

EMERGING DIMENSIONS OF E-COMMERCE IN INDIA; PROBLEMS AND PROSPECTS

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Abstract

E-Commerce includes business to business connections to make easier big corporation to purchase. The E-Commerce shall have significant impact on the global economy as well as plays a key role in the future development. It is, therefore, various developing countries have attempted to formulate an adequate legal and regulatory framework in support of E-Commerce across State, National and International level. However, the adequate legal framework requires the substantial reconsideration of traditional legal approaches and all these legal regulatory mechanism as well as legal infrastructure comes under domain of cyber law. Internet has facilitated online execution of commercial transaction. The growth and development in the field of E-Commerce has propelled the need of an effective regulatory mechanism. This regulatory mechanism falls within the domain of Internet/ Cyber Law. Cyber law is a constantly evolving process. The legal issues of Electronic Commerce/Electronic Data Interchange are related to the evidential, contractual and liability. The law of contract being the area of Private Law and the brainchild of corporate world the underlying postulate in any legal regime governing contractual relations, that the contracting parties must get freedom to contract, adhere to contract terms and conditions of and get adequate redress in the event of breach thereof. The basic issues involved in the contract are acceptance, communication, consideration, competency of parties and remedies for breach of contract. The decision by UNCITRAL to create Model legislation on electronic commerce was made in response to a number of countries having inadequate or outdated existing legislation. International law on electronic contracts appears to have resolved the doubts previously applicable to “Shrink Wrap” and “Click-Wrap” Contracts. Difficulty may

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arise in determining the appropriate jurisdiction of the execution and performance of contract that has been entered into electronically.

Key Words-E-Commerce, E-Contract, Click-Wrap Agreement, Shrink Wrap Agreements , The Electronic Data Interchange, The E-Mail Contract.

Introduction

The legal aspects or issues related to any activity of citizens in cyberspace come within the ambit of cyber law. E-Commerce means the paperless exchange of business information using a suite of technologies such as Electronic Data Interchange (EDI), Electronic Mail (e-mail) Electronic Fund Transfer (EFT), Credit Cards, Fascimile (Fax), Electronic Bulletin Board Systems (BBS) and Data Base Services. In other words, E-Commerce is a form of computerized buying and selling both by consumer and by company, which facilitates choosing the goods ordering, delivery, after sales support and payment. These are few complex issues of security, privacy, authentication and anonymity, which have been thrust into the forefront as confidential information increasingly traverses modern networks. For the functioning of E-Commerce, confidence, reliability and protection of information against security threats are very crucial prerequisite. A security threat may be defined as a crucial condition or event with the potential to cause economic hardship or loss to data or network resources by disclosure, modification of data, denial of service, fraud, waste and abuse. In sum, the fast developing technology innovation in the world of the Wired and Wireless internet require for increasing governance capacity among social, educational and political organization to create an equitable and safe knowledge Society. The World Wide Web (WWW) is new digital technology which has brought new opportunities and imposed challenges to existing legal environment. The corporate business explores and utilizes it for their benefit by expanding their activities not only in physical space but also in virtual space in search of the potential customers. While E-Contract has become a fundamental element in the E-Commerce world, the Electronic Contract raises various new legal issues. Contract is always an essence in the agreement between two or more parties to conduct any business transaction. Such a contract must be valid and legally binding on the parties to be made mutually benefit their interest and transactions. These contracts may be oral or written as may be required by law in specific cases and is validated by the law.

In any community settings, breach of contract is settled through community adjudication legal system, which inquired into the breach and set right things. As with the evolution of the legal system, contracts came to be governed by specific laws under the respective legal systems. In other words, a contract is an agreement for a specified transaction between two or more parties for a specified consideration and is binding upon the transacting parties. The Contract, oral or written, is made through a process of negotiation with offers/proposals, counter offer/counter proposals towards acceptance by the contracting parties. Such an acceptance turns into an agreement. The Section 2(h) of the Indian Contract Act, 1872 clearly states that an agreement enforceable by law is a contract.

1. Meaning and Concept of E-Commerce

With the advent of internet and its commercialization since 1994, a new medium of commerce popularly known as E-Commerce (EC) rapidly emerged in the modern global economy. E-Commerce can be defined as the use of the internet and other networking technologies for conducting business transactions. Further, E-Commerce not only involves selling and buying online but it also involves a host of activities spanning the firm's value chain like promotion of product/services on the web, integrating invoicing and payment from customers, secure transactions, and handling customer queries online. In short, E-Commerce is an umbrella concept to integrate a wide range of existing and new applications.²

Most people think E-Commerce means online shopping. But web shopping is only a small part of the picture. The term also refers to online stock, bond transactions, buying and downloading software without ever going to a store. In addition, E-Commerce includes business to business connections that make purchasing easier for big corporations. E-Commerce is generally described as a method of buying and selling products and services electronically. The main vehicle of E-Commerce remains the internet and the World Wide Web, but use of e-mail, fax and telephone orders is also prevalent. Electronic Commerce is the application communication and information sharing technology among trading partners to the pursuit of business objectives. E-Commerce can be defined as modern business methodology that addresses the needs of the

² Sridhar Vaithianathan, "A Review of E-Commerce Literature on India," *available at: http://download.Springer.Comstaticpdf186art%253a10.1007%252fs10660-010-9046-0.Pdfauth66=1393853765_Ceb2a84f1fc05f57feba8b3b56086344&Ext=.Pdf* (last visited on February 1, 2013).

organization, merchants and consumers to cut costs while improving the quality of goods and services and speed of service delivery.³

Nevertheless, because of the ways in which it differs from traditional commerce, electronic commerce raises some new and interesting technical and legal challenges. These include:

- Satisfying traditional legal requirements for reduction of agreements to signed documents;
- Applying legal rules of evidence to computer based information; and
- Interpreting, adapting and complying with many other existing legal standards in the context of electronic transactions.⁴

From a legal perspective, one of the most significant issues in electronic commerce is how to create enforceable electronic contracts for the sale of goods and services or how to ensure that a digital transaction will be at least as enforceable and valid as a traditional paper-based transaction. In every business environment, whether transactions are executed in person (face-to-face) or over distance, there are accepted customs and practices that determine, in conjunction with applicable legal rules, the parties rights and responsibilities.⁵ These practices often include controls, such as:

- Signatures, to evidence agreements;
- Time and date-stamping, to provide proof of dispatch, submission, receipt or acceptance; and, in some cases;
- Witnesses, notaries or other trusted third parties, to acknowledge and authenticate transactions.

³ Mr Rajiv Rastogi, “India: Country Report on E-Commerce Initiatives” Director Department of Information Technology: Ministry of Communication and Information Technology India, *available at:* http://www.unescap.org/tidpublicationpart_three2261_ind.pdf (last visited on February 2, 2011).

⁴ Diwan Sharma, *Electronic Commerce: A Managers Guide to E-Business* (Vanity Books International, 1st edn., 2000).

⁵ *Ibid.*

2. Definition of E-Commerce

E-Commerce is the mode of conducting business through electronic means. However, there exists no standard definition for the term yet and different organizations have defined it diversely. E-Commerce means the production, distribution, marketing, sale or delivery of goods and services by electronic means.⁶ E-Commerce is the application communication and information sharing technology among trading partners to the pursuit of business objectives. E-Commerce can be defined as modern business methodology that addresses the needs of the organizations, merchants and consumers to cut costs while improving the quality of goods and services and speed of service delivery. E-Commerce is associated with the buying and selling of information, products, and services via computer networks. A key element of E-Commerce is information processing. E-Commerce is generally described as a method of buying and selling products and services electronically. The main vehicle of E-Commerce remains the internet and the World Wide Web, but e-mail, fax and telephone orders is also used for conducting business.⁷ The World Trade Organization (WTO)⁸ Ministerial Declaration on E-Commerce defines E-Commerce as the production, distribution, marketing, sales or delivery of goods and services by electronic means. The six main vehicle of E-Commerce that have been recognized by WTO are telephone, fax, TV, electronic payment and money transfer system, electronic data interchange (EDI) and the internet. According to European Commission,⁹ E-Commerce encompasses more than the purchase of goods online. It includes a disparate set of loosely define behaviour, such as shopping, browsing the internet for goods and services, gathering information about items to purchase and completing the transaction. It also involves the fulfillment and delivery of those goods and services and inquiries about the status of orders. Like any other sustained business activity is also means conducting consumer satisfaction surveys, capturing information about consumers and maintaining consumer databases for marketing promotions and other related activities.

⁶ Aashit Shah, Parveen Nagree, et. al., “Legal Issues in E-Commerce,” *available at: http://www.nishithdesai.comResearch-PapersLegal_issues_ecom.pdf* (last visited on January 6, 2012).

⁷ Mr Rajiv Rastogi “India Country Report on E-Commerce Initiatives”, Director Department of information Technology, Ministry of Communication and Information Technology India” *available at: http://www.unescap.orgtidpublicationpart_three2261_ind.pdf* (last visited on January 4, 2013).

⁸ See, *available at: <http://www.wto.org>*. (last visited on September 18, 2011).

⁹ See, *available at: <http://europa.eu.int>*. (last visited on September 18, 2011).

3. E-Commerce: A Categorization

There are several categories of E-Commerce being used now days. These categories are classified based on the nature of the transactions, including Business-to-Consumer (B2C), Business-to Business (B2B), Consumer-to-Consumer (C2C), Consumer-to-Business (C2B), and No Business and Government, and Organizational (Intrabusiness). As an interested party can use various methods to participate in Electronic Commerce. Electronic Commerce could be further classified into different types based on different classifying standards as follows.

3.1. Business-to-Business (B2B)

This model defines that Buyer and Seller are two different entities. It is quite similar to manufacturer issuing goods to the retailer or wholesaler.¹⁰ Business-to-Business refers to the full spectrum of E-Commerce that can occur between two organizations. Among other activities, Business-to-Business (B2B) E-Commerce includes purchasing and procurement, supplier management, inventory management, channel management, sales activities, payment management, and service and support.¹¹ While, we may be familiar with a few Business-to-Business (B2B) pioneers e.g., Chemdex (www.chemdex.com), Fastparts (www.fastparts.com), and FreeMarkets (www.freemarkets.com) some other exciting new consortia are emerging. Business-to-Business E-Commerce has been undertaken solely via proprietary network and is usually referred to as Electronic Data Interchange (hereinafter referred to as EDI).

3.2. Business-To-Consumer (B2C)

The basic concept of this model is to sell the product online to the consumers.¹² Business-to-Consumer E-Commerce refers to exchanges between businesses and consumers, e.g., Amazon.com, Yahoo.com and Schwab.com. Similar transactions that occur in business-to-business E-Commerce also take place in the Business-to-Consumer context. These include sales

¹⁰ S.Sai Sushanth, "E-Commerce and Law:Trends and Challenges" 3(2) *UACEE International Journal of Advances in Computer Science and its Applications* p.57(2013).

¹¹ S.Sudalaimuthu, J Lilly, Emerging Trend of E-Commerce in India, available on <http://www.fibre2fashion.com/industry-article/market-research/industry-report/emerging-trend-of-E-Commerce-in-india/emerging-trend-of-E-Commerce-in-india1.asp> (last visited on October 12, 2013).

¹² S.Sai Sushanth, "E-Commerce and Law: Trends and Challenges" 3(2) *UACEE International Journal of Advances in Computer Science and its Applications* p.57(2013).

activities, consumer search, frequently asked questions, service, and support.¹³ The commercial world fundamentally changed only after the introduction of the World Wide Web, or open networks. At present, a large part of the profits from electronic commerce goes to Business-to-Business (B2B). However, consumer transactions are in the process of rapid development and should mean big business in the near future. This business should take several forms, such as electronic shopping, customer support, and product delivery and the volume of transactions should multiply.¹⁴

3.3. Consumer-To-Consumer (C2C)

The Consumer-to-Consumer exchanges involve transactions between and among consumers. These exchanges may or may not include third party involvement as in the case of the auction-exchange e-Bay.¹⁵ The Consumer-to-Consumer (C2C) category involves business transactions among individuals using the internet and web technologies. Using Consumer-to-Consumer (C2C), consumers sell directly to other consumers. For example, through classified ads or by advertising, individuals sell services or products on the Web or through auction sites such as ubid.com. E-Bay.com is a good example of a Consumer-to-Consumer (C2C) E-Commerce company. Using this web site, consumers are able to sell a wide variety of products to each other. Consumers are also able to advertise their products and services in organizational intranets and sell them to other employees.¹⁶ Other activities include classified ads (e.g., www.numberoneclassifieds.com), games (www.heat.net), jobs (www.monster.com), Web-based communication (www.icq.com), and personal services (e.g., Yahoo Personals, webpersonals.com).¹⁷

¹³ S. Sudalaimuthu, J Lilly, “Emerging Trend of E-Commerce in India”, *available at* <http://www.fibre2fashion.com/industry-article/market-research/industry-report/semerging-trend-of-e-commerce-in-india/semerging-trend-of-E-Commerce-in-india1.asp> (last visited on October 12, 2013).

¹⁴ Yun Zhao, *Dispute Resolution in Electronic Commerce* p.24 (Brill Academic Publishers, The Netherlands, 2005).

¹⁵ S. Sudalaimuthu, J Lilly, “Emerging Trend of E-Commerce in India”, *available at*: <http://www.fibre2fashion.com/industry-article/market-research/industry-report/semerging-trend-of-E-Commerce-in-india/semerging-trend-of-E-Commerce-in-india1.asp> (last visited on October 12, 2013).

¹⁶ Hossein Bidgoli, *Electronic Commerce: Principles and Practice* p. 52 (Academics, California, 2002).

¹⁷ *Ibid.*

3.4. Consumer-To-Business (C2B)

The Consumer-to-Business (C2B) E-Commerce involves individuals selling to businesses. This may include a service or product that a consumer is willing to sell. In other cases, an individual may seek sellers of a product and service. Companies such as priceline.com, travelbid.com, and mobshop.com for travel arrangements are examples of C2B. Individuals offer certain prices for specific products and services.¹⁸ Consumers can band together to form and present themselves as a buyer group to businesses in a Consumer-to-Business relationship. These groups may be economically motivated as with the demand aggregator, Mercata.com, or socially oriented as with cause-related advocacy at voxcap.com.¹⁹

3.5. Nonbusiness and Government

The E-Commerce applications in government and many non-business organizations are on the rise. Several government agencies in the United States have been using E-Commerce applications for several years, including the Department of Defense, Internal Revenue Service, and the Department of Treasury. Universities are using E-Commerce applications extensively for delivering their educational products and services on a global scale. Not-for-profit, political, and social organizations also use E-Commerce applications for various activities, such as fundraising and political forums. These organizations also use E-Commerce for purchasing (to reduce cost and improve speed) and for customer service.²⁰

3.6. Organizational (Intrabusiness)

Organizational or intrabusiness E-Commerce involves all the E-Commerce related activities that take place within the organization. The organization intranets provide the right platform for these activities. These activities may include exchange of goods, services, or information among the employees of an organization. This may include selling organization products and services to the employees, conducting training programs, offering human resources services, and much more.

¹⁸ Hossein Bidgoli, *Electronic Commerce: Principles and Practice* p.52 (Academics, California, 2002).

¹⁹ S. Sudalaimuthu, J Lilly, "Emerging Trend of E-Commerce in India", available at <http://www.fibre2fashion.com/industry-article/market-research/industry-report/emerging-trend-of-E-Commerce-in-india-emerging-trend-of-E-Commerce-in-india1.asp> (last visited on October 12, 2013).

²⁰ Hossein Bidgoli, *Electronic Commerce: Principles and Practice* p.52 (Academics, California, 2002).

Although, they are not direct selling and buying, some of these activities provide support for a successful E-Commerce program in human resources management, finance, and marketing.

4. Meaning and Concept of E-Contract

This is an undisputed fact that E-Commerce has become a part of our daily life. E-Commerce is the practice of buying and selling goods and services through online consumer services on the internet. The ‘e’ used before the word ‘commerce’ is a shortened form of ‘electronic’. The effectiveness of E-Commerce is based on electronically made contracts known as E-Contracts. Although E-Contracts are legalized by IT Act, 2000 but still majority feels insecure while dealing online. The reason being lack of transparency in the terms and conditions attached to the contract and the jurisdiction in case of a dispute that may arise during the pendency of a transaction with an offshore site.²¹

An E-Contract is a contract modelled, executed and enacted by a software system. Computer programs are used to automate business processes that govern E-Contracts. E-Contract can be mapped to inter-related programs, which have to specify carefully to satisfy the contract requirements. These programs do not have the capabilities to handle complex relationships between parties to an E-Contract. An electronic or digital contract is an agreement drafted and signed in an electronic form. An electronic agreement can be drafted in the similar manner in which a normal hard copy agreement is drafted.

5. Essentials of E-Contract

An electronic or digital contract is an agreement drafted and signed in an electronic form. An electronic agreement can be drafted in the similar manner in which a normal hard copy agreement is drafted. The normal rule of contract law applies to the Electronic Contracts also.

Traditional concept of contract provides for the foundation of all types of valid and enforceable contract, keeping in view the meaning of definition of contract in Section 2(h) of The Indian Contract Act, 1872 as *an agreement enforceable by law and further requiring that it should be made by the free assent of parties, competent to contract, for a lawful consideration and with a*

²¹ Rishabh Khandelwal, “Understanding E-Contracts and Its Impacts” available at: http://accessindia.org.in/pipermail/accessindia_accessindia.org.in/2009-July/028297.html (last visited on May 3, 2013).

*lawful object and should not be expressly declared to be void.*²² Hence it is clear that every contract needs certain conditions to be fulfilled which are known as essential ingredients of a contract. Contract exists only when following terms are fulfilled:

- (1) An unconditional offer should be made
- (2) That offer should be accepted unconditionally
- (3) There must be some consideration passing between the parties
- (4) The parties are having intention to bind themselves and
- (5) The agreement must be legally binding upon the parties

These are the necessary conditions without which no agreement will be a valid contract. It is to be noted that the rules of normal contracts are also applicable in the Electronic Contracts, hence Electronic Contracts also need few conditions to be fulfilled and the basic principle is same as in normal contract with slight modifications.

6. Kinds of Electronic Contract

An Electronic Contract is also known as a ‘click-wrap’, ‘click-through’, ‘web-wrap’, ‘browse-wrap’ or ‘point and click’ contract. This is an agreement presented and consummated entirely in an on-line environment; most often on the internet. These contracts are typically contracts of adhesion i.e., one-sided (in favour of the presenting party), boiler plate agreements presented to customers on a ‘take-it or leave it’ basis. There is little if no room to negotiate the contract and, if the customer does not accede to the agreement, he or she will be denied access to the product or service. The term, ‘wrap’ is a misnomer and has nothing to do with the manner in which such agreements are physically presented. ‘Click-wrap’ or ‘browse-wrap’ agreements take their name from ‘shrink-wrap’ agreements; written paper contracts that were included in the plastic shrink-wrapped packaging containing, most often, computer software.²³

The four basic forms of Electronic Contract are as follows:²⁴

1. The Click-wrap or Web-wrap Agreements
2. The Shrink Wrap Agreements

²² See, Sec. 10 of The Indian Contract Act, 1872.

²³ Jeffery E. Wittmann, Vancouver, BC. “Electronic Contracts”, Negotiation and Drafting Major Business Agreements Conference Federated Press (October, 2007)., available at: http://www.wdwlaw.ca/ELECTRONIC_CONTRACTS_111007_280312.pdf (last visited on April 5, 2013).

²⁴ *Ibid.*

3. The Electronic Data Interchange

4. The E-Mail Contract

6.1. The Click-Wrap or Web-Wrap Agreements

The Click-wrap agreements are those whereby a party after going through the terms and conditions provided in the website or program has to typically indicate his assent to the same, by way of clicking on an 'I Agree' icon or decline the same by clicking "I Disagree." These types of contracts are extensively used on the internet, whether it be granting of a permission to access a site or downloading of software or selling something by way of a website.²⁵ These are the most common form of agreement seen over the internet. Here, the consumer has to give his express assent by clicking upon the "I Agree" button or "I Disagree" button to deny assent to terms and conditions presented for the usage of a particular website or software products therein, for downloads or selling of products.²⁶

6.2. The Shrink Wrap Agreements

The Shrink-wrap agreements have derived their name from the "shrink-wrap" packaging that generally contains the Compact Disc Random Online Memory (hereinafter referred to as CD ROM) of Software. The terms and conditions of accessing the particular software are printed on the shrink-wrap cover of the Compact Disc (hereinafter referred to as CD) and the purchaser after going through the same tears the cover to access the CD ROM.²⁷ Sometimes additional terms are also imposed in such licenses which appear on the screen only when the CD is loaded to the computer. The user always has the option of returning the software if the new terms are not to his liking for a full refund.²⁸

²⁵ "Online Contract and Its Validity," available at: [http:// ashishlal.wordpress.com/2011/02/12/ online-contract-in-context-of-internet/](http://ashishlal.wordpress.com/2011/02/12/online-contract-in-context-of-internet/)(last visited on November 15, 2012).

²⁶ Siya Rathore, " Electronic Contracts: Understanding Digital Goods and their Sale and Purchase" available at: [http:// expertscolumn.com/content/electronic-contracts-understanding -digital-goods-their-sale-and-purchase](http://expertscolumn.com/content/electronic-contracts-understanding-digital-goods-their-sale-and-purchase) (last visited on November 10, 2012).

²⁷ "Electronic Contracts-A Basic Understanding," available at: [http://www.lexvidhi.com/ article -details/electronic-contracts-a-basic-understanding-41.html](http://www.lexvidhi.com/article-details/electronic-contracts-a-basic-understanding-41.html)(last visited on April 5, 2013).

²⁸ "Online Contract and Its Validity" available at: [http:// ashishlal.wordpress.com /2011/02/12/ online-contract-in- context-of-internet/](http://ashishlal.wordpress.com/2011/02/12/online-contract-in-context-of-internet/)(last visited on November 15, 2012).

Shrink Wrap Agreements- CD-ROM of software is enclosed in shrink-wraps, which are the source for naming these agreements as Shrink-Wrap Agreements. The terms and conditions for using software are given on the shrink-wrap cover of the CD. The buyer first clearly reads the terms and conditions on the shrink-wrap cover and then tears it to access the CD-ROM. Few terms of license may appear after the CD has been loaded to the computer. The buyer has the option of returning back the software, if the new terms are not to his liking and can obtain a full refund of the price paid.

6.3. E-Mail Contact

The general rule is that an acceptance must be communicated to the offeror. The contract is formed at the place and time the acceptance is received by the offeror. If the post is used for acceptance the acceptance is effective immediately upon regardless the letter is delayed or lost provided it is properly stamped, addressed and posted. The postal rule is applicable to telegram too, but not to more instantaneous means of communication such as telex, telephone. As for the instantaneous means, the general principle will be applicable. The acceptance is effective only when it comes to the knowledge of the offeror.²⁹

If the general principle is applied, an acceptance sent by e-mail will be effective at the time it is communicated. Communication in the type of system described above could occur at the time the message is received by the recipient's ISP or at the time the message is downloaded to the recipient's computer or at the time the message is read by the recipient. Does this mean that because no definite time of communication can be readily identified that a different rule, such as the postal acceptance rule, should be applied? The postal acceptance rule has not been applied to other forms of modern communication such as facsimiles and telexes.

6.4. The Electronic Data Interchange (EDI)

Electronic Data Interchange is the computer-to-computer transmission of information used by frequently contracting commercial parties to send and receive standard forms, generally purchase orders and invoices, in a store and forward message system. It is, perhaps, the clearest example

²⁹ Sarabdeen Jawahitha, Noor Raihan Ab Hamid, "Electronic Contract and The Legal Environment", available at: http://www.irfd.org/events/wf2003/papers_global/R38.pdf (last visited on February 15, 2013).

of electronic contracting through the use of an electronic agent. Parties agree on the standardized terms of the transaction. Transactions, quotes and automatic responses to them, are sent and received daily via a phone line between electronic agents, devoid of human involvement. Electronic Data Interchange reduces the time and complexity associated with sending and receiving large volumes of information, reducing keystroke errors. Purchase orders are one of the most common uses of Electronic Data Interchange. For example: Wal-Mart, a large retailer, uses Electronic Data Interchange to repeatedly order large quantities of consumer goods, such as laundry detergent, for its thousands of stores. Electronic Data Interchange enables the ordering and invoicing of these goods between computer systems. Contract, offer, acceptance, and assent occur automatically.³⁰

Conclusion

India comes under the few countries across the world that has enacted E-Commerce legislation. A developing country may become industrialized and modernized if it applies extensively information technology to enhance productivity and International competitiveness, develop E-Commerce and E-Governance applications. A knowledge based society or information-based society is composed of Information Technology products. Many Asian countries in Asia are beneficiary of E-Commerce through opening of economies, which is essential for promoting competition and diffusion of internet technologies. Due to the rapid expansion of internet, E-Commerce plays a very important role in the 21st century, the new opportunities that will be open, will be accessible to both large corporations and small companies. It is the role of government is to provide a legal framework for E-Commerce whereby the domestic and international trade may expand their horizons, basic rights such as Privacy, Intellectual Property, and Prevention of Fraud, Consumer Protection etc. E-Commerce beholds its elements on telephone, computer and web sites which are the basis for deciding competitiveness of a country. India does not perform well on each of them to be a super power in the present century. India must take lead in all relevant areas. It may be assumed that the conduct of business will change very fast, impose further responsibility on India to keep pace with changes by encouraging E-

³⁰ Rishabh Khandelwal, "Understanding E-Contracts and Its Impacts" *available at: http://accessindia.org.in/pipermail/accessindia_accessindia.org.in/2009-July/028297.html* (last visited on May 3, 2013).

Commerce. We may gain besides lower prices and better quality of information without cost and responsibility of maintaining it.

The exchange of the information through by electronic means which turns into a contract raises several legal issues which cannot be answered within the existing provisions of the Contract Act. So, there should be either amended the Indian Contract Act or bring a new legislation which was realized by enacting the Information Technology Act, 2000 (hereinafter referred to as IT Act). But the IT Act, 2000 was not a complete code dealing the Electronic Contracts. Hence, the Contract Act is still the fundamental law for contract formation and when the provisions of the Contract Act do not cover any issue raised by the introduction of the information technology, the IT Act, 2000 may be applied.

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