

DIRECT SELLING ACTIVITIES IN INDIA THROUGH THE LENS OF LAW

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Abstract

Direct selling is a relatively old business model prevalent in many countries across the world where sellers directly approach customers for a sale based on personal communication. India also has had a fledgling direct selling industry since several decades but efforts at regulating it only gained steam in the past decade. In the current submission, we look into the efforts at regulation of the direct selling industry and the different models of regulation. We look into the overlaps in the regulatory process due to the presence of multiple legislation on the subject and how they affect the industry. We also look into the shortcomings of the existing model of regulation which depends on cooperation between both the Union government of India (similar to the federal government of the USA) and the state governments in the country and provide suggestions on how these shortcomings may be resolved.

Keywords: Direct selling, Consumer Protection, India, regulations, unregulated deposits.

Introduction: What is Direct Selling?

Direct Selling, as the term suggests is an informal selling relationship grounded firmly on inter-personal relationship of the direct seller and his/her consumer base. It has been one of the fastest growing non-store retail formats in India in the post-liberalization period. It continues to record double-digit growth and is expected to reach an annual market size of Rs 645 billion [1 Indian Rupee = 0.012 USD (present conversion rate)] by the year 2025 (Economic Times, 2016). According to the Federation of Indian Chambers of Commerce and Industry ("FICCI") defines Direct Selling as direct selling is a sales and distribution channel / system whereby, on the basis of certain well defined rules direct sellers can derive income not only from personal sales but also from ongoing sales and consumption by people whom they, directly or indirectly, have introduced to the direct selling company and for whom they provide ongoing motivation and training (FICCI, n.d.).

The regulations in India governing the market of Direct Selling are based on considerations of consumer welfare and level-playing field for the market players. Even though direct selling models have been prevalent in India since late nineties, the attempt to regulate this market began only in 2012 when Rajasthan vide its Gazette Notification dated 05.10.2012 issued guidelines to regulate its functioning in India. Herein, the Rajasthan Government specifies that if an entity does not conform to the principles laid down, such an entity will not be considered a Direct Selling Entity and would be dealt appropriately under relevant provisions of existing laws.

At present, there is a need felt to regulate the direct selling market at the global level because of its fast paced growth and the employment opportunities it provides to millions of people. This paper discusses the regulatory framework in India pertaining to direct selling entities and the inadequacies in the same along with providing suggestions for revamping the same. The said framework could also be studied by other regulatory bodies for direct selling across the world and thus, this paper also holds international significance.

Review of Literature

Authors in the past have sought to discuss about direct selling business and its regulation in India, primarily for specific regions (states). Aisha Ibrahim Mohammed and Thomas Joseph Thoomkuzhy (Mohammed & Thoomkuzhy, 2021) draw a comparison between the direct selling business ecosystem in Kerala under the Direct Selling Guidelines 2016 and the Consumer Protection (Direct Selling) Rules, 2021. They state that the new rules have brought in more clarity by giving it legal recognition and that there needs to be compliance mechanism in place to foster the growth of genuine direct selling ventures while also dealing with the illegal ones. Muhammed Juman. B K and Dr. J Christopher (B.K & Christopher, 2015) also study the impact of the direct selling companies in the same state Kerala with special reference to Amway and state that the growth of the direct selling business in India can be accelerated through policy interventions by the government. Dr. Abdul Assis Korothe and Dr. A. K. Sarada (Korothe, 2012) also describe the problems that arise due to the influence of relationship in building network in direct selling business which is the pre-requisite for the better performance of distributors in direct selling in the state of Kerala, the same state as the prior two publications.

Certain authors have also covered old legislation which have now been supplemented or replaced with newer versions. Priya Misra (Misra, 2021) critically examines the Direct Selling Guidelines issued in 2016 and how they are inept to regulate the direct selling business in India. The author proposes that the regulation of the industry should be in the hands of an independent and specialised regulator instead of a government department. Moreover the industry should have a set of tailored laws along with proper enforcement mechanism. Nishant Kumar Singh and Dr. Shiv Kumar

(Singh & Kumar, 2019) analyse the core concept of direct selling and its modus operandi in India and note that while a lot remains to be done in this sector, it has led to financial security and entrepreneurial enhancement for a lot of people especially the women.

Venkata Sai Srinivasa Rao Muramalla (Rao, 2019) discusses the language barriers that impact the direct selling business in India. He states that since direct selling relies on the skills of the sales person to convince the customers to make a purchase, thus, the language adopted by the salesperson plays a significant role in motivating the customers to buy a product. The author suggests that more salespersons should try to adapt the local regional languages of the area in which they operate. Deepali Bhattacharjee (Bhattacharjee, 2016) analyses the customer preference towards purchasing from direct seller industries in the state of Assam and the level of satisfaction that the customers get from this marketing practice. The author states that quality of the goods is the primary reason behind the purchase from direct sellers, that the customers use the products regularly and are satisfied with the service of the distributors.

It highlights the problem of buying of goods from direct sellers by their acquaintances or close relatives only who do so on the basis of false promises of income and not due to their need for the goods. Vandana Gupta (Gupta, 2012) studies the socio-economic impact of direct selling industry in India and observes that direct sellers saw a positive change in their standard of living as a result of more disposable income in the family. Moreover, the direct selling industry is spreading even to the rural areas and smaller towns. Preksha Malik (Malik, 2012) proposes in her paper that direct selling entities are better suited for collectivist countries as these countries as they have close-knit societies which provide greater push to the direct selling entities than the loosely knit framework of individualistic countries. Thomas R. Wotruba (Wotruba, 1989) examines the effects of goal setting on effort and performance among sales agent in the direct selling industry and observed that while goal setters spent more time on their jobs that did not necessarily result in increased performance.

A review of the aforementioned literature shows that developments in the direct selling industry post the introduction of the Consumer Protection (Direct Selling) Rules, 2021 have not been addressed yet. The paper authored by Priya Misra (2021) stops short of an analysis of the 2021 Rules and the impact that it had on the direct selling regulatory framework in India. The paper authored by Aisha Ibrahim Mohammed and Thomas Joseph Thoomkuzhy (2021) does not present an assessment of the state-wise implementation of the Direct Selling Guidelines, 2016 and the Direct Selling Rules of 2021. It also does not address the shortfalls in the monitoring mechanism adopted by the states at present.

This paper thus, attempts to go a step forward and study the direct selling industry in India after the enactment of the 2021 Rules. Inter alia, it puts forward the various shortcomings that exist in the present monitoring mechanism of the direct selling industry under the 2021 Rules and the manner in which it is hindering the proper and effective implementation of these rules. It undertakes a state-wise review of the monitoring mechanism for the direct selling industry and identifies the various inadequacies in the present framework. It also highlights the non-uniform nature in which these rules have been adopted across the states. Moreover, it underscores that confusion that plagues the implementation of the direct selling rules owing to its overlap with other legislations such as the Prize Chit and Money Circulation Scheme (Banning) Act, 1978 and Banning of Unregulated Deposits Act, 2019. Further, this paper provides suggestions for a new framework for the regulation of the direct selling industry in India and how the adoption of these suggestions could lead to a more efficient mechanism for the regulation of the direct selling industry moving forward.

History of Regulation

Direct Selling in India has been prevalent since the late nineties, with the onset of companies such as Amway, Tupperware and Avon in India. A few Indian companies such as Modicare also utilized the Direct Selling model to build their consumer base and have been largely successful in expanding business across India. With the advent of Indian and foreign companies in the direct selling market, the Indian Direct Selling Association ("IDSA") was established on the principles of self-regulation in 1996 (Indian Direct Selling Association (IDSA)). IDSA has a Code of Ethics that its members are obligated to abide by and also provides for a complaint redressal procedure. Further, IDSA engages with various stakeholders to publish yearly survey reports on the progress made by the industry and the challenges it faces. Pertinently, IDSA has supported the Indian government's push for regulation of the direct selling market in order to foster competition among market players, and also to protect consumer rights. The Association acts as an interface between the industry and policy-making bodies of the Government facilitating the cause of Direct Selling Industry in India (Indian Direct Selling Association (IDSA)).

Interestingly, the Constitution of India does not expressly cover the issue of legislation on consumer welfare. The issue regarding consumer welfare is actually covered by the residuary powers conferred upon the Union of India by the Seventh Schedule of the Constitution. A possible explanation for the same could be that at the time of Independence of India the legislation pertaining to consumer welfare was non-existent. It was only in the year 1986 that India introduced consumer welfare legislation in India and the legal maxim 'consumers is king' became the norm instead of the earlier maxim of 'consumers beware'.

The development of regulation in the field of Direct Selling has been guided by the need to protect consumers against malicious schemes. In India, many direct selling or multi-level mechanisms to sell goods or services have been looked upon with suspicion as ponzi schemes. For a long time, direct selling in India did not have a regulatory framework of its own and was governed by the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 ("PCMCS Act"). However, one of the major issues with the application of this legislation to direct selling entities was that their activities were often equated to a money circulation scheme and they were wrongly booked under the PCMCS Act. Before the notification of Consumer Protection (Direct Selling) Rules, 2021, the Department of Consumer Affairs vide its notification dated 26.10.2016 issued Model Direct Selling Guidelines. Herein, the onus was on the state governments to ensure that an implementation mechanism is adopted for effective grievance redressal and to curb malpractices by misuse of the direct selling model. The said notification dated 26.10.2016 was based on deliberations of various stakeholders including representatives of the Ministry of Finance, Department of Industrial Policy and Promotion, the Department of Legal Affairs, the Department of Information and Technology and the Ministry of Corporate Affairs and representatives from the states of NCT of Delhi, Andhra Pradesh and Kerala.

Following the Central government's advisory to States to formulate their own rules for monitoring and regulating the direct selling entities, a total of 14 states came up with their respective model selling rules over the next 4 years. However, as the nomenclature suggests, these guidelines were only advisory in nature and thus, led to a non-uniform implementation across the states. Moreover, these Direct Selling Guidelines 2016 were challenged before the Hon'ble Delhi High Court in a commercial suit between Amazon and Amway India. The Hon'ble Delhi High Court in Amazon Seller Services Pvt. Ltd. versus Amway India Enterprises Pvt. Ltd. (2020) opined that these guidelines were only directory in nature, and thus, not enforceable. This judgment was a setback to the regulatory regime recommended by the Union Government.

The Hon'ble Delhi High Court considered the submissions of the parties at length and the question whether the 2016 guidelines could be considered to be 'law' for the purpose of implementation and taking action against a direct selling entity was one of the issues under challenge. Interestingly, the Appellant i.e. Amazon in its submissions made a case that these guidelines were not 'law' and therefore, could not be enforced as such against an entity's fundamental right to occupation under Article 19 (1) (g) of the Constitution of India. The Hon'ble Court opined that since these guidelines were issued as 'model framework' by the Union Government, formulated in consultation with the stakeholders to protect legitimate rights and interests of consumers and industry, the same could not be considered to have the effect and character of 'law'. The Hon'ble High Court held these model guidelines as directory and not 'law', since at the relevant time, its parent legislation i.e. Consumer Protection Act, 2019 itself had not been

enacted. It further held that the onus was on the states to adopt these guidelines into law.

Thereafter, the Direct Selling guidelines were comprehensively revamped. It is also to be noted that in 2019, the Central government introduced the 'Banning of Unregulated Deposit Schemes Act, 2019', which included a prize chit or a money circulation scheme banned under the PCMCS Act within the definition of an 'Unregulated Deposit Scheme'.

The Consumer Protection (Direct Selling) Rules, 2021 (hereinafter referred to as "DSR") were enacted by the Central Government under powers conferred by clause (zg) of sub-section (2) of section 101 read with section 94 of the Consumer Protection Act, 2019. The DSR, 2021 are another step towards regulation of the fast growing direct selling industry. With the notification of the DSR, 2021, the issue of 2016 guidelines being enforceable or not, has become a moot proposition. However, state-wise implementation of DSR, 2021 remains problematic due to various lacunae in the guidelines notified by the States. This has resulted in an imbalance in the enforcement exercise, leading to industry players misusing the lacunae in existing enforcement mechanisms.

The Nature of Disputes that come before the Courts pertaining to direct selling entities:

Prior to the issuance of the 2016 guidelines by the Central government and the 2021 Direct Selling Rules, the cases that came before the Court under the PCMCS Act, 1978 mostly pertained to allegations of cheating or fraud against the direct selling companies. In most cases, it was contended before the courts that these companies were operating money circulation schemes in the name of direct selling. Moreover, the policymakers and the judiciary in the country suffered from no clear understanding of the direct selling business and thus, many legitimate direct selling entities were also booked under the stringent provisions of the PCMCS Act. This position was clearly seen in the landmark case of *Amway India Enterprises vs. Union of India*(2007) where Amway which operates a direct selling business was targeted using the provisions of the PCMCS Act.

Recently, in April 2022, Amway India was once again alleged to have been involved in a pyramid scheme in the guise of direct selling following which assets worth Rs. 7578million were seized by the Enforcement Directorate (a federal investigative agency of India). While the case is presently sub-judice, it again brought to the forefront the subtle difference between pyramid schemes and direct selling. The Enforcement Directorate reiterated the distinction made by the Supreme Court between the two business models in various judicial pronouncements as to how the pyramid schemes focuses on recruitment of more investors whereas the direct selling business model focuses on the actual sales of a product.

The understanding that the direct selling business model and money circulation schemes are distinct was recognized in another landmark decision, *Naresh Balasubramaniam v. the State of Karnataka* (2017), where it was categorically stated by the Court that the activities of the multilevel marketing companies involved in the case did not constitute offences under the PCMCS Act, 1978 and that they are governed by the Model Framework for Guidelines on Direct Selling released by the government which recognises the validity of such direct selling entities.

Another category of cases which came before the courts was consumer grievances where the issues of the consumer were not resolved through the internal grievance redressal mechanism of the company leading to the matter taking on the nature of a legal proceeding. *E-Biz Com Pvt Ltd vs. Vishwanath Patil* (2012) is a decision of this kind wherein the consumer and the business entity failed to reach a solution and thus, the matter had to be taken before the court.

One of the recent disputes that came before the Delhi High Court involving a direct selling entity was *Amway India Enterprises Pvt. Ltd. v. 1Mg Technologies Pvt. Ltd.* (2019) wherein, inter alia, the Court had to decide on the validity of the Direct Selling Guidelines, 2016 and the issue of whether e-commerce platforms can sell the products of direct selling entities without their consent. It was held that the Direct Selling Guidelines are law and that the sale of direct selling's entities products on the e-commerce platforms violated these guidelines as well as affected the right of Amway to carry on business.

Current Regulatory Regime

The Union has notified its Model Guidelines i.e. DSR, 2021 vide notification dated 28.12.2021. Notably, Rule 11 of the DSR, 2021 prescribes for implementation machinery through rules adopted by individual states. Therefore, in order to enforce DSR, 2021, the onus lies with individual states to notify the rules, and designate nodal departments/officers for ensuring compliance with the guidelines. This means that the old model rules, prior to the notification of DSR, 2021 that states were supposed to notify individually sets up the framework for the functioning of DSR, 2021. The initiative and promptness shown by the states to enact these model guidelines is laudable. However, many states have omitted to apply the guidelines in a conclusive manner, thereby, omitting crucial appointments/nominations of nodal officers and enforcement officers. In the humble opinion of the authors, without the appointment of the nodal officers and enforcement officers, the model guidelines cannot be effectively implemented.

It is essential to highlight the fact that the implementation of the Direct Selling Rules has not been uniform across the states. The Central government expected the states to apply their mind to the Rules before notifying them in their respective state gazettes. This application of mind was supposed to be in terms of appointing the

monitoring authority and ensuring other requisite mechanism to oversee the compliance with the Direct Selling rules was in place. States like Tamil Nadu, Andhra Pradesh, Kerala, Telangana, Maharashtra, Punjab, Odisha, West Bengal and Himachal Pradesh have made the necessary appointments such as nodal officer and nodal department to supervise and regulate the direct selling entities in their respective states. However, others such as Goa, Rajasthan, Mizoram, Sikkim and Meghalaya have merely re-published the Direct Selling Guidelines and Rules issued by the Central government. Moreover, Karnataka has appointed the nodal department to oversee the implementation of the direct selling rules; however, it is not clear as to who is the nodal officer or the Registering Authority. Moreover, even in some states that have made the necessary appointments, there are certain aspects which might hinder the proper implementation of the Rules. For instance, Telangana provides for a hierarchy of officers such as the Registering Authority, Disciplinary Authority, Enforcement Officer, Appellate Authority and Reviewing Authority which could potentially lead to a slow implementation of the Rules.

Shortfalls in Current Mechanism

Lacunae in the rules enacted by the State Governments

The current regime of regulation of direct selling entities suffers from numerous shortfalls with one of the major ones being the weak and non-uniform implementation of the Rules by the States. It is vital to underscore that the 2016 Guidelines were only a model framework and advisory in nature. It granted power to the State Governments to adopt these rules into law. This is where the genesis of the problem of non-uniform implementation lies. The Central Government envisioned the State Governments to apply their mind to the model rules, taking into account the prevalent situations with respect to direct selling entities in their respective states, before notifying the same. While states like Kerala, Karnataka and Andhra Pradesh took note of this pre-requisite before notifying the rules, numerous other states have merely reproduced the 2016 Guidelines issued by the Central government in their notifications. For instance, Goa, Mizoram and Sikkim have re-notified the model rules without the appointment of a nodal officer or designating a nodal department for the purpose. In the absence of such appointments and designations, it remains questionable whether the compliance with the DS Rules, 2021 can be ensured.

Additionally, even among states which have modified the Guidelines before notifying them, certain issues persist, making the implementation of the DS Rules, 2021 difficult. For example, the notification issued by the Andhra Pradesh government provides for a Registering Authority, Appellate Authority, Disciplinary Authority, Revision Authority and Enforcement Officer. While it is understandable that the objective behind creating these multiple positions might have been to clearly and exhaustively demarcate the responsibilities of the various officers, nonetheless, it is not

a too far-fetched proposition to state that the creation of such multiple positions has the potential of leading to slow implementation of the DS Rules, 2021.

Multiple Modes of Dispute Resolution

The DS Rules, 2021 lay down a grievance redressal framework wherein the aggrieved consumers can file a complaint with the company and the grievance redressal officer is expected to resolve the complaint within one month of its receipt failing which the reason for the delay has to be communicated to the complainant in written form. Alternatively, the consumers also have the option of resolving their grievances by approaching the consumer forums under the Consumer Protection Act, 2019.

The Conundrum of Self-Regulation

The Indian Direct Selling Association (IDSA) is an autonomous and self-regulating body for the direct selling industry in India. Its objective is to provide a conducive environment for the growth of direct selling business sector in India. In furtherance of this, it acts as an interface between the policymakers and the direct selling industry. IDSA provides for a strong code of ethics which the members have to abide by and a failure to follow the Code can be resolved by a Grievance Redressal Mechanism outlined in the Code itself.

Major companies in the direct selling market in India such as Amway and Modicare are members of IDSA and axiomatically, bound to follow its code of ethics. However, the nature of a self-regulation code is such that it cannot be enforced as law. Thus, it serves a limited purpose in regulating the direct selling business in India. The Code of Ethics of IDSA also categorically states that the compliance with the laws pertaining to the direct selling business in India is pre-condition for the members of IDSA (clause 1.8). With the advent of the DS Rules, 2021 which holds the power of law due to it being introduced under the Consumer Protection Act, 2019, a self-regulatory body like IDSA seems to have become redundant.

Overlap between the Consumer Protection E-Commerce Rules, 2020 and the Consumer Protection (Direct Selling) Rules, 2021

Rule 9 of the Consumer Protection (Direct Selling) Rules states that the direct sellers as well as the direct selling entities which make use of e-commerce platforms for sale shall comply with the requirements of the Consumer Protection (e-Commerce) Rules, 2020. Moreover, Rule 3(f) of the Consumer Protection (e-Commerce) Rules, 2020 defines an 'inventory e-commerce entity' as an e-commerce entity that owns the inventory of goods or services and sells such goods or services directly to the consumers and shall include single brand retailers and multi-channel single brand retailers. Thus, it is apparent that there exists an overlap between the Direct Selling Rules and the e-Commerce Rules.

This overlapping can lead to problems when it comes to regulation of direct selling entities. This is so because in the absence of an in-built framework for regulation of direct selling entities operating on the e-commerce platforms in the Direct Selling Rules, the e-Commerce Rules would need to serve as a parallel legislation for the purpose. It would clearly lead to more confusion among both the direct selling entities as well as the authorities appointed to regulate and monitor their functioning. Moreover, it also leaves room open for direct selling entities to claim that they are e-Commerce entities and thus, would not be governed by the Direct Selling Rules which could lead to bigger problems which the authorities would need to deal with later.

The Superseding of the Consumer Protection (Direct Selling) Rules, 2021 by the Regulations made under the Reserve Bank of India Act, 1934

Rule 12 of the Consumer Protection (Direct Selling) Rules, 2021 provides that in the event of an inconsistency between the Rules and the provisions of any regulation made under the Reserve Bank of India Act, 1934, ("RBI Act") the latter would prevail. As can be observed, this Rule is not clear on what is the existing framework of the RBI with regards to direct selling entities or the manner in which the regulations made under the RBI Act would prevail over the DS Rules, 2021. Similarly, it does not elaborate on the situations where there might be a conflict between the regulations made under the RBI Act and the DS Rules, 2021. This again would generate uncertainty among the direct sellers as well as the regulatory authorities and might even lead to possible misuse of this rule by some direct selling entities.

Overlap between the Banning of Unregulated Deposits Act, 2019 ("BUDA") and the PCMCS Act, 1978

Transactions that are in the nature of deposits are governed by the BUDA and the objective behind the introduction of this Act is to legislate, delineate and define the authorities pertaining to an 'Unregulated Deposit Scheme'. It is defined as a scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under Column (3) of the First Schedule. However, the problem in enforcing this Act arises due to the lack of understanding on the part of the enforcement agencies. Uncertainty still exists on when the BUDA should be applicable and when the PCMCS would come into operation. For instance, where a direct selling entity is not involved in genuine direct selling business, it remains unclear for the enforcement agency to decide whether to book the accused under the provisions of the BUDA or the PCMCS Act. While BUDA is a Central legislation with application across India, the PCMCS Act largely depends on state mechanisms for its enforcement. Thus, a clarity is needed on which legislation should be applicable when an enforcement agency books a fraudulent direct selling business entity.

How to Resolve the Shortfall

As noted above, there are some significant shortfalls in the present regulatory regime pertaining to the direct selling entities which need to be addressed in a satisfactory manner so as to ensure that the Direct Selling Rules are implemented in a uniform fashion across the states and achieve the objectives with which it was introduced by the government. In this regard, solutions can be drawn from the functioning of the National Anti-Profiteering Authority ("NAA") which was established under the Central Goods and Services Tax, 2017 ("GST Act") to ensure that any reduction in the rate of tax on any goods or services or the benefit of input tax credit was passed on to the consumer by the way of commensurate reduction in the prices of the respective goods or services.

As the nomenclature suggests, NAA is a national level body and oversees that the benefits of the GST Act are evenly distributed and the confidence of the customers in the effective implementation of the Act is maintained. Pursuant to this, it specifies the qualifications required to be the members of NAA, the powers vested in it as well as the authorities appointed and the procedure to be followed during investigation of such complaints. NAA provided for a three-tier grievance redressal mechanism with NAA being the apex authority, and Directorate General of Anti-Profiteering (DGAP) along with State-level Screening Committees and Standing Committee working under its supervision. Every state has one State-Level Screening Committee with one member from both the State and the Central government respectively. On being satisfied that the application is of a local nature, the State Screening Committee forwards it to the Standing Committee which after collection of prima facie evidence forwards it to the DG Anti-Profiteering for further investigation who gives his recommendations to the NAA after the investigation. Moreover, the orders of the NAA are appealable only in the High Court.

The regulatory framework adopted by the NAA could act as a starting point for the policymakers to constitute a similar mechanism for the regulation of the direct selling entities in India. It would also effectively replace the current regulatory regime for direct selling entities which suffers from a non-uniform monitoring mechanism. Providing a single apex authority like the NAA and the regulatory framework in the Direct Selling Rules itself would no doubt, bring in more clarity in the current ecosystem. Moreover, it would also eliminate the messy framework which at present plagues the direct selling regulatory regime in India.

This new authority on the lines of NAA could also serve as a one-stop authority for conducting investigations into the complaints received under the Direct Selling Rules. Similar to how the State-level Screening Committees and Standing Committee under the NAA conduct a prima facie inspection to see that the case indeed falls under their jurisdiction, this new authority to regulate direct selling entities could also be

endowed with the powers to prima facie investigate the complaints. This prima facie inspection of the complaints received would result in two possible scenarios. First, the case falls under the provisions of the direct selling rules and thus, would be dealt therein following the procedure prescribed in the institutional framework of this proposed authority. The second scenario would be where the complaint does not relate to a direct selling case, rather is a criminal act by an organisation claiming to be a direct selling entity but which is actually involved in a pyramid scheme or a money circulation scheme and thus, would have to be decided in accordance with the provisions of the PCMCS Act; or it is a case which involves an e-commerce entity and thus, would need to be dealt under the provisions of the Consumer Protection (E-Commerce) Rules, 2020. Thus, the cases falling under the second scenario could be transferred to the authorities designated to deal with them.

Practices from the functioning of the NCLT can also be incorporated in the proposed framework. For instance, the apex authority at the Centre could have benches across the country similar to NCLT and thus, not get overburdened with the complaints received by it. The new framework could also provide for submission of complaints against direct selling entities through the online mode on payment of a nominal fee. This could make it easier for the consumers to register disputes. This apex authority could be a quasi-judicial body created under a statute having the powers similar to a Tribunal and an appeal should lie only to the Supreme Court.

In effect, the multifaceted framework under the Consumer Protection Act at present is sought to be replaced by a framework wherein a single quasi-judicial authority like NAA would have the powers to deal with all the complaints pertaining to the direct selling industry and the consumers would have the option to appeal against the decision only in the Supreme Court. It is vital to note here that the monitoring mechanism for direct selling could be strengthened and made effective only through necessary legislative amendments of the nature mentioned above. Thus, the onus lies on the policymakers and the legislature to see that the direct selling industry which generates a major chunk of revenue for our economy while also providing employment to a substantial portion of the population is regulated and monitored in a proper manner.

Conclusion

The foregoing paper has attempted to study the regulatory framework of the direct selling industry in India in light of the Consumer Protection (Direct Selling) Rules, 2021. The paper has identified the numerous shortfalls from which the present regulatory framework suffers such as the non-uniform implementation of the Rules, overlapping jurisdiction of the Rules with other legislations such as the Prize Chit and Money Circulation Scheme (Banning) Act, 1978, Banning of Unregulated Deposits Act, 2019, Consumer Protection (E-Commerce) Rules, 2020 and the regulations made under

the Reserve Bank of India Act, 1934. Moreover, the grievance redressal mechanism as well as the dispute resolution process under the present framework is messy and uncertain creating difficulties even for the enforcement authorities to follow the necessary procedure after booking a direct selling entity for non-compliance with the Rules. To eradicate these inadequacies in the present regulatory framework, this paper provides suggestions such as the introduction of a single authority whose functioning could be as per the best practices adopted by the NAA and the NCLT as have been detailed in the paper. These suggestions are aimed at making the regulatory and monitoring mechanism of the direct selling industry in India more efficient and conducive to its growth. This industry contributes a fair share to the GDP of our country and is expected to grow more in the coming years having already penetrated small towns and rural areas, making it essential for the policymakers to come up with solutions of the nature mentioned above so as to address the shortcomings present in the present regulatory framework of this industry.

Limitations of this paper

This paper has not undertaken a quantitative analysis of the contribution of the direct selling industry to the economic development of India. Future research on this topic can potentially throw light on this along with providing a statistical analysis of the impact of the Direct Selling Guidelines of 2016 and the Rules introduced in 2021 on the growth of the direct selling industry as well as the overall growth of the Indian economy.

References

- Amazon Seller Services Pvt. Ltd. versus Amway India Enterprises Pvt. Ltd. (Delhi High Court January 31, 2020), Indian Kanoon.
- Amway India Enterprises Pvt. Ltd. v. 1Mg Technologies Pvt. Ltd. (Delhi High Court, July 8, 2019), Indian Kanoon.
- B.K, M. J., & Christopher, J., Dr. (2015). A Study on Direct Selling Business (Amway India Ltd) in Kerala: A Case Study of Calicut District of Kerala. *International Research Journal of Engineering and Technology (IRJET)*, 02(08), 1489-1500. Retrieved December 17, 2022, from <https://www.irjet.net/archives/V2/i8/IRJET-V2I8223.pdf>.
- Bhattacharjee, D. (2016). Consumer in Direct selling-A case study of Assam. *IOSR Journal of Humanities And Social Science (IOSR-JHSS)*, 21(11), 01-09. doi:https://www.researchgate.net/publication/316975671_IOSR_Publication
- E-Biz Com Pvt Ltd vs. Vishwanath Patil (State Consumer Disputes Redressal Commission January 17, 2012), Indian Kanoon.
- The Indian Express (2022, April 18). Enforcement Directorate attaches Rs 757 crore worth assets of Amway India. *The Indian Express*. Retrieved December 17, 2022, from

<https://www.newindianexpress.com/business/2022/apr/18/enforcement-directorate%E2%80%8Bbattaches-rs-757-crore-worth-assets-of-amway-india-2443460.html>

FICCI (n.d.), Compilation of Various International Acts and Laws for Direct Selling Industry. Retrieved December 17, 2022, from

<https://ficci.in/spdocument/20356/Direct-Selling-Laws-Book.pdf>

Gupta, V. (2012). A study on Socio-economic Impact of Direct Selling. Pacific Business Review International, 5(3), 77-83. Retrieved December 17, 2022, from

http://www.pbr.co.in/2012/2012_month/Sep/7.pdf

Indian Direct Selling Association (IDSA). (n.d.). Retrieved December 17, 2022, from

<https://www.idsa.co.in/>

Korsoth, A. A., Dr. (2012). Significance of Relationship in Multilevel Marketing and its effect on Business Outcome. IOSR Journal of Business and Management (IOSRJBM), 3(6), 26-36. Retrieved December 17, 2022, from

<https://www.iosrjournals.org/iosr-jbm/papers/vol3-issue6/E0362636.pdf>.

Malik, P. (2012, September 18). Direct Selling: Collectivist versus Individualistic. Retrieved December 17, 2022, from

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2147685.

Misra, P. (2021). What Ails Direct-selling Businesses in India? Economic and Political Weekly, LVI(48), 42-47. Retrieved December 17, 2022, from

https://www.strategyindia.com/wp-content/uploads/2022/03/EPW_Vol-LVI_No-48_27-November-2021.pdf#page=42.

Mohammed, A. I., & Thoomkuzhy, T. J. (2021). Regulating dubious direct selling businesses under the consumer protection act, 2019. Kerala Economy, 2(10-11-12), 74-83. Retrieved December 17, 2022, from

https://www.gift.res.in/ofk_im/journal/pdf/Regulating_dubious_direct_selling_businesses1.pdf.

Naresh Balasubramaniam v. the State of Karnataka (Karnataka High Court February 15, 2017), Indian Kanoon.

Economic Times (2016, May 5). Direct selling market to touch Rs 64,500 crore by 2025: Report. Retrieved December 17, 2022, from

<https://economictimes.indiatimes.com/industry/services/retail/direct-selling-market-to-touch-rs-64500-crore-by-2025-report/articleshow/52136397.cms?from=mdr>

Rao, V. S. (2019). Language barriers of the sales force in personal selling. Journal of Business and Retail Management Research, 13(3), 136-146. Retrieved December 17, 2022, from

https://www.researchgate.net/publication/332169860_Language_barriers_of_the_sales_force_in_personal_selling.

Singh, N. K., & Kumar, S., Dr. (2019). Direct Selling: Understanding Its Building Blocks And Current Status In India. International Journal of Research and Analytical Reviews (IJRAR), 6(1), 488-495. Retrieved December 17, 2022, from

https://www.researchgate.net/profile/Dr-ShivKumar/publication/344718241_Direct_Selling_Understanding_Its_Building_Blocks_And_Current_Status_In_India/links/5f8b2602a6fdccfd7b66b97e/Direct-Selling-Understanding-Its-Building-Blocks-And-Current-Status-In-India.pdf.

Wotruba, T. R. (1989). The Effect of Goal-Setting on the Performance of Independent Sales Agents in Direct Selling. *Journal of Personal Selling and Sales Management*, 9(1), 22-29.