# E-COMMERCE LAWS IN THE INDIAN PERSPECTIVE

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***Abstract***

*Electronic commerce offers exceptional opportunities for the economic development of India, with its huge pool of technology skilled, English speaking manpower. However the growth of e-commerce will depend on the concomitant advancement of a consistent legal and regulatory framework able to cope with ensuring rights and obligations in a virtual environment. A number of developing countries have pursued policies to formulate consistent legal and regulatory framework to support electronic transactions across state, national and international borders. Besides developing the e-infrastructure in the country through effective Telecom Policy measures, the Indian Government is taking appropriate steps as confidence building measures for the growth of e-commerce. It has created the necessary legal and administrative framework through the enactment of Information Technology Act 2000, which combines the e-commerce transactions and computer misuse and frauds rolled into an Omnibus Act***.**

*Key Words:* E-Commerce, Legal, IT Act 2000, India

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A facilitative and legal framework is *sine qua non* for the promotion and development of technology like electronic commerce (Mehta, 2004)[1]. Besides developing the e-infrastructure in the country through effective Telecom Policy measures, the Indian Government is taking appropriate steps as confidence building measures for the growth of e-commerce. It has created the necessary legal and administrative framework through the enactment of Information Technology Act 2000, which combines the e-commerce transactions and computer misuse and frauds rolled into an Omnibus Act. While on the one hand it seeks to create the Public Key Infrastructure for electronic authentication through the digital signatures, on the other hand, it seeks to build confidence among the public that the frauds in the cyber space will not go unpunished. The Controller of Certifying Authority (CCA)[2] has been put in place for the effective implementation of the IT Act, 2000. The Act also enables e-governance[3] applications for the electronic delivery of services to the public, business and government.

**The Information Technology Act, 2000 and E-Commerce**

The Information Technology Act 2000[4] is based on the Model Law on E-Commerce adopted by the United Nations Commission on International Trade Law (UNCITRAL)[5] 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 (Sumanjeet and Mahlawat, 2004)[6].

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[7]. The Act comprises of the three significant aspect 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, 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, establishment of the Adjudicating Authority and the Cyber Regulatory Appellate Tribunals*

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 the 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 (Duggal, 2000)[8].

By virtue of the recognition given to the electronic records, electronic documents and electronic signature, consequal amendments have been made in some existing laws. The Act amends the Indian Panel Code, 1860[9], the Indian Evidence Act, 1872[10], Banker's Book Evidence Act, 1891[11] and the Reserve Bank of India Act, 1934[12], and for the matters connected therewith or incidental thereto. The main purpose of theses amendments is to address the related issues of electronic commerce, electronic crimes and evidence, and to enable further regulation as regards electronic fund transfer.

**Security Provisions of the IT Act, 2000**

One of the most important issues in the context of e-commerce relates to the security of business and commercial transactions. A security threat in term of Internet has been defined as a circumstance, condition or even with the potential cause economic hardship to data/network resources in the form of destruction, disclosure, modification of data, denial of services, fraud and abuse.

The IT Act 2000 not only amends the Indian Panel Code to bring within its scope conventional offences committed electronically, but also creates a new breed of information technology offences, the prevention of which are incidental to the maintenance of a secure electronic environment for e-commerce. To make e-commerce transactions safe and secure, the IT Act 2000, provides for investigation, trail and punishment for certain offences (these offences are found in Chapter XI of the Act) like source code attacks (section 65), hacking (section 66), obscenity (section 67), failure to comply with the controller's directions (section 68), subscriber's failure to Controller's requirement for decryption (section 69), accessing designated protected systems (section 70), misrepresentation to CCA (section 71), breach of privacy/confidentiality (section 72), publishing false digital signature certificate (section 73), making available digital signature for the fraudulent purpose (section 74) and section 75 of the IT Act deals with the offences or contravention committed outside India which reads as[13]:

- *Subject to the provision of sub-section (2), the provision of this Act shall apply also to any offences or contravention committed outside India by any person irrespective of his nationality.*
- *For the purpose of sub-section (1), this Act shall apply to an offences or contravention committed outside India by any person if the act or conduct constituting the offences or contravention involves a computer, computer system or computer network located in India.*

**Readiness of E-Commerce Laws in India**

The IT Act 2000, in spite of being a special regime for e-commerce, has done little to achieve the objective stated in its preamble. In the current form the Act is

completely inadequate as it has several drawbacks and gray areas. Still, there are many important issues and areas, which are very important for the promotion and development of e-commerce in India and they are not covered by the IT Act, 2000. The issues and areas, which are not touched/covered by the IT Act, 2000, are (Sumanjeet and Mehlawat, 2004)[14]:

- *Electronic payment and how electronic transactions are going to be made.*
- *Intellectual Property Rights*[15]
- *Negotiable instruments such as cheque, banker's orders, pay orders etc.*
- *E-taxation*
- *Right and liabilities of the domain name*[16] *holders- the most basic starting point for anyone interested in e-commerce business.*
- *WAP (Wireless Application Protocol)*[17] *and Mobile Commerce.*
- *Protection of e-consumers and*
- *Privacy Issues*

Indian law is also silent on the most important issue on the domain name dispute. Domain names are registered on the first come first served basis and in such cases, much depend on the observations of the courts. There is no specific Indian law on domain names except the judicial pronouncements, which have reiterated the principles of law that domain names are valuable property and are entitled to trade mark protection.

Another very important issue in e-commerce is that relating to content. If any site contains material that is lascivious or appeals to the prurient interest of internet users, the uploading of the material will distinctly attract the provision of Section 67 of the Information Technology Act 2000 and such an act will be liable for the punishment. In case of copyrighted material, if uploaded without permission, there is nothing that can be done against the person under the IT Act, 2000. But the aggrieved party can file a suit in the civil court for injunction under provisions of the Copyright Act. A criminal complaint under the Indian Copyright Act, along with the provisions of the Indian Panel Code, could also be preferred.

Added to these, jurisdiction problems are likely to arise as the Act applies to both the Indian and foreign citizens. The laws are presently covered under the civil procedure not criminal procedure, making the enforcement process very slow. This deters the companies from approaching the cyber crime cell. Some definitions in the Act are vogue and cause problems to the plaintiff. Last but not the least; the Act does not lay down parameters for its implementation.

## Concluding Remarks

As more and more business activates are carried out by the electronic means, it has become more and more important that evidence of these activities should available to demonstrate legal rights and obligations that flow from them. India is among the first few countries, which have passed a separate law enabling e-commerce and other IT enabled services. The IT Act, 2000 is quite comprehensive and well defined. But there are many important issues of e-commerce (e.g. Intellectual Property Rights, Data Protection, Domain Names Disputes, Electronic Payment System, Data Protection, Protection of E-Consumers, Privacy and E-Taxation), which are important for the development of this new technology, but not covered by the IT Act 2000. Added to these issues, the Act is a set too far, the over complex provisions relating to contract formation, the ties to

particular technology in the regulation of digital signatures, the over elaborate mechanisms for controlling certification authorities and the attempts to define the technology stand in stark contrast to more minimalist approaches adopted in other jurisdictions. Unless all these legal issues are dealt with, e-commerce cannot really take off in India.

## Notes and References

[1] Mehta, P.L. (2004), *"Cyber Crime Law in India: Some Reflections",* Indian Socio-Legal Journal, p 119.

[2] Chapter IV of the IT Act, 2000 deals with the regulation of Certifying Authorities. The Central Government may appoint a Controller of Certifying Authority who shall exercise the supervision over the Certifying Authority. The Certifying Authority means a person who has been granted a license to issue Digital Certificates. The Controller of Certifying Authority shall have the powers to lay down rules, regulations, duties, responsibilities and functions of the Certifying Authority issuing Digital Signature Certificates. The Certifying Authority empowered to issue a Digital Signature Certificate shall have to procure a license from the controller of Certifying Authority to issue Digital Signature Certificates.

[3] Chapter III of the IT Act, 2000 deals with the electronic governance. Where any law provides submission of information in writing or in the type written or in the printed form, from now onwards it will be sufficient compliance of law, if the same is sent in electronic form. Further, if any status provides for affixation of signatures in any document, the same can be done by the means of Digital Signature.

[4] In May 2000, both the houses of the Indian Parliament passed the Information Technology Bill. The Bill received the assent of the President of India in August 2000.

[5] UNCITRAL Model Law, 1996 states that in the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by the means of "data message". Valid contracts can therefore, be formed where offer and acceptances is conveyed via the Internet.

[6] Sumanjeet and Mahlawat, Sameer (2004), *"E-Commerce in the Indian Legal Regime*", Indian Journal of Applied Economics, Vol. 1, No. 1, pp 176-181.

[7] Taxmann's IT Act (2000), *Information Technology Act 2000,* New Delhi: Taxmann's Allied services Ltd.

[8] Duggal, Pavan (2000), *Cyber Law India- An Analysis*, New Delhi: Saaksharth Publication.

[9] The Act makes numerous amendments to the Indian Panel Code. By the virtue of section 91 of the IT Act, the amendments to the IPC, as described in the first schedule of the IT Act, take effect. Most of these amendments are in the nature of recognizing the validity of electronic documents and electronic signatures. They amend existing IPC offences such that these offences will also be punishable if committed with regard to electronic counterparts.

[10] The key provision that are showed to be made in the Indian Evidence Act relate to widening of the scope of the term "document" to include electronic records. Most important, section 65 B recognizes admissibility of computer outputs in media, paper,

and optical or magnetic form. There are detailed provisions related to the admissibility of computer output as evidence. New section 73 (A) prescribes procedure for verification of digital signatures. New section 85 (A) and 85 (B) creates presumption as regards electronic contracts, electronic records and digital signatures, digital signature certificates and electronic message.

[11] The Banker's Book Evidence Act has been amended in the manner specified in the 3rd schedule to the Act (Section 93).

[12] The Reserve Bank of India Act, 1934 has been amended in the manner specified in the 4th schedule to the Act (Section 94).

[13] Mittal, D.P. (2000), *Taxmann's Law of Information Technology*, New Delhi: Taxmann's Allied Services Ltd.

[14] Sumanjeet and Mehlawat, Sameer (2004), *"E-Commerce in the Indian Legal Regime",* Indian Journal of Applied Economics, Vol 1, No 1, pp 176-181.

[15] For details see, Sumanjeet and Dalal, Ashok (2004), *"Intellectual Property Rights in the age of Information Technology",* M D University, Law Journal, Vol. 9 No 1&2, pp 114-123.

[16] Every computer that hosts data on the Internet has a unique numerical address. A domain name always has two or more parts separated by dots and typically consist of some form of an organization's name and a three letter or more suffix. For example, the domain name for IBM is "ibm.com"; the United Nations is "un.org."

[17] Wireless Application Protocol or WAP, is the de facto worldwide standard for providing Internet Communication and advanced Telephony services on digital mobile phones, pagers, personal digital assistant and other wireless terminals. Wireless Application Protocol is a standard developed by the WAP Forum, a group founded by Nokia, Ericsson, phone.com (formerly Unwired Planet) and Motorola. WAP defines a communication protocol as well as an application environment. In essence it is a standardized technology for cross-platform, distributed computing. (Accessed on: http://www.auditmypc.com/acronym/WAP.asp)