POLICY CONSENSUS CENTRE

Policy Brief

PCC/PB/2025/007
August 2025

Do India's E-commerce Policies Balance Innovation and Regulation?

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List of Abbreviations

ASTM	American Society for Testing and Materials
BIS	Bureau of Indian Standards
COPRA	Consumer Protection Act
DoCA	Department of Consumer Affairs
DPIIT	Department for Promotion of Industry and Internal Trade
FDI	Foreign Direct Investment
FSSAI	Food Safety and Standards Authority of India
FTP	Foreign Trade Policy
GeM	Government e-Marketplace
IT	Information Technology
KYC	Know Your Customer
MRP	Manufacture, Retail Selling Price
MSMEs	Micro, Small, and Medium Enterprises
ONDC	Open Network for Digital Commerce
UPI	Unified Payments Interface
US	United States
USD	United States Dollar

1. Introduction

E-commerce came to India late, but it grew at an incredibly fast pace. Not surprisingly, the then regulatory framework for the retail sector, which was still under List II of Schedule 7 of the Constitution (meaning State subject) was not only not sufficient, but also inadequate, to regulate e-commerce. This forced new regulatory frameworks to develop and emerge to accommodate new formats of the retail sector.

E-commerce in India still stands only at around 7 per cent of total retail. With an estimated and projected growth rate of 15 per cent year on year, India's e-commerce sector is expected to reach a value of USD 345 billion by 2030[1]. With increase in smart phone penetration, UPI payments. And overall digital inclusion, this kind of growth in e-commerce is not surprising. As the sector has grown and evolved, so has the regulatory framework for e-commerce, but regulation often plays a paradoxical dual role; it must govern the market behaviour to ensure fairness, stability, and consumer protection, whilst simultaneously ensuring that the sector also grows and develops. This inherent duality, often a double-edged sword, forms the crux of the constant struggle to find the perfect, but often elusive balance between "under" regulation and "over regulation."

2. Summary of Existing E-commerce Regulation in India

The biggest problem with e-commerce regulation as it stands today is its convoluted structure that borders on over regulation. Policymakers have already created significant regulatory arbitrage by creating differentiated regulations for different players within the e-commerce sector.

2.1 Information Technology Act

The IT Act 2000 defined electronic commerce as "…transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce."[2] This Act provided one of the earliest definitions for e-commerce and for almost a decade, the IT Act 2000 was the core regulation guiding basic operation of e-commerce in India and has acted as the foundational legislation for e-commerce in India. It provides legal recognition to electronic transactions, digital signatures, and the authentication of electronic records. The 2008 amendment introduced provisions related to data protection, cybersecurity, and intermediary liability, making it a critical regulation for e-commerce platforms.

2.2 Foreign Direct Investment

Subsequent to the IT Act 2000, the Department for Promotion of Industry and Internal Trade (DPIIT) (erstwhile Department of Industrial Policy Promotion (DIPP)), under the

[1] https://www.ibef.org/industry/ecommerce

[2] THE INFORMATION TECHNOLOGY ACT, 2000 (No. 21 OF 2000), 9th June 2000, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department), New Delhi

Ministry of Commerce and Industry (MoC&I), through Press Note 2 (2000 series)[3], permitted foreign direct investment (FDI) up to 100 per cent only for e-commerce activities in B2B trade, keeping retail trade through e-commerce out for foreign investors.

The significant changes began with the "Make in India" programme, aimed at improving India's manufacturing, which resulted in DIPP Press Note 3 (2016 series), that allowed for e-commerce in B2C format albeit with certain conditions. DIPP become the default nodal regulatory agency for e-commerce since at that time the Consumer Protection Act was yet to be amended, and didn't have the wherewithal to regulate e-commerce. Press Note 3 not only redefined e-commerce but also classified e-commerce into two distinct models - "inventory-based model" and "market-based model" - with separate FDI and operational norms for both models.[4] This classification also created the initial regulatory arbitrages.

Then in 2017 came the Consolidated FDI Policy 2017 that created another sub-category under e-commerce for food products manufactured or produces in India, in which it allowed for 100 per cent FDI under Government approval route.[5] In 2018, the FDI Policy was further amended to allow for 100 per cent FDI in the marketplace model under the automatic route. However, these were subject to more stringent operational parameters.[6] Some of these were, prohibiting ownership or control of inventory, ensuring non-discriminatory services to all sellers, and barring exclusive sales on platforms, to name a few. FDI in inventory model was still not permitted.

Then came Press Note 2 (2018 Series) that expanded the already stringent operational parameters, which prevented e-commerce marketplaces that extended even to the group companies.[7] Since these operational parameters were included in the FDI policies, these were not applicable to Indian e-commerce enterprises, which could be inventory based.

In 2019, DPIIT put out the first draft e-commerce policy in the public domain on February 23, 2019 requesting comments and suggestions from stakeholders of the industry.[8] There have been subsequent versions, but no policy has emerged till now.

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[3] Press Note No.2 (2000 Series), Department of Industrial Policy & Promotion, SIA (FC Division), Ministry of Commerce & Industry, Government of India

[4] Press Note No 3 (2016 Series), 29 March 2016, Department of Industrial Policy & Promotion, SIA (FC Division), Ministry of Commerce & Industry, Government of India https://static.investindia.gov.in/s3fs-public/2019-01/Press%20Note%203%20%282016%29.pdf

[5] Consolidated FDI Policy Circular of 2017, 28th August 2017, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India

[6] https://dpiit.gov.in/sites/default/files/pn2_2018.pdf

[7] https://dpiit.gov.in/policies-rules-and-acts/press-notes-fdi-circular

[8] PIB Release: PIB1595850 (can be accessed from file:///D:/Work/PCC/E-Commerce%20Book_ISB/Secondary%20Reading/Regulations/DPIIT/2019/PIB1595850.pdf)

2.3 Consumer Protection

The Department of Consumer Affairs (DoCA) under the Ministry of Consumer Affairs, Food and Public Distribution, notified the Consumer Protection Act 2019 on 20th July 2020 replacing the erstwhile Consumer Protection Act (COPRA), 1986. The new Act incorporated several new provisions, to keep pace with a much more evolved retail sector in India, particularly a fast-growing e-commerce sector. This led to notification of the Consumer Protection (E-commerce) Rules, 2020 on 23rd July, 2020, that defined the various elements of e-commerce trade, the duties of the different e-commerce entities, and their liabilities.[9]

2.4 Competition Laws

By far the most significant changes to regulation that affect e-commerce were the amendments made to competition laws. The Competition (Amendment) Act, 2023 included deal threshold values, platform neutrality, deep discounts, and exclusivity contracts into account. The debate on ex-poste and ex-ante regulations also came into play. The definition of key terms such as predatory pricing, market dominance, market share, have all been topics of public debate.

2.5 Foreign Trade Policy

One of the most significant policies that have recently emerged has been the inclusion of e-commerce in India's Foreign Trade Policy (FTP), which has helped provide the necessary impetus and incentives for Indian e-commerce businesses to export their products and services to global markets, expanding their reach and contributing to the country's overall economic growth. This becomes particularly significant in light of the recent Trump Tariffs.

The FTP 2015–2020 was the first to officially highlight e-commerce as an essential channel for exports.[10] The midterm review of FTP 2015–2020 in 2017 broadened the horizons for e-commerce exports by emphasising a greater role for technology and allowing higher-value transactions per consignment.[11] However, it was not until FTP 2023 that the full export potential of e-commerce was discussed.[12] The FTP 2023 was focussed on promoting skill development, quality assurance, export knowledge, and access to overseas market among MSMEs from rural India.

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9 Refer https://consumeraffairs.nic.in/sites/default/files/E%20commerce%20rules.pdf
10 https://content.dgft.gov.in/Website/ftp2015-20E.pdf
11 https://content.dgft.gov.in/Website/Notification%20No.%2022%20dt.%2026.07.2018%20English.pdf
12 https://content.dgft.gov.in/Website/dgftprod/2a0f81fa-fdb9-4d01-acd4-e35865edf903/FTP2023_Chapter09.pdf

2.6 Legal Metrology

In 2017 the Legal Metrology (Packaged Commodities) (Amendment) Rules came out, that also added to the existing gamut of e-commerce regulations. The amendment mandated e-commerce companies to display specific product details such as date of manufacture, retail selling price (MRP), net quantity, expiry date, contact details of the manufacturer/packer/importer, and country of origin details (particularly for e-commerce companies).[13] There have been subsequent amendments to refine the rules further.[14][15][16]

2.7 E-commerce Aggregators and Food Safety

In February 2017, the Food Safety and Standards Authority of India (FSSAI) issued its first set of comprehensive guidelines specifically for e-commerce food businesses, marking a formal regulatory framework for the sector. The key requirements as per these guidelines included registration and licensing, product listing, packaging and labelling, to name a few.[17] These came the same year as the amendments to the Legal Metrology Rules.

2.8 Other Regulations

Other key regulations include the Personal Data Protection Act (2023), the Digital Data Protection Act (2023), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules (2021), E-Waste (Management) Rules (2016), and now the more recent draft BIS E-Commerce — Principles And Guidelines For Self-Governance (May 2025).

3. The BIS E-Commerce — Principles And Guidelines For Self-Governance

Early 2025, BIS issued draft self-governance principles and guidelines. An amended version of this was made available on the public domain briefly in May 2025. The guidelines detail broad principles for self-governance in e-commerce, with the objective of consumer protection and trust. The standard proposes a comprehensive set of principles and guidelines designed to foster an ethical and responsible e-commerce ecosystem, and it applies to all e-commerce operations.

The basic principles of self-governance guidelines are divided into pre-transaction, contract formation, and post-transaction phases. Pre-transaction principles are centred

[13] https://consumeraffairs.nic.in/sites/default/files/uploads/legal-metrology-acts-rules/8%28xii%29_0.pdf
[14] https://consumeraffairs.nic.in/sites/default/files/uploads/legal-metrology-acts-rules/GSR226.pdf
[15] https://consumeraffairs.nic.in/sites/default/files/uploads/legal-metrology-acts-rules/Notification%20-%20%20Legal%20Metrology%20%28QR%20Code%29.pdf
[16] https://consumeraffairs.nic.in/sites/default/files/uploads/legal-metrology-acts-rules/2022%203rd%20amendment%20in%20PCR%20Garments.pdf
[17] https://www.fssai.gov.in/upload/advisories/2018/02/5a968f14cc994189.pdf

on ensuring that consumers have access to the necessary information to make informed decisions before committing to a purchase. This includes stringent requirements for seller registration, such as providing legal entity name, contact details, and financial information. The platform is responsible for due diligence on all business partners, especially third-party sellers, through KYC. The guidelines also detail the general principles around sale of banned products, by putting the onus on the e-commerce platforms to verify and ensure that products listed are not counterfeit or banned goods.

It further mandates "Disclosures of Relevant Information" such as, final consumer price with a breakdown of all components, privacy policy, terms and conditions of use, and cancellation, exchange, return, and refund policies. Other relevant information includes the seller's details, contact information, and the country of origin of the product. Furthermore, e-commerce entities must now also ensure that all photos and videos are high resolution

In terms of contract formation principles, the guidelines mandates express informed consent, which means, e-commerce entities must only record consent if it is explicitly given by the consumer, prohibiting pre-ticked checkboxes or other automated consent mechanisms. Additionally, consumers must have an opportunity re-confirm their order before making the final payment.

Post-transaction principles aim to protect consumers after the sale has been made. These principles ensure the easy return, exchange, refund, or dispute resolution process.

4. The Predicament that BIS Guidelines Present

First, most of what the guidelines have outlined are already encapsulated in existing laws, particularly the consumer protection laws and the data protection laws. This means there is a significant overlap.

Second, new compliance expectations of e-commerce platforms, such as the requirement for high resolution photographs and videos, will only add to the already compliance burden on MSMEs. While large sellers may be in a position to negotiate these requirements, the smaller businesses, particularly the micro and small enterprises, are more like to be discouraged by such requirements.

Third, it is necessary to pause and questions if these guidelines are in fact necessary in the first place. One could argue that the current scope of the draft guidelines has created confusion by including software platforms and digital intermediaries under the e-commerce umbrella. This broad definition creates uncertainty about who must comply and how. This is particularly important for smaller sellers.

Fourth, existing regulations have provided for safe harbour protection for platforms. These were provided because it was acknowledged that the platform, particularly for marketplaces, cannot be held completely liable or accountable for third party listings. The idea must be to ensure that the platform assumes responsibility to educate its sellers and take action against sellers who are non-compliant, but not bear the liability for non-compliance.

In the end, it comes down to the fundamental question of whether more regulation is indeed required for e-commerce. The role of regulations has to extend far beyond policing. Effective regulations can be, and are in fact expected to be, a powerful catalyst for market development. Establishing clear rules and standards can reduce uncertainty, encourage investment, and foster trust, but over regulation can impede the same innovation and the growth of the sector. Well-designed regulations that are harmonised and standardised can provide a framework for innovation, encourage new participants to enter e-commerce, and ensure fair access to markets for all players, particularly the smaller players.

5. Outline and Summary of the Discussion

In this regard, The Policy Consensus Centre held an online panel discussion on 12 August 2025 on whether India's e-commerce policies strike the right balance between innovation and regulation. The panel brought together legal practitioners, industry representatives, micro and small sellers on e-commerce platforms, along with participants from academia and the trade. The conversation opened with a broad question, i.e., has e-commerce regulation in India tipped into over-regulation? Panellists traced the layering of rules across the Information Technology Act, FDI policy, the Consumer Protection (E-Commerce) Rules, competition law, the Foreign Trade Policy, Legal Metrology, FSSAI norms and, most recently, the draft self-governance guidelines issued by the Bureau of Indian Standards (BIS). Most speakers felt the existing framework already covers much of what the BIS draft proposes, and that a fresh layer of guidelines risks duplication rather than clarity. Concerns were raised about specific provisions, such as mandatory high-resolution product images and disclosures on material composition and environmental impact, which are difficult for micro and small sellers to meet. The draft's broad definition of e-commerce, which could extend to software platforms and digital intermediaries, was also flagged as a source of uncertainty over who must comply and how.

Discussion then moved to wider issues. Panellists debated platform liability and the case for retaining safe harbour protection, given that platforms cannot reasonably be held responsible for every third-party listing. The term "preferential treatment" in the draft guidelines drew mixed views, with some arguing it needs a clear definition to separate legitimate business practice from genuine discrimination. Product certification came up as a practical concern, with testing requirements under BIS overlapping with other standards such as American Society for Testing and Materials (ASTM) and EN71 (European product safety standards that dictates mandatory requirements for all toys sold in the European Union), and no mutual recognition between them, adding cost for sellers who trade across markets. Speakers also called for the guidelines to place comparable obligations on sellers and other intermediaries, not just platforms, and welcomed the emphasis on grievance redressal, comparing it favourably to the ombudsman model used in banking. Data privacy was seen as a matter for separate, evolving legislation rather than these guidelines. Dark patterns were cited as an area where India has moved early, though without enough practical tools to help smaller firms check compliance. The panel also touched on the role of artificial intelligence in easing compliance costs, competition concerns around dominant platforms and the alternative model offered by ONDC, and whether the current climate of global trade pressure, including US tariffs, makes this the right time to streamline rules that affect export competitiveness. The session closed on with a broadly shared view stating that regulation has a legitimate role, but it must be proportionate, coherent and mindful of ground realities faced by MSMEs and micro sellers, and the BIS draft in its current form needs revision rather than outright rejection. The following recommendations came up during the discussion.

6. Recommendations

i. Regulatory overlap and harmonisation

- Undertake a mapping exercise across existing e-commerce related laws (IT Act, Consumer Protection Rules, data protection law, competition law, Legal Metrology, FSSAI norms) before introducing new guidelines, to identify where obligations already exist.
- Where the BIS draft duplicates existing consumer protection or data protection provisions, remove or cross-reference rather than restate them.
- Move towards a single point of coordination between the ministries and regulators involved in e-commerce, to reduce the current spread of oversight across multiple agencies.

ii. Scope and definitions in the BIS draft guidelines

- Narrow the definition of e-commerce in the draft so it does not inadvertently cover software platforms, digital intermediaries, internal corporate portals or the Government e-Marketplace (GeM), unless that is a deliberate policy choice.
- Define "preferential treatment" clearly, distinguishing it from legitimate commercial practices such as volume-based discounts, so platforms can differentiate between sellers on service quality without falling foul of the rule.
- Clarify the legal status and enforceability of the guidelines, since their voluntary, self-governance framing creates uncertainty for both platforms and consumers about what is actually binding.

iii. Compliance burden on MSMEs and micro sellers

- Recalibrate disclosure requirements, such as high-resolution images and detailed material composition or environmental data, to account for the resources available to micro and home-based sellers.
- Consider tiered or graded compliance timelines and requirements based on seller size and turnover, rather than a single standard applied uniformly.
- Explore low cost or shared infrastructure, possibly provided or subsidised by BIS or platforms, to help small sellers meet image and documentation standards without bearing the full cost themselves.

iv. Platform liability and safe harbour

- Preserve safe harbour protection for platforms acting as intermediaries, while continuing to hold them to due diligence and "know your seller" obligations.
- Keep responsibility for product level compliance, such as certification and accurate labelling, with the seller or manufacturer rather than shifting it wholesale to the platform.

v. Product certification and testing

- Pursue mutual recognition arrangements between BIS and international testing standards such as ASTM and EN71, to avoid sellers paying for repeat testing of the same product for different markets.
- Review practical implementation issues raised by sellers, such as restrictions on checking or repackaging goods before sale, to ensure certification rules do not compromise product quality checks at the point of sale.

vi. Parity between sellers, platforms and intermediaries

- Extend the scope of self-governance standards to cover sellers, logistics partners and other digital service providers, not platforms alone, so that responsibilities are shared proportionately across the value chain.

vii. Dark patterns

- Develop and publish practical toolkits or technical guidance to help e-commerce companies, particularly smaller ones, identify and self-audit against dark patterns, since current guidance leaves considerable room for interpretation.

viii. Grievance redressal

- Build on the existing emphasis on grievance redressal by setting clear, standardised timelines for resolution, drawing on models such as the banking ombudsman system.
- Maintain a clear distinction between grievance handling and dispute resolution, with defined processes for each.

ix. Data privacy

- Keep data privacy obligations under the forthcoming data protection framework rather than folding them into sector-specific guidelines, to avoid inconsistent standards.

x. Competition and platform dominance

- Continue to monitor self-preferencing and related conduct by dominant platforms through competition law and ex-post enforcement, rather than through ex-ante restrictions embedded in sector guidelines.
- Support the growth of open-network alternatives such as ONDC as a way of broadening competition and access for smaller sellers.

xi. Use of technology in compliance

- Encourage the use of assistive technology, including AI-based tools, to help small sellers meet documentation and image quality requirements at lower cost.
- Restrict the use of generative AI in product depiction to ensure listed images continue to represent products accurately.

xii. Timing and export competitiveness

- Assess the cumulative compliance cost of new guidelines on export-oriented MSMEs at a time of global trade pressure, and consider phased or delayed implementation where this cost is significant.
- Commission a comparative study on regulatory burden faced by MSMEs selling online versus offline, to establish whether the current framework creates an unfair gap between the two channels.

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About Policy Consensus Centre (PCC)

The Policy Consensus Centre (PCC), founded by Ms. Nirupama Soundararajan and Mr. Arindam Goswami, emerges with a distinct mission: to conduct impactful policy research and drive policy transformations. Our focus encompasses pivotal sectors crucial for India's advancement, along with those that have been underexplored. In the intricate landscape of India, divergent opinions often hinder consensus-building for policymakers amidst diverse stakeholders.

PCC stands dedicated to comprehensive, evidence-driven research, promoting inclusivity and rigor. Our objective resides in cultivating accord among stakeholders through independent, data-centric analysis, a catalyst for meaningful policy shifts. In a climate where some research entities avoid unconventional subjects, PCC remains resolute in advocating thorough exploration across all sectors. Our belief underscores the necessity to scrutinize seemingly unconventional domains, an approach vital for identifying accurate risks and formulating sound policies.

PCC champions the synergy of economic rationale and empirical data, pivotal in fostering consensus and enabling effective policymaker engagement. In essence, PCC embodies a pioneering spirit committed to navigating uncharted territories, propelling well-informed policy decisions for India's holistic growth.

Ms. Nirupama Soundararajan
Co-founder & CEO
Mobile: +91 9971100996
Email: nirupama@policyconsensuscentre.org

Mr. Arindam Goswami
Co-founder & Partner
Mobile: +91 9811095423
Email: arindam@policyconsensuscentre.org