

# E-COMMERCE CONTRACT: CHALLENGES FROM BUSINESS PERSPECTIVE

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## ABSTRACT

*The study objective is to identify the situations that could have been improved through implementation of various concepts of Ecommerce contract and related theories. In E-commerce contracts is the need for parties to be able to form valid and legally binding contracts online. How E-contracts can be formed, performed, and enforced as parties replace paper documents with electronic media. Outlines the significance of communication and need for improved communication. In the modern world, the advanced means of communication (the computer, the internet, and the cyberspace) have collectively brought revolution in the field of information technology, which, in turn, has radically changed the life styles of people.*

## MINI REVIEW

Advancements in the field of IT have a deep impact on the economy of a country and also on the quality of human life. One of the chief areas wherein the information technology has made a tremendous impact is 'business and commerce'. Information technology has created novel ways in which businesses can relate to their customers, suppliers, partners and investors. Contract law, which forms the fundamental premise for any commercial or business enterprise, could not keep itself aloof from these developments. With the advent of information technology, companies and other business houses started using information technologies to prop up their trading relations. Consequently, there has been a shift from 'paper-based transactions' to 'electronic transactions'. Accordingly, in trading relations, supported by modern information technology, traditional paper-based contracts are not found to be very efficient and effective instrument in so far as time and expenditure (transactional costs, etc) are concerned; and hence, electronic contracts have become a necessity. From the standpoint of contract law, it is the most appropriate time to understand the structural changes that are possible in this new world of business relationships and the emerging legal issues governing them.

**Offer and Acceptance:** The Information Technology Act, 2000 ("IT Act") deals with contractual aspects however, since the IT Act is only an enabling Act, it is to be read in conjunction with the Indian Contracts Act, 1872 ("Contract Act"). Formation of any contract, under the Contract Act, would involve three main ingredients. a) An offer, b) an acceptance and c) Consideration for the contract. These parts would be applicable to e-contracts.

**Online Identity:** Transactions on the Internet, often occur between parties which may raise concerns of the person's identity with respect to issues of the person's capacity, authority and legitimacy to enter the contract. The regulatory framework with respect to digital signatures is governed by the provisions of the IT Act.

**Security:** Security over the Internet is of vital importance to promote e-commerce. A company could face security threats externally from hackers, viruses and Trojan horses as well as internally from its technical staff and employees which can be maintained by using security tools such as access codes / passwords, encryption, firewalls, virus scans and biometrics.

**Authentication:** Different authentication technologies have progressed over a period of time to ensure the identity of the parties entering into online transactions.

**Privacy and Data Protection:** Every e-commerce website is to maintain the privacy of its users. Use of innovative technologies and lack of secure systems makes it easy to obtain personal and confidential information about individuals and organizations. Privacy concerns have also been raised regarding the Internet Corporation for Assigned Names and Numbers, which is a publicly searchable resource used to determine the identity of domain name registrants. Privacy groups criticized the company for selling information about its registrants, arguing that many of them are individuals who never agreed to having their information sold as a commodity when they signed up for the service.

Now at present, there exists no legislation in India that upholds the privacy rights of an individual or organization against private parties. The Constitution of India upholds the right to privacy as a fundamental right of every citizen; the right is exercisable only against a State action. Even the IT Act addresses the issue of protecting privacy rights only from Government action.

The protection of intellectual property rights ("IPRs") is a challenge and a growing concern amongst most e-businesses. Some of the significant issues that rise with respect to protective IPRs in e-commerce are: a) Copy-right, b) Patent, c) Trade mark, d) Trade Secret, e) Design.

A company that commences e-commerce while registering domain names, if the company chooses a domain name that is similar to some existing trademark of a third party, the company could be held liable for cybersquatting. Over the past few years, domestic and international forums have handled and decided numerous cybersquatting disputes. According to the traditional rules of private international law, any content placed on a website should be reviewed for compliance with the laws of any jurisdiction where an organization wishes to market, promote or sell its products or services as it may run the risk of being sued in any jurisdiction where the goods are bought or where the services are availed.