



An study of E-commerce and its legal frame work: With special reference to India

Dr. Vivek Kumar

Assistant Professor of Law, Institute of Legal Studies, Ch. Charan Singh University, Campus, Meerut, Uttar Pradesh, India

Abstract

In the digital world of 21st century, computer, internet and Communication Technologies have changed the life style. Today we have new terminologies like cyber world, e-commerce, and etc. apart from positive side of e-revolution. Further, in 1990s Business people were aware of increasing use of ICTs as it was easier, faster and cheaper to store, transact and communicate electronic information but were reluctant to interact electronically because there was no legal protection under existing laws. Accordingly, a new Branch of jurisprudence known as Cyber Law or Cyber Space Law or Information Technology Law or Internet Law, emerged to create order in cyber space. For the first time, a Model Law on E-commerce was adopted in 1996 by United Nations Commission on International Trade and Law (UNCITRAL) which was subsequently adopted by General Assembly of United Nations. Significantly, main objective of law was to have uniformity at international level regarding law relating to e-commerce and to provide equal treatment to paper-based and electronic information. India was a signatory to this Model law and hence, enacted the Information Technology Act, 2000. To keep pace with technology, the Model law on E-Signature (MLES), 2001 was adopted by United Nations Commission on International Trade and Law (UNCITRAL). Accordingly India enacted the Information Technology (Amendment) Act, 2008. This paper is an attempt to make indepth study of e-commerce and its legal framework national vis –a-vis international.

Keywords: e-commerce, unictal, it act, digital signature, e –signature

1. Introduction

The term 'electronic commerce' or 'e-commerce' simply refers to business transacted by electronic means which includes business to business and business to consumer transactions. The term is a broad concept that encompasses agreements concluded electronically through the exchange of e-mail over websites and the transfer of money by electronic means. It also refers to many other forms of transacting, such as the use of automated teller machines (ATMS) and the submitting of various types of documents to government entities.

E-commerce is built fundamentally on the use of electronic communications systems, mainly the internet, which have challenged our laws and do not recognize either geographic or jurisdictional boundaries. This has been proved to be an important advantage for participating in worldwide business. Also electronic business has other advantages over paper based commerce, including increasing speed while reducing paper work and the cost of document business.

These advantages increasingly have encouraged business to transact electronically. This development is supported by advancements in global communication technologies, particularly the Internet, which have had a profound impact not only on commercial activities, but also on many aspects of our lives.

Despite the fact that companies have exchanged business data for many years by using different- communication networks, the emergence of e-commerce has changed the method and nature of that exchange. As mentioned, e-commerce is most frequently associated with the use of the internet, which allows one to advertise goods and services make purchases and arrange sales and payment. During its rapid growth the internet has made e-commerce open to every person and every company around the world. It provides business with the ability

to reach customers without the need to have a Physical existence. (i.e. shop) in different jurisdictions^[1].

Electronic commerce consists of the buying and selling of products and services via the Internet. It included business to business, Business to consumer and consumer to consumer transactions. These transactions can include online retail sales, supplier purchases, online bill payment and web-based auctions. Electronic commerce utilizes a variety of technologies including electronic data inter change, electronic fund transfer, credit cards and e-mail.

The term E-commerce is often used inter changeably with e-business. The common element is the effecting implementation of business activities a using Internet technology. However E-Business is the broader, more encompassing strategy and related activities. In addition to retail sales it includes vendor-partner communication, electronic procurement, customer relationship management, data mining and numerous other business functions.

1.1 Methodology

It is theoretical study based on books, journals (International-National), other International and National instruments, reports, articles and internet.

2. Historical development of e-commerce

The development of the World Wide Web during the early 1990's dramatically changed the use of internet. The expansion of the web, and along with it the web browser opened the internet to anyone with basic computer experience and an online connection. As online activity increased, companies quickly saw the internet's marketing potential. Subsequently, there was a rush to take products and services into this expanding electronic realm and to redefine business itself^[2]. E-

commerce, in full electronic commerce, maintaining relationships and conducting a business transaction that induces selling information, services, and goods by means of computer telecommunications networks.

Although in the vernacular e-commerce usually refers only to the trading of goods and services over the internet, broader economic activity included. E-commerce consists of business to consumer and business to business commerce as well as internal organizational transactions that support those activities.

E-commerce originated in a standard for the exchange of business documents, such as orders or invoices, between suppliers and their business customers. Those origins date to the 1948-49, Berlin blockade and airlift with a system of ordering goods primarily via telex. Various industries elaborated upon that system in the ensuing decades before the first general standard was published in 1975. The resulting computer to computers electronic data interchange (EDI) standard is flexible enough to handle most simple electronic business Transactions with the wide adoption of the internet and the introduction of the world wide web in 1991 and of the first browser for accessing it in 1993, most E-commerce sifted to the Internet. More recently, with the global spread of smart phone and the accessibility of fast broadband connections to the Internet, much E-commerce moved to mobile devices, which also included tablets, Laptops, and wearable products such as watches. Today the number of internet users in the world is close to 3 Billion. Out of this India have a total of 259.14 Million Internet and broadband subscribers. This penetration of Internet coupled with the increasing confidence of the internet coupled with the increasing confidence of the internet user to purchase online, has led to an enormous growth in the E-commerce space, with an increasing number of customers registering on E-commerce web sites and purchasing products through the use of mobile phones. It is not surprising therefore that India in a prime position for the growth and development of the E-commerce sector. In particular, E-commerce present one of greatest opportunities in the retail sector since it provides a dramatic change from Brick and mortar establishment to virtual shops which could operate for a fraction of the cost.

E-commerce has deeply affected everyday life and how business and governments operate. Commerce is conducted in electronic market places and in the supply chains working on the internet web. Consumer oriented market places Include large E-malls (such as Amazon) consumer to consumer auction platforms (eBay, for examples) multi-channel retailers (Such as LL.Bean) and many millions of E-retailers. Massive business to business market places have been created by Alibaba and other companies.

Social networks sites, such as Facebook undergird a great verity of individual relationships and are the sites of so called social commerce, driven by the opinions and reviews shared by the participants as the electronic word of mouth.

The web is also an interactive medium of human communication that supplements and often replaces traditional media. The hyper media nature of the web with the interlinking of multimedia content available on globally distributed sites, enables creation of new types of media products, Often offered free of charge. Those new media include Blogs, video aggregators (Such as YouTube), Social media and customized electronic newspapers. As with all media, this aspect of the

web leads to its use in marketing. Web advertising ranges from the display ads on web sites to Keyword ads shown to information seekers using search engines, such as Google.

3. Technically secure system

Security is a central concern in E-commerce it includes authentication of the parties, authorization to access the given resources, confidentiality of the communication; and the assurance of message integrity. Many of those goods are accomplished with public Key infrastructure, system of specialized organizations and computerized means for providing electronic certificates that authenticate firms and if desired individuals, provide the encryption and decryption Key for communications; and furnish the protocols for secure communications^[3].

4. Importance of e-commerce

The subject of e-commerce is undoubtedly one of the most fascinating and topical subjects of legal research in today's world. We are in the age of knowledge management and instant communication and consequently in the midst of an electronic revolution, the impact of which on the economy is much more profound than that caused by the industrial revolution. This modern day revolution, at the global level, has manifested itself in the form of many innovations and break through's and giant leaps in internet working technology with these new opportunities, people can now transcend the barriers of time and distance with the internet's speed.

Legal issues play an important role in determining the growth and advancement of the ICT infrastructure and its relative impact on the entire E-Governance system. Legal issues forms a base for governance infrastructure as they are the inherent management and control tools for the E.G. initiative.

There are rapid advancements happening in the field of technology, which are aimed at providing a seamless and a transparent infrastructure to the citizens. Legal issues unlike the technical and social issues had to take into consideration the fact that the system provides a transparency the entire initiative yet does not provide for the vulnerability associated with the open channels of communication.

Government being the prime custodians of the sensitive information, and being the largest business entity of any nation may suffer from unwanted perforation due to E-government.

There we will view three national namely U.S. which has a pretty stable and an extremely good infrastructure for E-governance in places, South Africa (which I would place in the moderate category) and India (which is in initial stages of implementing the E-government) me find the cyber laws.

According to a report provided by Forrester Research, social networks play an important role in driving consumer online and getting them to engage with brands. This would gain specific significance in light of facts such as India being ranked as Facebooks second largest audience after the U.S. However it should be kept in mind that there still exists a form of "digital divide" in India where the benefits of internet have not fully percolated to non-urban areas. In this scenario mobile connections would play a very important role. India has close to 914.92 million wireless subscribers. Mobile phones have been and will be a key tool in helping users connects in a market where overall internet penetration may low.

The Indian Government has a approved projects for providing broadband connectivity to the local and village level

Government bodies. The Governments plan is to enable broadband connectivity at the rural levels. This if further likely to boost E- commerce in India ^[4].

5. Legal Status of E-Commerce

5.1 Uncitral Model Law

5.1.1 Unictal E-Commerce Law

This law applies to any kind of information in the form of a data message used in the context of commercial activities.

For the purposes of this law:- Article 1 –Sphere of Application

- a) “Data message” means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI) electronic mail, telegraph, telex or telephony.
- b) “Electronic data exchange (EDI)” means the electronic transfer from computer to computer of information using an agreed standard to structure the information;
- c) “Intermediary ”, with respect to a particular data message, means a person who, on behalf of another person, sends, receives or stores that data message or provides other services with respect to that data message;
- d) “Information system” means a system for generating, sending, receiving, storing or otherwise processing data messages.

Article:-5 Legal recognition of Data messages.

Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.

Article:-7 Signature.

- i) Where the law requires a signature of a person, that requirement is met in relation to a data message if:
 - a) A method is used to identify that person and to indicate that person’s approval of the information contained in the data message; and
 - b) That method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.
- ii) Paragraph (i) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the absence of signature.
- iii) The provisions of this article do not apply to certain things.

Article -11. Formation and Validity of Contracts.

- i) In the contract formation, unless otherwise agreed by the parties, an offer and acceptance of any offer may be expressed by means of data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose ^[5].
 - Emphasis’s on providing legal recognition to E-contracts, electronic signatures.
 - Rules on attribution, acknowledgement, receipt, time of dispatch of electronic communications
 - Legal admissibility and evidential weight of data messages
 - ITA 2000 substantially incorporates UNCITRAL model Law.

5.2 European Union

- Prior disclosure by service providers name location.
- Positive obligation to enforce electronic contracts on member states
- Exclusion of liability of service provider on the principle of “mere conduit”.
- No liability for service providers for caching and hosting of information.
- Obligation to frame code of conduct (trade association) to ensure compliance.
- Member states obliged to facilitate out of court dispute settlement in case of dispute between service provider and the recipient of the service.

5.3 United Kingdom

- UK E-commerce Regulations 2002 transpose the main requirement of the directive.
- Emphasis on by breaking Junes fictional barriers 4 boosting consumer Confidence.
- Regulations apply to persons who advertise goods/services online, sell/ services online or Transmit or store electronic content or provide access to a communication network.
- Obligation in respect of information an online service provider must give a consumer.
- Imposition on service provider’s liability for unlawful information they unwittingly carry or store. Regulation or licensing by government authorities.

5.4 United Nations Convention on the Use of Electronic Communications in International Contracts, 2005

It was adopted in November 2005 and came into force in 1 March 2013. It aims at facilitating the use of electronic communications in international trade by assuring that contracts concluded and other communications exchanged electronically are as valid and enforceable as their traditional paper-based equivalents. It intended to strengthen the harmonization of the rules regarding electronic commerce and foster uniformity in the domestic enactment of UNCITRAL model laws relating to electronic commerce, as well as to update and complement certain provisions of those model laws in light of recent practice. Finally, the Convention may provide those countries not having yet adopted provisions on electronic commerce with modern, uniform and carefully drafted legislation. Important provisions of the Convention The Electronic Communications Convention is based upon UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signatures which talked about three fundamental principles of electronic commerce legislation, i.e., non-discrimination, technological neutrality and functional equivalence. Significantly, the Convention also laid emphasis on these principles. The Convention applies to all electronic communications exchanged between parties whose places of business are in different States when at least one party has its place of business in a Contracting State. It International Journal of Social Science and Economics Invention may also apply by virtue of the parties' choice. It is important to note that only business contracts and not the personal contracts are covered under the Convention as it clearly provides that contracts concluded for personal, family or household purposes, such as those relating to family law and

the law of succession, as well as certain financial transactions, negotiable instruments, and documents of title, are excluded from the Convention's scope of application. Further, the Convention establishes the general principle that communications are not to be denied legal validity solely on the grounds that they were made in electronic form. It is important to note that like MLEC and MLES it mentions criteria for establishing the functional equivalence between electronic communications and paper documents, as well as between electronic authentication methods and handwritten signatures. Similarly, the Convention defines the time and place of dispatch and receipt of electronic communications, tailoring the traditional rules for these legal concepts to suit the electronic context and innovating with respect to the provisions of the Model Law on Electronic Commerce. Specifically, given the proliferation of automated message systems, the Convention allows for the enforceability of contracts entered into by such systems, including when no natural person reviewed the individual actions carried out by them. The Convention further clarifies that a proposal to conclude a contract made through electronic means and not addressed to specific parties amounts to an invitation to deal, rather than an offer whose acceptance binds the offering party. Moreover, the Convention establishes remedies in case of input errors by natural persons entering information into automated message systems. Finally, the Convention permits contractual parties to exclude its application or vary its terms within the limits allowed by entering into contrary agreements which is otherwise permitted under legislative provisions ^[6].

5.5 India

- In India E-commerce falls within purview of the Information technology Act, 2000. It legally recognizes all correspondence by electronic mail, information in an electronic form with electronic signature. The electronic is certified by the controller. It also recognizes application and approval done in electronic format for niceness, permits and at her documents pertaining to Government department. In addition, it also makes hacking download, copy, extract, damage of electronic files data liable for punishment.
- E-commerce stores are form of an on-line form of shops thus regulated under the shops and establishments Act, 1953 (coach Indian state) has separate Act,
- Labor issues falls within the purview of the Industrial Disputes Act, 1947 as "Industry" term in this Act also censor E-commerce websites.
- The two tax registrations necessary for sale of goods and services on E-commerce websites are central sales tax (CST) and value added tax (VAT)
- A valid contract- whenever you enter any website you are bound by its terms of use called end user license agreement. This is a consumer's agreement with the website. The term is a consumer's agreement with the website. The terms of use shall satisfy the conditions and essentials of Contract Act, 1872
- Privacy as per section 72 A of information technology Act Amendment 2008, if an E-commerce website discloses personal information to another entity without consent of member it has committed an offence. It should take necessary steps and keep integrity of personal information.

5.5.1 Information Technology Act

The Information Technology Act was enacted in 2000. The ITA's purpose are to: (1) recognize the legal validity of electronic transactions that are used in e-commerce;(2) promote the growth of e-government; and accordingly, (3) to amend the criminal law, evidence law and banking law insofar as they are affected by the legal recognition of electronic transactions. Ostensibly, deference was shown by the drafters of the ITA to the United Nations model law on electronic commerce. The ITA contains six exclusions, a weakness the ITA is further hamstrung by its first generation e-signature provisions.

5.5.1.1 Satisfaction of Statutory Requirement

An electronic record may be used to satisfy a statutory requirement for; a writing ^[7]; a filing with a government department, if the department in question permits it ^[8]; retention ^[9]; or publication ^[10]. An electronic record signed with a digital signature may be used to satisfy a statutory requirement for authentication; or signing ^[11].

5.5.1.2 Certification Authorities

The ITA distinguishes 'secure' e-records and digital signatures from insecure ones: to be considered a 'secure' electronic records, a security procedure must have been applied to it. To be considered a 'secure' digital signature, a security procedure accepted by all the parties must confirm that at the time of attachment, the digital signature was (i) unique to the subscriber; (ii) identified the subscriber; and (iii) was under the sale control of the subscriber and was connected to the electronic record so that if any changes were made to the electronic record, the digital signature would automatically be invalidated ^[12].

The controller of certification authorities is responsible for regulation of certification authorities ^[13] and for investigation ^[14] of any alleged violations of the ITA ^[15]. No person or entity may act as certification authorities unless it holds a license issued by the controller ^[16]. An applicant for certification authorities license must be able to show, possesses the requisite: (i) knowledge, abilities and skills; (ii) number of personnel; (iii) capitalization; and (4) physical assets, including computer equipment and suitable worksite ^[17]. For good cause shown, the controller is authorized to suspend or revoke a certification authority's license ^[18].

5.5.1.3 Adjudication of Violations of the ITA

The controller appoints adjudicating officers to hear and resolve alleged violations of the aforementioned rules and determines the geographical locations where each may exercise jurisdiction. After giving all parties an opportunity to present their cases at a hearing, the officer will render a decision in the matter ^[19]. The officer will take into account: the wrongdoer's "gain of unfair advantage," the amount of loss caused by the wrongful acts; and the number of times the wrongdoer committed the acts ^[20]. Penalties will be imposed or awards will be made on a case by case basis. The qualification for adjudicatory officers will be stated by the government and will include both information technology experience and legal /judicial experience. The officer's authority will be both civil & criminal in nature ^[21]. The government of India is authorized to

establish one or more cyber regulations appellate tribunals and to specify the “matters and places” pertinent to their jurisdiction ^[22].

6. Case study on E- commerce

Hill v Gateway 2000, Inc, 105f 3d 1147 (7th Cir, 1997) facts- The facts of the case consider the situation of terms in the box contracts. Mr. & Mrs. Hill ordered a Gateway, 2000 computer system. When they received this computer system, along with the pocket of warranties was an arbitration agreement which precluded plaintiffs from bringing any action against defendant other than in the forum of arbitration. Hill was dissatisfied with the purchase and he filed a suit in federal court. The district court refused Gateways request that it honor the arbitration clause, holding that the record did not support a finding of a valid arbitration agreement or that Hill had adequate notice of the arbitration clause.

This case follows the same logic as the “shrink wrap license” cases shrink wrap license agreement typically involve notice of the agreement on the product packaging inclusion of the full terms of the agreement inside the packaging, and prohibit access to the product absent an express indication of acceptance. Under such cases the contract does not form at the time of purchase; generally it forms when the purchaser makes the express indication of acceptance for example by declining to return the product within a specified period of time.

People V Lipsitz 663 N.Y.S 2nd 468 (N.Y. sup ct. June 23 1997) in this case a New York court held that the defendant was subject to personal jurisdiction and liable for violating New York consumer protection laws, even though the defendant conducted its magazine subscription business globally over the internet ^[23].

Legal validity of Electronic Transactions

Some of the most common forms of e-contracts are click wrap, browse wrap and shrink-wrap contracts. A browse wrap agreement is intended to be binding on the contracting party by the mere use (or browse) of the website.

Shrink wrap agreements though not directly relevant to e-commerce platforms are relevant in the context of e-commerce mostly because of the kind of goods associated with shrink wrap agreement the conditions only after opening the box with in which the product is packed.

7. Validity of Online Contracts

Existence of a valid contract forms the crux of any transaction including an e-commerce transaction. In India, e-commerce like all other contracts are governed by the basic principles governing contracts in India. i.e., the Indian Contract Act, 1872; in this context it is important to note that the Information Technology Act, 2000 provides fortification for the validity of e-contracts. Unless expressly prohibited under any statute, e-contracts like click-wrap agreements would be enforceable and valid if the requirements of a valid contract as per the Indian Contract Act are fulfilled consequently the terms and conditions which are associated with an e-commerce platform are of utmost importance in determining and ensuring that e-commerce transactions meet with the requirements of a valid contract.

In India there does not seem to be well developed jurisprudence on the issue of whether standard form online agreements are unconscionable. However, Indian laws and

Indian courts have dealt with instances where terms of contracts (including standard form contracts) were negotiated between parties in unequal bargaining positions. Certain provisions under the Indian Contract Act deal with the unconscionable contracts such as when the consideration in the contract or the object of the contract is opposed to public policy, then the contract itself cannot be valid. In case of unconscionable contracts, the courts can put a burden on the person in the dominant position to prove that the contract was not induced by undue influence. The Indian Contract Act does not define the expression ‘public policy’ or what is meant by being ‘opposed to public policy.’ However this section allows the court to hold clauses opposed to public policy void ^[24]. Section 16(3) of the contract act provides that where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Section 23 of the Contract Act provides that the consideration or object of any agreement is unlawful when

- 1) It is forbidden by law, or
- 2) Is of such a nature that if permitted, it would defeat the provisions of any law; or
- 3) Is fraudulent, or
- 4) Involve or implies injury to the person or property of another, or
- 5) The court regards it as immoral or opposed to public policy.

In the case of LIC of India V. Consumer education & research center ^[25]. The Supreme Court of India interpreted an insurance policy issued by LIC of India by bringing in certain elements of public purpose. The court declared certain term clauses in the policy, pertaining to restricting the benefit of the policy only to those people employed in the government as void under article 14 of the Indian Constitution. The court noted that “in dotted line contracts there would be no occasion for a weaker party to bargain as to assume to have equal bargaining power. He has either to accept or leave the service or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forgo the service forever.”

In the case of Lily White V. R. Munnuswami ^[26] the court held that a limitation of liability clause printed on the back of a bill issued by a laundry which restricted the liability of laundry to 50% of the market price of the goods in case of loss was against public policy and therefore void.

By analyzing the various legal & technological issues I find India is favorable destination for e-commerce. Being the most populated and IT enabled country India has a very bright future for e-commerce. The efforts made by the Indian government to promote digital services to the remotest area of India in the form of digital India. Now India is a well-equipped (technically & legally) state to promote e-commerce.

8. References

1. The law of E- commerce: E- contracts, E-business by Dr. Abdullah M. Alghamdi- Published by Author house, Bloomington. 1-4.
2. www.referenceforbusiness.com visited on 25th Feb 2016. at 3.41. PM.
3. www.britannica.com- an 28th Feb at 4:50 pm
4. www.nishith deasi.com last visited on 28/2/16. at 3. 12pm

5. UNCITRAL model law on electronic commerce with guide to enactment – available at www.unictr.org/pdf/english/texts/electcom/05-89450-Ebook.pdf -visited on 25/05/17 at 4:11 pm
6. Law relating to e- commerce: international and national scenario with special reference to India Dr. Jyoti Rattan. (JJSSEI) Volume//01//Issue//02//August 2015 Dr. Jyoti Rattan(www.isij.in) Page6- 7
7. ITA, section 1(4)
8. ITA, section 4
9. ITA, section 6(1)
10. ITA, section 7(1)
11. ITA, section 3
12. ITA, Section 14
13. ITA, section 15
14. ITA, section 18
15. ITA, section 29
16. ITA, section 28(1)
17. ITA, section 21
18. ITA, section 21
19. ITA, section 45
20. ITA, section 46
21. ITA, section 47
22. ITA, section 46
23. www.legalindia.com visited on 04/03/16 at 10:10 Pm
24. www.ivca.in/reports/2015-visited on 22/05/17 at 10:58 pm
25. 1995 AIR1811
26. AIR1966Mad 13