

Governing Digital Trade in Bangladesh: Challenges and Prospects[†]

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Abstract: *Digital commerce and cross-border data flows are growing faster in an unprecedented way and scale in the era of Fourth Industrial Revolution (4IR). The digital era requires rethinking of traditional legislative policies in addressing governance of digital trade issues to achieve desired economic gains of innovation. Domestic favorable legal framework has always played pivotal role in leveraging technological transformation and economic growth. As a developing country, Bangladesh urgently requires a flexible regulatory regime with proper safeguards for both businesses and consumers. Moreover, domestic legal reform in Bangladesh is particularly necessary to address the issues of data privacy, e-payment, consumer protection, cybersecurity, and market competition. This article attempts to explore the key challenges of integrating digital trade within the existing operational domestic legal environment in Bangladesh and strives to figure out how the potential reforms can be done to seize the maximum opportunities arising from the data driven transformation of trade and digital economy.*

Keywords: Fourth Industrial Revolution (4IR), Digital Trade, E-commerce, Regulatory challenges, Domestic Law Reform

1. Introduction:

The rapid growth of digital technologies is significantly transforming the process of expanding trade and commerce¹ and increasingly upending global trade into borderless digital trade worldwide. The technological revolution has led to unprecedented and phenomenal expansion of trade connectivity and increased global data flow. The surge of digital trade contributes to sharp economic growth by enhancing productivity and lowering costs in the IT sector, including manufacturing, services, health, and agriculture. Notably, it opens up a horizon

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¹ Wentong Zheng, 'The Digital Challenge to International Trade Law' (2019) 52 New York University Journal of International Law and Politics 539, 540.

for a wide variety of emerging industries, including e-commerce platforms, big data, cloud computing, the Internet of Things (IoT), social media, and app-based services.²

The governance framework of digital trade is usually intricate and multi-layered as because its operational framework requires numerous institutions, including trade, consumer rights, internet governance, payment, and development institutions.³ That is why, both domestic and international regulatory frameworks are in constant pressure to respond to myriad of digital trade governance challenges.⁴ One of the key regulatory challenges relating to digital trade is prevalent laws and regulation of many countries' either archaic or they have not still implemented any pertinent rules to support the evolution and progression of the digital economy. The notable impediments to a dynamic digital trade ecosystem generally include regulatory barriers and compliance issues; tariffs, quota, and import duties; data localization issues; online payment issues; data privacy issues; fraud, cybercrime; consumer protection; anti-trust issues and intellectual property issues etc.⁵

Likewise any countries around the globe, Bangladesh is also experiencing exponential growth of digital trade which has become crucial component for its economic growth. As an emerging economy with favourable demography and high domestic consumption, Bangladesh has been experiencing significant growth in the digital trade sector since COVID-19 pandemic and onwards. For Bangladesh, digital trade has created an exciting opportunity for businesses and consumers to trade in a meaningful way around the world by including small and medium-sized businesses in the broader perspective of borderless trading. Despite, digital trade sector in Bangladesh is now at the booming stage, it is also obvious that the absence of a specific legal framework for regulation and compliance issues about digital trade sector is creating innumerable challenges to reap the full potentials of this sector. In this context, Bangladesh must define a fit-for-purpose regulation to overcome all the roadblocks involved in building and preserving long term interest of the digital economy.

² Ibid.

³ Andrew D Mitchell and Neha Mishra, 'Data at the Docks: Modernizing International Trade Law for the Digital Economy' (2017) 20 Vanderbilt Journal of Entertainment & Technology Law 1073.

⁴ Andrew D Mitchell and Neha Mishra, 'International Trade Law Perspectives on Paperless Trade and Inclusive Digital Trade' (2017) ARTNeT(Asia-Pacific Research and Training Network on Trade) Working Paper Series, No. 170 1 <<https://www.econstor.eu/handle/10419/172049>>. accessed 18 October 2023

⁵ 'Digital Trade & the Digital Economy | DFAT' <<https://www.dfat.gov.au/trade/services-and-digital-trade/Pages/e-commerce-and-digital-trade#why-is-digital-trade-important-to-australia>> accessed 18 October 2023.

This article aims to categorize the prospects and challenges about legal and regulatory framework for governance of digital trade in Bangladesh. Additionally, it proposes requisite reforms to develop a harmonized domestic legal framework for the digital trade ecosystem in Bangladesh in conformity with the rapidly changing global digital economy which would facilitate paperless domestic and cross-border trade in goods and services, consumer protection, local market protections, measures countering cybercrime and access to digital market economy. It also highlights why and how legal framework can be reformed by striking a harmonious balance between trade facilitation and compliance as well as maintaining consistency amongst relevant international, regional and domestic legal frameworks.

2. Conceptual Issues and Regulatory Governance of Digital Trade:

We are said to be living in a technical era of “Fourth Industrial Revolution(4IR)” which is characterized by a technological revolution that is fundamentally changing the way we live, work and relate to one another and the rate of change is exponentially faster than any other preceding revolutions of humankind history.⁶ Like all other parts of human activity, the incremental impacts of technological transformation on trade and commerce activities are phenomenal. The scale, speed and scope of trade have dramatically changed the whole ecosystem of trade and commerce by connecting a greater number of businesses and consumers globally with the potentials of digital transformation. It has created the enormous possibility for innovations in the digital domain and made services like buying a product, booking a flight, ordering food, making payments, watching a film or playing a game more affordable and accessible to consumers. The spread of digital technologies and other technological innovations have made digital platforms an indispensable part of modern trade economy around the globe. Instead of traditional face-to-face consumer transactions, consuming goods and services in digital age are taking new shapes by the revolutionary use of smart phones backed by fast internet speed and Internet of Things (IoT).

However, legislators and regulators are in a challenging position being responsive to the rapidly changing 4IR because they have got little time to study situation specific complex issue and develop an appropriate regulatory outline. The capacity of government systems and regulatory authorities to effectively navigate the rapid changes brought about by the 4IR, particularly through updating and enhancing their regulatory frameworks to maintain transparency and effectiveness, is crucial for them to stay relevant.⁷ Without this capacity, they risk

⁶ Klaus Schwab, *The Fourth Industrial Revolution : What it means, how to respond*, January 2016 <<https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond/>> accessed 11 February 2024

⁷ Klaus Schwab, ‘The Fourth Industrial Revolution’ <<https://www.foreignaffairs.com/>

losing their authority. The regulators must continuously adapt to a fast-changing digital eco-system in order to have comprehensive understanding about what they are regulating.

It is to be mentioned that although the spread of digital technologies has started the transformation global economy and growth of globalisation of goods, services, peoples and ideas, the Covid-19 pandemic has effectively promoted the digital transformation of trade and dramatically paced the rapid acceleration of domestic and cross-border digital trade. The global digital trade is booming and it is predicted to continue its explosive growth in future. While there are rapid expansion of digital trade in its various forms with huge potentials to promote economic development and digital economy, it is not easy to define and measure the actual size of digital trade. There is yet no single and commonly accepted or recognised definition about what is ‘digital trade’⁸ and what it encompass among various organizations’ and stakeholders’ operational context. Conceptually, the term ‘e-commerce’ and ‘digital trade’ are frequently used interchangeably in most frameworks.⁹ Some define ‘digital trade’ as broader term to include ‘e-commerce’ and all related internet or digital aspects, while others has limited its consideration in streamlined sense which excludes sales or purchase of physical goods through the internet. The WTO Work Program on Electronic Commerce has defined E-Commerce as the “production, distribution, marketing, sale or delivery of goods and services by electronic means”¹⁰. The United States International Trade Commission (USTC) has defined digital trade in broader terms as “US domestic commerce and international trade in which the internet and internet-based technologies play a particularly significant role in ordering, producing, or delivering products and services”¹¹. Lopez-Gonzalez and Jouanjan have identified a growing general understanding about what digital trade covers which is as follows:

articles/2015-12-12/fourth-industrial-revolution> accessed 13 October 2023.

⁸ Ismail, Y. (2020). E-commerce in the World Trade Organization : History and the latest developments in the negotiations under the Joint Statement. Winnipeg: International Institute for Sustainable Development. <<https://www.iisd.org/library/e-commerce-world-trade-organization>> accessed 13 February 2024

⁹ Kende, M & Sen, N (2019). Cross-border e-commerce : WTO discussion and multi-stakeholder roles-stocktaking practical ways forward (CTEI working paper). <[¹⁰ WTO \(1998\), Work Programme on Electronic Commerce \(1998\) WT/L/274, 30 September 1998](https://repository.graduateinstitute.ch/record/297080?_ga=2.85884697.1278962529.1711449464-1585142015.1711449463&v=pdf,> p.11, accessed 12 February 2024</p>
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¹¹ Horowitz, Jeff “U.S. International Trade Commission’s Digital Trade Roundtable : Discussion Summary”, Journal of International Commerce and Economics, web version : October 2015, <https://www.usitc.gov/publications/332/journals/vol_iv_article4_digital_trade_summary.pdf> accessed 12 December 2023

“digitally enabled transactions in trade in goods and services which can be either digitally or physically delivered and which involve consumers , firms and governments.”¹²

Referring the approach of Lopez-Gonzalez and Jouanjean in policy note entitled “Trade in Digital Era” of 2019 , the OECD added that “ digital trade involves business-to-business transactions, including within [global value chains] GVCs, as well as transactions between consumers or businesses through online platforms. All of these transactions are underpinned by data, which is the lifeblood of digital trade.”¹³

Inspite of the differences in defining e-commerce and digital trade amongst various stakeholders, one common characteristics in all the above mentioned definitions can be identified which is selling and delivering goods and services through the use of electronic modes and internet connected networks.

The opportunities and utilities of digital platform are manifold. Digital platforms have made it possible to be online from home and reach markets globally which is regarded as a significant shift towards borderless trade. E-commerce provides an excellent opportunity to increase small businesses participation in international trade without establishing a physical existence overseas.¹⁴ Platform services also provide information on foreign marketplaces, which benefits small businesses grow with diversified products. The Internet has reduced the transaction cost, which has allowed the business to split production globally. Digital trade will enable SMEs to contribute to the Global Value Chain(GVC) to offer their particular service or consolidate traditional e-commerce offerings.¹⁵ The purchase and payment are made online, and the goods are delivered offline. Cross-border data movements have become the ‘carrier wave’ of global trade. Digital trade is also significant for the growth in services trade, as many services are now digitized and can be tradable across the borders.¹⁶

Domestic laws have a significant impact on how local and international

¹² Lopez, G.J., & Jouanjean, M. (2017). “ Digital Trade : Developing a Framework for Analysis”, OECD Trade Policy Papers, No.205. Paris : OECD, <https://read.oecd-ilibrary.org/trade/digital-trade_524c8c83-en#page2> accessed 11 December 2023

¹³ Ismail, Y. (2020). E Commerce in the World Trade Organization : History and the latest developments in the negotiations under the Joint Statement. Winipeg : International Institute for Sustainable Development. <<https://www.iisd.org/publications/report/e-commerce-world-trade-organization-history-and-latest-developments>> accessed 31 December 2023

¹⁴ Joshua P Meltzer, ‘The United States-Mexico-Canada Agreement: Developing Trade Policy for Digital Trade’ (2019) Vol.XI, 2 Trade Law & Development 243 <<https://papers.ssrn.com/abstract=3595185>> accessed 20 October 2023.

¹⁵ Ibid 247.

¹⁶ Ibid 243.

entity operates in any country, and in this way is generating a more broad-based digital economy. A weak or out-of-date regulatory framework can create barriers to e-trade and impede the evolution of the necessary enabling atmosphere.¹⁷ A functional regulatory eco-system for digital trade involves many domestic electronic transactions laws to be in place to facilitate trade, payment, consumer protection, and data privacy in the digital space. Additionally, these domestic laws should be interoperable and relatively harmonious with other countries' laws, even if they are not identical.¹⁸ A thriving atmosphere for digital trade requires a suitable environment for the economy, where traders and customers can leverage digital technologies to improve competitiveness and increase economic welfare. Businesses also need a wide-ranging regulatory framework that deals with challenges such as digital documentation, signatures, and data flow. Acts and Rules that allow smooth entry and exit of firms, and an open trade regime that exposes companies to global competition and investment, play essential function in allowing companies to avail digital technologies and use them for better competitiveness.¹⁹ Legal uncertainties surrounding digital trade can be fixed through a comprehensive regulatory infrastructure that can handle the complex legal issues of borderless business and, at the same time, stand as a pillar of support for the overall digital economy. Technological innovation in the digital era also raises fears regarding cybersecurity and data privacy. The continuous and rapid movement of data across borders can challenge the domestic regulatory issues in privacy and consumer protection. The use of digital technologies makes businesses more competitive and more efficient and opens up opportunities for domestic enterprises and multinationals. If a small business wants to be competitive overseas, it can use cloud computing to gather data effectively and apply some machine learning to understand sales and consumer needs better, and it's going to do better in his home market as well as overseas. Global data flows and emerging technologies are becoming critical drivers of international trade with the immense implication in the domestic trade regulatory pattern.²⁰

3. Challenges and Concerns of Governing Digital Trade in Bangladesh:

Digital platforms like Amazon, eBay, and Alibaba match the sellers with the buyers wherever they might be. However, there also exists many issues and challenges to make it happen as because it requires an international financial payment to happen, then the good has to be shipped through customs formalities. Indeed, digital trade puts divergent challenges to the law that is designed to

¹⁷ WTO and OECD, 'Aid for Trade at a Glance 2017: Promoting Trade, Inclusiveness and Connectivity for Sustainable Development' (2017) Text 186 <https://www.oecd-ilibrary.org/development/aid-for-trade-at-a-glance-2017_aid_glance-2017-en> accessed 11 October 2023.

¹⁸ Mitchell and Mishra (n 4) 2.

¹⁹ WTO and OECD (n 17) 182.

²⁰ Meltzer, 'The United States-Mexico-Canada Agreement' (n 14) 242.

regulate it. Many purchases at the consumer end that happen online are in small value good, so transportation cost and cost of customs duties begin to matter and can make the difference between a transaction being economical or otherwise. International financial payments of small amounts also have some regulatory impediments. In some payment systems, the fund must be banked in an escrow account until the goods are shipped or delivered. Rules are not well calibrated for small businesses. So having an online presence essentially expanded the number of consumers, but many other barriers remain, which limited the potentiality of this to expand export opportunities created by platforms. The potential issues and challenges to digital trade are as follows:

3.1 Undermining the local necessity:

Without the proper legal framework, Bangladesh will not get efficiency benefits or network effects from the digital trade ecosystem. One of the fundamental impediments to digital trade is the failure to adapt regulation to local needs with the global minimum standard and understand local business journeys. Often, the problem is that regulators try to enforce higher standards than required by the international regime, which blocks cross-border data flow and encourages discrimination. So, we need a little bit of regulatory innovation and courage often in that space.

3.2 Disruptions in the national economy:

It is always argued that the economic benefits of exposure to cross-border data flows are evident but at the same time they can dislocate local industries by pushing them to international competition and new business models. Some jobs and businesses may be in jeopardy, even as new growth opportunities are created. This is a challenging situation for the governments while considering these trade-offs and expose themselves to large-scale streams at a pace their economies and cultures can absorb.²¹

3.3 Less capacity to reform:

Developing countries and poor countries have moderately less capacity to accomplish reforms on the regulatory framework due to inadequate domestic knowledge and resources.

3.4 Lack of transparency, predictability, and interoperability:

Many countries purposefully decide to implement vague regulations to disguise their objectives of enforcing protectionist policies or control data

²¹ James Manyika and others, 'Digital Globalization: The New Era of Global Flows' (McKinsey Global Institute 2016) 99 <<https://www.mckinsey.com/business-functions/mckinsey-digital/our-insights/digital-globalization-the-new-era-of-global-flows>> accessed 11 October 2023.

distributed via cyberspace.²² Many firms find it burdensome or unprofitable to deal with these complicated legislations, which effectively discourages them from operating in these countries. Lack of transparency and interoperability often increases the compliance cost for the companies working across various jurisdictions.

3.5 Privacy protection:

Privacy protection and e-trade share a problematic relationship. To establish and boost trust in digital trade, a minimum degree of privacy protection is necessary.²³ But different attitudes to privacy protection legislation across countries often create trade barriers. In particular, privacy legislation creates challenges to cross-border data movements of personal data. In Australia, legislation requires the storage of digital health records within Australia. Patient's medical data cannot be held or processed outside Australia.²⁴ This type of restriction hinders trade in the health care sector. A clear gap exists concerning the proper standard for privacy and data protection.

3.6 Identification of goods and services:

Trade rules are dependent on whether products are goods or services and the borders they cross.²⁵ Many digital offerings blur these distinctions as they combine telecommunication services with other services, including banking, computer, financial, audio-visual, and advertising services.²⁶ These services are the amalgamation of various forms of services to provide a comprehensive digital platform. For instance, Google combines different services, such as web mapping, communication, advertising, payment, and cloud computing. Bundling of the various goods and services makes it challenging to distinguish the specific trade rules applicable to particular transactions.²⁷ But a specific digital service cannot be at the same time categorized under computer and related services, telecommunication services, and advertising services. Classification of the internet and digital services in the borders is a challenging issue.

²² Mitchell and Mishra (n 4) 5.

²³ Dr Neha Mishra and Professor Andrew D Mitchell, 'The Future of Digital Trade Rules' (2020) Consultation 6 <<https://research.monash.edu/en/activities/the-future-of-digital-trade-rules>>.

²⁴ Hosuk Lee-Makiyama, 'E-Commerce and Digital Trade' in Jane Drake-Brockman and Patrick Messerlin (eds), *Potential Benefits of an Australia-EU Free Trade Agreement* (University of Adelaide Press 2018) 215 <<https://www.jstor.org/stable/j.ctv9hj94m.19>> accessed 20 October 2023.

²⁵ 'Digital Trade: Developing a Framework for Analysis', vol 205 (2017) OECD Trade Policy Papers 205 <https://www.oecd-ilibrary.org/trade/digital-trade_524c8c83-en> accessed 21 October 2023.

²⁶ Mitchell and Mishra (n 3) 13.

²⁷ Ibid.

3.7 Lack of security:

Digital space often lacks system security, reliability, and communication protocol. People are always concerned about losing their money if the website of any online bank or e-commerce is hacked. They often complain about the scam and low reliability of the digital system. In the case of fraudulent activities in the digital arena, the present legal structure is insufficient to ensure punishment to the culprits causing disruptions in the system.²⁸

3.8 Lack of trust:

Trust is one of the key issues in the digital trade arena. Traditional rules and regulations are centered on paper-based transactions, which may create uncertainties about the validity and legality of e-commerce transactions. In developed countries like USA, Australia, to establish trust among digital trade users, contemporary laws are adopted and impartiality implemented. But in developing countries where legal and judicial systems are not vigilant, e-commerce based businesses are in trouble because of a lack of security and trust, whether real or perceived.²⁹

3.9 Disruption in the labour market:

Digital revolution could yield negative or uneven results in the labor market. There is a fear of displacement of unskilled workers. While digital technologies raise efficiency and increase overall welfare, more jobs become automated, which could substitute labor in many industries, creating a great inequality in society.³⁰

3.10 Determining intermediary's liability:

Numerous intermediaries are engaged in the online value chain of digital trade. They range from infrastructural amenities and data hosting providers to various online services namely social media, advertising agencies, search engines, payment providers and e-commerce platforms, all of which help link buyers and sellers on a global transaction. It is complicated to determine the legal responsibility for illegal and harmful activities of the intermediaries as they are often overlapping.³¹

²⁸ 'Digital Bangladesh 2021: Payment Systems and Fintech (The Daily Star, October 8, 2020)' <<https://www.thedailystar.net/supplements/news/digital-bangladesh-2021-payment-systems-and-fintech-1974417>> accessed 27 October 2023.

²⁹ Abdul Gaffar Khan, 'Electronic Commerce: A Study on Benefits and Challenges in an Emerging Economy' (2016) 16 Global Journals Inc. (USA) 3 <<https://globaljournals.org/item/5673-electronic-commerce-a-study-on-benefits-and-challenges-in-an-emerging-economy>> accessed 21 November 2023.

³⁰ 'World Development Report 2016: Digital Dividends' (The World Bank 2016) 20 <<https://www.worldbank.org/en/publication/wdr2016>>.

³¹ Lee-Makiyama (n 24) 216.

3.11 Conformity requirement:

In cross-border trade in services, some developed country's legislation requires that the counterpart also has the same or adequate protection in their legislation.³² Domestic legislation that deviates substantially from established international standards may find it difficult to meet the developed country requirement for data flow. For instance, the General Data Protection Regulation (GDPR 2016) of the EU prohibits the international transfer of personal information where there is no 'adequate protection'.³³

3.12 Filtering and blocking content:

Some countries like China impose rigorous control over digital data within its borders, including what material people can retrieve online and how content is shared inside and outside its jurisdictions. These sorts of filtering and blocking impede access to data, form another type of non-tariff barrier to digital trade.³⁴ Additionally, net neutrality policy where the internet access providers can discriminate against content providers, foreign or domestic, may also create non-tariff barriers.³⁵

3.13 Internet Access:

Internet is considered the backbone of borderless digital trade. Internet access is expanding globally, but developing countries like Bangladesh are lagging behind in internet connectivity. Again, access to mobile devices and telecommunication networks is inseparable from internet access challenges as it is the primary way of getting online in the developing world.³⁶ Broadband access is necessary to engage in international trade. Without broadband, businesses can't take full advantage of cloud computing. However, access to broadband internet in developing countries is minimal. High service charges, poor telecommunication infrastructure, government policy, low buying capacity of potential consumers, and lack of competition are the key reasons for the non-availability of the internet in developing countries. Telecommunication regulations and interconnection rules most often hinder the

³² Ibid 215.

³³ General Data Protection Regulation, Art. 45, <<https://gdpr-info.eu/art-45-gdpr/>> accessed 21 March 2024

³⁴ 'Digital Trade and U.S. Trade Policy' (Congressional Research Service 2019) 18 <<https://crsreports.congress.gov/product/pdf/R/R44565>>. accessed 10 November 2023

³⁵ Ibid.

³⁶ Joshua P Meltzer, 'A New Digital Trade Agenda' (International Centre for Trade and Sustainable Development (ICTSD), World Economic Forum 2015) Overview Paper 4 <<https://e15initiative.org/wp-content/uploads/2015/09/E15-Digital-Meltzer-Final.pdf>>. accessed 05 November 2023

entry of new competitors in the telecom sector and thus create obstacles to access to internet.³⁷

3.14 Cross border data restriction:

Free movement of data across borders is essential for the function of the internet as a global platform for e-trade. Most of the digital services are based on cross-border data flow over the internet. Government restrictions on the free movement of data for legitimate reasons such as cybersecurity, IP(Internet Protocol) protection can reduce the internet's potential for international trade.³⁸ In some countries, data-flow is restricted to provide a competitive advantage to domestic companies. Limitations on data flow also lessen users' options of technology and services on the internet.³⁹

3.15 Localization requirement:

One of the most common measures used to block cross-border data flow is data localization.⁴⁰ Data localization is any law that requires the domestic location of data storage as a condition for doing business.⁴¹ Sometimes it also involves the use of local computer facilities, whether hardware or software.⁴² Localization impedes the ability for data to move freely and to remain local. It increases the costs of moving data globally, which affects the opportunities for internet-enabled trade.⁴³

3.16 Source code disclosure:

Some country's legislation requires disclosure of source code, which allows the governments to conduct unauthorized surveillance.⁴⁴ Access to source code amounts to intellectual property theft.

3.17 Intellectual Property rights and defamation in digital space:

In the digital space, the platforms often had to confront with tort of defamation and intellectual property issues. Copying can easily occur of IP protected content such as music, software, and film on the internet. On the other side, making search engines or internet platforms liable for all copyright-infringing contents would

³⁷ Ibid.

³⁸ Ibid.

³⁹ Mitchell and Mishra (n 3) 32.

⁴⁰ Ibid 31.

⁴¹ Meltzer, 'The United States-Mexico-Canada Agreement' (n 14) 254.

⁴² 'Digital Trade and U.S. Trade Policy' (n 34) 15.

⁴³ Meltzer, 'A New Digital Trade Agenda' (n 36) 5.

⁴⁴ Meltzer, 'The United States-Mexico-Canada Agreement' (n 14) 255.

have ruined their business model and more specifically, the development of the digital economy.⁴⁵ It is challenging to find a way to give the IP rights holders the ability to enforce their rights without burdening the internet platforms. For SMEs who are doing business in the platforms, protection of IP is rugged. Rarely they have the capacity and resources to identify a copyright or trademark breach and enforce a IP right in a foreign jurisdiction.⁴⁶

3.18 Dispute settlement system:

The traditional dispute resolution cost in cross-border trade is often prohibitive and makes no commercial sense for many low-value goods transactions. The non-existence of a cost-effective and speedy mechanism for dispute resolution in international online trading increases the business risk in digital commerce.⁴⁷

3.19 Lack of international payment facility:

Cross-border online payment facility is very limited in developing countries as access to a credit card or intermediary payment gateway like PayPal, Google Pay is minimal. Consumers cannot stop payment in case of non-receipt of goods or any fraud. At the same time, vendors also suffer from late payment. People also find other challenges in the international payment system like limit on the amount, fraud, terrorist financing, and money laundering.⁴⁸

3.20 Lack of trade logistics:

The absence of proper logistics support like express postal services and efficient customs administration obstructs digital trade growth.⁴⁹

3.21 Dilemma between protectionism and domestic interest:

Protectionist trade policies always erect digital trade obstacles and hurt trust in the underlying digital economy. Policymakers are still confronted with the dilemma of striking a balance between protectionism and domestic interest.⁵⁰

3.22 Cybersecurity:

In the rise of digital trade, protecting the ICT structure and its contents from cyberattacks is one of the growing concerns for policymakers. Major

⁴⁵ Ibid 257.

⁴⁶ Meltzer, 'A New Digital Trade Agenda' (n 36) 5.

⁴⁷ Ibid.

⁴⁸ Ibid 6.

⁴⁹ Ibid.

⁵⁰ 'Digital Trade and U.S. Trade Policy' (n 34) 10.

cybersecurity threats in digital space include cybertheft of intellectual property(IP) and personal data and exploitation of online information. Infrastructure (e.g., telecommunications, financial, transport, and health care) and IoT, which relies on software to network services, are also susceptible to cyberattacks.⁵¹ The impact of cyberattacks can extend to multiple areas of concern such as national security, financial and communication systems, privacy, and the functioning of digital trade and commerce, posing significant risks.⁵²

3.23 Distribution of regulatory control:

Currently, the regulatory control of digital commerce is haphazardly distributed across different ministries and regulatory bodies with very limited visibility or control. The regulatory ecosystem is not functioning correctly. It increases the cost of doing business and delays in service delivery.

4. Legal Reform for Governing Digital Trade in Bangladesh:

The legal or regulatory ecosystem of a country can be an enabler or a hurdle to digital trade. Bangladesh needs to re-orient itself regarding digital market ecosystem to enable prosperous growth of digital trade market. In order to understand the legal vacuum facing our industry and reforming the existing legal structure to be effective in the world dominated by artificial intelligence, big data, cloud computing, Internet of Things(IoT), Bangladesh will require a thorough investigation of all possible challenges in the domestic as well as in the global perspective. Bangladesh is a perfect destination for FDI flow in the digital service sector and offers an irrefutable possibility for homegrown start-ups because of its demographic dividend and increasingly digitized people. According to the Bangladesh Telecommunication Regulatory Commission (BTRC) the total number of internet subscribers has reached 131 million benchmarks at the end of December 2023, including nearly 7 million new users in the last year.⁵³

From the covid pandemic onwards, the online retail businesses, streaming services, communication services are experiencing significant demand and high growth, which have further flourished the usage of e-commerce platforms and cloud-based services by consumers as they get more familiar with the convenience of the services. But, in the absence of a straightforward regulatory setup, the tech companies are making their own rules regarding data infrastructure and how data

⁵¹ Joshua P Meltzer, 'Cybersecurity, Digital Trade, and Data Flows: Re-Thinking a Role for International Trade Rules' (Social Science Research Network 2020) SSRN Scholarly Paper ID 3595175 1 <<https://papers.ssrn.com/abstract=3595175>> accessed 11 October 2023.

⁵² 'Digital Trade and U.S. Trade Policy' (n 34) 18.

⁵³ Internet users in Bangladesh reach 131m as of 2023, (Dhaka Tribune, 12 February, 2024) <<https://www.dhakatribune.com/bangladesh/339218/internet-users-in-bangladesh-reach-131m-as-of-2023>> , accessed 12 January 2024

is retained, collected, processed, and used, which sometimes go against the public policy. In this context, Bangladesh must act quickly to replace decades-old laws and regulations. To achieve the double-digit ranking in the World Bank's ease of doing business, Bangladesh needs to retain and continue improving its legal structure for the effective digital trade generation. Legislative backdoors that destroy confidence in the digital space must be avoided in any circumstances.

At present, Bangladesh is the thirty-first largest market for e-commerce in the world with a projected revenue of US \$ 10,959.5 million by 2024⁵⁴. According to the projection of Centre for Policy Dialogue, the size of local e-commerce market is likely to grow by \$4 billion in four years and is expected to reach at \$10.5 billion value in 2026 which was \$6.6 billion at the end of 2022⁵⁵. Understanding the potentials of the digital market growth of Bangladesh, giant investors like Alibaba has just entered into the Bangladesh e-commerce market.⁵⁶ It is momentous for Bangladesh to develop a new legal architecture to boost orderly data collection, grading data access and sharing and data analytics among various groups while protecting privacy and data ethics. An enabling environment is necessary to attract a lot more big international and nationally recognised investors. At the same time, the Government must ensure a level playing field by proper anti-trust legislation to pave the way for small local entrepreneurs to grow. Policymakers must engage the industry, academia, and consumers in preparing the proper legal framework for digital trade to achieve a specific policy goal. Bangladesh requires to reform its domestic laws and regulations in the following areas to facilitate cross-border digital trade:

4.1 Regulation for e-commerce platforms:

Recently, the e-commerce business is booming in Bangladesh. There is no uniform legal framework to govern the activities of e-commerce platforms. Although the Government has formulated a National Digital Commerce Policy in 2018, some vital issues like IP and consumer protection are absent in the policy. Rules on refund and return are also not clear. To attract foreign investment and flourish in the e-commerce sector, the Government has taken the initiative to bring significant changes in the policy.⁵⁷ The reform area includes registration process

⁵⁴ 'E-commerce Market in Bangladesh', <<https://ecommercedb.com/markets/bd/all>>, accessed 12 January 2024

⁵⁵ 'Bangladesh e-commerce market to grow over \$10 b by 2026', (Dhaka, 01 May, 2023) <<https://en.prothomalo.com/business/local/zqdbigrkbe>>, accessed 13 January 2024

⁵⁶ 'Foreign E-Commerce Entities Now Can Invest Alone' (*The Business Standard*, 23 June 2020) <<https://tbsnews.net/economy/industry/foreign-e-commerce-entities-now-can-invest-alone-97231>> accessed 19 October 2023.

⁵⁷ 'Policies on E-Commerce Operations, Complaints This Month' (*The Daily Star*, 11 September 2020) <<https://www.thedailystar.net/business/news/policies-e-commerce-operations-complaints-month-1959377>> accessed 27 October 2023.

simplification, foreign investment facility, payment and delivery system, and e-aspect of IP.⁵⁸

4.2 Protection of labour market:

Fluctuations in the labor market due to automation require reconsidering social security and tax systems.⁵⁹ The digital economy requires informal workers and freelance workers rather than full-time employees. Again, work through platforms like Uber raises many issues. It is difficult to determine whether the people work through digital platforms be considered an employee and fall under the scope of labor law or classified as independent workers and excluded from labor law protections.⁶⁰ Significant reform is necessary in labor law to meet the demand of the 21st-century workplace created by the different world of work. It is essential to strengthen workers' job security independently and help workers retrain and quickly find new employment.⁶¹

4.3 Reforming competition law for digital space:

Internet firms are changing the market structure by creating innovative business models, causing new challenges for regulatory agencies.⁶² For example, Uber and Airbnb lifted the conventional ride-sharing and subletting to a global level.⁶³ But in many countries, regulators struggle to ascertain whether these firms are taxi or hotel companies or merely software providers. Offline competitors often raise concerns about the lack of uniform regulatory compliance by their online counterparts. However, in the United States, they have started to expand proper rules for these platforms, enforcing safety and tax obligations, and reducing their competitors' regulatory burdens.⁶⁴

Bangladesh has a competition authority, set up recently in 2012 under the provisions of *Bangladesh Competition Act 2012*.⁶⁵ But this Act is not capable of dealing with digital business models. This Act does not provide any plausible solution to prevent anti-competitive trade practices in the digital space. However,

⁵⁸ Ibid.

⁵⁹ 'World Development Report 2016: Digital Dividends' (n 30) 36.

⁶⁰ Bernd Waas, Vera Pavlou and Elena Gramano, 'Digital Economy and the Law: Introduction to This Special Issue' (2018) 12 *Work Organisation, Labour & Globalisation* 7, 8.

⁶¹ Ibid.

⁶² 'World Development Report 2016: Digital Dividends' (n 30) 18.

⁶³ Ibid 32.

⁶⁴ Ibid.

⁶⁵ Bangladesh Competition Act 2012.

the internet is still relatively new, and its impact on markets is continuously growing in Bangladesh. Increasing the capacity to examine and prosecute problematic disruptions to competition law will take time. Bangladesh can increase the competitiveness in online marketplace and promote greater use of digital technologies by steadily reducing market distortions while developing efficient competition enforcement.⁶⁶ An endeavor to reform competition law for the digital age must focus on the real cause for harm and then customize remedies that address this cause. Anti-competitive conduct might have a different chilling effect on the economy, which does not always result in price distortion. Competition laws based on economic efficiency has been struggling to deal with issues other than price distortion. Market dominance of many online platforms and internet intermediaries like Google, Facebook, Amazon, Alibaba poses another risk.⁶⁷ Any amendment must be cautious about the monopoly of large digital platforms and the aggregation of data in the hands of a few entities. It is evident that firms always took the benefit of their dominant position. Google, which controls nearly one-third of the online advertising revenue, has been probed for preferential placement of its own products and distortionary practices in its advertising arrangement.⁶⁸ Real reform to suit the digital age should focus on the actual damage that data dominance might cause.

4.4 Customs facilitation:

Digital goods or e-commerce goods, just like traditional goods, need to be transferred or transported and cross physical borders; and they are also subject to customs and border regulation.⁶⁹ E-trade often involves the shipping of small quantities of goods. The existing *Bangladesh Customs Act, 1969*, does not meet the modern necessity of the internet and e-trade. Reform of customs rules facilitating automation and reducing the friction in cross border trade is essential for lessening trade costs and linking small producers to markets and global value chains.⁷⁰ SME merchants must not be burdened with import duties when they receive a returned item sold to a buyer in another country.⁷¹ The Government can introduce Blockchain technology for the automation of the Customs House for fast track paperless service. Reforms must also address the harmonization, standardization, and simplification of the classification of digital goods and services.

⁶⁶ 'World Development Report 2016: Digital Dividends' (n 30) 31.

⁶⁷ Ibid 19.

⁶⁸ Ibid.

⁶⁹ WTO and OECD (n 17) 187.

⁷⁰ Ibid 189.

⁷¹ 'E-Bay Small Online Business Growth Report: Towards an Inclusive Global Economy' (eBay Public Policy Lab 2016) 22 <<https://www.unescap.org/sites/default/files/22.%20eBay%20Small%20Online%20Business%20Growth%20Report.pdf>> accessed 10 January 2024

4.5 Improving the regulatory environment for e-payment:

Without the international payment facility, cross-border transactions cannot happen. Domestic laws must facilitate international electronic payment, which is essential to develop e-platforms and paperless cross-border trade. But the digitization of the traditional payment system and new entrants in the payment ecosystem poses regulatory challenges. Restrictions on e-payment gateways such as PayPal and Google Pay by imposing strict regulatory obligations are not desirable for digital commerce development.⁷² Currently, international digital wallet services are not available in Bangladesh, and international credit cards are also restrictive.

Over the last decade, Bangladesh has made enormous growth in digital payments, especially in mobile banking, but it is still in its infancy.⁷³ Bangladesh Bank, National Board of Revenue (NBR), and Bangladesh Securities and Exchange Commission (BSEC) must work together for regulatory innovation to help the fintech startups. Legal reform in digital space must be aimed at firstly customer's fund protection and secondly building regulator's capacity to monitor the fund flow.⁷⁴ Legislation must ensure vigilance on the proper use of digital ID/e-KYC to counter fraudulent cases. Chinese experiences highlight how payment providers should be subject to suitable proportional regulation to tackle risk and offer a level playing field.

International payment also depends on the free flow of data. Banks and credit card providers always require access to data to verify and approve payments. Increased data flows also facilitate financial institutions create improved risk profiles which can consequently result in the more effective allocation of capital. Access to transaction records of mobile wallets will help financial institutions create risk profiles that reflect the risk of lending to a particular business more precisely. Data sharing also opens up a new horizon for 'open banking'. It enables the customers to share their data with trusted organizations like credit card companies, property vendors of their choice.⁷⁵ Open Banking will open up more preferences and cheaper and better options for consumers. Bangladesh Bank must take proper steps to introduce open banking with appropriate regulations.

4.6 Money laundering and terrorist financing:

Money laundering, fraud, and terrorist financing are always a threatening

⁷² Mitchell and Mishra (n 4) 2.

⁷³ 'Digital Bangladesh 2021: Payment Systems and Fintech | The Daily Star' (n 28).

⁷⁴ Ibid.

⁷⁵ 'Capitalizing on the Potential Benefits of Open Banking | McKinsey' <<https://www.mckinsey.com/industries/financial-services/our-insights/data-sharing-and-open-banking>> accessed 24 October 2023.

issue to the digital payment system. Bangladesh adopted the *Money Laundering Prevention Act, 2012*⁷⁶ and Rules 2019, *Anti-terrorism Act, 2009*⁷⁷ and Rules 2013. Bangladesh Central Bank also issued regulations for the prevention of trade-based money laundering for banks to prevent such crime in the name of e-trade.⁷⁸ Despite having such a legal authority Bangladesh is struggling with money laundering.⁷⁹ Compared to the sophisticated nature of digital payment system, the legal framework of Bangladesh offers a lack of monitoring and preventive provisions. Policymakers must adopt an efficient legal framework in harmonization with international standards to protect financial integrity and prevent electronic payment misuse. Bangladesh can introduce new tools like blockchain and artificial intelligence to supervise complex, multi-party trades and to confirm transparency in e-trade transactions.⁸⁰

4.7 Consumer Protection:

The success of digital trade depends on the trusted and secured legal framework for consumer protection. To safeguard consumers against product or service deficiencies, fraud and unfair trade practices, legal provisions should be clear and easily understandable. *The Consumer Rights Protection Act (CRPA), 2009* deals with the aspects of consumer protection in Bangladesh. With the mandate of this Act, a National Consumer Rights Protection Council has been established to hear the complaints of the consumers⁸¹. This Act does not explicitly refer to non-store e-commerce transactions. With the advancement and evolution of the more complex nature of digital transactions, it is necessary to incorporate provisions for digital content and businesses in this Act through amendment. Existing Act could be revised to reflect the trade of goods and services, including digital content over a digital platform. The difficult part of consumer protection is recourse mechanisms. Regulators of consumer protection need to play a mystery shopper role and pretend to be customers and find out how well these recourse mechanisms work. It is essential to consumer trust in a digital trade ecosystem.

4.8 E-transactions and digital signature:

Domestic legislation must have provisions for digital signature recognition

⁷⁶ Money Laundering Prevention Act 2012.

⁷⁷ Anti-terrorism Act 2009.

⁷⁸ 'Regulations and Guidelines' <<https://www.bb.org.bd/aboutus/regulationguideline/guidelist.php>> accessed 24 October 2020.

⁷⁹ 'Why Anti-Money Laundering Laws Are Failing' (*The Business Standard*, 22 March 2020) <<https://tbsnews.net/thoughts/why-anti-money-laundering-laws-are-failing-59452>> accessed 24 October 2023.

⁸⁰ Ibid.

⁸¹ The Consumer Rights Protection Act 2009 s 18.

and secure electronic authentication method to facilitate digital trade.⁸² *The Information and Communication Technology Act, 2006 (ICT Act)*, and amendment in 2009 and 2013 aim to promote e-governance by granting legal recognition to digital signatures and digital records authentication. The matter of online payment is not explicitly addressed in the *ICT Act*. E-contracting provisions are also missing from this Act. Even the *Contract Act, 1872* does not have any provision for e-contract. Though the *ICT Act* is a tiny attempt to establish a legal basis for digital transactions, many vital issues are missing from the Act. To advance e-trade activity, this is high time to examine the *ICT Act* provisions against the best international practices, including UNCITRAL model laws. Missing provisions could be underlined, and ambiguities concerning the legal status of electronic signature could be solved, probably by reinforcing technology neutrality.

4.9 Cybersecurity:

The growth in data-driven economy poses a new and potentially high risk of cybersecurity.⁸³ There are broadly five crucial cyber risk areas in digital space: national defense space, critical infrastructure of any country, trade secrets/IP with economic value, digital information, and access to data and technology through borderless trade.⁸⁴ Domestic legislation must address all these areas to define particular criminal activity and proper safeguards to the victim regarding cyber-attacks. There must be a provision for “dedicated cybersecurity response teams” for immediate response to cyber-attack and any possible cyber threat. Legislators must focus on preventive approach and risk management to deal with cybersecurity.

In Bangladesh, the *ICT Act* provides provisions for establishing a dedicated Cyber Tribunal to deal with cybercrime cases. Cybercrimes are covered within the purview of *ICT Act* and the *Cyber Security Act 2023*. In a broad line, the *Cyber Security Act* acknowledges the importance of digital trade and online transaction activity in the country and the risks of cyberattacks that can affect national security, infrastructure, businesses and individuals. It aims to strengthen the regulatory framework. Spamming⁸⁵, hacking⁸⁶, cyber terrorism⁸⁷ are specifically included as a criminal offense in the Act. This *Act* largely controls digital contents that are violent, harmful, and false. However, in order to maximize the opportunities of digital trade, it is essential for the policymakers and lawmakers to follow

⁸² Mitchell and Mishra (n 4) 3.

⁸³ Meltzer, ‘Cybersecurity, Digital Trade, and Data Flows’ (n 51) 7.

⁸⁴ Ibid 10.

⁸⁵ Digital Security Act 2018 s 17,18.

⁸⁶ Ibid 34.

⁸⁷ Ibid 27.

the common international standard and best practices to avoid any disguised unnecessary restrictions in the name of managing cybersecurity.⁸⁸

4.10 Disclosure of source code:

There is no regulatory requirement in Bangladesh to hand over or access to source code or proprietary algorithms as a condition for import or sale of any software or products containing the software. Bangladesh must not enforce any regulatory requirement for disclosing source code for the more significant benefit of the digital economy. But the policymakers may consider proper regulations seeking access to source code to protect health, safety, and cybersecurity.⁸⁹ Regulatory body or Judicial body may require access to the source code for a particular inquiry, inspection, enforcement action, or judicial proceeding, subject to protections against illegal disclosure.⁹⁰

4.11 Data privacy:

Resilient domestic data privacy regulation is necessary for building trust in digital trade. The lack of data privacy regulations in one country can have negative repercussions on the data privacy goals of other countries. Some countries like Canada, Australia, and the EU require the data receiving country to have laws that offer similar domestic law safeguards.⁹¹

The Constitution of Bangladesh endorses an individual's right to "privacy of correspondence and other means of communication".⁹² But, there is no comprehensive legislation in Bangladesh as to how privacy can be safeguarded. However, section 26 of the *Digital Security Act, 2018* provides a provision for data privacy. But, no provision lists how data privacy in online platforms can be protected. Without data privacy legislation, the Bangladeshi citizens' personal data may be exploited by a cloud provider in unauthorized ways. Bangladesh should accept robust privacy laws that acknowledge the importance of data accessibility for fostering economic progress and participating in digital commerce. The approach taken by the United States has effectively provided both privacy and a

⁸⁸ Joshua P Meltzer and Peter Lovelock, 'Regulating for a Digital Economy - Understanding the Importance of Cross-Border Data Flows in Asia' (17 March 2018) <<https://papers.ssrn.com/abstract=3164401>> accessed 30 March 2024.

⁸⁹ Mitchell and Mishra (n 3) 34.

⁹⁰ Meltzer, 'The United States-Mexico-Canada Agreement' (n 14) 255.

⁹¹ Joshua P Meltzer and Peter Lovelock, 'Regulating for a Digital Economy: Understanding the Importance of Cross-Border Data Flows in Asia' (The Brookings Institution 2018) 17 <<https://www.brookings.edu/research/regulating-for-a-digital-economy-understanding-the-importance-of-cross-border-data-flows-in-asia/>> accessed 21 March 2024.

⁹² The Constitution of the People's Republic of Bangladesh 1972 Art. 43.

supportive environment for innovation and advancement in its digital economy.⁹³ Cross-border data restrictions are not allowed in the US, and instead, they depend on the application of sector-specific domestic legislation to institutions for infringement of their privacy notices. Individual firms are responsible for safeguarding the privacy of personal data in the USA and abroad.⁹⁴ Comprehensive privacy legislation must include the provision of data backup, data encryption, cross-border data transfer, data privacy, and risk assessment. More so, privacy legislation must include provisions for non-discriminatory protection to all users of digital trade, irrespective of their jurisdiction.⁹⁵ Best endeavors must also be taken to promote compatibility with the common-standard practices of data protection.⁹⁶ Legislation must ensure a well-resourced data protection authority to enforce and supervise the implementation of data regulations.

4.12 Cloud policy:

In Bangladesh, there is no specific legislation that directly or remotely outlaws, restricts, or regulates cloud technology. But there are prohibitions from the Government on hosting Government data out of the country. Data privacy is one of the preconditions for adopting cloud service, which is absent in Bangladesh. India had already adopted its cloud policy in 2014.⁹⁷ To meet the demand of the emerging digital economy, Bangladesh must adopt a regulatory framework for cloud technology, including detailed guidelines for consumer's data protection without enforcing excessive restrictions.⁹⁸ The regulation must prohibit the unauthorized use of data by cloud providers.

4.13 IoT Policy:

Bangladesh adopted a National Internet of Things (IoT) Strategy in March 2020⁹⁹. The strategy aims to develop a good and balanced Internet of Things (IoT) ecosystem in Bangladesh to cater to economic, societal, and global needs. The Government must consider formulating comprehensive policies and regulatory guidelines, providing security and privacy in IoT based services.

⁹³ Meltzer and Lovelock (n 91) 18.

⁹⁴ Ibid 15.

⁹⁵ Meltzer, 'The United States-Mexico-Canada Agreement' (n 14) 257.

⁹⁶ Meltzer and Lovelock (n 91) 18.

⁹⁷ Arpita Mukherjee and Avantika Kapoor, 'Trade Rules in E-Commerce: WTO and India' (Working Paper 2018) Working Paper 354 12 <<https://www.econstor.eu/handle/10419/176381>> accessed 25 October 2023.

⁹⁸ The Financial Express, 'Cloud Services: Prospects and Challenges' (The Financial Express, February 8, 2020) <<https://thefinancialexpress.com.bd/views/views/cloud-services-prospects-and-challenges-1581088926>> accessed 25 October 2023.

⁹⁹ National Internet of Things Strategy Bangladesh 2020.

4.14 Regulatory reform for SME:

Developing countries like Bangladesh must accommodate SMEs to grow efficiently to participate in the digital trade by lowering their regulatory requirements like licensing conditions, tax obligations. It will generate employment and help the economy to grow. Regulations must protect the SMEs from any unfair competition and market distortionary measures.

4.15 Data localization:

Rules restricting cross-border data movements and forcing local data storage are the instances of localization requirements that prohibit companies from transferring data outside a country.¹⁰⁰ Russia, China, Indonesia, and Vietnam has this kind of legislation in place.¹⁰¹ The main reasons behind the data localization requirements are cybersecurity or data protection and ensuring ready access to information for law enforcement purposes.¹⁰² Such circumstances can diminish the effectiveness of digital trade and escalate the expenses associated with delivering internet-based services, such as cloud computing. Data localization creates a risk of dividing the internet from a unified global network into separate systems based on regions or countries.¹⁰³ It is unlikely that data localization strategies will achieve many of their intended objectives. For instance, the practice of storing data in different locations is not guaranteed to minimize the costs associated with data breaches and enhance security. As a result, data localization may end up being less secure and expensive.¹⁰⁴ Bangladesh must take a prudent approach in preparing any privacy law to avoid data localization stipulations. Bangladesh may address legitimate security concerns regarding government services and financial services by cautiously defining “legitimate public policy objectives” to justify data localization measures.¹⁰⁵ It can emphasize on mutual legal assistance treaty reform and international data-sharing agreement.¹⁰⁶ Any regulatory answer regarding data flow must aim at keeping the internet free and open for “all legitimate commercial purposes.”¹⁰⁷

¹⁰⁰ ‘Digital Trade and U.S. Trade Policy’ (n 34) 14.

¹⁰¹ Manyika and others (n 21) 101.

¹⁰² Meltzer and Lovelock (n 91) 19, 21.

¹⁰³ Joshua P Meltzer, ‘Maximizing the Opportunities of the Internet for International Trade’ (Social Science Research Network 2016) SSRN Scholarly Paper ID 2841913 16 <<https://papers.ssrn.com/abstract=2841913>> accessed 11 October 2023.

¹⁰⁴ Ibid.

¹⁰⁵ Mitchell and Mishra (n 3) 21.

¹⁰⁶ Meltzer and Lovelock (n 91) 22.

¹⁰⁷ Mitchell and Mishra (n 3) 32.

4.16 Avoid digital protectionism:

Governments sometimes put commercial restrictions on foreign online businesses by blocking websites or routing traffic to domestically owned companies to protect domestic companies from online competition.¹⁰⁸ These restrictions are often governed in an arbitrary and non-transparent way and adversely affect sales, advertising revenues, and the scope and size of digital trade.¹⁰⁹ Bangladesh must consider that internet and global data flows can attract more FDI and provide a significant employment generation opportunity.¹¹⁰ In order to fully leverage the benefits of new digital trade opportunities government must adopt a fit-for-purpose regulatory regime to prepare the entrepreneurs and people of the country.¹¹¹

4.17 Reforming Intellectual Property Rights for digital age:

A country's domestic IP legal framework is an essential foundation for innovation and development in the digital economy. With regard to the copying in the internet space, there must be a good balance between respecting the copyright owner's rights to monetize their innovation or creativity and allowing the people to utilize information and ideas, which is made available on the internet. Simultaneously, the platform hosting services must not be a safe harbor for copyright-infringing materials. So, they are required to take down copyright-infringing material when they receive notice from the copyright owner. The EU's new Copyright Directive, 2019 focuses the debate on balance. The directive proposes to grant news publishers rewarded for using their articles by online platforms and provide journalists with a fair share of their revenues.¹¹² The directive also upholds the rights of content creators and producers to negotiate and receive remuneration for the use of their content that is hosted online within the EU by prominent content platforms like YouTube. Though, these obligations do not apply to all newer and smaller platforms.¹¹³ The publishing industry appreciates the new rules, but the platforms have raised worries about enhanced costs, barriers to market access, and impacts on innovation. However, overly rigid IPR rules may restrain information flows and legitimate digital trade.¹¹⁴

Existing intellectual property laws of Bangladesh (i.e. *The Patents and Design Act 1911*, *The Trademarks Act 2009*) do not provide any provisions

¹⁰⁸ Meltzer, 'Maximizing the Opportunities of the Internet for International Trade' (n 103) 17.

¹⁰⁹ Ibid.

¹¹⁰ Meltzer and Lovelock (n 91) 23.

¹¹¹ Ibid.

¹¹² 'Digital Trade and U.S. Trade Policy' (n 34) 17.

¹¹³ Ibid.

¹¹⁴ Ibid 16.

for e-commerce or digital space.¹¹⁵ Currently, there is no provision for domain name protection in Bangladesh. Domain names can be protected as a registered trademark.¹¹⁶ Amendment of intellectual property laws must support digital access and give certainty to copyright, patent, trademark owners, creators, and users. Reform must aim to provide a flexible and tailored legal framework so the Bangladeshi people can gain access to content in the open digital world. The recently enacted *Copyright Act, 2023* demonstrates a sophisticated approach to copyright issues by repealing the previous *Copyright Act of 2000* which recognized digital work as literary work. The 2023 legislation integrated elements of the EU model of data protection, albeit not comprehensively.¹¹⁷ It adopts a different strategy for addressing digital content. This updated legislation provides distinct definitions for databases¹¹⁸ and digital works¹¹⁹, rendering them eligible for copyright protection with specific provisions. Section 14 of the *Act* grants copyright protection to databases and digital works. Policymakers can take an experience from the EU directives for further reform of the existing IP regime of Bangladesh to have an extensive safe harbor for internet platforms.

4.18 Open Government Data:

Public access to and the use of government data “fosters economic and social development, competitiveness and innovation”, could help focused domestic endeavors to develop the laws and regulations required to improve access.¹²⁰ By making data open and available Government can encourage the development of innovative solutions and establish transparency and accountability in government services. Bangladesh adopted Open Government Data Strategy in 2016 with the vision of “Data for all”.

4.19 Digital dispute settlement:

A functional dispute resolution process is required to promptly and efficiently address any conflicts that may arise in the context of digital trade.¹²¹ Currently,

¹¹⁵ United Nations Conference on Trade and Development, *Bangladesh Rapid eTrade Readiness Assessment* (UN 2020) 31 <https://www.un-ilibrary.org/economic-and-social-development/bangladesh-rapid-ettrade-readiness-assessment_e9e0b324-en> accessed 11 November 2023.

¹¹⁶ Ibid.

¹¹⁷ Mozammel Hoque, ‘Feasibility of Data Protection under the Copyright Act 2023: A New Approach?’ (*The Daily Star*, 12 January 2024) <<https://www.thedailystar.net/law-our-rights/news/feasibility-data-protection-under-the-copyright-act-2023-new-approach-3517336>> accessed 30 March 2024.

¹¹⁸ The Copyright Act 2023 (Bangladesh) s 2(16).

¹¹⁹ Ibid 2(10).

¹²⁰ Meltzer, ‘The United States-Mexico-Canada Agreement’ (n 14) 256.

¹²¹ Meltzer, ‘Maximizing the Opportunities of the Internet for International Trade’ (n 103) 8.

there are limited efforts to develop a dispute settlement mechanism specifically for digital commerce, and it is important to further develop such mechanisms to effectively address the unique challenges posed by digital trade. The 2007 OECD Recommendations on Consumer Dispute Resolution and Redress highlighted the necessity to establish a voluntary, efficient, and prompt system, including “private third party alternative dispute resolution services, by which businesses establish, finance, or run out-of-court consensual processes or adjudicative processes to resolve disputes between that business and consumers.”¹²² In addition, the United Nations Commission on International Trade Law (UNCITRAL) has established a working group to develop model rules on alternative dispute resolution processes that are specifically intended for use in the context of cross-border, high volume, low value transactions conducted via electronic communication means.¹²³

eBay has developed a low value, high volume online dispute settlement mechanism for disputes arising on its platform.¹²⁴ More than 60 million e-commerce disputes are resolved annually through e-bay platform. eBay’s online dispute resolution model has given some insights into developing a dispute settlement system that can settle low-value disputes efficiently and promptly.¹²⁵ Bangladesh can develop its own online dispute settlement resolution guidelines for the e-commerce platforms. *Bangladesh Arbitration Act, 2001* is far from perfect for digital space concerning third-party funding and enforcement of foreign arbitral awards. But the Law Commission, Bangladesh, has proposed a reform of arbitration laws to meet national and international stakeholders’ necessity on the enforcement of foreign arbitral awards.¹²⁶

4.20 Telecommunication Regulations:

To meet the WTO commitment, the Government must ensure that a digital services supplier, whether local or international, can use the public telecommunication networks on reasonable and nondiscriminatory terms and conditions for the supply of service offered within or across borders. Telecommunication rules and interconnection rules must not inflict any unreasonable restrictions on digital

¹²² Ibid 23.

¹²³ Ibid.

¹²⁴ Louis F Del Duca, Colin Rule and Kathryn Rimpfel, ‘eBay’s De Facto Low Value High Volume Resolution Process: Lessons and Best Practices for ODR Systems Designers’ (2014) 6 Yearbook on Arbitration and Mediation 17, 204.

¹²⁵ Ibid 205.

¹²⁶ Law Commission, ‘Report on Arbitration Act 2001’ <<https://lc.portal.gov.bd/site/view/reports/%E0%A6%AA%E0%A7%8D%E0%A6%B0%E0%A6%A4%E0%A6%BF%E0%A6%AC%E0%A7%87%E0%A6%A6%E0%A6%A8/http%3A%2F%2Fic.portal.gov.bd%2Fsite%2Fview%2Freports%2F%25E0%25A6%25AA%25E0%25A7%258D%25E0%25A6%25B0%25E0%25A6%25A4%25E0%25A6%25BF%25E0%25A6%25AC%25E0%25A7%2587%25E0%25A6%25A6%25E0%25A6%25A8%2F->> accessed 30 March 2024.

trade.

4.21 Developing legislation to support AI:

Artificial Intelligence seems to have a transformative impact on digital trade. For example, AI can create projections of a future trend, such as changes in consumer needs. To deal with the issues like ethics, data privacy and security in AI, Bangladesh needs to define how it is going to apply AI, as well as when and where it will be utilized. *'EU White Paper on AI'* is an excellent example of a policy framework on AI, and Bangladesh can take the experience from such an initiative to formulate its own framework on AI.

5. Recommendations

A favorable regulatory atmosphere and progressive strategies are the cornerstones for accelerating digital trade. Bangladesh needs to take into consideration regulatory and policy framework of other standard setting jurisdictions, for example, countries like China, South Korea and Taiwan about how they have reformed their domestic laws to cope and compete with the borderless digital trade. In order to reform the existing regulatory landscape of borderless digital trade in Bangladesh, the following actionable recommendations can be considered:

5.1. Regulatory Sandbox:

Bangladesh can introduce regulatory sandbox for firms to test innovative business models, services and startups. Developed country regulators are trialing regulatory sandboxes. It is a safe harbor where entrepreneurs and fintech can take risks with reduced licensing obligations and they are trialing new business models and delivery mechanisms to promote innovation. It allows regulators to supervise digital service providers and tech startups better.

5.2. Principles of future regulations:

To allign with the digital trade landscape any future regulations or amendment of regulatory framework of Bangladesh must based on the following principles:

- a. Transparency;
- b. Non-discrimination;
- c. Avoiding unnecessary trade restrictions;
- d. Interoperability;
- e. Legally distinct and functionally independent regulatory bodies.

Apart from these, policymakers must consider equity and gender issues to

ensure equitable growth and digital inclusion in digital trade market.

5.3. Cybersecurity:

Bangladesh should improve its cybersecurity framework to safeguard the digital trade infrastructure. This includes enforcing strong measures to prevent cyber threats, to protect digital data privacy of consumers and ensure the security of online transactions. By doing so, Bangladesh would be able to build and secure trust among both domestic and international trading partners, reassuring them that their digital trade activities are safe and secure in Bangladesh.

5.4. Consumer protection:

In evolving landscape of digital trade domain, protecting consumer rights is a critical issue for Bangladesh to further its position and interests in competitive digital trade market. Bangladesh still lacks regulatory gap about the effective enforcement of consumer rights in digital trade market. It is making vulnerable the appropriate protection of consumer rights, particularly rights about data privacy and getting quick remedy for fraudulent activities, counterfeit products or scams. Bangladesh urgently requires to establish a functional consumer protection system with proper and quick recourse mechanism in digital market.

5.5. Digital trade advisory taskforce:

The Government should set up a digital trade advisory taskforce comprising the expert people from Government, academia and businesses sector. The primary obligation of taskforce will be to conduct periodical impact assessments to address evolving issues of digital trade domain, then evaluate the effectiveness of prevalent digital trade regulations aligning with emerging challenges and issues of continued technological advancement and propose necessary modifications of domestic policy and regulatory framework of digital trade.

5.6. Defining internet intermediary liability:

The Government must promote a balanced regulatory regime for defining internet intermediary liability and position to foster the internet-based digital trade. Specific guidelines for intermediary entities are required to formulate for content moderation, data privacy, and cooperation with law enforcement agencies.

5.7. One stop digital window:

To ensure uniformity among the service providers, the Government can introduce 'Digital single window' for digital trade market. It will provide a one-stop service to the business providers and consumers as well.

5.8. Postal modernization:

The postal system should be viewed as a facilitator of digital trade, and postal regulations need to be simplified to support the demands of digital commerce. Bangladesh needs to develop a robust online infrastructure to enhance the efficiency of parcel deliveries.

5.9. Customs modernization:

Bangladesh needs to update its Customs Rules by integrating modern blockchain technology to handle digital goods and services more efficiently. This involves adopting electronic documentation and automated processing systems, following the WTO guidelines provided in the Trade Facilitation Agreement

6. Conclusion

Digital trade can speed up development and increase efficiency in the economy of Bangladesh, but there is no shortcut around building a proper legislative framework for digital commerce.¹²⁷ The regulatory structure of Bangladesh will be critical factors in how quickly and to what extent the economy attracts new investment, promotes innovation, and expands its footsteps in the digital world. The governance challenges caused by the data-driven economy are enormous, and many of the challenges are playing out on a global scale. National policymakers need a global approach to avoid erecting barriers that can lead to competitive difficulties. While considering legislative reforms involving digital trade, policymakers need to find the right balance of efficacy and proportionality, particularly given the increasing benefits of data and data flows.¹²⁸ This paper illustrates how the policymakers in Bangladesh can get the balance right considering different data privacy factors, cybersecurity, internet access, intellectual property rights, and dispute resolution. This paper underlines potential challenges and several points to reform and improve the existing domestic legal framework for digital trade matters. Although legislative reform always depends on the political will and engagement of different domestic, regional, and international stakeholders, this paper argues the dire necessity of reform to reap benefits the most out of the digital economy. The ideas presented in this paper asserts that to preserve the safety and soundness in the digital trade ecosystem, Bangladesh needs a robust legal framework to avail the opportunities of various tools offered by Fourth Industrial Revolution in order to minimize the challenges and maximize the opportunities of digital trade prospects. Digital commerce grows so rapidly that regulators have to adopt a test-and-learn approach to keep up with the pace of

¹²⁷ Manyika and others (n 21) 100.

¹²⁸ Nigel Cory, 'Cross-Border Data Flows: Where Are the Barriers, and What Do They Cost?' [2017] INFORMATION TECHNOLOGY 42, 18.

innovation. Understanding the different cross-border digital trade dimensions and finding resolutions in discussion with all stakeholders would be a good starting point for domestic regulatory reform. Bangladesh also needs financial support and technical collaborations from international organizations and developed countries to initiate and implement such legal reform.

Guidelines for Contributors

Format, Footnotes and References

Contributors must prepare the article in plain Word format and avoid any special formatting style including Heading style or page break. The text must contain appropriate headings, sub-headings and authoritative footnotes. Footnotes, designated numerically, should appear in single space at the bottom of each relevant page.

Contributors shall conform to the Oxford Referencing Style (OSCOLA), which can be downloaded from the internet (https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012quickreferenceguide.pdf).

Primary Sources

Do not use full stops in abbreviations. Separate citations with a semi-colon.

Cases

Give the party names, followed by the neutral citation, followed by the Law Reports citation (eg AC, Ch, QB). If there is no neutral citation, give the Law Reports citation followed by the court in brackets. If the case is not reported in the Law Reports, cite the All ER or the WLR, or failing that a specialist report.

Corr v IBC Vehicles Ltd [2008] UKHL 13, [2008] 1 AC 884.

R (Roberts) v Parole Board [2004] EWCA Civ 1031, [2005] QB 410.

Page v Smith [1996] AC 155 (HL).

When pinpointing, give paragraph numbers in square brackets at the end of the citation. If the judgment has no paragraph numbers, provide the page number pinpoint after the court.

Callery v Gray [2001] EWCA Civ 1117, [2001] 1WLR 2112 [42], [45].

Bunt v Tilley [2006] EWHC 407 (QB), [2006] 3 All ER 336 [1]-[37].

R v Leeds County Court, ex p Morris [1990] QB523 (QB) 530-31.

If citing a particular judge:

Arscott v The Coal Authority [2004] EWCA Civ 892, [2005] Env LR 6 [27] (Laws LJ).

Statutes and statutory instruments

Act of Supremacy 1558.

Human Rights Act 1998, s 15(1)(b).

Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004, SI 2004/3166.

EU legislation and cases

Consolidated Version of the Treaty on European Union [2008] OJ C115/13.

Council Regulation (EC) 139/2004 on the control of concentrations between undertakings (EC Merger Regulation) [2004] OJ L24/1, art 5.

Case C-176/03 Commission v Council [2005] ECR I-7879, paras 47-48.

European Court of Human Rights

Omojudi v UK (2009) 51 EHRR 10.

Osman v UK ECHR 1998-VIII 3124.

Balogh v Hungary App no 47940/99 (ECHR, 20 July 2004).

Simpson v UK (1989) 64 DR 188.

Secondary Sources

Books

Give the author's name in the same form as in the publication, except in bibliographies, where you should give only the surname followed by the initial(s). Give relevant information about editions, translators and so forth before the publisher, and give page numbers at the end of the citation, after the brackets.

Thomas Hobbes, *Leviathan* (first published 1651, Penguin 1985) 268.

Gareth Jones, Goff and Jones: *The Law of Restitution* (1st supp, 7th edn, Sweet & Maxwell 2009).

K Zweigert and H Kötz, *An Introduction to Comparative Law* (Tony Weir tr. 3rd edn, OUP 1998).

Contributions to edited books

Francis Rose, 'The Evolution of the Species' in Andrew Burrows and Alan Rodger (eds), *Mapping the Law: Essays in Memory of Peter Birks* (OUP 2006).

Encyclopedias

Halsbury's *Laws* (5th edn, 2010) vol 57, para 53.

Journal articles

Paul Craig, 'Theory, "Pure Theory" and Values in Public Law' (2005) 12(5) Public Law 440. (adopted preferred form)

When pinpointing, put a comma between the first page of the article and the page pinpoint.

JAG Griffith, 'The Common Law and the Political Constitution' (2001) 117 LQR 42, 64.

[NOTE: Both full and abbreviated forms of journal names are accepted under OSCOLA (4th edition). However, for the convenience of readers, the Dhaka University Law Journal prefers the use of full names of journals.]

Online journals

Graham Greenleaf, 'The Global Development of Free Access to Legal Information' (2010) 1(1) EJLT <<http://ejlt.org/article/view/17>> accessed 27 July 2010.

Command papers and Law Commission Reports

Department for International Development, *Eliminating World Poverty: Building our Common Future* (White Paper, Cm 7656, 2009) ch 5.

Law Commission, *Reforming Bribery* (Law Com No 313, 2008) paras 3.12-3.17.

Websites and blogs

Sarah Cole, 'Virtual Friend Fires Employee' (Naked Law, 1 May 2009) <www.nakedlaw.com/2009/05/index.html> accessed 19 November 2009.

Newspaper articles

Jane Croft, 'Supreme Court Warns on Quality' *Financial Times* (London, 1 July 2010) 3.