

## E-commerce Laws and Regulations in India: Issues and Challenges

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### I. Introduction

Ecommerce has brought a paradigm shift in trading throughout the world. Although Indian e-commerce sector has witnessed an impressive growth rate in the recent years, the sector is still beset with some serious challenges. The etymological meaning of E-commerce is the businesses transaction of buying and selling of products and services by & customers solely through electronic medium, without using any paper documents. The *Organization for Economic Cooperation and Development* (OECD) defines E-commerce as a new way of conducting business, qualifying it as business occurring over networks which uses non-proprietary protocols that are established through an open standard setting process such as the Internet.

The rapid popularity and acceptance of e-commerce throughout the world is driven by the greater customer choice and improved convenience in commercial transactions with the help of internet where the vendor or merchant can sell his products or services directly to the customer and the payment can be made electronic fund transfer system through debit card, credit card or net banking etc. Out of these convenience and ease in doing business, the e-commerce market and its holding in the whole trade and commercial transactions is increasing in demand as well as expanding very fast replacing non-e-commerce transactions in so many sectors. E-commerce is already appearing in all areas of business and customer services.<sup>2</sup>

With the increasing use of information and communication technology (ICT) s, a new branch of jurisprudence known as Cyber Law or Cyber Space Law or Information Technology Law

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<sup>1</sup> ET Bureau, "Don't let regulatory issues hamper ecommerce in India; Constitute an 'informed' empowered committee" *The Economic Times* Sep. 21, 2014.

<sup>2</sup> Rajendra Madhukar Sarode, "Future of E-Commerce in India Challenges & Opportunities" 1(12) *IJAR* 646 (2015).

or Internet Law, emerged to regulate law and order in cyber space. In 1996, for the first time, a Model Law on E-commerce (MLEC) was adopted by United Nations Commission on International Trade and Law (UNCITRAL) which was subsequently adopted by General Assembly of United Nations. The main objective of MLEC was to bring a uniform law relating to e-commerce at international level and to bring electronic transactions to the level at par with paper-based transactions ascertaining the rights and liabilities of the transacting parties similar to those of paper-based transactions. India being a signatory to this Model law enacted the *Information Technology Act, 2000*. Accordingly, to give effect the UNCITRAL law on E-Signature (MLES), 2001 India enacted the *Information Technology (Amendment) Act, 2008*.

The e-commerce revolution has just begun in India, and will encompass a much wider range of goods and services on a pan India basis in just a few years from now. Ecommerce is spawning thousands of entrepreneurs every year, and that number could swell to tens of thousands annually within a year or two. In India e-commerce has huge potential having middle class more than 288 million people in India. However the legal and regulatory challenges have been limiting the growth of electronic commerce in India. It would be a pity if regulatory haze and maze brings this emerging vibrant business and social ecosystem to atrophy.<sup>3</sup> The main problem generally faced by developing economies like India is that with a completely different economic as well as technological set up, the proper and a replica implementation of such 'high-tech' legislation as envisaged by the Model law becomes very difficult. Even if the legislature fulfils the act of enacting a law, it becomes difficult to enforce and implement in Indian scenario. Thus, a critical analysis of the existing laws and regulations shows that various legal issues such as jurisdiction, taxation, intellectual property rights and domain names in E-commerce remain untouched. We need more regulations for making E-commerce transactions fairer and achieving a more consumer-friendly E-commerce environment in India.

The paper tries to undertake a study to describe the present laws and regulations governing e-commerce and examine the challenges and opportunities of e-commerce under the present legal regime in India. The paper also seeks to find the effectiveness the present laws and regulations in dealing the legal issues of e-commerce in the present legal system and tries to suggest if any improvements required for a better legal and regulatory framework for ensuring a just, fair and consumer-friendly e-commerce environment in India.

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<sup>3</sup> *Supra* Note 1.

## II. Legislation on E-commerce in India

### Information Technology Act, 2000

The first ever law enacted by the Government of India on e-commerce was *Information Technology (IT) Act 2000*. It was an enactment to give effect the *UNCITRAL Model Law on Electronic Commerce*, 1996. The General Assembly of the United Nations adopted a resolution on January 30, 1997 commending the Model Law on Electronic Commerce for a favourable consideration by the Member States as a Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information.

The main aim of the *IT Act* was to provide legal recognition to the transactions carried out by the means of electronic data interchange and through other electronic means of communications, commonly referred to as electronic commerce (e-commerce). The *IT Act 2000* facilitates e-commerce and e-governance in the country. It contains provisions for Legal recognition of electronic record and digital signatures rules for attribution of the e-record, for mode and manner of acknowledgement, for determining time and place of dispatch and receipt of electronic records. The Act also establishes a regulatory framework and lays down punishment regimes for different cyber crimes and offences. Significantly, under the Act the Certification authority is a focal point around which this Act revolves as most of the provisions are relating to Regulation of Certification Authorities i.e., appointment of a Controller of CAs, grant of license to CAs, recognition of foreign CAs and duties of subscribers of digital signature certificates. It also made the offences like hacking, damage to computer source code, publishing of information which is obscene in electronic form, breach of confidentiality and privacy, and fraudulent grant and use of digital signatures punishable. Further, it provides for civil liability i.e., Cyber contraventions and criminal violations, penalties, establishment of the Adjudicating Authority and the Cyber Regulatory Appellate Tribunals.<sup>4</sup> The related provisions of the *Indian Penal Code*, 1860, the *Indian Evidence Act*, 1872, *Banker's Book Evidence Act*, 1891 and the *Reserve Bank of India Act*, 1934 were also amended to address the related issues of electronic commerce, electronic crimes and evidence, and to enable further regulation as regards electronic fund transfer.

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<sup>4</sup> Dr. Jyoti Rattan, "Law Relating to E-commerce: International and National Scenario with Special Reference to India" 1(2) *IJSSEI* 7 (2015).

## **Information Technology (Amendment) Act, 2008**

India incorporated *Information Technology (Amendment) Act, 2008* to give implementation of the *UNCITRAL Model Law on Electronic Signatures, 2001* in India. The *IT Act* of 2000 was amended to make it technology-neutral and recognized electronic signatures over restrictive digital signatures. The Act brought many changes such as introduction of the concept of e-signature, amendment of the definition of intermediary, etc. Besides, the state assumed specific powers to control websites in order to protect privacy on the one hand, and check possible misuse leading to tax evasions on the other hand. It is important to note that this act recognized the legal validity and enforceability of the digital signature and electronic records for the first time in India and also gave emphasis on the secure digital signatures and secure electronic records. These changes were brought in an attempt to decrease the incidence of electronic forgeries and to facilitate e-commerce transactions.

### **III. Legal Issues and Challenges of E-commerce**

In the commercial relationship between parties, disputes are very normal. Disputes may arise on the contractual terms and negotiations and there may be disputes both in and out of the contractual terms which can be contractual as well as of non-contractual nature, as for example, Copyright issues, data protection issues and competition issues. Disputes surrounding the B2C segment though small in monetary terms; yet involve issues such as jurisdiction over the dispute, choice of law and problems of trans-border litigation which are not practically feasible for a common customer. Various important legal issues relating to e-commerce transactions are discussed hereafter:

#### **Issues of Validity of the E-Contracts**

All e-contracts entered online are to be governed by the *Indian Contract Act, 1887*. Acceptance of the terms and conditions prior to any purchase made online creates an implied contract between the purchaser and the seller. These are called ‘click-wrap’ contracts i.e. contract created by clicking on an ‘I accept’ tab. ‘Browse-wrap’ is also a recognized form of an implied contract which is created by the mere browsing of a website.<sup>5</sup> Therefore all

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<sup>5</sup>Jayanth Pattanshetti Associates, “Ecommerce Laws In India: Foreign Investment And Retail Trade” 2-3 available at:

<https://pattanshettiassociates.wordpress.com/2015/01/02/Ecommercelawsinindiaforeigninvestmentandretailtrade/> (Visited on June 3, 2016).

principles of contract law would apply to an e-commerce transaction. All pre-requisites of a valid contract are to be fulfilled as provided under the *Contract Act*. Intention to enter into a legal relationship, the capacities of the parties to enter into a contract, free consent of the parties are the most important aspects of valid contract, which can be defeated in a contract of e-commerce very easily. Capacity to enter into a contract are the age of the parties entering into a contract, soundness mind etc. Again the free consent means the consent of the parties should not be induced by fraud, misrepresentation, mistake etc. The terms and conditions associated with an e-contract has to remain in conformity with the Indian Contract Act, irrespective of the mode of 'clickwrap' or 'shrinkwrap' agreements to enter into a contract or any other mode recognized by the *IT Act*.<sup>6</sup> But, all of these aspects in an e-commerce contract come into play only when there is a dispute. Some issues arise out of e-commerce may make an e-contract *void ab initio*, thus rendering the contract inadmissible as evidence in a court of law. Further, the e-contract in itself may be held unconscionable for providing no option of negotiation. Here, the question then arises whether such standard form contracts are to be considered unconscionable and may be struck down by the courts. U.S. courts have not been averse in treating such standard contracts as unconscionable, making them liable to be struck down in facts and circumstances of the cases. In India there does not seem to be well developed jurisprudence on the issue of whether standard form online agreements are unconscionable. However, 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. Thus, Indian law on e-commerce has little guidance to offer on these serious issues.

### **Issues of Jurisdiction in Disputes**

The core elements of e-business are registering order, arranging delivery, and receiving e-payments. If and when such problems arise in such transactions, the setback can be irreversible and are to be addressed with expediency. Settlement of disputes in the B2C segment, particularly, is challenging. Disputes are traditionally settled within the physical territory where one or both of the disputants are located. Different principles are applied in different national jurisdictions in this regard. In the beginning, courts in different countries

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<sup>6</sup> M.M.K. Sardana, "Evolution of E-Commerce in India: Challenges Ahead (Part 2)" 3 *available at*: <http://www.isid.org.in/pdf/DN1408.pdf> (Visited on June 6, 2016).

began to access the internet merely to use it as a sufficient ground for assuming jurisdiction over internet related transactions.<sup>7</sup>

The U.S. courts underlined the fact that orders of a foreign court against a legal entity of another country would not automatically become operable in the country of origin, but would need scrutiny by the court of country of origin with reference to its laws and constitution.<sup>8</sup>

The courts have laid down the parameter of determining the jurisdiction based on the level of interactivity and commercial nature of the exchange of information that occurs on the website in a particular jurisdiction and have categorized activities of the websites to into three areas:

- a) Fully interactive sites where users purchase goods or services, exchange information or files, or enter into agreements;
- b) Fully passive sites where information is available for people to view; and,
- c) Sites somewhere in the middle, with limited interaction.

Courts are likely to take jurisdiction over the out-of-state operator of fully interactive sites, unless the operator forbade the sale in the state or did not target them. Fully passive websites are not likely to be subject to jurisdiction as they operate from outside the state.<sup>9</sup>

Jurisprudence in India with respect to issues relating to jurisdiction and enforcement issues in e-commerce is still nascent. In general a lot of local statutes provide for a 'long arm jurisdiction' whereby the operation of such local laws have extra-territorial application if an act or omission has resulted in some illegal or prejudicial effect within the territory of the country. The *IT Act* by the force of its Section 75 is extend to the whole of India and thus it shall apply also to any or contravention there under committed outside India by any person and the Act shall apply to any offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.

Section 3 of the *Indian Penal Code* (IPC), 1869 provides that any person who is liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of the IPC for any act committed beyond India in the same manner as if such act had been committed within India.

Thus, there does not seem too much jurisprudence in India on the issue of jurisdiction in cases of e-commerce.

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<sup>7</sup> *Id.* at 5.

<sup>8</sup> Abha Chauhan, "Evolution and Development of Cyber Law - A Study with Special Reference to India," available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2195557](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2195557) (Visited on June 6, 2016).

<sup>9</sup> *Supra* Note 4 at 6,7.

## **Issues Relating to Privacy**

In any e-commerce transaction, it is almost difficult to complete the online transaction without collecting some form of personal information of the users such as details about their identity and financial information. Apart from the collection of primary data from the users, e-commerce platforms may also collect a variety of other indirect but very valuable information such as users' personal choices and preferences and patterns of search etc.

The IT Act deals with the concept of violation of privacy in a limited sense; it provides that the privacy of a person is deemed to be violated where images of her private body areas are captured, published or transmitted without her consent in circumstances where she would have had a reasonable expectation of privacy<sup>10</sup> and prescribes a punishment of imprisonment of up to 3 years and/or fine of up to INR 2 lakhs.

However, a notification has been issued under Section 43A of the *IT Act*, providing a framework for the protection of data particularly relating to personal information and sensitive personal data. Personal Information relates to the identity of the person and the sensitive personal data includes information on password; bank account or credit card or debit card or other payment instrument details etc. The notification cast obligations for the protection of privacy in relation to personal information and sensitive personal information on the punishment as provided under the *IT Act* besides making the entities liable for monetary compensation. E-retail companies and entities are thus required to have foolproof instruments and arrangements in place to remain on the right side of law. Their servers and those of their associates have to safeguard their systems from any unauthorised intrusion, both internally and externally.<sup>11</sup>

## **Issues of Intellectual Property Rights**

Intellectual Property concern is one of the foremost considerations for any company entering into business including e-commerce transactions. The internet is a boundless with minimum regulation and therefore the protection of intellectual property rights (IPR) is a challenge and a growing concern amongst most e-businesses. India has well-defined legal and regulatory

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<sup>10</sup> Section 66-E of the *IT Act*.

<sup>11</sup> Nishith Desai Associates, "E-commerce in India, Legal, Tax and Regulatory Analysis" available at: [http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/E-Commerce\\_in\\_India.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/E-Commerce_in_India.pdf) (Visited on June 6, 2016).

framework for the protection of IPRs in the physical world. But, the efficacy of these laws to safeguard the rights in and out of an e-commerce transaction is not simple.

Indian law is also silent on another important issue of the domain name disputes. A company that commences e-commerce activities would at first have to get its domain name registered. A domain name in simplistic terms is an address on the internet. In more technical terms a domain name is an easily recognizable and memorable name to the Internet Protocol resource. Domain names normally fall within the purview of trademark law. A domain name registry will not register two identical domain names but can register a similar domain name. This leads to a situation where deceptively similar domain names can be registered by a third party. There is no specific Indian law on domain names except the judicial pronouncements, which have reiterated the principles of law that domain names are valuable property and are entitled to trade mark protection.<sup>12</sup>

#### **IV. Conclusion**

The rapid growth of e-commerce has created the need for vibrant and effective regulatory mechanisms, which would strengthen the legal infrastructure that is crucial to the success of e-commerce in India. It has always been the allegation that the weak cyber security laws in India and the absence of a proper e-commerce regulatory framework is the reason for what Indian people as well as the e-commerce industries face so many challenges in enjoying a consumer-friendly and business-confidant e-commerce environment in India. India has no dedicated e-commerce regulatory law other than the *IT Act* which regulates the e-commerce business and transactions in India. So, the government should develop a legal framework for e-commerce so that both domestic as well as international trade in India flourish, the basic rights such as privacy, intellectual property, prevention of fraud, consumer protection etc. are all taken care of. Legal community in India is required to the necessary expertise to guide entrepreneurs, consumers and even courts in a manner that the fast emerging business module is enabled to adhere to existing legislations normally applicable to business transactions in conventional modules. Simultaneously, it should ensure that the advantages of technology are availed of unhindered by judicious evolution of law through learned interpretation of courts

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<sup>12</sup> Sumanjeet, "E-Commerce Laws In The Indian Perspective" *available at*: [http://www.smsvaranasi.com/insight/e-commerce\\_laws\\_in\\_the\\_indian\\_perspective.pdf](http://www.smsvaranasi.com/insight/e-commerce_laws_in_the_indian_perspective.pdf) (Visited on June 7, 2016).



till a consensus emerges that a specialized law to govern and regulate certain aspects of e-commerce is imperative and an exclusive necessity.

## References

1. Abha Chauhan, "Evolution and Development of Cyber Law - A Study with Special Reference to India," *available at*:  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2195557](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2195557) (Visited on June 6, 2016).
2. Dr. Jyoti Rattan, "Law Relating to E-commerce: International and National Scenario with Special Reference to India" 1(2) *IJSSEI* 7 (2015).
3. ET Bureau, "Don't let regulatory issues hamper ecommerce in India; Constitute an 'informed' empowered committee" *The Economic Times* Sep. 21, 2014.
4. Jayanth Pattanshetti Associates, "Ecommerce Laws In India: Foreign Investment And Retail Trade" 2-3 *available at*:  
<https://Pattanshettiassociates.Wordpress.Com/2015/01/02/Ecommercelawsinindiaforeigninvestmentandretailtrade/> (Visited on June 3, 2016).
5. K. M. Baharul Isalm, "E-commerce: Laws and Cyber Crimes," *available at*:  
[https://www.academia.edu/694983/E-COMMERCE\\_LAWS\\_AND\\_CYBER\\_CRIMES](https://www.academia.edu/694983/E-COMMERCE_LAWS_AND_CYBER_CRIMES) (Visited on June 6, 2016).
6. M.M.K. Sardana, "Evolution of E-Commerce in India: Challenges Ahead (Part 2)" 3 *available at*: <http://www.isid.org.in/pdf/DN1408.pdf> (Visited on June 6, 2016).
7. Nishith Desai Associates, "E-commerce in India, Legal, Tax and Regulatory Analysis" *available at*:  
[http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/E-Commerce\\_in\\_India.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/E-Commerce_in_India.pdf) (Visited on June 6, 2016).
8. Rajendra Madhukar Sarode, "Future of E-Commerce in India Challenges & Opportunities" 1(12) *IJAR* 646 (2015).
9. Sumanjeet, "E-Commerce Laws in the Indian Perspective" *available at*:  
[http://www.smsvaranasi.com/insight/e-commerce\\_laws\\_in\\_the\\_indian\\_perspective.pdf](http://www.smsvaranasi.com/insight/e-commerce_laws_in_the_indian_perspective.pdf) (Visited on June 7, 2016).