numerous legal disputes have focused on the meaning of the term "actual knowledge" and the impact of cease and desist (C&D) notices. Furthermore, the trademark owner cannot be left without recourse if the sellers are based abroad and the trademark owner is unable to take legal action against the seller of counterfeit goods on the online marketplace. Furthermore, immunity has been given to the E-commerce platforms, against the posting of unlawful content on their platform in which the E-commerce platforms have allegedly little control. When being charged, the same safe harbour is being quoted by them as defence making prosecution difficult.

Lastly, there are many instances in the past where legitimate direct selling business is considered as a Ponzi scheme has been exhaustively defined and being prosecuted, recent guidelines have extensively defined pyramid schemes but have not defined direct selling business which is certain to create ambiguities in the future.

Data Protection

The restrictions on the scope and nature of information sought by regulations are also not specified. For instance, personal information, such as the details of a person's interactions with others, may be requested. Lack of controls could potentially harm individuals' privacy.

Data and privacy protection are essential issues that require regulation. Both domestic and foreign organizations should be subject to a regulatory system similar to the EU General Data Protection Regulation.

Procedural Complication

Firstly the implementation of the rules is not uniform among states, secondly states like Andhra Pradesh which has implemented rules have reserved posts for Registering Authority, Appellate Authority, Disciplinary Authority, Revision Authority, and Enforcement Officer. Even though it makes sense that the goal of establishing these numerous positions was to precisely and fully define each officer's duties, it is not unreasonable to suggest that the establishment of these numerous positions could cause the DS Rules, 2021 to be implemented more slowly than planned.

SOLUTIONS AND WAY FORWARD

The Challenge of selling counterfeit products on e-commerce platforms is one of the most prominent issues faced even by developing countries. To resolve this issue United States, Direct Selling Entities can obtain Temporary Restraining Offers (TRO) against the seller who is selling counterfeit products, by freezing his proceeds citing that the company will suffer injury and loss if the order is not granted. Also, the Union Government must take the initiative to pass a separate statute for regulating the DSB entities.

The Union Government must take the initiative to create a dedicated Nodal Ministry to address the concerns of this DSB sector, a Nodal Ministry will act as a single line of contact. Currently, the companies are not sure where to look in case of any inconvenience whether it Ministry of Consumer Affairs, Food and Public Distribution or the Department of Industry Policy and Promotion.

The Union Government must take the initiative to clearly define the Direct Selling Business, lack of such will always create ambiguity. In the past, because of a lack of a clear definition of the Ponzi¹⁶ Scheme regulatory uncertainties hit the country's economy, for instance, Mary Kay Inc. left the Indian market in 2013 because of a lack of a clear regulatory framework. The "ambiguity on acceptable norms for direct selling in India" was the reason even Hindustan Unilever Network, which was founded in 2003 has left the Indian market. In the case of State of Bengal vs. Swapan kr. Guha and Sanchita Investment¹⁷, the partnership firm was wrongfully accused of running a money circulation scheme, where the Supreme Court had to intervene

¹⁶ Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

¹⁷ State of Bengal vs. Swapan kr. Guha and Sanchita Investment (1982) SCC 561.

stating that “the promise of a rapid return of money” doesn’t fall under the ambit of an illegal money circulation scheme exemplifies the consequences of indefinite legal interpretation.

Protection of personal information and data are crucial issues that call for legislation. A legislative framework akin to the EU General Data Protection Regulation ought to apply to both domestic and foreign organizations. The Article 25¹⁸ "privacy by design" requirement may also require that privacy concerns be taken into account while developing a website or e-commerce page. Article 3(2)¹⁹ states that the law may be applied extraterritorially to non-EU organizations that keep an eye on how people behave inside the EU.

European Union (EU) legislation can be used to overcome two major issues in cross-border transactions: the enforcement of contracts and the jurisdiction of courts. According to "Article 17(1) of the EU's Brussels I Regulation,"²⁰ if a trader uses any kind of targeted approach or advertising in the consumer's home state, the consumer's jurisdictional court will be the competent court.

To prevent the DSB entities from promoting any malpractice, the Indian government must take inspiration from Vietnam. As of now in India no license is required to start a DSB entity, one just simply applies for membership in the Indian Direct Selling Association, which is a private body, with the view to regulate businesses Vietnam passed a new decree with stringent regulations. As per decree 110, a license granted to a DSB entity is for six months and it can be cancelled in case of any irregularities. Mechanism as such will ensure the quality and integrity of the DSB entities operating in India. Along with that the E-commerce entities should be held strictly liable for infringing the copyright of the DSB entities and promoting any malpractices on their platforms, more clarity should be given on the term “Actual Knowledge”.

CONCLUSION

The foregoing paper attempted to study the tracks of the Evolution of the Direct Selling Business, the regulatory framework associated with the Direct Selling Business and finally its incorporation into the E-commerce entities. The paper also identifies the benefits of such cohesion, and its drawbacks and also tries to give probable solutions after critically analyzing the existing framework and suggesting best practices of other countries to incorporate into your

¹⁸ General Data Protection Regulation, (European Union), [2016] , art . 25

¹⁹ General Data Protection Regulation, (European Union), [2016], art 3(2).

²⁰ Brussels Regulation, (European Union), [2002], art 17(1)

existing regulatory regime it also emphasizes the need for precise legal definitions of concepts and comprehensive understanding intricate legal nuances. To conclude the interplay of human intelligence and artificial intelligence has created a harmonious symphony further revolutionizing the Direct Selling Industry and E-commerce platforms collaboration.

