

**EVOLUTION OF E-COMMERCE IN INDIA WITH SPECIAL
REFERENCE TO E-CONTRACTS**

Dissertation submitted to National Law University and Judicial Academy,
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SUPERVISOR CERTIFICATE

It is to certify that Joydeep Banerjee is pursuing Masters of Laws (LL.M) from the National Law University, Assam has completed his dissertation titled “EVOLUTION OF E-COMMERCE IN INDIA WITH SPECIAL REFERENCE TO E-CONTRACTS” under my supervision. This research work is found to be original and suitable for submission.



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DECLARATION

I, Joydeep Banerjee, do hereby declare that the Dissertation titled “EVOLUTION OF E-COMMERCE LAWS IN INDIA WITH SPECIAL REFERENCE TO E-CONTRACTS” submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

Date: 28-06-2023

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2. *Gaekwar Baroda State Rly v. Habibullah*
3. *Himalayan Drug Company v. Sumit*
4. *Interfoto Picture Library Ltd. v. Stiletto Visual Programs Ltd*
5. *International Shoe Co. v. Washington (1945)*
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7. *Specht .v. Netscape Communications Corp*
8. *Step Saver Data Sys. Inc versus Wyse Tech*
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10. *Thornton v. Shoe Lane Parking Station*
11. *Turner v. Bank of Scotland*
12. *Viente Taiwan LP v. United Parcel Service*

TABLE OF STATUTES

1872 - Indian Contract Act

1872 - Indian Evidence Act

1908- Civil Procedure Act

1998 - Electronic Transactions Act

1999 - the Electronic Transactions Act

1999 - Uniform Electronic Commerce Act

1999 - Uniform Electronic Transactions Act

2000 - Information Technology Act

2008 - Information Technology Amendment Act

2019 - Consumer Protection Act

TABLE OF ABBREVIATIONS

AIR	All India Reporter
Ch	Chapter
Anr	Another
ASP	Application Service Providers
ATM	Auto Teller Machine
B2B	business-to-business
B2C	business-to-consumer
B2G	Business-to-Government
C2C	Consumer-to-Consumer
CA	Certification Authority
COD	Cash on Delevery
Corpn.	Corporation
CPC	Code of Civil Procedure
Del	Delhi
E-	Electronic
E-Communication	E-communication
E-Contract	Electronic Contract
E-papers	E-papers
E-Transaction	Electric transaction
EDA	Electronic Data Interchange system

EDI	Electronic Data Interchange
Edn	Edition
ESC	Electronic Signature Certificate
ETA	Electronic transactions Act
GST	Goods and Services Tax
ICA	Indian Contract Act
IRCTC	Indian Railway Catering and Tourism Corporation
IT	Intellectual Technology
JIPR	Journal of Intellectual Property Rights
Ltd	Limited
M-Commerce	Mobile commerce
MSME	The Ministry of Micro, Small and Medium Enterprises
Nag	Nagpur
OA	Original Application
OECD	Organisation for Economic Co-operation and Development
ONDC	Open Network for Digital Commerce
Ors	Others
OTP	one-time passwords
SME	Small and Medium Enterprises

UECA	The Uniform Electronic commerce Act
UNICTRL	United Nations Commission on International Trade Law
UPI	Unified Payments Interface
USA	United States of America
WTO	World Trade Organisation

CHAPTER 1: INTRODUCTION

1.1. General

Business activities are integral to our daily lives, as they play a crucial role in shaping our economic, social, and environmental landscape. Business enterprises provide employment opportunities, generate income, and facilitate personal development. Consequently, people's living conditions and quality of life are improved. Businesses also aid in the expansion and improvement of the national economy by serving as a hub for commerce, investment, and innovation.

However, the impact of business activities is not limited to economic outcomes alone. The environment in which people live is also significantly affected by business activities. To achieve sustainable development, it is critical to identify the relationship between business and the environment and to guarantee that business operations do not affect the environment.

The government of India has put in place a number of policies to promote and safeguard the interests of businesses and the people they serve. The Indian Contract Act of 1872 and the IT Act of 2000 establish a legal foundation for E-commerce and E-contracts, facilitating digital business activity. Administrative regulations and public policies have also been implemented to protect consumer interests, promote fair competition, and prevent monopolies.

Now everyone knows that today's world has highly adopted new technology in the business area. The current era of IT has evolved in a significant change in the way we do in our line of work. Computers and computer networks have become indispensable element of our everyday life, with many individuals relying on E- means for business communication and transactions. The Internet has evolved into an essential tool for performing business transactions, connecting with worldwide markets, and lowering costs and effort.

E-communication through the Internet has made it possible to conduct business transactions with ease, speed, and efficiency. It has led to a reduction in the use of paper documents, as well as a growth in cashless transactions, encouraging the expansion and health of the economy and laying the foundation for a digital nation.

Communication is a vital tool for a well-ordered world, and the advancement of technology has led to the replacement of traditional paper-based documents with more efficient tools such as emails and websites for conducting online business. This has made information readily available through IT and cyberspace, allowing businesses to communicate and transact with ease, irrespective of their location.

Moreover, The usage of IT has resulted in the development of new business prospects and models., such as e-commerce, that were previously not feasible. It has enabled businesses to reach new markets and customers, thereby contributing to the growth of the economy.

However, it is important to recognize that the use of E- means for business communication and transactions also comes with its own set of challenges. The security of personal and confidential information, In the digital age, both intellectual property protection are of utmost significance.

E-commerce, also known as E-commerce, has significantly transformed contemporary business operations. The advent of the internet and IT has enabled individuals to engage in commercial transactions with ease and efficiency through the utilisation of e-commerce. It is imperative to bear in mind that while engaging in such transactions, ethical and legal tenets must be maintained.

Traditionally we relied on shops which required our physical presence, not the case with e-commerce. The whole idea of shopping has changed post the advent of the internet, as businesses are progressively inclining towards their online presence to capture potential consumers. It is diverse from the business we knew so far. E-commerce appeals to users and business entities because of the simple fact that it can increase profits and decrease costs, increase customer satisfaction and decrease time consumed. Earlier there were the mail order catalogues, where customers accessed the catalogues and placed orders with the business entity by making the required payment through traditional means, after which the goods were dispatched. The entire process consumed a lot of time. In E-commerce, speed and convenience are of the essence due to real-time business. Product advertisement, offer, acceptance and payment could take the shortest time possible, without the need to go out. Mobile E-commerce, popularly known as m-commerce, has gained larger popularity in recent years. E-commerce has expanded significantly as a result of the decline in trade barriers and the development of the Internet. Particularly in India, the spread of digital and communication

technologies like smartphones and computers into almost every home, an increase in social media users, lower internet data costs, the government's ongoing efforts to promote an open market, the digitalization of banks, and supportive policies have all helped to fuel the growth of e-commerce. The future of e-commerce in India is very promising as the current boom is caused by only 50% reach so far in the country.⁸ The world of E-commerce grew past its definition of commerce through the internet, to a large multibillion-dollar industry covering a vast variety of sectors, in just a matter of two decades. Various factors have contributed towards its success, be it technological advancement, the positive involvement of international organizations and governments in providing physical and legal infrastructure befitting its needs, growth and popularity of the internet, media and particularly social media.

In traditional commerce, expanding businesses can be a challenging task. However, with the growth of e-commerce, it has become easier to conduct various types of businesses such as business-to-business (B2B) and business-to-consumer (B2C) and Consumer-to-Consumer (C2C), also Business-to-Government (B2G), Government-to-Business (G2B). The use of E-contracts has also made it easier for individuals and organizations to engage in business activities with one another.

E-commerce offers numerous opportunities for businesses to expand their operations, reach global markets, and conduct purchases without leaving the comfort of their homes or offices. Just like phones, faxes, and other communication technologies, E-commerce has the potential to improve business processes and operations.

However, it is essential to ensure that ethical and legal considerations are taken into account when engaging in E-commerce activities. This includes safeguarding consumer data and privacy, adhering to contractual agreements, and respecting intellectual property rights. By doing so, businesses can not only protect their interests but also build trust with their customers and establish a positive reputation in the marketplace.

In conclusion, E-commerce has revolutionized the way businesses operate in the modern world, providing numerous opportunities for growth and expansion. However, it is important to remember that ethical and legal considerations must not be overlooked when engaging in E-commerce activities. By doing so, businesses can ensure long-term success and establish a positive reputation in the marketplace.

The Internet has revolutionized the way businesses operate, making it easier for them to conduct transactions smoothly and efficiently. This has led to a rise in E-commerce and other virtual opportunities, resulting in increased use of E-contracts for commercial purposes.

The use of E-contracts has become popular due to their efficiency, cost-effectiveness, and growing productivity at all levels - individual, business, and governmental. Traditionally, contracts were paper-based, regulated by the Indian Contract Act of 1872 in India. The rules and regulations of the contract were well established under this Act. However, with the advent of the Internet, E-contracts have become a common and convenient method of agreement formation.

A contract that is produced, signed, and maintained Electronically in digital form is known as an "E-contract." Additionally, it is controlled by the Indian Contract Act of 1872 and the IT Act of 2000, both of which recognise E-papers and signatures as valid legal documents. E-contracts in India are enforceable in court as long as they adhere to the rules for contract formation.

The benefits of E-contracts are many, including the ease of formation, the ability to conduct transactions remotely, and the ability to store and retrieve contracts in a secure and efficient manner. Additionally, e-contracts offer greater transparency and accountability in business transactions, which can help prevent fraudulent activity and disputes.

However, it is crucial to make sure that e-contracts adhere to all applicable legal standards for contract formation, including the assent of both parties, the consideration given in exchange, and the parties' power to enter into a contract under applicable law. The e-contract may become void if certain legal conditions are not met.

E-contracts have gained immense popularity in the world of business. However, the authenticity and validity of E-contracts have been a subject of debate. The Indian Government has taken a proactive approach to promoting E-commerce and has identified the need to establish a secure framework for E-transactions. The Indian government realises that E-transactions have the potential to provide individuals and organisations, particularly small and medium-sized enterprises (SMEs), with vast opportunities to trade at cheap costs across national and international borders.

E-contracts are any type of contract entered into by the interaction of two or more parties using Electronics mediums of communication such as email, or software such as E-agents. These contracts differ from traditional forms of business transactions as they deliver physically ordered goods Electronically.

In India, the principal piece of legislation that addresses the topic of E-contracts is called “the IT(Amendment) Act of 2008.” The act must be read in connection with other pertinent legislation, such as the Indian Contract Act 1872, and it amends other pieces of legislation, such as the Indian Evidence Act 1872, to incorporate provisions on the admissibility of computer evidence in court proceedings. The act is required to be read in conjunction with other legislation, such as the Indian Contract Act of 1872.

The IT(Amendment) Act of 2008 is a technology-centric piece of legislation that is applicable to the public as well as the commercial sectors. The most important aspect of the change that was made in 2008 is that it broadens the definition of what exactly constitutes a valid and legally recognised E- signature. Specifically, it states that any E-record can have its authenticity confirmed by an E- signature or another method of E-verification that is regarded as trustworthy.

In order to clear up some of the confusion surrounding E-contracts, the United Nations Commission on International Trade on E-commerce (UNCITRAL, Model Law) ,1996. In the year 1998, the United Nations developed a framework for the bylaw of E-contracts to be applied to India. Nevertheless, there was a substantial amount of work involved in the investigation of problems associated with the legal structure of India and the potential obstacles that it would face. The legal environment in which online business is done in India is fraught with ambiguity, and its rules frequently contradict one another. In many instances, government authorities have not kept pace with the changes that have been brought about by the use of the Internet. This is a major problem that has to be fixed in the online world.

The use of traditional paper-based transactions is being supplemented and even replaced by the use of online contracting, which is at the very heart of corporate operations. Transactions in Electronic marketplaces, in which buyers and sellers interact through a variety of different channels, typically come to a close with the use of E-contracts as the primary tool for doing so. Up until this point, the Electronic Data Interchange system (EDI) has been the method of choice for companies when it comes to entering into contracts. EDI stands for Electronic data interchange and refers to the

process of Electronically-exchanging corporate papers using a standardised format. This process is intended to replace the traditional method of exchanging paper paperwork. The Electronic Data Interchange (EDI) technology is typically utilised by major businesses through a private network known as the Value-Added Network. Although the majority of the heavy E-commerce operations began via these private channels (E-Data Interchange system), only recently have new and emerging business-to-business E-transactions begun to rely on the Internet. This trend is expected to continue in the near future. These deals are finalised by utilising pre-existing platforms that provide support for the purchasing and selling of products and services through the Internet. There is still the use of privately maintained E-Data Interchange system channels in addition to the use of internet platforms for the conclusion of E-contracts.

However, the idea of E-contracts gives rise to a number of concerns, most notably those pertaining to the hacking of data. In E- transactions, the risk of having one's data hacked is significant. The existing legal frameworks and enforcement procedures are not well-built, and the laws in India pertaining to online contracts are still insufficient and require clearer rules. People have differing points of view about the topic of E-contracts because of a lack of awareness pertaining to technology, the validity of e-contracts, uneasiness pertaining to e-transactions, and the protection of data.

Before entering into any E-contract, it is essential to have a thorough understanding of the legal concerns and potential hazards involved in doing so. This will create a safe and secure environment in which to conduct business with consumers and other companies. The government of India supports efforts to build a unified infrastructure for online commerce that makes use of trusted applications and protocols, such as digital signatures, and encourages their widespread adoption.

1.2. Aim

This research paper aims to explore the evolution of E-commerce and the detailed issues pertaining to e-contracts. The study will also shed light on the argument pertaining to provisions and jurisdiction in E-commerce concerns about data protection, and the lack of awareness about the technology. This research aims to explore these opinions and provide insights into how they impact the growth of E-commerce and legal frameworks and enforcement systems for e-contracts.

1.3. Objective

The objectives of the present work that the researcher has undertaken are as follows -

- The research paper studies the concept of E-commerce and legal development and various legal issues concerning E-commerce in general.
- To critically analyse the development of e-contracts in India, including the Indian Evidence Act 1872 and the IT Act 2000.
- To study the legal framework of e-contracts of different countries and international treaties pertaining to it.
- To study the legal issues and implications of e-contracts in India.

1.4. Scope and Limitation

The scope of this research paper is to provide a comprehensive analysis of E-contracts (e-contracts) and the relevant laws governing them across different jurisdictions. The paper will cover the legal framework surrounding e-contracts in countries like India, the USA, Europe, Singapore, Australia, and the UNICTRAL Model.

The paper will provide a detailed overview of e-contracts, including their definition, types, and advantages, along with a discussion of the legal principles involved. Additionally, the paper will examine various judicial decisions related to e-contracts in these countries and provide a comparative analysis of the laws and regulations surrounding them.

It is crucial to highlight, however, that this study report has several limitations. To begin, the analysis presented in this paper is primarily doctrinal, which means that it is based on secondary sources and does not include empirical research or analysis of practical applications of e-contracts; additionally, due to time and resource constraints, the researcher focused primarily on the IT Act of 2000. Finally, because the article depends on secondary sources, the material offered may not be totally up-to-date or correct.

1.5. Research Design

The present work has been divided into six chapters the research design of which is summarised as follows:-

1. Chapter One - Introduction

This introductory chapter outlines the objectives, scope, and hypothesis of the research paper, which aims to analyse the legal framework surrounding E-contracts and the evolution of the concept of E-commerce and laws pertaining to it, with a focus on the IT Act, of 2000. The study will employ a doctrinal research methodology and examine the growing importance of E-contracts in modern commercial activities and their legal implications. The research will contribute to the understanding of E-commerce and E-contracts, providing insights for legal professionals, academics, and policymakers.

2. Chapter Two – The Evolution of E-commerce and laws relating to E-commerce

The second chapter covers an overview of e-commerce, including its definitions, types, advantages, and challenges. The main types of E-commerce are Business to Business (B2B), Business to Consumer (B2C), and Consumer to Consumer (C2C). Other types, such as Business to Government and Consumer to Business, exist but are less common. The chapter also discusses the importance of government policies in facilitating E-commerce growth and the role of international organizations in supporting E-commerce globally.

3. Chapter Three - Conceptual Analysis of E-Contracts in India and Transnational Contexts: Definition and Regulatory Perspectives.

The chapter covers the concept of E-contracts, including their definitions and essential elements.

This chapter also discusses the laws related to E-contracts in developing countries, examining international conventions such as the UNCITRAL Model Law and their impact. It provides a critical analysis of e-contract use in selected developing countries, including Europe, the USA, Australia, and Singapore, The study aims to evaluate changes in laws related to e-contracts in developing countries to enhance the admissibility and enforcement of E-contracts in cyberspace, considering the lack of provisions for e-contract formation.

4. Chapter Four - Exploring the Legal Dimensions of E-contracts in India

In this chapter, the focus is on the legal aspects of e-contracts in India. The IT Act 2008, along with the IT(Amendment) Act 2008 and other related legislation, are given considerable attention. This research study includes relevant provisions of E-contracts under these Acts. Moreover, it emphasizes the need for amendments to other laws related to E-contracts, such as the Indian Contract Act, Indian Evidence 1872, and Civil Procedure Code 1908. The analysis of these laws is carried out critically in this chapter.

5. Chapter Five - Analysing Judicial Enforceability and Jurisdiction Pertaining to E-Contracts

In this chapter, a detailed analysis is presented of the judicial enforceability and jurisdiction of e-contracts in India and transnational. The study focuses on some landmark judgments and case laws related to the validity of E-contracts. The researcher also explores the judicial activism approach towards e-contract legislation in India through their research work. Through the analysis of various court rulings, the study sheds light on the evolving legal framework surrounding E-contracts in India. It highlights the role of the judiciary in shaping the legal landscape for e-contracts and provides valuable insights for legal practitioners, policymakers, and scholars working in this field.

6. Chapter Six - conclusion, suggestions with recommendations.

This chapter concludes with the researcher's suggestions and recommendations related to the legislation on e-contracts. The study highlights the loopholes and lack of security in the existing legislation, which can pose a threat to cyberspace. In order to address these issues, the researcher recommends the emergence of new trends in the cyberspace industry. The suggestions and recommendations made in this chapter are the result of extensive research on the selected topic and are intended to provide valuable insights for future improvements in e-contract legislation. The importance of implementing such improvements cannot be overstated, as the digital economy continues to grow and evolve at an unprecedented rate.

1.6. Research Question

1. What is the reason for the evolution of the concept and laws pertaining to E-commerce in India?
2. What are the similarity and differences of provisions of e-contracts in different countries & India?
3. What are the different contours in relation to e-contracts in India?
4. What is the judicial approach to the enforceability of E-Contracts in India?

1.7. Research Methodology

The research methodology employed for this study is solely based on the doctrinal approach. In order to identify new issues and innovations in the area of study, various literature reviews have been conducted. The study draws upon several references and textbooks, including E-books written by Indian and foreign authors or jurists who deal with the legal framework. Additionally, the study makes use of various websites such as. Enactments, legal decisions (reports), international conventions, and other sources of binding legal authority have also been used to inform this research.

To achieve the objectives of the study, data collected from both primary and secondary sources will be analysed using the doctrinal methodology. The Bluebook (19th edition) citation style has been adopted throughout the paper to maintain consistency and accuracy in a citation.

1.8. LITERATURE REVIEW

- R.K. Singh¹

The book titled 'Law Relating to E-contract' talks about E-contracts, which are agreements made online or through E-means. It explains the legal issues and important concepts related to E-contracts and also discusses relevant case laws. The first chapter explains how technology has changed the way businesses operate. The second chapter talks about the basic principles of making contracts. The third chapter explains the different ways E-contracts can be created. The book also covers the laws that govern E-contracts in India and their validity. The last two chapters talk about the traditional way of buying things and how

¹ R.K.Singh, Law Relating to E-contract, Lexis, (2015)

E-contracts affect them. Overall, the book is helpful for anyone who wants to learn more about E-contracts and can be used as a reference for research work.

- C.M. Abhilash²

The article titled "E-commerce Law in Developing Countries: An Indian Perspective" examines the Model Law of UNCITRAL on Information Technology. The article is divided into three sections. The first section describes the IT Act of 2000. The second section distinguishes between the International Convention and the IT Act of 2000. The article's third section investigates the probable legal issues that may occur when implementing the Act in social, technological, and economic circumstances. Overall, the essay offers an Indian viewpoint on the legal elements of e-commerce, including the IT Act of 2000 and the problems it poses.

- Shmuel I. Becher & Tal Z. Zarsky³

The article titled 'E-Contract Doctrine 2.0: Standard Form Contracting in the Age of Online User Participation' focuses on business-to-consumer contracts. The article re-evaluates the analysis of online consumer contracts by considering the flow of information in this new age. It also highlights the significant challenges that arise due to the motivations of information providers and receivers, and the credibility of the data, which may be compromised intentionally or unintentionally. Overall, the article sheds light on the evolving nature of standard form contracts and the need for a revised approach in light of online user participation.

- Karnitha Seth⁴

The book titled 'Computers, Internet and New Technology Law' aims to provide guidance on forming contracts E-ally. It is divided into twelve chapters. Chapter

² C.M.bhilash, e-commerce law in developing countries: an indian perspective, researchgate,(2014) https://www.researchgate.net/publication/233334303_e-commerce_law_in_developing_countries_an_indian_perspective/citations

³ Becher, Shmuel I. and Zarsky, Tal, E-Contract Doctrine 2.0: Standard Form Contracting in the Age of Online User Participation (2008). 14 MTandTLR303 (2008)

⁴ Karnitha Seth, Computers, Internet and New Technology Law, Lexis Nexis, (2022)

one discusses the evolution of cyberspace, while some of the later chapters provide an overview of online contract laws in various jurisdictions around the world. Chapter three contains examples of documents currently in use for online contracting. Chapters four, five, twelve, thirteen, and fourteen offer general commentary on dispute resolution, contract provisions, and legal developments, with practical explanations for both customers and suppliers. The book provides precedents that are useful for practitioners and business entities, covering contract formation principles, E- signatures, jurisdiction, and contract termination. Overall, the book is a valuable resource for understanding the legal issues surrounding e-contracts and for creating relevant documents.

- Pavan Kumar. R⁵

The Book titled 'The Law of E-contracts' is a comprehensive guide to understanding the legal framework governing E-contracts. The book provides a detailed analysis of the legal principles that apply to E-contracts and explores the challenges that arise when entering into contracts online.

One of the key strengths of the book is its focus on practical issues related to E-contracts. The author provides guidance on how to draft effective E-contracts and discusses the importance of including certain clauses to protect the interests of both parties. The book also covers important topics such as E- signatures, data protection, and jurisdictional issues.

- Sumit Sethi⁶

The book titled "A-Z E-commerce," published by Centrum Press in 2009 provides a comprehensive guide to E-commerce, covering topics such as online marketing, website design, payment systems, supply chain management, and legal issues. It offers practical advice and case studies to help businesses succeed in the E-commerce landscape, including navigating the legal and regulatory challenges in countries with strict frameworks. However, due to its publication date, some of the information may be outdated, and the book's coverage of specific topics is not very in-depth. Nonetheless, it is a valuable

⁵ Pavan Kumar. R, The Law of E-contract, InSc International Publisher,(2022)

⁶ Sumit Sethi, A-Z E-Commerce, Centrum Press, (1st ed. 2015)

resource for entrepreneurs and managers looking to start or grow an online business.

- S.R. Sharma⁷

The book titled "Laws on E-commerce" provides an extensive guide to the legal and regulatory framework governing E-commerce in India. It covers important laws such as the IT Act, of 2000, the Consumer Protection Act, of 2019, and the Competition Act, of 2002, and provides insights into judicial decisions and case law. The book offers practical guidance on how businesses can ensure compliance with laws related to data protection, consumer protection, and competition. However, its focus is mainly on the legal landscape in India, which may limit its usefulness for businesses operating in other countries, and its technical content might pose a challenge for readers without a legal background. Nonetheless, it is an informative resource for businesses operating in the Indian E-commerce landscape.

- Carol Guercio Traver and Kenneth C. Laudon⁸

The book titled "E-commerce: Business, Technology, Society" is a comprehensive guide to the world of E-commerce that covers a range of topics. It includes the history of e-commerce, technologies, business models, legal and ethical issues, global e-commerce, and emerging trends like mobile commerce, social commerce, and artificial intelligence in e-commerce. The authors take a holistic approach, providing readers with insights into the interplay between business, technology, and society in the E-commerce landscape. The book also features case studies of successful and failed E-commerce businesses to help readers understand the strategies employed by successful E-commerce businesses. However, readers without a background in business or technology may find the technical language challenging, and the level of detail may not provide a deep understanding of any one area.

⁷ S.R. Sharma, Laws on E-commerce, Anmol Publisher, (2004)

⁸ Kenneth C. Laudon & Carol Guercio Traver, Pearson (2001)

CHAPTER 2:

The Evolution Of E-Commerce And Laws Relating To E-Commerce

2.1. Introduction

The internet has brought about a new era of commercial interaction, resulting in the emergence of more efficient models in the traditional marketplace. Businesses and consumers alike are shifting towards E-commerce as it offers a cost-effective alternative to conservative marketing strategies. The internet's capacity to connect a large number of people at a cheap cost has transformed trade, hastening its global expansion. This is because conducting business through the Internet has a substantially lower transaction cost than traditional ways, making it a cost-saving alternative that no organisation can afford to ignore. Because of the intrinsic structure of the Internet, businesses of all sizes may now engage in the E-marketplace, generating new chances for development and expansion. This pattern is projected to continue as the digital economy evolves and offers new opportunities for trade in a variety of industries⁹.

The dawn of the Information Age ushered in the age of E-commerce, which has been a benefit not just for customers but also for retailers and other types of enterprises. As a direct consequence of this, there has been a meteoric rise in the number of individuals and organisations who have decided to create a presence online. The advantages of conducting business online are various, and they include enhanced accessibility, convenience, and the ability to save money. Because of this, new doors have been opened for companies, allowing them to broaden their consumer base and communicate with people all over the world. Traditional stores with physical locations will always have a market, but E-commerce companies are expanding at an astounding rate, creating a wealth of new chances for company owners to prosper in the modern day.

This growth in E-commerce may also be substantially ascribed, in large part, to the reduction in trade barriers as well as the ubiquitous availability of the Internet. Even those living in rural parts of India are able to maintain their connections to the outside world because of the proliferation of communication technology such as cell phones

⁹ Rahul Matthan, The Law Relating to Computers and the Internet(Lexis Nexis Butterworth Wadhwa & Co,2000)

and personal computers. In addition¹⁰, there has been a considerable increase in the number of people using digital currencies, which has contributed significantly to the expansion of online shopping. People have turned to online shopping as a way to avoid personal contact in response to the current pandemic, which has also contributed to the rise of the internet and the growth of E-commerce. In addition, the efforts that the government has made to encourage digitization have assisted in driving E-commerce to the forefront of business. The combination of all of these factors has created the ideal environment for the expansion of E-commerce in India and internationally, ensuring a lucrative future for businesses engaged in the digital sector.

There are different modes of E-commerce such as –

- Business-to-Business (B2B)
- Business-to-Consumer (B2C)
- Consumer-to-Consumer (C2C)
- Consumer-to-Business (C2B)
- Government-to-Business (G2B)
- Government-to-Consumers (G2C)
- Business-to-Government (B2G)¹¹

2.2. The Definition and Meaning of E-commerce

E-commerce has transformed the way we shop and conduct business. Gone are the days when we had to physically visit shops to purchase goods or services. Instead, E-commerce has made it possible for businesses to reach customers from all over the world through the Internet. This has led to a significant shift in the retail landscape, with more and more consumers turning to online shopping for its speed and convenience.

One of the key advantages of E-commerce is its ability to conduct transactions in real-time. This means that product advertisements, offers, acceptance, and payment can be completed within a matter of seconds, without the need to leave the house. This is in stark contrast to traditional mail-order catalogues, which relied on customers contacting

¹⁰ Nishith desai, E-COMMERCE IN INDIA
NISHITHDESAIASSOCIATES, https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/E-Commerce_in_India.pdf.

¹¹ D.mahipal & K.Shankaraiah, E-COMMERCE GROWTH IN INDIA: A STUDY OF SEGMENTS CONTRIBUTION,22, AMSJ, (2018)

sellers through various mediums and paying using traditional banking methods, often leading to delays and potential fraud¹².

Another advantage of E-commerce is its cost-effectiveness. By eliminating the need for physical stores, E-commerce businesses can save on rent, utilities, and other expenses associated with maintaining a brick-and-mortar presence. This translates to lower prices for consumers and greater profitability for businesses.

In recent years, mobile commerce, often known as m-commerce, has been a crucial factor in the expansion of online commerce. Businesses can connect with customers whenever and wherever they are by utilising the power of mobile devices, which enables them to provide a seamless purchasing experience. This has disproved the conventional business models that have been used in the past and led to the development of several novel approaches to conducting business that gives customers more agency.

When it comes to the purchase and sale of products and services via the Internet, E-commerce is not a one-size-fits-all solution. It involves a diverse spectrum of transactions involving a variety of actors operating in a number of different industries. E-commerce has completely altered the way in which we conduct business, whether it be B2C (business-to-consumer), B2B (business-to-business), or even C2C (consumer-to-consumer).

The flexibility offered by online businesses is one of its primary strengths. E-commerce platforms come in a wide variety, and companies can select one that best suits their requirements and the customers they intend to attract. For instance, a business-to-consumer (B2C) model may be used by an online store to sell things to end users, whereas a business-to-business (B2B) approach could be used by a software firm to sell software to other companies. E-commerce has made previously unthinkable forms of customer interaction with firms conceivable, opening up a whole new universe of opportunities for all parties involved.

E-commerce is expected to become even more advanced as technology continues to improve, which will result in an even wider range of options and an even higher level

¹² Khosla, Madhurima and Kumar, Harish, Growth of E-commerce in India: An Analytical Review of Literature, Volume 19, Issue 6, Ver. I, IOSR-JBM, pp. 91-95, (June 2017)

of convenience for both customers and companies. Whether it's through mobile devices, social media, or other developing technologies, E-commerce is almost certainly going to play a large role in the process of determining what the future of business will look like¹³.

Hence The significance of E-commerce in today's business world has prompted a number of organisations and pieces of legislation to make attempts to define the term "E-commerce." If we take the time to familiarise ourselves with these concepts, we will be able to get a deeper comprehension of what exactly E-commerce is and how it contributes to the operation of our economy.

2.2.1. Definitions

There is no one universally accepted definition of e-commerce, as different organizations have defined it in their own ways. While most definitions share commonalities, they each offer unique perspectives on what E-commerce entails. In order to gain a better understanding of e-commerce, it's important to explore some of the most prominent definitions put forth by various organizations.

The World Trade Organization (WTO) defines E-commerce as "the production, distribution, marketing, sale, or delivery of goods and services by Electronic means." While this definition covers the different stages and activities involved in E-commerce transactions, it falls short in identifying the unique characteristics of E-commerce and fails to explicitly mention the use of the internet. As a result, this definition is considered vague and lacks definitive elements specific to E-commerce¹⁴.

According to the definition provided by the Organisation for Economic Co-operation and Development (OECD), an E-transaction is a process of selling or buying goods or services that takes place via computer-mediated networks and involves several parties. The transaction entails placing an order for products and services over several networks, with payment and delivery taking place either online or offline, respectively.

¹³ Branka Vuleta, E-commerce STATISTICS 2023 UPDATE 99FIRMS (2023), <https://99firms.com/blog/E-commerce-statistics/#gref>.

¹⁴ Yasmin Ismail, E-commerce in the World Trade Organization (2020), <https://www.iisd.org/system/files/publications/e-commerce-world-trade-organization-.pdf> (last visited May 20, 2023).

The term places an emphasis on the role that computer-mediated networks play in Electronic transactions.¹⁵

E-commerce, as defined by the Consumer Protection Act 2019, is "the buying or selling of goods or services including digital products over an Electronic or digital network." This definition can be found in clause 16 of Section 2 of the act. This is a reduced definition that implies all connected activities, such as branding, delivery of the goods, and payment, are included in selling. However, each of these constituents has a unique significance in the context of online retailing. In contrast to more conventional forms of business, E-commerce relies heavily on each and every one of these aspects. This definition does not adequately include all aspects of E-commerce due to the fact that it encompasses not only the purchasing and selling of goods as well as services but also advertising and the shipment of stuff.

However, other E-transactions that fall under the criteria of E-commerce are successfully included. It identifies immaterial things, i.e., digitally supplied online goods like music, service subscriptions, software, etc. E-commerce is a term used in the definition to refer to business transactions that are both digital and Electronic. In order for a business transaction to qualify as E-commerce under the Act, it must specifically involve other Electronic devices such as a phone, fax machine, bar code reader, vending machine, stand-alone computer, kiosk, etc,

Ministry of Statistics & Program Implementation, Government defines E-commerce elaborately as, "The way of advertising, buying, selling, and in some cases delivering goods and services. At its broadest, E-commerce is any type of business transaction or interaction in which the participants operate or transact business or conduct their trade Electronically. Potentially this could include activities that include the use of the telephone or the fax as well as the Internet".¹⁶

This definition of E-commerce encompasses not only the straightforward purchasing and selling of goods and services but also the marketing of goods and services through the internet as well as their physical delivery. Additionally, it recognises that E-

¹⁵ ANNEX 4. THE OECD DEFINITIONS OF INTERNET AND E-COMMERCE TRANSACTIONS, <https://www.oecd.org/digital/ieconomy/2771174.pdf>.

¹⁶ Ministry of statistics and programme Implementation, <https://www.mospi.gov.in/1012-e-commerce>

commerce transactions and business interactions can take place in a variety of methods, in addition to the use of the internet, such as through the use of fax machines and telephone conversations. Because E-commerce is not restricted to the internet alone, this recognises the legitimacy of digital and E-transactions that take place both online and offline. The ensuing interactions may take the form of phone calls, faxes, or any other appropriate medium. Even in business-to-consumer transactions, merchants will call to explain product requirements in an effort to reduce the number of unneeded product returns or exchanges, which can result in additional costs and take away from the overall satisfaction of the customer. In addition, logistics necessitate a telephone confirmation of the buyer's address and E-signatures such as one-time passwords (OTPs) are utilised in order to authenticate the delivery of goods and services.

Transfer of personal and sensitive data by customers to the E-commerce organisation, whether the transfer is voluntary or not, is an essential component of E-commerce that corresponds to these key characteristics of e-commerce. Despite this, there is no mention of the problem, primarily due to the fact that data protection legislation is still in its infancy and that the general public as well as the authorities that develop laws are unfamiliar with the particulars of the E-commerce industry and the impacts it has. E-commerce can alternatively be briefly characterised as "commerce in bytes" due to the fact that a typical commercial transaction did not essentially incorporate data transfer. E-commerce, in general, can be characterised as a commercial method that is based on the Internet and E-communication and that caters to the requirements of businesses, traders, and customers by reducing prices, improving the quality of goods and services in a shorter amount of time, and reducing the amount of time it takes to complete transactions. In addition, the transmission of business-related information in a manner that does not involve the use of paper by means of Electronic fund transfers, data exchange, etc.

As one of the authors explains E-commerce in his book¹⁷, E-commerce is not simply about easy data-based transactions; rather, it has a broad range of commercial activities such as publicity, marketing, negotiations, contracts, and fine settlements. It is a term that is used to describe any and all sorts of commercial exchanges that take place

¹⁷ Vakul Sharma, E-commerce: A New business Paradigm, 51 (S. K. Verma & Rama Mittal (eds.), 2004)

between individuals and/or organisations that depend on the processing and transmission of digitalized data, including as text, audio, and visual images.

E-commerce is defined in the following way by some other authors, "E-commerce is the use of E-communications and digital information processing technology in business transactions in order to create, transform, and redefine relationships for the purpose of value creation between or among organisations, and between organisations and individuals"¹⁸.

E-commerce, in its most basic definition, refers to the transfer of traditionally conducted business activities into the online sphere. It is the greatest potential application of IT for enhancing internal business efficiency and supporting firms in growing their operations globally by overcoming geographical borders, according to Journal¹⁹.

Ministry of Human Resource Development (MHRD) initiated the E-pathshala course explains E-commerce as, the "technology-mediated exchange of digital information between various individuals and/or organizations as well as the Electronically-based intra or inter-organizational activities that facilitate such exchanges over network channels"²⁰.

A mobile E-commerce transaction, also known as m-commerce, is one that is initiated and carried out by a smartphone or communication device over a wireless access network or a short-range wireless link. A combination of advertising, sale, lease, or licence of tangible digital goods and services, such as CDs, Books, downloaded music, etc., and sale, lease, or licence of tangible products over the internet as the equivalent of existing systems are the four main modes of operation for e-commerce. Manufacturers and corporate entities, customers, business intermediaries, and the government can all be considered major stakeholders²¹.

¹⁸ Nisha Chanana and Sangeeta Goele. Future of E-commerce in India, IJC&BR (pp. 1-8), (2012)

¹⁹ Madhurima Khosla and Harish Kumar, Growth of E-commerce in India: An Analytical Review of Literature, (IOSR-JBM) Volume 19, Issue 6. Ver. I, pp.91-95(91), (June 2017)

²⁰ Ministry of Human Resource Development (MHRD), E-commerce and E-governance

²¹ Harish Chander, Cyber Laws And IT Protection, 15 (1 st edn, 2012).

2.3 Characteristics of E-Commerce

The following characteristic qualities of E-commerce are established by these definitions:-

1. It is a commercial transaction, just like any other company known to civilised society, with some extra benefits brought about by the use of the Internet and other E- media. It involves elements of contracting and trade. Each party is bound by a legal contract that is included in the e-commerce. It includes an offer, an invitation to accept, an acceptance, a consideration, and the delivery of goods or services.
2. It integrates conventional business with the simplicity of contemporary technology. E-commerce transactions include the same characteristics as traditional brick-and-mortar transactions, including marketing, purchasing, selling, online and offline payment options, and product delivery on a device that may or may not be online.
3. E-commerce involves a number of different parties, including producers, retailers and wholesalers, online consumers, advertising and marketing firms, internet service providers, other intermediaries, logistics companies, and the government (or legal system)²².
4. E-commerce involves a number of different partners, including producers, retailers and wholesalers, online consumers, advertising and marketing firms, internet service providers, other intermediaries, logistics companies, and the government (or legal system).
5. Business transactions can be carried out digitally or Electronically using a telecommunications network. The phrase "Electronic" is more inclusive and covers a range of gadgets, including telephones, fax machines, and vending machines. Digital transactions, however, refer to the use of the internet and communication tools like computers or mobile phones (popularly known as m-commerce). Instead of face-to-face interaction, it entails screen-to-face engagement.
6. E-commerce comprises not just traditional commodities and services but even digital goods and services as well. For example, one may consider a purchase

²² Veijalainen, J. (2009). E-commerce Transactions. In: LIU, L., ÖZSU, M.T. , P 960-961,(2020)

of a music CD or a subscription to the services offered by a music app to be examples of E-commerce transactions. In a manner analogous to this, the purchase of software in either digital or CD format through an online marketplace is considered to be an example of E-commerce²³.

In addition to these features emphasised by the definitions, some of the general characteristics of E-commerce are:-

Global Reach:

E-commerce is thriving because of the use of the net and various forms of communication technology. Because of this, people from all over the world are able to access the website for online commerce and conduct business there.

Universal Standards:

The technical requirements for accessing the internet, in contrast to previous technologies, are universal and thus available to everyone worldwide. For businesses around the world, the cost of entering the online market is still the same. Due to a considerable drop in price and worldwide uniformity, the costs of goods and services are essentially the same everywhere and are thus available to all regions of the world²⁴.

Interactivity:

It enables two-way contact between corporate entities and the general public. The telephone was the only other form of communication in the 20th century that permitted this luxury. Information can be exchanged through E-commerce between several websites or between users and the websites.

²³ Abdul Shareef Pallivalappil & Jagadeesha S. N., INDIA'S E-COMMERCE INDUSTRY'S GROWTH AND PROJECTED BREAKTHROUGHS, https://www.researchgate.net/publication/356999946_India's_E-Commerce_Industry's_Growth_and_Projected_Breakthroughs

²⁴ Subhadeep Mukherjee & Huidrom Michael, MODERN TRENDS, CHALLENGES AND OPPORTUNITY OF E-COMMERCE IN INDIA , https://www.researchgate.net/publication/304490118_MODERN_TRENDS_CHALLENGES_AND_OPPORTUNITY_OF_E-COMMERCE_IN_INDIA_-_AN_OVERVIEW.

Information Density:

The information on the internet is accurate, comprehensive, and quickly accessible to all users. Such information does not need to be processed or stored, saving money. Anyone with the necessary authority can access the enormous amount of data that is floating around.

Personalization/Customization:

E-commerce and artificial intelligence technologies allow businesses to target clients based on their online activity by personalising advertisements and online shopping experiences based on past purchases and online searches. Based on the person's previous purchases, it is possible to tailor marketing messages to an individual, specifically mentioning the person's name and details. Considering the potential damage to an individual's privacy, this is unquestionably risky. It is also possible to provide customisation by altering the product to meet the needs of the user. Large amounts of client preference data can be collected and retained.

2.4. Modes of E-commerce

E-commerce can be classified using a number of different criteria. The three main parties participating in E-commerce are business entities, consumers, and the government. The parties involved in business transactions give rise to various forms of E-commerce., which are:-

a. Business-to-Business (B2B):

It includes dealings between small, medium, and large commercial organisations, including industrial producers and distributors, partners, wholesalers, and retailers, as well as E-transactions between two corporate entities. To put it more precisely, it is business between businesses that excludes the customer. The price is usually lowered based on the quantity requested and is frequently adjustable. It typically involves high quantity/bulk purchasing. larger-scale exchanges of commodities, services, or information between commercial organisations through Internet transactions. Alibaba.com is an online store with a business-to-business (B2B) model where wholesalers and manufacturers sell their goods in bulk to retailers who then sell them to consumers. When Apple, Inc. sells its goods directly to consumers, this kind of online

transaction is known as "Business to Consumer" (B2C) e-commerce. However, since many companies are also involved in the production of the product's component parts, this is referred to as a Business to Business (B2B) E-commerce transaction. It can also refer to the provision of products or services that assist other companies, such as logistical services like shipping, warehousing, and distribution. Application Service Providers (ASPs), which provide applications or software for businesses on a rental basis or subscription and assist them in using these software packages or services from a central location across a network, are another notable example of outsourcing support tasks.

Though ASPs a business entity can reduce the cost incurred on investing in new software by availing their services that includes hosting and management of the rented software (for example, Amazon Web Services handles streaming for Netflix). Similarly, web-based commerce enablers can be included in the category of business-to-business transactions as they provide automated online purchasing capabilities. Business to Business E-commerce is the largest contributor to E-commerce and By utilising ASPs' services, which include hosting and managing rented software, a business entity can lower the expense associated with making an investment in new software (for example, Amazon Web Services handles streaming for Netflix). Similarly to this, since they enable automated online purchasing, web-based commerce enablers can be categorised under business-to-business interactions.²⁵

b. Business-To-Consumer (B2C):

Transactions in E-commerce that include businesses selling their wares or services directly to consumers are known as business-to-consumer E-commerce. This is a commercial transaction that is being conducted Electronically between a firm and a customer. This could entail purchasing goods, tickets, food, home-parlour services, etc. Because Indian E-commerce platforms accept cash on delivery, unlike those in other countries, it is important to keep in mind that this transaction between E-commerce stakeholders need not be entirely digital. For this reason, it is important to disregard any articles that claim that E-transactions involving physical payment do not qualify as

²⁵ Dr Naveen Kumar, E-commerce in India: An Analysis of Present Status, Challenges and Opportunities, "International Journal of Management Studies", Vol.-V, Issue -2(3), April 2018

E-commerce²⁶. Many examples exist, including Amazon, Flipkart, Redbus, Zomato, Urban Clap, etc. Essentially, these consist of retail transactions, often known as 'Electronic-tailing'.

B2C models come in a wide range of forms, including those used by online merchants without physical stores, such as gifting websites that work with retailers across the nation and receive commissions on purchases made through their websites. Secondly, there are online marketplace E-commerce entities (also known as "click-and-mortar" businesses) that assist other business entities with online sales through their platform by assisting them in connecting and delivering the products to end consumers. Lastly, manufacturers connecting directly to the consumers through their online portals allowing customers to place orders and allow customization are also known as inventory E-commerce entities. A B2C company may sell tangible (in the form of something physical, like a CD), intangible, or both types of goods or services (in E-form). The necessity for numerous business middlemen, such as wholesalers, distributors, and retailers, who are often involved in the selling of tangible goods, is significantly diminished by B2C e-commerce. This has both advantages and disadvantages.

c. Consumer-To-Consumer (C2C):

Direct sales and purchases of goods and services between customers are part of the C2C, E-commerce paradigm. It typically involves a third-party facilitator who gives the customers a platform to communicate and exchange goods and services. The best examples of this type of E-commerce include online auction sites like eBay and platforms like baazee.com, Etsy.com, nobroker.com, Quicker, and OLX. The third party are intermediaries that charge commission for the platforms given, either from the parties to the transaction or through marketing, when one customer posts an item for sale on another customer's website and those customers compete to purchase it. However, it doesn't make up a sizable amount of e-commerce. Here, customers engage in social interaction and business transactions²⁷.

²⁶ Proposal For Equalization Levy On Specified Transactions, Report of the Committee on Taxation of E-commerce 11-12 (February 2016)

²⁷ MARC OSTROFSKY & HOLTER GRAHAM, GET RICH CLICK!: THE ULTIMATE GUIDE TO MAKING MONEY ON THE INTERNET, (2013).

d. Consumer-To-Business (C2B):

This type of E-commerce can be characterised as individuals or sole proprietorships selling goods to other enterprises. Examples of this type of E-commerce include Google Ads sense and Commission Junction²⁸. On some platforms, buyers can submit a quote that the vendor will accept. The consumer is in control in this scenario, which is often referred to as a "reverse auction"²⁵ or a "demand collection" model. It enables customers to place bids and set prices for goods and services.

e. Government-To-Business (G2B):

This method refers to the E-trade conducted between government entities and businesses.

f. Government-To-Consumers (G2C):

These are financial dealings that occur between the government and individual consumers, such as online tax payments, payment of bills for services like land, water, and electricity, and other similar transactions.

a. Business-To-Government (B2G):

B2G stands for "business to government." The process by which private companies sell their products or services to public sector organisations is referred to as E-commerce (E-commerce). This kind of business deals with things like supplying goods and services to various departments and agencies within the government.

2.5. Benefits and Drawbacks of E-commerce

E-commerce is a rather brand-new method for organising, administering, and carrying out commercial transactions with the aid of contemporary information and communication technologies. There is no doubt that the enormous expansion of E-

²⁸ Špundak, Mario, Batos, Vedran & Milicevic, Mario. (2005). An Application of E-commerce in Auction Process, https://www.researchgate.net/publication/237227625_An_Application_of_E-Commerce_inAuction_Process.

commerce is a result of its many benefits over conventional company strategies. Here is a list of some of the main benefits and drawbacks of E-commerce.

2.5.1. Benefits

E-commerce has been praised for its quick business environment, which is accessible around the clock and in all countries. The vendor can expand his business internationally and increase his profits by cutting the costs associated with traditional showrooms if the consumer can benefit from convenience, choice, and lower prices. Prior to free trade and e-commerce, certain things were only available in a select few towns or nations²⁹. Today, anyone may purchase goods from practically anywhere in the world. Additionally, it is feasible to combine the greatest aspects of traditional commerce with those of internet buying. According to a National Report on the "E-commerce Development in India," MSMEs that have adopted advanced digital engagement have experienced higher annual revenue growth than conventional offline businesses because of a variety of factors, including lower marketing and distribution costs, a shorter time to market, and lower inventory costs. Internet use helps customers and suppliers cut out middlemen and the associated costs. This can be a significant way to support local entrepreneurs and craftspeople by enabling them to sell their goods online directly, cutting out the middlemen and their associated costs. Some of these advantages are elaborately covered below:-

1. Higher Profits And Minimal Costs:

Most company businesses are forced to enter the online market by rising earnings and falling expenses. It is a business with cheap start-up and overhead costs, according to Jeff Walker in his book. The company organisations do not need to hire a large number of workers or make significant investments in infrastructure as in brick and mortar buildings. By lowering the expense of traditional brick-and-mortar showrooms, the vendor can expand his customer base internationally and increase profit.³⁰ Consequently, the seller is able to offer the goods at a lower price, which benefits the buyers and eventually raises the standard of living for everyone in society. Compared

²⁹ J. Ohene-Djan for University of London International Programmes, E- Commerce, (2008), <https://london.ac.uk/sites/default/files/study-guides/E--commerce.pdf>

³⁰ 7 National Report on E-commerce Development in India for the UN, Inclusive and Sustainable Industrial Development Working Paper Series WP 15 2017

to a typical business model, the seller can focus more resources on the client. From a B2B perspective, it is also possible to minimise the costs associated with establishing paper contracts, placing orders, and frequently travelling to the location. In its place, online discussions, conferences, contracts, digital signatures, and, if necessary, limited travel can save a great deal of time, and money. From the perspective of the customer, purchasing through E-commerce websites can prove to be cost-effective because they avoid travel, save time, and take advantage of deals that are offered all year long.

2. Reach:

Even the smallest of businesses have the potential to benefit from a never-ending supply of prospects if they employ efficient marketing strategies that allow them to connect with customers all over the world. Because of this, a small group of craftsmen living in a hamlet in India are able to sell their creations to people all over the world. The globe has shrunk into a little gadget, linking wholesalers, merchants, and enormous commercial houses around the world. According to Scott Fox's insightful observation, the term "small business" does not longer connote limited impact or reach, as well as limited levels of sales³¹.

3. Choices:

One of the biggest benefits of online purchasing is the abundance of options available to consumers. Additionally, consumers can choose between traditional brick-and-mortar stores and internet retailers. Customers can also investigate things that are offered online before making a real-store purchase. According to Janice Reynolds, giving consumers this many alternatives to choose from is like giving them the holy grail. They are no longer required to select those that are on display in a store. Even if the products are not currently on the entity's premises, they can nonetheless display a very broad assortment of things on their online platforms. Customers can quickly browse through a vast database of goods and services and compare costs with those of other similar products and vendors to make an informed decision. This improves client

³¹ Jeff Walker, *An Internet millionaire's secret formula to sell almost anything online*, 4-5 (1st ed., 2014)

satisfaction and makes shopping more enjoyable. The extensive database gives consumers options³².

4. Convenience:

E-commerce is praised for its quick business environment as well. The company may be made accessible around the clock and from any location. The buyer can purchase the products and services at a time and location that work for them. It is feasible to combine the best aspects of traditional retail and online shopping. Customers may buy from the comfort of their own homes, and the products will be delivered right to their front doors, making them very handy and simple.

5. User-Friendly, Informative And Technology-Friendly User Interface:

E-commerce from the perspective of the consumer aids them in making a well-informed decision by providing them with more options in terms of goods and services as well as the competitive prices from multiple sellers. In an electronic world, the customer's barrier is face-to-screen communication. This includes personal digital assistants, portable computers, ATMs, and computer-based monitors (PDAs). If the user interface is well-designed, there will be no need for consumers to have a follow-up telephone discussion, which could be seen as a drawback³³. Consequently, the screen-to-customer interaction may result in an increase or decrease in costs.

6. Cash On Delivery:

Businesses in other nations do not take advantage of this feature, which is common in the Indian E-commerce sector. From the perspective of the customer, COD is practical because payment can be made after verifying that the products have been delivered. This feature was primarily introduced to combat public mistrust of online shopping and ineffective logistics that resulted in non-delivery and fraudulent sales incidents³⁴. Consumer preferences, however, can differ.

³² Scott Fox, Click Millionaires, 14 (1st edn., 2012)

³³ Janice Reynolds, The Complete Book of E-commerce, 9-10 (2nd edn., 2004)

³⁴ P.T. Joseph, S. J. "E-commerce-An Indian Perspective", 12 (3rd ed. 2008)

7. Home Delivery:

Simply selecting the products or services and paying for them will result in delivery to the specified address. Even alternative delivery places might be selected by the customer for the correctly packaged items. The customer will not have to worry about how to transport it home or how to prevent damage because the seller will take care of such details. The products might be quickly returned or replaced if found to be damaged.

8. Women Empowerment:

E-commerce has provided a venue for Women to have a balanced career by being an E-commerce entrepreneurs. There are many options to work from home and become financially independent because E-commerce doesn't require the seller or the customer to be physically there. They can market their artwork, build a following as a successful home baker, operate a Tiffin business from their house, do proofreading, write blogs, teach online classes, etc. They have countless options and ideas at their disposal, and with little capital and infrastructure, they can work marvels in the comfort of their own homes.

2.5.2. Drawbacks

Almost every smart operator is interested in expanding their business online given the amount of money at risk. Even while E-commerce is expanding at an astonishing rate, many people, including both businesses and consumers, are concerned about it. Advancements in technology hold the key to the problem. E-commerce carries hazards for both buyers and vendors. Since it is a relatively new mode of business, there are ongoing difficulties that require strong legal and policy solutions to address.

Because of the increased degree of competition in the E-commerce industry, corporate entities must continuously adapt and innovate while offering a seamless and information-rich experience to win over customers. Given that the E-commerce sector is only two point five decades old, there are still a number of challenges that need to be resolved before it can grow in popularity. Some of the major disadvantages are:-

1. Cyber Security And Data Theft:

Due to the massive amounts of data that the players deal with, data and cyber security are significant concerns for them. With third-party service providers like logistics, a lot

of data is shared. Even a company employee or a hacker could be the culprit. Such data theft results in significant losses for both customers and E-commerce businesses. Data theft can be used to commit cybercrimes or to gather trade secrets from rival companies. The motivation could be anything, including monetary gain, settling scores, jealousy, or the satisfaction of system hacking. E-commerce is being hampered primarily by concerns about information security. A potential benefit of information security is that it might foster confidence in an online firm. The increase in cybercrimes, particularly those that target commercial sectors, has raised concerns in the modern day and is a significant hindrance to online transactions and E-commerce.

2. Fake Products And IPR Issue:

The distribution of counterfeit goods via E-commerce platforms has also been on the rise, adding to the problems faced by both customers and E-commerce businesses. This is primarily due to the lack of a reliable system that would enable customers to verify merchants or their goods.

Nowadays, it's typical to discover counterfeit goods when shopping online. Due to the nature of online transactions, where we cannot personally examine the product or vendor before we buy, this is the case. Products are delivered a week or two after one orders them, and when they are, one usually uses them just as they are. Additionally, the intermediary is supposed to check to see if such things are being sold on their website, but this is not done correctly³⁵.

3. Online Frauds And Other Cyber-Crimes:

The number of cybercrimes has increased for a variety of reasons, and it is true that catching the offender is difficult. The perpetrator might come from anywhere in the world, use highly developed technology, and be one step ahead of the investigating agency. While frauds, phishing attacks, viruses, worms, identity theft, hacking, credit card, debit card, and ATM thefts, among other issues that businesses and banks face continuously, are a major factor in why customers should avoid using Internet banking or plastic money while shopping online. Additionally, many customers who are hurt by

³⁵ Bruce, G. & Dempsey, R., Security in Distributed Computing, (1997), as cited in Dr. Sushila Madan, "A Systematic Approach to evaluation of information security controls in E-commerce", Information Technology- E-commerce, 56-57, SCL June 28-July 4, 2004

these intrusions from third parties have a negative experience, which puts E-commerce businesses at risk. Cybercrime does deter consumers and undermines trust³⁶.

4. Trust Issues:

Some customers still have some trepidation about giving their credit card information to online businesses they have never met and letting them know so much about them. Some customers simply don't like change and find it uncomfortable to see products online rather than in person. Additionally, organisations with a solid reputation in the real world frequently foster confidence by letting their clients know who they are. These companies can rely on their well-known brand names to build confidence online. Because there is a certain level of anonymity for businesses attempting to develop a web presence, new businesses that wish to start doing business online have a more difficult job. The majority of scholars concur that culture varies across national borders and, frequently, between areas within nations. Language, cultural, and infrastructure challenges are some of the obstacles to global internet trade.

5. Legal Framework:

In comparison to more developed economies, the regulatory barriers in the Indian E-commerce market are higher. E-trade takes place in a complex legal context with many contradictory rules. Government authorities frequently lag behind emerging technologies. Numerous difficulties currently exist in the Indian judicial system. Due to the complexity and nature of the E-commerce sector, legislation is currently being created to address any future difficulties. The problems are made worse by the overflowing docket, the slow administration of justice, and the dearth of trained investigation officers to handle E-commerce crimes³⁷.

³⁶ C.M.Abhilash, E-commerce Law in Developing Countries: An Indian Perspective, researchgate,(2014)
https://www.researchgate.net/publication/233334303_E-Commerce_Law_in_Developing_Countries_An_Indian_Perspective/citations

³⁷ Maximilian Claessens, Cultural Differences In Marketing – What Businesses Need To Consider In International Markets (19th February 2019) <https://marketing-insider.eu/cultural-differences-in-marketing/> 39 PWC supra

6. Taxation:

Intense competition, customer preferences for paying in cash on delivery (COD), a lack of adequate infrastructure, and low levels of digital literacy are just a few of the problems that the E-commerce sector has been dealing with. There are also taxation issues, fraud incidents, cyber security problems, incidents of fraud, and other problems. There is no standard tax structure among the states, and it is unclear whether to classify offerings as "goods" or "services." There are no clearly established rules on how certain transactions, such as those involving e-wallets, cash on delivery, gift cards, etc., are taxed. After the Goods and Services Tax (GST) is implemented, some of these difficulties should be rectified.

7. Logistics:

Even while E-commerce has had a significant impact on transportation services, the expansion of E-commerce as a whole is becoming more and more reliant on the ability of logistics and transport services to deliver the goods requested over the Internet on schedule. According to some analysts, current logistics and transportation services fall short of electronic needs commerce and that issue could get worse as E-commerce grows in scope. Despite the rapid growth in e-commerce-related transportation demand, there hasn't been a comparable increase in the availability of transportation and logistics support services. It may be said that the ability of transportation and logistics services to handle E-commerce is a new domain that is going through new organisational and technological changes. Order fulfilment choices are numerous, and one solution that satisfies the needs of one shipper might not always satisfy the requirements of another. Several variables, such as the product type and whether the order is for domestic or international delivery, can affect how effective the various alternatives are. As a result, the best system for fulfilling orders requires strategic decisions that can alter over time and vary by industry. Another issue facing Indian e-tailers is a poor last-mile connection, especially in distant areas with a high population. The safe and proper delivery of goods to the consumer is greatly influenced by logistics. They are typically driven by the ratings and rewards, however, this is not always the case. The difficulty

lies in managing a separate sector that might not necessarily be engaged in ensuring that customers are satisfied with the E-commerce operation³⁸.

8. Expectations Of The Companies:

Since these large organisations have made significant investments in the E-commerce infrastructure, it is reasonable to assume that they will be more focused on attaining their goals. The scale of the operation, the business line, and the operation's target all have a significant impact on achieving business objectives. According to a survey, some but not all of the business goals were met by internet-based E-commerce. However, it did save businesses of all sizes time when looking for materials and helped them develop a stronger brand. Even small-sized businesses felt they had to have an online presence in order to survive, even though their online sales were quite small. The organization's security architecture and risk management plan have a significant impact on achieving business goals since they give trading partners confidence in the company because threats perceived online cannot be completely eliminated.

2.6. Evolutionary Stages of E-commerce

1. First Phase (1995 to 2005):

When the internet was first made available in 1995, it marked the beginning of an era of rapid E-commerce development in India. The liberalisation and economic reforms implemented in 1991, which drew major Multinational Corporations (MNCs) to invest in the nation, occurred during this time period. Additionally, this period saw substantial expansion in the IT sector.

The expansion of the IT sector and the presence of MNCs fostered the growth of a variety of enterprises, including Small and Medium Enterprises (SMEs). These businesses adopted the Internet early and soon saw its potential. They used it to grow their businesses, attract new clients, and become more competitive overall³⁹.

The substantial rise of the Business-to-Business (B2B) sector is one noteworthy result of this phase. The availability of the Internet allowed businesses to more effectively

³⁸ PRICEWATERHOUSECOOPERS Pvt Ltd (PWC), E-commerce in India Accelerating growth, <https://www.pwc.in/assets/pdfs/publications/2015/E-commerce-in-india-accelerating-growth.pdf>

³⁹ E-commerce Land, History of E-commerce, (https://www.ecommerceland.com/history_E-commerce.html)

engage with their suppliers, distributors, and other business partners, streamlining their procurement procedures and improving their supply chains. As a result, the corporate ecosystem's collaboration and productivity rose.

Additionally, the growth of the IT sector and the advent of E-commerce both contributed to the creation of job possibilities across a variety of business sectors. Because of the increased need for qualified professionals in a variety of industries, including software development, web design, digital marketing, and E-commerce administration, more people now have the opportunity to pursue a career in one of these areas.

In addition to its effects on the economy and employment possibilities, the advent of E-commerce has had a ripple effect on the social dynamics of the world. As a way to meet potential life mates online, a growing number of people are turning to matrimonial services. As a result of this change in the matrimonial environment, single people who are looking for life partners now have access to more possibilities, which enables a way of matchmaking that is more practical and efficient.

Overall, the advent of the internet and the expansion of the IT sector, which powered the early phase of E-commerce progress in India, established the groundwork for significant breakthroughs in the B2B sector, job creation, and the alteration of conventional social behaviours. These breakthroughs cleared the foundation for the current digital revolution in India and prepared the groundwork for the later stages of E-commerce expansion⁴⁰.

2. Second Phase (2005 to present day):

The environment of online businesses underwent tremendous expansion and change during the second phase of E-commerce in India. This phase came after a difficult five-year era that was characterised by the fallout from the dotcom bubble, which caused E-commerce growth to stagnate. However, E-commerce experienced a stunning rebound and a quick expansion in the years that followed that far above forecasts. Significant growth was seen across a number of industries, particularly in online ventures in travel, e-retail, group buying, social networking, and other industries. These sectors developed

⁴⁰ Murray C, Holloway D, & Timson-Hunt D, Scmittof's Export Trade: The Law and Practice of International Trade, 279 (South Asian edition, 2007

creative business models and tapped into the expanding digital consumer market by utilising the internet and technology breakthroughs. India's population advantage is a crucial factor boosting the country's E-commerce industry. The majority of Indians are between the ages of 15 to 34, which is thought to be the largest demographic of prospective customers for businesses involved in E-commerce. This group of people are very tech savvy, connected online, and favours doing business and purchasing online. India is therefore expected to see rapid growth in E-commerce over the next few years.

Additionally, it is anticipated that increased internet availability and usage in rural areas would serve as important catalysts for further expansion of the E-commerce industry. Rural India is turning into a sizable market for E-commerce as internet infrastructure spreads and reaches farther-flung regions of the nation. Online platforms' accessibility and ease have the power to completely change how individuals conduct business in rural areas, opening up new business opportunities and bridging the gap between urban and rural communities.

The use of UPI transformed the nation's approach to digital payments. Users were able to make payments and complete transactions with the utmost comfort thanks to the platform's smooth and secure instant fund transfer capabilities between bank accounts. UPI was very popular with both businesses and consumers due to its simplicity of use, real-time transfers, and interoperability, which fuelled the expansion of E-commerce. The utilisation of UPI ushered in a period of profound transformation within the payment system. In the past, most purchases conducted via the internet depended on traditional methods such as credit cards, debit cards, or online banking, all of which had certain limitations and presented certain challenges. users were able to link their bank accounts directly to a mobile application through the use of UPI, which streamlined the process of making payments. Previously, users had to provide card information or go through onerous identification procedures. Because of advancements in payment technology, individuals who previously had restricted access to formal financial services or who had no bank account at all now have increasing access to these services.

The use of UPI has had a major effect on the growth of e-commerce. It has made transactions quicker and simpler, which has improved the user experience and increased

confidence in websites that allow online shopping. UPI allows customers to pay fast and simply, which relieves some of the pressure that is associated with utilising traditional payment methods. As a direct consequence of this, conversion rates have improved, customer satisfaction has gone up, and finally, E-commerce revenue has gone up as well.

In addition, UPI has been an essential component in the development of financial inclusion and the expansion of the digital economy. The user-friendly and risk-free payment option provided by UPI has made it possible for millions of individuals and thousands of companies to participate in online commerce⁴¹. It has made new options available to company owners, giving them the ability to create online operations, interact with a broader client base, and achieve success in the online economy.

It is projected that UPI's effect on E-commerce will rise even more as it continues to develop and get utilised by a greater number of people. The convenience and dependability offered by UPI have ushered in a new era in the conduct of financial transactions, which has fuelled the growth of online businesses in a wide range of fields, including e-commerce, food delivery, travel, and many more. UPI has changed the way transactions are processed. The expansion of the possibilities for the growth of E-commerce is facilitated by the coupling of the UPI with cutting-edge technologies such as biometrics, voice-based payments, and QR codes.

The introduction of the Unified Payments Interface (UPI) as a key payment interface has been a transformational event for the E-commerce industry in India. The payment process has been sped up and made easier, which has increased customer confidence and contributed to the development of businesses operating online. E-commerce in India looks to have a bright future, with endless opportunities for innovation, entrepreneurial endeavours, and overall economic progress. This is largely down to the role that UPI plays in building a more inclusive and digitalized economy.

⁴¹ Subhasis Saha, "Patenting of Internet and E-commerce: An International View", *Journal of Intellectual Property Rights*, vol. 14, March 2009

Open Network for Digital Commerce (ONDC), which is a non-profit company that aims to create a shared network of E-commerce platforms, was one of the most recent steps taken by the Government of India in April 2022. This will enable the display of products and services from all participating sellers in search results across all apps on the network. This was one of the most recent steps taken by the Government of India. If both Amazon and Flipkart link their platforms with ONDC, for instance, a customer looking for a Bluetooth headset on Amazon would also receive results from Flipkart on the Amazon app if both companies integrate their platforms with ONDC. ONDC expects that by operating in this manner, it would be possible to provide all sellers, particularly small and medium businesses (SMEs), with an equal opportunity to compete with major market participants and become discoverable online.

The third objective of ONDC is to bring in other stakeholders, such as groups that specialised in shipping, banking, and technology, in addition to buyers, so that these parties may collaborate to provide customers with a shopping experience that is uniform across all categories and languages. The ONDC has the goal of expanding the use of E-commerce throughout rural India⁴².

In conclusion, the lengthy process of establishing laws relating to E-commerce in India has been a dynamic one. This has been the case throughout the whole process. The fast growth of the digital economy, as well as the requirement to govern E-transactions in an effective manner, has been a driving force behind this development. The key stages can be summarised:-

- a. Early Stages: In 1998, the government of India approved legislation that is known as the E-commerce Act. This law is regarded as the first important move towards the establishment of E-commerce laws in the nation and was thought to be the first significant step in the construction of the law. The United Nations Commission on International Trade Law (UNCITRAL), the organisation that is accountable for drafting a model law on doing business over the Internet, served as the basis for this piece of legislation. However, in 1999, when a separate

⁴² D Mahipal & K Shankaraiah, "E-commerce Growth in India: A Study Of Segments Contribution", Academy of Marketing Studies Journal, Volume 22, Issue 2, (2018)

Ministry of IT was established, the law was updated and renamed the IT Bill. This was done in conjunction with the legislation.

- b. ITACT, 2000: this act is the primary piece of law in India that regulates online business. The IT Act was created to make E-transactions easier to complete, to build confidence in the digital environment, and to provide digital signatures and electronic documents the same legal legitimacy as handwritten ones. It also included a variety of legal concerns associated with E-commerce, including the protection of data, the prosecution of cybercrimes, and the administration of E-systems.
- c. Cybersecurity Initiatives: The Indian government has taken strong steps in recent years to improve E-commerce cybersecurity. To protect critical infrastructure and advance secure digital transactions, programmes like the National Cyber Security Policy of 2013 and the formation of the “National Critical Information Infrastructure Protection Centre (NCIIPC)” have been implemented.
- d. Data Protection And Privacy: The necessity of maintaining data privacy and integrity in the age of E-commerce prompted the government of India to introduce the Personal Data Protection Bill, 2019, earlier this year. This piece of proposed law seeks to govern the acquisition of personal data as well as its storage, processing, and transmission in order to safeguard individuals' constitutionally protected rights to privacy.
- e. Consumer Protection: The Consumer Protection Act, 2019 was recently approved by the government of India in order to address the rights and concerns of consumers with regard to E-commerce transactions. This legislation contains measures that are unique to e-commerce, such as rules for E-commerce platforms, processes for resolving consumer complaints, and sanctions for unfair business activities⁴³.

⁴³ Afrina, Y., Sadia, T. & Kaniz, F.. Effectiveness of digital marketing in the challenging age: An empirical study.

In India, law pertaining to E-commerce is currently being established as a reflection of the government's commitment to provide a safe and supportive environment for online transactions. The adoption of these regulations is part of an effort to advance the growth of e-commerce, safeguard the interests of consumers, improve cybersecurity, and guarantee the privacy of individuals and the protection of their data. As the landscape of online commerce continues to transform, it is anticipated that more legislative changes will be enacted in order to combat newly developing challenges and provide support to the establishment of a successful and responsible digital economy in India. These changes are likely to take place in the next years.

2.7. Legal Regulations of E-commerce in India

The Indian government has made the effort to develop a legal framework that would encourage and supervise E-commerce in that nation, and they have been successful in doing so. The government drafted the first piece of legislation, which was titled the "E Commerce Act 1998," in accordance with the principles that were set by the UNCITRAL model law on E-commerce. This law is currently in effect. The year 1998 saw the passage of this law. On the other hand, the creation of a distinct Ministry for IT made it clearly clear that thorough regulation was essential in order to keep up with the rapidly changing environment of E-transactions and the issues that are associated with it. This was the case because of the foundation of a separate Ministry for Information Technology⁴⁴.

Due to restraint of time and resources, the researcher has limited his focus mainly on the IT Act of 2000 and described it below.

The legislation was revised as the "IT Bill 1999" to satisfy this need, and it was approved in May 2000. This important piece of legislation created a solid legal basis for online transactions and paved the way for their expansion in India. It laid the groundwork for a trustworthy and secure digital ecosystem by recognising the value of digital signatures, secure online communication, and electronic recordkeeping.

⁴⁴ R.K.Singh, Law Relating to E-contract, Lexis, (2015)

To address new issues and guarantee the security of E-transactions, it became important to update and enhance the legislative rules as the digital environment continued to change.

" The IT (Amendment) Bill 2008" was presented by the government as part of this initiative. With the passing of this measure, Indian law would be brought into accordance with UNCITRAL model legislation on e-signatures, plus provisions to combat the rising issue of cybercrime would also be added. Before it was finally passed with widespread support in 2008, the law was carefully investigated and discussed in both chambers of parliament.

In the year 2009, the President of India gave his assent to the IT (Amendment) Bill 2006, so transforming it into a document that is legally enforceable. In addition to making a number of other important enhancements to the existing legal system, this ground-breaking legislation tightened the rules that apply to digital signatures, imposed stringent punishments for those who commit cybercrimes, and crafted a legal framework for the protection of personal information and its confidentiality.

The Indian government showed its dedication to fostering an environment that is favourable for internet commerce by passing these progressive laws. Businesses and individuals engaging in E-transactions now have essential legal support and protection thanks to the IT Act and its subsequent revisions. It has promoted trust in online interactions, enabled safe digital payments, and cleared the door for India's E-commerce industry to expand quickly.

As new challenges arise and technology develops, the government is vigilant in its efforts to update and improve the legislative framework in order to keep up with the ever-changing nature of the environment in which E-commerce operates. It seeks to strike a balance between fostering innovation and ensuring the protection of people's personal information and the confidentiality of online commercial transactions.

The IT Act created the foundation for an extensive legal framework to control E-transactions in India by pursuing these goals. It aimed to encourage the development of E-commerce and e-governance, set up systems for safe and reliable digital transactions, fight cybercrime, and offer effective justice delivery systems.

The main objective of the IT Act:-

a. Promotion of E-commerce and e-governance:

One of the most essential goals of the IT Act is to foster and help the growth of E-commerce and e-governance in India. This was one of the Act's primary aims. In view of the enormous potential of digital transactions and interactions that take place online, the goal of the Act was to establish a legal framework that would inspire trust and confidence in the conduct of business by electronic means. This was done with the hope that it would make it easier for people to do business online. One of the purposes of the Act that was adopted with the intention of fostering an environment that would be favourable to the expansion of E-commerce and the adoption of practices connected to e-governance was the establishment of legal recognition for e-records and digital signatures. The Act was implemented with the intention of fostering an environment that would be conducive to the growth of E-commerce⁴⁵.

b. Appointment of a certifying authority:

The IT Act required the appointment of a suitable government certifying authority in order to guarantee the wider acceptability and enforceability of papers that have been digitally signed. The issuance of digital certificates and the authentication of digital signatures would fall under the purview of this institution. The Act sought to strengthen the security and integrity of E-transactions and encourage their widespread adoption by providing a trusted and reliable certification method.

c. Delineation of offences and contraventions:

In order to combat cybercrime and protect individuals as well as companies from the dangers posed by the internet, the IT Act defined a variety of fines and offences connected to E- transactions. It devised procedures to deal with crimes using computers, such as unauthorised access, data theft, and other forms of cybercrime. The purpose of this Act was to provide a legal framework for the identification, investigation, and punishment of cybercrimes by establishing a specific definition of these offences. This

⁴⁵ Bhat, Dr. Shahid & Kansana, Keshav & Majid, Jenifur. (2016). A Review Paper Retrieved from https://www.researchgate.net/publication/304703920_AReviewPaper-on_on_E-Commerce. E-Commerce

was done in the hopes of making the internet environment safer for everyone involved. Establishment of justice dispensation systems.

In order to effectively combat cybercrimes and ensure that victims get justice in a timely manner, the IT Act mandated the formation of the Cyber Appellate Tribunal as well as the employment of adjudicating officials. The Cyber Appellate Tribunal served as a specialist venue for appeals against the judgements of adjudicating officers. Adjudicating officers were assigned to handle situations involving contraventions of the Act, while the Cyber Appellate Tribunal was responsible for hearing challenges against the decisions of adjudicating officers. These guidelines intend to hasten the process of adjudicating matters involving cybercrime, ensure that decisions are made in an unbiased manner, and simplify the legal processes.

To summarise, India's regulatory framework for E-commerce has evolved over time to take into consideration the fast-increasing digital economy and to guarantee that E-transactions are successfully controlled. This was done to ensure that E-transactions are effectively regulated. "The IT Act of 2000" is the primary piece of legislation in this field; it establishes a solid legal framework for E-commerce and instils trust in the digital ecosystem. Both of these benefits are important. The legal framework has been further enlarged by subsequent changes that address issues like cybercrime, data security, and privacy concerns. These forward-thinking pieces of legislation have been crucial in fostering the growth of E-commerce, fostering confidence in interactions that take place online, and providing the necessary support and safety for individuals and organisations that participate in financial dealings over the Internet. The Indian government is still committed to updating and refining the legislative framework to keep up with technical developments and new issues in order to strike a balance between the need for innovation and the need for internet users to maintain their security and privacy online. In general, the imposition of these legislative constraints has facilitated the expansion of online shopping in India and created a more favourable environment for the growth of the digital economy.

CHAPTER 3:

Conceptual Analysis of E-Contracts in India and Transnational Contexts: Definition and Regulatory Perspectives

3.1.Introduction

This chapter's main goal is to examine the underlying ideas of E-contracts, with a particular emphasis on their significance, formation, meaning, and various varieties in relation to India. People who use the internet and conduct E-commercial transactions are increasingly using

E-contracts. Due to its affordability, speed, and usability, Electric ways of conducting business have quickly become the preferred option with the rapid development of information technology.

Traditional commerce includes the buying and selling of moveable items as well as agreements pertaining to immovable property. It is governed by the guidelines given in the Indian Contract Act of 1872⁴⁶. However, the introduction of IT has completely changed how businesses operate on a worldwide scale. The world has changed into an "E-world," offering innovative ideas like E-money, E-commerce, and E-contracts.

Nowadays, people routinely enter into agreements through Electronic channels, utilising a variety of networking platforms for the marketing and exchange of goods, online services, retail product sales, marketplace services, and interactions between the government and its constituents. Along with paperless documents, the electronic world also enables cashless transactions made possible by credit cards, smart cards, electronic bills, mobile bills, and online banking. E-contracts are widely used because of their availability, quickness, cost-effectiveness, and physical effort reduction⁴⁷.

The chapter's goal is to explore the history and principles of E-contracts in India, emphasising their importance and influence in the context of a developing digital landscape. The growing reliance on Electronic methods for carrying out commercial transactions is evidence of information technology's revolutionary capacity in influencing how people and organisations conduct trade.

⁴⁶ Indian Contract Act 1872, professional publication, 2017.

⁴⁷ Larry Bates, Administrative Regulation of Terms in Form Contracts: A Comparative Analysis of Consumer protection, 16 EILR 1, 1-105 (2002)

3.2. Inception of dynamic concept in E-contracts

E-contracts unquestionably form a crucial aspect of online trade. With the advent of employing E- media for contractual reasons in 1991, a dramatic transition started, and Indians have since adopted it as their preferred option. Nobody could have predicted at the time that India would go beyond traditional commerce and embrace networking for business transactions.

The country's current widespread use of E-contracts reflects the current trend. The Indian Railway Catering and Tourism Corporation (IRCTC) introduced the first connection to

E-contracts for online ticket sales, allowing people to conveniently and whenever they wanted to purchase train tickets. Online systems developed with the advancement of technology, which made paperless transactions possible. This made it unnecessary for regular people to wait around for extended periods of time to complete business transactions or contract requirements. Therefore, using E- means to create contracts reduces responsibilities while also saving time, making it a significant advancement in contract law⁴⁸.

E-commerce has brought about a huge transformation in the way that commercial transactions are conducted, which has helped to establish India as a digital global leader. EDI refers to the use of Electronic data interchange (EDI) and other methods, such as email, to facilitate online agreements for the sale and purchase of products and services within the realm of E-commerce. Additionally, it makes possible secure and convenient methods of payment such as credit cards. It has been demonstrated that individuals, as well as businesses, may make money via the use of E-commerce⁴⁹.

Simply defined, Electronic media promotes the development of online contracts and the acquisition of goods and services as well as their advertisement. Users can easily make purchases with a single mouse click. E-contract usage has increased significantly in India, demonstrating the country's emergence as a trend for carrying out contract-

⁴⁸ Karnika Seth, *Computer Internet and New Technology Laws*, 1st edn, Lexis Nexis publication, (2013)

⁴⁹ *ibid*

related tasks online. The study's next point of interest is to go into the definition of E-contracts after briefly examining its history and introduction⁵⁰. Due to their complexity, defining the precise meaning of E-contracts is a difficult issue.

In conclusion, the development of E-contracts has fundamentally changed how business is done in India, with a big move towards digital transactions. E- methods have been widely adopted due to their accessibility, efficiency, and ease, making them a vital component of contemporary commerce.

3.3. The essential elements of e-contracts

The study focuses on examining how E-contracts are created and their importance in the virtual world. Compared to traditional paper-based agreements, E-contracts have a number of benefits, including accessibility, speed, efficiency, and cost-effectiveness. As we move into the digital age, embracing E-contracts can help to advance and build the economy of our nation. To obtain techno-legal certainty, it is essential to make sure that the creation of E-contracts complies with applicable laws. This study focuses on the creation of E-contracts and addresses concerns about their legality and testamentary implications. It highlights the crucial components, tools, and procedures needed to create legally binding E-contracts. Although the Indian Contract Act of 1872 regulates traditional contracts, there is still debate about whether the IT Act of 2000 applies to E-contracts or not. the researcher makes an effort to construct a few key elements through reference materials, publications, etc. The study also emphasises the significance of adopting a suitable and structured style for E-contracts in order to secure their legal authentication, placing particular emphasis on components like legality, non-repudiation, and confidentiality.

The elements are explained below:-

a. E-offer

In today's world, the ability to draught contracts Electronically has arisen as a direct result of the proliferation of internet communication. The advent of the internet as a vehicle for the formation of contracts does not, at first glance, show a condition that is unique from that which is linked with reproduction or telex. It is possible to generate it

⁵⁰ R.K.Singh, Law Relating to E-contract, 1st ed, 2015, Lexis Nexis publication, (2015)

Electronically by filling out a document on a website and then forwarding it to the intended recipient as an alternative to sending an email⁵¹.

It is possible to carry it out while using a virtual chat service while participating in a video conversation or talking on a regular phone, or in any other environment. The term "video teleconference" refers to a collection of telecommunications technologies that concurrently allow people in two or more places to speak with one other using audio and visual signals that may be sent in both directions. As a consequence of this, it is feasible to organise a conference with two or more persons who are situated in different locations thanks to the capability of computer networks to transmit audio and video.

The personal computers of each participant are outfitted with a microphone, speaker, and video camera. When two individuals are having a conversation with one another, their voices are sent over the network to the speaker of the other device, and any video photos that are being shared are shown on the monitor of the device that the other human is using. If the parties in this situation make an offer, and it has a chance of being accepted by the other party, then the creation of a contract may occur. The fundamental aspects of the formation of an E-contract are not materially different from those that apply traditional contracts (traditional). Some aspects are specific to Internet trading. For example, a legal agreement can be drafted even if the parties involved have never met in person.

The deal, which is also referred to as an online offer every once in a while. An E- offer may be communicated via many different channels, including as websites, emails, E-data interchange (EDI), or E- agents. It is possible to conceive of both the making of an offer and its acceptance as being equivalently represented by data transfers, provided that the parties participating in the formation of the contract do not reach any other consensus about this matter. When data communications are used to generate a contract, the fact that they were used for that purpose cannot be used as a reason to deny the validity or enforceability of the contract⁵². This is because the data communications were used to create the contract in the first place. The customer will examine all of the offered products and services on the website in order to get more information before

⁵¹ Ryder D. Rodney, Guide to Cyber Law, 1st edn Wadhwa & Co. Publisher, 86, (2001)

⁵² Karnitha Seth, Computers, Internet and New Technology Law, 1st ed, Lexis Nexis Publication, (2022)

committing to a purchase. Offers are typically submitted in the form of Electronic forms in the case of E-contracts.

The IT Act of 2000, introduces three parties for conducting E-agreements that are as follows-

- The Originator
- The Intermediary
- The Addressee

The term "originator" refers to “an individual who sends, generates, stores, or transmits any type of E- message, or who causes another individual to send, generate, store, or transmit any type of E- message.”

If there is data, the human who is deemed to be the message's originator is the person who seems to have been responsible for sending or generating the message before it was placed in storage, either by themselves or on someone else's behalf. There is no evidence to support the hypothesis that an intermediate was responsible for the production of the data message. The "originator" of data is the human who first creates, saves, or transmits the data message. This individual is known as the "originator" of the data message. The intermediary of the message is third party who acts on behalf of both the sender and the recipient of the message. The intermediary may send, receive, store, or offer further services in connection with that data communication in respect to a particular individual. The addressee of a message is the person to whom it is being sent by a third party. However, this does not suggest that the person was acting as a go-between for the data message in any way. Put another way, he or she is the person to whom the communication is directed and is hence known as a addressee⁵³.

The offer has to be presented to the offeree in such a way that a reasonable person would be led to think that the offeror wants to develop a contractual relationship with the offeree. In other words, the offer has to be made in such a way that a reasonable person would conclude that the offeror wants to build a relationship. If the offer is conveyed to the offeree via the use of an electronic agent, then the offer must be made in a manner that ensures it is received by the offeree. If a computer is programmed to make or accept

⁵³ ibid

offers under a certain set of circumstances, for instance, it is reasonable to assume that the user or programmer meant to form legal connections via the usage of the computer. This is because the computer is acting as a legal agent. This may be deduced from the fact that the computer is set up to either make or accept proposals under specific conditions. The term "E-agent" refers to "a computer programmer or any electronic means used to initiate an action or respond to an Electronic document or action in whole or in part without review by a natural person at the time of response or action." In other words, an E-agent is "any electronic means used to respond to an E-document or action in whole or in part without review by a natural person." According to one definition of the word, an electronic agent is "a computer programme or any E- means used to initiate an action or respond to an Electronic document or action in whole or in part." Another definition of the term describes an electronic agent as "any Electronic means used to respond to an Electronic document or action in whole or in part."⁵⁴.

b. The Process of Acceptance Of E-Contract

When the individual to whom the proposal is presented grants their consent to it, we believe that to be an indication that the proposal has been accepted. When a proposition is accepted, it is transformed into a promise. Absolute and absolute acceptance In addition, for there to be any chance of achievement, acceptance must be total and without conditions. The "Mirror Image Rule" is an alternative name that might be used for this fundamental idea. The standard operating procedure stipulates that the offer must be accepted in full and with no modifications made to any of the restrictions that it includes. This means that the offer cannot be partially accepted. If the conditions of the acceptance do not match those of the offer, then what was being offered has not been accepted.

E-contracts require not just an E-offer but also an E-acceptance of that offer. An E- offer will not be considered accepted unless it has been confirmed as having been accepted in person. If the sender offers the recipient a proposal via Electronic means, and the recipient accepts the proposal, the sender may request that the recipient return the acceptance to them via interest. An E- offer can be accepted in a few different ways: by clicking an option that reads "I Accept", "I Agree," by downloading data, or by sending

⁵⁴ Rohas Nagpal, Fundamentals of Cyber Law, Asian School of Cyber Laws,2019

an email to confirm acceptance. You are able to accept a shrink-wrapped licence after you have broken open the packaging.

An Electronic paper may be used to accept an offer in compliance with the Uniform Electronic commerce Act of 1999. This law was passed in 1999. A purposeful action carried out Electronically that gives permission, such as selecting an icon or location of the display of a computer that has been painstakingly constructed in this respect. This kind of action may also be referred to as a digital signature. It can be assumed that a person has given their permission for an offer to be accepted Electronically if the offer has been made by Electronic means, and if the offer has been made, it is also safe to assume that the person has given their permission for the offer to be accepted E-ally. If the E-transmission of acceptance is not necessary, then it is permissible to send acceptance in any other way that is thought to be suitable⁵⁵.

There are some other methods of E-offers and acceptances can be made in the following ways;

- E-mail: Email may be the sole mode of communication involved in the making of offers and the acceptance of those offers, or email may be used in conjunction with other modes of communication such as printed letters, faxes, phone calls, and so on. Either way, the process may take place entirely online.
- Website Forms: The merchant may provide goods or services for sale through his/her website (such as software, airline tickets, etc.). By completing and submitting the online order form, the client places an order. The things may be supplied physically later or immediately via E-means (as in the case of clothing, music CDs, etc). (For instance, software, mp3s, and e-tickets).
- Online Agreements: Email may be the sole mode of communication involved in the making of offers and the acceptance of those offers, or email may be used in conjunction with other modes of communication such as printed letters, faxes, phone calls, and so on. Either way, the process may take place entirely online.

⁵⁵ Nagpal Rohas, E-contracts and the Indian Law, Asian School of Cyber Law, (2012)

c. Intention To Create Legal Relations

It is a well-established principle in English law; nevertheless, the Indian Contract Act does not clearly require that there must be an intent to establish legal relations in order for a contract to be valid. This is in contrast to English law, where it is a well-established premise. The Indian Supreme Court, on the other hand, has expressed some doubt about whether or not it is necessary for the Contract Act to include this particular condition. The case of *Banwari Lal v. Sukhdarshan Dayal*⁵⁶, in which the court gave the impression that the concept had only achieved a little amount of attention. The court emphasized that rather than inferring the purpose of the parties from a select few passages of the contract, the reader should do so based on the entirety of the document. The actual nature of the transaction, as opposed to a merely supplied description of it, ought to take primacy, and the construction of contracts ought to be based on the content of the agreements, rather than the form those agreements take. It is essential to take into account all of the terms and conditions of the contract, rather than concentrating solely on select areas, in order to gain an understanding of the true nature of the agreement as well as its overall impact. The case *State of Orissa vs. Titagarh Paper Mill Co. Ltd.*⁵⁷ Established a notion that the nomenclature and description of a contract cannot reveal the nature of the connection between the parties, and that the nomenclature and description of a contract should instead be assessed in the context of the whole document. In other words, the nature of the relationship between the parties cannot be inferred from the nomenclature and description of the contract. Additionally, the case provided additional support for the idea that the nomenclature and description of a contract had to be evaluated in the light of the entire agreement.⁵⁸

d. Lawful Consideration

A contract can never give birth to an action that is taken without first thinking about it. This indicates that consideration is necessary for a contract to be enforceable in order for it to be a valid legal document. The Indian Contract Act of 1872 states that a contract that was entered into without consideration is null and invalid. The phrase

⁵⁶ *Banwari Lal v. Sukhdarshan Dayal*, AIR 1973 SC 814, (1973) 1 SCC 294

⁵⁷ *State of Orissa vs. Titagarh Paper Mill Co. Ltd.*, 1985 AIR 1293, 1985 SCR (3) 26

⁵⁸ Dr.Amita Verma ,*Cyber Law & Cyber Crimes*,1st edn, Central Law Publications, (2009)

"consideration" comes from the legal phrase "quid pro quo," which stands for "something given in exchange for something else." Each party to an agreement is entitled to some type of compensation in return for their commitment to fulfil their end of the bargain. That something else is called consideration. In the normal run of events, when one person makes a promise to another, they do so with the aim of benefitting in some form from what the other person is able to offer. This is because promises are made with the expectation that the other person will fulfil their obligations. Even if the promise is made with the aim of assisting the other person, this is still the result that will occur.⁵⁹ According to Section 25 of The Indian Contract Act of 1872, "Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law"⁶⁰.

E-contracts are subject to the same criterion, which states that the contract will not be enforceable if there is no consideration involved. Because the customer did not pay anything in return for the product (as they would if they downloaded the paid version of Adobe's PDF reader), the vendor of the programme cannot bind the customer to the conditions. In addition to that, the payment itself has to be legal. The consideration of an agreement is permissible under the law unless the agreement in question is expressly not allowed in the law, is fraudulent, or by which that has the potential to undermine the norms governing the operation of the law, or if it causes harm to other people, violates moral principles, or goes against established public policy. To put it succinctly, if an auction website helps two persons enter into a contract in which one party provides a pornographic film in return for the other party purchasing an MP3 player, then the transaction is null and unlawful since the contract violates federal law.

e. Capacity Of The Parties

The Contract Act is no longer applicable to the inclusion of computers in the legal definition of "person" since they do not fit into either the natural or legal categories of natural or legal persons. As a result, the inclusion of computers in the definition of "person" in the legal definition does not apply to them. This is because the inclusion of

⁵⁹ Nagpal Rohas, E-contracts and the Indian Law, Asian School of Cyber Law, (2012)

⁶⁰ The Indian Contract Act of 1872

computers in the legal definition of "person" When debating and ultimately passing the IT Act, the legislative body was presented with two potential solutions to this issue. Either computers would be granted legal personality so that they might be recognized as parties in their own right, or computers would be recognized as the party's agents. Both scenarios are possible. When utilizing E-contracts, it may be difficult to verify the identities of the parties to a contract and determine whether or not they are legally able to engage into a binding agreement. Additionally, it can be difficult to determine whether or not they are legally able to enter into a binding agreement. It is difficult for one party to establish the capabilities of the other due to the complexities of E-transactions and the lack of face-to-face communication between the parties involved. One example of this degree of complexity is demonstrated by situations in which minors pass themselves off as adults in order to enter into possibly void contracts or place orders for things. Online retailers have implemented preventive measures, such as include phrases pertinent to capacity in their product descriptions and offerings⁶¹. Before an offer can be accepted, the accepting party is required to verify that the terms are true and appropriate.

f. Consent

A consent clause, which Salmond refers to as an "error in causa" or a wrong, is required for a contract to be considered legal and enforceable. This includes circumstances in which permission is gained through means of duress, undue influence, fraud, or misrepresentation. In addition to being physically present, one of the requirements of providing permission under Section 14 of the Indian Contract Act of 1872⁶² is to do it voluntarily. However, the rigid application of these standards to E-contracts may leave some scenarios unsuitably covered and may, on occasion, be burdensome to one party while providing advantages to the other side. The goal of the Uniform Electronic Commerce Act (UECA), which came into effect in 1999, is to cut down on the number of mistakes that take place throughout the process of persons conducting financial transactions using Electronic agents. It specifies the requirements that need to be accomplished in order for this to be the case, as well as indicates that an agreement will

⁶¹ Apar Gupta, Commentary on IT Act 2000, 2nd ed., (2011)

⁶² Indian Contract Act of ,1872

not have any legal effect and cannot be enforced when certain circumstances are achieved, and it also states that this can be the case. The individual's prompt notification of the error upon its discovery, and the person's prompt return or destruction of any compensation received as a result of the error. The click-through method is widely used in online contracts to ensure that the parties have freely given their assent.

This occurs rather frequently in circumstances in which the parties engaged in the contract do not communicate with one another in real-time. However, in the complicated world of internet transactions, where mistakes are more likely to occur, the general contract doctrines, especially the defence of non-Est factum (lack of assent), may still be applicable. It is essential to emphasise that a party is not able to get out of a contract by alleging that there were mistakes, that they were misrepresented, or that they were unable to read the fine print. Due to the inherent dangers of conducting business online, it is not uncommon for parties to E-contract to give incorrect information about their identity. Because of this, it is impossible to legally uphold agreements that were reached under false pretences⁶³.

3.4.TYPES OF CONTRACT

E-contracts can be broadly categorized into three types:-

1. Click-Wrap Contracts

The click process and the click-wrap that is used on CD-ROMs are two examples of the click-wrap agreements that are employed in software operations. Both of these examples of the click-wrap agreements may be found in software. Users are forced to select one of two options within a display box: "agree" or "I do not agree." This is done so that they can confirm their acceptance throughout the click process. If the user chooses to decline, they will no longer be able to make use of the agreement or the service going forward. Users are obligated to thoroughly read and completely appreciate the terms and conditions given by the software system before they may legally bind themselves to any Internet or E-contract. Before clicking "I Agree," users of click-wrap agreements have the option of either accessing and reading all of the rules

⁶³ Nagpal Rohas, E-contracts and the Indian Law, Asian School of Cyber Law, (2012)

and regulations in the same window or by following a hyperlink to do so. Unlike shrink-wrap agreements, which conceal the information within the package and need acceptance before revealing the terms, click-wrap agreements disclose all of the provisions prior to acceptance.

Due to the fact that the programme in question is downloaded from a website, shrink-wrap licences cannot be used for the licencing of online software. Consumers are instead able to read the terms of the agreement and consent to it by clicking a "accept" button in click-wrap agreements. Users of the Internet commonly come across click-wrap agreements, which outline the rights and responsibilities of the parties involved. Users show that they are willing to abide by the terms of the contract by selecting an icon or button located on the user interface. When making any kind of purchase online, whether it be a website membership, payment for digital goods and services, or any other kind of purchase, you will frequently come across these kinds of agreements. Users are required to click a button indicating that they agree to the terms of sale or use before they can continue with the transaction.⁶⁴

2. Shrink-Wrap Contracts

A "shrink-wrap agreement" is a type of E-contract that is also sometimes referred to as an "Internet contract." It is common practice for the terms and conditions of these agreements to be included in separate licencing agreements, which must first be opened before they may be accessible. When referring to the plastic covering that is used to surround software boxes, the term "shrink-wrap" refers to this covering and indicates that the agreement becomes enforceable upon breaking the seal. When a customer purchases a shrink-wrap agreement, they are allowed to return a software package that has been wrapped for a refund as long as they do not break the seal. However, if the CD or software is found to be defective after the seal has been broken, there will be no reimbursement offered for the purchase.

After the consumer has opened the product, they are required to read and agree to the terms of any shrink-wrap agreements that may be included. These may take the form of licence contracts or other forms of contracts. Users give their approval to the terms

⁶⁴ Bakshi P.M, Handbook of Cyber and E-commerce Laws, 1st edn., Bharat Law House Pvt. Ltd., (2007)

of the licence by using the software that they have paid for. A letter that is affixed to the software's top and included in the packaging contains a list of the terms and conditions that must be followed in order to use the programme. Upon opening the package, it is presumable that the User has already read these terms, considered them acceptable, and accepted to be bound by them. The User also agrees to be bound by them. Although "shrink-wrap" most commonly relates to the packaging of software, this type of agreement is not limited to the software industry alone.

A sort of licence known as a shrink-wrap licence is one that does not need to be signed by either the person who purchases a mass-market computer software product or the person who provides the programme. This licence outlines the terms of the transaction and explains the legal restrictions that will be put on the buyer with regard to how the software may be utilised once it has been purchased. Before the customer uses the product, the licence is clearly tied to the programme in a way that makes it simple to find and understand. This occurs before the customer makes use of the product. Even if they haven't read the terms and conditions of the licence, a consumer's action of ripping the seal on the shrink-wrap shows that they accept those terms and conditions. The extensive distribution of software often requires software companies to utilise shrink-wrap licencing contracts as a means of protecting their intellectual property rights. Instead of selling the programme outright, they will retain control of it and instead issue a licence to the customer who purchases it. This provides them with the opportunity to impose conditions on the licensee that may or may not be permitted by the laws governing Copyright⁶⁵.

The most essential clauses of a shrink-wrap licence often ban illegal software copying or renting, establish limits on reverse engineering or alterations, restrict usage to a single central processing unit, disclaim warranties, and place liability restrictions. In addition, these provisions typically place liability restrictions. When the user opens the product for the first time, which is generally contained within the box, the user is signalling that they accept the terms and conditions that are specified in the agreement. If you choose to proceed in this manner, you will end up with an indirect E-contract.

⁶⁵ Kumar Sanjeeb, ANMRJRIC&M, 23 Vol. 3, Issue 7, (July 2014)

Users of computers are often familiar with the licencing agreements that are included in the "shrink-wrap" packaging of consumer software packages. Consumer software products. Despite this, a significant number of customers have only been exposed to them in the form of printed documents and have not read the terms and conditions in their entirety. The user and the software vendor are intended to enter into a legally enforceable contract through the execution of these agreements. You can typically find them in the user handbook, on the CD-ROM envelope, or within the software box itself. It is strongly recommended that the user does not even bother to launch the software, let alone use it, if they do not accept the terms and conditions.

Adhesion contracts are another name for shrink-wrap contracts. This is due to the fact that the parties to the contract did not engage in substantial negotiation. It is possible that the buyer or user has not accepted the terms or that their acceptance is unclear. The presence of these qualities provides the basis for arguments that such agreements cannot be enforced. There is no dialogue involved with adhesion contracts, and the parties are given the option to either accept the agreement or reject it. This is a fundamentally different approach to the construction of contracts than is taken in typical business transactions⁶⁶.

3. Browse-Wrap Contracts

Customers who hunt for it will discover a link to terms and conditions someplace on online pages that profess to offer products and services utilizing browse-wrap contracts. According to these terms and conditions, visiting the website or using it to purchase any items or services offered therein constitutes acceptance of the terms and conditions set forth. These agreements primarily web-browser and click-wrap agreements are particularly widespread since the Internet might replace traditional forms of trade. However, one may argue that the browse-wrap conditions fit the requirements of an implied contract because of the consumer's activities, refuting some critics who claim that browse-wrap terms are unenforceable because they fail to meet the fundamental criteria of contract formation⁶⁷.

⁶⁶ Bakshi P.M & Suri R.K, *Cyber and E-commerce Laws*, Bharat Publishing House, edn 1,(2002)

⁶⁷ *ibid*

In conclusion, E-contracts are now routinely used in modern business and play an important role in this sector. Contracts that are categorized as clickwrap, contracts that are categorized as shrink-wrap, and browse-wrap contracts are the three basic categories that they can be separated into. The terms and conditions of agreements that are established using shrink-wrap are often hermetically sealed within the package itself and do not become enforceable until the seal is broken. This is because the shrink-wrap acts as a container for the terms and conditions. When determining whether or not the user has given their permission to the browse-wrap contract, the activity of the user after the conditions have been placed on web sites is watched.

Each different kind of contract has its own set of characteristics and repercussions. Users should carefully read the conditions and ensure that they have a full understanding of them before signing any online or E-contracts. If certain statutory requirements are satisfied, such as the parties' legal capacity, the exchange of lawful consideration, and the parties' intention to establish a legal relationship, an E-contract has the potential to be legally binding and enforceable. However, the enforceability and legality of these contracts are subject to change depending on the jurisdiction in which they are being considered and the specific facts of the case in question. As the volume of business conducted via the internet continues to rise, it is essential for individuals and companies to have a solid understanding of the legal implications and parameters surrounding E-contracts.

3.5. General overview of definitions and laws of E-contract

A contract that results from online E-commerce is known as an E-contract. It is a computerised contracting procedure that supports online platforms for cross-organizational business development and automation. E-contracts, which are executed, regulated, enacted, and specified via software systems or other Electrical means, regulate company and individual trading agreements. While E-contracts and conventional paper-based commercial contracts have some similarities, they are established and handled through very different processes.

Our way of life has undergone a significant transformation as a result of the integration of new contract systems and information technology. Numerous benefits come with E-

contracts, including simplicity, efficiency, and speed. In business transactions, they conserve time and resources⁶⁸. For instance, vendors can use websites or other online platforms to advertise their goods, costs, and terms to prospective customers, and they can also get paid online for their transactions.

As a consequence of this, when two parties decide to enter into a contract with the intention of exchanging value, they do so digitally as opposed to using more traditional techniques that include paper-based documentation. Because more people are using the internet, email, online shopping, and social networking, the significance of using E-contracts (also known as e-contracts) has increased. They are the fundamental building blocks of E-commerce because they make it possible for individuals, groups, businesses, and organisations to engage in the buying and selling of commodities via the internet. E-contracts have significantly reduced the amount of documentation that is required, which has enabled online buying and trading agreements, resulting in time and money savings.⁶⁹

It includes a variety of e-business transactions and depends on sound and image transmission, as well as electronic means of communication and data exchange. Additionally, the usage of Electronic tools in corporate operations surpasses national boundaries thanks to email and Electronic data exchange on a global scale⁷⁰.

An important task is to thoroughly examine the developments brought about by E-contracts and determine whether they are appropriate for the digital era. The idea of mutual exchange has served as the cornerstone of civilization throughout history. People give and

receive in accordance with their needs, comfort, and enjoyment of life. A contract is created when two parties agree to the establishment of certain, legally recognised rights or duties. A contract is an agreement that has legal force and effect and provides rights and protections for the parties involved that can be enforced in court.

However, it becomes crucial to have the right regulations in place to ensure their successful application when contracts are implemented using Electronic techniques. Specific legal frameworks and rules are needed for E-contracts in order to manage the

⁶⁸ Pavan Duggal, *Cyber Frauds, Cybercrimes and law in India*, 1st edn, Saakshar Law Publications, (2013)

⁶⁹ R.K.Singh, *Law Relating to E-contract*, 1st ed., 2015, Lexis Nexis publication, (2015)

⁷⁰ Dr, Gupta & Agarawal, *Cyber laws*, 3rd ed, Premier Publishing Company, (2022)

special issues and difficulties that come with doing business online. As technology develops, it is crucial to safeguard the interests of parties to E-contracts and offer procedures for resolving any disputes that may occur.

An E-contract is really executed by a software system that makes use of computer programmes to support and manage the commercial operations involved. These technologies facilitate the creation, carrying out, and enforcement of E-contracts, improving efficiency and requiring less manual intervention.

It is essential to have thorough legal rules that cover the nuances of E-contracts as the digital world develops further⁷¹. These laws ought to cover a range of topics, including the enforceability and legality of E-signatures, the security and privacy of electronic transactions, the privacy of personal information, questions of jurisdiction, and the mechanisms for resolving disputes in connection with E-contracts.

Examining and analysing these legal frameworks as well as investigating technological developments that could improve the efficiency and dependability of e-contracting are all part of the study of innovations in E-contracts. In order to promote confidence, effectiveness, and growth in online business transactions, it is ongoing work to ensure that E-contracts are well-protected, legally valid, and smoothly incorporated into the digital world⁷².

In conclusion, research into technological advancements and legal issues related to E-contracts in the digital age is crucial. It necessitates a multidisciplinary strategy that brings together legal skills, technology breakthroughs, and a profound comprehension of the dynamic nature of digital trade. We can create a strong and secure digital business environment by addressing the particular issues and opportunities raised by E-contracts. The researcher is studying the definitions and laws of E-contracts in different countries, including the UNCITRAL Model Law, Europe, USA, Australia, Singapore, and India. This research aims to explore how these countries define E-contracts and gain insights into their respective legal frameworks. By analysing these definitions, the researcher seeks to deepen the understanding of E-contract laws globally.

⁷¹ *ibid*

⁷² Pavan Duggal, *Data Protection Laws in India*, Universal Law Publishing Co, (2016)

3.6. The UNCITRAL Model Law of E-commerce

The Model Law on E-commerce with Guide to Enactment 1996 which was released by the United Nations Commission on International Trade Law (UNCITRAL) contains the concept of an E-contract. In accordance with the model law, the formation of an E-contract can take place through the exchange of digital communications. The model legislation emphasises that the legitimacy of a contract should not be called into question simply due to the fact that it was established Electronically.

The UNCITRAL Model Law emphasises an essential point, namely that it is not necessary for either party to routinely analyse each message before entering into an E-contract. This means that the contract's legal validity and enforceability should not be affected by the lack of this review⁷³. The model law respects the efficiency and practicality of E-transactions by recognising this principle, which frequently entails a large number of data messages that may not be practically evaluated individually.

According to the UNCITRAL Model Law, the word "data messages" can refer to a wide range of information that is generated, transmitted, received, or stored Electronically. This is the case since data messages can be made, conveyed, received, or stored Electronically. It encompasses a broad variety of Electronic channels, telegrams, telexes, and telecopies, in addition to more particular ways of communication. This all-encompassing phrase not only ensures that the model law is applicable to a broad range of forms of E-communication but also symbolises the all-encompassing character of E-contracts. For example, it ensures that the model legislation is applicable to e-mail, but it also ensures that e-mail⁷⁴.

The UNCITRAL Model Law is essential in facilitating global trade and business because it provides precise instructions on the establishment and legality of E-contracts. It encourages the acceptance and acknowledgement of E-contracts as binding legal documents, independent of the method by which they were created. The UNCITRAL Model Law is a helpful guide for nations as they create their own laws governing E-commerce⁷⁵, taking into account the special features and difficulties presented by E-

⁷³ Kamallesh N, Analysis Of Uncitral Model Law Provisions On E-commerce With Respect To Indian Perspective, 2 IJIRL,258-270,(2020)

⁷⁴ Burman and Harold S, UNITED NATIONS: UNCITRAL MODEL LAW ON E- COMMERCE, 36 ASIL, 1997

⁷⁵ *ibid*

transactions. It promotes legal framework harmonisation and uniformity, enabling more safe and convenient global E-transactions.

In conclusion, the UNCITRAL Model Law emphasises the legitimacy and enforceability of E-contracts in the digital sphere and offers a thorough explanation of them. The model law improves the efficacy and efficiency of E-transactions by recognising the relevance of data communications and removing the need for routine inspection. The acceptance and use of E-contracts will increase as more nations implement the model law's ideas into their legal frameworks, advancing digital commerce and enabling international trade.

3.7. European Directives of E-commerce

A key piece of European legislation governing E-contracts is the E-Signatures Directive 1999/93/EC (EU). The use of E-signatures in E-contracts is the special emphasis of this regulation. The statute specifically acknowledges the potential of entering into contracts via Electronic means, but not providing a complete description of E-contracts⁷⁶.

The ability for parties to participate in contractual agreements through the use of Electronic means is recognised by Article 9 of the Directive on some legal elements of net services, particularly e-commerce. In a manner not dissimilar to the previous example, parties may also engage into contracts by utilising one or more remote communication channels. An E-agreement may be understood as an agreement between a service provider and a user that is made possible by Electronic means and is sent via the internet. This interpretation is based on the requirements of this contract, which provide that an E- agreement may be construed as such⁷⁷.

The employment of "electronic means" is the fundamental component of what is meant by an E-contract under these rules. The electronic tools that the contracting parties used to create the agreement are referred to by this phrase. It includes all programming, linguistic constructions, and verifiable interfaces or services required for the software

⁷⁶ Gerald Spindler & Fritjof Börner, E-commerce Law in Europe and USA, Springer Berlin Heidelberg, 2013

⁷⁷ Uniform E-transactions Act (UETA). In 1999

to function with E- devices. In essence, an E-contract is created by the use of online platforms or software that let users and service providers communicate and settle on terms and regulations.

The importance of E-contract means in the creation of contracts is emphasised by the E-Signatures Directive and comparable directives in Europe. They advocate for the acceptance of E-contracts as instruments that are legally binding and enforceable and acknowledge the digital aspect of contemporary transactions. These directives support the expansion of E-commerce and E-transactions inside the European Union by establishing guidelines for the use of e-signatures and recognising the value of technology⁷⁸.

In conclusion, the legal framework for E-contracts in Europe is established by the E-Signatures Directive and related directives. They emphasise the significance of E-methods in creating contractual agreements but without giving a full explanation. These directives stimulate the expansion of digital commerce and advance harmonisation within the European Union by supporting the development of secure and effective E-transactions.

3.8.USA's laws of E-commerce

The Uniform E-transactions Act of 1999 (UETA) was a piece of legislation in the United States that lays the groundwork for the legality of E-transactions. This legislation provides a comprehensive knowledge of E-contracts when applied to the context of online commerce. According to the Uniform E-transactions Act (UETA), an E-contract is referred to as a contract that is made through the use of E- interaction between two or more parties. This may comprise communication via e-mail or interactions between a human and an E- agent, such as a piece of software on a computer. Communication between at least two E- agents that have been set up to acknowledge the presence of a contract is another thing that UETA will acknowledge when it comes to contracts⁷⁹.

⁷⁸ Pablo Asbo Baistrocchi, Liability of Intermediary Service Providers in the EU Directive on E-Commerce, 19 Santa CLARA COMPUTER & HIGH TECH. L.J. 111 (2002).

⁷⁹ Uniform E-transactions Act (UETA).In 1999

Additionally, the Uniform Computer Information Transactions Act enhances UETA by setting guidelines for the creation, administration, and essential elements of E-contracts. These laws ensure that traditional principles and legal remedies that apply to traditional contracts also apply to E-contracts. This indicates that the same legal requirements, including contract creation and enforcement, apply to digital transactions.

It's vital to remember that UETA generally focuses on contracts that are completed Electronically and involve computer information⁸⁰. The mechanics of E-contracting are covered, but its scope also includes more general features of information technology. UETA creates a solid legal framework that supports the legality and enforceability of E-contracts by taking into account various forms of E- interaction and taking into account the recognition of contracts by Electronic agents.

The U.S. assures that e-contracts are held to the same legal requirements as conventional contracts by adopting the principles of UETA and the Uniform Computer Information Transactions Act. This fosters the expansion and advancement of E-commerce in the nation and offers assurance and dependability in E- transactions⁸¹.

E-contracts in the United States also have a legal foundation in the Uniform E-transactions Act and the Uniform Computer Information Transactions Act. Both of these pieces of legislation were passed in the year 2000. The year 2000 saw the enactment of both of these pieces of legislation. These regulations highlight the relevance of the role that E- technologies play in the process of contract creation, in addition to specifying the standards for the legality and enforceability of contracts. These habits ensure that traditional contract norms are maintained in the digital realm, which is essential for the effective completion of E-commerce transactions. For transactions to go through in an online store successfully, confidence and trust are essential.

⁸⁰ Gerald Spindler & Fritjof Börner, E-commerce Law in Europe and USA, Springer Berlin Heidelberg, 2013

⁸¹ Tamas Dezso Czigler, E-Consumer Protection in the US - The Same Jungle as in Europe, 4 COMP. L. REV. 1 (2013).

3.9.AUSTRALIA's laws of E-commerce

In Australia, the E-transactions Act of 1999 (also known as Act No. 162 of 1999 as modified) lays forth the specifics of the legal framework for E- transactions. The domestic usage of E-communications and transactions are governed by the rules and regulations that have been established as a result of this law. Despite the fact that it does not offer a comprehensive explanation of E-contracts, the act's primary focus is on the regulations and safety precautions that belong to E-communication⁸².

The E-transactions Act defines E-communication as "the transmission of information in the form of data, text, or images, where the speech is processed by an automatic voice recognition system at the recipient's end." This is the definition of E-communication. This all-encompassing term encompasses a number of different E-communication channels, so ensuring that a comprehensive range of digital interactions is brought under the purview of the act.

The act also acknowledges the value of information systems in supporting E-communications. An information system is any apparatus that is utilised for the purposes of producing, transmitting, receiving, storing, or processing electronic communications. This includes all of the technological support necessary for the reliable operation and safe transfer of electronic data.

The E-transactions Act also highlights how important IT needs are for facilitating E-communications. Software requirements that permit the appropriate generation, processing, and storing of E-messages are included in this. The act makes sure that E-transactions are completed securely and successfully by attending to these conditions⁸³.

In general, Australia's E-transactions Act offers a foundation of protection for E-communications and transactions. The emphasis on E-communication and IT standards, even while it does not provide a formal definition of E-contracts, emphasises the significance of trustworthy and secure digital transactions. The act encourages the development and adoption of E-contracts within the Australian legal system by setting rules and regulations for their use⁸⁴.

⁸² E-transactions Act 1999 (Act No. 162 of 1999 as amended Australia)

⁸³ George Cho, *Cyber Law in Australia*, 2, Wolters Kluwer, (2020)

⁸⁴ *ibid*

3.10. SINGAPORE's laws of E-commerce

Singapore adopted the Electronic Transactions Act (ETA) in 1998⁸⁵ to create a solid regulatory framework that oversees a variety of digital services. This comprehensive law includes provisions for e-commerce, E- records, E-contracts, and digital signatures, among other facets of the digital world.

The ETA was subjected to significant adjustments in the year 2010 in order to bring it into conformity with the regulations of the United Nations Convention on the Use of E-Communications in International Contracts. This was done in order to take into consideration the ever-evolving nature of both technology and international standards. This step demonstrated Singapore's commitment to global harmonisation and made it simpler to conduct Electronic transactions across international borders⁸⁶.

It is notable that Singapore was the first country in the world to accept the UNCITRAL Model Law on E-Commerce. This illustrates how forward-thinking it is to deal with E-transactions and is a testament to how forward-thinking it is to handle E-transactions. As a result of this achievement, Singapore has been given the title of "first nation in the world." Singapore has firmly established itself as a major global centre for the commerce and innovation of digital technologies with the adoption of this model law⁸⁷. The Singaporean government actively urges companies to adopt E-transactions and take advantage of digitalization's advantages. It encourages the use of E-tools for doing business, enabling efficiency and enhancing convenience for both firms and consumers through its policies and programmes. Additionally, the government stresses the significance of preserving accurate and trustworthy E-records to guarantee accountability, transparency, and legal compliance.

In brief, the E-Transactions Act of Singapore functions as an all-encompassing legal framework for a broad variety of digital services, including e-commerce, E- records, and E-contracts. By adhering to international standards and recognising the UNCITRAL Model Law, Singapore positions itself as a pioneer in the field of E-

⁸⁵ E-transactions Act (ETA) ,1998

⁸⁶ Harry S. K. Tan, The Impact of the Singapore E-transactions Act on the Formation of E-Contracts, 9 ELEC. COMM'n L. REV. 85 (2002).

⁸⁷ *ibid*

transactions. This creates an environment that is conducive to the expansion and innovation of digital firms⁸⁸.

3.11. INDIA'S Laws of E-commerce

In India basically, three pieces of legislation are provided for E-contracts that are as follows:-

1. The Indian Contract Act 1872,

The act defines a contract as a legal-enforceable agreement⁸⁹. The definition, formation, and implementation provisions of this Act encompass particular and appropriate contract-related obligations and damages. Conditions for a legal contract are also provided in Section 10⁹⁰. This Act analyses E-contracts and defines contracts based on paper documents. it is the exact reverse of it. Indian Contract Act 1872 and other relevant legislation must be examined collectively in order for E-contracts to be legally binding in India. According to the important case law, the court utilised this comment⁹¹.

2. The Information Technology Act 2000,

Undoubtedly, the IT Act 2000's laws regulating E- transactions⁹², Nevertheless, the aforementioned Act does not provide a comprehensive description of what really constitutes an E-contract.. The IT Act of 2000 gives E-contracts the same legal validity as their paper counterparts. On the other hand, it does not provide a comprehensive explanation of what an E-contract is. Digital signatures, the filing and maintenance of E-records, E-contract transactions, and e-governance transactions all need to be granted legal recognition by the Act. It only offers a framework within which information may be given that, if incorporated into an E-contract, will carry the force of law and be enforceable in accordance with its terms. The existing Act solely addresses the establishment of a safe and secure E- environment for the purpose of protecting

⁸⁸ Roger Brownsword, Information and Communications Technology Law in Singapore, 2020 Sing. J. LEGAL Stud. 772 (2020)

⁸⁹ The Indian Contract Act, 1872

⁹⁰ *ibid*

⁹¹ PR Transport Agency v Union of India, AIR 2006 All 23 : 2006 (1) AWC 504

⁹² The IT Act of 2000

individuals' privacy and preventing unlawful E-transactions that go against the conditions of an E-contract⁹³.

3. The IT(Amendment) Act 2008,

There is a definition of the legality of using E-contracts provided in Section 10A of this document. Section 10A of the IT Amendment Act of 2008, E-contracts in India can now be credited with the same level of legal legitimacy as paper contracts. In spite of the fact that the Indian Contract Act of 1872 does not place any limitations on the use of E-transactions, Section 10A was added to the IT Act of 2008 (ITAA 2008) in the form of an amendment that was passed in the year 2008. This amendment takes into consideration Section 11 of the UNCITRAL Model Law on E-commerce from 1996. The definition of the phrase "E-contract" may be found in section 10A and is reinforced here for use with digital agreements. This specific formulation drew its major motivation from Article 11 of the 1996 UNCITRAL Model Law on E-Commerce, which is a word that is conceptually comparable to the present-day definition⁹⁴.

⁹³ Apar Gupta ,Commentary on IT Act 2000,2nd edn ,(2011)

⁹⁴ The ITAmendment Act of 2008

CHAPTER 4:

Exploring The Legal Dimensions Of E-Contracts In India

4.1.Introduction

The majority of the following study focuses on the ramifications that E-contracts in India may have from a legal standpoint. The scope of this dissertation is restricted to determining the legal standards that are appropriate in light of India's laws governing E-contracts. The first thing that will be investigated in this line of inquiry is whether or not Indian law is applicable in each and all circumstances in which a user or client enters into an E-contract.

The proliferation of new technology and the creation of new communication networks have had a profound impact on our day-to-day lives as well as the manner in which we do business and commerce. The traditional method of creating and transmitting information, which relies on paper, is being rapidly supplanted by the use of computers and the internet, which are at the vanguard of this transformation. The benefits are undeniable, with effectiveness and velocity being the most important factors to consider. In spite of this benefit, many individuals have been dissuaded from using this platform for E-transactions due to the absence of clear legal restrictions.

Writing and signatures are necessary for legal recognition in addition to oral evidence and paper records in traditional evidentiary practice. This requirement is the primary obstacle standing in the way of the expansion of E-commerce from both a legal and a practical aspect. Because paperless transactions are no longer essential thanks to e-commerce, it is now of the highest necessity to make major modifications to relevant laws and legislation. Additionally, E-commerce has been a driving force behind the expansion of international trade ⁹⁵.

The Internet has shown to be an excellent instrument for performing commercial transactions or contracts online throughout the years. To build solid business partnerships, the same features that are necessary to satisfy offline contracts, such as

⁹⁵ Kamlesh N Agarwal & Amit Lal, et al., *Business on The Net An Introduction To The What's & How's Of E-Commerce*, Macmillan India Limited, (2000)

competency, consent consideration, lawful object, and so on, must be applied to E-contracts. To create assurance, parties must guarantee that Internet-controlled Electronic connections are legally binding and enforced in the same way that traditional offline contracts are.

The net has made it easier for corporations and regular people to engage in constructive activity. It has necessitated a far faster familiarisation with contract law⁹⁶. On the surface, the Internet casts doubt on many aspects of E-business transactions, including the development of enforceable E-contracts and their admission authority, as well as validity, which requires verification and signature. As a result of the combination of ordinary law establishment's command and law-making change, the legal norms guiding the formation of enforceable E-contracts are becoming increasingly compelling. The researcher focused on the legal consequences of E-contracts in this chapter.

4.2.Laws Pertaining E-contracts

E-contracts are currently gaining popularity in India. Because traditional law does not address the issues surrounding e-contracts, a new and strict regulation is required to control them. This chapter is devoted to discussing the legal aspects of e-contracts. In the Indian context, the IT Act, 2008 might be regarded to have resolved some of the challenges that emerge in the establishment and validity of E-contracts. The IT Act has altered several statutes, including the Indian Evidence Act, the IPC, and the CRPC, Some of the legislation will be examined in this section from the perspective of E-contracts.

4.3.The Indian Contract Act, 1872

We understand it, and some of us have inadvertently incorporated ourselves into the E-world. In the modern world, an e-contract might be anything from making an online purchase to ratifying a treaty internationally. An agreement is reached through E-communication during the offer, invitation to offer, counteroffer, acceptance, and other stages of an E-contract. One should first comprehend what a contract is and its

⁹⁶ ibid

fundamentals before knowing anything about E-contracts. All contract laws and regulations are governed by the Indian Contract Act of 1872⁹⁷.

The Act's Sections 1 to 75 cover general contract principles that apply to all types of transactions. Since a thorough understanding of these ideas is necessary to understand the nuances of E-contracts, it would be good to briefly summarise the fundamentals of contracts here.⁹⁸

The parties are free to establish their rights and responsibilities based on the ICA's essential principles, and the law will continue to uphold such rights and obligations even after they have been developed.

4.3.1. Formation of Contracts

According to Section 2(h) of the ICA, "a contract is an agreement enforceable by law." The definition of agreement in S. 2(e) of the ICA is "every promise and every combination of promises comprising consideration for each other." S. 2(b) of the ICA explains 'When a proposal is accepted, it becomes a promise.' According to these definitions, a contract is an agreement; an agreement is a promise; and a promise is an approved proposition. In the end, every contract is the outcome of a proposal from one party and its acceptance by the other⁹⁹.

The ICA's Section 10 outlines the components needed to create a legally binding contract. This is what it says: If two parties freely consent, are legally able to enter into a contract, have a lawful consideration, and have a legal purpose, and nothing in this statement specifically declares that the agreement is void, then it is a contract. Thus, the essential elements of a valid contract are further explained in detail:-

An Agreement : As was mentioned earlier, in order to constitute a contract, there must first be an agreement. An agreement has two elements, which are referred to as the "offer" and the "acceptance." The person or entity that makes the offer is referred to as the proposer (offeror), and the person or entity that accepts the offer is referred to as the proposee (offeree). As a direct consequence of this, an agreement will always involve

⁹⁷ Indian Contract Act, 1872

⁹⁸ Neha Bahelia, E-Contracts: An Analysis From An Indian Perspective, SSRN, 1-7,(2022)

⁹⁹ E-contracts- contracts executed under a digital signature, hairani &Co. ADVOCATES AND SOLICITORS, https://hariani.co.in/newsletters/14083_Hairani%20&%20Co.%20Newsletter%20-%20E-contracts%20- %20contracts%20executed%20under%20a%20digital%20signature.pdf

two primary participants.¹⁰⁰ In order for there to be consensus-ad-idem, or "meetings of mind," it is necessary for all of them to be considering the same topic in the same manner.

The Agreement Should Be Made By The Free Consent Of The Parties (S. 13-22) : It is claimed that two or more persons have consented to something when they agree on something else in the same meaning. The parties' consent to the agreement ought to be voluntary and wholehearted. When consent is given voluntarily, it is not the product of coercion (as defined in section 15 of the ICA), undue influence (as defined in section 16 of the ICA), fraud (as defined in section 17 of the ICA), misrepresentation (as defined in section 18 of the ICA), or mistake (subject to the restrictions of sections 20, 21, and 22 of the ICA). It is argued that consent was thusly caused when it is determined that the individual in question would not have given their approval in the absence of such factors as coercion, undue influence, fraud, deception, or mistake¹⁰¹.

The Agreement Should Be Entered Into Between Parties Competent To the Contract : In order to successfully engage in a contract, both parties must possess the necessary level of mental capacity. According to Section 11 of the ICA, a person is competent to enter into a contract if they meet the following criteria: (i) they have reached the age of majority, (ii) they are of sound mind, and (iii) they are not prohibited from entering into contracts by any legislation to which they are subject. As a consequence of this, there is a possibility that there is a shortfall in the capacity of the parties to the contract. This deficiency in capacity may be due to factors such as minority, insanity, idiocy, drunkenness, or status. As a general rule, the agreement is null and void if any of these flaws are present in one of the parties to the contract.

It Should Be For Lawful Consideration: Consideration on the part of both parties is required for an agreement to be considered legally enforceable in any jurisdiction. Consideration is the monetary amount that one party pays to the other in exchange for the promise made by the other party. However, the cost of this decision does not have

¹⁰⁰ JAIMALA CHAHANDE An Analytical Study on E-contract: Its Legal Validity and Jurisdiction,3 IJLM&HU, 8-10, (2020)

¹⁰¹ ibid

to be quantified in monetary terms. If there is no other consideration involved, the agreement is reduced to the status of a simple promise and is not legally binding. In addition, the consideration in question has to be honest and above board.

It Should Be With A Lawful Object: The agreement must also have a valid aim, which cannot be something that would put it in breach of the law. Any agreement that leads to the commission of a crime is regarded as null and void, and it is impossible under any circumstances for such agreement to be called a contract. For instance, if A rents out his flat to B with the idea that B will use it for criminal activities such as bomb manufacturing or prostitution, then the arrangement is invalid and unlawful. As a direct result of this, it is impossible to classify an agreement of this kind as a contract that is enforceable by law¹⁰².

It Is Not Expressly Declared To Be Void: Sections 25 to 30 of the Indian Contract Act expressly state that certain sorts of agreements are null and void. For instance, in accordance with Section 26 of the ICA, a court has ruled that a contract that prohibits a couple from getting married is invalid. In a similar vein, agreements that hinder court processes, agreements that are confusing, agreements that include wagering, and agreements that restrict commerce are all explicitly determined to be invalid.

Intention To Create A Legal Relationship: In order for an agreement to be legally binding, the parties involved need to be committed to the idea of forming a legitimate partnership. In English law, it is a well-established concept that in order for a contract to be made, the parties must share the same purpose to enter into legal obligations. If this intention is not present, the contract cannot be formed¹⁰³.

¹⁰² Goldsmith, *Against Cyber Anarchy*, 65 CLR1199, 1239-1245, (1998)

¹⁰³ FindLaw's team, *What Is the Most Common Legal Remedy for a Breach of Contract?*, FindLaw, (Jan22,2018), <https://www.findlaw.com/smallbusiness/business-contracts-forms/what-is-the-most-common-legal-remedy-for-breach-of-contract.html>

4.4.The Information Technology Act 2000

Many different laws apply to different aspects of online business. The necessity of writing records and writing signatures on paper, as well as any other concerns connected to the recognition of E-records and signatures as proof, are two examples of the kinds of obstacles that can be overcome by certain regulations in order to facilitate E-commerce. These obstacles can either be genuine or imagined. While some laws may try to expand or adapt the existing regulation of commercial activity to encompass comparable aspects of E-commerce like security, taxation, privacy, and so on, others may control the precise design of certain E-record keeping and signature processes.

A new age of business and financial dealings has come to fruition as a direct result of the rapid growth and huge impact that E-commerce is having on our social and economic activities. This is because the IT industry has exerted a significant amount of influence in recent years. The IT legislation of 2000 tackles a wide variety of significant legal matters, one of which is the facilitation of E-commerce as well as E-transactions done by the government. This is one of the many essential legal concerns that are addressed by this legislation. The principle behind the IT Act is to maintain an attitude that is not biased towards any particular technology, while at the same time giving equal weight to both paper and E- forms of commerce¹⁰⁴.

The researcher won't go into great detail on the IT Act 2000 in this chapter and will focus on the e-contract provisions in the act:-

Digital Signatures: Cryptographic algorithms are the building blocks of digital signatures. These algorithms not only secure the privacy of users but also verify the authenticity of communications and their origin. The algorithms, keys, and codes that are used in these procedures are typically all brought together. In contrast to symmetric cryptography, which encrypts and decrypts communications using just a single key, asymmetric cryptography makes use of two keys: one of which is public (given that both parties are aware of it), and the other of which is private (given that only one of the parties is aware of it)¹⁰⁵.

¹⁰⁴ Arshiya, E-Contract: A New Normal,2 IJIRL,(2020)

¹⁰⁵ Jose Carlos Erdozain, Encryption Technologies and Digital Signatures, 27 IBL, (1999)

The vast majority of traditional signatures are on the concept of symmetrical approaches, such as a door that can only be opened with four keys to a lock, two on each side of the door. This is an example of a conventional signature. The door can be opened once both parties have successfully hidden the door's keys within, at which point the parties will know for certain that they will be able to conduct secure negotiations via the opening. The roles of evidence, approval, efficiency, and logistics all fall under the purview of signatures. In order for digital signatures to accomplish these core aims, they need to be capable of performing authentication on both the signer and the document. These methods are essential components of what is commonly referred to as a non-repudiation service and function as tools for eliminating forgers and impersonators. Because of this, it is impossible for an individual to unilaterally terminate or alter legal obligations that are the outcome of computer-based transactions. Dispatch of E- Records, Attribution of E- Records, and Acknowledgment of E- Records are the topics that are covered in Sections 11, 12 and 13, respectively, of Chapter IV. These sections include clauses that pertain to E-contracts.

Attribution Of E- Records: In the following situations, it is mandated by Section 11 that the author of the E- record that is being considered must be credited to the context that it is being considered.

Acknowledgement of Receipt: If the author and the recipient have not agreed on a specific technique, Section 12 (1) of the IT Act, explains the several alternatives for recognising receipt of an E-record. Any form of communication is one way to acknowledge something¹⁰⁶.

Time And Place Of Dispatch And Receipt: In Section 3 of the IT Act 2000, there is a provision that covers the authentication of E- records through the use of an E-signature¹⁰⁷.

¹⁰⁶ Ankit Singh, Regulating E-commerce in India a Work in Progress, 2 INT'L J.L. MGMT. & HUMAN. 130 (2019)

¹⁰⁷ *ibid*

4.5.The Information Technology(Amendment) Act 2008

The Indian IT Act of 2000 was based on the Model Law on E- Commerce, which was approved by the United Nations Commission on International Trade Law. This law served as the basis for the legislation. It was recommended that in light of the fact that it is essential for there to be uniformity in the laws that are applicable to alternatives to paper-based methods of communication and information storage, all states that desire to adopt a law for the contested purpose supply the aforementioned Model Law free of charge in order to enact or amend their laws. This proposal was developed in light of the requirement for consistency in the regulations that apply to communication and information storage alternatives to paper-based techniques. The Act was passed to provide legal support for transactions made through internet communication and other types of digital data interchange, sometimes referred to as digital commerce. It was done to streamline the process of sending E- papers to government agencies.

This involved transitioning away from traditional forms of communication and information storage technology, such as paper-based systems. In addition, it was decided that it was needed to put the previously stated resolution into action and achieve more progress towards the effective delivery of government services through the use of dependable E-records. This was considered to be essential after it was established that it was essential to put the resolution into action. On June 9, 2000, the Act was granted the support of the President, and he signed it into law to make it official¹⁰⁸. The Act was then considerably revised in 2006 and again in 2008, with the following goals in mind:-

- The protection of personal data and information, as well as the implementation of security practices and procedures related to the various applications of E-communications, has become increasingly important as a result of the proliferation of information technology-enabled services such as e-governance, e-commerce, and e-transactions. This is due to the fact that these services allow for the transfer of information E-ally. As a direct consequence of this, they are responsible for adhering to the guidelines established by the IT Act. Because protecting vital information infrastructure is essential to ensuring the continued well-being of the nation as a whole, as well as the health and safety of its

¹⁰⁸ ¹⁰⁸ Jaimala Chahande, An Analytical Study on E-Contract: Its Legal Validity and Jurisdiction, 3 Int'l J.L. Mgmt. & Human. 1 (2020).

individual citizens, it is of the utmost importance that such infrastructure be designated as a protected system in order to limit who may have access to it¹⁰⁹.

- As the use of computers and the internet has become more widespread, new criminal behaviours have arisen to make use of these technologies. The E-distribution of pornographic content, video voyeurism, data breaches and leaks by intermediaries, and E-commerce scams such as personation, often known as phishing, identity theft, and the spread of inflammatory messages via communication services are all examples of these types of crimes.
- In 2001, the United Nations Commission for International Trade Law (UNCITRAL) published the Model Law on E- Signatures. It is now necessary to provide an alternate technology for E- signatures in order to comply with the aforementioned Model Law because the IT Act's present requirements link digital signatures to a specific technology¹¹⁰.
- The IT(Amendment) Act of 2008 specifies the conditions under which service providers may receive authorization from the federal or state governments to install, maintain, and upgrade computerised facilities as well as to collect and hold the appropriate service fees for rendering such services.

The researcher has tried to explain some of the important provisions pertaining to E-contracts under the IT Amendment Act 2008 written below:-

1. Digital Signature Authentication Of E- Records

In order to verify the integrity of the E- record, the Act makes it possible to authenticate it by encrypting it and then converting it from its original form into another E-record using a hash function and an asymmetric cryptosystem. A hash function is a method that converts one set of bits into another set, known as the hash result, which is frequently less than the original set. This is carried out because, every time the method is run with a certain E- record as its input, it will always provide the same hash result. The technique may provide the same hash result for two different Electrical data sets, making it possible to recreate or construct the original E-record using the method's hash

¹⁰⁹ Shivani Verma & Yash, Critical Analysis of the Junctures between E-Contract and Indian Legal System, 17 *Supremo Amicus* 547 (2020)

¹¹⁰ Jaimala Chahande, An Analytical Study on E-Contract: Its Legal Validity and Jurisdiction, 3 *INT'l J.L. MGMT. & HUMAN.* 1 (2020).

result. The user's public key can be used to get access to a database. A functional key pair consists of a public key and a private key that are unique to each subscriber.¹¹¹.

2. Authentication Of E- Records By Use Of E- Signature.

A subscriber can verify any E-record by employing an E-signature or another trustworthy E-authentication mechanism that may be indicated in the schedules. This can be done in a number of different ways. To ensure that the E-signature can be relied upon:

- Depending on the conditions, only the signatory or authenticator is linked to the generated signature information or authentication information throughout the framework in which they are utilised; these connections are unique to the data.
- At the moment of signing, the signatory or authenticator, as appropriate, had control over the signature creation or authentication data, and no one else did.
- After applying the E- signature, it is impossible to change it without being noticed¹¹².
- Information that has been altered after being authenticated by an E-signature can be identified.
- It also satisfies additional conditions.

The method that must be followed in order to ascertain who attached the signature can be specified by the federal government, which has the ability to do so. By publishing an announcement in the Official Gazette, the Central Government is able to add, remove, or modify any credible E-signature or E-authentication device, as well as the procedure for doing so. This is done in accordance with the requirements outlined in the Official Gazette. This may be accomplished by going either forward or backwards. Any approach or procedure of this kind is obliged to be disclosed to the House of Representatives as well as the Senate.

¹¹¹ Bishwajyoti Pal, Brief Introduction to E-Contracts, 5 INT'L J.L. MGMT. & HUMAN. 1841 (2022)

¹¹² *ibid*

3. E-Records:

Regardless of other provisions of the law, if a statute requires that information or another item be in writing, typewritten, or printed, such requirement is met if the information or other thing is -

- a. rendered or made available in an E- form; and
- b. accessible so as to be usable for subsequent reference.

4. Legal Recognition Of Electronic Signatures

Regardless of any other provisions in the law, if the information or matter is authenticated using an E-signature applied in accordance with the guidelines of the Central Government, the requirement will be deemed satisfied in situations where a law specifies that a signature must be attached to a document or that information must be authenticated in some other way. This applies even if the law specifies that the information must be authenticated in some other way¹¹³.

5. Validity Of Contracts Formed Through Electronic Means

A contract won't be ruled unenforceable just because it was created using an E- form or technique when communicating, accepting, and withdrawing offers and acceptances, as necessary, during the contract formation process.

6. Secure E- Signature

Each subscriber has a one-of-a-kind digital signature in their account. The subscriber's identity may be determined by using the signature once it has been affixed to an E-record and verified. It is presumed that the Subscriber has full and complete control over the situation. The signature contains information about the moment it was appended to an E-document as well as the methods that were taken to produce it. If an E- document that has been signed is then altered in any way, the signature will no longer be legitimate. An electronic signature will be deemed safe if it can be shown that at the time it was requested, it was solely within the signatory's control, and that the signature data (private key) was saved and used in the authorised manner.¹¹⁴

¹¹³ Paras Gupta & Neha Sharma, India's E-commerce Rise: Performance of E-Contracts under Sale of Goods Act, 1930, 5 INT'L J.L. MGMT. & HUMAN. 1421 (2022)

¹¹⁴ B. Sreelakshmi, The Indian Contract Act to the ITAct: Analysis of Validity and Legality of E-contracts in India, 5 INT'L J.L. MGMT. & HUMAN. 134 (2022).

7. Certifying Authority To Issue An Electronic Signature Certificate.

A request for the issue of an ESC can be submitted to the CA by any individual. The application must be constructed in a way that adheres to the standards set out by the central government. Along with the necessary fee, which cannot be any higher than twenty-five thousand rupees, the application must be handed over to the Certifying Authority. Different costs could be associated with different application classes. A certification practice statement or, in the lack of one, a statement containing any extra information required by law must be included with the application together with the fees.

After considering the application and the certification practice statement, the CA may decide to either grant the ESC or deny the application for a variety of reasons that will be documented in writing.¹¹⁵

8. Suspension Of E-Signature Certificate

According to section 37, any ESC which is issued by a CA can be suspended by the CA on the occurrence of one of the following events:

- on receipt of a specific request to that effect from the subscriber of an ESC or a person duly authorized by such a subscriber.
 - if the CA is of the opinion that it is in the interest of the public to do so
- The suspension of the ESC by the CA is required to be communicated to the subscriber. The CA cannot suspend the ESC for a period of more than 15 days, without providing the subscriber, a reasonable opportunity of being heard.

9. Revocation Of E-Signature Certificate

According to Section 38, in order for a CA to cancel an ESC that it has provided, the subscriber or a representative that the subscriber has lawfully appointed in this respect must make a direct request to the CA. In the case that the subscriber passes away, the CA has the ability to terminate the ESC, provided that the subscriber was a living individual. The CA has the right to revoke the subscriber's ESC if the subscriber's

¹¹⁵ Jaimala Chahande, An Analytical Study On E-Contract: Its Legal Validity And Jurisdiction, 3 Int'l J.L. Mgmt. & Human. 1 (2020).

corporation is dissolved. It is possible for the CA to revoke the ESC in the event that the subscriber's corporate entity is dissolved.

If the Certification Authority (CA) determines that there has been a material misrepresentation or concealment of the facts in the ESC, that any requirement that was necessary for the issue of the ESC has not been met, that the CA's private key or security system has been compromised in a way that materially affects the ESC's reliability, or that the subscriber has been treated unfairly, then the CA may revoke the ESC with immediate effect after providing the subscriber with a reason for doing so. In the event that the CA makes the decision to revoke an ESC, the subscriber is obligated to be informed of the decision. Any suspension or cancellation of ESCs that is carried out by the CA is obligated to be made public in one or more of its public repositories. This is the case regardless of whether the action was taken temporarily or permanently¹¹⁶.

10. Acceptance Of The E- Signature Certificate

According to section 41, a subscriber is regarded to have authorised an ESC if they publish or allow the publication of one or more ESCs to persons in a repository or express their consent in any other manner. This includes allowing the publishing of one or more ESCs to individuals in a repository. When a subscriber accepts an ESC, they are attesting to the fact that they are legitimately permitted to possess the private key that corresponds to the public key that is provided in the ESC and that no one else may lawfully depend on the information that is contained in the ESC. This is a prerequisite for being able to use the ESC. Furthermore, the subscriber's declarations to the CA and any other documents pertinent to the data in the ESC are, to the best of the subscriber's knowledge, accurate¹¹⁷.

¹¹⁶ Khush Bhachawat, E-contracts In India: Challenges And Complexities, 4 Int'l J.L. Mgmt. & Human. 3502 (2021).

¹¹⁷ Devesh Pathak & Dr. L. S. Rajpoot, Legal Impact of Technology on E-contracts Communication in India, 3 A IJFA, (2015)

4.6. Indian Evidence Act, 1872

The IT Act, which was just passed, brought about some regulation of cyberspace. The topic of whether E-contracts can be admitted as evidence arises since it is common knowledge that contracts are admissible as evidence in legal proceedings. The IT Act's Section 92 and Schedule II provide the answer to this query. The researcher shall discuss all pertinent provisions of the Evidence Act of 1872 in this section.

a. SECTION 22A

The most recent addition to the Evidence Act is Section 22A. The new provision's goal is to outline the conditions under which a spoken admission related to an E-record's contents may be proven¹¹⁸. The clause prohibits oral testimony pertaining information in an E-record. The rare circumstance where the court's acceptance of an Electronically filed document has been questioned is then explored. In cases where the accuracy of the record is contested, the clause states that oral admissions pertaining to its contents may be used as evidence.

b. SECTION 47A

This new element was included to assure the importance of professional judgement in determining the legitimacy of an E-signature. According to the new legislation, when a court must decide whether a person's E-signature is legitimate, the certifying authority that issued the E-Signature Certificate is a significant fact. A "certifying authority" is a person who has been authorised to give an E- signature certificate under Section 2471 of the IT Act of 2000¹¹⁹.

c. SECTIONS 65A and 65B

The rule in Section 65B can be utilised to support the information in E- records, according to the Section 65A provision. The technique for demonstrating the contents of E- documents are outlined in Section 65B, primarily to allow demonstration through supporting evidence.

¹¹⁸ *ibid*

¹¹⁹ Annapurna Pattnaik, E-contract and its enforceability in respect to the Indian Evidence Act, AIJRHASS,05-08,(2019)

Any information contained in an electronic record that has been printed on paper, copied, recorded on optical or magnetic media, or otherwise reproduced may be referred to as a document under Section 65B.

This was an argument that, for the sake of evidence, the output of a computer should be treated as a document.

The requirements that must be met in order for computer output to be accepted as evidence are outlined in Section 65B(2). These conditions are:

- The information was included in the computer output that was made by the computer at the time it was routinely used to store or process data connected to tasks that the person who had legal authority over it typically carried out. The data was generated when the computer was being utilised to save or analyse data linked to duties that the person in charge of it regularly performed. This data was generated whenever the computer was utilised in its usual manner to either store or process information in connection with a job.
- During that time, the computer routinely provided information of the same kind as that found in the E-record or from which the information is derived as part of those activities¹²⁰.
- The computer was in normal working order during the relevant time, or if not, any period during which it was not in proper working order or out of operation had no bearing on the E-record's accuracy.
- The data that are stored in the E-record are either a duplication of, or a derivation from, the data that were input into the computer when those processes were being carried out normally.

If the information was processed on or passed into numerous connected or later computers, all of the computers used in the process should be treated as a single computer.

A certificate must accompany any statement required to be presented as evidence under Section 65B. The certificate must identify the E-record containing the statement, describe how it was made, identify the machine used to create the record to verify that

¹²⁰ Neha J. Joshi, A Study of Challenges and Benefits of E- Commerce,6 IJRHAL,25-32,(2018)

it was created by a computer and attest to compliance with Section 65B(2) requirements. A person holding a senior official position with authority over the conduct or administration of the pertinent activities must sign the declaration. The statement serves as proof of the facts mentioned in the certificate and was made to the person's knowledge¹²¹.

Information is deemed to have been sent to a computer for the purposes of Section 65B if it is done so in any suitable format, directly or indirectly, with or without human involvement, and using suitable tools. Even if the computer is used outside of those tasks, it also includes information provided by an official for the purpose of storing or processing the information.

Some of the Sections are discussed below:-

d. SECTION 67

The evidence for a digital signature is covered in this recently added section. It specifies that unless it is a secure digital signature, every subscriber whose digital signature is asserted to have been linked to an E- record must provide proof of their identity.

e. SECTION 73A

After the incorporation of Section 73, the subsequent brand-new section that will be presented is Section 73A. In order to determine whether or not the signature is legitimately that of the person to whom it is attributed, the court may make an order ordering the person to whom the digital signature is ascribed, the controller, or the certifying authority to provide the digital signature certificate. This will allow the court to determine whether or not the signature is legitimately that of the person to whom it is attributed.

f. SECTION 81A

According to Section 81A, any E-record that pretends to be the Official Gazette or an E- record that a person is compelled by law to preserve must be deemed to be true by

¹²¹ Sreeja Chatterjee, Types of E-Contracts and Their Legal Compliance: Guiding Netizens towards Fair and Transparent Internet Usage, 4 INT'L J.L. MGMT. & HUMAN. 1548, (2021).

the court. Additionally, any E-record that purports to be the Official Gazette must also be presumed to be true. The E-record has to be meticulously produced and maintained in a way that, in essence, satisfies all of the legal criteria¹²².

g. SECTION 85A

Any Electronic document that incorporates the E-signatures of the parties and purports to be an agreement will be presumed to have been signed by those parties on the basis of this clause, which gives the court the ability to make that determination. This pertains to any E-document that contains the digital signatures of the persons involved.

h. SECTION 85C

With the exception of material that is identified as subscriber information but has not been checked, the information that is presented in an E-signature certificate is presumed to be accurate if it was accepted by the subscriber unless there is evidence to the contrary.

i. SECTION 88A

According to the provision, the court may make the presumption that an E-communication that has been transmitted by the sender to the intended recipient through an email server corresponds to the message that the sender has written into his computer in order to transmit it. On the other hand, the court will not make any assumptions about the identity of the person who sent such a communication¹²³.

j. SECTION 131

To accommodate both Electronic records and documents, this part has been substituted. According to the new rule, nobody will be forced to show documents they have or E-records they are in charge of that any other person would have the right to withhold if they were in their custody or control unless that person gives their approval. Agents, attorneys, mortgagees, trustees, and other people who regularly possess documents on behalf of others are typically in this category. The protection that Section 130 offers to

¹²² Srishti Aishwarya Shrivastava, *The Enforceability of E- Click-wrap and Browse-wrap Agreements*, 77 NLTU LR , (2017)

¹²³Paras Gupta & Neha Sharma, *India's E-commerce Rise: Performance of E-Contracts under Sale of Goods Act, 1930*, 5 INT'L J.L. MGMT. & HUMAN. 1421 (2022)

a witness who is not a party to a lawsuit is also extended to these individuals by this section. Finally, it can be claimed that in terms of their evidentiary value, E-contracts are nearly identical to other hard copy contracts, and in the event of a discrepancy, certain prerequisites fill in the gaps. Due to the IT Act's legalisation of E-contracts, all E-contracts are valid agreements, and anyone who violates the terms and conditions may be held accountable. Many adjustments have now been made in an effort to achieve conceptual clarity.

4.7. Civil Procedure Code 1908

The question of whether or not Section 65B of the IT Act and Section 20 of the CPC, 1908, are compatible will be decided by the Indian courts. The grounds for determining jurisdiction are laid forth in Section 20 of the Civil Procedure Code in the event that the parties do not make a choice about the forum in which the case will be heard¹²⁴.

The court has to look at the defendant's domicile, place of business, or the site where the claim initially arose in order to determine whether or not it has jurisdiction over the case. Whenever there is a disagreement over a contract, one of the most significant factors to take into account is the location where the agreement was initially made and approved. When an offer is accepted, it is customarily understood that this marks the beginning of the contractual relationship. When determining whether court has jurisdiction, you need also take into account the place where the transaction will be carried out¹²⁵.

The word "cause of action" refers to each and every significant fact that the plaintiff has to prove in order to validate their demand for some form of remedy. Even if only a small part of the paperwork is challenged, the entire case can be heard at the court where it was initially filed.

According to Section 20 of the CPC, a lawsuit can be brought against a defendant no matter where the defendant maintains a place of business or where the circumstances that gave birth to the cause of action occurred. In the event of a breach of contract, a cause of action is established, and a lawsuit may be launched either in the location

¹²⁴ Mrinali Komandur, Jurisdiction and Enforcement of E-commerce Contracts, 5 IJCLP 90 (2017)

¹²⁵ Shubhada Gholap, E-contracts In India: An Overview,6 IMPACT: IJRHAL, (2018)

where the contract was formed or in the location where the defendant conducts business.

On the other hand, the IT Act combines the location of the company with the location of the site where the contract was produced. This is done in order to determine which state has jurisdiction over the matter¹²⁶

¹²⁶ Nandan Kamath, Law To Computers, Internet And E-Commerce: A Guide To Cyber Laws, Universal Law Publishing Co. Pvt. Ltd, (4thed 2009)

CHAPTER 5:

Analysing Judicial Enforceability And Jurisdiction Pertaining To E-Contracts

5.1.Introduction

This chapter investigates the methodology of judicial interpretation, as well as its approach and interpretation, with reference to laws and jurisdictions from India and beyond. The internet is typically utilised as the principal channel for the formation of E-contracts. In terms of market penetration, the Internet is nothing more than a virtual marketplace that can be accessed from any computer, located in any part of the world. The use of E-contracts can be completed on a variety of websites, many of which are accessible over the Internet. Offline and online contracts both result in duties for both parties. In the E-market, these contractual duties are owed by the parties involved, and there may also be a presence of physical attributes. The nature of the internet and computer systems as a worldwide web of networks evolved on a daily basis or over the course of time, and advancements in IT could give rise to a variety of difficulties pertaining to the creation, implementation, and jurisdiction of E-contracts.

E-contracts are becoming increasingly popular among consumers. The vast majority of the organization's business is conducted online. Individuals and companies no longer engage in direct trade with one another or with other firms and individuals. Computers are being used more often by individuals and organisations to generate, transmit, and store information in an E-version rather than the more conventional paper sheets. Information that is stored Electronically has many advantages over information that is retained on paper, including lower costs, an easier storage and retrieval process, increased speed, and increased longevity. People in business nowadays are becoming more aware of the perks that come with completing transactions online¹²⁷.

Another thing to keep in mind is that anytime something new is introduced into society, it brings with it both advantages and downsides. This is something to bear in mind whenever something new is introduced into society. As a direct result of this, the

¹²⁷ Farooq Ahmad, *Cyber Law In India*, 236, 2nd ed New Era Law Publications, Delhi, (2005)

change brought about by the internet has both advantages and disadvantages. These cons need to be governed by cyberspace legislation, which our culture requires. The IT Act of 2000 is one example of such a law, although it is in no way enough on its own. The United Nations Commission on International Trade and Law was the agency that first created a model piece of law for the conduct of business via the internet in the year 1996. (UNCITRAL). On January 31, 1997, A resolution endorsing the idea was unanimously accepted by the UN General Assembly. Additionally, India was a signatory to this model legislation, which required it to update its own laws to comply with the model law.

Several sections of the Civil Procedure Code (CPC), 1908, are responsible for determining the court's jurisdiction in the vast majority of civil cases. Either the domicile of the defendant or the place where the alleged wrongdoing occurred is acceptable. However, this is precisely the challenge that we face when trying to determine the jurisdiction over cyberspace. The term "cyber-jurisdiction" refers to the judicial authority that is exercised over disagreements that emerged as a result of parties communicating with one another through the medium of cyberspace. The fact that cyberspace is not a tangible domain, in which the location of a court's jurisdiction may be easily established, should be brought to the attention of readers. Instead, it is a virtual world, which means that its jurisdiction is also in space, making it difficult to pinpoint exactly where it falls. There is no street address, and even if there were one, it would not be apparent.

5.2. Legal Enforceability Of E-Contracts

The use of E-contracts has undergone significant transformation over the past few decades, which has resulted in both advantages and disadvantages. While there are certain challenges with e-contracts that may be resolved by using the general contract principles, new and more sophisticated problems have emerged. One such problem is the question of whether or not agreements including shrink-wrap, click-wrap, and browse-wrap may be legally enforced. Due to the fact that they determine the terms and circumstances of online transactions, these agreements have garnered a lot of interest in the world of online commerce. The courts have had a difficult time determining the legitimacy of these agreements and the extent to which they are enforceable, taking into account factors such as the visibility of the terms, the user's

knowledge, and express assent. The purpose of judicial interpretation is to arrive at a solution that strikes a balance between the rights of consumers and the interests of businesses. It depends on the circumstances, but click-wrap and browse-wrap agreements are typically respected when the conditions are easily available¹²⁸. Shrink-wrap agreements, on the other hand, should be approached with caution. Standard contract standards are utilised by the courts, with consideration given to factors such as prominence, clarity, user rejection, and negotiation alternatives. In order to foster equity and transparency within the digital economy, the judicial process is essential in the process of developing the legislation governing E-contracts¹²⁹.

The judicial approach and interpretation for enforceability of shrink-wrap, click-wrap and browse-wrap agreements are discussed in detail:-

1. Enforceability of shrink-wraps agreements

The term "shrink-wrap" agreements derive its name from the clear plastic wrapping that many various kinds of software are shipped in. They include a message that notifies the user that by removing the shrink-wrap, they are confirming that they agree to the terms of the programme that is included inside. This message may be seen on the product packaging.

Step Saver Data Sys. Inc versus *Wyse Tech*¹³⁰ was a pivotal case in the enforcement of shrink-wrap licences. The complaint focused on the form of the contract as well as the question of whether or not the transaction was subject to any of the shrink-wrap licencing requirements. The shrink-wrap licence, according to the Third Circuit Court of Appeals, was not included in the agreement and was not a sufficient notice of an already-existing contractual arrangement for the selling of pre-packaged computer software. The court also decided that the disclosure of an earlier, pre-existing contractual link for the sale of computer software that had already been packed was inadmissible.

On the other hand, the legislation that governs the licencing of shrink-wrap went through a significant transformation as a result of the case *ProCD, Inc. v. Zeidenberg*¹³¹. A large amount of work had been put in by ProCD to establish a database for telephone

¹²⁸ S.V. Joga Rao, Computer Contracts and ITLaw, 2nd ed Wadhwa & Co., Nagpur, (2005)

¹²⁹ S.V. Joga Rao, Computer Contracts and ITLaw, 2nd ed Wadhwa & Co., Nagpur, (2005)

¹³⁰ Step-Saver Data Sys., Inc.v Wyse Tech 939 F.2d 91 (3d Cir.1991)

¹³¹ Pro CD, Inc.v Zeidenberg 86 F.3d 1447 (7th Cir. 1996)

directories, and they had made it available for usage under both commercial and individual licences. The outside of the software package made it abundantly clear that the user's use of the product was subject to the terms and conditions of the associated licence. These terms and conditions were also included in the user's manual and were shown on the user's screen while they were using the programme.

In spite of being informed of the licencing limitations, the PhD student Zeidenberg chose to ignore them and proceeded with the purchase of the consumer package of the database. He started selling the data via the internet at prices that were lower than those for the ProCDs. The original determination made by the District Court was that the licencing conditions were not a part of the agreement between ProCD and Zeidenberg since the agreement was drafted before Zeidenberg discovered or consented to the terms that were included within the box.

However, the ruling was overturned by the 7th Circuit Court of Appeals, which acknowledged that printing the entire licence conditions on the outside of the box would be impossible. The court ascertained that the act of displaying the licence notice on the exterior of the box, providing the terms within the box, and offering the option of sending back the software for a reimbursement in case the terms were unsatisfactory, constituted a legitimate and permissible approach for both buyers and sellers to engage in commercial transactions. The court arrived at the determination that the limitations on licencing could be implemented¹³².

ProCD's decision departed from past cases such as Step-Saver and ARS, although it was found equitable in light of the circumstances. It acknowledged the practical limits of displaying lengthy licence terms on the box while also offering notice and the option to reject the conditions. However, in circumstances such as Gateway, the equities may differ, and businesses must properly express such restrictions to consumers during marketing and the initial interaction, whether through telephone or online purchase processes. Overall, the ProCD decision showed that shrink-wrap licences can be enforced even if they were not explicitly agreed to prior to the sale, so long as

¹³² Johnson David and Post David, Law and borders: the rise of law in cyberspace , 136 Stanford Law Review ,(1996)

reasonable notice of the terms is supplied and the buyer has the choice to reject the terms if they are unsatisfactory¹³³.

2. Enforceability of Click-Wrap Agreements

When software producers began delivering their wares in forms other than physical CDs, a need arose for click-wrap agreements to govern the distribution of their software. These formats include pre-installed software and software that is downloaded from the internet. Users are obliged to either choose "I agree" or "I do not agree" after having terms and conditions of the licence shown to them. In the event that the user does not consent, the procedure will be terminated. There has been a lot of discussion all around the world over whether or not click-wrap agreements can actually be enforced.

When compared to shrink-wrap agreements, which are packaged with software discs and are presumed to be accepted when the product is opened, click-wrap agreements can be held to a higher standard of enforcement. In contrast to shrink-wrap agreements, click-wrap agreements let customers view the terms of the agreement before they are required to click "I agree." Users in the United States are considered to be legally bound by click-wrap agreements if the conditions of the agreement are displayed on the site in a manner that is both clear and obvious, and the visitor has to press a button to indicate his or her approval of the terms after having sufficient time to read them. Click-wrap agreements are more enforceable than shrink-wrap agreements, which are bundled with software discs and are deemed accepted when the software is opened¹³⁴. Click-wrap agreements, as opposed to shrink-wrap agreements, allow consumers to see the conditions before agreeing to them by clicking "I agree."

The enforceability of click-wrap agreements has been addressed in a number of noteworthy legal decisions. In *Hotmail Corporation v. Van Money Pie Inc*¹³⁵, the court ruled that click-wrap agreements are enforceable and that the defendants were obligated

¹³³ Bernhard Maier, How has the law attempted to tackle the borderless nature of the internet? 18 IJL&IT, 142-144 (2010), p

¹³⁴ Johnson David and Post David, Law and borders: the rise of law in cyberspace, 136 Stanford Law Review, (1996)

¹³⁵ Hotmail Corporation v Van\$ Money Pie Inc. 47 USPQ 2d 1020, 1998 WL 388389 (April 1998, ND Cal.)

by the website's Terms of Service. Similarly, in *Via Viente Taiwan LP v. United Parcel Service*¹³⁶, the court determined that a smart corporation should have anticipated that terms of service would be displayed during software installation.

Many click-wrap licencing claims include forum selection and arbitration clauses. Courts have generally affirmed the enforceability of click-wrap conditions. In *Caspi v. Microsoft Network*¹³⁷, for example, the court upheld a forum selection clause in a click-wrap agreement between Microsoft and a subscriber¹³⁸.

It is possible to uphold click-wrap agreements; however, the legality of doing so depends on the norms of traditional contract law, which are applied individually to each agreement. Users should take the time to study the conditions before pressing the "I agree" button because of that they are not bound by terms that they do not support.

Click-wrap contracts are a practical replacement for paper contracts in the digital world. However, companies frequently utilise too complicated language in their terms of use, leading people to select "I agree" without fully understanding the conditions. Users must read the terms carefully and take their time before agreeing to them. Users should exercise caution and carefully read the clauses before accepting these agreements until the language is simplified.

It is therefore advised to delay accepting the next time a box with extensive conditions pops up and instead take the time to study and comprehend the potential obligations and repercussions of the agreement.

3. Enforceability of Browse-Wrap Agreements

Between browse-wrap and click-wrap agreements, there are a number of key differences. The screen does not initially indicate the need for perusing wrap agreements before proceeding with computer activities. Instead, users can opt to click on the supplied URLs to see the terms and conditions.¹³⁹

Following are the key differences between the two types of agreements: Users are given constructive notice in click-wrap agreements by being shown all the terms prior to agreeing to the conditions. However, with browse-wrap agreements, the terms will

¹³⁶ *Viente Taiwan LP v. United Parcel Service* 130 F 3d 414 (1997)

¹³⁷ *Caspi Microsoft Network* 732 A.2d 528 (N.J. App.Div.1999)

¹³⁸ Faye Fangfei Wang, *Internet Jurisdiction And Choice Of Law: Legal Practices In Eu, Us And China*, 1st ed Cambridge university press, (2010)

¹³⁹ ¹³⁹ *ibid*

only be viewable by the user if they make the conscious decision to click on the link that will take them to the website containing the terms and conditions. Customers are needed to signal that they have read and agree to the terms of a click-wrap agreement before they are allowed to continue with their main purpose, which may include downloading software or buying tickets online¹⁴⁰.

In conclusion, browse-wrap agreements cannot provide consumers with any indication that a contract is being formed, which makes it more challenging to uphold such agreements. As a direct consequence of these disparities, the courts now approach the execution of browse-wrap agreements in a manner that is unique from that of click-wrap agreements.

*Specht .v. Netscape Communications Corp*¹⁴¹. is a significant case. In this instance, Netscape offered free download tools dubbed Smart Download on both their website and other download portals. On Netscape's website, the browse-wrap conditions, which contain an arbitration clause, were not immediately obvious. The link to the browse-wrap keywords had to be found by scrolling down the screen. Additionally, the software may be downloaded from non-Netscape websites without any references to the browse-wrap conditions. The wording "Please review and agree to the conditions" on Netscape's website was deemed by the court to be an invitation rather than a requirement, and as such, did not qualify as the required consent to make the arbitration provision enforceable.¹⁴² According to the court, users may still choose whether or not to accept the browse-wrap agreement, and there was insufficient evidence to support the claim that users were aware they were doing so just by using the software. The court's ruling was intended to prevent unaware users from unintentionally waiving their right to a trial.

The court disagreed with the legitimacy of the provisions in a browsing wrap agreement in *Comb .v. PayPal, Inc*¹⁴³. If the browse-wrap agreements are not

¹⁴⁰ Savin & Andrej, Jurisdiction in E-contracts and Torts - the Development of the European Court's Case Law, SSRN, (2011)

¹⁴¹ *Specht v Netscape Communications Corp.* 150 F Supp 2d 585 (SDNY 2001)

¹⁴² Zhang, Mo, Contractual Choice of Law in Contracts of Adhesion and Party Autonomy, 41 ALR, Vol. 41 2007-25, (2007)

¹⁴³ *Comb v PayPal Inc.* 218 F.Supp.2d 1165 (ND Cal 2002)

maintained, it was suggested that site owners may use the same constraints using clickwrap or shrink-wrap agreements instead. Because click-wrap licences are considered to be standard form terms, the courts have usually found them to be enforceable when they consider them. The foundation for shrink-wrap licencing is the notion that consumers accept the terms by using the programme that they have bought. This premise has been supported by the majority of courts and is the basis for shrink-wrap licencing. Browse-wrap licences have been affirmed by an increasing number of courts over the last few years. In many cases, the user may not even be aware that the contract exists, but by viewing the website.

where browsing wrap licences are not enforced frequently, do so to safeguard consumers, whereas situations where they are enforced usually involve businesses. Cases using shrink-wrap and click-wrap have allowed contracts to be enforced against customers while simultaneously defending them against onerous provisions. Businesses are more likely to be bound by the conditions of use of a website because they are typically expected to be aware of them when using the website of another company.

These case studies highlight the significance of giving reasonable notice and outlining the conditions of online contracts in detail. The importance of providing reasonable notice as well as the requirements and boundaries of contractual provisions in E-transactions are emphasised in court decisions like *Thornton v. Shoe Lane Parking Station*¹⁴⁴ and *Interfoto Picture Library Ltd. v. Stiletto Visual Programs Ltd*¹⁴⁵.

5.3. Legal Jurisdiction Of E-Contracts

Internet use and IT have spawned a market that calls for a worldwide strategy toward a cogent and predictable framework. Since both individuals and businesses want to know the criteria they need to comply with, one of the key components of E-commerce is the necessity for certainty and predictability for the contracts completed online. Without knowing which laws apply to the transaction and which laws apply to a future dispute, compliance is impossible. The crucial question is therefore how to locate the appropriate Court with the competence to decide the prospective dispute as well as

¹⁴⁴ Thornton .v. Shoe Lane parking station

¹⁴⁵ Interfoto picture Library Ltd Stiletto Visual Programmes Ltd [1989]]1 QB 433

whose legislation governs actions related to E-contracts. For contracts entered into in the same sovereignty, jurisdictional grounds have traditionally been created, placing emphasis on the defendants' presence and residence there. Therefore, territoriality serves as a key factor in the assertion of personal jurisdiction. However, it is debatable whether the old jurisdictional concepts apply and to what extent cross-border E-transactions may be regulated given the borderless nature of the internet¹⁴⁶.

According to Britannica Jurisdiction refers to the power of a State to affect persons, property, and circumstances within its territory¹⁴⁷. In addition to the adjudicative jurisdiction, which is the Court's authority and power over parties, the term "jurisdiction" also refers to the state's authority and ability to make its substantive laws applicable to specific persons and circumstances. This aspect of the state's jurisdiction is known as the "jurisdiction to prescribe." The word "jurisdiction" can also refer to the constitutionally granted (or constitutionally recognised as existing in) power and authority of a Court or judge to pronounce the law's sentence or to award the remedies provided by law upon a state of facts that have been proven or admitted, referred to the tribunal for decision, and permitted by law to be the subject of investigation or action by that tribunal, and in favour of or against persons (or a res) who present themselves before that tribunal. The ability of a court to judge cases and make a judgement about them is referred to as its "jurisdiction."

This may work to the benefit of the court. The term "jurisdiction" refers principally, but not solely, to the lawful power that the states have to enact and maintain laws. However, this is the primary meaning of the phrase. Additional definitions of the jurisdiction include a court's capacity to hear cases and issue judgements, as well as the geographic region in which a court or government agency legitimately exercises its authority.¹⁴⁸.

The approach towards the jurisdiction of E-commerce is slightly different from one another but it is in harmony with each other. In this chapter, Researcher has tried to describe the Transnational approach and Indian approach with appropriate statues and case laws to support them.

¹⁴⁶ Trakman, L. E ,THE BOUNDARIES OF CONTRACT LAW IN CYBERSPACE. 38(1)PCLJ 187–236, (2008).

¹⁴⁷ Britannica, T. Editors of Encyclopaedia (2020, February 26). jurisdiction. Encyclopedia Britannica. <https://www.britannica.com/topic/jurisdiction>

¹⁴⁸ Amani, S. Z,E-Contract in Cyber Space: Does It Really Warrant the Acceptance of “Entores” Case? 63(4) India Quarterly 1–13, (2007).

1. Transnational Approach Legal Jurisdiction Of E-Contracts

Because it determines which courts have the authority to hear cases and make decisions on a range of legal matters, jurisdiction is an essential component of legal systems. Congress possesses the jurisdiction to regulate commercial activity as a result of the Commerce Clause of the United States Constitution, and the role that the federal judicial system plays in upholding and protecting this constitutional framework is of critical significance. Simultaneously, the European Union works towards uniformity throughout its member states by enforcing legislation and directives such as the Brussels I Regulation, which specifies guidelines for jurisdiction and judicial cooperation¹⁴⁹.

In the United States, personal jurisdiction is established by the federal courts according to the guidelines outlined in the Federal Rules of Civil Procedure. They investigate to determine if there is a "long-arm law" in existence, which is a legal provision that enables a state to exercise jurisdiction over a defendant who is located in another state. If the requirements of the long-arm statute are satisfied, the court examines whether personal jurisdiction is appropriate under the Fourteenth Amendment's Due Process Clause. The Supreme Court found that when a defendant has minimal contact with the forum state, personal jurisdiction over them exists.

For instance, the "minimal contacts" threshold was established by the Supreme Court in the historic case *International Shoe Co. v. Washington* (1945)¹⁵⁰. It was decided that a defendant needed to be sufficiently connected to the forum state to anticipate being sued there. This rule makes sure that people and businesses are not subject to the jurisdiction of a court in a state with which they have no good connection.

The Brussels I Regulation significantly contributes to the harmonisation of jurisdictional laws within the European Union. It establishes uniform standards for member states to use when deciding who has jurisdiction in civil and business disputes. A company is deemed to be domiciled where its statutory seat, central administration, or major place of business is located, which is a key consideration in defining jurisdiction.

¹⁴⁹ *ibid*

¹⁵⁰ *International Shoe Co. v. Washington* 326 U.S. 310 (1945)

Additionally, great progress has been made towards the global harmonisation of jurisdictional principles as a result of the Hague Conference on Private International Law. The Convention on Choice of Court Agreements of 2005 helps to facilitate international business and investment by providing uniform standards for the use of exclusive choice of court agreements in the context of civil and commercial disputes. This ensures that the parties to an agreement have the ability to select a particular court to arbitrate any issues that may arise, offering clarity and stability to the conduct of international business.

A choice of court agreement was present in the 2012 case of *Turner v. Bank of Scotland*¹⁵¹ as an illustration. The validity of the contract was validated by the European Court of Justice, which emphasised the need of maintaining the efficiency of such agreements and safeguarding the independence of the parties involved¹⁵².

Despite the existence of these legal frameworks, problems and disagreements persist. The United Nations Convention on the Use of E- Communications in International Contracts does not specifically address jurisdiction. However, the objective of current talks is to support the development of universally recognised techniques for managing jurisdictional issues in the context of online commerce.

2. India's Approach Legal Jurisdiction Of E-Contracts

Because the laws that are applicable in India are quite similar to one another, the majority of the challenges that arise with regard to finding jurisdiction concern the court system. Because it is objective and straightforward, the former causes less complications in the event of a dispute involving E-commerce. The subjective cause of action test, on the other hand, is one that regularly generates dispute in E-commerce situations.

¹⁵¹ *Turner v Royal Bank of Scotland Plc* [1999] 2 All E.R. (Comm) 664

¹⁵² Seema Jhingan & Neha Yadav ,et.al, India: E-Contracts - Legal Validity And Jurisdiction, mondaq (15th Nov,2016)
<https://www.mondaq.com/india/contracts-and-commercial-law/544404/e-contracts---legal-validity-and-jurisdiction>

When a party to a dispute has multiple places of business, the main location is regarded as the pertinent site. The usual place of abode is regarded as the place of business if neither party has a business location. Nevertheless, it is up to the Indian courts to determine whether or not this provision is consistent with Section 20 of the CPC, 1908, which regulates jurisdiction when a choice of forum is not available.

When determining whether court has jurisdiction over a case, the courts are required to take a variety of factors into consideration. These factors include the location of the defendant's residence or place of business as well as the scene of the event that gave birth to the claim, such as the signing of the contract. The acceptance of an offer is one of the most common events that leads to the formation of a contract. The location of the performance, or the region in which the parties intended or agreed to carry out the terms of the contract, is also an important consideration.

The cause of action includes all the elements that the plaintiff must establish in order to establish their claim to the court's ruling. It excludes unimportant evidence and concentrates on the crucial details. The court whose territorial bounds that part occurred has jurisdiction over any portion of a cause of action¹⁵³.

In accordance with Section 20 of the CPC, cases are required to be submitted to a court in the same jurisdiction in which the defendant has a place of business or in which the basis for the cause of action can be found. The reason of action for breach of contract begins at the location of the contract's creation or at the location of the defendant's business operations, and this is also the location where a lawsuit may be launched against the defendant.

There is a conflict between Section 11 of the 1986 Consumer Protection Act and Section 13 of the IT Act. While the latter allows customers to register complaints in the jurisdiction where the opposing party maintains a branch office, the former establishes jurisdiction based on the main place of business. Customers are inconvenienced by this dispute, especially when the opposing party's main headquarters is outside of India.

Along with the provision for the "principal place of business" in the IT Act, this contradiction can be avoided by incorporating the line "the place of business" is that which has the closest relationship to the underlying transactions" from the Model Law.

¹⁵³ Albornoz, M. M., & Martín, N. G., Feasibility Analysis of Online Dispute Resolution in Developing Countries. 44The University of MI-ALR 39–61,(2012).

This language was not included. This would have been done to eliminate any possibility of misunderstanding that may have arisen. Courts have made it abundantly obvious that Contract formation is an important element, which paves the way for lawsuits to be brought in the location where the contract was created regardless of where the contract was supposed to be fulfilled or where the breach of the contract really took place. This permits lawsuits to be brought in the site where the contract was made regardless of where the violation of the contract actually took place.¹⁵⁴.

In terms of cyberspace jurisdiction, simply visiting a website does not constitute a cause of action. Online information is typically regarded as an invitation rather than an offer. Therefore, merely accessing a website does not give rise to a cause of action unless the information itself does, such as in the case of defamation or false advertising.

While due process or minimal contact requirements are not specifically addressed in Section 20 of the CPC, Indian courts frequently take into account criteria other than simple website accessibility when finding jurisdiction. They assess the transaction's impact in India and its locations¹⁵⁵.

Several noteworthy cases related to jurisdiction in India include:

- *Tata Sons v. Ghassan Yacoub*: In this case, An interim injunction was issued by the Delhi High Court against a defendant with a US address who had registered an illegal domain name. The court took into account the effect of the transaction in India and acknowledged that online transactions may have jurisdictional repercussions¹⁵⁶.
- *Himalayan Drug Company v. Sumit*: This case upheld the idea that when an internet transaction has a significant impact in India, it can create jurisdiction¹⁵⁷.

These cases illustrate how Indian courts have taken into account the effects of internet transactions and the impact felt within the country when determining jurisdiction.

¹⁵⁴ Shivani Verma & Yash, Critical Analysis of the Junctures between E-Contract and Indian Legal System, 17 *Supremo Amicus* (2020).

¹⁵⁵ Sanika Fegade, An Analysis on Jurisdiction in E-commerce Disputes, 4 *INTL J.L. MGMT. & HUMAN*, 1522 (2021).

¹⁵⁶ *Tata Sons v. Ghassan Yacoub* [1974] 1 WLR 155 (CA)161

¹⁵⁷ *Himalyan Drug Company v. Sumit 2000, Inc* 105 F.3d 1147(7th Cir.1997)

Internet-based communications are worldwide, which puts old legal systems based on borders to the test. The concept of "location" is largely obsolete in the connected world because the internet cuts over national boundaries. It can be challenging to ascertain jurisdiction, appropriate laws, and enforcement procedures when conflicts emerge because parties to online transactions may be located in various nations with different legal systems¹⁵⁸.

Consider the following scenario: an architect in Paris and an engineering consulting firm in Geneva collaborate on a project in Michigan using internet methods. When problems occur as a result of flawed designs that do not comply with Michigan's building rules, finding the jurisdiction for resolving the dispute becomes complicated. When a mistake is found after construction, the magnitude of this difficulty increases due to the fact that the statutes of limitations and statutes of repose that apply in each state are distinct from one another. The increasing prevalence of online platforms for collaborative project work and E-commerce increases the prospect of coming up against jurisdictional challenges.

When several parties across the globe have just virtual connections, Internet jurisdiction becomes extremely difficult. When one party tries to sue another, determining the proper jurisdiction becomes difficult. Traditional jurisdictional requirements usually revolve around the defendant's residency or the location of the cause of action. However, conclusively showing these characteristics in the context of the internet is difficult. Even simple transactions might cause jurisdictional issues. For example, if a person in India purchases and pays for an item on a website hosted on a Brazilian server but is unable to download it, they may choose to sue the website's owner in Thailand. Determining the defendant's address and the location of the transaction raises major difficulties.

In the case of *Gaekwar Baroda State Rly v. Habibullah*¹⁵⁹, the Allahabad High Court construed Section 20 of the CPC to cover NRI whose cause of action arises in domestic . Concerns about enforcing the verdict in another nation were highlighted in the case of

¹⁵⁸ Mrinali Komandur, Jurisdiction and Enforcement of E-commerce Contracts, 5 IJCLP 90 (2017)

¹⁵⁹ *Gaekwar Baroda State Rly v. Habibullah* AIR 1970 SC 802: (1969) 3 SCC 769

*Bachchan v. India Abroad Publications Incorporated*¹⁶⁰, in which a favourable judgement obtained in the United Kingdom was unable to be executed in New York due to different laws¹⁶¹. The issue of jurisdiction extends beyond national borders to global disputes. An international convention, similar to existing instruments in Europe, that provides clear standards for controlling E-commerce between parties from various countries could provide a solution to the current uncertainties. E-commerce may be impeded if the legal environment is unclear. The legal standing of businesses who use websites for contract execution is currently unknown. There are, however, methods to protect their interests, such as declaring the jurisdiction and applicable legislation in online agreements. Contract conflicts can be broken down into two categories: those that have a provision defining jurisdiction and applicable laws, and those that do not have such conditions in the contract. When determining whether or whether they have jurisdiction, courts frequently consider the purpose of the parties involved and the contractual conditions. The Civil Procedure Code, however, prohibits parties from granting jurisdiction to a court that does not already have it. There are fewer alternatives accessible to the parties since central legislation that are applicable throughout India usually restrict their choice of applicable law.

¹⁶⁰ *Bachchan v. India Abroad Publications Incorporated* AIR 2004 SC 4959: (2003) 10 SCC 258

¹⁶¹ C.M.Abhilash, *E-commerce Law in Developing Countries: An Indian Perspective*, Taylor&Francis online, (2010)

Chapter 6:

Conclusion And Suggestions

6.1. Conclusion

The rapid expansion of the digital economy, as well as the need to efficiently regulate E- transactions, have been the key driving forces behind the development of E-commerce legislation in India, which has been a dynamic and rigorous process. The Indian government has made significant progress towards establishing a legal framework that supports and governs Internet commerce in the country.

The establishment of the E-commerce Act in 1998 was followed by the IT Act, which is the key piece of law that oversees E-commerce in India. The Indian Statutes contain both of these articles of legislation. The IT Act's goal was to make E-transactions easier to execute, to develop trust in the digital environment, and to provide digital signatures and E- records the legal legitimacy they deserved. Furthermore, it addressed a number of legal issues related to E- commerce, such as data protection, cybercrime prosecution, and E- system governance.

Furthermore, the Unified Payments Interface (UPI), which was first adopted in India, was a game changer for digital payments since it provided a safe and simple platform for the quick transfer of money between bank accounts. UPI's user-friendliness and interoperability have had a significant impact on e-commerce. These qualities have enabled transactions to be completed quickly and painlessly, increased client confidence, and increased conversion rates and E-commerce revenue. It has also played an important role in increasing financial inclusion and strengthening the digital economy by providing previously unbanked individuals and small companies with greater access to formal financial services. This has been achieved through increasing access to formal financial services.

The Indian government is clearly committed to ensuring that people who conduct business online do so in a safe and welcoming environment, as indicated by the consistent revisions and upgrades to the legislative framework. Legislative reforms are being implemented with the goals of addressing newly emerging challenges, stimulating innovation, and preserving individuals' and businesses' rights to privacy and data in the context of the digital economy.

The IT Act of 2000 (often referred to as the 'IT Act') is critical in developing trust in E-interactions and establishing a solid legal framework for online business transactions. It has facilitated the expansion of E-commerce and E-governance, established secure and reliable digital transaction systems, addressed cybercrime, and ensured the effective delivery of justice through the appointment of certifying authorities, the delineation of offences and contraventions, and the formation of adjudicating officers and the Cyber Appellate Tribunal.

The legal framework for E-commerce in India has created an environment conducive to the growth of the country's digital economy. These forward-thinking laws have sparked innovation, increased trust in online interactions, and provided the required support and security for businesses and individuals conducting E- transactions. The government's determination to maintain and improve the present legal framework demonstrates its commitment to striking a balance between innovation and the privacy and safety of internet users.

In a nutshell, the legislative regulations that govern E-commerce in India have evolved over time in order to accommodate the country's fast expanding digital economy. The IT Act, along with other pieces of legislation and revisions, has provided a firm foundation for the use of E- transactions, helped to cultivate a sense of trust, and opened the way to the spread of online commercial activity. These regulatory efforts have made a significant difference in shifting the needle towards greater financial inclusion.

A review of the laws that govern E-contracts in different countries reveals a diverse set of legal structures meant to facilitate and control digital transactions. The UNCITRAL Model Law, developed by the UNICTRL, is used to define E-contracts. This law provides national governments with global guidelines. It emphasizes the legitimacy and enforceability of such contracts, independent of the instrument used to generate them, fostering trust and confidence in cross-national E-transactions.

E-contracts are governed in Europe by the E-Signatures Directive and other regulations related to them. These directives are critical. These instructions recognize the possibility for enterprises to enter into contracts using E-methods and provide requirements for the use of E-signatures. They do not provide a comprehensive definition of E-contracts; however, they promote the acceptance of digital agreements and the binding nature of digital contracts.

The legal underpinning for E-contracts in the United States is comprised of the Uniform E-transactions Act (UETA) and the Uniform Computer Information Transactions Act. The UCITA is the acronym for these two statutes. These acts establish the guidelines for the legitimacy and enforceability of E-contracts, ensuring that they meet the same legal standards as traditional contracts. This ensures that E-contracts are subject to the same requirements as traditional contracts. By identifying the many types of E-communication and the function of E-agents, the legal system in the United States promotes the growth and advancement of E-commerce. This recognition helps to provide assurance and dependability in digital transactions.

In Australia, the E-transactions Act establishes legislation and principles for the domestic use of E-communications and financial transactions. Despite the fact that it does not define E-contracts, it emphasizes the importance of E-communication channels and information systems in assuring the safety and success of digital transactions in the Australian legal system.

Singapore's E-transactions Act governs e-commerce, E-recordkeeping, and E-contracts, among other digital services. Singapore has established itself as a forward-thinking nation by adopting the UNCITRAL Model Law on E-commerce and actively promoting the use of E- technologies for commerce. Its policies and practices promote simplicity of use and productivity in digital transactions, while simultaneously emphasizing the importance of maintaining reliable and accurate E- records.

The Indian Contract Act of 1872, the IT Act of 2000, and the IT Amendment Act of 2008 are the three pieces of legislation that create the foundation for E-contracts in the Indian legal system. The UNCITRAL Model Law had an influence on the formulation of these laws, which outline the components and legal standing of E-contracts, as reflected in the IT Amendment Act of 2008. While the Indian Contract Act of 1872 deals with paper-based contracts, the IT Act of 2000 focuses on creating a secure E-environment for digital transactions, including digital signature recognition. Both of these laws were enacted in India.

In general, the laws and regulations governing E-contracts vary by country, but they all have the same overriding goal of strengthening the legitimacy, acceptance, and enforceability of digital agreements. By addressing the special difficulties and opportunities provided by E-transactions, these legal frameworks aim to build trust,

promote worldwide trade, and support the growth of digital commerce. They accomplish this by addressing the specific problems and opportunities that E-transactions provide. The landscape of E-contract laws is constantly altering, which will have a significant impact on the global development of digital commerce as more nations bring their legal systems into compliance with international norms and respond to technological changes.

The IT Act of 2000 is a significant piece of law that helps govern cyberspace activities and provides guidance for the approval and revocation of E- system certificates (ESCs). An E- signature certificate, or ESC, is the digital equivalent of a physical signature that a subscriber can get from a Certifying Authority (CA) under the Act. The CA validates the subscriber's identity before issuing the ESC, which contains the subscriber's public key as well as any other relevant information. The publication of an ESC in a repository or any other form of explicit expression can serve as proof of the ESC's adoption by the community.

The CA has the jurisdiction under the Act to suspend or terminate an ESC under certain conditions. The CA has the authority to withdraw the ESC in the event of a severe misrepresentation, rule violation, compromise of the CA's security system, or unjust treatment of the subscriber. Furthermore, the CA has the authority to remove the ESC if the subscriber's corporate entity is dissolved. Any information on the revocation or cancellation of ESCs must be made available through the CA's repository.

The Indian Evidence Act of 1872 and its modifications address the role of E-contracts and E-records in Indian court procedures, both in terms of admission as evidence and in the process. According to Section 17, an oral, written made by a party that suggests a conclusion on a contested or relevant fact is considered an admission. Admissions have a significant weight in the evidentiary analysis since they eliminate the need for additional proof.

Section 22A of the legislation was adopted to establish the criteria under which verbal admissions related to the contents of an E- record can be proven. When the veracity of the record is called into question, oral admissions may be used instead. According to Section 39, which limits the admission of statements, statements can only be entered into evidence if they are directly related to a longer statement, conversation, document, E-record, book, or sequence of letters or documents.

Section 47A recognizes the importance of the certifying authority's professional judgement in deciding whether or not an E- signature is valid. Sections 65A and 65B of the code detail the standards for admitting computer output as evidence, with a special emphasis on the importance of correct functioning, consistent use, and data replication.

The Evidence Act was updated to include new parts such as Section 73A, which allows the court to request the possession of a digital signature certificate for verification, and Section 67, which requires digital signatures to be accompanied by identification confirmation. The Evidence Act contains both of these requirements. Section 81A presumptively accepts the truth of E- records claiming to be the Official Gazette or those required by law to be retained.

Sections 85A to 85C create several presumptions about the accuracy of E- documents, digital signatures, secure E- records, and E- records in general. These sections give the court presumptions about the authenticity and integrity of E- records and signatures until the contrary is shown.

The CPC, which was enacted in 1908 and works in concert with the ITAct, addresses the issue of jurisdiction in controversies over E-contracts. Section 20 of the CPC provides that jurisdiction can be established based on the defendant's place of residence or business, as well as the location where the claim first arose as a result of the defendant's acts. The location of both the contract's formulation and performance are also taken into account as a significant factor.

The question of whether Section 20 of the CPC and Section 65B of the IT Act are compatible must be decided by the courts. Both of these components are critical in determining whether the court has jurisdiction over disputes concerning E-contracts and whether E- documents can be submitted as evidence.

Finally, in conjunction with the CPC, the IT Act and the Indian Evidence Act provide a thorough legal structure governing the utilization of E-contracts, E- signature certificates, and the admissibility of E-data as evidence. These pieces of the law were designed to ensure the legitimacy and enforceability of E-contracts, as well as the authenticity and integrity of E- records used in legal proceedings.

Because there are no physical boundaries on the Internet, establishing jurisdiction in the context of E-commerce and international E-transactions can be a complicated and time-consuming process. In the process of enforcing laws and mediating

disagreements, determining which courts have the ability to hear and consider legal questions is an essential part of the process known as "jurisdiction." However, in the age of digital technology, the traditional paradigm for determining jurisdiction based on territorial boundaries faces significant challenges.

The global approach to jurisdiction recognizes the significance of legal system harmonization and uniformity. The United States Constitution grants Congress the authority to regulate trade, while the European Union establishes standards for jurisdiction and judicial cooperation through rules such as the Brussels I Regulation. The Federal Rules of Civil Procedure in the United States consider variables such as the amount of time the defendant spent in the state being sued when determining a person's personal jurisdiction. The statutory seat, central administration, or major place of business of a firm can be used to identify which jurisdiction has jurisdiction over it. The Brussels I Regulation established these concepts.

International groups such as the Hague Conference on Private International Law contribute to the global harmonization of jurisdictional concepts. The Convention on Choice of Court Agreements aims to encourage and facilitate international trade and investment by establishing common principles for exclusive choice of court agreements. These agreements add clarity and certainty to international commercial transactions by letting the parties choose a specific court to resolve any issues that may emerge as a result of their interactions.

Because the laws that apply throughout the country are compatible with one another, establishing judicial jurisdiction is the primary focus of choosing jurisdiction in India. The plaintiff's place of business or residence, as well as the nature of the claimed wrongdoing, are the two key considerations considered for determining jurisdiction. The location of the defendant's place of business, the place of the dwelling that gave rise to the claim, and the region in which the contract was either meant to be performed or was actually done are all factors considered by Indian courts. However, there are situations when different laws contradict one another.

When determining who has jurisdiction over a matter, Indian courts place a high value on the impact that transactions done on the Internet have had within the country. They investigate the transaction's effects as well as the locations in India. Indian courts have

considered the consequences of Internet transactions conducted within the country while evaluating whether or not they have jurisdiction in noteworthy cases such as *Tata Sons v. Ghassan Yacoub* and *Himalayan Drug Company v. Sumit*.

The virtual absence of geographical borders that characterizes the internet calls into question traditional concepts of legal jurisdiction based on location. Because parties engaging in Internet-based communications and transactions originate from a variety of countries, each with its own legal system, determining whose jurisdiction applies, which laws are applicable, and how enforcement should be carried out can be difficult. In today's hyper-connected world, the concept of "location" is meaningless, and establishing legal jurisdiction solely on the ease with which a website may be viewed is insufficient. The effect of the transaction, as well as its location within a country, must be considered by the courts.

Global conflicts fought in cyberspace make identifying jurisdiction even more complicated. Because of the plethora of local rules and regulations, it may be difficult to bring verdicts handed down in one nation into force in another. An international convention similar to the processes now in existence in Europe might offer clear principles for controlling E-commerce between parties from different nations. This would help to alleviate the confusion about jurisdiction. Clarity in the legal environment is critical to the smooth operation of E-commerce, and businesses can better protect their interests by including jurisdiction and relevant law terms in any online agreements they sign into.

Traditional notions of jurisdiction are being put to the test as a result of the internet's borderless nature and the global nature of online business. Unlike India's strategy, which focuses on establishing judicial jurisdiction, the transnational technique seeks to harmonize the laws that govern several countries. When multiple parties have virtual connections, it becomes difficult to determine which jurisdiction has jurisdiction over an online issue, and the internet's jurisdiction becomes more convoluted. International cooperation and the adoption of clear standards are essential to tackle the challenges raised by different jurisdictions and to provide assurance to the parties participating in international E-transactions.

6.2. Suggestion

After conducting extensive research for the research paper, Researcher has come up with the following suggestions:

1. Enhanced Data Protection Laws

Strengthening of Pre-Existing Data Protection Laws Countries should improve the data protection laws that are already in place and adopt comprehensive regulations, such as the execution of the Personal Data Protection Bill. These rules should offer a legal framework for protecting personal data and providing transparency in the data collecting, storage, and processing that is done by companies involved in e-commerce. In addition, governments should encourage collaboration in data protection across borders in order to solve issues posed by different jurisdictions.

2. Cybersecurity Measures

In order to establish effective cybersecurity frameworks, it is absolutely necessary for government agencies, industry stakeholders, and cybersecurity professionals to work together in a collaborative effort. For the purpose of identifying and mitigating the effects of cyber threats, it is important to carry out regular audits, vulnerability assessments, and information-sharing efforts. Additionally, in order to reduce potential dangers, governments want to encourage users' understanding of cybersecurity issues by means of educational initiatives and training programs.

3. Strict Enforcement and Monitoring

In order to guarantee that E-commerce regulations are followed to the letter, there needs to be an establishment of efficient enforcement procedures. Regular monitoring of E-commerce platforms, including proactive identification of fraudulent activity, counterfeit products, and unfair business practices, can protect customers and preserve a level playing field in the marketplace. It is also important for governments to work together with international organizations to share successful policies and procedures and to bolster enforcement efforts.

4. Cross-Border Trade Facilitation

Simplifying Customs Procedures and Reducing Trade Barriers in Order to Simplify and Facilitate Cross-Border E-Commerce, Governments Should Focus on Simplifying

Customs Procedures and Reducing Trade Barriers. It is possible to simplify and speed up the process of international trade transactions by putting into place efficient clearing systems, standardizing the requirements for customs documents, and investigating the use of technology solutions such as blockchain or E-trade platforms. It may be possible to foster conditions that are conducive to international online commerce through the implementation of cooperative projects with other nations and involvement in international agreements and conventions, such as the Trade Facilitation Agreement negotiated by the World Trade Organization.

5. The Development of Payment Infrastructure

Governments should work together with financial institutions and technology companies to create payment systems that are both safe and easy to use. Consumers will have a higher level of trust and confidence in E-commerce when certain measures are taken, such as encouraging the adoption of secure payment methods, spreading awareness about safe online transactions, and incentivizing compliance with payment security requirements. Prioritization must be given to both international collaboration and conformance with global payment standards.

6. Consumer Education And Redressal

Education of Consumers and Redress for Injuries Governments should educate consumers about their rights, duties, and potential hazards involved in E-commerce transactions. Consumers will gain more agency and the E-commerce ecosystem will see an increase in trust if channels for the registration of complaints and the resolution of disputes, as well as accelerated resolution procedures, are made easily available. In order for governments to effectively settle legal disagreements, they should also encourage the use of alternative dispute resolution processes, such as online mediation and arbitration.

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