

The Need to Enhance Online Consumer Protection in KSA

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Abstract—E-commerce has evolved to become a functional and mainstream tool of global trading, including in the Kingdom of Saudi Arabia. Consequently, online consumers need protection just as much as consumers in the offline world. In 2019, the Ministry of Commerce in Saudi Arabia established a so-called ‘e-commerce law’; however, this law does not cover the court enforcement of contracts entered into by international vendors, so it is not applicable in cross-border situations. The purpose of this paper is to identify the gaps present in this new e-commerce law in Saudi Arabia.

Keywords—Consumer protection, e-commerce law, Saudi consumer, international vendor.

I. INTRODUCTION

SAUDI Arabia is an Islamic state and its legal system is based on Sharia law, derived from two main sources: the Quran and the Sunnah. The Quran is the Holy Book of Islam, whereas the Sunnah is Prophet Muhammad’s teachings. Thus, unlike common law countries where law is derived from legislation or court precedents, the primary source of Islamic law comes from opinions of religious scholars in books known as “fiqh”. For example, the people of Saudi Arabia have been influenced by religious teachings to be kind to one another, an ethos taken directly from the Quran. For example: “and let them pardon and overlook. Would you not like that Allah should forgive you? And Allah is Forgiving and Merciful” [1]. The Hadith says, “The Messenger of Allah (the peace and blessings of Allah be upon him) said, ‘Do not envy one another, and do not inflate prices for one another, and do not hate one another, and do not turn away from one another, and do not undercut one another in trade, but [rather] be slaves of Allah and brothers [amongst yourselves]’” [2]. These Islamic teachings and cultural values influence the Saudi people greatly. The teachings prioritize amicable solutions rather than resorting to legal action and this is the relevant Saudi Arabian context within which this paper will be undertaken. In contrast, in common law countries such as Australia, the legal system is one that provides rights and remedies in the event of most disputes, and people turn to legal action more readily. The legal system in the Kingdom of Saudi Arabia is unique and has a variety of courts with a hierarchical structure. The Supreme Judicial Council, or high court, has the greatest authority in the Saudi legal system’s court of appeals which is the second greatest authority in the kingdom. There are a variety of circuit courts under this court, which include Labor Circuits, Commercial Circuits, Criminal Circuits, Personal

Status Circuits, and Civil Circuits. First degree courts, in turn, have several courts of their own: General Courts, Criminal Courts, Commercial Courts, Labor Courts, and Personal Status Courts. Additionally, there is a Board of Grievances which hears disputes against the government of Saudi Arabia, scrutinizes national business practices, takes “disciplinary action against civil servants” [3] and enforces external court decisions. The hierarchical structure of this court is as follows: High Administrative Court, Administrative Courts of Appeals, and Administrative Courts [3]. The decision of the courts is recorded and can be accessed by the plaintiff and defendant and/or their representative, so they can read or print the judgement through the website of the Ministry of Justice. In addition, the ministry publishes a collection of judicial decisions every year, which can be viewed through their website [4]. Those court decisions are not binding, since case law is not a source of legislative legitimacy in Saudi Arabia, but merely the so-called *Ijtihad* which references the opinion “of religious legal scholars from both the past and present who by their piety and learning have become qualified to interpret the scriptural source and derive laws” [3].

II. EXISTING CONSUMER PROTECTION UNDER ISLAMIC LAW

Saudi consumer protection law is derived from Islamic law (Sharia law), [5] which is in turn derived from the Quran and the Hadith [6]. The purpose of Islamic law in trade is to establish and uphold the rights of both vendors and customers, such that morality is ensured in the business sector, the law is enforced, and the stability of society is maintained [5]. The consumer is protected under Islamic law, which compels merchants to execute specific duties towards the purchaser. The duties entailed in Islamic contracts are divided into two obligations: from vendor towards customer and from customer towards vendor. For example, merchants are required to state, within the contract of sale, the quality, quantity, and exact date of delivery of the goods to be supplied and must “act in good faith.” In the same contract, purchasers are required to state the price, pick the goods and “to assume the risk of the property.” All contracting parties must comply with these terms and conditions [7]. The parties’ contractual duties are derived from the Quranic verse, “O you who have believed, fulfil [all contracts]” [8]. In the case of a breach of the fundamental terms and conditions of the Islamic contract, the party in compliance with the terms and conditions has the right to admit or reject the contract, as not complying with the terms and conditions renders the contract defective [7]. However, in common law, the commitments of the contract are classified into conditions, ‘innominate terms’ and

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warranties, as stated in s11(3) of the Sale of Goods Act 1979 (UK):

Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract; and a stipulation may be a condition, though called a warranty in the contract [9].

There are many differences between Sharia and conventional legal systems, such as the Australian legal system. Sharia or Islamic law cannot be altered or modified, as the law is divine, whereas in traditional legal systems law is subject to change where it must be altered or modified. Also, Sharia law does not only regulate human relationships but also involves practices and behaviors, such as praying. In contrast, “Devotional acts are also kept separate from common activities and acts” [10]. In Islamic law, the punishment for wrongful actions takes place both in this world and hereafter, while in the traditional legal systems, the punishment for breaching the law takes place in this world alone [10]. This exemplifies the problem for Saudi consumers when dealing with foreign vendors, since there is a conflict between the contractual legal terms and obligations within the two systems. Moreover, the foreign seller does not necessarily know about Islamic legal contractual obligations and principles, which suggests that Islamic legal obligations are fit for the purpose of sales in the offline world in Saudi Arabia, as both vendor and consumer fall under the jurisdiction, whereas the online market is open to everyone despite the location of either vendor or customer. The problem with this distinction is that the e-commerce law in Saudi Arabia states that this particular law is enforced on both domestic and international vendors, with no mention of its discrepancy with the international vendor’s local law enforcement. In Saudi Arabia, there is no comprehensive legislation for consumer protection, but there are many laws and legislations that prohibit cheating and deceptive selling conduct, like the ‘Law on Combating Commercial Adulteration’ [11].

III. THE LACK OF A COMPREHENSIVE FRAMEWORK FOR PROTECTING CONSUMER RIGHTS WITH RESPECT TO ON-LINE BUYING

Consumer protection has recently become a problem for the government and people of Saudi Arabia. The Saudi consumer needs to have more protection due to several factors, among which is the fact that for Saudi people, the maturing of consumerism is still in its early stages, and they are looking for the government to come up with laws and regulations to provide them with the most comprehensive protection possible [10]. Additionally, the lack of legal knowledge is one of the major factors that prevent the Saudi consumer from making claims and asking for remedies in cases of disputes. Moreover, the price of commodities in Saudi Arabia is not established based on the market, but instead by the manufacturers, due to monopolies in the marketplace [10]. With the rapid growth of

sales from online merchants, the market has seen a total income amounting to over 29.7 billion Saudi riyals since the technological evolution of smartphones [12]. This movement not only encourages local vendors to start their own digital shops, but also allows international sellers to increase the size of their businesses through the internet [12]. There are a variety of challenges facing the growth of e-commerce in Saudi Arabia. For instance, the lack of clear legal remedies and regulation in cases of disputes, the cost of delivery due to the dearth of accurate home addresses, and the absence of trusted websites among those that require giving personal information to online sellers [12]. However, the Saudi government has announced a “2030 Vision” to enhance many sectors, including e-commerce trade. In order to improve this sector, there must be clear laws and remedies available for both vendors and customers, which have been acknowledged by the government [12]. According to the Communications and Information Technology Commission (CITC) report entitled ‘E-commerce in Saudi Arabia’:

There is a lack of a comprehensive framework for protecting consumer rights with respect to online buying. Currently, consumer protection regulations only cover in-store purchases and do not protect buyers when purchasing from international sellers. Although consumers are aware of these general consumer protection regulations, there is a strong perception that the rules and regulations in place are not adequately enforced. There is also a lack of provisions to address violations and no clarity on the boundaries of jurisdiction in the event of a complaint [12].

IV. THE INTRODUCTION OF THE SAUDI E-COMMERCE LAW 2019 AND ITS FAILURE TO PROTECT CONSUMERS IN SAUDI ARABIA

In 2015, the Ministry of Commerce in Saudi Arabia proposed a new legal project for regulating e-commerce. The aim of this project is to protect the consumer by setting requirements that merchants must fulfill, which includes the regulation that the seller must display the name, location, contact information, and commercial registration number of their online business. Also, the so-called terms and conditions must be clear, pricing must be accurate, and the correct product information for the item must be provided [13]. In 2019, the Ministry of Commerce published an e-commerce law, and then in 2020 the implementing regulation has been implemented, which governs contracts between domestic or international vendors and customers [14]. Additionally, this e-commerce law covers many aspects of e-contracts, such as the provision of the seller’s personal information, essential characteristics of products and/or services, delivery information, warranty if any, terms and conditions of the contract, and regulation surrounding electronic advertisements, including banning deception and false information [15]. The consequences of non-compliance with this law include receiving a warning, a fine of 1,000,000 Saudi Riyals, the prevention of practitioners from trading online temporarily, or permanently blocking the online provider [15].

This law applies to both local and international sellers, with no mention of how the law is going to be enforced on international sellers, or how this law protects the Saudi consumer from foreign vendors who do not comply legally. This is a gap in the 2019 E-commerce law of Saudi Arabia. These punishments show the inconsistency of enforcing the law upon foreign sellers, due to the cross-border law enforcement problem. Moreover, blocking foreign sellers has practical issues. For example, the seller can easily change their personal information and continue to operate in the country.

V. E-COMMERCE ADOPTION BARRIERS

Salem points out that the adoption of e-commerce in Saudi Arabia came as a result of the rapid rise in the use of ICT; however, the evolution of e-commerce is not taking place as quickly as is the evolution of ICT [16]. In Saudi Arabia, both the public and private sectors have tried to improve the growth of e-commerce. Moreover, e-commerce in Saudi Arabia, as well as in other Middle Eastern and North African states, does not yet measure up to e-commerce in the global context. In the same vein, e-commerce in Saudi Arabia is not as prevalent as it is in states with similar economies [16].

There are a variety of factors for the slow adoption of e-commerce in the Kingdom. First, since using technology requires a good internet service and skilled employees, the lack of both resources/commodities is one of the issues that Saudi institutions face [17]. According to Al Ghamdi et al., the factors that impact businesses and allow them to flourish and improve in (B2C) e-commerce are the desire of purchasers/consumers for convenience and lifestyle enhancements, as well as a variety of items and services offered [18]. Also, businesses need to be willing to expand online, customers need to have purchased power, there needs to be a solid information technology infrastructure, and governments need to be on board [18]. Factors that impact the development of e-commerce adoption include socioeconomic inequality, lack of consumer trust, a deficiency of secure online portals, lack of customer service, and language difficulties [18]. It has been asserted that social barriers for e-commerce adoption in Saudi Arabia include: the unwillingness of Saudi people to change their attitudes towards online commerce; a lack of trust of online traders; deficiencies in laws and regulations regarding e-commerce, including consumer protection measures [19].

VI. OVERVIEW OF E-COMMERCE LAW

The Ministry of Commerce initiated a project to legislate for e-commerce in the Kingdom of Saudi Arabia. As a result, in 2019, a law was issued by Royal Decree No. (M/126) to protect e-consumers in Saudi Arabia. The law contains 26 acts, which, among other functions, govern electronic contractual relationships between vendors and consumers, define relevant terms, govern electronic advertisements, provide guidelines for traders and consumers, govern the use of consumer information and identify the parties that must comply with the legislation [15]. In 2020, the implementing regulation was enacted and become enforceable in the kingdom of Saudi Arabia. The implementing regulation of e-

commerce law contains 20 acts, which define the relevant terms, identify the activity of vendors, regulate the identify information by vendors in the e-shop profile including business location, protecting consumer personal information, regulate the condition of the e-contract, govern electronic advertisements, identify the conditions for lawful and unlawful e-contract termination, regulate for e-platforms (intermediary between purchaser and vendors) [14].

VII. E-COMMERCE LAW GAPS

In 2019, the Ministry of Commerce launched a new e-commerce law that governs several aspects of e-commerce and is enforceable for both domestic and international vendors. It has been stated that e-commerce suppliers in Saudi Arabia consist of domestic, regional and international sellers, with a high percentage of international dealers who supply Saudi consumers. In 2020, the Ministry of Commerce announced the establishment of the Implementing Regulation of the Electronic Commerce Law. Questions remain about how this regulation protects consumers. Saudi e-consumers are dealing online with international sellers more often, which shows that e-consumers need more protection when dealing with international vendors. The new regulation is adequate to protect Saudi e-consumers locally, as both e-vendors and e-customers are located under one specified jurisdiction, but it is not adequate to protect e-consumers internationally, as there is a deficiency in being able to enforce the law upon sellers who are in another jurisdiction. Hence, one of the major issues of this law is the cross border-issue, as well as that consumers are not able to claim remedies in case something goes wrong. Another gap is that there is confusion as to whether the reporting of incidents to the Ministry of Commerce or to authentication entities is adequate – this is not clear and needs to be clarified. Also, some of the requirements for contractual obligations, as stated by several of the articles, may be different than contractual obligations in sellers' legal systems; this can cause problems, confusion or even disputes between e-consumers and international e-sellers. Also, the law does not address the confusion that consumers may face due to the nature of Islamic contractual obligations, which are different than contractual obligations in common and civil law; it seems that the Saudi legislature was not aware of this point. Blocking service providers or intermediary platforms for non-compliance with laws would not allow Saudi customers to obtain remedies and be compensated for damages that might have been caused because e-consumers were not able to access remedies. However, blocking websites or service providers is not adequate, as businesses can easily change names and operate again inside the jurisdiction of Saudi Arabia. Regulations on e-commerce cannot be enforced upon international sellers – they can merely be enforced on service providers within Saudi jurisdiction. Therefore, the law can govern electronic commerce within Saudi jurisdiction, and international service providers can be dealt with in different ways.

VIII. RECOMMENDATIONS

Saudi Arabia could create and publish a list of reliable sellers, or blacklisted vendors, in an online system accessible to the public. Furthermore, the Saudi government could also regulate online trading platforms to protect Saudi e-consumers from deceptive misconduct by sellers. These regulations may include compelling online trading platforms to guarantee remedies for Saudi e-consumers as part of the agreement.

IX. CONCLUSION

Electronic Commerce Law is not adequate for regulating e-commerce transaction concluded between Saudi consumer and international vendor.

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