

# **Review of E-Commerce Legal Framework in Bahrain: Under the Perspective of Local and Global Consumer Protection**

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## **Abstract**

E-commerce has been recognized by the Bahraini government as a key driver of the economy. It has become a cornerstone for business and communication in the country which is an important financial hub. However, there are formidable challenges for Bahrain as it strives to reach its complete potential to be a regularize the e-commerce business at an international level. The objective of the current paper is to establish an understanding of the gaps of E-commerce business in the Kingdom of Bahrain in comparison to the detrimental growth and established structure in the rest of the world and GC countries.

The paper has adopted an exploratory critical analysis as a methodology to compare, contrast and thoroughly understand the laws of E-commerce business establishments in Bahrain. The Secondary research approach with an exploratory philosophical stance is utilized in order to study the current decree Law No 208 so that its critical strengths and weaknesses can be assessed under the international framework of legalities of consumer protection rights. The findings of this study are that decree Law No 208 provides a basic framework for protecting consumers.

The findings suggest that the law needs to be updated so that adequate information regarding goods or services offered by businesses can be sufficient for the consumers so that they can make informed decisions regarding the transaction, most particularly, in cases where domain registration and business registration neither having a bahraini domain name nor have physical presence in the Kingdom. E-commerce legislation in the country was passed in the year 2002 with decree Law No 208 as part of the initiative to recognize electronic records and ensure that electronic transactions can be safeguarded. Recently, Bahrain has witnessed a tremendous increase in e-commerce with over \$175 million sales recorded in the year 2015. It is recognized as a key driver of the economy and needs to updated in terms of proper legalization of the online selling, customer protection, key authoritative identifier, transaction tacking and others in order safeguard online consumers from various types of threats.

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### Introduction

The development of the Internet has created a technological revolution that has been growing at an exponential rate. Specifically, e-commerce has become an important concept which has the potential to transform society. International texts define e-commerce as applying “to any kind of information in the form of a data message used in the context of commercial activities”<sup>(1)</sup> or conducted over computer-mediated networks”<sup>(2)</sup>. It helps to enhance consumer welfare while providing a greater range of products available and boosts price competition. Nevertheless, the security threats to users have increased substantially in the field of e-commerce. The digital environment has been established to facilitate trade and growth between buyers and sellers. This raises the need to look at e-commerce business and evolution of consumer protection law and its impact on consumers. In this regard, tremendous efforts have been made to regularize the online business in a manner that both consumers and seller’s rights are protected and at the same time.

Bahrain is a continuously growing economy that has implemented e-commerce law in 2006, however, this needs to be thoroughly analyzed as the technological advancements are sky-rocketing in order to keep the protection of buyer and consumer together.

### 1.1 Objectives Of The Research

The objectives of the current research are two folds, first is to understand and thoroughly analyze the current law in comparison to the international laws of united states, European and middle east market and secondly to suggests the improvement strategies to implement the law in an influential manner.

### 1.2 Background Study

Electronic commerce is “the production, advertisement, sale and distribution of products”<sup>(3)</sup> “or services, whether between businesses, households,

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(1) Uncitral.1999. Model Law on Electronic Commerce, article 1 United Nations Publication New York, ISBN 92-1-133607-4.

(2) OECD (2002) Measuring the Information Economy 2002, Annex 4, Organisation For Economic Co-Operation and Development, Paris 2002, p. 89.

(3) European Parliament Resolution of 5 February 2009 on international trade and the internet, (2008/2204(INI)), OJ C 67E, 18.3.2010, p. 112.

individuals, governments and other public or private organizations<sup>(4)</sup>. Three different kinds of electronic commerce forms are detailed in the European Parliament Resolution (2009). Direct e-commerce (on-line commerce): The transaction is processed with electronic forms including order, delivery and liquidation of cost. Indirect e-commerce (offline commerce): The contract is online while the delivery is accomplished through different ways which include mail, courier or by hand deliver. Mobile E-commerce (m-commerce): This involves the transactions to be occurred through mobile device not only through a computer. When the transaction is conducted not only via PC but also from mobile phones, tablet etc.)<sup>(5)</sup>

Moreover, e-commerce poses serious threats to users as the development of new technologies has helped hackers and online criminals the ability to steal private and confidential information of online consumers. Privacy and protection are necessary in order to ensure the smoothness of online transactions.

Protecting online consumers has become an important goal for many governments with the establishment of regulatory and legal frameworks. Such frameworks strive to regulate the e-commerce environment so that the rights of consumers can be protected from all sorts of fraudulent and malicious activities. The scope of these laws also extends to providing safe and reliable payment gateway systems to the users. Bahrain is one of the oil rich states in the Gulf Region. It has been able to establish itself as a regional financial hub which attracts international business and commerce. In addition, Bahrain has a diverse population that includes locals as well as expatriates. E-commerce use in the country has been increasing rapidly as the government has sought to make investments in the industry so that it can be used as a tool for promoting growth and development. The current e-commerce laws in the country need to be studied and evaluated so that they can be used to protect online consumers in an efficient manner.

Considering the growing technological transformation in Information technology, US APRA project was launched that increased is focused towards

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(4) OECD, op.cit.

(5) SEC (2011) 1641 final, Commission Staff Working Document, "On Line Services, including E- Commerce in the Single Market", Accompanying Document COM (2011) 942, "A Coherent Framework to boost Confidence in the Digital Single Market of E-commerce and other online services", 11.1.2012, p. 8.

the progress of the networks, protocols and software and lead to the development of Arpanet (1969). Further, for the data exchange of information based on computers, EDI (1972) and the WWW (1992, CERN)<sup>(6)</sup> were followed that set the foundation of the e-commerce legislations in the following years and decade to come. It can also lead to the development of new markets.

The electronic marketplace is an open system that is visited by different individuals like manufacturers, retailers, and general public. First electronic transaction was made possible in the period of 1997-2000 and since then e-commerce has grown widely capturing the global world and tremendously increased the business opportunities for the world. In EU, the turnover of business increased from 10 Billion Euros to 70 Billion Euros from 2001 to 2008. These purchases were mainly from the e-shops and e-transactions, however, the trust for cross-border transactions was limited, accounting for 7% transactions only, mainly due to the limited cross-border protection law<sup>(7)</sup>.

### 1.3 Problem Statement

The analysis of multiple studies shows the primary concerns that online consumers face when they engage in e-commerce transactions. One study cites unfair marketing practices, insufficient information disclosure, and contract terms as being the primary concerns for online consumers<sup>(8)</sup>. In other words, many online businesses often have vague business contracts while they do not provide complete information to the consumers. Another study focuses on the inability of online businesses to implement the proper merchandize and delivery practices<sup>(9)</sup>.

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(6) Electronic Data Interchange, 1954. See Tziva E., E-commerce for medicine, Sakkoulas publishers, Athens- Thessaloniki 2007, p. 26. European Centre for Nuclear Research (1954), see <http://public.web.cern.ch/public/en/About/About-en.html>.

(7) Anagnostopoulou D., 2011. Law of International Transactions, the European Dimension, Ant. Sakkoulas 2011, pp. 295-297 (in Greek).

(8) Dehkordi, LotfollahForouzandeh, Ali Shahnazari, and Ali Noroozi. «A study of the factors that influence the acceptance of e-commerce in developing countries: a comparative survey between Iran and United Arab Emirates.» *Interdisciplinary Journal of Research in Business* 1, no. 6 (2011): 44-49.

(9) Aleid, Fahad Abdulaziz, Simon Rogerson, and Ben Fairweather. «Notice of Retraction A consumers perspective on E-commerce: practical solutions to encourage consumers adoption of e-commerce in developing countries-A Saudi Arabian empirical study.» In *Advanced Management Science (ICAMS)*, 2010 IEEE International Conference on, vol. 2, pp. 373-377.

Security is an important concern for online consumers as they have doubts regarding the safety of their financial information while they are conducting online transactions. Fraud and deception have also been cited by one study as a major problem because it refers to the lack of secure and safe online transaction processes. Unsafe products, insecure payment methods, loss of privacy, risk of misuse of personal information, computer fraud, hacking, alteration of financial data, and other concerns are also highlighted as being concerns for online consumers<sup>(10)</sup>. The It has established the Uniform Domain Name Dispute Resolution Policy and Rules<sup>(11)</sup>.

In Bahrain and similar States in the Middle East strict prohibitions are implemented across the internet medium, yet there are various loop holes in the internet transactions in the Kingdom. For internal and authenticated gateways, like BENEFIT, consumer protection seems to be in healthy position because of various limitations and strong check and balance at the government level.

However, this is creating a problem for the normal seller who cannot sell online unless a proper BENEFIT gateway system is installed. This means higher cost, know-how of the technicalities and over-burden of the costing. Thus, people use different modes of payments like cash on delivery or bank transfer for online buying which is not backed by any consumer protection rights, once the money is transacted there is no guarantee of buyer's rights protection.

#### 1.4 Research Questions

1. To understand the current state of e-commerce legal framework in Bahrain.
2. To understand how the e-commerce legal framework affects consumer protection in Bahrain.

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IEEE, 2010.

Al Amer A .N Bahrain and the information society.2003.Director of Computer Services, Central Informatics Organisation Kingdom of Bahrain

(10) Mohapatra, Sanjay. «E-commerce Strategy.» In E-Commerce Strategy, pp. 155-171. Springer US, 2013

(11) Karadimitriou K., The e-signature as a means for the security of transactions in e-commerce, Sakkoulas Publishers, 2008, pp. 50-51.

3. To analyze the Evolution of consumer protection law and its influence in E-commerce Business.

## **1.5 Importance Of The Study**

This study is important as it helps understand the need for e-commerce legal framework in Bahrain: under the perspective of local and global consumer protection. E-commerce has been recognized by the Bahraini government as a key driver of the economy. It has become a cornerstone for business and communication in the country which is an important financial hub. However, there are formidable challenges for Bahrain as it strives to reach its complete potential to be a regularize the e-commerce business at an international level.

The law needs to be updated so that adequate information regarding goods or services offered by businesses can be sufficient for the consumers so that they can make informed decisions regarding the transaction, most particularly, in cases where domain registration and business registration neither having a .bh domain name nor have physical presence in the Kingdom. Bahrain has witnessed a tremendous increase in e-commerce with over \$175 million sales recorded in the year 2015.

## **Chapter One: Literature Review**

### **1.6 E-Commerce Law in Bahrain**

International Covenant on Civil and Political Rights (1966) was the first in its form that accepted the e-communication as the freedom of expression other than print, oral and written form of expressions.<sup>(12)</sup> In Later years, this lead to the formation of UNCITRAL model law of electronic commerce (1996) that boosted the protection and promotion of electronic communication to a greater extent. It was the first model that accepted e-signatures as the authority of originality if it can be recognized. It also explained the risk involved within the transaction of such systems like risk transfer, liability in case of fraud or wrong transmission, time of sending etc. The model law has been signed by 68 States in a total of 144 jurisdictions that includes Bahrain, who signed the UNCITRAL law in 2002, prior to UAE in 2006 and Qatar in 2010 in the Gulf.

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(12) International Covenant on Civil and Political Rights, UN Treaty Series, Vol. 68, p. 17 and 999,1- 14668 art. 19 par. 2, See <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

Online consumer sales have increased in Bahrain with over \$175 million sales recorded in the year 2015<sup>(13)</sup>. 55 out of every 100 Bahrainis have now access to the Internet which is one of the highest internet usage levels in Arab countries<sup>(14)</sup>. Bahrain has realized the importance of e-commerce as evident in the establishment of the Directorate of e-commerce & IT within the Ministry of Industry, Commerce, and Tourism in 2004<sup>(15)</sup>.

The Directorate's strategy has been to focus on supporting and enhancing the infrastructure for e-commerce and information technology with the participation of the commercial and industrial sectors. Moreover, the Directorate has sought to find ways to allow daily transactions in a secure, fast, and low cost manner over the Internet. The legislative framework has been introduced with decree Law No 28 of 2002 on Electronic transactions that strives to meet the ever changing requirements of the commercial world<sup>(16)</sup>. The legislation is concerned with the application of electronic records and signatures, electronic transactions, records, and legal recognition of electronic records in evidence<sup>(17)</sup>.

## **1.7 Growth of the Scope of legal framework in The Kingdom of Bahrain**

The e-commerce sales in GCC region is projected to grow by \$5 billion by the end of 2020<sup>(18)</sup>. Online shopping is at its nascent stages but there are signs that it will continue to grow with key factors like government commitment, retailer investment, and young population using new technologies and innovations. Hence it is important to study the scope of the e-commerce regulatory framework in Bahrain with an emphasis on its current mechanisms for protection of online consumers. The aim of this article is to study the limitations of the current framework and make recommendations so that online consumer protection can be achieved in order to safeguard the rights of online consumers while simultaneously striving to improve e-commerce as an engine of growth in the country.

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(13) Benmamoun, M, Rana S, Nitish S, and Francisco T M. 2015. Gulf Arab E-Business Environment: Localization Strategy Insights, Thunderbird International Business Review (2015).

(14) Benmamoun, M, Rana S, Nitish S, and Francisco T M. 2015, op. cit.

(15) Benmamoun, M, Rana S, Nitish S, and Francisco T M. 2015, op. cit.

(16) Benmamoun, M, Rana S, Nitish S, and Francisco T M. 2015, op. cit.

(17) Trade Act (7/1987) (GCC Legal Information Network 2011)

(18) Benmamoun, M, Rana S, Nitish S, and Francisco T M. .2015, op. cit.

## **1.8 Expected growth of ecommerce in Bahrain**

E-commerce in Bahrain has progressively increased as 5% of total retail sales are now occurring through online channels. This is higher as compared with the regional average as 90% of Bahrain's population is connected to the Internet. It is expected that 20% per year growth rate will be registered in the e-commerce market of the country. However, there are many obstacles for the acceptance of e-commerce in Bahrain such as low adoption of online retail channel by the local retail companies, cash on delivery payment models, and low consumer acceptance of online shopping.

Online financial exchanges are present that allow for currency exchanges or trading purposes while their business-to-business (B2B) electronic data interchange for the process of e-commerce. Broadly speaking, e-commerce has come to encompass a divergent set of business activities because of the advent of technologies. Studies have shown that e-commerce has advantages for consumers such as allowing them to purchase products at any hour or day<sup>(19)</sup>.

## **1.9 Consumer Protection and its importance**

The fundamental rights of consumers started in the 1960s when President Kennedy focused on the primary rights of consumers which were the right to safety, the right to information, the right to choose and the right to be heard<sup>(20)</sup>. Consumer protection is therefore an important concept in the context of e-commerce as it must safeguard the above four elements.

The theoretical basis for offering consumer protection can be identified from the empirical literature on the subject. Consumers have a weak position in commercial transactions which necessitates the need for empowering them so that they can make informed choices regarding products and services that they purchase<sup>(21)</sup>.

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(19) Lawrence, J. E., and Usman A. T. 2010. Barriers to e-commerce in developing countries. *Information, society and justice journal* 3, no. 1 (2010): 23-35. Bahrain Legislative Decree No.28 of 2002 with respect to Electronic Transactions art 5. Detecon Consulting .2014. Policy and Regulatory Framework for Governing Internet Applications.

(20) Armstrong, Mark, John Vickers, and Jidong Zhou, Consumer protection and the incentive to become informed, *Journal of the European Economic Association* 7, no. 2-3 (2009): 399-410.

(21) Donoghue, Suné, and Helena M. De Klerk, The right to be heard and to be understood: a conceptual framework for consumer protection in emerging economies, *International Journal of Consumer Studies* 33, no. 4 (2009): 456-467



The promotion and defense of their rights should be safeguarded in view of the complexity of the markets in which they operate. The implications are that complex nature of e-commerce markets justifies the goal of achieving consumer protection because they are more vulnerable and in a weak position due to the challenges of technology. The inability of consumers to seek adequate redress justifies the concept of consumer protection. The relationship between buyers and sellers is unequal which also justifies the concept of consumer protection<sup>(22)</sup>. Such imbalances create inefficiencies in the relationship between both parties. Consumers are at the mercy of traders who are powerful and well organized while they also possess strong knowledge about the products or services that they sell.

Another feature of consumer protection is regarding the nature of purchases. The consumer who purchases goods or products remains unaware if the seller is reputable or unreliable. This can lead consumers to receiving low quality goods or services. The rationale behind consumer protection is that regulation of this field will create a sufficient balance in the relationship between buyers and sellers<sup>(23)</sup>. The buyer will have sufficient knowledge about products and information regarding the reliability of the seller.

Consumer protection has been defined as a set of laws that strive to protect the rights of consumers as well as ensure fair trade, accurate information in the market place, and competition. Specifically, the laws are designed with the intention of preventing businesses from engaging in unfair or fraudulent practices that might give them an advantage over competitors. Moreover, the goal of such laws is to safeguard the consumers from harm<sup>(24)</sup>.

The global nature and unique characteristics of e-commerce has made it mandatory for governments to develop innovative approaches related to the concept of consumer protection. One study argues that governments should provide transparent and effective protections to online consumers that are at the same level as those provided in other forms of commerce<sup>(25)</sup>.

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(22) Henry, Paul C, How mainstream consumers think about consumer rights and responsibilities, *Journal of Consumer Research* 37, no. 4 (2010): 670-687.

(23) Helberger, Natali, MB M. Loos, Lucie Guibault, Chantal Mak, and Lodewijk Pessers. Digital content contracts for consumers, *Journal of Consumer Policy* 36, no. 1 (2013)p. 37-57.

(24) Andam, Zorayda Ruth. *e-Commerce and e-Business*. (2014)

(25) Grandón, E. E., Suzanne A. N, and Peter P. , Comparing theories to explain e-commerce adoption. *Journal of Business Research* 64, no. 3 (2011) p. 292-298

Moreover, businesses should provide their legal names and physical locations so that consumers can easily contact them through online and offline means. Another study argues that e-commerce businesses must be able to provide information about the businesses, products and services offered, terms of transactions, and other important information in a clear and accessible manner to the consumers<sup>(26)</sup>.

### 1.10 Bahraini Consumer Protection law

Bahraini Consumer Protection law stipulating in Article (4)<sup>(27)</sup> that vendor must include all the information of the products, documents, refund policy, clearly stated pricing and discounts in case applicable, further the documents arranged during the electronic transactions like receipts, sales orders, purchase order, purchase request, should be kept as a record which acts as the necessary elements of a commercial charter.

However, there is little information available in terms of data protection and the dissemination of the people's data. In EU, for instance, privacy is a fundamental part of human integrity and personal freedom which is extensively detailed in the EU Charter of Fundamental Rights, article (7) and (8). Such rules are applied to all businesses either inside or Europe or operating from outside in Europe. People exchange their services<sup>(28)</sup>.

### 1.11 Legality of Domain Names registration in Bahrain

The domain names provide the identity to an online business that acts as an administrative autonomy, authority or control within the Internet. Domain names are formed by the rules and procedures of the Domain Name System (DNS). At an international level, a domain name with an extension of com.

is easily and cheaply accessibly without any prior strict regulations, control and authority. The Internet Corporation for Assigned Names and Numbers (ICANN-1998) 54<sup>(29)</sup> is responsible for directing the global internet system

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(26) Boateng, R, Alemayehu M, and Richard H., E-Commerce in developing economies: a review of theoretical frameworks and approaches. In Emerging markets and e-commerce in developing economies, pp. 1-56. IGI Global, 2009

(27) See: <http://www.moic.gov.bh/En/Commerce/StandardizationConsumerProtection/ConsumerProtectionDirectorate/General%20Information/Pages/For%20Consumers.aspx>.

(28) See Article (5) from Bahraini Consumer Protection Law.

(29) Internet Corporation for Assigned Names and Numbers, see <http://www.icann.org/en/about>.

to have a secure and stable internet system, yet it is difficult to monitor all the domain names for their authenticity and legality framework. Bahrain in this regard, urges the local business owners to have a domain name under the regulated laws of Bahrain and the authoritative telecommunication companies that provide domain name with end extension of dot.bh, where BH signifies Bahrain as a country.

Such domain name is not easily accessible to anyone unless it has a regulated, registered, authoritative business establishment under the ministry of commerce of Bahrain. Bahrain Ministry of industry and commerce, LAW NO.(13)<sup>(30)</sup> OF 2006 under the Bahrain Consumer protection law establishment of an office to be affiliated to the Ministry concerned with telecommunications to undertake all the duties related to the registration which validates the information of the business, conditions, procedures, time-period and payment method.

## Chapter Two: Methods And Analysis

### 1.12 Research Methodology

Research methodology is an important aspect of this research as it highlights the techniques used to acquire data and information in this study. Research methodology has been defined as the theoretical and systematic analysis of the methods used in a field of study<sup>(31)</sup>. It is an important aspect of this study as it whereas, strives to ensure that theoretical analysis of the body of methods and principles can be done for any branch of knowledge.

In addition, the goal of research is to identify new assumptions or challenge

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(30) See:<http://www.moic.gov.bh/En/Regulation/Documents/b28891f7cb1147aabdd6268ecc583c03eTransactionlawEnglish.pdf>

The regulation issued as to regulate the registration and use of the “bh” domain name may prescribe the following:

- (i) the establishment of Domain Name Registration Office at the Ministry of Transportation;
- (ii) the form of registration;
- (iii) the period during which registration continues in force;
- (iv) the manner in which the terms on which and the period or periods for which registration may be renewed;
- (v) the circumstances and manner in which registrations may be granted by the Domain Name Registration Office;
- (vi) process for contesting the decision of the Domain Name Registration Office;
- (vii) determine the fees, if any, to be paid for the grant or renewal of registration and the time and manner in which such fees are to be paid, subject to prior consultation and approval of the Council of Ministers;
- (viii) such other matters relating to registration.

(31) Bryman, Alan, and Emma Bell, Business research methods, Oxford University Press, USA, 2015.

existing ones regarding specific phenomenon<sup>(32)</sup>. The goal of methodology is to offer a theoretical framework for identifying the best method or practices that can be applied to the specific case. Another goal of research methodology is to apply the principles and methods for answering specific research goals and objectives.

There are different ways of adoptive a particular method for the research which could be descriptive, analytical, physical and exploratory. Depending on a particular research ideology or research questions, a method is adopted that entails the essence or solving a problem or filling up a knowledge gap. Considering the fact that e-commerce law is still in its developing stage, however, tremendous efforts have been made in this regard, in formulizing the infrastructure, strict abidance to law and awareness is still vague. This is the reason than an exploratory or descriptive method of research is adopted in this study. A descriptive research is more of an explanation of the situation in a particular community, country or social structure to understand the different dynamics of the problem which helps in understanding the research problem in a clear and concise manner.

### **1.12.1 Research Strategy**

There are two ways data can be collected, first is by conducted a primary research in which the researcher goes in the field and collect the data through a survey, interview, questionnaire or market research at a larger scale in order to fill the knowledge gap. This method is adopted mostly by the objectivist who considers to develop an objective answer from a realistic point of view. In law, most of the studies are constructive, case study based or exploratory that views the issues from a constructive point of view and reality is built by understanding the different proximities of a reality and critically analyzing the situation. This is the reason that the current research on e-commerce business in Bahrain, is constructive in nature and not limited by time and answers the questions in a manner that it entails different factors or subjective reality of the situation.

### **1.12.2 Data Collection Methods**

For this study, qualitative approach was used to collect data. Qualitative

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(32) Blumberg, Boris F., Donald R. Cooper, and Pamela S. Schindler. Business research methods. McGraw-hill education, 2014.

approach was chosen due to the nature of this research which followed a case study approach. A case study on Bahrain as a country was used to review the e-commerce legal framework under the perspective of local and global consumer protection. Qualitative approach was also chosen for this study as the paper is of law in nature and review of the current law is important as opposed to acquiring quantitative data from different respondents. This means that Secondary research was selected as the data collection method for the objectives and questions of this study. For this study, secondary data resources that will be used include, books, journal articles, law articles, online articles and newspapers on review of e-commerce legal framework under the perspective of local and global consumer protection in Bahrain

The advantages of secondary research are extensiveness of data which has been collected by different institutes and researchers. This allows the researcher to have access to materials that cover a large spectrum of issues. The data can be filtered in an easy manner as the relevant parts can be used for the research process. Another advantage is that it helps in improving the understanding of the problem. However, there are certain disadvantages to secondary research such as data being outdated and inaccurate.

The researcher does not participate in the process directly which means there is no way to identify any biases of the researchers<sup>(33)</sup>. Moreover, the extensiveness of the information can also be a drawback as it can be difficult to find specific information that will help in answering the research problem. Nevertheless, secondary research has been selected as the methodology because it will help in answering the basic problems. A number of studies have been selected based on their relevance and recentness so that the basic questions can be answered. These studies are related to the notion of consumer protection and e-commerce legislation.

They also include a study of the legal framework in Bahrain with respect to online consumers. Review of literature is done so as to form a valid conclusion on e-commerce legal framework under the perspective of local and global consumer protection in Bahrain.

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(33)Blumberg, Boris F., Donald R. Cooper, and Pamela S. Schindler, Business research methods.,McGraw-hill education, 2014.

### 1.12.3 Justification Of Using The Current Methodology

For the current research, a descriptive qualitative data analytical methodology was selected. The method is adopted for the secondary qualitative data that has been already published in different literatures in order to have a comparative understanding of the laws and principles of the e-commerce business in Bahrain. An Exploratory qualitative data analysis is used in studies where the purpose is to explore the knowledge of the current subject and can be conducted in both primary and secondary research. The methodology is advantageous in various ways, first of all it provides researcher an option of investing the topic in a deeper critical manner, understanding the ground rules and construct the understanding of reality through a perspective that is closed to the real situation. Further, it assists the researcher to set the foundation of a bigger research in which primary data is involved, which helps in answering the questions objectively.

The data collection method is flexible and researcher finds it time and space friendly. In this research, an online repository is used for the search of literatures and related governed laws are thoroughly understood and critically explained in a manner that a clear guidance and justification is made of all the claims.

The researcher is constructivist in its research philosophical stance and thus constructs the reality from an interpretivist rule, which involves the subjectivity of the reality into consideration.

This philosophical stance is important in the current study as Bahrain's infrastructure and domains are quite different in terms of legality and prone to threats in an online environment and thus must be carefully analyzed under the perspective of different factors.

### 1.13 Findings and Analysis

Bahrain still needs a legal structure that is favorable for the promotion of e-commerce. Despite the passing of Legislative Decree, no (28)<sup>(34)</sup> and (35)<sup>(35)</sup> of 2002, there are still issues related to security, transparency, and consumer

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(34) SEE: <http://www.moic.gov.bh/En/Regulation/Documents/0c8253a105674c79a0407948835779c2LAWNO13OF2006TranslationMOIC.pdf>.

(35) SEE: <http://www.moic.gov.bh/En/Regulation/Documents/b28891f7cb1147aabdd6268ecc583c03eTransactionlawEnglish.pdf>.

protection. The analysis from the secondary data sources highlights the importance of consumer protection with the goal of addressing the imbalances between businesses and consumers in all forms of commerce.

Given the nature of the Internet, it is important that e-commerce legislation should strive to protect the information of the consumer such as identity and financial information which is implemented as long as the domains are locally registered. However, there is limited information available on the structure of the international domains and websites registrations and operations within the premises of Bahrain. Legislation should ensure that sellers do not try to conceal vital information such as identity, location, and credibility. Consumers are more vulnerable online to deceptive and fraudulent activities. The aim of consumer laws, policies and regulations should strive to identify consumers' rights and business practices that are expected online. Moreover, they should strive to limit fraudulent and misleading commercial conduct which is clearly detailed in the in Bahrain consumer protection law Article Chapter Six: Penalties Article (18)<sup>(36)</sup>. Another goal of Bahrain Consumer Protection law is to assist businesses in developing self-regulatory mechanisms that can help them to reduce the chances of online criminal and fraudulent activities. Article 24 of the Decree outlines some of the penalties as a response to fraudulent and criminal activities against online consumers<sup>(37)</sup>. It mentions about penalties regarding any individual who copies or possesses the signature creation device of another person without the authorization of the other person. It also defines penalties for any individual who changes or discloses signature creation device of another person without authorization<sup>(38)</sup>. This is a basic form of online security that protects the rights of online consumers. The decree is able to identify the nature of basic threats to online consumers in the above statements. The decree does define the act of using a certificate for fraudulent purposes as illegal while it also defines any action that involves misrepresenting any person's identity or authorization in requesting or accepting a certificate.

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(36) Legislative Decree no.28 of 2002 With Respect To Electronic Transactions <http://www.moic.gov.bh/En/Regulation/Documents/b28891f7cb1147aabdd6268ecc583c03eTransactionlawEnglish.pdf>.

(37) Legislative Decree no.28 of 2002 With Respect To Electronic Transactions <http://www.moic.gov.bh/En/Regulation/Documents/b28891f7cb1147aabdd6268ecc583c03eTransactionlawEnglish.pdf>.

(38) Legislative Decree no.28 of 2002 With Respect To Electronic Transactions <http://www.moic.gov.bh/En/Regulation/Documents/b28891f7cb1147aabdd6268ecc583c03eTransactionlawEnglish.pdf>.

However, a major problem with the e-commerce decree in Bahrain is that it does not protect consumers that engage in cross border online transactions. Many consumers do not have information regarding who is operating an online store or how to contact the website for more information unless it is a Bahraini domain name. If things go wrong such as customer being billed twice or ordered goods not arriving than this can be problematic for the customers<sup>(39)</sup>. There are no provisions in the Bahraini law which can provide redressing mechanisms for consumers from the country that engage in cross border transactions. Another issue associated with the current e-commerce framework has been related to privacy. The decree does not define privacy adequately and has not been updated to protect the privacy of online customers<sup>(40)</sup>.

Specifically, the Bahraini customers may not have information what personal information is being collected and who is collecting their personal data. They do not have information what purpose their data is being used. Consumers will have no choice but to accept the complex privacy terms or not to use the service at all<sup>(41)</sup>. The decree has to specify the data retention laws clearly in order to ensure that they can provide complete information to consumers about their privacy rights. This is important because it will help to balance the needs of law enforcement authorities in keeping data and help to protect the privacy of the consumers.

A significant contribution of the decree is related to the concept of digital signatures which is considered to be a credible step towards consumer protection as well as having adequacy as proof in the courts. Digital signatures are important because they help to enhance the capability of individuals when they engage in electronic communication<sup>(42)</sup>.

Advanced encryption and decryption technology is used to validate identification of other party during e-commerce transactions<sup>(43)</sup>. However,

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(39) Alotaibi, Aziz Obaid, and Christian Bach, *Consumer Awareness and Potential Market for e-Commerce in Saudi Arabia: Challenges and Solutions*, In ASEE 2014 Zone I Conference, pp. 1-5. 2014.

(40) Madiwalar, Mahantesh B., and B. S. Reddy, *E-Consumer Protection: Problems and Perspectives*, IUP Law Review 7, no. 1 (2017).

(41) Madiwalar, Mahantesh B., and B. S. Reddy. *op. cit.*

(42) Larsen, G, and Rob L. 2013. *Consumer rights: an assessment of justice*. *Journal of business ethics* 112, no. 3 (2013) p. 515-528

(43) Hondius, E. 2012. *The innovative nature of consumer law*. *Journal of consumer policy* 35, no. 2 (2012) p. 165-173.



digital signature law is still in the beginning stages even though it has been considered to be vital for resolving conflicts among parties in e-commerce.

The decree also focuses on the importance of electronic records being established and taking adequate steps for the security of electronic records and transactions. The use of electronic records has been defined under the law which is an important step towards the promotion and development of e-commerce in the country.

The e-commerce law in Bahrain helps to impose penalties on individuals that are involved in establishing, publishing or offering electronic certificate of authenticity for fraudulent purposes or other illegal activities. The penalty is punishment of three years and fine not exceeding BD 10,000. In some cases, one of the penalties might be imposed on the perpetrators. The analysis of the Bahraini e-commerce law suggests that there is a focus on creating a secured environment through which electronic transactions can be conducted<sup>(44)</sup>.

Electronic records must be signed and authenticated while the use of electronic signatures is promoted. Additionally, the parties that are authorized to apply this authenticity provided it has been authorized by the government. However, the law governs the electronic records and files while its scope over consumer protection remains limited. Online consumer protection can be promoted only when there is a multifaceted legal framework that will help consumers and companies to adopt e-commerce without any concerns<sup>(45)</sup>.

The law must clarify the privileges and duties for the consumers and companies. Another concern with the decree is that it has a limited response towards cybercrime which is a growing concern for countries at multiple levels of development. It also affects buyers and sellers. Online fraud is specifically a major problem in the world with over \$3.5 billion lost in the year 2015 due to such activities<sup>(46)</sup>. Counterfeit products, fraudulent websites, and other scams are the most frequent type of cybercrime that occurs in the world. Consumers are attracted by advertisements which claim to sell cheap or free products. The

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(44) Xiao, B, and Izak B., Product-related deception in e-commerce: a theoretical perspective, *Mis Quarterly* 35, no. 1 (2011), 169-196.

(45) Antón, A I., Julia B. E, and Jessica D. Y., How internet users, privacy concerns have evolved since 2002, *IEEE Security & Privacy* 8, no. 1 (2010).

(46) Omoola, S O., and Umar A. O., Towards An Effective Legal Framework For Online Dispute Resolution In E-Commerce Transactions: Trends, Traditions, And Transitions., *IIUM Law Journal* 24, no. 1 (2016) p. 257.

preferred method of payment for the criminals is related to money transfer. Ecommerce fraud has become a major problem for online consumers<sup>(47)</sup>.

It can also be a major threat to Bahraini consumers. The decree which is part of the e-commerce framework does not identify the various types of criminal actions that can threaten the online consumers. It only provides a basic identification of fraud and deceptive activities. The need for clear definitions of cybercrime is important for Bahrain if it wants to enhance its e-commerce regulatory framework so that it can safeguard the interests of its online consumers.

Article 24 only outlines basic types of fraudulent activities and minimum penalties for cybercrime activities. There is the need for an integrated and coordinated framework which can be used to update the cybercrime laws in the context of e-commerce regulation so that Bahrain has a robust response to any type of cybercrimes. The analysis of the literature suggests that cybercrimes can be perpetrated against individuals in many countries without the criminal having to leave home. They can route communications through Internet Service providers, wireless and satellite networks as they go through multiple computers in different parts of the world so that they can attack a specific system.

Mobile merchants are considered to be particularly vulnerable in incurring the greatest fraud losses. The decree in Bahrain was passed in 2002 when mobile technologies and other information technologies were not present. Hence this means that it is unable to identify and track such activities. The law needs to be strengthened so that it can take into account the advances in technology and the ways that criminals are attacking systems with newer methods. Such a regulatory framework is important for promoting e-commerce and safeguarding the rights of online consumers<sup>(48)</sup>.

It is important for Bahrain to create a cybercrime legislation that can protect online consumers from various cybercriminal activities. The passing of legislation will be instrumental in creating capacity and infrastructure that can be used to respond effectively to cyber-attacks. The Bahraini e-commerce law is still limited in scope with respect to the notion of online consumer

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(47) Omoola, S O., and Umar A. O., 2016. op. cit, p.257.

(48) Ward, B. T., Janice C. S, and Linda V., Internet Jurisdiction for E-commerce, Journal of Internet Commerce 15, no. 1 (2016), p. 1-17

protection. There is the need for transparent and effective consumer protection so that consumers have feelings of safety when they participate in e-commerce activities<sup>(49)</sup>. This protection can be achieved only when the government is able to work the key stakeholders.

They may have to address the unique circumstances of e-commerce in order to achieve long term success.

Specifically, the e-commerce laws in Bahrain must be able to protect consumers by ensuring that misleading advertising and unfair business practices are penalized and prevented<sup>(50)</sup>. The goal of the law should be to compel businesses to engage in e-commerce activities that take into account the interests of the consumers while striving to act in the interest of fair business and advertising practices. Online consumer protection should be safeguarded in Bahrain by preventing businesses from making any deceptive, misleading or unfair representation or omission<sup>(51)</sup>.

Unfair contract terms should be penalized while businesses must not hide terms and conditions that might impact the consumer's decision regarding any transaction. It is important for the Bahraini e-commerce legal framework to be updated so that it can help to protect online consumers. This can be done with the aim of protecting the personal data of consumers with online companies following the principles of information safeguard, fair use, given time limit, and appropriate disposal<sup>(52)</sup>.

Another important step towards the creation of a robust e-commerce framework in Bahrain that protects online consumers is to ensure that online disclosures are done by businesses in a transparent and reasonable manner<sup>(53)</sup>.

This is important because businesses that are engaged in e-commerce activities in the country must be able to provide information about their business, develop

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(49) Nica, Elvira, Positive Drivers of Consumer Trust in E-commerce., *Journal of Self-Governance and Management Economics* 3, no. 1 (2015) p.60.65.

(50) Gomez-Herrera, E, Bertin M, and Geomina T, The drivers and impediments for cross-border e-commerce in the EU, *Information Economics and Policy* 28 (2014) p. 83-96.

(51) Bélanger, F, and Robert E. C., Privacy in the digital age: a review of information privacy research in information systems, *MIS quarterly* 35, no. 4 (2011) p. 1017-1042

(52) Svantesson, D, and Roger C., A best practice model for e-consumer protection. *Computer Law & Security Review* 26, no. 1 (2010) p. 31-37.

(53) Gillies, L E., *Electronic commerce and international private law: A study of electronic consumer contracts*, Routledge, 2016.

effective communication systems with the consumer, and ensure mechanisms for effective resolution of any disputes<sup>(54)</sup>.

Moreover, the law needs to be updated so that adequate information regarding goods or services offered by businesses can be sufficient for the consumers so that they can make informed decisions regarding the transaction. The issues related to specific products and services should include key technical requirements, safety and health information, age restrictions or any other special conditions that might impact the consumer's decision making ability. Another important area where the law needs to be updated is that of e-payments in Bahrain. The legal framework should be upgraded so that government and stakeholders can work together to develop minimum levels of consumer protection for e-commerce payments<sup>(55)</sup>. Protection should focus on consumer liability, chargeback mechanisms, and others. Payment arrangements like escrow services should be encouraged in order to enhance consumer confidence in e-commerce<sup>(56)</sup>.

### 1.14 Conclusion And Recommendations

The analysis of the e-commerce regulatory and legal framework in Bahrain suggests that it is an important step towards online consumer protection. It recognizes the need for creating a robust framework that can help to promote e-commerce while simultaneously striving to provide a secure and reliable environment for transactions. However, the law needs to be updated so that it can be used for enhancing the ability of users to engage in online transactions in a safe, reliable, and transparent manner. The government needs to update the law in accordance with the evolving needs and international standards in order to achieve efficiency and effectiveness.

The analysis of the decree suggests that it is insufficient to meet the rapid changes in technologies and e-commerce transactions that are occurring in the world. Bahrain's potential for e-commerce can be realized only when

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(54) Sohn, K. H., Privacy and Security Protection under Korean E-Commerce Law and Proposals for Its Improvements, *Ariz. J. Int'l & Comp. L.* 33 (2016) p. 229

(55) Koopman, C, Matthew D. M, and Adam D. T., *The sharing economy and consumer protection regulation: The case for policy change*, (2015).

(56) Adelola, T, Ray D, and Firat B., Privacy and data protection in E-commerce: The effectiveness of a government regulation approach in developing nations, using Nigeria as a case.s In *Internet Technology and Secured Transactions (ICITST)*, 2014 9th International Conference for, pp. 234-239. IEEE, 2014.

the government is successful in creating a robust framework that protects the rights of online consumers. The legal challenges need to be addressed by ensuring a degree of legal harmonization. Adoption of laws should be done in coordination with leading international legal instruments<sup>(57)</sup>.

The critical issues can be addressed only when the baseline laws such as the decree as enhanced for the benefit of e-commerce in Bahrain. Adopting key principles and facilitating the delivery of all these services will be an important strategy towards success. Bahrain should update its e-commerce legislation by identifying what other countries in the same region have done in order to ensure compatible legal systems and trade policies. E-signatures, electronic contracts, and evidence should be given legal recognition at national levels as well as from other jurisdictions.

Laws need to be harmonized so that they can be compatible with international standards such as the United Nations Convention on the Use of Electronic Communications in International Contracts. This protocol helps to focus on regional and international harmonization of the legal framework in the world. Being a signatory to the law will assist Bahrain in updating its e-commerce regulatory framework in a proficient manner. Data protection and cybercrime laws need to be updated to recognize and track down various types of cybercrimes<sup>(58)</sup>. It is imperative for harmonization by adopting minimum standards so that the design and implementation of relevant legislation and strong enforcement institutions can be done for the benefit of Bahrain.

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(57) Ward, B. T., Janice C. S, and Linda V., Internet Jurisdiction for E-commerce, *Journal of Internet Commerce* 15, no. 1 (2016) p. 1-17

(58) Ward, B T., Janice C. S, and Linda V., *op.cit*, p. 1-17

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