



Dr. Babasaheb Ambedkar Open University

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PGDCL-102

**E-Commerce, E-Governance
and E-Contract**



Post Graduate Diploma in Cyber Law (PGDCL)

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E-Commerce, E-Governance and E-Contract

Dr. Babasaheb Ambedkar Open University



E-Commerce, E-Governance and E-Contract

Course Writer

Dr. Peter Ladis F Faculty, Chanakya Law University, Patna, Bihar

Mr. Kumar Gaurav Faculty, Chanakya Law University, Patna, Bihar

Content Editors

Prof. (Dr.) Nilesh K. Modi Professor & Director, School of Computer Science
Dr. Babasaheb Ambedkar Open University, Ahmedabad, Gujarat

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E-Commerce, E-Governance and E-Contract

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Block-1

E-Commerce

Unit 1: Overview of E-Commerce

UNIT STRUCTURE

- 1.1 Learning Objectives
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 - 1.3 Salient features of E-commerce
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 - 1.10 Legal issues and solutions in E-commerce
 - 1.11 Let's sum up
 - 1.12 Further reading
 - 1.13 Check your progress: Possible answers
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1.1 LEARNING OBJECTIVES

After going through this chapter, you should be able to understand:

- Models in e-commerce
- FDI in e-commerce
- Technical and Legal issues of E-Commerce

1.2 INTRODUCTION

The advent and growth of e-commerce in India brought some significant legal and regulatory challenges. Electronic commerce, commonly known as e-commerce or e-comm, is the platform

for buying and selling of products or services over electronic routes, such as the Internet and other computer networks. It involves sharing of business information, maintaining and conducting business transactions and relationships using a computer or a similar device connected to the telecommunication network. The traditional methods of communication channels like posts and telegraphs which once played a pivotal role in spreading commerce across the globe have now transmuted with the tremendous advancement of technology. E-commerce technologies have changed the framework and environment of business worldwide. Modern electronic commerce encompasses a wide range of technologies such as e-mail, mobile devices, telephones etc. It paves the way for a boundary-less virtual marketplace, without any geographical limitations, reaching global audiences. In the present era, E-commerce is considered a star of the Information Technology revolution and the Internet.

1.3 SALIENT FEATURES OF E-COMMERCE

1. Ubiquity

Internet / Web technology is omnipresent, and the outcome is known as '*Marketspace*'. A marketspace is a place extended beyond the traditional boundaries and removed from the temporal and geographic location. It is a method that saves transaction cost, and time, i.e., customer convenience is enhanced and shopping costs are reduced, unlike traditional commerce where one has to visit the market place physically.

2. Global Reach

The e-commerce transactions have crossed all the cultural and national boundaries across the globe. Marketspace includes potentially billions of consumers and millions of businesses worldwide compared to traditional commerce which couldn't cross national boundaries.

3. Universal Standards

E-commerce has become universal with the support of the Internet. They are shared by all the nations, as opposed to traditional technologies which differed from one nation to the other. For the merchants, market-entry cost remains constant all over the world, and it is lowered by

virtue of the internet. For the customers, the prices of products are lowered. The prices are uniform throughout the world and can be explored from any part of the world.

4. Richness

Information pertaining to any product can be acquired easily. Traditional markets and retail stores are able to provide prompt audio and visual information about the products. The messages are spread evenly and throughout the world i.e., complexity and the content of the message are the same.

5. Interactivity

E-commerce allows two-way communications between the merchant and the customer i.e., it can be used for both sending and receiving information from the internet using different websites.

6. Information Density

The information that is made available on the web is more accurate and reaches the person fast in a timely manner. The information is complete and is available to consumers, merchants and participants. This reduces information costs and raises quality. Communication costs drop dramatically while on the other hand, currency, accuracy and timeliness improve greatly. Information becomes ample, cheap and accurate.

7. Personalization / Customization

The advancement in technology in E-commerce allows personalization by targeting its marketing message to a specific person and adjusting a message based upon the person's name, interests and past purchases. The technology permits customization by changing the product according to the user's requirement. Due to information density, a lot of information about the customers and their requirements can be stored.

1.4 ADVANTAGES OF E-COMMERCE

- The messages and information reach across the globe in no time which makes the process effective and cheap for both suppliers and customers.

- The cost required to set up an office is very high compared to the cost of setting up a website which in turn can be integrated with fewer efforts.
- Newmarket segments can be explored with the use of the internet.
- An online store works 24 hours a day, 7 days a week, 365 days a year through an electronic data interchange system.
- Cost of order processing is reduced.
- Supply chain management is simpler, faster and cheaper with the use of e-commerce.
- Business can reach worldwide and there are high possibilities of establishing business partnerships.

1.5 DISADVANTAGES OF E-COMMERCE

- Electronic Data Interchange is expensive for small business entities.
- Security of internet is poor as virus invasion and hacker attacks can paralyze e-commerce. As a result of this, many companies and customers are harmed.
- Privacy of e-transactions is not guaranteed.
- The use of the Internet is only limited to the young and highly educated people. Elderly people are not prone to use the internet and hence cannot be customers for the internet-based business.
- E-commerce de-personalizes shopping.

1.6 MODELS IN E-COMMERCE

E-commerce models are of two kinds:-

a) Inventory based model

Inventory based model of e-commerce (Inventory Model) means an e-commerce activity where an inventory of goods and services is owned by an e-commerce entity and is sold to the consumers directly.¹

b) Marketplace based model

¹India's Foreign Investment Policy on E-commerce Retail:
<<https://corporate.cyrilamarchandblogs.com/2020/02/indias-foreign-investment-policy-on-e-commerce-retail/>>

Marketplace based model of e-commerce involves an e-commerce entity providing an information technology platform on a digital and electronic network so as to act as a facilitator between the buyer and seller.

1.7 FDI IN E-COMMERCE

Foreign Direct Investment (FDI) in India is regulated under the Foreign Exchange Management Act, 1999 (FEMA). The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, Government of India enacts policy announcements on FDI through Press Notes and Press Releases which are notified by the Reserve Bank of India (RBI) as amendments to Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.²

The prevailing policy in India does not allow foreign investment in the business of selling via online platforms to consumers i.e., the current policy does not allow FDI in business-to-consumer (B2C) e-commerce activities, but 100% FDI is allowed in business-to-business (B2B) e-commerce and in the marketplace model under which the e-retailer does not sell directly to consumers, instead provides a platform to other sellers. US-based e-commerce corporations like Amazon and e-bay operate in India through the market place model.

The consolidated FDI Policy issued by the DIPP (FDI Policy) lays down two entry routes for investment:-

- Automatic Route where foreign investments do not require prior approval of the government and
- Government / Approval route where prior approval of the Government of India through Foreign Investment Promotion Board (FIPB) is required.

1.8 INVENTORY MODEL AND FDI

²Foreign Direct Investment Fdi Policy - 877 Words | Bartleby
<<https://www.bartleby.com/essay/Foreign-Direct-Investment-Fdi-Policy-FKEEY63LDE7W>>

Inventory Model is the Business-to-Consumer (B2C) model of e-commerce and FDI in such model is strictly prohibited.³ However, Press Note No. 12 of 2015 clarified that subject to the Consolidated FDI Policy with regard to sectors and provision of services through e-commerce, the Inventory Model will be under the automated route.⁴

Press Note No. 12 of 2015 (Press Note 12) provided that certain manufacturers engaged in single-brand retail would be entitled to receive FDI upon certain conditions, such as follows⁵:-

- a) An Indian manufacturer who is permitted to sell its own branded product through wholesale retail e-commerce platforms.
- b) An Indian manufacturer, who is an investee company, manufacturing in India, in terms of value, at least 70% of its product in house, and sources, at most 30% from other Indian manufacturers.
- c) A single brand retail trading entity operating through brick and mortar stores.

Additional Conditions as mentioned under Press Note 12

- The product should be sold under the same brand internationally.
- **‘Single Brand’** product retail trading would cover only products which are branded during manufacture.⁶ Therefore, branding as a separate activity may not be considered as branding for single-brand.
- Non-resident entities whether as owners of a brand or otherwise shall be authorized to undertake single-brand retail trading through an agreement with the brand owner, thereby entitling the non-resident entity to undertake single brand product retail in India.
- FDI proposals of more than 51% would require 30% of the value of goods purchased to be from within India and preferably from MSMEs, village and cottage industries, artisans and craftsmen.

1.9 MARKETPLACE MODEL AND FDI

³Para 2.2. (ii) of the Press Note

⁴Para 3 of the Press Note

⁵Research and Articles - Nishith Desai Associates

<<http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/clarity-to-ambiguities-in-fdi-in-e-commerce-will-it-reduce-litigation.html>>

⁶Para 2.2.25: “Manufacture”, with its grammatical variations, means a change in a non-living physical object or article or thing– a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure

The Department of Industrial Policy and Promotion (DIPP) had established certain clarifications in the Press note pertaining to the Marketplace model. They are as follows:-

- Marketplace models entities have been permitted to enter transactions with sellers registered on its platform on Business-to-Business (B2B) basis. However, each seller or its group companies would not be allowed to sell more than 25% of the total sales of the Marketplace Model entity. On the other hand, this amendment affects the business of certain e-commerce entities where the majority of sales are made by one retail entity.
- Marketplace Models have been allowed to provide support services to sellers in respect of warehousing, logistics, order fulfilment, call centre, payment collection and other services. This paves way for e-commerce entities to have in-house support services instead of reaching out for third-party service providers.
- For any warrantee or guarantee or return of goods and services sold under this model, the seller will be held responsible and not the e-commerce entity i.e., responsibility for the delivery of goods to the customers and ensuring customer satisfaction would be that of the seller and not the intermediary entity. Added to that, liability under consumer protection laws would be on the sellers and not the e-commerce entities.
- Under this model, e-commerce entities should not exercise ownership over the inventory i.e., goods purported to be sold, otherwise, such ownership over the inventory will render the business into inventory model.
- E-commerce entities cannot 'directly or indirectly influence the sale price of goods or services' and are obligated to maintain a uniform level.

1.10 LEGAL ISSUES AND SOLUTIONS IN E-COMMERCE

a) Authentication and Identification

Although the Internet eliminates the need of physical contact, the transactions that take place, especially consumer-related transactions occur between parties who have no pre-existing relationship. This raises a lot of issues pertaining to persons' identities as well as the

authenticity thereof. Some of the issues that need to be taken into consideration by companies are:-

- **Digital Signatures to be used as authentication tools**

The Information Technology Act stipulates that digital signatures may be considered as one of the methods used to determine the authority and legitimacy of the person to authenticate an electronic record. The digital signature must follow the Public Key Infrastructure (PKI).⁷ This acts as a limitation on the use of any other technology for the purpose of authentication. If the Indian companies commence using other technologies for the authentication process which are not legalized, it could be said that there has been no authentication at all.⁸ The IT Act provides that an electronic signature shall be deemed to be a secure electronic signature if:

- The signature creation data, at the time of affixing the signature, was under the exclusive control of the signatory and no other party;⁹ and
- The signature creation data was stored and affixed in such exclusive manner as prescribed under the IT Act.

- **Identity Theft and Impersonation**

The IT Act provides that the identity of a person shall be deemed to have been stolen when any unique identification of a person (such as electronic signature or password) is fraudulently or dishonestly used. The Act prescribes a penalty of imprisonment of upto 3 years and fine upto 1 lakh rupees.¹⁰ Added to that, if any person cheats by impersonation by means of any communication device or computer resource, he shall be punished with imprisonment of upto 3 years and fine upto 1 lakh rupees.¹¹

The Indian Penal Code provides that any person who cheats by personation shall be punishable with imprisonment of upto 3 years and / or fine.¹²

⁷ Section 3 of IT Act

⁸ LEGAL ISSUES IN eCOMMERCE - Nishith Desai Associates
<http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Legal_issues_in_eCommerce.pdf>

⁹ E-Commerce in India - Nishith Desai Associates | 1pdf.net
<https://1pdf.net/e-commerce-in-india-nishith-desai-associates_5850c203e12e89cd355094cd>

¹⁰ Section 66-C of the IT Act

¹¹ Section 66-D of the IT Act

¹² Section 419 – Punishment for cheating by personation

b) Security of Systems

Security over the Internet is of immense importance in the present era. Since e-commerce companies manage their sensitive information (including Sensitive Personal Data or Information) on their servers, the companies must ensure that they have adequate security measures to safeguard their systems from unauthorized intrusions. A company could face security threats internally as well as externally. Security can be maintained by making use of various security tools such as encryption, firewalls, access codes/passwords, virus scans and biometrics.

c) Privacy and Data Protection

An important consideration for every e-commerce website is to maintain the privacy of its users. In an e-commerce platform, it is quite difficult to complete any online transactions without making use of some form of personal information of the users such as details with regard to their identity and financial information. With the help of innovative technologies and lack of secure systems, it would be easy to obtain personal and confidential information about individuals and organizations.¹³ Apart from collecting the primary data from the users, e-commerce platforms also collect a variety of other indirect information such as users' personal choices and preferences and patterns of search. One of the important consideration for every e-commerce platform is to maintain the privacy of its users.

Historically, the concept of privacy and data protection were not addressed in any of the Indian legislations. However, the Supreme Court of India in the cases of *Kharak Singh Vs State of UP*¹⁴ and *People's Union of Civil Liberties Vs Union of India*¹⁵ recognized the 'right to privacy' as a subset of Article 21 of Constitution of India i.e., right to life and personal liberty.

The Indian Constitution upholds the right to privacy as a fundamental right of every citizen,¹⁶ the right is exercisable only against a state action. The IT Act addresses the issue of safeguarding privacy rights only from Government actions.¹⁷ Under the IT Act, if the privacy

¹³Legal Issues in e-Commerce - UNECE Homepage

<https://www.unece.org/fileadmin/DAM/cefact/cf_forums/2018_China/eCommerce_Bio-PPT/PPT_10_Khan.pdf>

¹⁴*Kharak Singh v State of UP* AIR [1963] SC 1295

¹⁵*People's Union of Civil Liberties v Union of India*[1997] (1) SCC 318

¹⁶Article 19 (1) (a) and Article 21 of the Constitution. Refer to *Unni Krishnan, J P v State of AP*[1993] 1 SCC 645

¹⁷Section 69 and Section 72 of the Information Technology Act, 2000

of a person is deemed to be violated, a punishment of imprisonment of upto 3 years and/or fine upto 2 lakh rupees shall be imposed.

In 2011, Section 43A of the IT Act titled “*Reasonable practices and procedures and sensitive personal data or information Rules, 2011*” provided a framework for the protection of data in India which covered two categories of information under the Act. They are:-

- **Personal Information (PI)** which is defined as any information that relates to a natural person, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person.
- **Sensitive Personal Data or Information (SPDI)** which means that such personal information of a person which consists of
 - i. Password
 - ii. Financial information such as bank account or credit card or debit card or other payment instrument details
 - iii. Physical, physiological and mental health condition
 - iv. Sexual orientation
 - v. Medical records and history
 - vi. Biometric information

The IT Act lays down penalties for wrongful disclosure of personal information by way of imprisonment upto 3 years and/or a fine upto 5 lakh rupees.

d) Intellectual Property Rights

The Internet is a boundless and unregulated medium and therefore the protection of Intellectual Property Rights (IPR) is a challenge and a growing concern amongst most e-businesses. The efficacy of Indian laws in safeguarding the rights in e-commerce is not an easy task. Some of the significant issues that arise with regard to protecting IPRs in e-commerce are as follows:-

- Determining the subject matter of protection

With the advent of new technologies, new forms of IPRs are evolving and the challenge for any business would be in determining how best its intellectual assets can be protected.

- Designing a Platform / Content Creation through a Third Party

Often e-commerce entities outsource the job of designing websites/creation of content to third party contractors. This creates an issue with regards to who would own the IP in the

design and functionality (software underlying the website) of the website and in the content. Some important elements which need to be taken into consideration are as follows:-

- i. A written agreement that clearly determines the ownership of the IP including clauses on term, territory and the nature of the right.
- ii. If any third party is used by the contractors, it is important to understand the chain of title with respect to such third-party IP and whether appropriate permissions have been acquired from such third parties.

- **Use of Third Party Content on website**

Not all content available on the public domain can be used for free without prior permission of the owners of such content. The content could range from information to logos of third parties. The IP of the said content is owned by a third party and the e-commerce business has to obtain the requisite approvals.

- **Prevention of unauthorized hyperlinking and meta-tagging**

E-commerce companies often have to deal with hyperlinking, deep linking,¹⁸ framing¹⁹ and meta-tagging²⁰ issues in order to achieve their marketing goals. The Judiciary in many countries has dealt with issues concerning infringement of IPRs arising from hyperlinking and meta-tagging activities. They have held that hyperlinking, especially deep linking may constitute copyright infringement; and on the other hand, meta-tagging may constitute trademark infringement. The Indian Courts have not yet dealt with these issues in detail.

The US courts have held in cases of *Ticketmaster Vs Tickets.com*²¹ and *Batesville Serv. Inc. Vs Funeral Depot Inc.*²² that linking to another website could constitute copyright infringement. Furthermore, in the cases of *Playboy Enterprises Inc. Vs Calvin Designer*

¹⁸Hyperlink is a reference to a webpage or document on the Internet and deep hyperlink links to a specific interior page or paragraph inside a website surpassing the homepage

¹⁹Framing is the juxtaposition of two separate web pages within the same page

²⁰Metatags are HTML codes that are intended to describe the contents of a web page but do not appear on the web page

²¹*Ticketmaster v Tickets.com* CV 97-3055 RAP (C D Cal, filed April 28, 1997)

²²*Batesville Serv Inc v Funeral Depot Inc* No 1:02-CV-01011-DFH-TA, 2004 WL 2750253 (S D Ind Nov 10, 2004)

*Lab*²³ and *Nat'l Envirotech Group L.L.C., Institution Technologies Inc. Vs Nat'l Envirotech Group L.L.C*²⁴; it was held that using competitors' trademarks in the meta tags would be an infringement of such trademarks. The UK courts have also asserted the same view in the case of *Roadtech Computer Systems Vs Mandata Ltd*²⁵ and *Reed Executive plc and another Vs Reed Business Information and others*.²⁶

- **Domain Names**

A company that commences e-commerce activities would at first have to get a registration of its domain name which must not be similar to some other domain names or some existing trademark of a third party. If any company's domain name is found to be similar to that of another, then the company could be held liable for cybersquatting. Indian Courts have been proactive in granting orders against the use of infringing domain names.²⁷ In the case of *Satyam Infoway Ltd. Vs Sifynet Solutions Pvt. Ltd.*,²⁸ the Supreme Court held that 'a domain name may pertain to the provision of services within the meaning of Section 2(z) of the Trade Marks Act, 1999'.

e) **Taxation**

Taxation of e-commerce transactions has raised several issues. Tax authorities all over the world are examining the tax implications of e-commerce transactions and resolving mechanisms to tax such transactions.²⁹ In India, the High Powered Committee (HPC) constituted by the Central Board of Direct Taxes, submitted its report in September 2001. The said report envisaged upon the need for introducing a separate tax regime for e-commerce transactions. Based on the Principle of 'Neutrality', the HPC maintained that the existing laws are sufficient to tax e-commerce transactions and held that there is no need for a separate regime for the taxation of e-commerce transactions.

²³*Playboy Enterprises Inc v Calvin Designer Lab* [1997] U S Dist Lexis 14345 (D Cal Sept 8, 1997)

²⁴*Nat'l Envirotech Group LL C, Institution Technologies Inc v Nat'l Envirotech Group L LC* Civil Action 97-2064 (E D La)

²⁵*Roadtech Computer Systems vMandata Ltd* [2000] ETMR 970

²⁶*Reed Executive plc and another v Reed Business Information and others* [2004] EWCA Civ 159

²⁷Some of the cases in which injunctions against the use of conflicting domain names have been granted are: *Yahoo Inc vAakashArora&Anr* AIR [2000] Bom 27; *Rediff Communication v Cyberbooth&Anr* [1999] PTC (19) 201 and *Satyam Infoway Ltd v Sifynet Solutions Pvt Ltd* AIR [2004] SC3540

²⁸*Satyam Infoway Ltd vSifynet Solutions Pvt Ltd* AIR [2004] SC 3540

²⁹An overview on e-commerce transactions - CAclubindia

<<https://www.caclubindia.com/articles/an-overview-on-e-commerce-transactions-24119.asp>>

1.11 LET'S SUM UP

In this chapter, we have studied the meaning of e-commerce, its salient features, advantages and disadvantage and its models. We also studied how FDI plays a vital role in e-commerce. Finally, we ended the discussion with the legal issues and solutions in e-commerce.

1.12 FURTHER READING

- The eComTaxpert Group, "Taxation of Electronic Commerce in India", [2002] Asia-Pacific Tax Bulletin July/August 241
- The law of E- commerce: E- contracts, E-business by Dr. Abdullah M. Alghamdi- Published my Author house, Bloomington. 1-4.
- Law relating to e- commerce: international and national scenario with special reference to India Dr.Jyoti Rattan. (IJSSEI) Volume//01//Issue//02//August 2015 Dr.Jyoti Rattan(www.isij.in)

1.13 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1. What is e-commerce?

A. E-commerce is the method by which products and services are bought and sold by electronic means using the internet and mobile applications.

2. What are the advantages of e-commerce?

A. The advantages of e-commerce are as follows:

- Messages and information reach across the globe in no time which makes the process effective and cheap for both suppliers and customers.
- The cost required to set up an office is very high compared to the cost of setting up a website which in turn can be integrated with fewer efforts.
- Newmarket segments can be explored with the use of the internet.
- An online store works 24 hours a day, 7 days a week, 365 days a year through an electronic data interchange system.
- Cost of order processing is reduced.

- Supply chain management is simpler, faster and cheaper with the use of e-commerce
- Businesses can reach worldwide and there are high possibilities of establishing business partnerships

3. What are the disadvantages of e-commerce?

A. The disadvantages of e-commerce are as follows:

- Electronic Data Interchange is expensive for small business entities.
- Security of internet is poor as virus invasion and hacker attacks can paralyze e-commerce. As a result of this, many companies and customers are harmed.
- Privacy of e-transactions is not guaranteed.
- The use of the Internet is only limited to the young and highly educated people. Elderly people are not prone to use the internet and hence cannot be customers for the internet-based business.
- E-commerce de-personalizes shopping

4. What are the various models and salient features of e-commerce?

A. The various models of e-commerce are inventory-based model and marketplace-based model.

The salient features of e-commerce involve ubiquity, global reach, universal standards, richness, interactivity, information density and personalisation or customization.

5. Mention the kinds of legal issues involved with e-commerce?

A. Legal issues involved with e-commerce inter alia involve authentication and identification of users, security of systems engaged in the exploration of cyberspace, protection of privacy and data, protection of intellectual property rights.

1.14 ACTIVITY

Demonstrate E-Commerce and discuss its objectives, advantages and challenges? (800 words)

Unit 2: Historical Development and Regulatory Framework of E-Commerce

1

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Introduction
 - 1.3 Historical Development and Concept of E-Commerce
 - 1.4 Conceptual Framework
 - 1.5 Types of e-commerce
 - 1.6 Regulatory framework of E-Commerce under I.T. Act, 2000
 - 1.7 Let's sum up
 - 1.8 Further reading
 - 1.9 Check your progress: Possible answers
 - 1.10 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you should be able to understand:

- Historical and emergence of e-commerce
- Types of e-commerce
- Regulatory framework of e-commerce

1.2 INTRODUCTION

Electronic commerce, a new means of carrying out business transactions through electronic means in general, and through Internet environment in particular, has been proving its potential benefits and effective contribution to the socio-economic growth. As an essential part of the “digital economy”, electronic commerce plays the role as the key for us to open our door to the 21st century, the new era of the knowledge-based economy. In the context of electronic commerce, there is a need to define the framework of e-commerce.³⁰

³⁰ E-commerce: An Introduction, <<http://cyber.law.harvard.edu/olds/ecommerce/setuptext.html>>

‘Electronic commerce is sharing business information, maintaining business relationships and conducting business transactions by means of telecommunications networks’. E-Commerce is one of the most important facets of the Internet to have emerged in recent times. E-commerce or electronic commerce involves carrying out business over the Internet with the assistance of computers, which are linked to each other forming a network. To be specific e-commerce would be buying and selling of goods and services and transfer of funds through digital communications.

Today, e-commerce is a major economic force driving growth for developed as well as developing countries. The exponential growth of Internet use and online purchases globally combined with the relatively low cost of Internet marketing is enabling large companies as well as small and medium-sized enterprises (SMEs) to expand their market overseas through e-commerce.

As per the Economic Survey 2017-18, the electronic commerce (e-commerce) market in India is estimated at USD 33 billion, with a 19.1 percent growth rate in 2016-17.³¹ As per the National Association of Software and Services Companies (NASSCOM) Strategic Review 2018, in the Information Technology and Business Process Management (IT-BPM) sector in India, the Indian e-commerce market was USD 33 billion in 2017-18 and reached USD 38.5 billion, growing at a rate of about 17% in the financial year 2018-19.

1.3 HISTORICAL DEVELOPMENT AND CONCEPT OF E-COMMERCE

The development of the World Wide Web during the early 1990’s dramatically changed the use of the internet. The expansion of the web, and along with it the web browser opened the internet to anyone with basic computer experience and an online connection. As online activity increased, companies quickly saw the internet’s marketing potential. Subsequently, there was a rush to take products and services into this expanding electronic realm and to redefine business itself.³²E- commerce, in full electronic commerce, maintaining relationships and conducting a business transaction that induces selling information, services, and goods by means of computer

³¹“India: E-Commerce Business.” MENA Report, Albawaba (London) Ltd, Feb 2019

³²Electronic Commerce
<<http://afreidooni.blogfa.com/post/46>>

telecommunications networks.³³ Although in the vernacular e-commerce usually refers only to the trading of goods and services over the internet, broader economic activity included. E-commerce consists of business to consumer and business to business commerce as well as internal organizational transactions that support those activities. E-commerce originated in a standard for the exchange of business documents, such as orders or invoices, between suppliers and their business customers. Those origins date to 1948-49, Berlin blockade and airlift with a system of ordering goods primarily via telex. Various industries elaborated upon that system in the ensuing decades before the first general standard was published in 1975. The resulting computer to computers electronic data interchange (EDI) standard is flexible enough to handle most simple electronic business Transactions with the wide adoption of the internet and the introduction of the world wide web in 1991 and of the first browser for accessing it in 1993, most E-commerce sifted to the Internet. More recently, with the global spread of smartphone and the accessibility of fast broadband connections to the Internet, much E-commerce moved to mobile devices, which also included tablets, laptops, and wearable products such as watches. Today the number of internet users in the world is close to 3 Billion. Out of this India have a total of 259.14 Million Internet and broadband subscribers.³⁴ This penetration of Internet coupled with the increasing confidence of the internet user to purchase online has led to enormous growth in the E-commerce space, with an increasing number of customers registering on E-commerce web sites and purchasing products through the use of mobile phones. It is not surprising therefore that India in a prime position for the growth and development of the E-commerce sector. In particular, E-commerce present one of the greatest opportunities in the retail sector since it provides a dramatic change from Brick and mortar establishment to virtual shops which could operate for a fraction of the cost. E-commerce has deeply affected everyday life and how business and governments operate. Commerce is conducted in electronic market places and in the supply chains working on the internet web.³⁵ Consumer-oriented market places Include large E-mails (such as Amazon) consumer to consumer auction platforms (eBay, for examples) multi-channel retailers and many millions of E-retailers. Massive business to business market places has been created by Alibaba and other companies. Social networks sites, such as Facebook

³³Chauhan, Abha (2013), "Evolution and Development of Cyber Law – A Study with Special Reference to India," Social Science Research Network

³⁴Baharullsalim, K M (2008), "E-commerce: Laws and Cyber Crimes," academia.edu

³⁵ 'Trends In India's e-Commerce Market': Report provided by Forrester Research for ASSOCAM's 2nd National Conference on e-Commerce 2012

undergird a great verity of individual relationships and are the sites of so-called social commerce, driven by the opinions and reviews shared by the participants as the electronic word of mouth. The web is also an interactive medium of human communication that supplements and often replaces traditional media. The hypermedia nature of the web with the interlinking of multimedia content available on globally distributed sites, enables the creation of new types of media products, Often offered free of charge. Those new media include Blogs, video aggregators (Such as YouTube), Social media and customized electronic newspapers. As with all media, this aspect of the web leads to its use in marketing. Web advertising ranges from the display ads on web sites to Keyword ads shown to information seekers using search engines, such as Google.

1.4 CONCEPTUAL FRAMEWORK

Simply put, **E-commerce is buying and selling on electronic networks, predominantly the Internet. This could** involve a trade of tangible goods/services similar to traditional commerce, or intangible items like music, information and involving digital transfer etc.

The word commerce is the basic concept for electronic commerce, pertaining to buying and selling of goods while ‘commercial’ denotes business practice and activities intended to make profits. Electronic commerce, like any other business, deals with the exchange of money for soft or hard goods and services.

Kalakota and Whintons in 1997 defined the term E-commerce from different perspectives. These perspectives are:

- Communication
- Business Process
- Service
- Online

COMMUNICATION PERSPECTIVE:

According to this perspective, E-commerce is the delivery of information, product/services or payments over telecommunication channels, computer networks or any other electronic mode of communication.

BUSINESS PROCESS PERSPECTIVE:

This says that E-commerce is the application of technology towards the automation of business transactions and workflow.

SERVICE PERSPECTIVE:

E-commerce is defined as a tool that addresses the desire of firms, consumers and management to cut service cost while improving the quality of goods/services and increasing the speed of service delivery.

ONLINE PERSPECTIVE:

E-commerce provides the capability of buying and selling products and information on the internet and other online services.

Electronic Commerce (e-commerce) is an electronic business. It's using the power of computers, the Internet and shared software to send and receive product specifications and drawings; bids, purchase orders and invoices;³⁶ and any other type of data that needs to be communicated to customers, suppliers, employees or the public. E-commerce is the new, profitable way to conduct business which goes beyond the simple movement of information and expands electronic transactions from point-of-sale requirements, determination and production scheduling, right through to invoicing, payment and receipt. E-commerce uses key standards and technologies including Electronic Data Interchange (EDI), Technical Data Interchange (TDI), Hypertext Markup Language (HTML), Extensible Mark-up Language (XML), and the Standard for Exchange of Product model data (STEP). E-commerce is made possible through the expanded technologies of the Internet, the World Wide Web, and Value-Added Networks.

The Organization for Economic Cooperation and Development (OECD) defines electronic commerce as a new way of conducting business, qualifying it as business occurring over networks which use nonproprietary protocols that are established through an open standard-setting process such as the Internet.³⁷ This definition distinguishes it from the earlier EDI type proprietary based networks or Intranets that were not based on an open (and, therefore, not cost-effective information infrastructure) like the Internet.³⁸ In the WTO Work Programme on Electronic Commerce, it is understood to mean the production, distribution, marketing, sale or

³⁶Web and Value-Added Networks Essay - Lesson Plan Essay<<https://larochelleairport.net/what-is-electronic-commerce-essay-2/>>

³⁷Electronic Commerce: Issues of Policy and Strategy for India
<<https://icrier.org/pdf/WP-86.pdf>>

³⁸E-COMMERCE AND RETAIL BUSINESS IN NIGERIA: CHALLENGES
<<https://nairaproject.com/m/projects/1190.html>>

delivery of goods and services by electronic means. A commercial transaction can be divided into three main stages: the advertising and searching stage, the ordering and payment stage and the delivery stage. Any or all of these may be carried out electronically and may, therefore, be covered by the concept of 'electronic commerce'

The World Trade Organization (WTO) distinguishes six main instruments of electronic commerce:

- The Telephone,
- The Fax,
- Television,
- Electronic payment and money transfer systems,
- Electronic Data Interchange, and
- The Internet

Though the telephone, fax, TV and EDI have been in existence for some time when people talk of E-commerce, they usually refer to Internet Business, wherein goods or services are traded on the net.

1.5 TYPES OF E-COMMERCE

One way of classifying E-Commerce is based on parties involved in the transaction. Major types are mentioned below:³⁹

- Business to Business (B2B)
- Business to Customers (B2C)
- Consumer-to-Consumer (C2C)
- Government to Business (G2B)
- Government to Citizens (G2C)

³⁹Types of E-Commerce Models | Eyerys
<<https://www.eyerys.com/articles/types-e-commerce-models>>

Business to Business:On the Internet, B2B (business-to-business), also known as e-biz and is defined as the exchange of products, services, or information between businesses such as between a manufacturer and a wholesaler, or between a wholesaler and a retailer.

Business to Consumer:A transaction that occurs between a company and a consumer. The term may also describe a company that provides goods or services for consumers.

Consumer to Consumer:Consumer-to-consumer (C2C) electronic commerce involves the electronically facilitated transactions between consumers through some third party. A common example is an online auction, in which a consumer posts an item for sale and other consumers bid to purchase it; the third party generally charges a flat fee or commission.

Government-to-Business(G2B):is a business model that refers to the government providing services or information to business organization. The government uses the B2G model website to approach business organizations. Such websites support auctions, tenders and application submission functionalities e.g. government procurement, electronic auctions, sending filled-out electronic forms (e.g. tax forms, social insurance forms).

Government to Citizen (G2C): is a term that refers to the relationships between organizations (subjects) of public administration and a citizen(s). The designation can be used for any relationship between the subject of public administration and the citizen, most often it is used as one of the basic relationship within e-Government models. The initiative comes from a federal organization (public administration) and citizens are the target group.

Another way of classifying E-Commerce is based on whether the Internet is used or other electronic devices are used for transactions. On this basis, we can classify them as (a) Non-Internet Based E-Commerce, and (b) Internet-Based E-Commerce.

Non-Internet Based E-Commerce:

There are many electronic devices, other than the Internet, which are used for the purpose of E-Commerce. For example (i) Bar-Code Machines, (ii) Vending Machines, (iii) Telephone & Telegraphs (iv) Fax (v) Television (vi) Standalone Computers (vii) Computer Network etc. Transactions made through the devices mentioned here are easy to understand except the use of Computer Network for Electronic Data Interchange (EDI). A discussion on EDI follows.

Electronic Data Interchange (EDI) - This is a business-to-business (B2B) type of E-Commerce. EDI is the computer-to-computer exchange of structured business information in standard electronic format. Information stored in one computer is translated by software programs into standard EDI format for transmission to one or more trading partners. Trading partner's computer, in turn, translates the information using software programs into a form they can understand. There is no human involvement in the processing of the information. EDI was developed in the 1960s. However only in the 1980s, a wide range of industries started using this technique.⁴⁰

Organizations adopting JIT (Just in Time) purchasing, maybe much benefited if they adopt EDI. With the help of EDI, the supplier constantly gets information on the stock position of the customer(s) online. On the basis of such information, the supplier can supply goods just in time. Let us suppose that a chicken farm has many outlets in a city, which sells varieties of chicken-based products. If the main office has a computer network with EDI facility with its outlets, it can easily monitor the stock position of the outlets. Whenever the stock position of a particular item in an outlet reaches reorder level, the main office computer will automatically initiate the reorder process. Thus it reduces time and expense of paperwork.⁴¹

Besides this, EDI is also used in international trade, electronic fund transfer (EFT) between supplier and customer via banker, insurance claim settlement etc. If properly used, EDI can save a substantial amount of cost involved in transaction processing.

Supply Chain Management (SCM) -As a part of internal E-commerce, Supply Chain Management is a landmark concept in inventory management. JIT inventory management is no doubt beneficial but still, it is only a part of the overall Supply Chain Management. On the other hand, SCM is an integrated approach which involves- supplier management, inventory management, distribution management and payment management. SCM considers that instead of treating these as separate functions, a holistic view is needed. Organizations are experiencing that if they have to respond to the needs of the fast-changing world; cross-function integration

⁴⁰ Yazdanifard, Asst Prof Dr Rashad & Baruani, Baome & Mohseni, Shahriar (2012) Review of Electronic Data Interchange in Business to Business E-Commerce in a Competitive Global Market. RNIS: Research Notes in Information Science. 9. 48-53. 10.4156/rnis.vol9.issue0.6

⁴¹ Andersen, Kim Normann & Juul, Niels Christian & Bjørn-Andersen, Niels & Bunker, Deborah. (2000). Electronic Commerce and Document Interchange: EDI Applications in Denmark. Copenhagen Business School, Department of Informatics, Working Papers

and use of information & communication technology is a must. All the functions in SCM are done electronically. SCM software solutions are also available in the market.

Internet-Based E-Commerce (I-Commerce):

By Internet Commerce, we mean the use of the global Internet and World Wide Web (WWW) for commerce. With the advent of Internet & Website (World Wide Web), is the all-pervasive communication tools, the scope of E-Commerce has increased manifold. At present, it is the most powerful *distribution channel* amongst all the channels. For these reasons, the term I-Commerce has become synonymous with the term E-Commerce. In the forthcoming paragraphs, we will use these two terms alternatively. In this context a basic idea about E-Commerce website is essential.

1.6 REGULATORY FRAMEWORK OF E-COMMERCE UNDER I.T. ACT, 2000

UNCITRAL MODEL LAW ON E-COMMERCE

UNCITRAL is the United Nations Commission on International Trade Law. Established by the United Nations in 1966 to harmonize the law of international trade, it is a core legal body of the United Nations system that works to create accessible, predictable and unified commercial laws. UNCITRAL created a Model Law on Electronic Commerce in 1996 to enhance the use of paperless communication.⁴² In 2001, it created a Model Law on Electronic Signatures. Future electronic commerce work will focus on: electronic contracting, with a view to creating a draft convention; online dispute settlement; dematerialization of documents of title; and a convention to remove legal barriers to the development of electronic commerce in international trade instruments.⁴³

THE INFORMATION TECHNOLOGY ACT, 2000 AND E-COMMERCE

⁴²Luca Castellani, UNCITRAL Legislative Standards On Electronic Communications And Electronic Signatures: <An Introduction itu.int/dms_pub/itu-t/oth/15/08/T15080000020001PDFE.pdf>

⁴³ UNICTRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 *bis* as adopted in 1998, United Nations, New York, 1999, <https://www.uncitral.org/pdf/english/texts/electcom/05-89450_Ebook.pdf>

In India E-commerce falls within the purview of the Information technology Act, 2000. It legally recognizes all correspondence by electronic mail, the information in an electronic form with an electronic signature. The electronic is certified by the controller. It also recognizes application and approval done in electronic format for niceness, permits and at her documents pertaining to Government department. In addition, it also makes hacking download, copy, extract, damage of electronic files data liable for punishment.⁴⁴

The Information Technology Act 2000 is based on the Model Law on E-commerce adopted by the United Nations Commission on International Trade Law (UNCITRAL) and pioneering e-commerce enabling legislations such as the Utah Digital Signatures Act, 1995; the Singapore Electronic Transactions Act, 1999 and the Malaysian Electronic Signatures Act. The main objective behind the introduction of IT Act, 2000 is to encourage the environment in which the laws are simple and transparent and in which the advantages of e-commerce can be tapped.

The Act aims to provide legal recognition for the transactions carried out by the means of electronic data interchange and other means of communications, commonly referred to as “Electronic Commerce”, which involve the use of alternatives to paper-based methods of the communication and storage of information, to facilitate electronic filing of document with the government agencies. The Act comprises of the three significant aspects of e-commerce:

- Legal recognition of electronic records and communications- contractual framework, evidentiary aspects, digital signatures as the method of authentication, rules for determining time and place of dispatch and receipt of electronic records.
- Regulation of Certification Authorities- appointment of a Controller of CAs, the grant of license to CAs, duties vis-à-vis subscribers of digital signature certificates, recognition of foreign CAs.
- Cyber contraventions- civil and criminal violations, penalties, the establishment of the Adjudicating Authority and the Cyber Regulatory Appellate Tribunals.⁴⁵

⁴⁴ Gandhi, Sunil. (2006). E-COMMERCE AND INFORMATION TECHNOLOGY ACT, 2000

⁴⁵ Basu, Subhajit & Jones, Richard (2003) E-commerce and the law: A review of India's Information Technology Act, 2000 Contemporary South Asia 12. 7-24. 10.1080/0958493032000123344

As the Act establishes the legal validity and enforceability of the digital signature and electronic records as well as the secure digital signatures and secure electronic records, it will enable the growth of e-commerce in India, because the secure computer-based signatures will:

- Minimize the incidence of electronic forgeries.
- Enable and foster authentication of computerized communications.
- Facilitating commerce by means of electronic communications.

Further, electronic filing of records and retention of information in electronic formats, enabled by the IT Act, 2000 will help in saving costs, time and manpower for the corporate. By virtue of the recognition given to the electronic records, electronic documents and electronic signature, consequential amendments have been made in some existing laws. The Act amends the Indian Penal Code, 1860, the Indian Evidence Act, 1872, Banker's Book Evidence Act, 1891 and the Reserve Bank of India Act, 1934, and for the matters connected therewith or incidental thereto. The main purpose of these amendments is to address the related issues of electronic commerce, electronic crimes and evidence, and to enable further regulation as regards electronic fund transfer.

1.7 LET'S SUM UP

In this chapter, we have studied the historical development and conceptual framework of e-commerce. We also studied the types of e-commerce along with the regulatory framework under the Information Technology Act, 2000 in the end.

1.8 FURTHER READING

- Singh, Taranjeet. (2016). E-Commerce Scenario in India. 3. 16-19.
- Hazelton, Bill, 'History of E-Commerce,' Spirecast, August 19, 2009.
- Mitra (2013) "E-Commerce in India-A Review" Journal of Marketing, Financial Services & Management Research International, Vol.2,No.02,Kolkata,February 2013,pp 126-132.
- Rajasekar and Agarwal (2016) "A study of Impact of India-Commerce on India's Commerce" Indian Journal of Development and Research, Vol. 6, Issue 03.

1.9 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1. What are the different perspectives of e-commerce?

- Communication
- Business Process
- Service
- Online

2. What are the different types of e-commerce?

- Business to Business (B2B)
- Business to Customers (B2C)
- Consumer-to-Consumer (C2C)
- Government to Business (G2B)
- Government to Citizens (G2C)

3. What is EDI?

EDI is the computer-to-computer exchange of structured business information in standard electronic format. Information stored in one computer is translated by software programs into standard EDI format for transmission to one or more trading partners.

4. When did UNCITRAL create a Model Law on e-commerce?

UNCITRAL created a Model Law on Electronic Commerce in 1996 to enhance the use of paperless communication.

1.10 ACTIVITY

Elucidate the different types of Internet and Non-Internet based E-Commerce along with the regulatory framework under the I.T. Act, 2000? (1000 words)

Unit 3: Security Challenges and Future of E-Commerce

3

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Legal Issues involved in E-Commerce
 - 1.3 Security Challenges of E-Commerce
 - 1.4 Best Practices to Combat E-Commerce Security Threats
 - 1.5 Issues and Challenges in the newly drafted E-Commerce Policy Bill of India
 - 1.6 Future of E-Commerce
 - 1.7 Let's sum up
 - 1.8 Further reading
 - 1.9 Check your progress: Possible answers
 - 1.10 Activity
-

1.1 LEARNING OBJECTIVES

After going through chapter, you will be able to understand:

- Legal issues and Security challenges
- Issues and challenges in the new bill
- Future of E-Commerce

1.2 LEGAL ISSUES INVOLVED IN E-COMMERCE

With the advanced and increased use of online media, online business is becoming a fast emerging trend. Every five in eight companies are operating online, conducting e-commerce business. But being functional online doesn't mean you can escape legal matters.

There are various legal issues associated with e-commerce businesses as well. And if these issues are not taken care of in time, they can lead to serious problems for your business.⁴⁶

Described below are some of the common legal issues an e-commerce business faces.

- **JURISDICTIONAL ISSUES**

The boom in internet transactions has brought a host of issues regarding jurisdiction of such transactions to the forefront. The primary question that needs to be addressed is “when a transaction takes place online, where is the contract concluded?” Justice S. Muralidhar has stated that the traditional approach to jurisdiction invites a court to ask whether it has the territorial, pecuniary, or subject matter jurisdiction to entertain the case brought before it.⁴⁷ With the internet, the question of ‘territorial’ jurisdiction gets complicated largely on account of the fact that the internet is borderless & Ecommerce exists in a borderless environment. Hence, create concern –

- Whose jurisdiction?
- Where to take action?
- What test and laws to be followed?
- When an individual resides outside the jurisdictional area?
- Laws of which country applies on a particular e-Commerce transaction?
- Courts/Authorities of which country are to be approached for enforcement of rights?

At present, although e-transactions are at the helm, we must realize that the laws governing these transactions are yet to emerge and develop. Although we have the IT Act in place, it is not sufficient to deal with online transactions in India. It is a step in the right direction as it lays down admissibility of electronic records, penalties for cyber-crimes etc. However, in the case of online transactions, it can be regarded as an enabling statute which must be read in consonance with the Contract Act, 1872 in order to determine whether the online transaction does indeed constitute a valid contract. There is a dire need for specific legislation to be enacted to determine

⁴⁶Common Legal Issues Faced By E-Commerce Businesses

<<https://www.eurologo.org/common-legal-issues-faced-by-e-commerce-businesses/>>

⁴⁷Jurisdictional Challenges in Online Transactions

<<http://www.legalservicesindia.com/article/2268/Jurisdictional-Challenges-in-Online-Transactions.html>>

issues involving jurisdiction for e-commerce disputes.

- **E-CONTRACTS**

Electronic contracts are governed by the basic principles provided in the Indian Contract Act, 1872 (“ICA”), which mandates that a valid contract should have been entered with free consent and for a lawful consideration between two adults. Section 10A of the Information Technology Act, 2000 (“IT Act”) provides validity to e-contracts. So, both the ICA and IT Act needs to be read in conjunction to understand and provide legal validity to e-contracts. Further, section 3 of the Evidence Act provides that the evidence may be in electronic form. The Supreme Court in *Trimex International FZE Ltd. Dubai v. Vedanta Aluminum Ltd.*¹ has held that e-mails exchanges between parties regarding mutual obligations constitute a contract. In an online environment, the possibility of minors entering into contracts increases, more so with the increasing usage of the online medium among teenagers (read minors here) and their preference to shop online or purchase online goods/services.⁴⁸ It becomes crucial for an online business portal to keep such possibility in consideration and qualify its website or form stating that the individual with whom it is trading or entering into the contract is a major. Stamping of contracts is yet another issue.⁴⁹ An instrument that is not appropriately stamped may not be admissible as evidence unless the necessary stamp duty along with the penalty has been paid. But the payment of stamp duty is applicable in case of physical documents and is not feasible in cases of e-contracts. However, as the payment of stamp duty has gone online and e-stamp papers are available, it can become a possibility later that stamp duty might be asked on e-contracts as well.

- **DATA PROTECTION**

Security of the information provided during the online transaction is a major concern. Under section 43A of the IT Act the “Reasonable practices and procedures and sensitive personal data or information Rules, 2011” have been proposed, which provide a framework for the protection of data in India. Data can be personal, which has been defined as “any information that relates to

⁴⁸Yuanqiao Wen, Chunhui Zhou "Research on E-Commerce Security Issues". 2008 International Seminar on Business and Information Management

⁴⁹ Praveen Kumar Mall, ‘Emerging Trends Of E-Consumers & Determining Jurisdictional Disputes In India’, International Journal Of Legal Insight, ISSN: 2456-3595, Volume I, Issue 1

a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person.” The data can also be sensitive and a sensitive personal data consists of password, financial information, physical, physiological and mental health condition, sexual orientation, medical records and history and biometric information. The entity collecting data should have a privacy policy in place, should always obtain consent from the provider of sensitive information and maintain reasonable security practices and procedures. Unauthorized access to personal information and any misuse of such personal information should be checked by the online goods/service providers.

- **IPR (INTELLECTUAL PROPERTY RIGHTS) ISSUES**

There are enormous possibilities of trademark, copyright or patent infringements in the online medium. E-commerce websites are designed and made by other parties and often the content is also created by third parties. Unless the agreements between the parties specifically provide the IP rights, there can be serious ownership issues of IPR. Any usage of third party IPR should have valid approvals in place. In interactive websites, the disclaimer and IPR policy should clearly spell out these issues and goods/service providers should also keep a watchful eye on the usage of their websites regularly. Domain names have trademark protection and deceptively similar domain names can give rise to disputes. In *Satyam Infoway Ltd v. Sifynet Solutions Pvt Ltd.*, the Supreme Court had held that “a domain name may pertain to the provision of services within the meaning of section 2(z) of the Trade Marks Act.”

- **TAXATION ISSUES**

E-Commerce occurs in various forms and between various entities in the market. The question is how to tax it. As the Internet has crossed borders (sovereignty) how can the requirements of physical presence and substantial nexus criteria of taxation be met. Due to the uniqueness of e-commerce, taxation faces a number of problems. This article tries to find out the key issues in the area of e-commerce taxation and tries to analyse the existing regime with regard to e-commerce taxation. It is also alarmed that if this is left untaxed, it will give rise to a parallel economy.

Difficulties in taxing e-commerce transactions:

- Determination of economic activity (to avoid double taxation)
- Identification of the existence of permanent establishment
- Tracing commencing and endpoint of transaction
- Lack of documentation to know the nature of the contract.

The Indirect tax laws need to be evolved and redesigned to consider the changing business dynamics of e-Commerce since the activities involve high volume and low-value supplies.

- **PRIVACY AND SECURITY**

Data protection is becoming an increasingly important issue for customers in e-commerce. Collection and the storage of personal data of the costumers should be made lawfully, with the implementation of adequate measures and modern technical resources for the protection of the personal data of the costumers.⁵⁰ The Law on Personal Data Protection requires the trader to be registered as a data administrator into the register of the Personal Data Protection Commission. The law describes in details the obligations of the administrators of personal data. E-commerce websites must have a policy for personal data protection that is available and posted in a conspicuous place on the site. Published rules for the protection of personal data must be drafted in compliance with the law.

- **RETURN POLICY**

The Law on consumer protection which regulates the sales in e-commerce contains an unambiguous provision for the right of every customer to return the purchased goods within seven days term after the delivery. The law does not require the presence of defects or inconsistency in the good quality; neither any reason for return has to be mentioned. The conditions upon which the right of return of goods purchased over the Internet cannot be exercised by the user are explicitly listed in the law. In any other case, the entrepreneur should respect the legal right of the customer and should accept back the purchased goods upon the existence of the conditions for returning.

⁵⁰ Dr Harish Kumari, 'Commerce In India-Challenges And Legal Issues', International Journal Of Business 29 Management, Vol 2(1), 2015 Available at <www.ijbm.co.in>

The legal framework for e-commerce is increasingly becoming complex even in one single jurisdiction. Things become more and more complicated when you are faced simultaneously with hundreds of potentially applicable legislation because you are entering agreements with customers located anywhere in the world.

The Internet provides many new sales and marketing opportunities and online business must adapt to this changing commercial environment.

- **ADVERTISING**

Advertising is an important and legitimate means for a seller to awaken interest in his products. For long, advertisements were regulated by the courts, government, tribunals, or police that depended upon the nature of each case. Additionally, the absence of single comprehensive legislation created a lot of confusion in terms of proper code to follow by the industry and the authority to regulate or guide the pattern of advertising. In 1985, the Advertising Standards Council of India (“ASCI”), a non-statutory tribunal, was established that created a self-regulatory mechanism of ensuring ethical advertising practices. ASCI entertained and disposed off complaints based on its Code of Advertising Practice (“ASCI Code”). On certain occasions, however, the ASCI orders were set aside by courts as ASCI being a voluntary association was considered usurping the jurisdiction of courts when it passed orders against non-members. Gradually, the ASCI Code received huge recognition from the advertising industry. The warnings issued by ASCI to the advertisers against the misleading advertisements were gradually being accepted by the advertisers and the advertisements were actually stopped being aired or were modified significantly to comply with the prescribed ASCI Code. The advertisements should make truthful and honest representations and avoid false and misleading claims, should not be offensive to public decency or morality, not promote products which are hazardous or harmful to society or to individuals, particularly minors, observe fairness in competition keeping in mind consumer’s interests and avoid obscene or harmful publication and indecent representation of women.

- **COMPETITION**

E-commerce has already generated a lot of competition with ever-increasing players and acquisition of several old players in the market and has enabled the development of new services, new distribution channels, and greater efficiency in business activities. Creation e-hubs where significant market share lies can lead to certain competition issues if they appear to have developed sustainable market power resulting from network effects and/or engaging in strategic acts to preserve or maintain their market power. Potential issues for e-commerce players would be price-fixing or tacit collusion or anti-competitive discrimination or refusal of access to third parties. E-commerce players should refrain from collusion and excessive pricing. Options for parties to use the same web platform for different kinds of products/services can give rise to different intermediaries and that can lead to collusive behaviour. Market transparency should be encouraged.

1.3 SECURITY CHALLENGES OF E-COMMERCE

Security risks associated with e-commerce can be as a result of human error, an accident or unauthorized access to systems. E-commerce threat is occurring by using the internet for unfair means with the intention of stealing, fraud and security breach. There are various types of e-commerce threats. Some are accidental, some are purposeful, and some of them are due to human error.⁵¹ There are various types of e-commerce threats. Some are accidental, some are purposeful, and some of them are due to human error. The most common security threats are phishing attacks, money thefts, data misuse, hacking, credit card frauds, and unprotected services.⁵²

- **CREDIT CARD FRAUD**

Credit card fraud is the most common security threat that online retailers face. It occurs when a hacker gains unauthorized access to customers' personal and payment information. To access this data, the hacker may penetrate the database of an e-commerce site using malicious software

⁵¹ Aziz, Dhiyauddin&Zunawanis, &Shahrulnizam, (2016) E-Commerce Challenges and Solutions

⁵²What is e-commerce and what are the major threats

<<https://www.techgenyz.com/2017/04/05/e-commerce-major-threats-e-commerce-security/>>

programs. At times, a hacker's intention when stealing customers' data is to sell it on black markets.⁵³

- **DISTRIBUTED DENIAL OF SERVICE (DDOS) ATTACKS**

This type of security threat aims at taking down an online retail store by sending overwhelming requests to its servers. The attacks originate from thousands of untraceable IP addresses. When this type of threat hits the servers, they slow down or completely shut down. An e-commerce site can also go offline temporarily when a DDoS attack affects its servers.

- **MAN-IN-THE-MIDDLE ATTACKS**

As hackers are becoming smarter with technology, they are devising ways of listening to the communications made by users of an e-commerce website. Through an approach known as a man-in-the-middle attack, these hackers maliciously trick users into connecting to a public wireless network. They gain access to people's devices once they are on public wireless networks. Hackers get to see a people's browsing history, credit card numbers, passwords and usernames if the websites they are visiting lack strong encryptions.

- **BOTS**

Bots, either good or bad, are all over the worldwide web. Search engines such as Bing and Google use good bots for indexing search results. On the other hand, there are hackers that use malicious bots for gathering data such as product data, inventories and pricing data. These bots are also capable of accessing the database of an e-commerce site and listing the logins of user accounts.⁵⁴

- **MALWARE**

In information technology, malware simply refers to malicious software programs. Attackers usually inject web pages or files with these malicious programs to help them in gaining access to

⁵³Patro, Sibopadhy, Neelamadhab&Panigrahi, Rasmita.(2016) Security Issues over E-Commerce and their Solutions IJARCCCE. 5. 81-85. 10.17148/IJARCCCE.2016.51216

⁵⁴ A Sengupta, C Mazumdar "e-commerce security – a life cycle approach" sadhanavol 30, parts 2 & 3, April/June 2005

online retail stores. Through means such as SQL injection, they can easily insert the malware into a website's database allowing it to compromise the data stored in the database.

- **PHISHING SCAMS**

E-commerce sites are also prone to phishing scams sent by known or unknown people in the form of emails. These scams focus on targeting important user data like credit card numbers and login credentials. An attacker may use a scheme known as social engineering to lure online shoppers to give out their personal information. When sent in an email to an online shopper, a phishing scam may contain a link to a malicious site that resembles an e-commerce site.

- **PRICE MANIPULATION**

Modern e-commerce systems often face price manipulation problems. These systems are fully automated; right from the first visit to the final payment gateway. Stealing is the most common intention of price manipulation. It allows an intruder to slide or install a lower price into the URL and get away with all the data.

- **SNOWSHOE SPAM**

Now spam is something which is very common. Almost each one of us deals with spam emails in our mailbox. The spam messages problem has never been actually solved, but now it is turning out to be a not so general issue. The reason for this is the very nature of a spam message. Spam is something which is sent by one person, but unfortunately, new development is taking place in the cyber world. It is called as snowshoe spam. Unlike regular spam it is not sent from one computer but is sent from many users. In such a case it becomes difficult for the anti-spam software to protect the spam messages.

1.4 BEST PRACTICES TO COMBAT E-COMMERCE SECURITY THREATS

- **PCI DSS COMPLIANCE**

PCI DSS stands for Payment Card Industry – Data Security Standard.

PCI standard contains a series of security requirements that every business, big or small, must

follow.⁵⁵ It is designed to ensure that all companies that process, store, or transmit credit card information maintain a secure environment. The PCI DSS compliance mandates creating and maintaining a security policy that covers different security aspects, such as installing firewalls and data protection mechanism. Businesses have to encrypt cardholder data that is transmitted over public networks; they need to establish strong passwords and monitor access to account data. PCI DSS can immensely help e-commerce companies to build their internal information security program, and design it to meet their own business needs.

- **USE SSL CERTIFICATES**

SSL (Secure Sockets Layer) certificates can be the crucial cybersecurity measures for your online store in order to protect your business data as well as your customers' information from attack. Adding an SSL certificate puts a lock icon and https to the web address that creates an encrypted link and prevents an attacker from listening in to the traffic. When an encrypted SSL link is created, what happens immediately is a user's web browser verifies that the site on the other end is who it says it is.⁵⁶ If you ignore this step, it may lead to a MITM attack. There are different SSL certificate versions: domain validation, organization validation, and extended validation.

- **ADDRESS VERIFICATION SYSTEM (AVS)**

An AVS is a system that validates a customer's entered address by comparing with major shipping carriers. This verification process can effectively reduce the number of checkout errors, and increase the conversion rate in the process. AVS can be both domestic and international, and you should be ready to handle both AVSs' result codes. It would be important to know how AVS can be helpful. Suppose an individual steals one of your customers' credit card information, then he may have obtained customer's name, credit card number, and possibly CVV code. But the thief doesn't know the address linked to that particular credit card account. Only the true cardholder would have that information. So, you and your customers are better protected when

⁵⁵Alexander Menzheres, 'Recent E-Commerce Security Issues And Best Practices (2018)' (*Eteam.io*, 2020) <<https://www.eteam.io/blog/e-commerce-security-issues>>

⁵⁶(*Csie.ntu.edu.tw*, 2020) <<https://www.csie.ntu.edu.tw/~ec/Laudon/Chapter5.pdf>>

fraud disputes arise.

- **WEB APPLICATION FIREWALLS (WAF)**

Usually, network firewalls are unable to block the port through which HTTP traffic is served to the web, which is why web-based application attacks have been mounting in the past few years. So web application firewalls can solve this problem by analyzing applying rules to HTTP traffic. Gartner reported that 75% of all web attacks occur at the Application Layer (Layer 7) of the Open Systems Interconnection model. WAFs are specifically designed to protect both inbound and outbound web traffic directed to a particular web server. WAFs are highly beneficial for an e-commerce business as they rely on private user data on their websites. WAFs automatically filter out malicious web traffic and allow you to manually dictate who you want to access to your website.⁵⁷

- **BOT BLOCKERS**

Bot blockers are basically software programs that monitor the traffic coming to your website and find patterns that tell you if a bad bot is harvesting your site's content. When a blocker detects a bot, it usually drops the request, and as a result, the robot discontinues making data requests. These blocking adjustments often happen in real-time. Some bot blockers are sophisticated and evaluate the specific request patterns, HTTP headers, source address, page request behaviours and more. For example, CAPTCHA is the first layer of defence that tests threatening visitor quickly and weed out automated bots, which cannot read and supply a correct answer to the test.

1.5 ISSUES AND CONCERNS IN NEWLY DRAFTED E-COMMERCE POLICY BILL OF INDIA

Single legislation to address all aspects of e-commerce would be enacted and a single regulator would be set up to consider issues such as:⁵⁸

- Addressing the legal fragmentation seen across the various laws governing the

⁵⁷ Tan and Thoen (2000), <http://www.electronicmarkets.org/netacademy/publications.nsf/all_pk/1812>

⁵⁸Electronic Commerce in India: Draft National Policy Framework

<<https://www.readkong.com/page/electronic-commerce-in-india-draft-national-policy-9057835>>

e-commerce sector, viz. the Information Technology Act, 2000, the consumer protection laws, and other relevant legislation/ rules and ensuring uniformity in the definition of the various e-commerce players and levels of the obligation imposed on them.

- FDI implementation issues
- Consumer protection issues
- Central registry/ repository dealing with promoting domestic production, full disclosure by e-commerce entities of purpose and intent etc.
- Reporting and information requirements
- Setting up an accreditation system for vetting e-commerce platforms which adhere to good business practices.

The data localization is one of the contentious issues in the draft bill which was resolved by commerce ministry and decided to keep data localization norms out of the final policy, leaving the proposed data protection legislation to deal with the matter.

1.6 FUTURE OF E-COMMERCE

In spite of a few challenges, still, e-commerce is booming day by day and sooner will become the drastic demand of the users.⁵⁹ The future of e-commerce is bright and growth will come from mobile platforms, personalization, social media analytics, omnichannel service, and sharing economy business models.⁶⁰

Following are some future trends of e-commerce:

- **SOCIAL MEDIA**

Majority of online buying decisions are made on Social Media. A social network like Facebook, LinkedIn, Twitter, Google+, Pinterest etc have become a medium for easy log-in and purchase. Moreover, the clients can stay updated via the posts published on this media. Further, the

⁵⁹ Choi, Soon-Yong & Whinston, Andrew (1999) The Future of E-Commerce: Integrate and Customize Computer 32. 133 - 134, 138. 10.1109/2.738310.

⁶⁰ Future of E-Commerce Business In India - HunterTech Global
<<http://huntertechglobal.com/2019/04/16/future-scope-e-commerce-business-india/>>

advertising & promotions on these social sites have increased the chances of success of generating transactions to many folds.⁶¹

- **DRONE DELIVERY**

Companies have been working their way around to innovate the delivery process to shorten human effort as well as time. The answer to these problems is Delivery by Drones. DGCA is now fast-tracking the process of issuing guidelines for the use of drones for civil purposes in India. If everything goes as per the plan, then India might become the first country in the world to allow the use of drones for civil purposes.⁶²

- **APP ONLY APPROACH**

Statistics suggest the future of the internet lies in mobiles. Experts say more than 580 million people in India will use the Internet by 2018, and 70-80% of them will access the Web on mobile phones. This will cause all major players to switch to app-only model. About two-thirds of its online traffic of Flipkart comes from users in small cities and towns.⁶³ Flipkart's app-only approach assumes larger significance in these places where most people don't own desktop computers and have limited access to broadband.

- **GOOGLE'S BUY NOW BUTTON**

Google is reportedly working on its own "Buy Now" style button that would allow e-shoppers to search for products on Google and purchase them with a single click, right through Google's own search results page. The button will be displayed near sponsored search results beneath a "Shop on Google" heading at the top of the page. When users click on the Google's "Buy Now" button, they will be re-directed to another Google page that will allow them to choose specific item details, such as colour and size, and then select a shipping route. Google would then pass on the order information, including the customer's name and shipping address, to the retailer.⁶⁴

- **ARTIFICIAL INTELLIGENCE**

⁶¹Challenges and Future Scope of E-commerce in India

<<https://www.ijettcs.org/Volume5Issue2/IJETTCS-2016-04-23-93.pdf>>

⁶²STUDY OF FUTURE SCOPE AND CHALLENGES OF ONLINE RETAIL

<https://ar seam.com/sites/default/files/published-papers/p1i9v5ijmfm-Full-%2001-09%20MANOJ%20SHARMA%20-PRAMOD%20GUPTA%20Sep-2017_0.pdf>

⁶³Supra note 12

⁶⁴(Criteo.com, 2020) <<https://www.criteo.com/es/wp-content/uploads/sites/8/2017/09/ovum-the-future-of-e-commerce-the-road-to-2026.pdf>>

As the e-commerce space gets saturated, investors looking for innovative use of technology are zeroing in on companies developing artificial intelligence (AI) solutions. Jet Airways is experimenting with one such solution devised by Vizury.

1.7 LET'S SUM UP

In this chapter, we have studied how E-commerce can bring immense benefit both to the buyers and the sellers. But it has not developed to the level as was envisaged. It is because it is not free from problems. These are, security problem, the poor spread of Internet facility, lack of face-to-face contact, taxation problem, the problem of intellectual property right violation etc. Some of these problems have been addressed by the enactment of laws. We are confident that all the problems will be addressed in the course of time and it will become the most popular mode of commerce. E-commerce has immense potential to generate wealth for developing countries. Enacting legislation in order to facilitate E-commerce transactions is merely the first step. Effective implementation and strategic exploitation of its potential is a much more arduous task and should be done with care and caution.

1.8 FURTHER READING

- Sumanjeet (2011), 'Emerging Economic Models in the Age of Internet and E-commerce,' Global Journal of Business Management and Information Technology, Vol. 1, No.1, Pp. 53–68.
- Bulsara, Hemantkumar & Vaghela, Pratiksinh. (2017). E-COMMERCE: PAST, PRESENT AND FUTURE - AN INDIAN PERSPECTIVE.
- Dasgupta, Prithviraj. & Sengupta, Kasturi. (2002). E-Commerce in Indian Insurance Industry. Electronic Commerce Research, Vol. 2, 43-60.
- Raghunath, Alka. & Panga, Murlidhar. (2013). Problem and Prospects of E-Commerce. International Journal of Research and Development- A Management Review, Vol. 2, 59-66

1.9 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1. What are the jurisdictional issues involved in e-commerce?

- Whose jurisdiction?
- Where to take action?
- What test and laws to be followed?
- When an individual resides outside the jurisdictional area?
- Laws of which country applies on a particular e-Commerce transaction?
- Courts/Authorities of which country are to be approached for enforcement of rights?

2. What are the issues in the newly drafted e-commerce policy bill?

- Addressing the legal fragmentation seen across the various laws governing the e-commerce sector, viz. the Information Technology Act, 2000, the consumer protection laws, and other relevant legislation/ rules and ensuring uniformity in the definition of the various e-commerce players and levels of obligation imposed on them.
- FDI implementation issues
- Consumer protection issues
- Central registry/ repository dealing with promoting domestic production, full disclosure by e-commerce entities of purpose and intent etc.
- Reporting and information requirements
- Setting up an accreditation system for vetting e-commerce platforms which adhere to good business practices.

3. Write a few security challenges of e-commerce?

- Credit card fraud
- Distributed denial of service (DDoS) attacks
- Man-in-the-middle attacks
- Bots
- Malware

1.10 ACTIVITY

Elucidate the legal and security challenges faced in E-commerce along with suggestions pertaining to it? Explain it with relevant cases? (1000 – 1500 words)

Unit 4: Taxing E-Commerce

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Introduction
 - 1.3 Changing face of Brick n' Mortar Model
 - 1.4 Uniqueness of E-commerce
 - 1.5 The basis of taxation in Online Environment
 - 1.6 Constituting permanent establishment
 - 1.7 OECD Model Treaty: A Critique
 - 1.8 OECD Model Treaty and E-commerce
 - 1.9 Changes to the commentary on Article 5
 - 1.10 Whether a Website Acts as a PE?
 - 1.11 Whether a Server Acts as a PE?
 - 1.12 An ISP hosting a website
 - 1.13 An enterprise hosting its own website
 - 1.14 Let's sum up
 - 1.15 Further reading
 - 1.16 Check your progress: Possible answers
 - 1.17 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you should be able to understand:

- The basis of taxation in online environment
- OECD Model Treaty and E-commerce
- Changes to the commentary on Article 5

1.2 INTRODUCTION

E-commerce is a new way of conducting, managing and executing business transactions using information technology tools. E-commerce is commerce based on bytes.⁶⁵ The World Trade Organization (WTO) Ministerial Declaration on E-commerce defines “e-commerce” as “the production, distribution, marketing, sales or delivery of goods and services by electronic means.”⁶⁶ And according to the Internet Tax Freedom Act “e-commerce,” includes “any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.”⁶⁷

1.3 CHANGING FACE OF BRICK N’ MORTAR MODEL

E-commerce has changed the ‘brick and mortar’ world of physical commerce to ‘click and mortar’, ‘click and brick’ and ‘all clicks’ online commerce. These online commerce models have characteristics of their own.⁶⁸

Brick n’ Mortar	Click n’ Mortar	Click n’ Brick	All Clicks
Purely offline (physical).	Partly offline and partly online.	Partly offline and partly online.	Purely online.
No web presence.	Web presence supplements offline activities.	Web presence complements the offline activities.	No offline presence.
Marketing and selling goods in an offline environment only.	Marketing and selling goods in both offline and online environment.	Increasingly shifting marketing and selling activities to the online environment.	Marketing and selling of Information (Knowledge or content) only.

⁶⁵Defining e-commerce
<https://cn10xz.blogspot.com/2012/10/defining-e-commerce.html>

⁶⁶The six main instruments of e-commerce that have been recognized by WTO are telephone, fax, TV, electronic payment and money transfer systems, EDI and Internet

⁶⁷47 U.S. Code § 151 - Purposes of chapter;
<https://www.law.cornell.edu/uscode/text/47/151>

⁶⁸Jones, Richard & Basu, Subhajit. (2002) Taxation of Electronic Commerce: A Developing Problem. INTERNATIONAL REVIEW OF LAW COMPUTERS & TECHNOLOGY 16. 35-52. 10.1080/13600860220136093

Handle tangible goods.	Handle tangible goods.	Handle tangible goods.	Handle intangible goods.
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The Government has always been taxing brick n’ mortar businesses as per the statutory provisions. It establishes the boundaries of legitimate state authority to impose a duty to collect sales and use taxes and reduces litigation concerning those taxes. So far, the brick n’ mortar businesses are being taxed on the principles of physical presence or ‘substantial nexus’ criteria.

The “click and mortar” sellers are required to collect sales taxes based on their substantial nexus in a state where their product is delivered. Presumably, the point of sale is the state to which the goods are shipped, and thus, the consumer owes sales taxes to this state. These are like mail-order companies, delivering tangible products via a common carrier.⁶⁹

It is important that transactions should not be immune from taxation solely because the sale is conducted through a medium distinct from that of a traditional brick-and-mortar retailer. Similarly, it is not prudent to tax these e-commerce models purely on the basis of the traditional approach to ‘brick n’ mortar’ taxation as they have their unique features.

1.4 UNIQUENESS OF E-COMMERCE

Tax revenues are a major source of income to the Governments. One major concern is whether a shift to online commerce may have a major impact on whether such a transaction will result in tax revenues, and if so, which taxing authority has the right to those revenues. It is the nature of the ‘technology-based transactions’ which has given rise to:

- a) The lack of ‘physical’ connection between a consumer in one state and a seller in another state;
- b) Ever-changing location of web servers hosting the website, meant for online transactions;
- c) Relocation of businesses in tax havens;

⁶⁹ DJ Johnston, Secretary-General of the OECD ‘Taxation and social progress’ Editorial The OECD Observer No 215, January 1999, <www.oecd.org/publications/observer/215/e.toc.htm>

- d) General confusion regarding which country has the right to tax the transaction, and at what rate;
- e) Non-taxation of digital (intangible) goods, like software, music and data (or information);
- f) Export and import of digital (intangible) goods across international borders without paying customs duty (or tariffs), thereby bypassing the existing export-import policies, regulations and tax systems;
- g) A parallel channel of transactions, ignoring the traditional documents based banking practices;
- h) The general lowering down of ‘barriers to trade’ for the smaller business entities; and
- i) Complete disregard to accounting and audit procedures.

Hence, any taxation regime for e-commerce has to address the aforesaid points from (a) to (i). In other words, a new tax system (or structure) is required to redefine the basis of taxation in online environment? What constitutes a ‘permanent establishment’? What should be the modus operandi of collecting taxes?

It should not be forgotten that it is the nation state’s constitutional prerogative to levy taxes on any online economic activity and for that purpose every nation state has a right to define its own e-commerce taxation principles. Moreover, it is a myth that electronic tax is an ‘additional’ tax burden – the fact is that it is a new tax which is applicable in lieu of other indirect taxes.⁷⁰

1.5 THE BASIS OF TAXATION IN ONLINE ENVIRONMENT
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The presumption is that no one wants to pay taxes. Given a chance or opportunity, every taxpayer would at least try to pay minimum of taxes. Hence, the thumb rule for wider acceptance of any new tax system is that it should not discriminate among types of commerce, nor should it create incentives that will change the nature or locations of transactions, i.e., it should observe strict neutrality. That is to say that of by going online, a vendor saves on tax, then such a tax regime would be beneficial for the vendor but detrimental for the state.

As the Organization for Economic Co-operation and Development (OECD), a 30 member organization (Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico,

⁷⁰Indirect tax, wherein tax is levied on transactions like, Sales tax, Custom duty, Excise duty and VAT

Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States) has proposed that the basis of any online taxation system should be equitable, simple, certain, effective, distortions free, flexible and dynamic. The idea is to create a uniform mode of taxation whether offline or online. That is, any online taxation system should completely harmonize with existing offline taxation system. Broadly speaking, electronic commerce should be taxed neither more nor less heavily than other commerce, and online sales should, to the extent possible, be taxed at the state of destination of sales, irrespective of the fact whether the vendor (seller) has a physical presence in the state or not.

It is not easy to adopt the OECD proposed guidelines, as their exist certain inherent difficulties in adopting and extending offline taxation features to an online environment. More so, the technology has failed to provide any clear-cut solutions so far.

1.6 CONSTITUTING PERMANENT ESTABLISHMENT

In order to understand the basis of taxation in online environment, the primal question that needs to be answered is: what constitutes a ‘physical presence’ or substantial nexus’?

- a) Is it downloading of the website and its contents at a particular location (buyer’s place of residence)? Or
- b) Is it the location of web server, hosting the website?

In fact, if one looks from the point of establishing “minimum contacts” and “purposeful availment”, then it would be the nature and mode of transaction with the resident that establishes the physical presence of the seller in the forum state. It would render the seller taxable in every possible taxable jurisdiction. But if one treats presence of a web server as permanent establishment for the purpose of electronic taxation then it would be make seller solely taxable at the jurisdiction, where the server is located.

Thus it is important to understand the principle of permanent establishment as being adopted by the OECD as Model Tax Convention on Income and Capital (OECD Model Treaty).

1.7 OECD MODEL TREATY: A CRITIQUE

The OECD Model Treaty defines “permanent establishment” as a fixed place of business through which the business of an enterprise is wholly or partly carried on (Article 5(1)).⁷¹ It defines certain types of activities, per se permanent establishments, including offices, factories, and mines. (Article 5(2)). Other types of activities are specified as not constituting a permanent establishment; for present purposes, the most important of these is the maintenance of a fixed place of business solely for the purpose of carrying in “activity of a preparatory or auxiliary character”. (Article 5(4)(e)). An enterprise’s use of an independent agent to carry on business activities does not create a permanent establishment. (Article 5(6)). A permanent establishment does result, however, from use of a dependant agent, one who is acting on behalf of an enterprise and has, and habitually exercises, an authority to conclude contracts in the name of the enterprise. (Article 5(5)).

Unanswered questions arose when applying the Treaty’s definition of permanent establishment to electronic commerce. Does hosting a web site on a server constitute a permanent establishment where the server is located? Is a website-hosting ISP an agent of the company whose website it hosts, so as to give rise to a permanent establishment where the ISP is located? Can computer equipment that operates automatically, without human intervention, ever constitute a permanent establishment?

1.8 OECD MODEL TREATY AND E-COMMERCE

On December 22, 2000 the Committee on Fiscal Affairs adopted the Commentary on the OECD Model Treaty concerning the issue of the application of the current definition of permanent establishment (Art.5) in the context of e-commerce.⁷²

The Committee has been able to reach a consensus on the various issues concerning the application of the current definition of permanent establishment in the context of e-commerce.

This consensus includes:

- That a website cannot, in itself, constitute a permanent establishment;

⁷¹Article 5 (Permanent establishment) - swisntaxnetwork.ch
<<http://sites.google.com/site/steuernetzwerk/gesetze/swiss-dta/article-5-swiss-dta>>

⁷²Internet transactions and PE issues.- Free Online Library
<<https://www.thefreelibrary.com/Internet+transactions+and+PE+issues.-a0102024755>>

- That a website hosting arrangement typically does not result in a permanent establishment for the enterprise that carries on business through that website; and
- That an ISP will not, except in very unusual circumstances, constitute a dependant agent of another enterprise so as to constitute a permanent establishment of that enterprise.⁷³

However, Spain and Portugal do not consider that physical presence is a requirement for a permanent establishment to exist in the context of e-commerce, and therefore, they also consider that, in some circumstances, an enterprise carrying on business in a State through a website could be treated as having a permanent establishment in that State.

Since mainly the entrepreneur or persons carry on the business of an enterprise, who are in a paid-employment relationship with the enterprise (personnel). This is still an accurate statement of how business operates but, again, does not rule out that a business may be at least partly carried on without personnel. The Committee concluded that human intervention is not a requirement for the existence of a permanent establishment (PE), because the Committee believes that a requirement of human intervention could mean that, outside the e-commerce environment, important and essential business functions could be performed through fixed automated equipment located permanently at a given location without a permanent establishment (PE) being found to exist, a result that would be contrary to the object and purpose of Article 5.

1.9 CHANGES TO THE COMMENTARY ON ARTICLE 5

According to the new OECD Commentary, on the “OECD Model Treaty” issued on January 28, 2003, a website is “a combination of software and electronic data” and “does not in itself constitute tangible property”. Paragraphs 42.1 to 42.10 have been added immediately after paragraph 42 of the Commentary on Article 5. It further clarifies:

- a) Whether a website constitutes a “place of business”;
- b) Whether location of a server constitutes a permanent establishment (PE):
 - When an ISP hosts its website, or
 - When an enterprise owns (or leases) and operates the server on which the website is stored;

⁷³TAX AND COMMERCE OECD CLARIFICATION ON THE APPLICATION
 <<http://www.oecd.org/tax/treaties/1923380.pdf>>

- c) Whether the location of a computer equipment constitutes a permanent establishment when functions performed through that computer equipment exceeds the preparatory or auxiliary threshold.⁷⁴

1.10 WHETHER A WEBSITE ACTS AS A PE?

An Internet website, which is a combination of software and electronic data, does not in itself constitute tangible property.⁷⁵ A website, therefore does not have a location that can constitute a “place of business” as there is no “facility such as premises, or in certain instances, machinery or equipment” as far as the software and data constituting that website is concerned.⁷⁶

1.11 WHETHER A SERVER ACTS AS A PE?

The distinction between a website and the server on which the website is stored and used is important since the enterprise that operates the server may be different from the enterprise that carries on business through the website. In order to constitute a fixed place of business, a server will need to be located at a certain place for a sufficient period of time so as to become fixed.

1.12 AN ISP HOSTING A WEBSITE

For example, it is common for the website through which an enterprise carries on its business to be hosted on the server of an Internet Service Provider (ISP). Although the fees paid to the ISP under such arrangements may be based on the amount of disk space used to store the software and data required by the website, these contracts typically do not result in the server and its location being at the disposal of the enterprise, even if the enterprise has been able to determine that its website should be hosted on a particular server at a particular location. In such a case, the enterprise does not even have a physical presence at that location since the website is not

⁷⁴Basu, Subhajit (2001)Taxation of Electronic Commerce Journal of Information, Law and Technology 1

⁷⁵Does your website construes as permanent establishment

<<https://taxmantra.com/does-your-website-construes-as-permanent-establishment-and-taxed-accordingly-2/>>

⁷⁶Simkin, Mark & Bartlett, Graham & Shim, Jung (2011) Pros And Cons Of E-Commerce Taxation. International Business & Economics Research Journal (IBER).1. 10.19030/iber.v1i2.3894

tangible.⁷⁷ In these cases, the enterprise cannot be considered to have acquired a place of business by virtue of that hosting arrangement.

1.13 AN ENTERPRISE HOSTING ITS OWN WEBSITE

However, if the enterprise carrying on business through a website has the server at its own disposal, for example, it owns (or leases) and operates the server on which the website is stored and used, the place where that server is located could constitute a permanent establishment of the enterprise if the other requirements of the Article are met.

Such location may thus constitute a “fixed place of business” of the enterprise that operates that server.⁷⁸

Another issue is whether the business of an enterprise may be said to be wholly or partly carried on at a location where the enterprise has equipment such as a server at its disposal. The question of whether the business of an enterprise is wholly or partly carried on through such equipment needs to be examined on a case-by-case basis, having regard to whether it can be said that, because of such equipment, the enterprise has facilities at its disposal where business functions of the enterprise are performed.⁷⁹

Significantly, the commentary further provides where an enterprise operates computer equipment at a particular location; a permanent establishment may exist even though no personnel of that enterprise is required at that location for the operation of the equipment. The presence of personnel is not necessary to consider that an enterprise wholly or partly carries on its business at a location when no personnel are in fact required to carry on business activities at that location.

1.14 LET’S SUM UP

In this chapter, we have studied the uniqueness of e-commerce along with the basis of taxation in the online environment. We also discussed the OECD Model Treaty and its critique along with

⁷⁷India’s reservations on 2017 update to the OECD Model Tax
<<http://www.in.kpmg.com/taxflashnews/KPMG-Flash-News-Indias-reservations-update-to-the-OECD-Model-Tax-Convention-and-Commentary-2.pdf>>

⁷⁸Nadeem, Shariq&Saxena, A (2018) The Challenges of Taxing E-Commerce. International Journal of Management Studies V 56. 10.18843/ijms/v5i4(4)/07

⁷⁹TAX AND COMMERCE OECD CLARIFICATION
<<http://www.oecd.org/tax/treaties/1923380.pdf>>

the changes that need to put forth on Article 5. Finally, we ended the discussion with whether a website and server act as a PE along with an example of an enterprise hosting its website.

1.15 FURTHER READING

- Jones, Richard & Basu, Subhjit. (2002). Taxation of Electronic Commerce: A Developing Problem. *INTERNATIONAL REVIEW OF LAW COMPUTERS & TECHNOLOGY*. 16. 35-52. 10.1080/13600860220136093.
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- Shepherd, Jordan (2014), “A Successful Conclusion to the WTO Bali Ministerial,” King & Spalding: Trade and Manufacturing Alert.

1.16 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1) What is Brick n’ mortar model?

The Government has always been taxing brick n’ mortar businesses as per the statutory provisions. It establishes the boundaries of legitimate state authority to impose a duty to collect sales and use taxes and reduces litigation concerning those taxes. So far, the brick n’ mortar businesses are being taxed on the principles of physical presence or ‘substantial nexus’ criteria.

2) What is Click n’ Mortar model?

The “click and mortar” sellers are required to collect sales taxes based on their substantial nexus in a state where their product is delivered. Presumably, the point of sale is the state to which the goods are shipped, and thus, the consumer owes sales taxes to this state. These are like mail-order companies, delivering tangible products via a common carrier.

3) What is a permanent establishment?

The OECD Model Treaty defines “permanent establishment” as a fixed place of business through which the business of an enterprise is wholly or partly carried on. It defines certain types of activities, per se permanent establishments, including offices, factories, and mines.

4) What is the main objective of the OECD Model Treaty?

The idea is to create a uniform mode of taxation whether offline or online. That is, any online taxation system should completely harmonize with the existing offline taxation system. Broadly speaking, electronic commerce should be taxed neither more nor less heavily than other commerce, and online sales should, to the extent possible, be taxed at the state of destination of sales, irrespective of the fact whether the vendor (seller) has a physical presence in the state or not.

1.17 ACTIVITY

Explain the changes that were brought into the brick n’ mortar model and how it is different from other models along with the basis of taxation? Describe the OECD Model Treaty and its advantages and disadvantages. (1000 words)

Block 2

E-Governance

Unit 1: Historical Development and Concept of E-Governance

1

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Introduction
 - 1.3 Concept of E-Governance
 - 1.4 Historical Development of E-Governance
 - 1.5 Good Governance versus E-Governance
 - 1.6 Salient features of E-Governance
 - 1.7 Objectives of E-Governance
 - 1.8 Types of E-Governance
 - 1.9 Let's sum up
 - 1.10 Further reading
 - 1.11 Check your progress: Possible answers
 - 1.12 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you will be able to understand:

- Concept of e-governance
- Salient features of e-governance
- Different types of e-governance

1.2 INTRODUCTION

Today, citizens are becoming more and more conscious about their rights to get the required services at their doorstep and both the state and central governments recognize the need to deliver faster and efficient services to ordinary citizens through e-governance which is an

effective instrument of administration.⁸⁰ India's experience in e-governance and ICT initiatives has demonstrated significant success in improving accessibility, cutting down costs, reducing corruption and extending help and increased access to un-served groups. E-governance initiatives have reached millions of people belonging to these sections of society. It helps to improve access to information and services because these have provided economic and social development opportunities, facilitated participation and communication in policy and decision-making processes and empowered the weakest groups. This has led to the fostering of a sense of ownership and the building of social capital, which in turn, constitutes a basis for local revitalization.⁸¹

1.3 CONCEPT OF E-GOVERNANCE

The use of Information Technology aids to improve the ability of government to address the needs of society. It includes the publishing of policy and programme related information to transact with citizens. It extends beyond the provision of on-line services and covers the use of IT for strategic planning and reaching development goals of the government. E-governance may be defined as delivery of government services and information to the public using electronic means. Such means of delivering information is often referred to as Information Technology or 'IT' in short forms. Use of IT in government facilities is an efficient, speedy and transparent process for disseminating information to the public and other agencies, and for performing government administration activities. The term governance may be described as the process by which society steers itself. In this process, the interactions among the State, Private Enterprise and Civil Society are being increasingly conditioned and modified through the influence of Information and Communication Technologies (ICTs), constituting the phenomenon of e-Governance. Examples of these shifts in dynamics are exemplified by:⁸²

- i. The use of the Internet by Civil Society, NGO's and professional associations

⁸⁰Challenges of Implementation of E-Governance

<https://rrjournals.com/wp-content/uploads/2020/01/1132-1135_RRIJM190401242.pdf>

⁸¹A PROJECT ON E-GOVERNANCE- rotiodisha.nic.in

<http://rotiodisha.nic.in/files/29102018/Publication%20And%20Training%20Material/Project%20Reports%20of%20Trainees/E-Governance/GIRIJA%20SANKAR%20MALLIK_18th%20Batch.pdf>

⁸²The History of E-Gov - Term Paper

<<https://www.termpaperwarehouse.com/essay-on/The-History-of-E-Gov/213307>>

- to mobilize opinion and influence decision-making process that affect them.
- ii. The increasing electronic delivery of government and commercial service and Information.
 - iii. The electronic publication of draft legislation and statements of direction for public feedback.
 - iv. On the infrastructure side, the liberalization of telecommunication markets and trends towards web-enabled mobile telephony and digital television are facilitating this evolution.

1.4 HISTORICAL DEVELOPMENT OF E-GOVERNANCE

Recognizing the increasing importance of electronics, the Government of India established the Department of Electronics in 1970. The subsequent establishment of the NIC in 1977 was the first major step towards e-governance in India as it brought ‘information’ and its communication to focus.⁸³ In the early 1980s, the use of computers was confined to very few organizations. The advent of personal computers brought the storage, retrieval and processing capacities of computers to government offices. By the late 1980s, a large number of government officers had computers but they were mostly used for ‘word processing’. Gradually, with the introduction of better software, computers were put to other uses like managing databases and processing information. Advances in communications technology further improved the versatility and reach of computers, and many government departments started using ICT for a number of applications like tracking the movement of papers and files, monitoring of development programmes, processing of employees’ payrolls, generation of reports etc. The main thrust for e-governance was provided by the launching of NICNET in 1987 – the national satellite-based computer network. This was followed by the launch of the District Information System programme of the National Informatics Centre (DISNIC) to computerize all district offices in the country for which free hardware and software was offered to the State Governments. The concept of e-governance has its origins in India during the seventies with a focus on the development of in-house

⁸³E-Governance: A move towards paperless Administration in India
<<http://ijctjournal.org/Volume4/issue-3/IJCTT-V4I3P141.pdf>>

government applications in the areas of defence, economic monitoring, planning and the deployment of IT to manage data-intensive functions related to elections, census, tax administration etc.⁸⁴ The efforts of the NIC to connect all the district headquarters during the eighties was a very significant development. From the early nineties, IT technologies were supplemented by ICT technologies to extend its use for wider sectoral applications with policy emphasis on reaching out to rural areas and taking in greater inputs from NGOs and the private sector as well. There has been an increasing involvement of international donor agencies under the framework of 'e-governance for development' to catalyse the development of e-governance laws and technologies in developing countries. E-governance in India has reached the 'transactional' stage and provides various services to citizens and business and government organizations and is dispensed by central government agencies and different state government departments. *The National e-Governance Plan (NeGP)*, initiated in 2006, attempts to make all Government services accessible to the common man in his locality, through CSCs being set up across India. The Second Administrative Reforms Commission was set up with the intention of revamping the public administration system. The eleventh report of the commission, submitted during January 2009, stresses upon to achieve a transparent, accountable and efficient governance system in the country. The commission expects the government to prepare a clear roadmap with specific milestones for transforming the citizen-government interaction at all levels to the e-governance mode by 2020.⁸⁵ This strong recommendation of the commission has led to the clearance of "Electronic Delivery of Services Bill" by the Union Cabinet during 2013 as per which the centre and state governments are required to deliver services to citizens in electronic mode. Other e-governance-related key strategic interventions for strengthening service delivery at grassroots include the constitution of Unique Identification Authority of India (UIDAI) and e-Panchayat Project of the Ministry of Panchayat Raj under Bharat Nirman II Programme. The UAIDI is mandated to provide unique identification to residents of India. The unique identification (popularly known as AADHAR) is expected to serve as the basis to ensure efficient delivery of services and act as a tool for effective monitoring of government programmes and schemes. The e-Panchayat project which aims at providing broadband

⁸⁴IMPLEMENTING E-GOVERNANCE IN INDIA

<<https://www.jstor.org/stable/42742751>>

⁸⁵E Governance, E Governance Applications, E - IAS EXAM

<<https://www.civildserviceindia.com/subject/General-Studies/notes/e-governance.html>>

connectivity to all village Panchayats, is expected to boost development at grassroots through bottom-up planning. As mentioned earlier, the NeGP, which was once considered a flagship government programme, has not delivered as per expectations. Most of the projects launched under NeGP are found to be lacking in terms of necessary re-engineering of underlying processes, use of emerging technologies, application of e-governance standards, localization of contents, etc. Projects initiated under NeGP are, therefore, considered to be performing at sub-optimal level. To address this E-Governance in India the government has launched e-Kranti as part of the Digital India Programme. All the ongoing and new MMPs are required to follow the key principles of e-Kranti which are: ‘Transformation and not Translation’, ‘Integrated Services and not Individual Services’, Mandatory ‘Government Process Reengineering (GPR), ‘ICT Infrastructure on Demand’, ‘Cloud by Default’, ‘Mobile First’, ‘Fast-Tracking Approvals’, ‘Mandating Standards and Protocols’, ‘Language Localization’, ‘National GIS (Geo-Spatial Information System)’, ‘Security and Electronic Data Preservation’ . All the existing MMPs are to be revamped accordingly under the e-Kranti programme. With the addition of 13 more MMPs, the e-Kranti programme comprises 44 MMPs as on December 2015.

1.5 GOOD GOVERNANCE VERSUS E-GOVERNANCE

GOOD GOVERNANCE

The concept of “governance” is not new. It is as old as human civilization. Simply put “governance” means: the process of decision-making and the process by which decisions are implemented (or not implemented). Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance. Good governance has 8 major characteristics. It is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law.⁸⁶ It assures that corruption is minimized, the views of minorities are

⁸⁶Qualities of Effective Leadership and Its impact on Good Governance
<<https://www.abysinnialaw.com/blog-posts/item/1473-qualities-of-effective-leadership-and-its-impact-on-good-governance>>

taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.

E-GOVERNANCE

Although the term e-Governance is widely used, there is no standard definition of this term and different governments and organizations define the term to suit own aims and objectives. Some widely used definitions are noted below:

According to World Bank, e-Governance refers to the use by government agencies of information technologies (such as Wide Area Networks, the Internet and mobile computing) that have the ability to transform relations with citizens, businesses, and other arms of government. These technologies can serve a variety of different ends, better delivery of government services to citizens, improved interactions with business and industry, citizen empowerment through access to information or more efficient government management. The resulting benefits can be less corruption, increased transparency, greater convenience, revenue growth and cost reduction. World Bank stress is on the use of ICT in improving citizen-government interactions, cost-cutting and transparency in the process.⁸⁷

UNESCO defines e-Governance as —Governance refers to the exercise of political, economic and administrative authority in the management of a country's affairs, including citizen's articulations of their interests and exercise of their legal rights and obligations. e-Governance may be understood as the performance of this governance via the electronic medium in order to facilitate an efficient, speedy and transparent process of disseminating information to the public and to other agencies while performing government administration activities.

This definition visualizes the use of ICT in the management of the country's affairs with greater transparency and efficiency protecting citizen's interests

Dr APJ Abdul Kalam, former President of India, has visualized e-Governance in the Indian context as —A transparent smart e-Governance with seamless access, secure and authentic flow

⁸⁷ICT and Governance | Study Notes | UGC NET Paper 1
<<https://www.scholarify.in/ict-and-governance/>>

of information crossing the inter-departmental barriers and providing a fair and unbiased service to the citizen.⁸⁸

E-Governance is the application of information and communication technologies to transform the efficiency, effectiveness, transparency, and accountability of informational and transactional exchanges within government, between government and government agencies of national, state, municipal and local level, citizens and businesses and to empower citizens through access and use of information.

Electronic Governance can be defined as giving citizens the choice of when and where they access government information and services. The advantages are plenty, a higher degree of transparency, lesser paperwork, less delay, improved pace and effectiveness of governance to name a few.

1.6 SALIENT FEATURES OF E-GOVERNANCE

E-Governance is more than just a government website on the Internet. But what is it exactly, and what is it not? Many definitions exist for e-Governance. Several other terms are also commonly used, including e-business, e-democracy and e-government. E-democracy refers to the processes and structures that encompass all forms of electronic interaction between Government (elected) and the Citizen (electorate). E-government is a form of e-business in governance and refers to the processes and structures pertinent to the delivery of electronic services to the public (citizens and businesses), collaborating with business partners and conducting electronic transactions within an organizational entity. The system of e-Governance is supported by five major pillars *viz*; Computers, Connectivity, Content, Consumer/s and Confidence Building.⁸⁹

"Computers" in this context refers to all the hardware and software requirements of Governance.

"Connectivity" refers to all the information carrier systems, bandwidth etc.

⁸⁸Information and communication technologies

<<http://www.srjis.com/pages/pdfFiles/146805725525.%20TUHINA1.pdf>>

⁸⁹E-GOVERNANCE - Radome.in

<<https://engg-project.blogspot.com/2010/10/e-governance.html>>

"Content" refers to the information that is exchanged between the "Consumers" of the system. "Consumers" refers to all the human and human substitute systems that access and use the "Content" in the EG system.

"Confidence Building" refers to such of those measures that help the Citizens develop confidence in the e-Governance and encourages them to take to the E-Transformation. It is in this context that "Law" has a part to play along with "Education".⁹⁰

Imagine a situation in which all interaction with government can be done through one counter 24 hours a day, 7 days a week, without waiting in lines. In the near future this will be possible if governments are willing to decentralize responsibilities and processes, and if they start to use electronic means such as the Internet. Each citizen can then contact the government through a website where all forms, legislation, news and other information will be available. In Europe and the USA, commercial banks have already adopted this approach. Most transactions can be done at an ATM, by mail or by the Internet, which has saved banks enormous costs. In other words, they do more work.

1.7 OBJECTIVES OF E-GOVERNANCE

Following are the objectives/aims of E-Governance:

1. To build an informed society – An informed society is an empowered society. Only informed people can make a Government responsible. So providing access to all to every piece of information of the Government and of public importance is one of the basic objectives of E-Governance.
2. To increase Government and Citizen Interaction - In the physical world, the Government and Citizens hardly interact. The amount of feedback from and to the citizens is very negligible. E-Governance aims to build a feedback framework, to get feedback from the people and to make the Government aware of people's problems.

⁹⁰ Singh, Rubee (2018) Impact of E-Governance in India : Opportunities & Challenges

3. To encourage citizen participation - True democracy requires the participation of each individual citizen. Increased population has led to representative democracy, which is not democracy in the true sense. E-governance aims to restore democracy to its true meaning by improving citizen participation in the Governing process, by improving the feedback, access to information and overall participation of the citizens in the decision making.

4. To bring transparency in the governing process - E-governance carries an objective to make the Governing process transparent by making all the Government data and information available to the people for access. It is to make people know the decisions and policies of the Government.

5. To make the Government accountable - Government is responsible and answerable for every act decision taken by it. E-Governance aims and will help make the Government more accountable than now by bringing transparency's and making the citizens more informed.

6. To reduce the cost of Governance - E-Governance also aims to reduce the cost of governance by cutting down on expenditure on physical delivery of information and services. It aims to do this by cutting down on stationery, which amounts to most of the government's expenditure. It also does away with the physical communication thereby reducing the time required for communication while reducing cost.

7. To reduce the reaction time of the Government – Normally due to red-tapism and other reasons, the Government takes long to reply to people's queries and problems. E-Governance aims to reduce the reaction time of the Government to the people's queries and problems, because problems are basically the Government's problems as the Government is for the people.

1.8 TYPES OF E-GOVERNANCE

E-Governance services can be shared between citizens, businessman, government and employees. These four models of e-governance areas⁹¹:-

- 1. Government to Citizens (G2C)**
- 2. Government to Government (G2G)**
- 3. Government to Employees (G2E)**
- 4. Government to a Businessman (G2B)**

Government to citizens (G2C):-This model of e-governance refers to the government services which are shared by citizens. Here, citizens visit the link of services that they want to use. This model strong the bond between the government and its citizen. Type of services which are provided by this model includes: -

- Payment of online bills such as electricity, water, telephone bills etc.
- Online registration of applications.
- Copies of land-record.
- Online filling of complaints.
- Availability of any kind of online information.

Government to Government (G2G):-This model refers to the services which are shared between the governments. There is lots of information that need to be shared between various government agencies, department and organizations. These types of services or information are as:-

- Sharing of information between the policedepartment of various state.
- Government document exchange which includes preparation, approval, distribution and storage of all governmental documents is also done through e-governance.
- Most of the finance and budget work are also done through e-governance.

⁹¹ Subramanian, C (2012) E-GOVERNANCE: A KEY TO GOOD GOVERNANCE IN INDIA International Journal of Scientific Research 3 305-308

Government to businessmen (G2B):-Through this model, the bond between the private sector and government increase and businessmen use to communicate. They share information through this model like:-

- Collection of taxes.
- Rejection and approval of patent are also done by this model.
- Payment of all kind of bills and penalty.
- Sharing of all kind of information, rules and data.
- Complaints or any kind of dissatisfaction can be shown by this.

Government to employees (G2E):-This model increases the transparency between the government and its employee. Here, the employee can keep a check on the functioning and working of government and government can keep on its employees. Information that can be shared by this model:-

- All kind of data submission (attendance record, employee record etc.) from various government offices is done by this model
- An employee can file all kinds of complaints and dissatisfaction by this model.
- All kind of rule- regulation and information for employees can be shared by this.
- Employees can check their payment and working record.
- Employees can register all kind of working forms online.

1.9 LET'S SUM UP

In a nutshell, when we talk about e-Governance in India, it signifies a standard relationship between a citizen and that of the Government. In this G2C relationship, the government is liable to provide services ranging over domains like healthcare, transportation, education, telecommunications and much more. In lieu of Digital India, the country is on the surge of change and revolution. It would be evident to mention that things which are not dynamic today are considered out-fashioned.

1.10 FURTHER READING

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- Chen, Yu-Che, and James Perry. 2003. Outsourcing E-Government: Managing for Success. Public Performance and Management Review 26 (4): 404 – 21.
- NandanKamath, Law Relating to Computers Internet and E Commerce Universal Law Publisher, 5th Edition, (2012).
- Apar Gupta, Commentary on Information Technology Act, 3rd Edition, Lexis Nexis, 2016.

1.11 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1. What is E-Governance?

Electronic Governance or e-governance is the application of information and communication technology (ICT) for delivering government services, exchange of information communication transactions, integration of various stand-alone systems and services between government-to-customer (G2C), government-to-business (G2B), government-to-government (G2G) as well as back-office processes and interactions within the entire governmental framework. E-governance allows citizens to communicate with the government, participate in the governments' policy-making and citizens to communicate with each other.

2. What are the various types of E-governance?

The various types of e-governance are as follows:

- i. Government-to-Citizen (G2C)
- ii. Government-to-Business (G2B)
- iii. Government-to-Employee (G2E)
- iv. Government-to-Government (G2G)

3. What are the characteristics of Good Governance?

Good governance has 8 major characteristics. It is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.

4. What are the objectives of E-Governance?

- To build an informed society
- To increase Government and Citizen Interaction
- To encourage citizen participation
- To bring transparency in the governing process
- To make the Government accountable
- To reduce the cost of Governance
- To reduce the reaction time of the Government

1.12 ACTIVITY

Explain the meaning of E-Governance, its features, objectives, types and how it is useful in the present era? (800 – 1000 words)

Unit 2: Legal Issues and Regulatory Framework of E-Governance

2

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Regulatory framework under I.T. Act, 2000
 - 1.3 Some E-governance initiatives of the Indian Government
 - 1.4 Issues involved in E-Governance
 - 1.5 Challenges involved in E-Governance
 - 1.6 Let's sum up
 - 1.7 Further reading
 - 1.8 Check your progress: Possible answers
 - 1.9 Activity
-

1.1 LEARNING OBJECTIVES

After going this chapter, you should be able to understand:

- Regulatory Framework under I.T. Act, 2000
- Issues and Challenges involved in E-Governance
- E-Governance initiatives

1.2 REGULATORY FRAMEWORK UNDER I.T. ACT, 2000

Section 4-10 of the Information Technology Act, 2000 highlight the extent of e-governance rights to the individuals and to the Government.⁹² The I.T. Act provides a road map for use of

⁹²E-Government, E-Participation and Challenging Issues:
<<https://pdfs.semanticscholar.org/c8dc/0f2e99c6d798364ea55a43c10a3aea0ec174.pdf>>

electronic records (including digital signatures) in Government and its agencies by promoting efficient delivery of Government services.⁹³

I. LEGAL RECOGNITION OF ELECTRONIC RECORDS

Section 4 deals with Legal Recognition of electronic records. Where any law provides that information or any other matter shall be in writing or the typewritten or printed form, then irrespective of anything contained in such law, such requirement shall be deemed to be satisfied if such information or matter is rendered or made available in an electronic form and accessible so as to be usable for a subsequent reference.⁹⁴

II. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES

Section 5 relates to the Legal Recognition of electronic signatures. Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then irrespective of anything contained in such law, such requirement shall be deemed to be satisfied if such information or matter is authenticated by means of electronic signature affixed in such manner as may be prescribed by the Central Government.⁹⁵

‘Signed’, to a person, mean affixing of his handwritten signature or any mark on any document and the expression ‘signature’ shall be construed accordingly.⁹⁶

III. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES IN GOVERNMENT AND ITS AGENCIES

⁹³(Gswan.gov.in, 2020)

<<http://www.gswan.gov.in/PDF/D3-2-Regulatory-framework-of-e-Governance.pdf>> accessed 20 May 2020.

⁹⁴Electronic Governance | Ministry of Electronics

<<https://meity.gov.in/content/electronic-governance>>

⁹⁵ICAI members use electronic signature for signing audit

<<https://taxguru.in/chartered-accountant/icai-members-may-use-electronic-signature-signing-audit-reports.html>>

⁹⁶Chapter 3: Electronic Governance Archives - Page 2 of 3

<<https://www.itlaw.in/bareact/chapter-3-electronic-governance/page/2/>>

Section 6 deals with the use of electronic records and electronic signature in Government and agencies.

Where any law provides for:

- The filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner; or
- The use or grant of any licence, permit, sanction or approval by whatever name called in a particular manner; or
- The receipt or payment of money in a particular manner, then irrespective of anything contained in any other law for the time being in force, such requirement shall be deemed to be satisfied if such filing, issue, grant, receipt or payment is effected by means of such electronic form as may be prescribed by the appropriate government.
- The appropriate Government may, by rules, prescribe:
- The manner and format in which such electronic records shall be filed, created or issued;
- The manner or method of payment of any fee or charges for filing, creation, or issue any electronic record.

IV. DELIVERY OF SERVICES BY SERVICE PROVIDER

Section 6A pertains to the Delivery of Services by service providers. For the purposes of e-governance and efficient delivery of services to the public through electronic means the appropriate government may, by notification in the Official Gazette, authorize any service provider to set up, maintain and upgrade the computerized facilities and perform such other services as it may specify.⁹⁷

Service provider so authorized includes any individual, private agency, a private company, partnership firm, sole proprietor firm, or any other body or agency which has been granted permission by the appropriate government to offer services through electronic means in accordance with the policy governing such service sector.⁹⁸

⁹⁷<https://egovstandards.gov.in/sites/default/files/Guidelines/Digital%20Signature/Digital_Signature_Certificate_1 interoperability.pdf>

⁹⁸E-Governance - Legal Bites <<https://www.legalbites.in/e-governance/>>

The appropriate government may also authorize any service provider to collect, retain and appropriate such service charges, as may be prescribed by the appropriate government for the purpose of providing such services, from the person availing such service.⁹⁹

Further, the appropriate government may authorize the service provider to collect, retain and appropriate service charges even if there is no express provision under the Act, rule, regulation or notification under which the service is provided to collect, retain and appropriate e-service charges by the service providers.

The appropriate Government shall, by notification in the Official Gazette, specify the scale of service charges which may be charged and collected by the service providers.

However, the appropriate government may specify the different scale of service charges for different types of services.

V. RETENTION OF ELECTRONIC RECORDS

Section 7 deals with Retention of electronic records. Where any law provides that documents, records or information shall be retained for any specified period, then that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form if:

- The information contained therein remains accessible so as to be usable for a subsequent reference;
- The electronic record is retained in the format in which it was originally generated, sent or received, or in the format which can be demonstrated to represent accurately the information originally generated, sent or received;
- The details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

However, the above provision will not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

Further, the above said provision shall not apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

⁹⁹INFORMATION TECHNOLOGY ACT, 2000 - Internet Rights
<<https://internetrights.in/wp-content/uploads/2014/05/Information-Technology-Act-2000.pdf>>

VI. AUDIT OF DOCUMENTS ETC. MAINTAINED IN ELECTRONIC FORM

Section 7A pertains to Audit of Documents etc. in Electronic form. Where any law for the time being in force contains a provision for audit of documents, records or information, then such provision shall also be applicable for an audit of documents, records or information processed and maintained in the electronic form.

VII. PUBLICATION OF RULE, REGULATION ETC. IN ELECTRONIC GAZETTE

Section 8 deals with Publication of rule, regulation, etc., in Electronic Gazette. Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette.

- In *Orissa Consumer Association Vs Orissa Electricity Regulatory Commission*¹⁰⁰, the Orissa High Court held that “if notification is published in the Electronic Gazette, the notification shall be deemed to have been published in the Official Gazette”.
- In *Tirumala Devi Eada Vs The State of Andhra Pradesh*¹⁰¹, it was held that on a reading of Section 8 together with Section 2(1) (s)¹⁰² of the Act, it is clear that even where the law provides for publication in the Official Gazette, such requirement shall be deemed to have been satisfied if the Rules, Regulations, etc. are published in the electronic gazette i.e., in the electronic form.

VIII. NO RIGHT TO INSIST GOVERNMENT OFFICE ETC. TO INTERACT IN ELECTRONIC FORM

Section 9 talks about section 6, 7 and 8 to not confer the right to insist document should be accepted in electronic form. No right is conferred upon any person to insist that any Ministry or Department of the Central Government or the State Government or any authority or body

¹⁰⁰ *Orissa Consumer Association v Orissa Electricity Regulatory Commission* AIR [2005]Ori 11

¹⁰¹ *Tirumala Devi Eada v The State of Andhra Pradesh* W P (C) Nos 34683, 34805 of [2011]

¹⁰² Section 2(1) (s) of the I T Act, 2000, “Electronic Gazette” means the Official Gazette published in the electronic form

established by or under any law or controlled or funded by the Central or State Government should accept, issue, create, retain and preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

IX. POWER TO MAKE RULES BY CENTRAL GOVERNMENT IN RESPECT OF ELECTRONIC SIGNATURE

Section 10 deals with the power to make rules by Central Government in respect of electronic signature. The Central Government may prescribe:

- The type of electronic signature;
- The manner and format in which electronic signature should be affixed;
- The manner or procedure which facilitates identification of the person affixing the electronic signature;
- Control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and
- Any other matter which is necessary to give legal effect to electronic signatures.

1.3 SOME E-GOVERNANCE INITIATIVES OF THE INDIAN GOVERNMENT

The Government of India approved the National e-Governance Plan (NeGP), comprising of 27 Mission Mode Projects (MMPs) and 8 components in 2006. In the year 2011, 4 projects – Health, Education, PDS and Posts were introduced to make the list of 27 MMPs to 31. Currently, there are 44 MMPs being implemented by the government under e-Kranti.

Under Pillar 5 of Digital India, e-Kranti - Electronic delivery of services of Digital India programme, 44 Mission Mode Projects (MMPs) are being implemented by Central Ministries/Departments and State/UT governments to provide completely online services in various domains like Health, Education, Passport Seva, Trade, Income Tax, Excise and Customs, Corporate Affairs, India Post, e-Police, Land Records, etc. Several services are completely online, while some services are partially online.

INITIATIVES IN VARIOUS SECTORS

Agriculture: The major services of Agriculture MMP include Pesticide registration, Display on the Web of Seed Testing Results, Prices and arrival details, Geographical Information System (GIS) based interface for price and arrival details, District level Agro-met advisories, Information on pesticides, Information on fertilizers/seeds, etc.

SOME MAJOR MOBILE APPLICATIONS DEVELOPED ARE

KisanSuvridha: This app provides information on five critical parameters- weather, input dealers, market price, plant protection and expert advisories.

PushaKrishi: This app provides information on the latest technologies to farmers.

Crop Insurance: Farmer can learn of insurance premium, notified area etc. on the mobile.

Agri Market: Farmer can learn about the prices of various crops in the mandis near him.

India Weather: This app provides current weather and 4 days of weather forecast across the country for more than 300 cities.

THE MAJOR WEB PORTALS DEVELOPED INCLUDE THE FOLLOWING¹⁰³

Farmers' Portal: Farmers' Portal is a one-stop-shop for farmers where a farmer can get information on a range of topics including seeds, fertilizer, pesticides, credit, good practices, dealer network, and availability of inputs, beneficiary list and Agromet advisories.¹⁰⁴

M-Kisan Portal: This is a unified platform from where officials and scientists can send targeted text and voice-based advisories to the farmers on a host of issues related to agriculture and allied sectors.

¹⁰³E-Governance In India: Concept, Initiatives And Issues - INSIGHTSIAS' (*INSIGHTSIAS*, 2020) <<https://www.insightsonindia.com/2014/11/23/e-governance-india-concept-initiatives-issues/>>

¹⁰⁴Nikithayadav, Singh, V B (Sep.2012) -"e-Governance: past, present and future in India", international journal of computer applications (0975-8887) volume 53, No 7

Crop Insurance Portal: To provide complete information related to Crop Insurance scheme being implemented in the country.

Participatory Guarantee System of India (PGS) Portal: This is a portal for encouraging a participatory approach to certification of organic farming in the country.

E-Mandi: The Government has launched the e-Mandi portal to make procurement of agricultural products smoother and provide competitive remuneration, especially for small and marginal farmers.

Land Records: Major services include real-time availability of land records, issuance of Record of Rights along with cadastral maps, issuance of a certified copy of the deed, issuance of non-encumbrance certificate, payment of stamp duties etc. 26 States have computerized their land records and providing computerized copies of Records of Rights on demand. These states have also placed their land records data in the public domain.¹⁰⁵

School Education Mission Mode Project (MMP): The MMP is focused on Primary, Secondary and Higher Secondary education. It will be a driving force for implementation of the National Policy on Information and Communication Technology (ICT) in School Education.

National Scholarships Portal (NSP): The portal is a one-stop solution to implement end-to-end disbursement of the scholarship to the beneficiaries. The process includes student registration, application, approval and disbursement. 76 schemes of 22 Ministries/ Departments of the Government are being on-boarded on the portal.

Aadhaar and Direct Benefit Transfer (DBT): 103+ crore citizens enrolled. 27+ Crore Bank Account seeded with Aadhaar No. 74 Government Schemes are on DBT, where Rs. 1.2 lakh crores transferred through DBT.

Central Excise and Customs: Facilitates trade and industry by streamlining and simplifying

¹⁰⁵(Meity.gov.in, 2020)

<https://meity.gov.in/writereaddata/files/e-Governance_Project_Lifecycle_Participant_Handbook-5Day_CourseV1_20412.pdf> accessed 20 May 2020.

customs and excise processes and to create a climate for voluntary compliance.

MCA 21: The major services delivered under the aegis of Ministry of Corporate Affairs through MCA21 include viewing of public records, issue of certified copy of documents, change in registered office, change in director(s), annual filings, application for change of name of a company, incorporation of a company and name allocation to a new company.

Passport Seva: Project focuses on reforming Passport services in India through simple, efficient and transparent processes from the processing of Passport to delivery of services.

E-Tourist Visa: Tourists can apply visa online, pay the visa fee online and receive e-Tourist Visa online. Around 8.45 lakh e-Tourist Visas have been issued since November 2015.

E-Courts: The services delivered through the e-Courts MMP include Automated case filing, Automated registration of case, Automated workflow for court, Generation of automated cause list, Judicial service centers in all Courts, Automation of Case Management System, allocation of cases, etc.

Common Services Centers (CSC) 2.0: The CSC aims for establishing at least one CSC in each of 2.5 lakh Gram Panchayat (GP) level under Digital India Programme to deliver various G2C, B2C and B2B services online.

E-District: e-District services have been launched in 555 districts of the country, which delivers various types of eGov services at districts.¹⁰⁶

Mobile Governance: The Mobile Seva platform delivers Government services over mobile devices using mobile applications installed on the user's mobile handsets. About 2521 Government departments and agencies at central, state and local levels have been integrated with

¹⁰⁶ Kumar, Suneel (2016) -"e-governance in India, Imperial Journal of Interdisciplinary Research, volume.2, issue-2, issn: 2454- 1362

the Mobile Seva platform.

E-Hospital: Online Registration System (ORS): It includes online appointment and registration by new patients, viewing of lab reports, checking the status of blood availability and integration with payment gateway (PayGov). 43 hospitals have been integrated.

JeevanPramaan: Digital Life Certificate for Pensioners scheme known as JeevanPramaan envisages digitizing the whole process of securing the life certificate. With this initiative, the pensioner is no more required to physically present himself or herself in front of the disbursing agency or the certification authority. JeevanPramaan is a biometric enabled digital service for pensioners. 16.30 lakh pensioners registered for the scheme.

Vikaspedia: It is a multilingual collaborative content creation platform that promotes access and sharing of e-knowledge for the empowerment of underserved communities. Vikaspedia facilitates societal empowerment through provision of relevant information in various domains including Agriculture, Education, Health, Social Welfare, Energy and e-Governance in 22 scheduled languages of the country, besides English.¹⁰⁷

MyGov: MyGov aims to establish a link between Government and Citizens towards meeting the goal of good governance. MyGov encourages citizens as well as people abroad to participate in various activities i.e. ‘Do’, ‘Discuss’, ‘Poll’, ‘Talk’, ‘Blog’, etc. There are multiple theme-based discussions on MyGov where a wide range of people can share their thoughts and ideas.

1.4 ISSUES INVOLVED IN E-GOVERNANCE

TECHNICAL ISSUES

1. Interoperability: It is one of the critical issues of e-governance. Interoperation among ministries and departments is difficult, and it became a hurdle for processing and sharing data. In other words, web-based data how to be captured and in which format these seem to

¹⁰⁷Mahajan, Preeti (2009) E-Governance Initiatives in India with Special Reference to Punjab

be major issues of e-governance.¹⁰⁸

2. Security: Nowadays, the security of online transaction is becoming a big issue; insurance, banking, utility bill payments, all these services done by e-governance. There is still discontent to citizens on availing government services due to lack of security.¹⁰⁹

3. Privacy: This is another key issues of e-governance. Any information provided by citizens should be ensured by the government. Otherwise, any person or institution may misuse valuable information. **4. Authentication:** It is very important to know the right user of the services, or it may be misused by private competitors. Meanwhile, the digital signature plays a major role in providing authenticity. It is expensive and causes for frequent maintenance.

ECONOMIC ISSUES

1. Cost: It is one of the economic issues, implementation of e-governance operations and maintenance of services fetch huge cost to govt.¹¹⁰

2. Reusability: Any models developed by the government, must be reusability. E-governance is being a national plan; what it incorporates any software or modules should be used by other administrations.¹¹¹

3. Maintainability: Maintenance should be given due importance. Because the IT ministry has been continuously developing new softwares in order to fill the current needs of citizens. Consequently, the government launched new projects, for example, digital India.

¹⁰⁸E-Governance in India: Issues and Challenges

<<https://pdfs.semanticscholar.org/b41a/d7d1537e49b90e40ec9b732736d6c16f3347.pdf>>

¹⁰⁹MeghashyamAthalyeShrinivas (Sep, 2013)-“e-Governance: issues and challenges”, epitome: an online interdisciplinary, multidisciplinary journal, volume 2, issue 2

¹¹⁰Beniwal, V S, and Sikka, Kapil (2013) -“e-Governance in India: prospects and challenges, International Journal of Computer & Communication Technology, Issn: 0975-7449, volume-4, issue 3

¹¹¹ Malik, Poonam, Dhillan, Priyanka and Verma, Poonam. (July, 2014) -“Challenges and future prospects for E-governance in India”, International Journal of Science, Engineering and Technology Research, volume-3, issue:7

4. **Portability:** The primary requisite for portable applications is the independence of components from hardware and software platforms in order to help in possible reuse by administrations.

SOCIAL ISSUES

1. **Accessibility:** In the era of technology, the most number of people using the internet via computers and mobile phones. In the context of India, there is still gap arising between users and nonusers; it is because of the language barrier, inadequate infrastructure in rural areas, etc.
2. **Usability:** Users of e-governance may be literate or illiterate. Any technology or software to be used as user-friendly to a greater extent; only then, citizens could use it as smoothly as possible.
3. **Use of local languages:** India's population is second next to china; over 65 % only literate citizens are there; the rest of the population cannot understand the English language. Therefore, the government should make it more comfort by translating this language into their regional languages for the sake of the benefit of e-services.
4. **Awareness about e-governance:** Number of people in the country has not been aware of it, on account of illiteracy, non-accessibility of the internet in rural areas, lack of will using internet services, etc. Therefore, educated citizens, concerned institution and department should come forward to get rural people benefited by e-services.

1.5 CHALLENGES INVOLVED IN E-GOVERNANCE
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1. TRUST:

It is the emerging challenges of e-governance. Trust can be defined regarding users of new software and trust of the government. Former aspect implies that users of any type of software or technology must be confident, comfortable and trusting of it. Another very important aspect related to the trust of govt. Nowadays, citizens using e-governance services, trusting the innovations of e-governance to some extent.

Furthermore, there might be some fraudulent activities done by any other entity for the sake of finance, valuable info and even about personal information, etc. Besides, in Government offices, dept. valuable info sometimes left out or missed; it erodes trust about e-governance among all classes citizens of the economy.¹¹²

2. DIGITAL DIVIDE:

Even in the era of science and technology, there is still a huge gap that exists between users and nonusers of e-govt. services. In fact, in India, the majority of the masses, who live below the poverty line and they deprived of govt. services. In contrast, some portion of people is immensely using the e-services of government. However, this gap needs to be made narrow, then only, the benefits of e-governance would be utilized equally.¹¹³

3. COST:

One of the difficult tasks of the govt. is to spend on implementation of e-governance initiatives to which govt. has to bear the huge cost. Few other developed countries UK and Singapore spending 1% of GDP and 0.8% of GDP respectively. India spending only 3% of GDP, indeed, govt. should motivate the officials, administrators and common people using services of e-governance subject to the conscious use of public finance on these types of projects.¹¹⁴

4. PRIVACY AND SECURITY:

It is one of the critical challenges of e-governance. Financial services, medical services

¹¹²Paramashivaiah, P and Suresh, B K, E-Governance: Issues and Challenges in India (August 15, 2016) OIDA International Journal of Sustainable Development, Vol 09, No 08, pp. 11-16, 2016

¹¹³e-Governance in India : Empowering Citizens

<<https://www.dhyeyaias.com/current-affairs/perfect-7-magazine/e-governance-in-india>>

¹¹⁴Palanisamy, Ram (2004) Issues and challenges in e-governance planning

and personal information are to be protected with security, and then only, there will be a number of people trusting of it. Therefore, the implementation of e-governance projects must have security standard and protocols for safeguarding the interest of all classes of masses; otherwise, citizens will lose trust and confidentiality of e-governance.

5. INFRASTRUCTURE:

It is essentially required for the implementation of e-governance as much as possible in India. Electricity, internet and poor adaptability of technology will retard the progress of e-governance. In the context of developing countries, there should be enough basic facilities in order to give impetus to e-governance.

1.6 LET'S SUM UP

E-governance is getting momentous in India. E-governance has had a great role in each sphere of the economy over a number of years. India economy has been progressive one on account of good governance. Conventionally, the Government used to struggle to provide services to its citizens before initiatives of e-governance. When the government started launching many initiatives for e-governance; it has become one of the emerging economies due to its potentiality of ICT. Till now, government has implemented various initiatives with different projects (Digital India, e-kranti, etc.). However, it still has some hurdles regarding e-governance, such as digital divide between urban and rural, poverty, illiteracy, security and cost of implementation, etc. Each of these issues and challenges is posing a serious concern to the government. Meanwhile, previous and current govt. launched multiple initiatives by overcoming the above issues and challenges. Under twelve five year plan, some of the future prospects outlined and partly achieved by every government. However, the govt. should spend more on this initiative to make it transparent, convenient, and safer and citizen-friendly in order to enhance people confidence into good democratic e-governance.

1.7 FURTHER READING

- Tripathi, R., & Gupta, M. P. (2014). Evolution of government portals in India: mapping over stage models. *Journal of Enterprise Information Management*, 27(4), 449–474. Retrieved from <http://www.scopus.com/inward/record.url?eid=2-s2.0-84927515542&partnerID=tZOtx3y1>
- Chris Reed, *Internet Law-Text and Materials*, Universal Law Publishing Co., New Delhi, 2nd Edition, 2005.
- Ian J Lloyd, *Information Technology Law*, Oxford University Press, 7th Edition, 2014.
- Aparna Viswanathan, *Cyber Law Indian and International Perspectives*, Lexis Nexis, 2012.
- Karnika Seth, *Computers, Internet and New Technology Laws-A comprehensive reference work with special focus on developments in India*. Lexis Nexis, Updated Edition 2013.

1.8 CHECK YOUR PROGRESS: POSSIBLE ANSWERS
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1. How has e-governance been legally acknowledged?

E-governance has been legally recognised through provisions of the Information Technology act 2000, such as sections 4 to 10 as laid down therein in the following manner.

Section 4 – Legal Recognition of Electronic Records

Section 5 – Legal Recognition of Electronic Signatures

Section 6- Use of Electronic Records and Electronic Signature in Government and its Agencies

Section 7- Retention of Electronic Records

Section 8- Publication of Rules, Regulations, etc. in electronic gazette

Section 9- Section 6, 7 and 8 to not confer the right to insist document to be accepted in electronic form

Section 10 - Power to make rules by Central Government in respect of electronic signature.

2. Write any 5 Web Portals developed by the Indian Government?

- Farmers' Portal
- M-Kisan Portal
- Crop Insurance Portal
- E-Mandi
- Land Records

3. What are 3 legal issues involved in E-Governance?

- Technical issues
- Economic issues
- Social issues

4. What are the challenges involved in E-Governance?

- Trust
- Digital divide
- Cost
- Privacy and security
- Infrastructure

1.9 ACTIVITY

E-Governance in India: A Myth or Reality? (1500 words)

Unit 3: National E-Governance Plan (NeGP)

3

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Introduction
 - 1.3 Three tier architecture
 - 1.4 The National E-Governance Plan (NeGP)
 - 1.5 Approach/Methodology
 - 1.6 Implementation strategy
 - 1.7 Programme Management
 - 1.8 Some Central Mission Mode Projects
 - 1.9 Let's sum up
 - 1.10 Further reading
 - 1.11 Check your progress: Possible answers
 - 1.12 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you should be able to understand:

- The meaning of National E-Governance Plan
- The Methodology and Implementation strategy of NeGP
- Some Central Mission Mode Projects

1.2 INTRODUCTION

India has a very strong presence in the IT sector globally, yet the benefits of the IT revolution have not truly percolated into the everyday life of the common man, particularly in rural areas. Experiments in IT-based service delivery has already been reaching heights. As mentioned earlier, some of them are e-Seva, and Bhoomi was more successful than the others. These early successes, as well as failures, showed that online services, served citizens better by reducing the burden of having to physically visit separate agencies, make contact with public officials, and be subjected to their discretion.¹¹⁵

NeGP is a major initiative of the Government of India, the first time under which a concerted effort is being made to take Information Technology to the masses in areas of concern to the common man. It aims to make most services available online, ensuring that all citizens would have access to them, thereby improving the quality of basic governance on an unprecedented scale.¹¹⁶

1.3 THREE TIER ARCHITECTURE

NeGP has a three-tier architecture. The **Common Service Centres (CSCs)** are the front-end delivery points for a range of citizen services. The common man feels empowered when he is able to get a service in a transparent manner, at a convenient location and an affordable cost. These centers also provide employment to the entrepreneurs running them, enumeration of data, insurance and IT education.

The second tier is of the common and support infrastructure that can allow information to be shared electronically between different agencies of the government and with citizens. Included in it, is the **State Wide Area Networks (SWANs)**, which form the converged backbone network for data, voice and video throughout a State/UT and the **State Data Centers (SDCs)** which can provide common secure IT infrastructure to host state-level e-government applications and data.

¹¹⁵BhatnagarSubhash: “Unlocking E-Government Potentialconcepts, cases and practical Insights”, Sage Publication, 2012

¹¹⁶Government of India, National E-Governance Plan,
<http://india.gov.in/govt/national_egov_plan.php>

The third tier comprises the **27 Mission Mode Projects (MMPs)** which will transform high priority citizen services from their current manual delivery into e-delivery. Each MMP is owned and spearheaded by the relevant ministry/agency of the national government or by a state government, and is called ‘**mission mode**’ because it has a definite timetable, service levels, project implementation team and process reengineering plans.¹¹⁷

1.4 THE NATIONAL E-GOVERNANCE PLAN (NeGP)

Over the past decade or so, there had been islands of e-Governance initiatives in the country at the National, State, district and even block level.¹¹⁸ Some of them had been highly successful and were ready for replication across other States, while some have not produced the desired results or withstood the test of time. Experiences from successes as well as the failures of the various initiatives, played an important role in shaping the e-Governance strategy of the country. The basic lessons that emerged from the various e-Governance initiatives were:

- Need for political ownership at the highest level and a national vision for e-Governance for successful implementation of the programme;
- A dedicated team with a stable tenure from within the organization to conceptualize and implement the programme down the line;
- New areas of public-private partnership in making e-Governance possible should be continuously explored;
- Defined architecture, standards and policies addressing issues of security, privacy, etc.;
- An urgent need to develop the basic core and support infrastructure for e-Governance such as Data Centers, Wide Area Networks and the physical access points for delivery of government services, which would be common to all departments and where services could be delivered at the doorstep of the citizen in an integrated manner;
- Need to start with small pilots before scaling-up, as IT projects take a long time to implement, and often there are modifications to be incorporated along the way; and

¹¹⁷ Administrative reform commission 11th report, chapter 7

¹¹⁸ Common Service Centre: National E-Governance Plan (NeGP)

<<https://upsc.blogspot.com/2008/07/national-e-governance-plan-negp.html>>

- Issues of re-engineering and management of change are of paramount importance in comparison to technical issues associated with e-Governance.

Hence, there was a felt need for taking a holistic view of the entire e-Governance initiative across the country. Increasingly, it was perceived that if e-Governance was to be speeded up across the various arms of government at the national, state and local government level, a programme approach would need to be adopted, which must be guided by a common vision, strategy and approach to objectives.¹¹⁹ This approach would have the added advantage of enabling huge savings in cost, in terms of sharing the core and support infrastructure, enabling interoperability through standards etc., which would result in the citizen having a seamless view of Government. With this background, the National e-Governance Plan (NeGP) was formulated by the Government, for implementation across the country.

**27 Mission Mode Projects identified
on the basis of high citizen / business interface**



¹¹⁹GuidelinesforOperational Model V4
<https://meity.gov.in/writereaddata/files/Guidelines_Operational_Model_V42_231210.pdf>

NeGP comprises of 27 Mission Mode Projects (MMPs) to be implemented at the Central, State and Local Government levels and 8 Common Core and Support infrastructure.¹²⁰

1.5 APPROACH/METHODOLOGY

The approach/methodology of NeGP encapsulates the learning from successes and failures of e-Governance initiatives across the country and the world, the recommendations/observations made by the Parliamentary Standing Committee and subsequently by the Committee of Secretaries (CoS).¹²¹ The broad approach/methodology of NeGP is

- DIT would create ***Common and Support Infrastructure*** (State Wide Area Networks, State Data Centres, Common Service Centres, National/State Service Delivery Gateways)
- DIT would evolve/lay down ***Standards and Policy Guidelines, provide Technical and Handholding support, undertake Capacity Building, R&D*** etc. as required for successful implementation of various e-Governance projects.
- ***Mission Mode Projects (MMPs)*** would be owned and spearheaded by various concerned line Ministries. The Ministry/Department would be entirely responsible for all decisions connected with their MMP.
- States would be given the flexibility to identify a few ***additional state-specific projects (not exceeding 5)***, which are very relevant for the economic development of the State. In case, Central assistance is needed, such inclusions would be considered on the advice of the concerned Line Ministries/Departments.
- E-Governance would be promoted through a ***Centralized initiative***¹²² to the extent necessary to ensure citizen service orientation, to realize the objective of interoperability of various e-Governance applications and to ensure optimal utilization of ICT infrastructure/resources while allowing for and adopting, as a policy, a ***Decentralized Implementation Model***.

¹²⁰<[https://meity.gov.in/writereaddata/files/Compendium_FINAL_Version_220211\(1\).pdf](https://meity.gov.in/writereaddata/files/Compendium_FINAL_Version_220211(1).pdf)>

¹²¹ Article on Challenges and Future Prospects for E- Governance in India by PoonamMallick, PriyankaDhillon and PoonamVerma in 'International Journal of Science, Engineering and Technology Research (IJSETR), Volume 3, Issue 7, July 2014

¹²²E Governance Initiatives in India

<<https://www.thehansindia.com/posts/index/Hans/2016-02-01/E-Governance-Initiatives-in-India/204109>>

- *Successes would be identified, and replication promoted* proactively with required customization.
- *Public-Private Partnership (PPP)* would be promoted wherever feasible to enlarge the resource pool without compromising on the security aspects.

1.6 IMPLEMENTATION STRATEGY

Implementation of the NeGP involves various Central Line Ministries/Departments and State Governments. Considering the multiplicity of agencies involved and the need for overall aggregation and integration at the national level, NeGP is being implemented as a programme, with well-defined roles & responsibilities of each involved agency

- Line Ministries/Departments are responsible for the implementation of the Mission Mode Projects (MMPs)/Components owned by them and work in a *project mode within a tight, defined timeframe*.
- *State Governments are responsible for implementing State Sector MMPs*, under the overall guidance of respective Line Ministries in cases where Central Assistance is also required.
- *DIT is the facilitator and catalyst for the implementation of NeGP* and provides technical assistance to various Ministries and State Governments. In addition, it implements *pilot/ infrastructure/ technical/ special projects and support components*.
- *DAR&PG is responsible for Generic Process Re-engineering and Change Management*, which are desired to be realized across all government departments. For various MMPs, concerned Line Ministries/ Implementing Agencies are primarily responsible for carrying out the required Process Re-engineering and Change Management.
- *Planning Commission and Ministry of Finance allocate funds for NeGP* through Plan and Non-plan budgetary provisions and lay down appropriate procedures in this regard.

1.7 PROGRAMME MANAGEMENT

For effective management of NeGP, a programme management structure has been created to accord credibility to the programme, to provide a forum to solicit view of stakeholders, to oversee the programme and resolve inter-ministerial/ inter-departmental issues and to ensure speedy sanctioning of projects.¹²³ The key components of the *Programme Management* structure are

- *Cabinet Committee on Economic Affairs (CCEA)* for programme level policy decisions.
- *A body under the Chairpersonship of Prime Minister* with representation drawn from relevant Ministries/ Departments, the National Knowledge Commission, the Planning Commission, experts, etc., to provide leadership, prescribe deliverables and milestones and monitor periodically the implementation of NeGP
- *National e-Governance Advisory Group*, headed by the Minister C&IT, to solicit views of external stakeholders and to provide inputs to the CCEA, advise the government on policy issues and strategic interventions necessary for accelerating the introduction of e-Governance across Central and State Government Ministries/Departments.
- *Apex Committee* headed by the Cabinet Secretary to oversee the programme and to provide policy and strategic directions for its implementation. In addition, it moderates and drives services, process reengineering and service levels of each MMP wherever required. *Further, it is empowered to add or delete MMPs as considered appropriate* and to resolve all inter-ministerial issues. DIT acts as the Secretariat for
- *Expenditure Finance Committee (EFC)/Committee on Non-Plan Expenditure (CNE)* to financially appraise/ approve projects as per existing delegation of financial powers. The EFC/CNE headed by Secretary Expenditure would also be recommending to the CCEA the manner in which MMP Projects are to be implemented, i.e. as a Central Sector Scheme, Centrally Sponsored Scheme etc., as well as the financial terms of participation for States.
- Further, considering the complexity of the Programme and the need to look at issues such as overall technology architecture, framework, standards, security policy, funding strategy, service delivery mechanism, sharing of common infrastructure etc. at a program

¹²³Paul, Anu& Paul, Varghese (2011) Project Management Model for e-Governance in the Context of Kerala State 191. 201-209. 10.1007/978-3-642-22714-1_22

level, *the technical appraisal of all NeGP projects is done by DIT*, prior to a project being placed before the EFC/ CNE.

- *State-level Apex Committees* headed by Chief Secretaries to allocate State level resources, set priority amongst projects and resolve inter-departmental issues.

1.8 MISSION MODE PROJECTS (MMPs)

NeGP consists of 27 Mission Mode Projects (MMPs) encompassing nine central MMPs, eleven state MMPs and seven integrated MMPs.¹²⁴ Line Ministries/Departments are responsible for the implementation of the assigned Mission Mode Projects (MMPs). Mission Mode Projects would be owned and spearheaded by various line Ministries for Central Government, State Governments and Integrated projects. Each department works in a project mode within a tight, defined timeframe by preparing a detailed project document, either in-house or with the assistance of a Consultant. This document spells out all important aspects of the project like services and service levels, project implementation team, process reengineering proposed, change management plan, project management plan, timelines, etc. The services and service levels are determined in consultation with the actual users.

State Governments are responsible for implementing State MMPs, under the overall guidance of respective Line Ministries in cases where Central Assistance is also required.

1.9 SOME CENTRAL MISSION MODE PROJECTS

1) MCA 21

The vision of the MCA21 project implemented by the Ministry of Corporate Affairs (MCA), Government of India, was *“to introduce a service-oriented approach in the design and delivery of Government services”*.¹²⁵

¹²⁴<www.mmp.cips.org.in/documents/workshops/2015/9-janeKranti.pdf>

¹²⁵Central Mission Mode Projects ! - IAS OUR DREAM

<<https://swapsushias.blogspot.com/2014/09/central-mission-mode-projects.html>>

Its mission was “*to build up a secure portal that offers the availability of all registry related services including the filing of documents, registration of companies and public access to corporate information. The portal services can be accessed/availed from anywhere, at any time that best suits the corporate entities, professionals and the public at large*”.

The project will be integrated with the *National e-Governance Services Delivery Gateway (NSDG)*, which will help extend MCA services to businesses via multiple front-end delivery channels, and which will also help provide other value-added services over and above the base services offered by MCA21.

There are more than 100 services covered within the scope of MCA21.

Among these, the major services are as follows:

- Name approval
- Incorporation of new companies
- Filing of Annual Statutory Returns
- Filing of forms for change of names/address/Director’s details
- Creation/Modification/Satisfaction and verification of charges
- Filings for various statutory services required under the Companies Act
- Inspection of company documents (public records)
- Investor grievance Redressal

2) PENSIONS MISSION MODE PROJECT

The pensions MMP is primarily aimed at making the pension/retirement-related information, services and grievances handling mechanism accessible online to the needy pensioners, through a combination of interactive and non-interactive components, and thus, help bridge the gap between the Pensioners and the Government.

The portal provides the following services

- ***Online registration of grievances:*** These grievances are passed on to the Ministry/Department concerned online as well as through post for redressal.

- **Dissemination of information** concerning pension and retirement-related benefits to Pensioners, other Stakeholders, etc. All orders/instructions are uploaded on the Portal for the users.

As an additional facility, Utility services have also been made available to users on the Portal by establishing hyperlinks to the websites of some of the State Directorates of Pension and AGs of various States, though the Department has no role to play on State Government pensioners.¹²⁶

3) **INCOME TAX MISSION MODE PROJECT**

The Income Tax Department of India is implementing a plan for setting up a comprehensive service that enables citizens to transact all businesses with the Department on an anywhere, anytime basis. Return of income for companies has to be filed compulsorily online every year.

OBJECTIVES

- **Systems Integrator and Databases Migration & Consolidation:**
Have a single ITD application running over a single national database with BCP and DRS.¹²⁷
- **PAN Module and PAN Related Services:** Provide PAN card to citizens and improve authentication for all major financial transactions.
- **Electronic filing of Income Tax Returns:** To enable all taxpayers to fulfil their statutory obligation of filing their Income Tax Return electronically – ‘Anytime’, ‘Anywhere’, securely and conveniently using the Internet.
- **Tax Information Network (TIN):** Deliver more than 18 e-services to the taxpayers through digitization of all processes, filing of forms/applications, digitization of tax payments, authentications, tax credit verifications and refund processing. Many TIN services are disseminated through 1750 NSDL facilitation centres set up all over the country. TIN infrastructure also serves the ITD manpower and the Central Government in day to day monitoring of taxpayers data and in making informed policy decisions.

¹²⁶ International Journal of Science, Engineering and Technology Research (IJSETR) volume 3, Issue 7, July 2014

¹²⁷CENTRAL MMPs.

<<https://www.panchayatportals.gov.in/documents/4856434/0/CENTRAL%20MMPs.pdf>>

- **Refund Banker Scheme:** Fast track issue of refunds through agency bank (SBI) and enable web-based tracking of refund status.

4) PASSPORT MISSION MODE PROJECT

The Consular, Passport and Visa (CPV) Division of the Ministry of External Affairs (MEA) provides passport and consular services to Indian citizens through the Central Passport Organization (CPO), and consular and visa services to foreign nationals and Indians residing overseas through the passport, visa and consular wings of over 160 Missions and Posts abroad. Various efforts by the CPO have led to significant improvement in productivity.

Despite all such measures, it was increasingly apparent that strategies adopted were proving inadequate to handle the growing demands on the Central Passport Organization. The quality of services provided to the citizens was being badly affected by the huge increase in workload without a concomitant increase in manpower and infrastructure. It was also evident that conventional solutions would not work in this situation.¹²⁸

Thus, the Passport Seva Project was launched by the Ministry of External Affairs to redeem the situation by infusion of technology, process reengineering and staff motivation and commitment. The end objective being delivery of Passport Services to the citizens in a timely, transparent, more accessible, reliable manner & in a comfortable environment.

5) IVFRT MISSION MODE PROJECT

India has emerged as a key tourist destination, besides being a major business and service hub. Immigration Check Post is the first point of contact that generates public and popular perception about the country, thus necessitating a state of the art system for prompt and user-friendly services.¹²⁹

Within the generic objective of facilitating legitimate travellers without compromising security, it is necessary to develop a secure, integrated service delivery framework to enhance security and facilitation in the Visa issuance process, and the Immigration function besides fortifying the Foreigners registration processes for effective tracking of foreigners. The Passport, Visa issuance

¹²⁸Mission Mode Projects | Welcome To Negd | National E-governance Division (Negd)' (*Negd.gov.in*, 2020) <<https://negd.gov.in/mission-mode-projects>>

¹²⁹Maurya, Ashutosh&Kar, Arpan (2014) Prioritising e-Governance Mission Mode Projects through systematic approaches

& consular matters, Immigration, Foreigners registration & tracking and Emigration, are inter-related subjects involving the Ministries of Home Affairs (MHA), External Affairs (MEA), Overseas Indian Affairs (MOIA), Central Board of Excise & Customs, and Civil Aviation. Many other Ministries in the Government of India (M/o Health and Family Welfare, M/o Tourism, M/o Commerce, etc.) also have a stake in this project.

The project for modernization and up-gradation of Immigration services is identified and included as one of the MMPs to be undertaken by the Ministry of Home Affairs under the National e-Governance Plan (NeGP). The MMP is titled ***“Immigration, Visa and Foreigners Registration & Tracking (IVFRT)”***.

The project will be implemented across 169 Missions, 77 ICPs (Immigration Check Posts), 5 FRROs (Foreigners Regional Registration Offices), and FROs (Foreigners Registration Offices) in the State/District Headquarters.¹³⁰

1.8 LET'S SUM UP

In this chapter, we have studied the meaning of National E-Governance Plan along with the three-tier architecture. We also studied the methodology and implementation strategy of NeGP. Finally, we ended the discussion on some Central Mission Mode Projects.

1.9 FURTHER READING

- Nazir, Mohsin&Wani, Sani&Arif, Tasleem. (2014). Current Scenario of the e-Governance Related Initiatives in India.
- Paul, Anu& Paul, Varghese. (2011). Challenges and Strategies of e-Governance in India. International Journal of Interdisciplinary Studies and Research: Baseliuss Researcher. XII. 472-480.

¹³⁰<<https://meity.gov.in/content/immigration-visa-and-foreigner%E2%80%99s-registration-tracking-ivfirt>>

- E-governance in India: Concept, Initiatives and Issues - INSIGHTS, INSIGHTS (2019), <https://www.insightsonindia.com/2014/11/23/e-governance-india-concept-initiatives-issues/>

1.10 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1) What are the basic lessons that emerged from the various E-Governance initiatives?

The basic lessons that emerged from the various e-Governance initiatives were:

- Need for political ownership at the highest level and a national vision for e-Governance for successful implementation of the programme;
- A dedicated team with a stable tenure from within the organization to conceptualize and implement the programme down the line;
- New areas of public-private partnership in making e-Governance possible should be continuously explored;
- Defined architecture, standards and policies addressing issues of security, privacy, etc.;
- An urgent need to develop the basic core and support infrastructure for e-Governance such as Data Centers, Wide Area Networks and the physical access points for delivery of government services, which would be common to all departments and where services could be delivered at the doorstep of the citizen in an integrated manner;
- Need to start with small pilots before scaling-up, as IT projects take a long time to implement, and often there are modifications to be incorporated along the way; and
- Issues of re-engineering and management of change are of paramount importance in comparison to technical issues associated with e-Governance.

2) What is the three-tier architecture taken by Government of India?

- The Common Service Centres (CSCs)
- State Wide Area Networks (SWANs)
- 27 Mission Mode Projects (MMPs)

3) What are the major services under MCA21?

The major services are as follows:

- Name approval
- Incorporation of new companies
- Filing of Annual Statutory Returns
- Filing of forms for change of names/address/Director's details
- Creation/Modification/Satisfaction and verification of charges
- Filings for various statutory services required under the Companies Act
- Inspection of company documents (public records)
- Investor grievance Redressal

1.11 ACTIVITY

What is NeGP? Elucidate its approach, implementation strategy and programme management along with the few Central Mission Mode Projects? (1000 words)

Unit 4: Integrated and State Mission Mode Projects

4

SUBJECT CODE – PGDCL 102

E-COMMERCE, E-GOVERNANCE AND E-CONTRACT

BLOCK 2 – E-GOVERNANCE

UNIT 4 – INTEGRATED AND STATE MISSION MODE PROJECTS

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Integrated Mission Mode Projects
 - 1.3 State Mission Mode Projects
 - 1.4 Future of E-Governance
 - 1.5 Let's sum up
 - 1.6 Further reading
 - 1.7 Check your progress: Possible answers
 - 1.8 Activity
-

1.1 LEARNING OBJECTIVES

After going this chapter, you should be able to understand:

- The Integrated Mission Mode Projects
- State Mission Mode Projects
- Future of E-Governance

1.2 INTEGRATED MISSION MODE PROJECTS

S. No.	Projects	Nodal Ministry/Department
01	CSC	Department of Information Technology
02	e-Courts	Department of Justice
03	EDI	Department of Commerce
04	India Portal	Department of Information Technology & Department of Administrative Reforms & Public Grievances
05	NSDG	Department of Information Technology
06	e-Biz	Department of Industrial Policy and Promotion
07	e-Procurement	Department of Commerce

1) CSC MISSION MODE PROJECT

The Government of India's National e-Governance Plan has a clear vision: to deliver, and make accessible all Government, Social and Private Sector services in the areas of agriculture, health, education, entertainment, FMCG products, banking and financial services, utility payments, etc. to the citizens at an affordable cost.¹³¹ With this intent, the Common Services Centres (CSCs) were conceptualized as the front end service delivery outlets enabling smooth and transparent governance at the village level. An unhindered citizen-centric leaning makes the CSC scheme a strategic cornerstone of the NeGP, and one of the key infrastructure pillars. In that respect, not many doubt that the CSC project is a huge opportunity to touch rural India like never before.

Under the scheme, over one lakh internet-enabled kiosks are being set up in the rural areas spread across more than 600,000 villages. One Kiosk is intended to serve a cluster of five to six villages. Classified under the integrated MMPs, the scheme got the approval of Government of India in September 2006 involving a total outlay of Rs. 5742 crore.¹³²

IMPLEMENTATION FRAMEWORK

The implementation at three levels:

Level 1: A village-level entrepreneur (VLE - loosely analogous to a franchisee) sets up a CSC in the nodal village to provide service to rural consumers in a cluster of 5-6 surrounding villages.

¹³¹Awareness of Government Policies | AIITA
<<https://aiita.org/initiatives/awareness>>

¹³²Maurya, Ashutosh&Kar, Arpan (2014) Prioritising e-Governance Mission Mode Projects through systematic approaches

Level 2: The Service Center Agency (SCA - loosely analogous to a franchiser) is an operator which manages; trains and builds the VLE network across the district. An SCA can service one or more districts in a state with one district covering approximately 100-120 CSCs.

Level 3: The State Designated Agency (SDA) facilitates the implementation of the CSC scheme within the state. It is primarily responsible for providing policy, content, financial and other support to the SCAs in the state.¹³³

2) E-COURTS MISSION MODE PROJECT

The e-Court Mission Mode Project (MMP) was conceptualized with a vision to transform the Indian Judiciary by making use of technology. The project had been developed, following the report submitted by the e-Committee under Supreme Court on national policy & action plan on implementation of information communication tools in Indian Judiciary.¹³⁴

OBJECTIVES

E-Court, an integrated MMP, has a clear objective - to re-engineer processes and enhance judicial productivity both qualitatively and quantitatively to make the justice delivery system affordable, accessible, cost-effective, transparent and accountable.

The scope of the project is to develop, deliver, install and implement automated decision making and decision support system in courts all over the country. The e-Courts project entails ensuring of digital interconnectivity between all courts from the *taluk* level to the *apex* court.

POWER OF SERVICES

The e-Courts MMP will provide a range of services prominent amongst them being

¹³³<<https://meity.gov.in/content/mission-mode-projects>>

¹³⁴Bhatnagar, Subhash et al (2007) Center for e-Governance, Indian Institute of Management, Ahmedabad, Draft Report Impact Assessment Study Of E-Government Projects in India, DIT, India



S No	Service	Details
1	Automation of Case Management Processes	Case Filing, Scrutiny, Registration, Case Allocation, Court Proceedings, Details entry of a Case, Case Disposal & restoration, Transfer of Case etc
2	Provision of online services	Certified copies of orders and judgments, Case status, Calculation of court fees, Cause lists, Institution Registers, and Court Diaries
3	Establish information gateways between courts and government agencies	Information exchange with police, prisons, land records department, registration offices etc; distant production/examination of under trial and witnesses through videoconferencing
4	Creation of National Judicial Data Grid	Monitoring of pendency in the courts

3) **E-TRADE MISSION MODE PROJECT**

The integrated mission mode project, Electronic Trade (eTrade) was conceptualized to facilitate effective and efficient mode of transacting business in the area of foreign trade. The Department of Commerce is the nodal agency for the implementation of the eTrade project. The project is being pursued in trade regulatory and facilitating agencies like Customs, Ports, Airports, Directorate General of Foreign Trade (DGFT), Banks, respective Container Corporation of India (CONCOR), export promotion organizations etc., who also happen to be the community partners

of the project.¹³⁵ The community partners have developed their systems for internal processing. eTrade Project interconnects these community partners and enables them to exchange messages through the web or FTP.

The major activities of the project are expected to be completed by June 2011. The project is being implemented on a self-support basis, and the funds are being provided by participating agencies and departments.

The various trade regulatory and facilitating agencies, have established electronic interfaces between them as well as with the trading community to allow electronic delivery of services.

OBJECTIVES

The simple objectives of the eTrade project are illustrated below:-

- to facilitate effective and efficient delivery of services
- to simplify procedures and to make procedures transparent
- to provide 24-hour access to users with their partners
- to reduce the transaction cost and time
- to introduce international standards and best practices

4) NATIONAL PORTAL OF INDIA MISSION MODE PROJECT

There are over 5000 websites on the internet of various Indian government entities that include Ministries, Departments, States/Union Territories, district administration, organizations. Citizens have to search and browse several websites to avail a service. The National Portal of India provides a single-window unified interface for over 5000 websites thereby reducing a lot of inconvenience to the citizens.¹³⁶ This portal acts as a logical front end to the e-governance initiatives under various central/state/UT government schemes and programmes. The National Portal has a long list of beneficiaries, which besides common citizen also includes government

¹³⁵Heeks, R (2003), *MosteGovernment-for-Development Projects Fail: How Can Risks be Reduced?* Institute for Development Policy and Management, University of Manchester, UK

¹³⁶INTEGRATED MMPs

<<https://www.panchayatportals.gov.in/documents/4752980/0/INTEGRATED%20MMPs.pdf>>

departments, the corporate sector, NRIs, national and international media and the general public across the world.¹³⁷

The National Portal comes with unique features geared up to facilitate smooth access, enhanced quality of services and convenient single window access for a variety of Government information and services. It is the central repository of documents, forms, services, acts, announcements, contact directories, schemes and rules.

OBJECTIVES

The objectives of the India Portal MMP are

- To ***establish a one-point source*** for availability of information about any Government of India constituent, be it the Central Government Ministries, Departments, State/UT Governments, Districts, Panchayats or even organizations and affiliates, for the benefit of the citizens, businesses and other target audience.
- To ***facilitate launch/ implementation*** of various e-governance initiatives by the Indian Government.
- To ***emerge as a comprehensive one-stop-source*** of government information and ***service delivery through a unified interface.***
- To ***define the standards for publishing the information and electronic delivery of government information and services*** thus facilitating, unified, seamless and universal access for citizens of India from all walks of life and of various demographic profiles.
- To ***establish a platform for participation by the public in the process of governance.***

5) NATIONAL SERVICE DELIVERY GATEWAY (NSDG) MISSION MODE PROJECT

Under the National e-Governance Plan (NeGP), various e-Governance applications are being implemented in order to provide speedy delivery of government services to the citizens at affordable costs.¹³⁸

¹³⁷ National Knowledge Commission (2007), Government of India, New Concept Information Systems Publication, New Delhi

In order to realize the NeGP vision, it is imperative that the different departments in the Centre, States and Local Government cooperate, collaborate and integrate information across the various levels, domains and geographies. The National e-Governance Service Delivery Gateway (NSDG), standards based (IIP/IIS/IGIS) messaging switch, will enable this by providing seamless interoperability and exchange of data across heterogeneous applications of geographically dispersed departments.¹³⁹

OBJECTIVES

The objectives of the NSDG are:-

- To act as a core infrastructure for achieving standards-based interoperability (IIP/IIS) between various e-Government applications implemented at various levels and geographically dispersed locations.
- To evolve Gateway messaging standards and build a government-owned Central Gateway based on these standards.
- To act as a catalyst in enabling the building of Standards-based e-Governance applications with Gateway as the middleware to ensure interoperability.
- To enable integration across Centre, State or Local Governments thereby enabling Integrated Service Delivery and a Service Oriented Architecture (SOA) leading to joined-up government.
- To help protect the legacy investments in software and hardware by easily integrating them with other technology platforms and software implementations.
- Reduce the cost of e-Governance Projects by rationalizing, distributing and optimizing the services framework.
- Use PKI infrastructure for secure transactions. Provision exists for encryption of department payload to ensure confidentiality of department data. The gateway provides digital signature and certificates to all stakeholders interacting with the gateway for identification, authentication and authorization. Transaction and audit logs help track government data.

¹³⁸Hamner, M and Qazi, R U R (2009), "Expanding the Technology Acceptance Model to Examine Personal Computing Technology Utilization in Government Agencies in Developing Countries", Government Information Quarterly, Vol. 26 No. 1, pp. 128-136

¹³⁹<<https://meity.gov.in/content/nsdg>>

- Enable transaction logging and time stamping for tracking of transactions and centralized control.
- Help the Departments backend workflow evolve gradually as the Gateway acts as a middleware de-linking the backend from the front end.¹⁴⁰

6) E-BIZ MISSION MODE PROJECT

The e-Biz Mission Mode Project, being executed by Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, Government of India, was conceptualized with the Vision.¹⁴¹

*“To transform the business environment in the country by providing efficient, convenient, transparent and integrated electronic services to investors, industries and business throughout the business life cycle”.*¹⁴²

OBJECTIVE

Like any other technology-driven project, e-Biz too has a clear mandate of addressing several issues that will result in making the industry interactions with the Government smooth ‘ seeking approvals and permissions, reducing the points of contact between the business entities and the Government agencies, standardization of information, and reducing the burden of compliance.

- Facilitate a 'one-stop shop' for procuring all business licenses and permits.
- Eliminate the need to physically interface with regulatory authorities at various levels of governance.
- Become a source for accessing all information 24X7, with respect to starting up a business.
- Allow business units to file returns, pay taxes and submit compliances through a single interface.

¹⁴⁰ Wahid, F (2013), “Themes of Research on eGovernment in Developing Countries: Current map and future roadmap”, in 46th Hawaii International Conference on System Sciences (HICSS), USA, 2013, HICSS, USA, pp 1743-1752

¹⁴¹ Kerr, N L and Tindale, R S (2004),“Group performance and decision making”,Annual Review of Psychology, Vol. 55, pp. 623-655

¹⁴²<<https://meity.gov.in/content/e-biz>>

7) E-PROCUREMENT MISSION MODE PROJECT

Various studies have estimated that globally government procurement accounts for around 5-15% of the national GDP. The estimates for government procurement for India vary from 3.4% to 5.7% of the GDP. Therefore efficient practices in procurement of goods and services by government agencies is important from the perspective of lowering cost of procurement of goods and services, optimal delivery of public services, efficient allocation and use of public funds, fair opportunities for suppliers to compete for government contracts, encouraging good governance practices in procuring entities, reducing corruption, providing legal certainty to procurement procedures, ensuring transparency and thereby also attracting foreign investment and partnerships.

Ministry of Commerce & Industry (Department of Commerce) has been nominated as the Nodal Ministry for implementation of E-Government Procurement (e-GP) Mission Mode Projects (MMP). The stakeholders of e-GP MMP include Central Government Departments, State Government Departments, Public Sector Undertakings of Central and State Government, Autonomous Organizations of Central & State Government and vendors spread across the country and abroad namely, MNCs, SMEs and tiny units.¹⁴³

VISION

The vision of the e-Procurement MMP is “To create a national initiative to implement procurement reforms, through the use of electronic Government procurement, so as to make public procurement in all Sectors more transparent and efficient”.

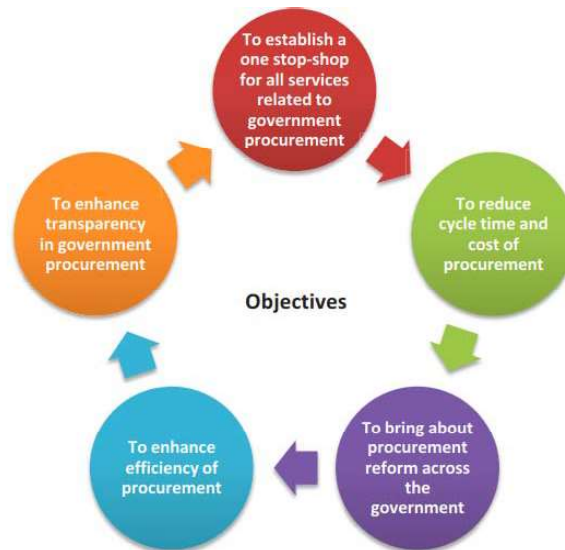
OBJECTIVES

The specific objectives of the e-Procurement MMP are to

- Establish a one-stop-shop providing all services related to government procurement.
- Reduce cycle time and cost of procurement.
- Enhance transparency in government procurement.
- Enhance the efficiency of procurement.
- Bring about procurement reforms across the government.

¹⁴³<<https://meity.gov.in/content/e-procurement>>

These objectives would be achieved through coordination and collaboration across the Government through the adoption of common standards.



1.3 STATE MISSION MODE PROJECTS

1) NLRMP MISSION MODE PROJECT

A Project for Computerisation of Land Records (CLR) was launched in 1988-89 with the intention to remove the inherent flaws in the manual system of maintenance and updation of Land Records. In 1997-98, the scheme was extended to tehsils to start distribution of Records of Rights to landowners on demand. The focus of the entire operation has always been to employ state of the art information technology (IT) to galvanize and transform the existing land records system of the country.¹⁴⁴

The second important scheme, viz., *Strengthening of Revenue Administration and Updating of Land Records (SRA&ULR)* was launched in 1988-89 to help States and UTs in updating and maintaining the land records, setting up and strengthening of survey and settlement organisations and the survey training infrastructure, modernization of the survey and settlement operations and strengthening of the revenue machinery.

¹⁴⁴<<https://meity.gov.in/content/land-records>>

However, the activities included in the schemes of CLR and SRA&ULR were basically meant for the strengthening of revenue administration although they also included activities that contribute to conclusive titling. The choice of activities was left to the States/UTs, most of whom chose activities that strengthen revenue administration but not necessarily helped in moving towards conclusive titling. A *“hamper-of-activities”* was followed which led to eddying; and each activity became a goal in itself rather than a step in the systematic, ladder-like approach towards reaching the stage of conclusive titling. Moreover, the way the schemes have framed no timeframe for achieving the goal of conclusive titling could be set, and technology options for the survey were not indicated, and the work remained neglected in most of the States. Further, both the schemes excluded interconnectivity, geographic information system (GIS) mapping, connectivity with banks and treasuries and Registration - the last of which is a vital link in updating the land records.

Hence, the National Land Records Modernization Programme (NLRMP) was formulated by merging two Centrally-sponsored schemes CLR and SRA&ULR to usher in the system of conclusive titles as per the *“Torrens System”* with title guarantee in the country.

2) ROAD TRANSPORT MISSION MODE PROJECT

The Ministry of Road Transport & Highways has been facilitating the process of computerization of approximately 1000 Road Transport Offices (RTOs) across the country for the last 5 years.¹⁴⁵ Almost 90% of the RTOs have been computerized, and connectivity has been provided to 80% of the RTOs. Since the documents generated by the RTOs (Registration Certificate - RC & Driving License - DL) are valid across the country it was imperative to define the same standards for these documents on a pan-India level to ensure interoperability and correctness and timely availability of information. The SCOSTA committee was setup for this purpose and in addition to defining the Smart Card standards, had recommended uniform standardized software across the country, which has been designed and developed by NIC. The software namely **VAHAN** and **SARATHI** are being implemented across the country.

¹⁴⁵<<https://meity.gov.in/content/road-transport>>

3) AGRICULTURE MISSION MODE PROJECT

Department of Agriculture and Cooperation (DAC) has over the years undertaken several IT initiatives such as AGMARKNET, SEEDNET, DACNET etc. Agriculture Mission Mode Project proposes to integrate these IT initiatives with the new applications/modules being developed as a part of the Project.¹⁴⁶

Similarly, States / UTs have also either developed or are in the process of developing IT applications such as AGRISNET under various programmes of DAC. All such applications will be integrated with the Central Agri Portal (CAP), and the State Agri Portals (SAPs) envisaged under NeGP-A. The Central Agri Portal (CAP) and State Agri Portals (SAP) will also have the options of providing online feedbacks by the stakeholders. This would not only improve transparency but at the same time, would help in efficient monitoring.

4) CCTNS MISSION MODE PROJECT

The Crime and Criminal Tracking Network & Systems (CCTNS) Scheme has been approved by Cabinet Committee on Economic Affairs (CCEA)¹⁴⁷ in June 2009 with a provision of Rs 2000 Crores as a 100% Centrally Sponsored Scheme to be implemented during the remaining part of the 11th five year plan period (2009-2012).¹⁴⁸

5) TREASURY COMPUTERIZATION MISSION MODE PROJECT

The State Treasuries are the structural and financial unit of the Government Financial System and are responsible for handling the day-to-day transactions of receipt and payment of Government. The functions generally performed by the treasuries are:-

- Receipt of Government Money
- Payments on behalf of Government
- Pension Payments
- Sale of Stamps through Vendors

¹⁴⁶<<https://meity.gov.in/content/agriculture>>

¹⁴⁷<<https://meity.gov.in/content/police>>

¹⁴⁸E - Government Services India - Gujarat
<<https://egovernmentsservicesgujarat.blogspot.com/>>

- Compilation of Government Accounts (District wise)
- Safe custody of valuables
- Maintenance of accounts for local fund/personal deposits etc.

1.4 FUTURE OF E-GOVERNANCE

Targets of the Twelfth Five Year Plan (2012-17) with respect to E-Governance¹⁴⁹

- 1) A National Institute for E-Governance (NIG) would be setup as an autonomous State of the Art National Institute. NIG will also train at least 50 employees from Central Government per year on Project Management Certification.
- 2) An E-Governance Innovation and R&D Fund will be created to give adequate impetus to innovation in E-Governance and M-Governance.
- 3) Electronic Delivery of Services (EDS) Bill will be implemented. Assistance will be given to every Central Government Department in delivering at least one Service in electronic mode and every State Government in delivering at least three Services in electronic mode apart from the services which are already identified in the MMPs under NeGP.
- 4) Shared Services Platforms for e-Payment, GIS, call centre, etc. will be created.
- 5) An apps store will be created to promote the development of large scale E-Governance and M-Governance applications.
- 6) M-Governance platforms and frameworks will be created to enable the delivery of public services through mobile devices.
- 7) At least one person per family in 50% of the families will be targeted to provide basic IT training in the XII Plan period.
- 8) Cyber Security will be a major focus area during the Twelfth Five Year Plan Period.
- 9) Existing SWAN, SDC, NSDG/SSDG, India Portal, CSC Schemes will be rolled out and maintained in all States/UTs. These schemes would be further augmented and technologically upgraded.

¹⁴⁹Report of the Working Group. Information Technology Sector
<<https://docplayer.net/16497521-Report-of-the-working-group-information-technology-sector-twelfth-five-year-plan-2012-17.html>>

10) The e-District MMP will be implemented in all districts.

11) Training on Basic IT Skills will be introduced systematically for the existing and all new entrants into Government service.

1.5 LET'S SUM UP

In this chapter, we have studied the different integrated mission mode projects along with the various state mission mode projects. Finally we ended the discussion on the future of E-governance.

1.6 FURTHER READING

- Government of India, National E-Governance Plan, http://india.gov.in/govt/national_egov_plan.php.
- Office of the Registrar General & Census Commissioner, Census in India, Government of India, <http://www.censusindia.gov.in/>.
- Department of Information Technology, Industrial Promotion Division, Ministry of Communication & Information Technology, Government of India, <http://www.mit.gov.in/default.aspx?id=243>.

1.7 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1) **State the functions of Treasury computerization mission mode project?**

- Receipt of Government Money
- Payments on behalf of Government
- Pension Payments
- Sale of Stamps through Vendors

- Compilation of Government Accounts (District wise)
- Safe custody of valuables
- Maintenance of accounts for local fund/personal deposits etc.

2) State two targets of 12th five year plan with respect to E-Governance?

- A National Institute for E-Governance (NIG) would be setup as an autonomous State of the Art National Institute. NIG will also train at least 50 employees from Central Government per year on Project Management Certification.
- An E-Governance Innovation and R&D Fund will be created to give adequate impetus to innovation in E-Governance and M-Governance.

3) What are the objectives of E-Procurement MMP?

- Establish a one-stop-shop providing all services related to government procurement.
- Reduce cycle time and cost of procurement.
- Enhance transparency in government procurement.
- Enhance the efficiency of procurement.
- Bring about procurement reforms across the government.

1.8 ACTIVITY

Explain 5 integrated and State Mission Mode Projects along with its vision, objectives and functions? Enumerate the target of 12th five-year plan pertaining to e-governance? (1000-1500 words)

Block 3

E-Contract

Unit 1: Overview of E-Contract

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Concept of E-Contract
 - 1.3 Essentials of Valid Contract vis-à-vis an E-Contract
 - 1.4 Types of E-Contract
 - 1.5 Difference Between Click-Wrap And Shrink Wrap Contracts
 - 1.6 Let's sum up
 - 1.7 Further reading
 - 1.8 Check your progress: Possible answers
 - 1.9 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you will be able to understand:

- The concept of E-Contract
- Essential elements of E-contracts
- Different types of E-contracts

1.2 CONCEPT OF E-CONTRACT

E-contract is a kind of contracts formed by negotiation of two or more individuals through the use of electronic means, such as email, the interaction of an individual with an electronic agent, such

as a computer program or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract.¹⁵⁰

E-contract is one of the divisions of e-commerce or e-business. It holds a similar meaning to traditional business wherein goods and services are switched for a particular amount of consideration. The only extra element it has is that the contract here takes place through a digital mode of communication like the internet. It provides an opportunity for the sellers to reach the end of the consumer directly without the involvement of the middlemen.¹⁵¹

E-Contracts are contracts attracting principles of *Uberrimaefidei* in which the contracting parties are not dealing at arm's length, but one party is entirely dependent upon the information supplied by the other party on the basis of which alone he expresses his willingness to contract. The doctrine of *Uberrimaefidei* should be considered the foundation of e-contracts as the chances of misrepresentation or suppression of material facts is most likely to occur in such transactions.

Although legal capacity is not explicitly dealt by the Information Technology Act, the law presumes that once an online contract is concluded, both the parties are presumed to be competent to do so. In other words, neither party is allowed to raise an objection at a later stage that the contract is unenforceable for want of competence on the part of the parties.

The doctrine of *Uberrimaefidei* will be strictly adhered to in case of electronic contract, and one party acting to his detriment on the representation of the other that he is competent should not be put to any prejudice. E-contract is made through electronic mode with the help of internet. According to the mode of its formation, there are different types of electronic contracts. They are stated below.

1.3 ESSENTIAL OF VALID CONTRACT VIS-À-VIS AN E-CONTRACT

All the fundamental principles of contract law, have been developed over the years through the judicial decisions of the courts apply to all contracts notwithstanding whether they are

¹⁵⁰ELECTRONIC CONTRACTS IN INDIA: AN OVERVIEW

<<http://oaji.net/pdf.html?n=2017/488-1535975071.pdf>>

¹⁵¹All About E-contracts- Meaning, Types and Law

<<https://taxguru.in/corporate-law/all-about-e-contracts-meaning-types-and-law.html>>

formed electronically, orally or through paper-based communications. Many of the issues that arise for consideration relate to how these conventional contract law principles will apply to modern forms of technology. As in every other contract, an e-contract also requires the following necessary elements:

OFFER

Like every other case, an offer is to be made to form an e-contract. In several transactions (whether online or conventional), however, the offer is not made directly one-on-one. The consumer 'browses' the available goods and services displayed on the vendor's website and then 'chooses' what he would like to purchase.

Under section 2(a) of The Indian Contract Act, speaks of offer. "When one person signifies his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal".¹⁵²

Advertisement on the website may or may not constitute an offer as offer and invitation to treat are two distinct concepts. Being an offer to an unspecified person, it is probably an invitation to treat, unless a contrary intention is clearly expressed. The test is of intention whether by supplying the information, the person intends to be legally bound or not. When consumers respond through an e-mail or by filling in an online form, built into the web page, they make an offer. The seller can accept this offer either by express confirmation or by conduct. When dealing with business websites, it is important to establish whether the content of that business website amounts to an "offer" or merely an "invitation to treat". An invitation to treat is not capable of being turned into a binding contract by simply accepting its terms. Rather, it is an invitation to others to make an offer of their own. By contrast, an offer is an expression of willingness to enter into a binding contract with another party.¹⁵³

The question which arises is, does it apply in electronic contracts? Is it when it enters the computer resource as provided under Section 13 of the IT Act or when the offeror receives an acknowledgement as in section 12 of the IT Act?

¹⁵²E-contracts. Essentials, variety and legal issues
<<https://www.grin.com/document/427203>>

¹⁵³Sundaram, Sethuram & Deepa, Ms & Kumar,. (2018). E-Contracts in India: The Legal Framework, Issues and Challenges 4 13-15

It is clear that a message can enter into a person's mailbox without him seeing it. Thus, the element necessary for determining communication of offer in case of posts cannot be the same in electronic communication. The communication of offer is complete when it comes to the knowledge of the offeree and acknowledgement is received by him.

The offeror is able to revoke the offer any time before the communication of acceptance is complete as provided in section 5 of the Indian Contract Act and has not been altered by the IT Act.

ACCEPTANCE

The offer needs to be accepted. The acceptance is more oftenthan not undertaken by the business/ vendor after the offer has been madeby the consumer in response to the invitation to treat. The offer isrevocable at any point in time before the acceptance is made.¹⁵⁴

Once an offer is accepted, a contract is concluded except the postal acceptance rule applies. The postal acceptance rule is an exception to the general rule that acceptance of a contract must be communicated to the offeror before a contract can be in existence. Under the rule, acceptance of a contract is said to occur at the time the acceptance is posted. Hence, the communication of acceptance is complete against the proposer when it is put in the course of transmission to him and as against the acceptor when it comes to the knowledge of the proposer, that is, when the acknowledgement enters into the designated computer resource. There is no disparity between Indian and Common law in this regard as seen in *LalmanShukla v. GauriDutt Sharma*¹⁵⁵ where in spite of the fact that he found the boy whose uncle had promised Rs. 501 to anyone who finds was denied the reward seeing that he came to know only after finding the boy.

Both offer and acceptance can be generally done through email, website forms, and online agreements.

LAWFUL CONSIDERATION

¹⁵⁴ The Law of Contracts & Tenders with a Special Chapter on E-Contracts, T S VenatesaIyer's&, ed10th, S Gogia& Company, at p 106

¹⁵⁵ *LalmanShuklavGauriDutt Sharma*[1913] 40 ALJ 489

There has to be a lawful consideration. Any agreement formed electronically, to be enforceable by law, must have a lawful consideration.¹⁵⁶ Consideration is one of the most important elements of a contract. The basic rule is that when a party to a contract promises to perform his promise, he must get something in return for the performance of his promise. Consideration is something of some value in the eyes of the law.¹⁵⁷ It may be of some benefit, right, interest or profit given to the party as inducement of promise. An act constituting consideration must be moved at the desire of the promisor and must be legal, real and not imaginary. Promises that are physically impossible to perform cannot have real consideration.

INTENTION TO CREATE LEGAL RELATIONS

There has to be an intention to create legal relations. If there is no intention on the part of the parties to create legal relationships, then no contract can be formed between them. By and the agreements of a domestic or social nature are not contracts and are, therefore, not enforceable.

COMPETENCY OF THE PARTIES

All the parties to the contract must be lawfully competent to enter into a contract. Agreements entered into by incompetent persons, such as minors, lunatics, insolvents, etc. are void. Parties to a contract must be capable of entering into a contract. He must attain the age of majority and must be of sound mind. He must not be disqualified from contracting by any law for the time being in force. In our country, an agreement where either party is a minor has no significance. It is considered a void ab-initio. As per section 12 of the Indian Contract Act, 1872, any person who is in a position to judge and safeguard his interest is of sound mind and capable enough to enter into a contract. When a person is declared insolvent by any competent Court, he cannot enter into a contract relating to his property. In the old age foundation case of Mohori Bibee vs. Dharmodas Ghose, (1903) 30 Cal. 539 it was held by the Privy Council that an agreement by a minor is void.

FREE CONSENT

¹⁵⁶<<https://www.lawyersnjurists.com/article/consideration-important-elements-valid-contract/>>

¹⁵⁷<http://elib.bvuict.in/moodle/pluginfile.php/183/mod_resource/content/0/Advantages%20of%20EContracts%20over%20Traditional%20Contracts%20-%20E-Contracts%20and%20ECommerce%20in%20India%20-%20Vijaysinh%20Shashikant%20Pisal.pdf>

There must be free and genuine consent. Consent is said to be free when it is not caused by coercion, misrepresentation, undue influence or fraud. In short, there must not be any subversion of the will of any party to the contract to enter into such contract.¹⁵⁸ Generally, in online contracts, especially when there is no active interaction between the contracting parties, e.g., between a website and the customer who buys through such a site, but the 'click-through procedure' ensures free and genuine consent.¹⁵⁹

Consent which is defined under Section 13 of the Indian Contract Act, 1872,¹⁶⁰ is an essential requirement of a contract. It is the meeting of minds of the parties. When both agree upon the same thing, in the same manner, they are said to consent. In case consent is caused by coercion, it is voidable at the option of the party whose consent was so caused. Coercion includes physical compulsion, threat, and violence. Consent has to be free and genuine and not induced by misrepresentation, undue influence. *e.a* case where one person is in a position to dominate the will of another. But in case of an online contract, there is a narrow scope of physical communication between the website and the customer availing their service; they give consent by clicking the option that ensures free and genuine consent.

LAWFUL OBJECT

The object of the contract must be lawful. A contract presupposes lawfulness of the object of the contract. Therefore, an agreement for selling narcotic drugs or pornography films online is void.

CERTAINTY AND POSSIBILITY OF PERFORMANCE

There must be a certainty and possibility of performance. A contract, to be enforceable, should not be vague or uncertain or ambiguous; and there must be the possibility of its performance. A contract, which is impossible to perform, is void, e.g. where a website promises to sell land on the moon. Similarly, an agreement, the meaning of which is not certain or capable of being made certain is to avoid.

¹⁵⁸E- Contracts and the Law - Indian Law Watch
<<https://indianlawwatch.com/practice/e-contracts-and-the-law/>>

¹⁵⁹E- Contracts and the Law - Indian Law Watch
<<https://indianlawwatch.com/practice/e-contracts-and-the-law/>>

¹⁶⁰ The Indian Contract Act, 1872, Dr Narender Kumar, 1st ed 2015, Allahabad Law agency, at p 870-871

1.4 TYPES OF E-CONTRACT

1. E-MAIL CONTRACTS

Though e-mail communication has some of the trappings of instantaneous communication, nevertheless, it is a fragmented process involving many stages. The e-mail message is split into various packets and sent via different routes. Further, unlike in instantaneous forms of communication, the sender does not know if the transmission of the e-mail is successful, for even though he gets a delivery receipt, it only signals delivery to the mailbox and does not indicate that the other party has the knowledge of the receipt. Thus, e-mail messages would come under the category of the non-instantaneous form of communication. The default rules enunciated above would apply to e-mail contracts.¹⁶¹

2. STANDARD FORM OF E-CONTRACTS

The concept of contract as a freely negotiated bargain has received severe strains in the modern age of mass production, mass marketing and mass consumerism and transportation. One must admit that the consumer has very little economic strength to dictate the terms and conditions favourable to him in a contract. On the other hand, the manufacturer, whole seller, producer, a carrier and other big companies having giant economic strength are in a favourable position to dictate terms and conditions and the other party contracting with them are quiet unable to insist their terms. Consequently, these companies or producers etc. have drawn up standardised forms of contracts which are also known as adhesion.E-contracts are standard forms of contracts. Instead of using a printed paper, they are entered into an electronic mode. A standard form of contract is a contract prepared by one party to it, otherwise, than by process of negotiation drafted by one party it enables the other party, to sign on dotted lines. The terms are prepared beforehand by the former, and the latter party is made to or deemed to agree to the terms where under the latter does not have much say. The

¹⁶¹ Pollock and Mulla Indian Contract Act and Specific Relief Acts, Mr R G padia, 13th ed 2006, Lexus Nexus ButterworthsWadhawa, Nagpur at p 153

terms are put a standardized form.¹⁶²

The standard form of E-contracts can be broadly categorized into three types:
Click Wrap Contracts, Shrink Wrap Contracts and Browse Wrap Contracts

1. CLICK-WRAP CONTRACTS

A clickwrap agreement is mostly found as part of the installation process of software packages.¹⁶³ It is also known as “click-through” agreement or clickwrap license. Click-wrap agreements allow “a buyer to manifest assent to the terms of a contract by clicking on an acceptance button that appears while the buyer obtains or installs the product.” A buyer cannot start using the software until he or she has clicked on the button accepting the terms and conditions of the agreement. Click-wrap agreements require buyer action in order to begin usage but do not guarantee cognizance of the agreement terms. Buyers can assent to the contract without even reading it in order to use the product. Buyers cannot negotiate and must, therefore, accept the terms as they are. Most courts find these agreements enforceable. Understandably, concern remains that click-wrap agreements may be accepted without users reading or understanding contract terms when manifesting assent. Click-wrap agreements can be of the following types:

- Type and Click where the user must type “I accept” or other specified words in an on-screen box and then click a “Submit” or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.¹⁶⁴
- Icon Clicking where the user must click on an “OK” or “I agree” button on a dialog box or pop-up window. A user indicates rejection by clicking “Cancel” or closing the window.

2. SHRINK-WRAP CONTRACTS

¹⁶²Ilobinso, Ihuoma (2018) Formation of Electronic Contracts: Melding the Traditional Contract Law with Contemporary Electronic Commerce Citation Information

¹⁶³Sneha J Joshi, A Study of Challenges and Benefits of Electronic Commerce, IMPACT: International Journal of Research in Humanities, Arts and Literature (IMPACT: IJRHAL), Volume 6, Issue 8, August 2018, pp. 25-32

¹⁶⁴ Alan Davidson, The Law of Electronic Commerce (Port Melbourne: Cambridge University Press, 2009), at p 73

Shrinkwrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product. The term describes the shrink wrap plastic wrapping used to coat software boxes, though these contracts are not limited to the software industry. Shrinkwrap agreements operate slightly differently. For example, they have been used when one purchases off-the-shelf software. The agreement is imprinted on the software box, CD-ROM case, or other materials included inside the package. “The license begins when the purchaser reads its terms and tears open the cellophane wrapping or shrink-wrap that surrounds the package.” Buyers are supposed to return the software package to the retailer if they elect not to abide by the agreement. Courts are similarly concerned about buyers actually receiving notice of the sale, consciously agreeing to the sale, and conditioning the sale on acceptance of the license.

3. BROWSE WRAP AGREEMENT

This agreement is considered as a browsewrap agreement that's supposed to be binding upon the contracting party with the aid of the usage of the website. Those encompass the consumer policies and phrases of service of websites along with Flipkart or E-bay and are in the shape of a “terms of use”, a “person settlement” or “terms of service”, which can be used because of the hyperlinks at the corner or backside of website.¹⁶⁵

1.5 DIFFERENCE BETWEEN CLICK-WRAP AND SHRINK WRAP CONTRACTS
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Basis	Click-wrap	Shrink-wrap
Knowledge of Terms and Conditions	Consumer gets an opportunity to have a clear	Consumer does not get to know the key terms of the

¹⁶⁵Purohit, TD, “Contracts Via E-mail -A Note of Caution”, Corporate Law Cases, Vol. 9, Part-11, 2008 (November), pp 488-489

	knowledge about the terms and conditions.¹⁶⁶	agreement.
Acceptance and Agreement	Allows the users to read the terms of the agreement before accepting them.	People agree to the terms by using the software which they have already purchased.
Enforceability	They have gained almost universal acceptance as law binding contracts.	They have questionable enforceability.
Conclusion of Contract	By clicking the ‘accept’ button.	By breaking the seal of the software bought.

1.6 LET’S SUM UP

Electronic contracts simplify daily transactions for an e-consumer to a large extent. However, they also give rise to issues of free consent and freedom to contract. In this chapter, we have studied the concept of E-contracts, along with the essential elements of a valid contract. Finally, we ended the discussion with the different types of E-Contracts and their differences.

1.7 FURTHER READING

- David G Post & Dawn C, Nunziato, ‘Shrink-wrap Licenses and the licensing on the Internet’, Technology Licensing and Litigation (1997), at p- 519.
- The Indian Contract Act Sale of Goods Act, Trikamal R. Desai, Lexis Nexis Butter worths Wadhava Nagpur, 20th Ed. at p-64.
- Sundaram, Sethuram & Deepa, Ms & Kumar, (2018). E-Contracts in India: The Legal

¹⁶⁶Shnikat, Morad & Alzubi, Ali & Aljaber, Maher & Alnsoor, Ali. (2017). THE LEGAL FRAMEWORK OF ELECTRONIC CONTRACT IN THE JORDANIAN LEGISLATION. Global Journal of Politics and Law Research. 5. 46-62

1.8 CHECK YOUR PROGRESS: POSSIBLE READING

1. What is an E-Contract?

It is an electronic contract, conceptually similar to traditional contracts albeit with a comparatively bigger realm and formed in the course of e-commerce and signed in electronic form without the use of paper or hard copies.

2. What are the essential elements of a valid contract?

- Offer
- Acceptance
- Lawful Consideration
- Intention to create legal relations
- Competency of the Parties
- Free consent
- Lawful Object
- Certainty and Possibility of Performance

3. How many kinds of E-Contracts are there? Name them.

There are three kinds e-contracts; click-wrap contracts, shrink-wrap contracts and browse-wrap agreements.

1.9 ACTIVITY

Explain the meaning of E-Contract, its essential elements along with the different types of E-Contracts? (1000 words)

Unit 2: Major Issues and Regulatory Framework of E-Contracts

2

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Introduction
 - 1.3 Laws that define E-Contracts
 - 1.4 Regulatory framework under the I.T. Act, 2000 and other laws
 - 1.5 Evidentiary value of E-Contract
 - 1.6 Standard Form Online Contracts are unconscionable
 - 1.7 E-Contracts and Consumer Protection
 - 1.8 Major issues and challenges
 - 1.9 Let's sum up
 - 1.10 Further reading
 - 1.11 Check your progress: Possible answers
 - 1.12 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you will be able to understand:

- The definition given by varied laws for E-contracts
- Regulatory Framework under I.T. Act, 2000 and other laws
- Major issues and challenges

1.2 INTRODUCTION

Since the last decade, there has been a tremendous technology revolution. Internet and transactions over the internet have become the sine qua non of everyday transactions throughout the world.¹⁶⁷ This is because of the emergence of information technology-based economy. The World Wide Web (WWW) has brought new opportunities and challenges to various people. The businesses utilize it for their benefit by expanding their activities not only in physical space but also in virtual space in search of potential customers. Thus contracting becomes a fundamental element in the e-commerce world.¹⁶⁸ The electronic contracting raises various new legal issues. The advent of the Internet has changed the mode of entering into an agreement, but the essentials of a valid contract are one and the same. In India, the rules relating to the formation of contracts, its validity and enforcement are regulated by the Indian Contract Act 1872. However, there still remain some dark areas in the interpretation of these contracts for which a consolidated law governing e-contracts is required. The general inclination of the legislature and the legal profession is to apply the existing law to the new sets of virtual commerce problems without much change; even where modification is necessary or unavoidable to protect the interest of e-businesses and e-consumers.

1.3 LAWS THAT DEFINE E-CONTRACTS

The UNCITRAL Model Law on E-commerce states that “a contract can be made by exchanging data messages; and when a data message is used in the formation of a contract, the validity of such contract should not be denied.”¹⁶⁹

The Information Technology Act, 2000, defines ‘data’ as a representation of information, knowledge, facts,¹⁷⁰ concepts or instructions which are prepared or have been prepared in a formalized manner, and are intended to be processed, are being processed or have been processed in a computer system or a computer network, and may, in any form (including

¹⁶⁷Agbozo, Ebenezer. “Developing a Digital Government Framework for Sub-Saharan Africa” European Conference on Digital Government, Academic Conferences International Limited, June 2017, p 294

¹⁶⁸ELECTRONIC CONTRACT AND THE LEGAL ENVIRONMENT
<http://www.irfd.org/events/wf2003/vc/papers/papers_global/R38.pdf>

¹⁶⁹Article 11, communication of data messages, UNICITRAL Model Law on E-Commerce, 1996

¹⁷⁰STAMP DUTY IMPLICATIONS ON E-AGREEMENTS – Vinod Kothari
<<http://vinodkothari.com/2020/01/stamp-duty-implications-on-e-agreements/>>

computer printouts, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.¹⁷¹

As per UNCITRAL Model Law, ‘data messages’ means ‘information generated, sent, received or stored by electronic, optical or similar means including, but not limited to Electronic Data Interchange(EDI), electronic mail, telegram, telex or telecopy’.¹⁷²

1.4 REGULATORY FRAMEWORK UNDER THE I.T. ACT, 2000 AND OTHER LAWS

- INDIAN CONTRACT ACT, 1872

The Indian Contract Act, 1872 governs the manner in which contracts are made and performed in India.¹⁷³ Every e-contract must comply with the provisions of the act to make it legally enforceable. In the context of contract formation, the parties to the contract can express it by means of data messages or electronic record. Where an electronic record is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that data messages were used for that purpose.

- INFORMATION TECHNOLOGY ACT

E-contracts are considered to be valid under the IT Act, 2000. Under the IT Act, any information which is in writing, typewritten or printed form is made available to a user in the electronic form for subsequent reference shall be deemed to have satisfied the requirement of law.¹⁷⁴ The IT Amendment Act, 2008 clearly states that the validity of contracts through electronic means, ‘Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic forms or means was

¹⁷¹Section 2(o) of Information Technology Act, 2000

¹⁷²Article 2(a) of UNCITRAL Model Law on E-Commerce, 1996

¹⁷³Electronic Contracts in India | E- Contract |

<<https://legalconclave.com/blog/electronic-contracts/>>

¹⁷⁴Section 4 of Information Technology Act, 2000

used for that purpose'.¹⁷⁵ Additionally, the Act lays down that the instruments to which the Information Technology Act, 2000 does not apply shall include negotiable instruments, power of attorney, a trust deed, a will and contracts for sale or transfer of Immovable Property.¹⁷⁶

- **INDIAN EVIDENCE ACT, 1872**

The emergence of information and communication witnessed a drastic change by elevating the status of evidence recorded, generated or stored electronically from the secondary to primary evidential status. The evidentiary value of e-contracts is well-defined under Sections 85A, 85B, 85C, 88A and 90A of the Indian Evidence Act, which deals with the presumptions as to electronic records. Section 65A of the said act relates to the admissibility of the electronic record.

1.5 EVIDENTIARY VALUE OF E-CONTRACT
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The Delhi High Court in *Societe Des Products Nestle S.A. And Anr.Vs. Essar Industries andOrs.*¹⁷⁷ noted that “Rapid rise in the field of information and technology in the last decade of 20th Century and the increasing reliance placed upon electronic record by the world at large necessitated the laying down of a law relating to admissibility and proof of electronic record.¹⁷⁸

The legislature responded to the crying need of the day by inserting into the Evidence Act Sections 65A and 65B, relating to admissibility of computer-generated evidence in the only practical way it could so as to eliminate the challenge to electronic evidence. By virtue of the provisions of Section 65A, the contents of electronic records may be proved in evidence by the parties in accordance with the provisions of Section 65B.” Section 65B of the Indian Evidence Act, 1872 (“Evidence Act”), provides for the admissibility of electronic records. Any information contained in an electronic record which is printed on a paper or

¹⁷⁵ Section 10A of the Information Technology (Amendment) Act, 2008

¹⁷⁶ Section 9 of the Information Technology (Amendment) Act, 2008

¹⁷⁷ *Societe Des Products Nestle S A And Anr vEssar Industries and Ors*[2006] (33) PTC 469 Del

¹⁷⁸ Newslex: March 2013 - Manupatra

<https://www.manupatrafast.in/NewsletterArchives/listing/Newslex%20DHLaw/2013/Resources_%20Newslex%20-%20March%202013%20-%20D.%20H.pdf>

stored/recorded/copied on optical/magnetic media produced by a computer shall be deemed to be a document. Further, such document is admissible as evidence in any proceeding without further proof of the original, if the conditions laid down under the Evidence Act are satisfied. The observations of the Supreme Court in the case of *State (N.C.T. of Delhi) vs Navjot Sandhu @ Afsan Guru*¹⁷⁹ may be relevant in this regard. Further, while analysing the evidentiary value of electronic records including electronic signatures, the Delhi High Court in the *State of Delhi v. Mohd. Afzal & Others*¹⁸⁰ held that “Electronic records are admissible as evidence. If someone challenges the accuracy of computer evidence or electronic record on the grounds of misuse of the system or operating failure or interpolation, then the person challenging it must prove the same beyond reasonable doubt.” Also, the Supreme Court in *State of Punjab & Ors. Vs. M/S. Amritsar Beverages Ltd. & Ors*¹⁸¹ while referring to the recent amendments on account of internet and other information technologies observed that “Section 464 of the Indian Penal Code deals with the inclusion of the digital signatures. Sections 29, 167, 172, 192 and 463 of the Indian Penal Code have been amended to include electronics documents within the definition of 'documents'. Section 63 of the Evidence Act has been amended to include the admissibility of computer outputs in the media, paper, optical or magnetic form. Section 73A prescribes procedures for verification of digital signatures. Sections 85A and 85B of the Evidence Act raise a presumption as regards electronic contracts, electronic records, digital signature certificates and electronic messages.” As also appreciated by the Supreme Court of India, certain statutory amendments have been carried out in order to keep pace with technologies and further to align the existing set of laws with the IT Act, thereby opening the doors of the judicial system for admission of such electronic records. Further, in addition, meeting the prerequisites of a valid contract under the Contract Act, courts around the world have opined that for electronic contracts to be valid, the following additional requirements are to be satisfied:

- Clear notice to the customer that the transaction is governed by the terms of a contract ;
 - An opportunity to review the terms of the standard form contract before agreeing to them;
- and

¹⁷⁹*State (N.C.T. of Delhi) v Navjot Sandhu @ Afsan Guru* AIR [2005] SC 3820

¹⁸⁰*State of Delhi v Mohd Afzal & Others* 107 [2003] DLT 285

¹⁸¹*State of Punjab & Ors v M/S Amritsar Beverages Ltd & Ors* AIR [2006] SC 2820

- A clear and unambiguous statement of what constitutes acceptance of the terms of the contract.

These requirements are in addition to the standard contract requirement for a signature or other act of assent (e.g., clicking on an “I Accept” button or by checking the box provided in the website).

The evidentiary value of e-contracts can be well understood in light of the following sections of the Indian Evidence Act. Sections 85A, 85B, 88A, 90A and 85C deals with the presumptions as to electronic records whereas Section 65B relates to the admissibility of an electronic record.

THE ABOVE MENTIONED SECTIONS CAN BE EXPLAINED AS FOLLOWS:

SECTION 85A:

As regards presumption to electronic agreements, this section is incorporated. It says that every electronic record of the nature of an agreement is concluded as soon as a digital signature is affixed to the record. Section 85A has been added in order to ensure the validity of e-contracts. But there are some restrictions as regards the presumptive value. The presumption is only valid to electronic records, electronic records that are five years old and electronic messages that fall within the ambit of Section 85B, Section 88A and Section 90A of Indian Evidence Act.¹⁸²

SECTION 85B:

Section 85B provides that the court shall presume the fact that the record in question has not been put to any alteration, in case the contrary has not been proved. The secure status of the record may be demanded until a specific time. The digital signature should also be presumed to have been affixed with the intention of signing and approving the electronic record. Further, it has been provided that the section should not be misread so as to create any presumption relating to the integrity or authenticity of the electronic record or digital signature in question.

SECTION 88A:

“The court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed

¹⁸²Evidentiary Value of E-Contracts - Legal Service India.
<<http://www.legalserviceindia.com/article/I127-E-Contracts.html>>

corresponds with the message as fed into his computer for transmission, but the court shall not make any presumption as to the person by whom such message was sent”.¹⁸³

This section is self-explanatory as it purports to follow the basic rules of a valid hard-copy agreement. The words “may presume” authorize the court to use its discretionary power as regards presumption. Sections 85A and 85B contained the words “shall presume” which expressly excluded this discretionary power of the court.

SECTION 90A:

In case of an electronic record being five years old, if proved to be in proper custody, the court may presume that the digital signature was affixed so as to authenticate the validity of that agreement. The digital signature can also be affixed by any person authorized to do so. For the purpose of this section, electronic records are said to be in proper custody if they are in the custody of the person with whom they naturally be. An exception can be effected in case circumstances of a particular case render its origin probable.

SECTION 85C:

As far as a digital signature certificate is concerned, the court shall presume that the information listed in the certificate is true and correct. Inclusion of the words “shall presume” again relates to the expressed exclusion of the discretionary power of the court.¹⁸⁴

SECTION 65B:

Section 65B talks about the admissibility of electronic records. It says that any information contained in an electronic record which is printed on a paper or stored/recorded/copied on optical/magnetic media produced by a computer shall be deemed to be a document and is admissible as evidence in any proceeding without further proof of the original, in case the following conditions are satisfied:

¹⁸³ J H Grahams Smith, Internet Law and Regulation, Sweet and Maxwell, New Delhi, 2007, pp 773-775

¹⁸⁴ SarabdeenJawahitha, Noor RaihanAb Hamid, “Electronic Contract and The Legal Environment”, available at: <http://www.irfd.org/events/wf2003/papers_global/R38.pdf>

The computer output was produced during the period over which the computer was used regularly to store or process information by a person having lawful control over the use of the computer. In case a combination of computers, different computers or different combinations of computers are used over that period, all the computers used are deemed to be one single computer.¹⁸⁵

The information contained should have been regularly fed into the computer, during that period, in the ordinary course of activities. The computer was operating properly during that period, and if not, it would not have affected the accuracy of data entered. A certificate issued is also admissible if it contains a statement which:

- Identifies the electronic record containing the statement.
- Gives information about the particulars of the computer involved in the production of the record.
- The certificate issued should be signed by a person officially responsible for the use of that device in relation to the relevant activity. The information fed into the computer should be in the appropriate form as well as by appropriate device.

1.6 STANDARD FORM ONLINE CONTRACTS ARE UNCONSCIONABLE

Under e-contracts, there is little or no scope for negotiations to take place between the e-commerce platforms and the customers pertaining to the terms of the online contracts. The question that arises is whether such standard form contracts are to be considered unconscionable and may be struck down by the courts. Indian laws and Indian courts have dealt with instances where terms of contracts (including standard form contracts) were negotiated between parties in unequal bargaining positions. Under Indian Contract Act, if a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears to be unconscionable, the burden of proving that such contract was not induced by undue influence

¹⁸⁵ Jeffery E. Wittmann, Vancouver, BC. "Electronic Contracts", Negotiation and Drafting Major Business Agreements Conference Federated Press (October, 2007)
<http://www.wdwlaw.ca/ELECTRONIC_CONTRACTS_111007_280312.pdf>

shall lie upon the person in a position to dominate the will of the other.¹⁸⁶ In addition to that, the consideration or object of any agreement is unlawful when¹⁸⁷

- It is forbidden by law; or
- Is of such a nature that if permitted, it would defeat the provisions of any law; or
- Is fraudulent; or
- Involves or implies injury to the person or property of another; or
- The Court regards it as immoral or opposed to public policy.

In the case of *LIC India Vs Consumer Education & Research Center*¹⁸⁸, the Supreme Court interpreted an insurance policy issued by Life Insurance Corporation of India by bringing in certain elements of public purpose. The Court held that certain clauses in the policy with regard to restricting the benefit of the policy only to those people employed in the Government as void under Article 14 of the Constitution of India, i.e., equality before the law.¹⁸⁹ The Court noted that ‘In dotted line contracts, there would be no occasion for a weaker party to bargain as to assume to have equal bargaining power. He has either to accept or leave the service or goods on terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forgo the service forever’.

In the case of *Lily White Vs R Munuswami*¹⁹⁰, the court held that a limitation of liability clause printed on the back of a bill issued by a laundry which restricted the liability of the laundry to 50% of the market price of the goods in case of loss was against public policy and therefore void.

1.7 E-CONTRACTS AND CONSUMER PROTECTION

In E-contracts, the dominant party stipulates the terms and conditions in order to absolve itself from the liability. This has given rise to issues with regard to consumer protection. Subsequent to the Consumer Protection Act being passed in 1986, the trading system changed drastically. This Act had lacunas for modern consumer protection. There were many changes brought under the

¹⁸⁶ Section 16(3) of the Indian Contract Act, 1872

¹⁸⁷ Section 23 of the Indian Contract Act, 1872

¹⁸⁸ *LIC India v Consumer Education & Research Center* [1995] AIR 1811

¹⁸⁹ Article 14 of Indian Constitution states that, the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

¹⁹⁰ *Lily White v R Munuswami* AIR [1966] Mad 13

Consumer Protection Bill, 2015 such as the definition of ‘Consumer’ included the expression “buys and goods” and “hires or avails any services” include the transaction made through any modes including but not limited to offline electronic means of transaction, teleshopping or direct selling or multilevel marketing.¹⁹¹ Furthermore, Section 32 enunciates the filing of complaint electronically and the payment of fees for such complaints in electronic form in order to save the time of the e-buyers.

1.8 MAJOR ISSUES AND CHALLENGES

- Capacity to contract

In an e-contract, the essential ingredients must be complied with in order to make the contract valid. However, one major issue which needs to be dealt with is, whether the other party is a legally competent person to enter into a contract. The Service provider will have no idea whether the individual who has clicked on ‘I Agree’ or any similar icon is a competent person. As per Indian Contract act, 1872, it is one of the pre-requisites that only a legally competent person enters into a contract to make it a valid contract.¹⁹² Contracts entered by individuals who are not competent to contract are void.

- Electronic Authentication

In e-contracts, ‘electronic records and digital signatures’ constitute the medium for electronic authentication. Electronic records need to be validated under the rules of evidence and procedure. The Information Technology Act, 2000 stipulates for use of digital signatures to authenticate electronic records. The said Act accepts digital signature as a means of authentication¹⁹³ and provides a legal framework for facilitating and safeguarding electronic transactions. Section 3 of the act deals with the authentication of electronic records and provides that any subscriber may authenticate an electronic record by affixing his digital signature. The IT (Amendment) Act, 2008 inserted a new Section 3A pertaining to electronic signatures.¹⁹⁴

¹⁹¹ Section 2(8) Explanation (b) of the Consumer Protection Bill, 2015

¹⁹² Section 11 of the Indian Contract Act, 1872

¹⁹³ Section 2(1) (p) of the Information Technology Act, 2000

¹⁹⁴ Jay and Briggs, “Information Technology and its Organizational Impact”, Journal of Management Information Systems, Vol 13, No 3, Winter, 1997, p 4

- *Choice of Law*

One of the major issues which need to be resolved in case of e-contracts is the law of jurisdiction which is referred to as 'Personal Jurisdiction' of the Court. Often the problem arising in a contract is with regard to the jurisdiction; when a party is a non-resident, which law would be applicable, i.e., domestic laws of the state where the party is residing or domestic laws of the state whose laws have been invoked in the offence being committed. In an online medium, fixing the choice of the law becomes a more complex issue compared to the normal contract.

1.9 LET'S SUM UP

In a nutshell, caution on the part of the consumer cannot be the only remedy for problems faced by e-consumer. Further, remedies available under the Indian Contract Act may not be feasible for easy solutions. E-consumer therefore, require creative or at least easily accessible solutions in limited timespan for daily dishonoured e-contracts. The Indian Legislature keeping in mind the end goal to control the rights and liabilities of gatherings if there should be an occurrence of Electronic Contracts has passed the IT Act, 2000 and the Electronic Commerce Act, 1998. The arrangements of these demonstrations approve the development of electronic contracts. The offer and acknowledgement given in type of information messages will be held substantial. Anyway, the arrangements of the demonstration are to be perused inconsistency with the Indian Contract Act, 1872 and the point and goals of the agreement ought not to be in negation to the arrangements of the Contract Act. We have likewise observed from different legal choices that offer, and acknowledgement given in the type of Emails would be held as legitimate, and the agreement along these lines framed would tie. The Electronic Contracts are an amalgamated type of Cyber Law and Contractual law, and hence it gets its power from both.

1.10 FURTHER READING

- Karnika Seth, *Computers, Internet and New Technology Laws-A comprehensive reference work with special focus on developments in India*. Lexis Nexis, Updated Edition 2013.

- NandanKamath, Law Relating to Computers Internet & E Commerce Universal Law Publisher, 5th Edition, (2012).
- AparnaViswanathan, Cyber Law Indian and International Perspectives, Lexis Nexis, 2012.

1.11 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1. What are the additional requirements that need to be satisfied under E-Contract?

The following additional requirements are to be satisfied:

- Clear notice to the customer that the transaction is governed by the terms of a contract ;
- An opportunity to review the terms of the standard form contract before agreeing to them; and
- A clear and unambiguous statement of what constitutes acceptance of the terms of the contract.

2. What are the requirements of 65B certificate?

A certificate issued is also admissible if it contains a statement which:

- Identifies the electronic record containing the statement.
- Gives information about the particulars of the computer involved in the production of the record.
- The certificate issued should be signed by a person officially responsible for the use of that device in relation to the relevant activity. The information fed into the computer should be in the appropriate form as well as by appropriate device.

3. What are the legal statues governing E-Contracts in India?

The legal statutes broadly addressing E-Contracts in India are the Indian Contract act, 1872, Information Technology Act, 2000, Indian Evidence Act, 1872.

1.12 ACTIVITY

Explain the evidentiary value of E-contracts with relevant cases along with the regulatory framework in other laws? (1000 words)

Unit 3: Comparative Analysis of E-Contract in Various Countries

3

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Introduction
 - 1.3 India
 - 1.4 United States of America
 - 1.5 U.K.
 - 1.6 Australia
 - 1.7 Europe
 - 1.8 Japan
 - 1.9 Let's sum up
 - 1.10 Further reading
 - 1.11 Check your progress: Possible answers
 - 1.12 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter you should be able to understand:

- About the UNCITRAL Model Law
- The laws in India which govern the e-contracts
- Laws in other countries which regulate the use of e-contracts

1.2 INTRODUCTION

With the move towards modernization and reliance on the technological advancements, the lives of humans have become more sophisticated yet complex, and this aspect also applies to the

commercial transactions. In other words, it is undeniably the truth that electronic contracts, which serves as a means to acquire the goods and services in the modern times, encapsulates with itself great complexities.¹⁹⁵ One major contributor of the complexities is the popularity of the standard form of contracts, which also is increasing with time. On the other hand, the ways in which the people (consumers) acquire the goods and services have changed drastically, like today there is a massive market of e-commerce, and for a variety of reasons that is being given more importance and is continuously increasing in its valuation. However, in e-commerce, there are certain drawbacks as well which come handy, for instance, more often than not, the goods in these platforms are sold under the contract which contains clauses to exempt the liability of the seller, or to say the least, restrict it to very few conditions only. In such a situation, it would not be wrong to say that the concept of caveat emptor has taken a step back as there is no opportunity for the consumer to inspect the goods beforehand. In the light of the flaws that come implied with the e-contracts, it is very important that the laws are present to provide a proper safeguard to the consumers and to protect them from the unreasonable whims and fancies of the traders whose sole aim becomes to gain the profits by whatever means possible.¹⁹⁶ According to Sir William Anson a contract is legally binding agreement between two or more person where rights are acquired by one or more acts or forbearance on the part of the other E contract is an aid to drafting & negotiating successful contracts in e-commerce & related service. Following are some issues that are taken into consideration:

- European Directives
- U.K.-Electronic Communication Act
- Japan-The Law Concerning Electronic signature & certificate, 2000
- U.S.A.-Digital Signature Act 1995

In this chapter, we will be looking into these laws which govern the matter at hand, and will also compare them with those of other countries.

1.3 INDIA

In our day to day lives in the current lifestyle, the contracts have become so common, and their presence is so widespread that knowingly or unknowingly we enter into some of the other forms

¹⁹⁵ Ahmad, Tabrez (2009) Electronic Contracts: A Comparative Study of India and USA. India Law eJournal

¹⁹⁶ Sasso, Lorenzo (2016) Certain Comparative Notes on Electronic Contract Formation. Law. Journal of the Higher School of Economics 216-131

of the contracts everyday. In India, the law which deals with the contracts is the Indian Contract Act, 1872.¹⁹⁷ It lays down the requisites of a valid, enforceable contract, the communication regarding the essentials of the contracts, the manner in which they are to be executed, the breach of the contract, and the consequences of the breach of the contracts. It doesn't lay down the only manner in which the contracts are to be executed and other secondary things, and leaves adequate discretion with the contracting parties. In today's world, the internet has impacted almost every aspect of our lives, and the mode of entering into contracts hasn't been left untouched. With the internet, the world has indeed metaphorically become a smaller place as the modes of communication, among other things, have increased by courtesy of the technological development.¹⁹⁸ The importance of electronic contracts lies in the factors like requirement for speed, comfort and productivity. To substantiate this point, let's consider a hypothetical situation where a person 'X' from country 'A' wants to do some trade with person 'Y' from country 'B', for them to enter into a contract, there are basically 3 ways:-

- a) The first one is that either X, or Y drafts 2 sets of agreement and sends it to the other person, and then the latter person signs the copies and then sends one of the copies to the first mentioned person.
- b) The second one is that X and Y meet at some place and then sign the agreements, and then the contract gains its validity.
- c) Now, in the third option, this entire transaction can take place in a couple of seconds, with the use of internet, as both X and Y can put their electronic signature in the electronic agreement and the electronic contract is formed, which to be very clear, has the same legal effect as any contract on paper.

The third option undoubtedly saves the delayed communications and the unnecessary monetary expenses.

In the initial phase, the countries were hesitant to accept this variety of contract and to make laws governing the same, but this was soon over and now countries have already put a law in place to acknowledge and regulate these types of contracts also. Needless to mention, that the laws which used to govern the traditional contracts couldn't be adequate to deals with the types of issues

¹⁹⁷ SV JogaRao, Computer Contracts & Information Technology Law (2nd Edition, 2005), pg. 182(Information Technology. Mathematical Markup Language (MathML) Version 3.0 2nd Edition)

¹⁹⁸ C.M. Abhilash, E Commerce laws in Developing countries: An Indian Perspective

three-contracts brought with them. As far as India is concerned, the Indian Contract Act, 1872 wasn't equipped to deal with the technicalities of the e-contracts and thus the Information Technology Act, 2000 was enacted by the Parliament to deal with certain indispensable issues which came handy in the validity, development and execution of e-contracts.¹⁹⁹

The Information Technology Act, 2000 recognizes and gives validity to the communications carried out by means of electronic data interchange. It also makes provisions for admissibility of electronic data as evidence in courts. Further, the courts have in the case laws have set precedents with the help of the legal provisions that the tape recordings, Compact Disks, email correspondences etc. are admissible and valid mode of evidence provided the proof is tendered in the manner laid down in the Indian Evidence Act. The Information Technology Act also provides for concepts like digital signatures as a mode of authentication, rules for determining electronic records.²⁰⁰

Traditional contracts as provided for by the Indian Contract Act 1872, are binding in nature and there are specific provisions which lay down the mode of the formation of contracts. But in respect of e-contracts, there is a lack of legal authorities to govern their formation and implementation. Further the recent instances raise a doubt on the security aspect.

It must have been understood by now that the problem which arises with e-contracts is the recognition and validity of the signatures of the parties which are in digital forms. So the laws which will be looked upto will be those dealing with the electronic signatures and not directly the e-contracts, as the validity and recognition to one implies and leads to that of the other one.

1.4 UNITED STATES OF AMERICA

The law on the use of electronic contract in the USA is the Digital Signature Act, 1995. USA became the first nation to pass a digital signature statute which intended to create assurance regarding the validity of the digital signature and thereby justify enforcement of obligations created by their use. Since then, many nations have passed similar legislation for governing the

¹⁹⁹history.background - UNCITRAL Model Law on Electronic Contract
<<https://www.jus.uio.no/lm/un.electronic.commerce.model.law.1996/history.background.html>>

²⁰⁰Kolekar, Yogesh Prasad. —A Review of Information Technology Act, 2000 SSRN Electronic Journal, 2015

use of electronic signatures. The Digital Signature Act requires the use of certified asymmetric cryptosystem (public-key encryption) to verify the authenticity of the digital signature to be enforced. Therefore, to be enforceable and have legal validity, a digital signature must be issued with an intent to be enforced and also must utilize the required public-key encryption. The public key encryption must be certified by an authorized certification authority as under the laws of each state. Each state has to establish or authorize certifying authorities to issue certified digital signatures. However, their effect in the marketplace has been limited because of the encumbrance nature of the certification & encryption requirements.²⁰¹

The UNCITRAL Model Law on Electronic Commerce was developed in response to the rapid changes that were taking place in the methods of communication used to conduct business and international trade.²⁰² As the use of electronic mail and electronic data interchange increased day by day and became more prevalent, the existence of legal impediments to electronic communications and uncertainty about their legal effect and validity became evident. The model law allows for the authentication of data by means of a signature. In America they provide that a document will be in a form acceptable to public authorities and courts. Therefore direction of Model Law on Electronic Commerce notes that for “all of the abovementioned functions of paper, electronic records can provide the same level of security as paper and, in most cases, a much higher degree of reliability and speed, especially with respect to the identification of the source and content of the data, provided that a number of technical and legal requirements are met.”²⁰³

The below discussed laws constitute the essential legal structure of electronic contracts in the United States:

The Uniform Electronic Transactions Act (UETA) is one among the several US Uniform Acts and an imperative U.S. enactment which is material to electronic contracts. UETA, as explicitly characterized in Articles 3 and 4, just applies to exchanges identified with business, business, and government matters; and to exchanges led by electronic means.

²⁰¹ Qin, Zheng Introduction to E-Commerce Springer Science & Business Media, 2010

²⁰² Rastogi, Sachin. Insights Into E-Contracts in India. 2014

²⁰³ Florell, Dan. “Just A Click Away.” National Association of School Psychologists. Communique, vol 43, no 4, National Association of School Psychologists, 1 Dec. 2014, p 36

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), 2001: This Act perceives the legitimacy of agreements entered electronically, and where electronic marks have been used. The primary reason for the enactment of this Act was to facilitate the use of electronic records and electronic signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.

Uniform Computer Information Transaction Act (UCITA) is an important set of proposed guidelines relevant to the development of electronic contracts, particularly to those e-contracts on electronic materials, or computer data exchanges as the Act calls them. The member states of the USA were given the discretion to adopt or not to adopt the UCITA, and surprisingly UCITA has not been adopted by numerous states, and till date only 2 of the states (Maryland and Virginia) did adopt it, and 4 other states passed anti-UCITA laws.

1.5 U.K.

The use of e-contracts in U.K. is governed by the Electronic Communication Act, 2000. The first draft of a bill, the Electronic Communication Bill was published in July 1999 although it was withdrawn when it attracted a great deal of attention regarding key escrow & provisions that were later incorporated into the Regulation of Investigatory Powers Act 2000. The Act received the royal assent on May 26, 2000.

Electronic Signature in the U.K.- The Act provides a definition in Section 7(2)- The term authentication has two meaning in the content of Information Security. In the U.K. an electronic signature is admissible under the provisions of Section 7(1)(a). The authenticity of data can be admissible where any person certifies the signature. The certificate would normally be provided by an entity such as a trusted third party. Although it does not follow that such a certificate has to be provided by a trusted third party.²⁰⁴

1.6 AUSTRALIA

²⁰⁴Electronic Signatures in Law on JSTOR
<<https://www.jstor.org/stable/j.ctv5137w8>>

In Australia, Electronic Transaction Act, 1999 the corresponding state and territory legislation is not comprehensive code of rules, nor does it govern all aspects of electronic contracting or of e-commerce's essential procedure and principles, intended to promote global regulating harmony in relation to electronic transactions.²⁰⁵ The two basic principles underlying the Australian Electronic Transactions Act are functional equivalence (i.e. that paper-based commerce and electronic commerce are to be treated with equality) and technology neutrality. In accordance with the UNCITRAL Model Law on this matter, the Australian Electronic Transaction Act does not involve heavy regulations to promote the validity of transactions involving electronic commerce. Further, Australia has publically declared their intention to adopt the UN Convention on the Use of Electronic Communications in International Contracts but hasn't acted upon it yet, and for complying with the obligation under the mentioned convention, it will need to update the Electronic Transaction Act.²⁰⁶

1.7 EUROPE

For the validity of e-contracts, the validity of e-signature is of prime concern. The Electronic Signature Directive (1999/93/EC) was a European Union Directive on the use of e-signatures in e-contracts which has now been replaced by Electronic Identification, Authentication and Trust Services(eIDAS)(Regulation 910/2014). The basic and most important directive of 1993 Directives, is mentioned under Article 5, which provides that electronic signatures must be recognized and given equal standing and effect in law as that is attributed to written signatures.²⁰⁷

Conclusion of online contracts in Europe- the Directives address the fundamental requirements to determine when a contract is concluded electronically. The mechanism of concluding a contract specified in the Articles of the Directives goes further than required by the traditional concept of offer and acceptance by adding the requirement that the recipient receives electronically the provider acknowledgement of acceptance. The objective of the Directive is to reduce obstacles and to ensure that the differences concerning the legal recognition of electronic signature do not become restrictions on the free movement of products between the member

²⁰⁵Alghamdi, Abdulhadi M. The Law of E-Commerce: E-Contracts, E-Business. AuthorHouse, 2011

²⁰⁶Dr.Lakshmi T and Rajeshkumar S "In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes" IRJMST, March 2018

²⁰⁷Harlow, Carol, and Richard Rawlings.—Contract, Contract, Contract Law and Administration, pp 393–436

states by creating a harmonized legal framework for the use of electronic signature within the EU and establishing a set of rules which form the foundation for legal recognition of electronic signatures.

The eIDAS which have replaced the previous Directives have come in effect from 1st July, 2016, and it sets out rules for electronic identification and trust services. These services help verify the identity of individuals and businesses online or the authenticity of electronic documents.

1.8 JAPAN

The law in the country of Japan governing the matter in hand is the Electronic Signature & Certification Service (Law No. 102 of 2000), which has been in force since April 2001.²⁰⁸ According to Article 3 of supplementary provisions, the government is required to examine how the law has been enforced & to undertake revisions where necessary. The law defines an electronic signature as measures are as follow:-

- Measures to indicate that the information was created by the person who performed
- Measures that can confirm whether or not any alteration of the information has been performed.

This definition requires the need to identify the person signing the data & for the ability to confirm whether the data has been altered since it was signed. In essence, this definition only provides for a digital signature & thereby precludes the use of other forms of electronic signature. Article 3 provides for the presumption that data is authentic, where the electronic signature is performed by the principles.²⁰⁹

1.9 LET'S SUM UP

In this chapter, we discussed how e-contracts has been put to use in different countries and how different countries have regularized e-contracts. Finally, we ended the discussion with a comparative analysis of the laws in India, USA, UK, Australia, Europe and Japan.

1.10 FURTHER READING

²⁰⁸Weakley, Suzanne L California Law of Contracts: 2017 Update CEB, 2017

²⁰⁹Trishala A , Lakshmi T and Rajeshkumar S,— Physicochemical profile of Acacia catechu bark extract –An In vitro study” IRJMST, April 2018

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- Tepper, Pamela. The Law of Contracts and the Uniform Commercial Code. Cengage Learning, 2014.

1.11 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

- 1. Which provisions of the IT Act, 2000 governs the manner of producing electronic records as evidence in a court of law?**

None. The Indian Evidence Act deals with the concerned situation.

- 2. Does the Uniform Computer Information Transaction Act (UCITA) apply to every member state of the USA?**

No. Only 2 states have ratified the UCITA.

- 3. Name the states which have ratified UCITA.**

Maryland and Virginia

- 4. Which law governs the e-contracts in Australia?**

Electronic Transaction Act, 1999

- 5. Which law governs the e-signatures in Europe?**

The Electronic Signature Directive (1999/93/EC) was a European Union Directive on the use of e-signatures in e-contracts which has now been replaced by Electronic Identification, Authentication and Trust Services(eIDAS)(Regulation 910/2014)

1.12 ACTIVITY

Find out whether India is a signatory to the UN Convention on the Use of Electronic Communications in International Contracts? Find about all the signatories of the convention and whether their laws comply with the guidelines set in the Convention. (1000 - 1500 words)

Unit 4: Exercise of Jurisdiction and Issues Related Therewith

4

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Introduction
 - 1.3 Jurisdictions over Internet Transactions
 - 1.4 Multiple Jurisdiction and their applicability
 - 1.5 Governing law
 - 1.6 Conclusion
 - 1.7 Let's sum up
 - 1.8 Further reading
 - 1.9 Check your progress: Possible answers
 - 1.10 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you should be able to understand

- Issues of Jurisdiction Related to E-Contracts
- Barriers in E-Commerce vis-à-vis jurisdiction
- Jurisdiction of Courts Under E-Contracts

1.2 INTRODUCTION

The presence of internet and netizens are ubiquitous in today's times. Internet is international and allows access to people from almost every corner of the world. Most websites do not even contain the geographical address that aid in detecting the jurisdiction of the activities associated

with such websites.²¹⁰ Effectively, parties involved in transactions taking place in cyberspace are not concerned with the geographical location of the site through which the transaction is made. The manner in which the internet has dissolved all physical boundaries has given rise to the issue of jurisdiction, which in turn becomes relevant in instances where disputes arise relating to such transactions conducted online.

‘Jurisdiction’ effectively means the judicial, legislative, administrative compliances that the states enjoy over the respective territories that they own and control. For disputes that arise offline, traditional processes as followed in courts through the litigation system are used to dissolve them, which involve remedies that are primarily structured as per the territories concerned and the local and national laws. However, since the internet is indifferent towards all forms of locational constraints, traditional jurisdictional laws do not hold much significance over such activities. However, in the event the parties involved in a dispute arising overuse and exploitation of cyberspace belong to the same territory, the territorial jurisdictional laws can be implemented in the same manner that they apply to offline disputes. But instances wherein parties belong to different jurisdictions give rise to complications of various kinds. The importance of jurisdiction lies in the fact that parties involved in a potential dispute need to be able to predict the magnitude of their liabilities relevant to the specific jurisdiction concerned, and consider the legal and practical expenses associated with defending the dispute in such specific jurisdictions. The factors to be taken into consideration during the determination of jurisdiction are as follows:²¹¹

- The location where the parties are based
- The location where the commercial activity has taken place
- Factors connecting the parties to one another
- Application of private international law rules vis-à-vis the dispute concerned

1.3 JURISDICTION OVER INTERNET TRANSACTIONS

²¹⁰VivekSood, “Cyber Law Simplified” (2001), p 186, Tata Mcgraw Hill Publishing Co Ltd, New Delhi

²¹¹ S.K. Verma and Raman Mittal, “Legal Dimensions of Cyber Space”, (2004), Indian Law Institute, New Delhi at p 266

As per traditional practices, there are two factors that play a significant role in determining the jurisdiction associated with dispute concerned; one, the place where the defendant resides; and two, the place where the cause of action arises.²¹² However, owing to the extra-territorial nature of the internet in general, the application of either of the aforementioned factors becomes very challenging. For example, if an individual residing in India wishes to pay and download an article from a website, and makes the payment online through a debit or a credit card but is thereafter unable to perform the download, he might want to sue the owner of the site for the dispute arising. In the event the owner is a resident of Thailand, there arises a jurisdictional issue, which becomes further complicated if the website itself is based in the server in Brazil.

Such jurisdictional issues arising in association with e-contracts have, to an extent, been addressed under the Information Technology Act, 2000. Section 13 of the IT Act²¹³ mentions the manner of determining the time and place of dispatch and receipt of electronic records and addresses concerns related to the issue of deemed jurisdiction in electronic contracts by stating that

“(1) ... Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator. (2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(i) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

²¹² Adrian Briggs, “The Conflict of Laws”, Clarendon, Oxford, 2002

²¹³Section 13: Time and place of dispatch and receipt

<<https://www.itlaw.in/section-13-time-and-place-of-despatch-and-receipt-of-electronic-record/>>

(b) if the addressee has not designated computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee; an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section:

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered."

In the case of ***PR Transport Agency Vs. Union of India***²¹⁴, the Allahabad High Court addressed the issue of jurisdiction in an instance wherein the respondent had sent a letter of acceptance through email to the petitioner's email address, but had subsequently sent another email cancelling the auction in favour of the petitioner owing to 'technical and unavoidable reasons'. After the petitioner challenged the communication before the Allahabad High Court, the respondent raised objections relating to the territorial jurisdiction of the court on grounds that the no part of the cause of action had arisen in Uttar Pradesh, which is to imply that the Allahabad High Court shall have no jurisdiction to try the dispute. The principal place of business of the petitioner in the case was in Chandauli, Uttar Pradesh, and hence, the court applied section 13(3) of the IT Act, 2000, and held that the acceptance of the tender by email would be considered deemed received by the petitioner at Chandauli, i.e., the place of the petitioner's business, and

²¹⁴*PR Transport Agency v Union of India* AIR [2006] All 23

hence the Allahabad High Court shall have jurisdiction to try the dispute.

Therefore, in view of the foregoing, it could be stated that the determination of the place of contract in an e-contract for the purposes of resolving disputes relating to jurisdiction would be deemed to be the place where the originator has his/her place of business and where the addressee has the place of business. However, with regards to the fact that section 13 of the IT Act, 2000 is subject to the mutual agreement of the contracting parties, it is always convenient that the parties always include a specific clause on the jurisdiction in their agreements.²¹⁵

1.4 MULTIPLE JURISDICTION AND THEIR APPLICABILITY

Transactions conducted over the internet often involve parties who are located in different countries across the world which have their own and individual legal systems, which might lead to ambiguities regarding the place of the disputed activities, especially in instances wherein the technology systems and computer servers are located in different regions. It is in instances like these that the scope and application of private international laws and their principles become relevant.²¹⁶

Principles of private international law aim at resolving issues that arise out of foreign components in legal relationships. From a global perspective, it is understood that private international law principles resolve issues related to jurisdiction and application of the law regarding enforcement of foreign judgments. From a general perspective as well, principles of private international law form a part of municipal law that aims to regulate the conduct between two private parties, which in turn assumes an international character because of the foreign element existing in the legal relationship. Given the international nature of cyberspace and the potential scope of the parties involved in such transactions being associated with multiple countries to the extent of giving every court possible in every country related a jurisdiction over

²¹⁵The Electronic Transactions Act 2010

<<https://www.lexology.com/library/detail.aspx?g=5e20c761-4ccd-4de3-8c0d-5c6eb6a9f2e1>>

²¹⁶Mapping Employee Experience Stages to Your Technology

<<https://www.cmswire.com/digital-workplace/mapping-employee-experience-stages-to-your-technology-landscape/>>

an occurring dispute,²¹⁷ principles of private international law become useful for they inter alia address contexts such as:

- Jurisdiction to adjudicate a dispute at a specific location (i.e., the forum concerned, and/or the situs)
- The law applicable to the dispute concerned
- Enforceability of preceding judgments in courts of foreign jurisdictions

1.5 GOVERNING LAW

Under traditional contracts, the governing law that applies is generally seen to be the laws of the state wherein the transaction takes place, unless, the parties to the contract agree otherwise and include the same in the agreement vide a clause. In the case of the latter, principles of private international law apply, especially in the case of transnational contracts. However, e-contracts might involve having parties belonging to different countries, giving away no specific factor to determine the place of the consummation of the contract. As a result, courts in motion often tend to apply the law of the country that has the closest and the most substantial connection with the contract. Nevertheless, various courts take various factors into consideration for establishing such a connection with the e-contract concerned.

E-contracts, hence, specify both the jurisdiction and the governing law applicable in case of resolving disputes arising and accruing out of an e-contract. In such instances, the court upholds party autonomy and gives precedence to the terms of the contract. However, in case of B2C contracts, exceptions are carved out to address instances that involve forum shopping by the party in authority owing to the unequal bargaining power of consumers in determining the jurisdiction and governing law in such transactions.²¹⁸ Various jurisdictions have included provisions of law in their domestic legal frameworks with a view to addressing this; for example, section 28 of the Indian Contract Act, 1872 states that²¹⁹

²¹⁷Wolters Kluwer Portal “Computabel contracts/E-contracting” (2014)
<<https://goo.gl/5YAtBq>>

²¹⁸Mindy Chen-Wishart, Formation and Third Party Beneficiaries (Oxford University Press 2018) 72

²¹⁹Void Agreements - KLE Society's Law College

“Every agreement, -

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or (b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.

Exception 1.-This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2. Nor shall this section render, illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.”

This, in turn, means that the laws of our country provide to its consumer's protection by way of allowing the court leeway to disregard the agreement between the consumer and the seller in so far as the choice of forum and the governing law are concerned.²²⁰

1.6 CONCLUSION

Notwithstanding the varying approach across jurisdictions laying down specific laws related to jurisdictions, and the global nature of cyberspace which creates complications with respect to determination of jurisdiction for the purposes of resolving disputes arising in connection with execution and implementation of e-contracts, the general and common intention of the respective legislature, as well as judiciary of almost all the states, addresses that acts or omissions performed shall continue to be as valid if performed electronically and/or digitally as they would be had they been performed traditionally, as long as they are legally acknowledged and

<<http://www.klelawcollege.org/kle/wp-content/uploads/2017/10/9.Void-Agreements.pdf>>

²²⁰Alexandra Bleoanca, “Earlier stage in the electronic contract conclusion” [2010] ISSN 1220-8512

approved, and contains all the attributes of a legally valid contract in accordance with the applicable laws.²²¹

However, notwithstanding the foregoing, it cannot be denied that determination of territorial jurisdiction in case of e-contracts becomes especially complicated in instances wherein no geographical and/or national boundaries have been laid down either by the existing laws or in exercise of party autonomy through the contract, to address the execution and implementation of such contracts, in part or in full. Admittedly, the IT Act, 2000 and general judicial interpretations related to contracts clarify the jurisdictional aspects of e-contracts to a certain extent; nevertheless, it is easier and more convenient to address disputes arising in relation to e-contracts if the parties therein have mutually agreed upon and specified both the jurisdictional aspects and the provisions on governing law in the concerned e-contract, so as to avoid future conflicts on issues regarding jurisdiction or choice of law.

As would be evident from this chapter, there is currently an unmistakable scarcity of one uniform international legal instrument and/or international laws in general that shall apply equally and universally to all territories comprehensively to govern all electronic contracts within their ambits. The introduction of such an act would aid and assist in ensuring and establishing a uniform and enhanced level of consumer protection, would promote a reduction in transactional costs incurred by entrepreneurs, would accelerate and simplify procedures required to be undergone for the purposes of settlement of disputes arising in connection with electronic contracts. Furthermore, the continuous development in the world of technology today demands development as well as persistent upgradation and development of the legal systems and frameworks associated with the functioning and regulation thereof, so as to ensure fair distribution of rights and responsibilities amongst the parties involved.

1.7 LET'S SUM UP

In this chapter, we studied the jurisdictional aspects in electronic contracts and how jurisdiction works over Internet Transactions. We also discussed the multiple jurisdictions and their

²²¹Adam J Mambi, ICT Law Book: A Source Book for Information and Communication Technologies & Cyber Law in Tanzania & East African Community (African Books Collective, 2010) 47

applicability and finally ended the discussion with the governing law with respect to it.

1.8 FURTHER READING

- S.K. Verma and Raman Mittal, “Legal Dimensions of Cyber Space”, (2004), Indian Law Institute, New Delhi at p. 266.
- Vivek Sood, “Cyber Law Simplified” (2001), p. 186, Tata Mcgraw Hill Publishing Co. Ltd., New Delhi.
- J. E. Hill, The Future of Electronic Contracts in International Sales: Gaps and Natural Remedies under the United Nations Convention on Contracts for the International Sale of Goods, 2 Nw. J. Tech. &Intell. Prop. 1 (2003), p. 5.
- G. Ruhl, Party Autonomy in the Private International Law of Contracts: Transatlantic Convergence and Economic Efficiency. CLPE Research Paper No. 4/2007; Conflict of Laws in a Globalized World, Eckart Gottschalk, Ralf Michaels, Giesela Rühl & Jan von Hein, eds., Cambridge University Press, p. 4.

1.9 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1) What is the meaning of jurisdiction under e-contracts?

‘Jurisdiction’ effectively means the judicial, legislative, administrative compliances that the states enjoy over the respective territories that they own and control. For disputes that arise offline, traditional processes as followed in courts through the litigation system are used to dissolve them, which involve remedies that are primarily structured as per the territories concerned and the local and national laws.

2) What are the factors that need to be taken into consideration while determining jurisdiction?

The factors to be taken into consideration during the determination of jurisdiction are as follows:

- The location where the parties are based
- The location where the commercial activity has taken place

- Factors connecting the parties to one another
- Application of private international law rules vis-à-vis the dispute concerned

3) What are the traditional practices that take place over internet transactions?

As per traditional practices, there are two factors that play a significant role in determining the jurisdiction associated with dispute concerned; one, the place where the defendant resides; and two, the place where the cause of action arises.

4) What does Private international law address with respect to e-contracts?

- Jurisdiction to adjudicate a dispute at a specific location (i.e., the forum concerned, and/or the situs)
- The law applicable to the dispute concerned
- Enforceability of preceding judgments in courts of foreign jurisdictions

1.10 ACTIVITY

Explain the jurisdictional issues and challenges pertaining to internet transactions and e-contracts with relevant provisions and case laws? (1000 words)

Block 4

International Perspective

Unit 1: Importance of International Organization in E-Commerce

1

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 E-Commerce: A Global Analysis
 - 1.3 Who sets the rules for E-commerce?
 - 1.4 Who addresses E-commerce at the national level?
 - 1.5 Importance of NGOs in E-commerce law and policy development process
 - 1.6 International Organizations involved in E-commerce law
 - 1.7 Let's sum up
 - 1.8 Further reading
 - 1.9 Check your progress: Possible answers
 - 1.10 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you should be able to understand:

- The International perspective of e-commerce
- Who sets the rules for e-commerce
- Importance of NGOs in E-commerce

1.2 E-COMMERCE: A GLOBAL ANALYSIS

The most important elements of e-commerce law relate to the fundamental components of commercial transactions – how to ensure that an online contract is as valid and enforceable as one consummated offline. The building blocks of e-commerce law, therefore, focus on both

enforcing the validity of electronic contracts and ensuring that the parties can be held to their bargains.²²²

Once the contractual issues have been addressed, e-commerce law analysis shifts to a series of legal issues that may govern the transaction. These include jurisdiction (which court or arbitral tribunal can adjudicate a case), consumer protection issues, taxation, privacy, domain name disputes, as well as the role and potential liability of intermediaries such as Internet service providers.

1.3 WHO SETS THE RULES FOR E-COMMERCE?

Several organizations contribute to the development of global e-commerce law at the international level. Different organizations have tended to take the lead on different issues:²²³

- UNCITRAL has played a leading role in developing model laws for e-commerce transactions;
- OECD has been at the forefront of Internet taxation, e-commerce consumer protection and privacy;
- WIPO has been the international leader on digital copyright and trademark issues involving domain names;
- ICANN has implemented the Uniform Domain Name Dispute Resolution Policy, which has addressed thousands of domain name disputes;
- APEC has worked on digital divide concerns and small and medium-sized enterprise (SME) e-commerce adoption;
- The Hague Conference on Private International Law has been the worldwide leader on Internet jurisdiction issues;
- WTO has considered e-commerce trade barriers.

²²² Nair, Kiran (2017) Impact of E-Commerce on Global Business and Opportunities - A Conceptual Study. *International Journal of Industrial Engineering and Management Research*. 2 324-336

²²³ Panagariya, A E-Commerce, WTO, and Developing Countries. *Policy issues in international trade and commodities study Series No.2* UN, New York and Geneva. 2000, pp 1-33

1.4 WHO ADDRESSES E-COMMERCE AT THE NATIONAL LEVEL?

E-commerce law frameworks at the national level vary by country. In some countries, such as Japan, India, Malaysia, South Africa and Columbia, most of the e-commerce law and policy initiatives come from the national government. The United States and Canada use a dual approach whereby both the federal and state/provincial governments play a role, while in the European Union, directives applicable in all Member States are often the most important source of legal guidance.²²⁴

1.5 IMPORTANCE OF NGOs IN E-COMMERCE LAW AND POLICY DEVELOPMENT PROCESS

On certain issues, such as jurisdictional rules and consumer protection, NGOs play a critical role in the development of e-commerce law and policy as they are often accorded a place at the negotiating and drafting table.²²⁵ At other times, the role of the NGO is more reactive, responding to new proposals and lobbying on behalf of the business or consumer interests.

1.6 INTERNATIONAL ORGANIZATIONS INVOLVED IN E-COMMERCE LAW

a) UNCITRAL

UNCITRAL is the United Nations Commission on International Trade Law. Established by the United Nations in 1966 to harmonize the law of international trade, it is a core legal body of the United Nations system that works to create accessible, predictable and unified commercial laws.

The Commission is composed of 36 Member States elected by the General Assembly, are chosen to represent the world's various geographic regions and its principle economic and legal systems.

²²⁴Malkawi, B H E-commerce in Light of International Trade Agreements: The WTO and the United States-Jordan Free Trade Agreement. *International Journal of Law and Information Technology*, Vol. 15 No.2, 2007, 153-169

²²⁵ ECLAC *Electronic Commerce, International Trade and Employment: Review of The Issues*. UN, Economic comission for Latin America and the Caribbean ECLAS, Washington Office, April 2002, pp 1-30

Members are elected for terms of six years, with the terms of half the members expiring every three years. The UNCITRAL Secretariat is located in Vienna and carries out its work in annual sessions, which are held in alternate years in New York and Vienna. All States and interested international organizations are invited to attend as observers and participate in sessions of the Commission and of its working groups.²²⁶

UNCITRAL focuses on law reform and creating model commercial laws that are both accessible and predictable. This is accomplished through:

- Conventions, model laws and rules which are acceptable worldwide
- Legal and legislative guides and practical recommendations
- Updated information on case law and enactments of uniform commercial law
- Technical assistance in law reform projects
- Regional and national seminars on uniform commercial law.

The Commission has established six working groups to perform the substantive preparatory work on a range of topics, including the international sale of goods; international transport of goods; international commercial arbitration; public procurement and infrastructure development; construction contracts; international payments; cross-border insolvency and, most important for current purposes, electronic commerce.

WHAT IS UNCITRAL'S INVOLVEMENT WITH E-COMMERCE?

UNCITRAL created a Model Law on Electronic Commerce in 1996 to enhance the use of paperless communication. In 2001, it created a Model Law on Electronic Signatures. Future electronic commerce work will focus on: electronic contracting, with a view to creating a draft convention; online dispute settlement;²²⁷ dematerialization of documents of title; and a convention to remove legal barriers to the development of electronic commerce in international trade instruments.²²⁸

²²⁶WTO. Study from WTO Secretariat highlights potential trade gains from electronic commerce, available at <<http://www.wto.org/english/newse/pres98e/pr96e.htm>>

²²⁷ UNCITRAL, Model Law on International Credit Transfers, UN, 1992

²²⁸Ham, S and Atkinson, D R a third way framework for global e-commerce. Progressive Policy Institute, Technology & New Economy Project, March, 2001, 1-29

b) OECD

The Organisation for Economic Co-operation and Development (OECD) grew out of the Organisation for European Economic Cooperation, which administered American and Canadian aid to Europe after World War II. Established in 1961, OECD today has 30 member countries and maintains active relationships with 70 more. Its goals are to build strong economies in its member countries, improve market systems, expand free trade and contribute to development in both industrialized and developing countries. The governing body of OECD, the Council, is led by a secretary-general and is made up of representatives of member countries, who provide guidance on the work of OECD committees and decide on the annual budget.²²⁹

OECD facilitates the creation of international instruments, decisions and recommendations in areas where multilateral agreements may create progress for individual countries in a globalized economy. Its various directorates and committees analyse issues, identify policies and deal with a wide range of economic and social issues from macroeconomics to trade, education, development and science and innovation. Among its other functions, OECD.²³⁰

- has published more than 4 000 publications including research reports, conventions, working papers, country surveys and statistics spanning the spectrum of socio-economics;
- promotes and develops international statistical standards and coordinates statistical activities with other international agencies;
- fosters good governance in the government and private sectors through the hosting of conferences and the development of policy and guidelines;
- identifies and analyses issues surrounding emerging economies, sustainable development and aid.

WHAT IS OECD'S INVOLVEMENT WITH E-COMMERCE?

E-commerce has become an area of focus for OECD because of its trans-border nature and its potential for all countries in the areas of economic growth, trade and improved social conditions. It has developed policy in areas ranging from telecommunication infrastructure and services to

²²⁹Oliner, S.D., and Sichel, D.E. The Resurgence of Growth in the Late 1990's: Is Information Technology the Story? Journal of Economic Perspectives, Volume 14, Number 4, Fall.2000

²³⁰ OECD E-commerce: Impacts and Policy Challenges. Economic Outlook 67, 2000

taxation, consumer protection, network security, privacy and data protection, as well as emerging markets and developing economies.²³¹

Following its "OECD Action Plan for Electronic Commerce", endorsed by its members in 1998, its work programme focus is to build trust for users and consumers; establish ground rules for the digital marketplace; enhance the information infrastructure for e-commerce; and maximize the benefits of e-commerce. Some of the activities currently underway in the area of e-commerce include:

- implementing aspects of the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce;
- promoting the use of privacy-enhancing technologies and user education and awareness about online privacy issues;
- studying the effects of e-commerce on cross-border trade in financial services, on contract law and electronic delivery of insurance products;
- studying access to high-bandwidth information and communication technologies at affordable costs in rural as well as in urban areas;
- researching the needs for and constraints to, capacity development for trade faced by developing countries; and
- disseminating its work on e-commerce to member and non-member countries through other international organizations.

c) WIPO

The World Intellectual Property Organization (WIPO) is an international organization that promotes and protects original works in the realms of art, science and technology.

Headquartered in Switzerland, WIPO is one of the 16 specialized agencies of the United Nations. It administers 23 international treaties dealing with different aspects of intellectual property protection (both industrial protection and copyright) and has more than 170 Member States.

²³¹OECD ICT Key Indicators. Information Technology Outlook. 2010. [35] IMF, World Economic Outlook, 2006/2011

Although WIPO was formed in 1970, its roots go back as far as the 1883 Paris Convention for the Protection of Industrial Property. In 1974, WIPO became a specialized agency of the United Nations with the mandate to administer intellectual property matters recognized by the Member States of the United Nations.

WIPO's main objective is to develop international standards for the protection of intellectual property in keeping with ongoing advances in technology and business. Through its treaties, it seeks to:

- harmonize national intellectual property legislation and procedures;
- provide services for international applications for industrial property rights;
- exchange intellectual property information;
- provide legal and technical assistance to developing and other countries;
- facilitate the resolution of private intellectual property disputes; and
- marshal information technology as a tool for storing, accessing and using valuable intellectual property information.

WHAT IS WIPO'S INVOLVEMENT WITH E-COMMERCE?

WIPO has created a Digital Agenda to respond to the confluence of the Internet, digital technologies and the intellectual property system. Through international discussions and negotiations, WIPO is formulating new ways in which intellectual works can be disseminated, while at the same time ensuring the rights of their creators remain protected.

The Digital Agenda also aims to:

- integrate developing countries into the Internet environment through such tools as the use of WIPOnet and the electronic delivery of information and services;
- rethink how intellectual property law works in Internet transactions and examine emerging new norms in this respect;
- facilitate the creation of effective online systems to resolve disputes; and

- Coordinate and ensure the development of efficient and consistent responses to common concerns across national and multi-sectoral boundaries.

d) ICANN

The Internet Corporation for Assigned Names and Numbers (ICANN) is a technical coordination body for the Internet. Created in October 1998 by a broad coalition of the Internet's business, technical, academic and user communities, ICANN has assumed responsibility for a set of technical functions previously performed under United States Government contract by other groups.²³²

As a non-profit, private-sector corporation, ICANN is dedicated: to preserving the operational stability of the Internet; to promoting competition; to achieving a broad representation of global Internet communities; and to developing policy through private-sector, bottom-up, consensus-based means. ICANN welcomes the participation of any interested Internet user, business or organization. The Board of ICANN has currently composed of nineteen directors: nine at-large directors, nine selected by ICANN's three supporting organizations and the president/CEO (*ex officio*). Five of the current at-large directors were selected by an Internet users' vote.

ICANN coordinates the assignment of the following identifiers that must be globally unique for the Internet to function:

- Internet domain names
- IP address numbers
- protocol parameter and port numbers.

In addition, ICANN coordinates the stable operation of the Internet's root server system.

WHAT IS ICANN'S INVOLVEMENT WITH E-COMMERCE?

Future ICANN work is likely to address several key issues including institutional reform, the participation of Internet users in the policy-making process, the establishment of new top-level domains and amendments to ICANN's domain name dispute resolution process.

²³² Huang Lijin, The economic impact of the network on international trade. Foreign trade: economy, international trade, 2010

e) **THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW**

The Hague Conference is an intergovernmental organization that works to unify private international law rules. The first session of the Hague Conference was held in 1893; after seven more sessions, a statute came into force in 1955, making the Conference a permanent organization.

The Conference, which has 59 Member States, holds plenary sessions every four years to discuss and adopt draft conventions and recommendations and make decisions on the working agenda of the Conference. Non-Member States invited to participate on an equal footing with Member States can vote at plenary sessions. The Conference is organized by a secretariat (the Permanent Bureau) which has its seat at The Hague and whose officials must be of different nationalities. The Bureau organizes the plenary sessions and maintains contacts with the Member States, international organizations and users of the conventions.²³³

The principal role of the Conference is to negotiate and draft multilateral treaties (conventions) in the different fields of private international law (e.g. international judicial and administrative cooperation; conflict of laws for contracts, torts, maintenance obligations, status and protection of children, relations between spouses, wills and estates or trusts; jurisdiction and enforcement of foreign judgments). Currently, its areas of concern include:

- conflict of jurisdictions;
- applicable law and international judicial and administrative cooperation regarding civil liability for environmental damage;
- problems of private international law raised by electronic interchange; and
- maintenance (support) obligations.

WHAT IS THE HAGUE CONFERENCE'S INVOLVEMENT WITH E-COMMERCE?

In 1999, the Conference held a round-table discussion (in conjunction with the University of Geneva) with experts in various fields on issues arising from e-commerce and Internet

²³³ Sun Liyun, YanchunRong, International e-commerce and conventional international trade. Practices of international trade, 2011

transactions. A series of recommendations were adopted in such areas as online contracts, business-to-business and business-to-consumer transactions and online dispute resolution.²³⁴ In June 2001 the Conference held its Nineteenth Session to work towards a new Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters and to decide on its future work programme. Delegates based their discussions on both a Preliminary Draft Convention drawn up in October 1999 and on the results of formal and informal meetings of experts on e-commerce and intellectual property.

f) WTO

The World Trade Organization (WTO) is an international organization that deals with the rules of trade between nations. Based in Switzerland, WTO was formed in 1995 as the successor of the General Agreement on Tariffs and Trade (GATT), which set up a multilateral trading system shortly after World War II. Today WTO has over 130 member nations, more than 75% of which are developing or least-developed countries.²³⁵

A series of rounds of trade negotiations under GATT and WTO have led to agreements between governments on various aspects of the trade, tariffs, telecommunications and financial services. These agreements help set the ground rules for international trade and commerce. Decisions are made by the entire membership, generally by consensus. WTO hosts a ministerial conference that generally meets every two years. Several other levels of councils and committees work on a wide variety of issues.

The primary functions of WTO are to:

- administer WTO trade agreements;
- act as a forum for trade negotiations;
- handle trade disputes;
- monitor national trade policies;
- provide technical assistance and training for developing countries; and

²³⁴INTERNATIONAL TELECOMMUNICATION UNION
<<https://www.itu.int/ITU-T/special-projects/ip-policy/final/Attach04.doc>>

²³⁵ Kraemer, K L J Gibbs and JDedrick Impact of globalization on ecommerce adoption and firm performance: a cross- country investigation. Mimeo, Irvine, CA.2002

- work together with other international organizations.

WHAT IS WTO'S INVOLVEMENT WITH E-COMMERCE?

At the 1998 ministerial meeting, WTO members agreed to study trade issues arising from global electronic commerce, focusing on three questions:

- how do existing WTO agreements impact e-commerce?
- are there any weaknesses or omissions in the law which need to be remedied?
- are there any new issues not now covered by the WTO system on which members want to negotiate new disciplines?

Since then, issues related to e-commerce have been examined by WTO councils in the areas of services, goods, intellectual property and trade and development. A seminar on "Government Facilitation of E-commerce for Development" was held in June 2000, at which speakers from developing and developed countries, international organizations and the private sector addressed issues related to e-commerce and development. Each of WTO bodies working on e-commerce issues has produced progress reports for the General Council.

1.7 LET'S SUM UP

In this chapter, we have studied the global analysis of E-Commerce along with who sets the rules for E-Commerce and who addresses E-Commerce at the national level. We also studied the importance of NGOs and finally, we ended the discussion with International organizations involved in E-Commerce.

1.8 FURTHER READING

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- Reynolds, Jonathan. (2000). E-commerce: A critical review. International Journal of Retail & Distribution Management. 28. 417-444. 10.1108/09590550010349253.
- Smith, Katherine. (2008). An Analysis of E-Commerce: E-Risk, Global Trade, and Cybercrime. SSRN Electronic Journal. 10.2139/ssrn.1315423.

1.9 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1) Who sets the rules for E-commerce?

Different organizations have tended to take the lead on different issues:

- UNCITRAL
- OECD
- WIPO
- ICANN
- APEC
- The Hague Conference on Private International Law
- WTO

2) Who addresses E-commerce at the national level?

E-commerce law frameworks at the national level vary by country. In some countries, such as Japan, India, Malaysia, South Africa and Columbia, most of the e-commerce law and policy initiatives come from the national government. The United States and Canada use a dual approach whereby both the federal and state/provincial governments play a role, while in the European Union, directives applicable in all Member States are often the most important source of legal guidance.

3) What the objective of digital agenda under WIPO?

- integrate developing countries into the Internet environment through such tools as the use of WIPOnet and the electronic delivery of information and services;
- rethink how intellectual property law works in Internet transactions and examine emerging new norms in this respect;
- facilitate the creation of effective online systems to resolve disputes; and
- coordinate and ensure the development of efficient and consistent responses to common concerns across national and multi-sectoral boundaries.

1.10 ACTIVITY

Enumerate the international organizations involved in E-commerce? (800-1000 words)

Unit 2: Overview of Entities and NGO's Involved in E-Commerce

2

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 National or Regional entities heavily involved in E-Commerce law
 - 1.3 NGO's involved in E-Commerce law
 - 1.4 E-Commerce Laws
 - 1.5 Let's sum up
 - 1.6 Further reading
 - 1.7 Check your progress: Possible answers
 - 1.8 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you should be able to understand:

- National or Regional entities involved in E-Commerce
- Different NGOs that are involved in E-Commerce
- E-Commerce Laws

1.2 NATIONAL OR REGIONAL ENTITIES HEAVILY INVOLVED IN E-COMMERCE LAW

a) EUROPEAN UNION (EU)

What are the most important European Union e-commerce law directives?

The European Commission has shaped e-commerce law throughout Europe and around the world since the mid-1990s. Essential directives include:

- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases
- Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular, electronic commerce, in the Internal Market ("Directive on electronic commerce")
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.²³⁶

b) **COUNCIL OF EUROPE**

Who sits on the Council of Europe?

Although it is frequently confused with the European Union, the Council of Europe is a distinct body that encompasses a far larger group of countries than the EU. It includes 41 countries from Andorra to the United Kingdom. Several non-European countries, including the United States, Canada and Japan, enjoy observer status with the Council.

What is the Council's involvement with e-commerce issues?

The Council of Europe is best known for having successfully completed negotiations on a global cybercrime treaty in 2001. The treaty covers a wide range of online criminal activity, including fraud and computer hacking. It also addresses Internet service provider liability and copyright concerns. In late 2001, the Council announced plans to develop an additional protocol dealing with racism and xenophobia online.²³⁷

²³⁶Chauhan, Pratibha & Sharma, Pooja & Chauhan, Rahul & Jain, Ayushi. (2019). National eCommerce Policy: What India's new (Draft) eCommerce Policy outlines for Online Retailers and its Regulatory aspects. *International Journal of Drug Regulatory Affairs*

²³⁷Mohanad Halaweh, Adoption of Ecommerce in Jordan: Understanding the Security Challenge, *The Electronic Journal of Information Systems in Developing Countries*, 47, 1, (1-13), (2017)

c) **APEC**

What is APEC?

The Asia-Pacific Economic Cooperation (APEC) was established in 1989 in response to the growing interdependence of Asia-Pacific economies. It began as an informal ministerial-level dialogue group with 12 members and has grown to include 21 member economies comprising some 2.5 billion people, a combined gross domestic product of over USD 18 trillion in 1999 and over 47 per cent of world trade. Its goal is to advance economic dynamism and sense of community within the Asia-Pacific region.²³⁸

APEC operates by consensus. The APEC chair rotates annually among members and hosts an annual ministerial meeting of foreign and economic ministers. At each year's ministerial meeting, members define and fund the work programmes for APEC's various committees, subcommittees, working groups and forums. APEC also has a Business Advisory Council composed of up to three senior business people from each member economy to provide advice on APEC action plans and specific business/private sector priorities.

What does APEC do?

APEC's goal is to achieve "free and open trade and investment in the Asia-Pacific by 2010 for developed member economies and 2020 for developing ones." In Osaka in 1995, APEC leaders established the three pillars of APEC activities: trade and investment liberalization, business facilitation and economic and technical cooperation. In 2000, APEC's objectives included:

- managing globalization through economic and technical cooperation and through participating in international forums;
- an Action Agenda for the New Economy, focusing on an e-Commerce Readiness Assessment, paperless trading and capacity building for both people and institutions;
- ensuring individuals from rural and urban communities alike have access to the Internet by 2010, including a pledge to triple the number of people with such access by 2005; and
- strengthening the multilateral trading system through a new WTO round.

²³⁸ <<http://www.apecsec.org.sg>>

What is APEC's involvement with e-commerce?

APEC's E-Commerce Steering Group is currently working on a range of issues, including:

- a Digital Divide Blueprint for Action to address issues of the digital divide and reliable, affordable access to the information infrastructure;
- paperless trading;
- a review of the 2000 APEC Action Plan to Support the Use of Electronic Commerce by SMEs;
- development of APEC voluntary online consumer protection principles;
- development of policy regarding the creation of an environment conducive to e-learning; and
- reviewing and updating the 1998 APEC Blueprint for Action on Electronic Commerce.²³⁹

d) UNITED STATES

Which United States agencies and organizations have been at the forefront of e-commerce law and policy development?

The United States has been a leader in developing e-commerce law policy since the Internet's inception. Agencies and organizations leading the way include:

- The Department of Commerce, which continues to play an oversight role over the Internet's infrastructure including the domain name system;
- The Federal Trade Commission, which has played the role of privacy and consumer protection enforcer;
- The Department of Justice, which administers United States competition law policy;
- The State Department, which leads the United States delegation at the Hague Conference negotiations;

²³⁹Teegen, Hildy&Doh, Jonathan &Vachani, Sushil. (2004). The Importance of Nongovernmental Organizations (Ngos) in Global Governance and Value Creation: An International Business Research Agenda. Journal of International Business Studies

- The Federal Communications Commission, which regulates communications infrastructure;
- The American Bar Association, which has developed policy documents on jurisdiction, privacy and e-commerce law; and
- The National Conference of Commissioners on Uniform State Law, which has drafted the Uniform Electronic Transactions Act, the United States version of the UNCITRAL Model Law on Electronic Commerce.

e) **CANADA**

Who regulates e-commerce activity in Canada?

No single agency or entity can be said to regulate the Internet or e-commerce in Canada. Agencies that play a significant role in Canadian Internet and e-commerce law and policy include:

- Industry Canada (privacy, electronic commerce, electronic signatures, copyright)
- Justice (jurisdiction, cybercrime)
- Canadian Heritage (copyright)
- Competition Bureau (consumer protection, marketplace regulation)
- Canadian Internet Registration Authority (dot-ca domain names)
- Canadian Copyright Board (copyright)
- Canadian Radio-television and Telecommunications Commission (broadcast, Internet regulation)
- Uniform Law Conference of Canada (e-commerce, jurisdiction).

f) **AUSTRALIA**

What is the most prominent e-commerce regulatory activity in Australia?

Although Australia has enacted e-commerce, privacy and online gambling legislation, it is perhaps best known for its online content regulation. The Australia Broadcasting Authority has been granted the power to order offensive content removed from Australian-based websites and to request that Australian Internet service providers take steps to make such foreign-based

content inaccessible to Australian users. Despite dire predictions about the likely effect of such legislation, few sites have been removed from the web, and the number of complaints has been relatively limited.

g) SINGAPORE

How early did Singapore adopt e-commerce legislation

While dozens of countries have enacted e-commerce legislation, Singapore stands as one of the very first to establish an e-commerce legal framework. The country enacted the Electronic Transactions Act of 1998 in June of that year. Moreover, the first digitally signed international government document between Singapore, Canada and the State of Pennsylvania was signed in April 1998.²⁴⁰

h) COLOMBIA

Has Columbia enacted e-commerce legislation?

Yes. Colombia approved a law on electronic commerce, digital signatures and certification authorities (Proyecto de Ley Sobre Comercio Electrónico, Firmas Digitales y Autoridades de Certificación) in August 1999. The law is based on the UNCITRAL Model Law on Electronic Commerce. Further regulations concerning requirements for certificate authorities (discussed further below) have also been adopted.

i) ARGENTINA

Is it too late to adopt e-commerce legislation at the national level?

No. While much of Europe, the United States and Canada have enacted their legislation, and many countries are still working on appropriate domestic e-commerce statutes. For example, Argentina enacted its digital signature law in December 2001. The Argentinian law addresses the licensing and liability of certificate authorities and the legal effects of electronic documents signed by digital signature. Moreover, the Government has prepared amendments to the Civil Code in order to adjust requirements of form to electronic commerce.

²⁴⁰INTERNATIONAL TELECOMMUNICATION UNION
<<https://www.itu.int/ITU-T/special-projects/ip-policy/final/Attach04.doc>>

j) TUNISIA

How broad is Tunisia's e-commerce legislation?

Tunisia enacted the Electronic Exchanges and Electronic Commerce Law in 2000. Much like its counterparts around the world, the law covers electronic contracting and the validity of electronic signatures. In addition, the law boldly creates a National Agency for Electronic Certification, an administratively independent public agency designed to address electronic signature and certification issues.

1.3 NGOs INVOLVED IN E-COMMERCE LAW
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a) GLOBAL BUSINESS DIALOGUE ON E-COMMERCE (GBDe)

Who belongs to GBDe?

Established in January 1999, the Global Business Dialogue on E-commerce counts dozens of the world's largest companies as its members including Disney, Vivendi Universal, BCE, AOL Time Warner, NEC, NTT, Hitachi, Toshiba, Alcatel, Deutsche Telekom, Daimler Chrysler and Nokia.²⁴¹

What are GBDe's areas of concern?

GBDe focuses on providing governments with a business perspective on e-commerce law and policy development. The organization has identified eight areas of concern: consumer confidence, convergence, cybersecurity, digital bridges, e-government, intellectual property rights, taxation and trade.²⁴²

b) INTERNET LAW & POLICY FORUM (ILPF)

What is ILPF?

Founded in 1995, the Internet Law and Policy Forum is an international non-profit organization of major, Internet-oriented companies, including Verisign, Microsoft, BCE, Fujitsu and Deutsche Telekom, dedicated to promoting the global growth of electronic commerce and communications

²⁴¹ Al-Qirim, Nabeel (2007) The adoption and diffusion of e-commerce in developing countries: The case of an NGO in Jordan. Information Technology for Development

²⁴² Brinkerhoff, D.W. and Brinkerhoff, J.M. (2002) 'Government– non-profit relations in comparative perspective: evolution, themes, and new directions', Public Administration and Development 22(1): 3–18

by contributing to solutions of the particular legal issues which arise from the cross-border nature of the Internet and electronic networks. ILPF provides information, calling upon the legal, business and technical expertise of its member companies and other companies, from governments and intergovernmental organizations and from the practice of law around the world.

What are ILPF's key issues?

ILPF addresses issues of concern through working groups consisting of representatives from member organizations. It currently has four such working groups:²⁴³

- Working Group on Jurisdiction
- Working Group on Electronic Authentication (a combination of the original Working Groups on Certificate Authorities and on Digital Signatures)
- Working Group on Content Regulation and Intermediary Liability
- Working Group on Self-Regulation.

c) CONSUMERS INTERNATIONAL

What is Consumers International?

Founded in 1960, Consumers International supports, links and represents consumer groups and agencies all over the world. It has a membership of more than 260 organizations in almost 120 countries. It strives to promote a fairer society through defending the rights of all consumers, including the poor, marginalized and disadvantaged.²⁴⁴

How is Consumers International involved in e-commerce?

Consumers International identified e-commerce as an issue of concern in 1998, calling on governments to establish global protections for consumers who are engaged in e-commerce. Since that time, the organization has played a leading role in crafting e-commerce consumer protection policy and in working to establish effective and fair dispute resolution processes.

²⁴³ Fowler, A (2001) *The Virtuous Spiral: A Guide to Sustainability for NGOs in International Development*, Earthscan Publications: London

²⁴⁴ Brown, L.D. and Moore, M.H. (2001) 'Accountability, strategy, and international nongovernmental organizations', *Nonprofit and Voluntary Sector Quarterly* 30: 569–587

d) ELECTRONIC PRIVACY INFORMATION CENTRE (EPIC)

What is EPIC?

EPIC is a public interest research centre in Washington, D.C., established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment of the United States Constitution and constitutional values.²⁴⁵

In what cases has EPIC become involved?

EPIC acts predominantly on cases of interest to the United States. It has appeared on some of the Internet and e-commerce's leading-edge cases including the Scarfo case on keystroke monitoring, the Microsoft antitrust case and the case challenging the constitutionality of the Children's Online Protection Act. EPIC has also played an important role in global awareness campaigns involving privacy issues.

e) INTERNATIONAL CHAMBER OF COMMERCE (ICC)

What is ICC?

The International Chamber of Commerce is a world business organization that speaks on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy. It often works with its member companies to develop global business codes of conduct. It also provides essential services, foremost among them the ICC International Court of Arbitration, a leading arbitral institution. Within a year of the creation of the United Nations, ICC was granted consultative status at the highest level with the United Nations and its specialized agencies.

How is ICC involved in e-commerce law and policy?

ICC is involved in e-commerce law issues on several fronts. Given its leading role in dispute resolution, ICC has shown a keen interest in developing dispute resolution for both B2C and B2B e-commerce. It has adapted for e-commerce its leading international trade rules, such as the Incoterms and the Uniform Rules for Documentary Credits (UCP 500). The organization has also become involved in jurisdictional negotiations, privacy and electronic contracting.

²⁴⁵ Fisher, J (1998) Nongovernments: NGOs and the Political Development of the Third World, Kumarian Press: West Hartford, CT

1.4 E-COMMERCE LAWS

(i) UNCITRAL MODEL LAW ON ELECTRONIC COMMERCE

1 ORIGINS

The Model Law, adopted in 1996, is intended to facilitate the use of modern means of communication and storage of information, such as electronic data interchange (EDI), electronic mail and telecopy, with or without the use of such support as the Internet. It is based on the establishment of a functional equivalent for paper-based concepts such as "writing", "signature" and "original".²⁴⁶

2 KEY PROVISIONS

How does the Model Law treat electronic transactions?

The key principle underlying the Model Law is the concept of "electronic equivalence," found in Article Five. Although the Model Law does not deem electronic communications valid (just as with paper documents, legal validity depends upon more than a document's form), it provides that information or documents will not be denied legal effect or enforceability solely because they are in electronic format.

How does the Model Law achieve electronic equivalence?

A series of functional equivalency rules specify what conditions must be met for electronic communication to constitute a legally effective substitute for a conventional, paper-based communication. For example, Article Six provides that a legal requirement to provide information or a document sent "in writing" is satisfied by its electronic equivalent if it is in a form that can be subsequently accessed and used by the recipient.²⁴⁷

Article Eight states that electronic documents will satisfy a legal requirement for "original" documents if there is a reliable assurance as to the integrity of the information and that the information is capable of being displayed to the person to whom it is to be presented. The

²⁴⁶Arnove, R F and Christina, R (1998) 'NGO-state relations: an argument in favor of the State and complementarity of efforts', *Current Issues in Comparative Education* 1(1): 1-5

²⁴⁷Boli, J and Thomas, GN (eds) (1999) *Constructing World Culture: International Nongovernmental Organizations Since 1875*, Stanford University Press: Stanford, CA

question of whether an assurance is reliable is to be determined in the light of all the circumstances, including the purpose for which the document was created.²⁴⁸

How is the integrity of the information determined?

Article Eight also addresses this issue. It provides that the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display.

Does the Model Law address the admissibility and evidential weight of electronic communication?

Yes. Article Nine creates an electronic equivalence standard for evidentiary purposes as it provides that evidentiary rules shall not deny the admissibility of an electronic communication solely on the grounds that it is in electronic form.

What conditions does the Model Law set for data retention?

Article Ten addresses the issue of data retention. It provides that data retention requirements are met where the information contained with the electronic message is accessible so as to be usable for subsequent reference, the message itself is retained in the format in which it was generated and any information indicating origin, destination, date and time of the message are retained.

Does the Model Law address online contracts?

Yes. The most interesting section of the Model Law focuses on online contracts. Although thousands of contracts are entered into daily through the Internet, some sellers and consumers remain uncertain of the legal implications of clicking the "I agree" button on a website. Article Eleven of the Model Law removes any doubt that this popular form of online consent is valid by stipulating that unless the parties agree otherwise, an offer or acceptance of an offer can be expressed in electronic form.

1.5 LET'S SUM UP

²⁴⁸ <<https://www.cl.cam.ac.uk/teaching/1314/ECommerce/Batch2.pdf>>

In this chapter, we have studied the varied national and regional entities heavily involved in E-Commerce Laws along with different NGOs involved in E-Commerce Laws. Finally, we ended the discussion with the origin of UNCITRAL Model Law and the key provisions with respect to it.

1.6 FURTHER READING

- Deloitte Research study on E-commerce in India. <https://www2.deloitte.com/in/en/pages/technology-media-and-telecommunications/articles/Ecommerce-in-india.html>
- Amith, Mr & MA, Amith & Professor, Asst. (2012). E-commerce: Opportunities and Challenges (ISBN:978-81910530-3-6).
- Study by Forrester Research: India growing fastest in E-commerce. <https://yourstory.com/2017/02/E-commerce-forrester-research/>
- Understanding the challenges in cross border E-commerce by AjeetKhurana Feb 4, 2014. <http://blogs.pb.com/ecommerce/2014/02/04/understanding-challenges-cross-border-ecommerce/>

1.7 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1) Name 5 national or regional entities involved in E-Commerce Law?

- European Union
- Council of Europe
- Canada
- Singapore
- Argentina

2) How was Consumers International involved in E-Commerce?

Consumers International identified e-commerce as an issue of concern in 1998, calling on governments to establish global protections for consumers who are engaged in e-commerce.

Since that time, the organization has played a leading role in crafting e-commerce consumer protection policy and in working to establish effective and fair dispute resolution processes.

3) What is Internet Law and Policy Reform?

The Internet Law and Policy Forum is an international non-profit organization of major, Internet-oriented companies, including Verisign, Microsoft, BCE, Fujitsu and Deutsche Telekom, dedicated to promoting the global growth of electronic commerce and communications by contributing to solutions of the particular legal issues which arise from the cross-border nature of the Internet and electronic networks.

4) When was UNCITRAL Model Law adopted?

The Model Law was adopted in 1996.

1.8 ACTIVITY

Explain the National entities and NGOs involved in E-Commerce along with the features of UNCITRAL Model Law? (1000 words)

Unit 3: Implementation of Model Law and Development in India

3

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 National Implementation of UNCITRAL Model Law
 - 1.3 E-Governance in developed and developing countries
 - 1.4 International instruments on E-Contract
 - 1.5 Current Status of MSMEs & E-Commerce development in India
 - 1.6 Let's sum up
 - 1.7 Further reading
 - 1.8 Check your progress: Possible answers
 - 1.9 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you should be able to understand:

- National Implementations of UNCITRAL Model Law
- International instruments on E-Contract
- Current Status of MSMEs & E-Commerce development in India

1.2 NATIONAL IMPLEMENTATION OF UNCITRAL MODEL LAW

a) UNITED STATES

Has the United States implemented the UNCITRAL Model Law at the national or state level?

Yes, both. Nevertheless, most of the activity initially occurred at the state level, with dozens of states using the Uniform Electronic Transaction Act (UETA), developed by the National Conference of Commissioners on Uniform State Law, as a model. When some state laws began

to deviate from UETA, the United States Congress stepped in to create a uniform standard by enacting the Electronic Signatures in Global and National Commerce Act (E-SIGN) in 2000.²⁴⁹

Are there any important differences between the UETA and the UNCITRAL Model Law?

Yes. First, UETA includes a consent provision that clarifies that the Act does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form. Second, it facilitates the use of electronic signatures for notarization of documents. Third, Section 10 of UETA features rules for where a change or error in an electronic record occurs in a transmission between parties to a transaction.

How does E-SIGN co-exist with the state law versions of UETA?

E-SIGN specifically provides that if there is a modification to UETA, state statutes that incorporate that modification supersedes the federal statute.

What are some of the provisions that distinguish E-SIGN from UETA?

First, E-SIGN includes strong consumer consent provisions. These provisions require that consumers affirmatively consent before electronic records can be used to provide them with information that, under other law, must be provided or made available to them in writing. Consumers are also granted the right to withdraw their consent.²⁵⁰

Second, E-SIGN contains some fairly expansive provisions related to contracting by electronic agents. The statute provides that a contract may not be denied legal effect solely because its formation or creation involved one or more electronic agents, provided that the action of the electronic agent is "legally attributable" to the person to be bound.

b) EUROPEAN UNION

Has the European Union addressed the issues found in the UNCITRAL Model Law?

Yes. The EU's Electronic Commerce Directive contains several articles that bear direct similarity to principles found in the Model Law. Although it falls to Member States to implement the

²⁴⁹INTERNATIONAL TELECOMMUNICATION UNION

<<https://www.itu.int/ITU-T/special-projects/ip-policy/final/Attach04.doc>>

²⁵⁰ Al-Hakim L, Global E-government: Theory, Applications and Benchmarking, University of South Queensland, Australia, published in Hershey PA, London, 2006

directive into national law, the directive does have a direct effect in those states that fail to enact e-commerce legislation in a timely manner.²⁵¹

How does the E-commerce directive treat electronic contracts?

Article 10 of the directive speaks to contracts concluded by electronic means. It provides that Member States shall ensure that their legal system allows contracts to be concluded by electronic means. In particular, Member States are warned not to create obstacles for the use of electronic contracts.²⁵²

c) CANADA

Has Canada implemented the UNCITRAL Model Law on e-commerce into national law?

Yes and no. Although the Model Law has not been enacted into federal law, with one exception, all provinces and territories have enacted versions of a Canadian model based on the United Nations model.²⁵³

What is the Canadian model law?

The Uniform Electronic Commerce Act(UECA), a project of the Uniform Law Conference of Canada (ULCC), obtained official approval in 1999, providing Canada with a legal model for electronic commerce transactions. The subject of more than two years of negotiation, UECA brought much-needed certainty to the world of e-commerce. Based largely on the UNCITRAL Model Law, it clarifies issues such as the enforceability and formation of online contracts, the use of electronic agents in the contracting process and at what point an electronic contract is presumed sent and received.²⁵⁴

Have all provinces and territories enacted the Canadian model into law?

Not quite. UECA has received widespread approval from Canadian provinces and territories. As of March 2002, all Canadian provinces, with the exception of Quebec, had enacted legislation based on the UECA model. In November 2001, Quebec enacted its own e-commerce legislation that departs from the UECA model.

²⁵¹ Asian Development Bank Institute (2005). Designing e-Government for the poor. Bangkok, Thailand

²⁵²(Uncitralrcap.org, 2020)

<http://uncitralrcap.org/wp-content/uploads/2015/11/session3_Ciccu-Mukhopadhaya.pdf>

²⁵³ Chen, P (2008) Electronic Governance. Oxford Companion to Australian Politics/Oxford Reference Online B Galligan and W Roberts, Oxford University Press

²⁵⁴ United Nations, "E-government Strategy Report;" New York, 2002

d) OTHER COUNTRIES

What other countries have enacted the UNCITRAL Model Law into national law?

Dozens of countries from virtually every continent worldwide have used the Model Law as the basis for establishing national e-commerce legislation.

In South America, **Colombia** passed the Electronic Commerce Law 527 in 1999, based on the 1996 UNCITRAL model law. It establishes the validity and admissibility for "data messages," as well as the enforceability of contracts that contain data messages. Additionally, it provides for the validity of digital signatures and delineates standards for the licensure of certification entities and for the issuance of certificates.

In Asia, **Thailand** also passed its own Electronic Commerce Law in 1999. It addresses electronic signatures along with all electronic communications.

In the Americas, **Bermuda** enacted the Electronic Transactions Act in 1999 to address the legal validity and enforceability of electronic signatures and records as well as their admissibility as evidence in any legal proceeding.²⁵⁵

In Africa, **Tunisia** enacted the Electronic Exchanges and Electronic Commerce Law in 2000. Although the law addresses the general organization of electronic exchanges, it also governs electronic contracts including the validity and execution liability that may arise from that form of contract.

1.3 E-GOVERNANCE IN DEVELOPED AND DEVELOPING COUNTRIES

E-Governance has become popular worldwide in present time.²⁵⁶ To make working of government more efficient, responsive and transparent many developed and developing countries

²⁵⁵Ndou V, "E-Government for Developing Countries: Opportunities and Challenges," EJISDC: The Electronic Journal on Information Systems in Developing Countries, Vol 18, No 1, pp 1- 24, 2004

²⁵⁶E-Governance: Past, Present and Future in India
<<https://arxiv.org/pdf/1308.3323>>

have taken some useful steps for the expansion of e-governance in their respective countries.²⁵⁷ Countries which are in the race of e-governance implementation are UK, USA, New Zealand, Brazil etc. Below the following countries with their respective projects has been described:

UNITED STATES OF AMERICA

On July 18, 2001, Task Force to identify priority actions that achieve strategic improvements in government and set in motion a transformation of government around citizen needs was done.²⁵⁸

VARIOUS PROJECTS

1. Recreation One-Stop: This project was started on 31 April 2002. It aimed to:

- Agreement with private sector reached on implementation of new recreation online projects.
- Additional recreation projects available online.

2. EZ Tax filling: This project was started on 31 April, 2002. It aimed to:

- Filling and refunding of taxes online.
- Initial deployment of industry partnership free e-filling solution for 2003 season.

3. Federal Assets Sales: started on 31 March 2003. It aimed to:

- Develop pilot business integration
- Re-host federal sales.

4. E-Payroll/HR: started on 31 March 2002. Aimed to:

- complete and submit business case to PMC
- integrated enterprise architecture

5. E-Authentication: started on 1 July 2002. Aimed at:

- Initial authentication gateway prototype
- Full deployment²⁵⁹

²⁵⁷Basu, Subhajit (2004) E-government and developing countries: An overview. INTERNATIONAL REVIEW OF LAW COMPUTERS & TECHNOLOGY

²⁵⁸E-governance International Status

<<https://bettersocietyblog.blogspot.com/p/governance-international-status.html>>

UNITED KINGDOM

In April 2000, the Cabinet Office in the UK came out with the document 'E-Government: A Strategic Framework for Public Services in the Information Age'.

VARIOUS PROJECTS

1. Cornwall Electronic Health Record Pilot: this project was started in April 2000. It aimed to:

- Pan-community EHR demonstrator
- Connect all General Practitioners to NHSnet (national-level NHS Virtual Private Network or intranet)
- 24-hour emergency care record
- Common information architecture
- Condition-specific care modules – mental health, coronary heart disease, diabetic care

2. Go-between Project: this project is for Calne Community Area in Wiltshire. This project is designed to assist a local rural community to organize its transport services by identifying unmet local demand and matching it with spare capacity.

3. Plymouth Bus Project: Commissioned by Plymouth City Council to undertake a comprehensive study of the bus network and propose initiatives for its future development and investment. (Completed in January 2009)

4. Integrating Transport: Started in South West Hertfordshire. Lead consultant on a project commissioned by Watford Borough Council. Preparation of a sustainable transport strategy for implementation over the next ten years. (Completed October 2008)²⁶⁰

NEW ZEALAND

²⁵⁹Nawafleh, Sahem&Obiedat, Ruba&Harfoushi, Osama. (2012). E-Government Between Developed and Developing Countries. International Journal of Advanced Corporate Learning (iJAC)

²⁶⁰ Deloitte and Touche 'At the dawn of e-government: the citizen as customer' Available at <www.publicnet.co.uk/publicnet/fe000620.htm>

In May 2000, Realising the importance of opportunities offered by ICT, the New Zealand Government came out with its e-government vision document and an 'E-Government Unit' was established by the State Services commission.²⁶¹

VARIOUS PROJECTS

The Treaty of Waitangi: It is the founding document of New Zealand. This website, launched in 2003, to provide information and resources for an informed understanding and greater public knowledge of the treaty.

As people's want advancement in their lifestyle same they want in their government. Success or failure of any government depends on three things:

- The way the government works.
- Transparency in its working and information.
- Communication to its citizen.

In developing countries, the Government beneficiary scheme can be reached to the lowest pyramid of society efficiently by implementing E-Governance projects. It can bridge the gap between rich and poor.²⁶²

E-GOVERNANCE

Use of internet by the government to provide its services at the doorstep of customers, business and other stakeholder.

In E-Governance, the government makes the best possible use of internet technology to communicate and provide information to common peoples and businessman. Today, electricity, water, phone and all kinds of bills can be paid over the internet. All this is what government and citizens are using and doing. All are dependent on internet and when citizens depends on government internet services all that comes is E-Governance.

²⁶¹ M Backus 'E-governance in developing countries', IICD Research Brief No 1, March 2001
<www.iicd.org>

²⁶² P Norris 'The worldwide digital divide: information poverty, the Internet and development' Harvard University, 2000 Available from <<http://www.ksg.harvard.edu/iip/governance/psa2000dig.pdf>>

There are four pillars of E-Governance:

- 1. CONNECTIVITY:** Connectivity is required to connect the people to the services of the government. There should be strong connectivity for effective e-governance.
- 2. KNOWLEDGE:** Here knowledge refers to IT knowledge. The government should employ skill full engineers who can handle the e-governance in an efficient way. These engineers also handle all kind of fault that may occur during the working of e-governance.²⁶³
- 3. DATA CONTENT:** To share any knowledge or information over the internet, there should be its database. This database should have the data content which is related to government services.
- 4. CAPITAL:** Capital can be on public or private partnership. It refers to money used by the government to provide their services or to that sector of the economy based on its operation.

1.4 INTERNATIONAL INSTRUMENTS IN E-CONTRACT

1. THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) MODEL LAW ON ELECTRONIC COMMERCE

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce was promulgated in 1996 (and amended in 1998) to assist countries in the framing of legislation which would enable and facilitate electronic commerce and electronic government. Surprisingly, it makes no reference to the Internet.²⁶⁴

This model law establishes rules and norms that validate and recognize contracts formed through electronic means, sets rules for forming contracts and governing electronic contract performance, defines the characteristics of valid electronic writing and an original document, provides for the

²⁶³Description about E-Governance

<<https://bisma.in/description-about-e-governance/>>

²⁶⁴UNCITRAL Model Law on Electronic Commerce | The IT Law

<https://itlaw.wikia.org/wiki/UNCITRAL_Model_Law_on_Electronic_Commerce>

acceptability of electronic signatures for legal and commercial purposes, and supports the admission of computer evidence in courts and arbitration proceedings.²⁶⁵

The Model Law adopts a limited framework approach. It is not intended to be a comprehensive, code-like articulation of the rules for electronic transactions, nor is it intended to govern every aspect of electronic contracting. Instead, it is intended to enable and facilitate electronic commerce by providing national legislators with a set of internationally acceptable rules aimed at removing legal obstacles and increasing legal predictability for electronic commerce. In particular, it was intended to overcome obstacles arising from statutory provisions that may not be varied contractually by providing equal treatment to paper-based and electronic information. Such equal treatment is essential for enabling the use of paperless communication, thus fostering efficiency in international trade.

The underlying analytical approach of the Model Law is the "functional equivalence" approach. This approach evaluates the underlying purposes and functions of traditional paper-based legal requirements and assesses to what extent electronic transactions can meet these purposes and functions. Where electronic transactions can satisfy the purposes and functions, the Model Law requires that they be given equal status. In effect, it puts electronic communications on par with traditional paper-based modes of communication.

Therefore, rather than rewriting the law, the Model Law seeks to extend the scope of standard national legal definitions of "writings", "signatures" and "originals" to encompass their electronic counterparts. It provides that information is not to be denied legal effect merely because it is in electronic form or is signed electronically. It also deals with transmission and receipt of messages and contracts for the carriage of goods. It does not address jurisdictional or conflict of laws issues.

2. MODEL LAW ON ELECTRONIC SIGNATURES

Building on the success of the Model Law as a precedent for national law reform, UNCITRAL adopted in 2001 a Model Law on Electronic Signatures, which builds on the signature provision in the 1996 Model Law. From a legal and security perspective, signatures provide two key

²⁶⁵Martin, Charles H., The Electronic Contracts Convention, the CISG, and New Sources of E-Commerce Law Tulane Journal of International & Comparative Law, Vol 16, No 2, Spring 2008

elements –authentication and integrity.²⁶⁶ The use of such of such techniques is seen as critical to the widespread adoption of electronic commerce, particularly in terms of meeting the requirements of Governments and regulatory authorities.

3. UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

The Convention was prepared by the United Nations Commission on International Trade Law and adopted on 11 April 1980. It came into force on 1 January 1988. The Convention has currently 85 member States. The purpose of the Convention is to provide a modern, uniform and fair text of the law for contracts for the international sale of goods, reduce barriers in international trade and promote the use and development of international trade. The Convention thus contributes significantly to introducing certainty in commercial exchanges, decreasing transaction costs and facilitates the ease of trading across borders. The Convention governs the international sale of goods between private businesses, excluding sales to consumers, sales of services and sales of specified types of goods. The Convention consists of 101 articles which are divided into four parts.²⁶⁷

1.5 CURRENT STATUS OF MSMEs & E-COMMERCE DEVELOPMENT IN INDIA

- E-COMMERCE SIZE IN INDIA

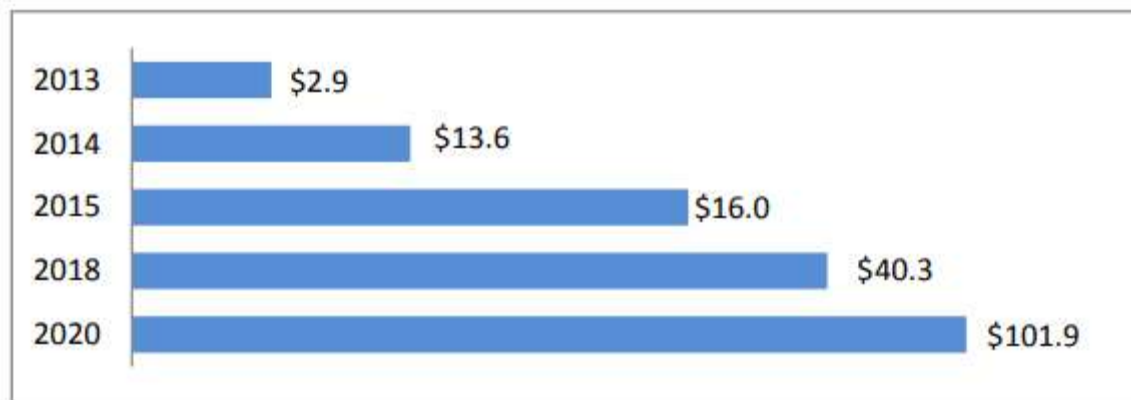
The E-commerce business is expected to form the largest part of Indian economy with a value of approximately USD 100 billion by 2020. E-commerce is facilitating MSMEs to scale up their operations by providing a means of financing, technology and training. Evolution of technology-

²⁶⁶ A. Introduction B. EDI and trading partner
<https://unctad.org/en/Docs/sdteecb20061ch8_en.pdf>

²⁶⁷ UN agreement to benefit Fiji economy - Post Courier
<<https://postcourier.com.pg/un-agreement-to-benefit-fiji-economy/>>

led innovations such as digital payments, hyper-local logistics, mass customer engagements and digital advertisements have enabled the E-commerce industry to grow speedily.²⁶⁸

Within the E-commerce industry, the Gross Merchandise Value (GMV) is an important metric for valuations, especially during the early stages of growth. The majority of B2C E-commerce companies report low profitability even in developed economies, and the situation in India is no different. While the GMV is rising, the companies have to suffer an overall loss as the Ecommerce companies establish themselves. The GMV for B2C segment in India was approximately USD 16 billion in 2015.

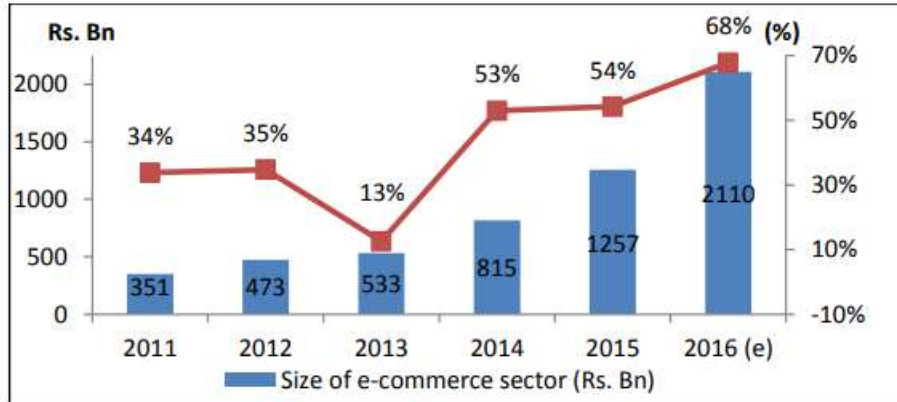


E-commerce size (\$ billions) in India

As per another report, the value of E-commerce sector (GMV) in Indian rupees was as under:-

- The size of the E-commerce industry was estimated to be Rs. 2,110 billion by 2016 as per Digital Commerce Report 2015 (IAMAI and IMRB). The industry was worth Rs. 351 billion in 2011 and grew at a CAGR of 37% to touch Rs. 1,257 billion in 2015.

²⁶⁸International Journal of Management and Economics
<http://ijme.co.in/paperadmin/images/files/Fle_1533560850.pdf>



Size of E-Commerce Sector (2011-2016)

MSMEs in India have been generally operating in a traditional manner and have been dependent on domestic trading activities. But, with a growing rate of internet penetration, MSMEs are also gradually changing their operations to avail the opportunities to trade through E-commerce. A large number of MSMEs is now involved in online transactions. These MSMEs look towards an enhanced customer base and increased profits by using E-commerce technology. MSMEs believe that use of E-commerce will boost their business growth.

- **GROWTH OF B2B E-COMMERCE IN INDIA**

The growth of the B2B E-commerce segment is relatively slower compared to the B2C e-commerce segment in India. This is because the entry barriers in the B2B E-commerce are more than those in the B2C E-commerce industry.²⁶⁹ A B2B E-commerce company has to have a strong business model, long term logistical arrangements with rail, road and ports and also adhere to stringent regulatory and taxation laws. With an aim to tap the huge potential in the B2B E-commerce market in India, apart from the existing B2B companies, leading B2C companies have also started to build their own platforms for small business owners and traders. This is expected to be supported by rising expectations among a growing number of companies buying and selling online and a shift to conduct procurement transactions through the Internet.

²⁶⁹e-Commerce in India A Game Changer for the Economy
 <https://slidelegend.com/e-commerce-in-india-a-game-changer-for-the-economy_59b65b061723ddf2725f0bde.html>

Understanding this untapped potential of the B2B E-commerce industry, the Government has allowed 100% FDI in B2B E-commerce, which has enabled globally successful B2B E-commerce companies such as Walmart and Alibaba to evince interest in the India B2B E-commerce industry.

- **RISE IN INTERNET USERS GIVING FILLIP TO E-COMMERCE**

In 2014, the number of internet users in India stood at around 280 million, and it was estimated that the number would rise to around 640 million by 2019. An increase of almost 70 million Internet users in a year is very significant. The rise of mobile internet users is also expected to touch 457 million by 2019. Comparing this with the projected growth, the E-commerce in India by the year 2020 is expected to touch USD 100 billion.

- **MERGERS AND ACQUISITIONS IN E-COMMERCE INDUSTRY**

E-commerce companies in India have also witnessed consolidation in the past 2-3 years. Larger E-commerce companies have been acquiring smaller companies to either diversify their product range or to enhance business operations. Such mergers and acquisitions have mainly centered on companies in the logistics, payment solutions and digital advertising areas. It is estimated that a total of 930 M&A deals with a cumulative value of USD 26.3 billion took place in India in 2015, of which, 259 deals worth USD 2.43 billion pertained to the E-commerce industry. Also, many strategic deals took place in the hyper-local, food-tech and real estate listing segments.²⁷⁰

- **PRIVATE ENTITY/VENTURE FUNDING OF E-COMMERCE COMPANIES IN INDIA**

Private equity and venture fund investments reached an all-time high in 2015 at USD 20 billion in India. The key sectors that saw investments were Information Technology, with 666 deals worth USD 4.49 billion, followed by consumer goods with 280 deals worth USD 4.69 billion.

²⁷⁰ Kierkegaard, Sylvia (2008) E-Contract Formation: U S And EU Perspectives

The majority of these investments have been concentrated in e-tailing (70% of investment), followed by online classifieds (17%) and lastly online travel and taxi (9%). This aggressive drive comes at a point when capital is becoming scarce for top venture-backed online retail companies.²⁷¹ There is also a reduction in the dependence on discounts as a growth strategy. Investors are currently focusing on start-ups that may scale slowly but have sound fundamentals and strong business models. In essence, these start-ups should have the ability to survive any scenario. Therefore, investors, today are interested in start-ups in sectors like health care and education which, by the nature of their offerings, will provide sustainable models and create legacy firms.

1.6 LET'S SUM UP

In this chapter, we have studied the National Implementation of UNCITRAL Model Law along with E-Governance in developed and developing countries. We also studied the International instruments on E-Contract and finally, we ended the discussion with the current status of MSMEs & E-Commerce development in India.

1.7 FURTHER READING

- Annual Report 2015-16, of Ministry of MSME, Govt. of India.
<http://msme.gov.in/relatedlinks/annual-report-ministry-micro-small-and-medium-enterprises>
- Ministry of Micro, Small and Medium Enterprises, Govt. of India site: msme.gov.in
<http://msme.gov.in/>
- International Journal of Computer Applications (0975 – 8887) Volume 53– No.7, September 2012

1.8 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

²⁷¹(Scholarlycommons.law.northwestern.edu, 2020)
<<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1015&context=njtip>>

1) Name 3 countries that have implemented the Model Law?

- United States
- Canada
- European Union

2) What are the four pillars of E-Governance?

- Connectivity
- Knowledge
- Data Content
- Capital

3) Name any 2 E-Governance projects executed by the UK?

- Go-between Project
- Plymouth Bus Project

4) Give a brief about the present status of MSMEs?

The E-commerce business is expected to form the largest part of Indian economy with a value of approximately USD 100 billion by 2020. E-commerce is facilitating MSMEs to scale up their operations by providing a means of financing, technology and training. Evolution of technology-led innovations such as digital payments, hyper-local logistics, mass customer engagements and digital advertisements have enabled the E-commerce industry to grow speedily. Within the E-commerce industry, the Gross Merchandise Value (GMV) is an important metric for valuations, especially during the early stages of growth. The majority of B2C E-commerce companies report low profitability even in developed economies, and the situation in India is no different. While the GMV is rising, the companies have to suffer an overall loss as the Ecommerce companies establish themselves. The GMV for B2C segment in India was approximately USD 16 billion in 2015.

1.9 ACTIVITY

Elucidate how UNCITRAL Model Law has been implemented by different countries along with the E-Governance development in developed and developing countries? (800 – 1000 words)

Unit 4: Dark Web and International Cyber Laws

4

UNIT STRUCTURE

- 1.1 Learning Objectives
 - 1.2 Introduction
 - 1.3 Basic understanding and definitions
 - 1.4 Danger and Crimes in Dark Web
 - 1.5 Laws across different jurisdictions
 - 1.6 Let's sum up
 - 1.7 Further reading
 - 1.8 Check your progress: Possible answers
 - 1.9 Activity
-

1.1 LEARNING OBJECTIVES

After going through this chapter, you should be able to understand:

- Basic understanding of Dark web and its concepts
- Danger and Crimes in Dark Web
- Laws across different jurisdictions

1.2 INTRODUCTION

The influx of digital technologies and the digitalisation of modern society have introduced both challenges as well as prospects for law enforcement. With the advent of technology, the face of crime also evolves and makes it extremely challenging for the authorities to keep up. The pace of the technology advancement is much ahead of the pace to keep a check to it; therefore, mostly such advancements run unchecked and enter into the illegal boundaries of law and humanity. One such challenge has been the Dark Web (also known as Dark Net). As fancy and helpful the world of the web has proved to be, its misuse and criminal effects are equally debatable.

Presently, most of the focus is on the defies as crime-fighting has become beleaguered by a loss of access to data inclusive of location through the dark web.

The very understanding of dark web is like that of black market where all the prohibited, top-secret and exclusive information is available apart from illegal practices of child pornography, human trafficking, drug mafia, assassins etc. An offender can commit a crime anywhere and at any time, parting behind a track of victims in diverse jurisdictions.

All the information unavailable in a public domain which is either extremely private, of national importance or security, of specific illegal acts, of privately-held details can be accessed, and all the illicit goods and services can be availed without having to disclose ones' identity. It is not only used for criminal activities but also other activities of journalism, national security, high-end research etc.

For beings living under oppressive regimes that block large portions of the Internet or penalise political disagreement, the dark web is a lifeline that provides access to information and safeguards from maltreatment. In liberated societies, it can be a precarious whistleblowing and communication tool that shields people from vengeance or judgment in the workplace or community. Otherwise, it can merely dispense privacy and anonymity for those wary of how corporations and governments are tracking, using, and potentially monetising their data. On the other side, the same privacy and anonymity that dispense protection from tyrants and targeted announcements also make the dark web a facilitator for the crime. Some of the more predominant illicit actions include arms trafficking, drug dealing and the contribution of abusive matter such as child pornography and images of viciousness and other varieties of abuse.²⁷²

Cybercriminals often choose to use the Dark Web to involve in illegal conduct. The Dark Web is packed with illicit marketplaces and platforms where criminal activity is advertised and communicated. There are search engines which are directed specifically to finding stuff on the Dark Web. The topmost of those are - Tor network - .onion and I2P - .i2p

²⁷²Digging through 3 layers to the dark web - CUInsight
<<https://www.cuinsight.com/digging-through-3-layers-to-the-dark-web.html>>

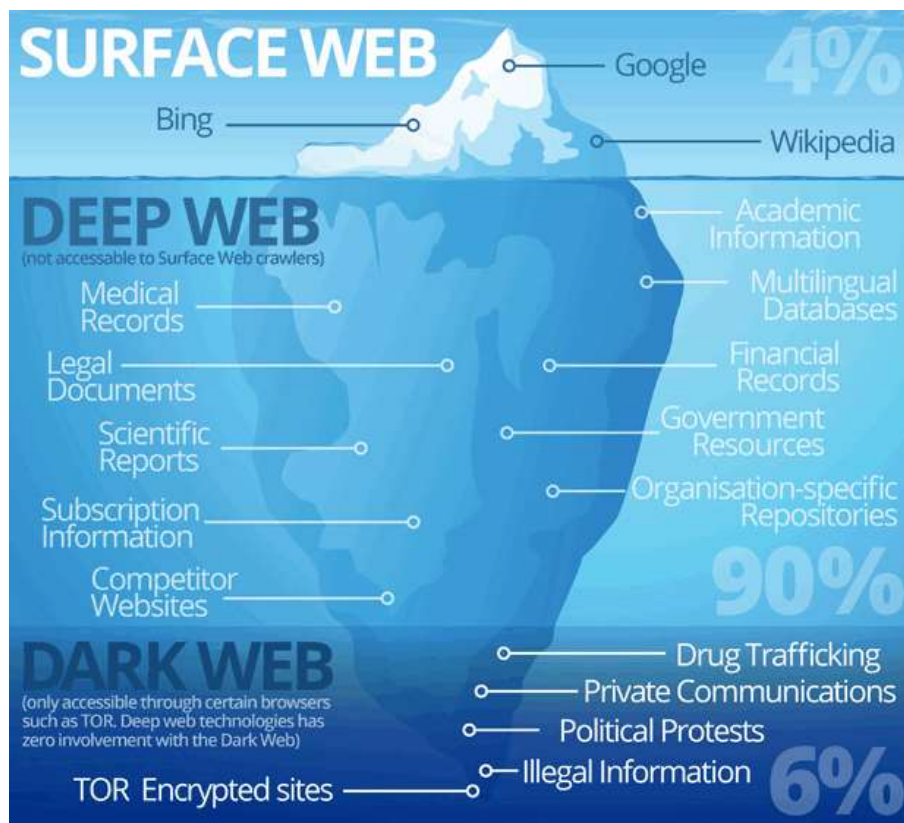
1.3 BASIC UNDERSTANDING AND DEFINITIONS

The definition as per the **United Nations Office of Drugs and Crimes (UNODC)** are as follows:

The Deep Web is defined as "a part of the World Wide Web that is not discoverable by search engines, includes password-protected information - from social networks through to email servers."²⁷³

The Dark Web is defined as "a collection of thousands of websites that use anonymity tools like TOR to encrypt their traffic and hide their I.P. addresses. The high level of anonymity in the digital space enables criminals to act without being easily detected."

The concept of Dark Web can be understood from the iceberg example:



²⁷³Global Programme on Cybercrime - United Nations Office
<<https://www.unodc.org/unodc/en/cybercrime/global-programme-cybercrime.html>>

Surface Web is the part of the World Wide Web frequently used by crores of people all over the world. It is an assemblage of indexed web pages that are administered by the most significant search engines such as Google, Bing or Yahoo, and come up as exploration results any time one types in an online search request. It comprises of a tiny part of approximately four per cent of the entire web, depending on an application and the number of the pages indexed.²⁷⁴

The Deep Web is formed by a massive amount of not indexed pages which comprises of approximately ninety per cent of the total content available on the Net and lies underneath the surface and is not observable to the search engines. It can be correlated to an iceberg which is below the water surface, hidden but massive in size and away from the eyesight. It is inclusive of government resources, legal documents, medical records, scientific reports, academic information, subscription information and even data stored on home-area networks etc. One can approach such kind of data by entering their bid into a search box of a specific site or retrieving the password-protected domain.²⁷⁵

The deep web is safe for use with precautions but not the whole part of it.

The Dark Web is a small fraction of the Deep Web which is buried at the utmost underneath section of the Net and cannot be accessed through the ordinary browsers. For such entry, one needs to use the encryption tools such as The Onion Router (hereafter called as TOR). Any user remains unidentified on TOR due to the linkage of the virtual tunnels offered by the encryption tools. There is no method to recognise anyone's physical location or trace the list of the websites one accesses, any posts or communications.

The anonymity offered by the Dark Web attracts all sorts of cyber-bullies, hackers, online fraudsters, predators, and criminals who can easily conceal their identity.

Dark Web is generally and easily misused for criminal, illegal, anti-national activities other than for useful emergency, research or meaningful purposes.

²⁷⁴ Andy Greenberg, "An Interview with Darkside, Russia's Favorite Dark Web Drug Lord," Wired.com, December 4, 2014

²⁷⁵ Kim Zetter, "New Service Makes Tor Anonymized Content Available to All," Wired.com, December 12, 2008

The dark web forms a small part of the Deep Web, and these terminologies are confused with a lot.

Various jurisdictions have created and implemented laws to ensure the misuse of the dark web, which will be discussed further. However, it still stands to be a part of the very dangerous resource, easily mishandled and manipulated for the crime. Since the location and I.P. address is all unidentifiable, the jurisdiction remains highly debatable and challenging to trace, causing the victim and the perpetrator to be from widely different domains.

There are two specific areas of Dark Web that cannot rationally be categorised as exclusively beneficial but have some commendable features: whistleblowing and hacktivism.

- Whistleblowing is an indispensable part of what keeps republics in check. Nonetheless, it can treacherously uncover government approaches and sources if it is not done through sanctioned channels. If these whistle-blowers use legal channels to make their grievances, the complications could have been handled without publicly broadcasting classified evidence.
- Hacktivism is another issue that ponders in a grey area. While the goals of few hacktivists may be contentious, their approaches are often offensive, and more vitally, illegal.

1.4 DANGER AND CRIMES IN DARK WEB

Broadly, cybercrime can be described as having cyber-dependent offences, cyber-enabled offences and, as a specific crime-type, online child sexual exploitation and abuse. It also includes online frauds, purchases of drugs online and online money laundering. Child sexual exploitation and abuse comprise abuse on the surface net or dark Net.²⁷⁶

There is no global definition of cybercrime or cyberattacks. Offences archetypally bunch around the following categories as per the United Nations Office of Drugs and Crimes (UNODC) are:

²⁷⁶ Michael K Bergman, The Deep Web: Surfacing Hidden Value, Bright Planet, September 24, 2001

- i) attacks against the confidentiality, integrity and availability of computer data and systems;
- ii) computer-related batteries;
- iii) content-related attacks
- iv) offences related to infringements of copyright and related rights.

A variety of malevolent actors influence cyberspace, from criminals to terrorists to state-sponsored spies. The web can serve as a forum for discussion, harmonisation, and deed. Precisely, they may rely upon the Dark Web to assist in carrying out their activities with abridged risk of uncovering.

In this 21st century, criminals have been increasingly relying on the Internet and progressive technologies to further their criminal operations.

Bitcoin added on to the dismay of such frivolous transactions by saving up the source of the owner and helped into more of such undisclosed transactions. Bitcoin laundering services helps to intensify the anonymity of money moving through the bitcoin system. Still, eventually, most bitcoin users end up extracting the money from the scheme to be converted into cash or other types of conventional payment means.

The case of Silk Route made the dark web more popular. The much-trumpeted shutting down of the Tor-accessible illicit market known as Silk Road in 2013 October followed by the arrest of its founder Robert Ulbricht hit a blow to consumer dependability in the market for illegal goods and narcotic drugs that are made available on the Tor network. Nonetheless, this victory of for the U.S. multi-agency task force was a massive step towards bringing such illegal acts out in public and a small step towards the end of black markets hosted on the Dark Web or the availability of drugs anonymously bought online. Ross Ulbricht was a former darknet operator who created and ran the Silk Road market which is like the Amazon but dealt with drugs, arms and other illegal products and services. He was jailed in 2013 on charges of money laundering, computer hacking, and treason to traffic narcotics.²⁷⁷

²⁷⁷ Michael Chertoff and Toby Simon, The Impact of the Dark Web on Internet Governance and Cyber Security, Global Commission on Internet Governance, Paper Series: No. 6, February 2015, p 1

1.5 LAWS ACROSS DIFFERENT JURISDICTIONS

Other than the universal laws, the role of government and policymakers along with the administration is vital to regulate the dark web. The legality of the use of the dark web gets very clumsy as the reference can be made only through the cyber-crime and its close-knitted aspects. The difficulty to regulate and monitor dark web is that the jurisdiction remains unidentified. Moreover, most countries do not make the use of dark web illegal but conducting illegal activities on obscure web offence, and few with stricter laws make even the entering dark web illegal. This global battle to legalise or not legalise the use of dark web across the nations makes it much more challenging to monitor and regulate.

The United Nations General Assembly passed a resolution 65/230. It also gave the Commission on Crime Prevention and Criminal Justice resolutions 22/7, 22/8 along with the Global Programme on Cybercrime. This obliges the Member States to assist in the struggle against cyber-related crimes over competence building and technical aid.

Preceding to the instigation of the Global Programme, UNODC's had an open-ended intergovernmental professional assembly which was founded to conduct a comprehensive analysis of the delinquent of cybercrime and reactions to it by the Member States, the international community and the private sector. This effort comprises the swapping of information on national legislation, most excellent practice, technical aid and international collaboration.²⁷⁸

The United States presently has few laws that apply to Dark Web activity. Still, they were not explicitly designed to meet the challenge of the Dark Web — for example, the Dark Web easily support hacking where they can purchase virus or hacking software from other hackers, or otherwise. Now, hacking is governed by the Computer Fraud and Abuse Act (CFAA), which prevents trespassing on, proscribed accessing of, and damaging computers in interstate or international commerce. These U.S. laws are entirely sufficient to handle hacking even then, they do not accurately control the challenge of anonymity online and are not necessarily valid beyond

²⁷⁸ Bright Planet, Deep Web: A Primer,
<<http://www.brightplanet.com/deep-web-university-2/deep-web-a-primer/>>

U.S. territorial jurisdiction, from where a maximum of the cybercrime abreast the U.S. is launched.

China has a stringent policy and bans the use of Dark web for any purpose even if it means for journalism or anything else. It forbids every entry and has made resolutions to block access to Tor.

Russia has made attempts to anonymise Tor for political objectives. Russia has recently declared some of the most stringent and most harsh laws concerning internet use and Dark Web activity - 'anti-terrorism' legislation which went into effect in 2016. Russia's Federal Security Service started enforcing the law by collecting encryption keys from internet service providers. A denial to hand over keys can charge one with a fine of approximately fifteen thousand U.S. Dollars. The Russian government is also making efforts to crack the anonymity of the Dark Web for such they are entering into research contracts with big groups.

In the European Union, once the user in Europe has acknowledged the identity, then civil charges can be lodged under the following:

Directive 2004/48/EC on the enforcement of intellectual property rights

Regulation (E.C.) No 864/2007 on the law applicable to non-contractual obligations

Regulation (E.U.) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.²⁷⁹

Austria has made attempts to eliminate Tor traffic within its borders. One of the most climactic policy actions in 2014 was when the authorities arrested a person who had made his computer a Tor relay, and held him responsible for 'contributing to the completion' of a cybercrime committed by a different Tor user who had no role to play with the arrested man, other than the fact that the cybercriminal's traffic was routed through the Austrian man's computer. This verdict of Clemmitt 2016, set a precedent that it is potentially illegal to operate a Tor exit relay in Austria, which is a significant blow to Austrians who wish to support the project.²⁸⁰

²⁷⁹The Rome II Regulation

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1314749>

²⁸⁰(Ec.europa.eu, 2020)

<<https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-305-EN-F1-1-ANNEX-1.PDF>>

The struggle lies at the point where the U.S. and Germany supported Tor, to the extent of even funding it whereas the international community vehemently opposes it. This poses a vital challenge for global policy development. Cooperation between Austria and the U.S. would be confronting as well.²⁸¹

Opposite to general understanding, other than in China, using proxy networks in and of itself is legal. Simply visiting Dark Web markets like Empire Market, Dream Market, and Nightmare Market is usually permissible. Mostly across the globe, one needs to conduct an illegal activity explicitly to be considered as a criminal within dark web, merely visiting or using it is not unlawful.

Catching dark web users is complicated. The location of the perpetrator remains unclear; however, advanced techniques and one silly move by the user helps in revealing the identity.

One can say that this struggle will always prevail as the international agencies do not want to ban the dark web because of its various advantages of privacy and identity security but keeping a check on it is similarly challenging and almost seems impossible in most cases. With the advent of technology, one can say that the breaking of privacy will become more comfortable. Still, the simultaneous growth in keeping it hidden will also see a similar increase.

Unfortunately, criminals can efficiently leverage the Internet to conduct conventional crimes such as dealing in illicit drugs and sex trafficking. Moreover, they employ the digital world to aid crimes that are usually technology-driven, including identification theft, payment card scam, and intellectual property fraud.

The Dark Web has been referred to as promoting a wide variety of crimes. Illicit goods such as drugs, weapons, exotic animals, and stolen goods and information are all sold for profit. There are gambling sites, thieves and assassins for hire, and troves of child pornography.

²⁸¹Kramer, Xandra E, The Rome II Regulation on the Law Applicable to Non-Contractual Obligations: The European Private International Law Tradition Continued - Introductory Observations, Scope, System, and General Rules (October 15, 2008). *NederlandsInternationaalPrivaatrecht (NIPR)*, No. 4, pp. 414-424, 2008. Available at <<https://ssrn.com/abstract=1314749>>

In the coming future, we can hope to develop a more effective international regulation to ensure safety from such unnamed and unidentified criminals.

In present times, several institutions manage a secured website within the dark web, including press agencies, Facebook, and even government bodies because it guarantees its commitment to privacy.

1.6 LET'S SUM UP

In this chapter, we have studied the basic concepts and definitions of Dark Web for a better understanding along with the danger and crimes in Dark Web. Finally, we ended the discussion with the laws pertaining to dark web across different jurisdictions.

1.7 FURTHER READING

- Michael K. Bergman, *The Deep Web: Surfacing Hidden Value*, Bright Planet, September 24, 2001.
- The Internet is also used for email, file transfers, and instant messaging, among other things. Michael Chertoff and Toby Simon, *The Impact of the Dark Web on Internet Governance and Cyber Security*, Global Commission on Internet Governance, Paper Series: No. 6 February 2015.
- Michael Chertoff and Toby Simon, *The Impact of the Dark Web on Internet Governance and Cyber Security*, Global Commission on Internet Governance, Paper Series: No. 6 February 2015, p. 1.
- Beshiri, Arbër&Susuri, Arsim. (2019). *Dark Web and Its Impact on Online Anonymity and Privacy: A Critical Analysis and Review*. *Journal of Computer and Communications*. 07. 30-43. 10.4236/jcc.2019.73004.
- Bright Planet, *Deep Web: A Primer*, <http://www.brightplanet.com/deep-web-university-2/deep-web-a-primer/>.

1.8 CHECK YOUR PROGRESS: POSSIBLE ANSWERS

1) Define Deep Web?

The Deep Web is defined as "a part of the World Wide Web that is not discoverable by search engines, includes password-protected information - from social networks through to email servers."

2) What is the Dark Web?

The Dark Web is defined as "a collection of thousands of websites that use anonymity tools like TOR to encrypt their traffic and hide their I.P. addresses. The high level of anonymity in the digital space enables criminals to act without being easily detected."

3) What are crimes related to Dark Web?

- i) attacks against the confidentiality, integrity and availability of computer data and systems;
- ii) computer-related batteries;
- iii) content-related attacks
- iv) offences related to infringements of copyright and related rights.

4) What is the policy of China pertaining to Dark Web?

China has a stringent policy and bans the use of Dark web for any purpose even if it means for journalism or anything else. It forbids every entry and has made resolutions to block access to Tor.

1.9 ACTIVITY

Explain the concept of Dark Web and the crimes pertaining to it along with the laws that have been enacted in varied jurisdictions? (1000 words)

યુનિવર્સિટી ગીત

સ્વાધ્યાય: પરમં તપ:

સ્વાધ્યાય: પરમં તપ:

સ્વાધ્યાય: પરમં તપ:

શિક્ષણ, સંસ્કૃતિ, સદ્ભાવ, દિવ્યબોધનું ધામ
ડૉ. બાબાસાહેબ આંબેડકર ઓપન યુનિવર્સિટી નામ;
સૌને સૌની પાંખ મળે, ને સૌને સૌનું આભ,
દશે દિશામાં સ્મિત વહે હો દશે દિશે શુભ-લાભ.

અભણ રહી અજ્ઞાનના શાને, અંધકારને પીવો ?
કહે બુદ્ધ આંબેડકર કહે, તું થા તારો દીવો;
શારદીય અજવાળા પહોંચ્યાં ગુર્જર ગામે ગામ
ધ્રુવ તારકની જેમ ઝળહળે એકલવ્યની શાન.

સરસ્વતીના મયૂર તમારે ફળિયે આવી ગહેકે
અંધકારને હડસેલીને ઉજાસના ફૂલ મહેકે;
બંધન નહીં કો સ્થાન સમયના જવું ન ઘરથી દૂર
ઘર આવી મા હરે શારદા દૈન્ય તિમિરના પૂર.

સંસ્કારોની સુગંધ મહેકે, મન મંદિરને ધામે
સુખની ટપાલ પહોંચે સૌને પોતાને સરનામે;
સમાજ કેરે દરિયે હાંકી શિક્ષણ કેરું વહાણ,
આવો કરીયે આપણ સૌ
ભવ્ય રાષ્ટ્ર નિર્માણ...
દિવ્ય રાષ્ટ્ર નિર્માણ...
ભવ્ય રાષ્ટ્ર નિર્માણ



DR. BABASAHEB AMBEDKAR OPEN UNIVERSITY

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'Jyotirmay' Parisar,

Sarkhej-Gandhinagar Highway, Chharodi, Ahmedabad-382 481

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