

## Legal Impact of Technology on E- Contracts Communication in India

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### Abstract

The mode of expression is always been the most important part of any communication made for undergoing a contract. The expression of intention either an offer or acceptance may be done by oral or written means including messages by electronic mode which is also called Electronic Records have been expressly mentioned under Information and Technology Act, 2000. The provisions for the communication of a contract under Indian Contract Act, 1872 are wide enough to cover such transactions. Therefore, in the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer, or either of them, can be expressed by means of data messages or electronic records. Whereas electronic records are used in the formation of a contract, but that contract shall not be denied on the sole ground that data messages were used for that purpose according to provisions of Section 10A of Information Technology Act, 2000. Thus, on the basis of the existing circumstances and provisions the question arises that whether the declaration of Will or other statement should be valid, effective and enforceable even though it is in the form of a data message? Because unlike general contracts there is issue of location of the formation to be decided according to which the offeror receives notification of the acceptance through data message. Through this paper the author wants to bring the provisions relating to the formation of Contract where the communication is made on electronic mode and to curb the issues relating to the complications for the validity of e-Contracts and finally to understand that e-contracting is the issue of when and where the contract is formally made or concluded.

**Keywords:** *Communication, e- Contracts, legality, Information technology*

### Introduction

With the recent development in the areas of computer technology; telecommunications technology and information technology the standard of living of people has been changed in an unbelievable manner. Now the communication is not restricted due geographical or time limitation. The Information is transmitted and received broadly and more speedily than ever before. Therefore, the electronic commerce offers the suppleness to business atmosphere in terms of place, time, space,

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distance, and even payment. The e-commerce is linked with the buying and selling of information, products and services via computer networks. It is a means of transacting business electronically, usually, over the Internet. It is the tool that leads to 'enterprise integration'. With the development of e-commerce, there is a rapid expansion in the use of e-contracts. The e-contract needs communication technology which involves various intermediaries such as Internet Service Providers (ISPs) etc. In case, if a contract that an Indian exporter and an American importer wish to enter there is one option would be that one party first draws up two copies of the contract, signs them and couriers them to the other, who in turn signs both copies and couriers one copy back. The other option is that the two parties mutually meet at a common place and sign the contract. In the electronic age, the whole contract can be completed in seconds, with both parties simply attaching their digital signatures to an electronic copy of the contract. There is no need for delayed couriers and additional travelling costs in such a situation.

But when we come across these e-contracts in our day to day life we are unaware of the legal complexities and challenges connected to it. The use of electronic contracts poses a lot of challenges at various levels, such conceptual, logical and implementation. At the same time, we come across lack of provision in formation of e-contract. Information Technology Act, Cyber law, Indian contract Act, Indian Evidence Act does not entirely justified electronic contract. In Indian judiciary many landmark judgments' has rejected the legality of electronic contracts. Then it's very difficult to define more justified validity of electronic contract. There was initially a hesitation amongst the legislatures to recognize this modern technology, but now many countries have passed laws to recognize electronic contracts.

### Meaning of Electronic Contract

The foremost requirement to authenticate an electronic contract is acquiescence with the necessary pre-requisites provided under the Indian Contract Act, 1872. Due regard is also given to electronic contracts under the provisions of the Indian Evidence Act, 1872. The provisions of the Information Technology Act, 2000 give legal recognition to an electronic (**E -Contract**) particularly section 10-A of the IT Act which states:

*"Section 10-A: Validity of contracts formed 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 form or means was used for that purpose."*

The above provision was introduced by the Information Technology (Amendment Act), 2008 after recognizing the growing dependence on electronic means to reach commercial agreements. This applies where contract formation, communication of the proposal and acceptance is carried out electronically. Therefore, E-contract is any kind of contract formed in the course of e-commerce by the interaction of **two or more individuals** using electronic means, such as e-mail, the interaction of

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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. E-contract is a contract modelled, specified, executed and deployed by a software system.

According to Information Technology Act, 2008, the two parties between whom the e-contract is performed are **Originator** and Addressee.

**a. An Originator** is a person who sends, generates, stores or transmits any electronic message to be sent, generated, stored or transmitted to any other person and does not include an Intermediary.

**b. An Addressee** is a person who is intended by the originator to receive the electronic record but does not include any Intermediary Under the provisions of the Information Technology Act, 2000 particularly Section 10-A, an electronic contract is valid and enforceable.

### **Elements of E- Contract**

As the interpretation and validity of electronic contracts are now a days taken as seriously as offline contracts, the same doctrine of valid contract will apply here in the similar manner. An agreement between parties is considered legally valid if it satisfies the requirements of the law regarding its formation, i.e. that the parties intended to create a contract primarily. This intention is evidenced by their compliance with the three classical cornerstones i.e. offer, acceptance and consideration. To make this concept more clear, further the elements of e-contract are discussed in detail as follows:

#### **A. Offer**

Section 2 (a) states that "When one person signifies his willingness to do or to abstain from doing anything with a view to obtain assent of that other to such act or abstinence, he is said to make a proposal". Advertisement on website may or may not constitute an offer as offer and invitation to treat are two distinct concepts. Being an offer to 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. It is mere an expression of willingness to negotiate. 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.

But the question arises that whether this principle applies in electronic contracts also and is it when it enters the computer resource as provided under Section 13 of the IT Act or when the offeror receives acknowledgement as in section 12 of the IT Act? This is the juncture of the contract where acknowledgement of communication plays its significant role in E- Contracts. It is clear that a message can enter into a person's mailbox without him seeing it, thus, the element necessary for determining

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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 Indian Contract Act and has not been altered by IT Act.

### **B. Acceptance**

This is the stage when electronic contract is to know where an agreement has been reached. Once an offer is accepted, a contract is complete except in case 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 into the designated computer resource. There is no disparity between Indian and Common law in this regard as seen in *Lalman Shukla v. Gaurie Datta Sharma* 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. Thus, both offer and acceptance can be generally done through email, website forms, and online agreements.

### **Revocation of Offer and Acceptance**

The Information Technology Act of 2000 is not a complete one and as a result, the Indian Contract Act of 1882 is still in use even for electronic contracts. However, the both Acts still complement each other. Section 5 which speaks of revocation will not be applicable as there will be no much time or time interval in case of electronic contracts, the dispatch and receipt of mail happens within split of minutes and simultaneously. This is significant to mention the principle of '*Minor Image Rule*'. This is a common law principle that denotes that the acceptance must be a mirror image of the offeror's offer. This implies that an acceptance which varies in terms as against the original offer is not an acceptance but a counter proposal which will now have to be accepted by the original offeror before the contract can be said to be concluded. The terms of the contract will now become the terms of the counter proposal and it is called **Last Shot doctrine** which implies that the terms of the final document in the series leading to the conclusion forms the contract.

### **C. Lawful Consideration**

The Indian Contract Act of 1872 reads that in the present scenario, once an item has been supplied and the price has been paid, the consideration is executed and the requirement is satisfied. Problems may arise at a time when the consideration is merely executor. This arises when the seller's computer has done no more than "promise" to supply that item. A key intention that lies behind such promises is, of course, the intention to be bound by that promise in other words, the intention to create legal relations. The Contract law cannot entirely apply in e-contracts as in sometimes when an autonomous computer is used.

**D. Lawful Object**

The purpose of such contract must be a lawful one. Courts will not enforce contracts that are illegal or violate public policy. Such contracts are considered void. An agreement which calls for the commission of a crime is illegal and therefore void. For example, a person could not enforce an agreement with another party to burn a house down. Also, an agreement that calls for the commission of a civil wrong such as a tort is illegal and void.

**E. Competent Parties to Contract**

It is generally accepted that both natural persons and legal persons are capable of entering contracts, Computers are clearly not natural persons, and neither American nor English contract law, at present, deem them to be legal persons. Computers, therefore, are not capable of being parties to contracts. In our scenario, both the buyer and the seller are natural persons, and consequently, are capable of being parties to the transaction. The autonomous computer, however, clearly cannot be a contractual party as the law now stands.

**F. Free Consent**

The consent of the both parties must be free from any deceit, mistake, fraud etc. E contracts can be broadly categorized into:

- a. Shrink Wrap Agreements
- b. Click Wrap Agreements

**a. Shrink Wrap agreements** are those which can only be read and accepted by the consumer after the opening of a particular product. The term is described after the shrink wrap plastic wrapping that is used to cover software or other boxes. Installing software from a CD into your PC is an example of a shrink wrap agreement.

**b. Click Wrap agreements** are mostly found in the software installation process. The user has to click either 'Accept' or 'Decline' to accept or reject the agreement respectively. These agreements lack a certain amount of bargain power. Choosing to make payments online or choosing to reject it is an example of using a click wrap agreement. Either ways, the consent to such must be free. This is quite difficult to determine because sometimes the margin used to determine the strict rule of free consent gets narrower.

**G. Certainty of Terms**

To ensure the certainty of the contractual terms, it is essential to keep the record of the conditions agreed. This can be difficult if there have been several email exchanges which may include each attaching documents intended to form part of the terms of the contract and also including counter offers and negotiations between the contracting parties. As noted above, it may be difficult in such a scenario to determine who the offeror is and who has accepted the final offer, which may determine which party's terms and conditions apply. In any event, it is important to ensure that the parties are clear on the content of the final contractual terms.

**Nature of E- Contracts**

1. No formal personal meeting of the contracting parties.
2. There are no physical boundaries.
3. No handwritten signature and in most times, no hand writing is required.
4. Since there is no utmost security, risk factor is very high.
5. Jurisdictional issues are a major setback on e-contracts in case of breach.
6. There is no single authority to monitor the whole process especially in shrink wrap contracts.
7. Digital Signatures are used and electronic records are used as evidences in court n when need arises.
8. The three main methods of contracting electronically are:-
  - e-mail,
  - World Wide Web (www), and
  - Cyber contracts (Click to agree/online contract).
9. The subject matter includes:
  - Physical goods, where goods are ordered online and paid over internet and physical delivery is made.
  - Digitised products such as software which can also be ordered for.
  - Services like electronic banking, sale of shares, financial advice etc.

**Process of Communicating E- Contracts**

E-Contracts can be entered into through modes of communication such as e-mail, internet and fax. The only essential requirement to validate an E-Contract is compliance with the necessary pre-requisites provided under the Indian Contract Act, 1872. These are:

- **Offer and Unconditional Acceptance** - It may be made online or by e-mail communication.
- **Lawful Purpose and Consideration** - A contract is enforceable by law only when it is made for a lawful purpose and for some consideration. It must not defeat any provision of law and must not be fraudulent in nature.
- **Capacity of Parties and Free Consent** - Parties to a contract are capable of entering into a contract, if they satisfy the requirements of Section 11 and 12 of the Indian Contract Act, 1872 (capacity to contract), and consent of the parties must be free as per Section 13 of the Indian Contract Act, 1872.

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The ease of the execution of an E-Contract being confounding, many sometimes wonder about its validity, especially when compared to a traditional written contract. The simple truth lies in the fact that the Indian Contract Act, 1872 has not specifically laid out any specific way of communicating an offer and what constitute its acceptance. The same can be achieved verbally, in writing or even through conduct. This shows that even in its simplicity, an E-Contract is as valid as a traditional written contract; the only condition/ requirement being that an E-Contract should possess all the essentials of a valid contract as mentioned above.

Unless an inference can be drawn from the facts, that the parties intend to be bound only when a formal agreement has been executed, the validity of an agreement would not be affected by its lack of formality. Therefore, once an offer is accepted through modes of communication such as e-mail, internet and fax then a valid contract is formed unless otherwise specifically provided by law in force in India; such as the Registration Act, 1908, the various Stamp Acts etc. The list of the instruments to which the IT Act, does not apply, which are as follows:

1. Negotiable Instruments;
2. Powers of Attorney;
3. Trust deeds;
4. Wills;
5. Contracts for Sale or Transfer of Immovable Property

#### **Evidentiary Value of Electronic Records:**

The courts in India recognize electronic documents under Section 65-A of Indian Evidence Act, 1872. The procedure for furnishing electronic documents as evidence is provided under Section 65-B of the Indian Evidence Act, 1872.

As per Section 65-B of the Indian Evidence Act, 1872 any information contained in an electronic record produced by a computer in printed, stored or copied form shall be deemed to be a document and it can be admissible as evidence in any proceeding without further proof of the original. But, admissibility of the same is subject to various conditions prescribed under section 65-B of the said act. It is required that the document or e-mail sought to be produced from a computer, was in regular use by a person having lawful control over the system at the time of producing it; the document or the e-mail was stored or received during the ordinary course of activities; the information was fed into the system on a regular basis; the output computer was in a proper operating condition and has not affected the accuracy of the data entered.

#### **Legal Challenges in the formation of E-Contract**

The internet system was first coined in 1980's by Science fiction writer William Gibson. However, a clear definition of the term still seems hard to go with. In general Cyberspace represents the new medium of communication, electronic communication, which is fast outmoding, or even replacing,

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more traditional methods of communication. This includes computers, networks, software, data storage devices (such as hard disks, USB disks etc), the Internet, websites, emails and even electronic devices such as cell phones, ATM machines etc. Further, cyberspace like physical space could also be categorized in four sub concepts i.e. place, distance, size and route. So we come across the relation of e contracting in cyberspace because today's global world Internet is a mode of communication. The real power of Internet is that it is borderless and available to anyone with a computer and a telephone. Not very long back when the scope of internet access was very limited, there was no requirement of law relating to cyberspace. The concept has been developed, recently with the advent of the internet, transmission of information and transacting of business across borders, various issues related to cyberspace cropped up on legal front.

The whole world has had great difficulty in keeping pace with the rapid growth of the internet and its impact whether positive or negative. Therefore, many countries have already laid down cyber laws to regulate this global mode of communication, India is proud to be one of them. In India, all cyber laws are contained in the Information Technology, Act 2000. The Act was made to provide the legal infrastructure for e-commerce in India. One of the unique features of the act is that it promotes the use of digital signatures for the growth of E-Commerce and E-Governance.

Article 11 of United Nation General Assembly states that in the context of the contract formation unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data message. If data message is used in the formation of a contract that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose. Simultaneously, Article 12 states that as between the originator and the addressee of a data message, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in form of a data message. According to UNCITRAL Model Law, Article 11 is not intended to interfere with the law on formation of contracts but rather to promote international trade by providing augmented legal certainty as to the conclusion of contracts by electronic means. In certain countries a provision along with the lines of provision of Articles 11 might be regarded as merely stating the obvious, namely that an offer and an acceptance, as any other expression of will, can be communicated by any means, including data message. However the considerable number of countries as to whether contracts can validly be concluded by electronic means. Such reservations may stem from the fact that, in certain cases, the data message expressing offer and acceptance are generated by computer without instantaneous human intervention, thus raising doubts as to be expression of intent by the parties. Another reason of such uncertainties is inherent in the modes of communication and results from the absence of a paper document. While much of the contract formation discussion revolves around the use of computer technology as a means of communication by contracting parties, a far more difficult issue is beginning to emerge with the automation of the contracting process itself. Traditional contract doctrine centers on the requirement of a 'meeting of the minds'. The involvement of two or more people, negotiating either face-to-face or through some means of communication is an underlying assumption.

However, modern technology is evolving with a goal of eliminating human involvement in

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transactions. How traditional contract doctrine will accommodate situations where the only 'minds' that meet are programmed computer systems is uncertain. For transactions caught by the International Sale of Goods Act, the "mailbox rule" does not apply. Instead, the Act sets out that the acceptance of an offer becomes effective at the moment the indication of assent reaches the offer or. To protect consumers from potential abuses, electronic versions of the following documents are invalid and unenforceable: wills, codicils, and testamentary trusts documents relating to adoption, divorce etc, court orders, notices, and other court documents such as pleadings or motions notices of default, repossession, foreclosure, or eviction, etches documents must be provided in traditional paper and ink format. Business-to-business contracts are an indispensable part of trading business relations since many centuries. With the advent of information technology, companies started using information technologies to support their trading relations. Consequently, in trading relations supported by modern information technology, traditional paper contracts become an inefficient and ineffective instrument to guarantee the rights and specify the obligations of the trading parties and electronic contracts become a necessity. Electronic contracts are the instrument to govern electronic trading relationships between business parties. A number of efforts exist in both the academic and industrial worlds to define an e-contract specification language.

Technologies brought about by computers, internet and cyberspace widen the scientific horizon but pose new challenges and created problems for the legal world in all aspects of law. The challenges that we facing today are not just confined to any single traditional legal system but in almost all major categories of law such as contract law, criminal law, Torts etc. In India, The information Technology Act, 2000 (ITA) and amendment in several existing laws through ITA does enforce and control a level of cyber related problems. However, it has shown inadequacy of law while dealing with information technology itself. The ITA in many ways falls short of International standards. Therefore, in the era of information technology such loopholes in legal framework cannot be ignored and can lead to some impairment for individual as well as nation. New provisions added through Information Technology (Amendment) Act, 2008 could be a way out from all these challenges but several changes are still needed for the act to ensure both functional equivalence and technological neutrality.

Hence, there is an urgent need to redefine the cyber laws in India as per International standards. There are few major areas in cyberspace in which many challenges have been cropped up on legal front. These areas are inherent challenges, Legal Challenges, technological challenges, Political and social challenges, practical challenges etc.

**Inherent Challenges:** In many countries the laws related to cyberspace have already been developed. U.S. and the West drafted their own legislations by either adapting their existing laws in the context of cyberspace or creating new laws in respect thereof. Determining jurisdiction and formation of e-contracts are two key issues on which traditional legal principles have been largely applied by Courts India enacted its first law on IT through the IT Act, 2000 based on the principles Elicit dated in the UNCITRAL Model law of e-commerce. It extends to whole of India and committed outside India by any person.

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**Legal Challenges: Jurisdiction** -Jurisdiction is the authority of a court to hear a case and resolve a dispute. The issue of Jurisdiction is highly conflicting and debatable in cyber law as to the maintainability of any suit which has been filed. It becomes more complicated largely on account of the fact that the internet is borderless. The notion of jurisdiction is rooted in territoriality from the point of view of both the court which can properly assert jurisdiction and from the point of view of the law that should be applied while deciding the dispute. In domestic transactions, a court will always have the jurisdiction to enforce their respective laws within their physical, geographical and political boundaries but the enforcement issues throws up several challenges when it comes to international transactions due to constant change in technology in borderless cyberspace. There have been various principles and test that lay down by the court in U.S. and U.K. which elaborated the scope of jurisdiction and the same is being followed by the Indian Court. However, the act still does not deal with some major legal issues such as Jurisdiction, protection of domain name, infringement of copyright law etc. This led the formation of various challenges before Indian Legal system.

Therefore, a practical approaches required to minimized the difficulties and for resolving all cyber disputes, happening in our cyberspace. Researcher has find out social media & Indian cyber law approach that, In India, there has been a lot of controversy over the last few months over Section 66A of the Indian Cyber law being the amended IT Act,2000 on different occasions.

In **Professor Amices Mahapatra case**, Professor Amices Mahapatra was arrested on account of forwarding of caricature/cartoons on Face book. Further, Ravi Srinivasan Twitter case showed how on a complaint, a person's tweets could be brought within the ambit of Section 66A of the amended Indian Information Technology Act, 2000.

In **K V Rao case**, two men K.V. Rao and Mayank from Mumbai were arrested for allegedly posting offensive comments against some leaders on their Face book group. The advent of the internet, transmission of information and transacting of business across borders, various issues related to cyberspace have cropped up on legal front. Some of the major issues are determination of jurisdiction, cybercrime, intellectual property, cyber forensic, E-commerce, Electronic Evidence, privacy and contract. One of the greatest lacunas for resolving these issues are the absence of comprehensive law anywhere in the world. The problem is further aggravated due to disproportional growth ratio of Internet and cyber law. Though a beginning has been made by the enactment of I.T. Act and Amendment made to Indian Penal Code, Indian Evidence Act etc, problems associated with regulation of cybercrime continues to persist-contracts are well suited to facilitate the re-engineering of business processes occurring at many firms involving a composite of technologies, processes, and business strategies that aids the instant exchange of information. The e-contracts have their own merits and demerits. On the one hand they reduce costs; saves time, fasten customer response and improve service quality by reducing paper work, thus increasing automation. With this, E-commerce is expected to improve the productivity and competitiveness of participating businesses by providing unprecedented access to an on-line global market place with millions of customers and thousands of products and services. On the other hand, since in electronic contract, the proposal focuses not on humans who make decisions on specific transactions, but on how risk should be structured in an

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automated environment. Therefore the object is to create default rules for attributing a message to a party so as to avoid any fraud and discrepancy.

Legal validity of E-Contract -Electronic contracts are governed by the basic principles elucidated in the Indian Contract Act, 1872, which mandates that a valid contract should have been entered with a free consent and for a lawful consideration between two adults.<sup>6</sup> It also finds recognition under section 10A of the Information Technology Act, 2000 that provides validity to e-contracts. Accordingly, both Indian Contract Act, 1872 and Information Technology Act, 2000 needs to be read in conjunction to understand and provide legal validity to e-contracts. Further, provisions of the Evidence Act, 1872 also provides that the evidence maybe in electronic form. The Supreme Court in Legal, Tax and Regulatory Analysis, August 2013, Nishith Desai Associates The Indian Contract Act 1872, Section 10 The Evidence Act 1872, Section recognizing the validity of e-transaction has held that e-mails exchanges between parties regarding mutual obligations constitute a contract. The Indian Contract Act, 2000 vis-à-vis E-transactions, The ICA, 1872 provides that where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on evidence adduced, to be [unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.<sup>9</sup> Consequently, in cases of dispute over e contracts the entity carrying out the e-commerce will have the onus to establish that there was no undue influence. Further, the Act also provides that the consideration or object of any agreement is unlawful when 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.<sup>10</sup> Thus, the entity is also required to keep these prerequisites in mind while entering into an E-transaction.

For Example, when a consumer visits a bookstore and inquires about the availability of an out-of-stock book, the Bookstore employee downloads a digital copy of the book and prints it along with cover. It is not an ecommerce retail transaction since agreement to purchase did not occur over an electronic network. However, the right to access document exist.

The following are the challenges which generally one has to face related to E- Contract:

1. **Jurisdictional Barriers-** It has been critically pointed out that some barriers across at the time of jurisdiction of issues related to above they are as following-
  - a. In the cyberspace, there is no geographical boundary. It establishes immediate long-distance communications with anyone who can have access to any website.
  - b. No judicial body exists to deal with legal commercial problems arising between citizens of different countries. The court while considering the scope of jurisdiction in International transaction,
  - c. India, all cyber law is governed by the IT Act. However, IT Act does not deal with some major legal issues including the issue of jurisdiction. It is well-established law in India that where

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more than one court has jurisdiction in a certain matter, an agreement between the parties to confer jurisdiction only on one to the exclusion of the other(s) is valid. In case there is no agreement, the respective court considers the balance of convenience and interests of justice.

**2. Cyber Crime** - Cyber-crime is a crime committed over the Internet. It could be against the government, property and against any person in various forms. Nowadays, the law enforcement agencies are facing difficulties in dealing with cyber-crime. In India, Information Technology Act, 2000 is the legislation that deals with issue related to cyber-crime. Today Cyber-crime is a bigger threat to India in comparison to physical crime. In a survey Conducted by National crime records Bureau, Ministry of Home Affairs shows that that cyber-crime is increasing every day in various forms.

**3. Contractual Difficulties** -Recently, India has emerged as a major player in the computer software and resources sector. Data shows that India will have the largest number of internet-users in Asia in near future. In all e-commerce, the validity and the formation of contract is very essential. The ITA deals with some contractual aspects in E-commerce. However, several practical problems arise when we form a contract.

#### **Conclusion:**

It may be concluded that where various steps of a contract have been affected through electronic means, the parties are at *consensus-id-idem* and such an agreement fulfils all the essentials of a valid contract under the Indian Contract Act, 1872 mentioned above, then, such contract is valid and legally enforceable. It is important to note that the Internet as with all path-breaking technological developments gives us all the opportunity to act as a global community, advertise and operate across all frontiers, over borders and beyond the control of any national government, but it also created serious problems, challenges for the legal world in all aspects of law due to its borderless nature. We need to promote and facilitate the fair use of cyber space among general masses, to educate civil society groups about the legal constitutional issues, to assure citizens regarding their concern on privacy, personal liberties, to make citizens aware of various kinds of commonly committed cyber offences such as Fraud, Identity Theft, Hacking, Phishing etc. and freedoms and also there is an immediate requirement of skilled investigators and trained judges for fair and effective dispute resolution. India needs to identify the possible areas of conflict and operational problems, to address various questions; issues' relating to cyberspace and the most appropriate way to start is the creation of a comprehensive legislation which should address broad area of cyberspace taking into consideration sectoral, institutional and individual requirements.

The proposed Communication Convergence Bill, 2001 could be a milestone in answering all these questions. The amendments in several laws by the IT Act are a good beginning but several changes are still needed for the act to ensure both functional equivalence and technological neutrality. International agreements by way of convention and cooperation are required for various dispute resolutions in International arena. There are already many research is going on for various email clients to control the spam's by using filters. In doing so we have examined the definition of spam, the

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user's requirements and the role of the spam filter as according to our need and specific requirements. There are comparisons are not easy, as benchmarks, measures, and methods for evaluating spam filters are still evolving.

For the securing e- Contracts such things must be consider that in spite of recent development in evaluation methodology, many uncertainties still remain which effect on filtering spam techniques and check the validity of spam filter evaluation techniques. Here we are going to advocate several prevalent filtering techniques and propose our work to acknowledge them. Therefore, when we uninterestingly click on an "I agree" button without even caring to see the terms or hurriedly tear the wrap of software CD being least interested about the terms typed on it, we have to think twice. They all are valid contracts which matters a lot.

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## Reference

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