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Introduction

Information is the data put into a meaningful and useful context. The term generally means news of events or knowledge communicated by others. In this context information refers to ‘facts or figures ready for communication and use as distinguished from those incorporated in a formally organised branch of knowledge’, denoted by the term ‘data’. It also means a ‘signal purposely impressed upon the input of a communication system or a calculating machine’.¹ It is, in short, a source of knowledge, a vital resource in developmental activities of any society or nation.

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We see tremendous and spectacular growth in information technology right after the invention of the first computer ENIAC (Electronic Numeral Integrator and Calculator) machine developed in the United States in 1946. The invention of transistors\(^2\) and the consequent commercialisation of computers, especially that of personal computers.\(^3\) With the introduction of internet facilities, communication became cheaper and faster. The launching of the first artificial satellite Sputnik in 1957 and the establishment of the Advanced Research Projects Agency (ARPA)\(^4\) in the USA in 1958 further precipitated the developments in science and technology concerning military applications. Since many countries gradually developed computer networks, sending messages without outside world obstacles became easier. This initial network was the ARPANET.\(^5\)

The internet facility was introduced in India in early 1990 by the Department of Telecommunications (DoT). The Government of India issued an Internet Policy on 20 October 1997. Information technology explores itself and expands into new paradigms and reveals new facets each day. The internet, which is a composition of several thousand networks, is the fastest growing network in history, and with this, communication becomes more rapid and cheaper. Therefore, people rely, more and more, on the electronic media to meet their everyday needs. The electronic media has taken commerce and contracts to new horizons, developing new styles called e-commerce and e-

\(^2\) William Shockley, John Bardeen and Walter Brattain are credited with the invention of transistor in 1948.

\(^3\) The first computer of this type, the ‘Altair’ was made in the year1975. In 1977 two American students, Steven P. Jobs and Stephen G Wozniak founded the Apple Computer Company in the United States. The same company later produced Apple II, which was cheaper and affordable and this made computer more popular.


contracts. The various governments became obliged to provide necessary laws to safeguard the enforceability of such agreements. We shall see in brief the different aspects of e-commerce and electronic contracts.

1. **Cyberspace**

The word ‘cyberspace’ means ‘the imaginary place where electronic messages exist while being sent between computers’. The term ‘cyber’ originates from the Greek *kybernan*, meaning 'to steer' or 'to govern'. ‘Cybernetics’ is the comparative study of the automatic control system formed by the nervous system and brain and mechanical-electrical communication systems and devices as computers or thermostats. Cyberspace refers to an electronic medium or the virtual world created by the computer to facilitate online communication. Such communication is made possible through an extensive computer network made up of many worldwide computer sub-networks that employ Transmission Control Protocol/Internet Protocol (TCP/IP) to aid in communication and data exchange activities. It is the imaginary location where people can engage in conversation.

2. **E-Commerce**

We see the gradual development of the internet and its expansion into the commercial world. The largest single sector of the internet has

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6 “Cyberspace” in, *New Oxford Advanced Learner’s Dictionary*, University Press, Oxford, 2011. It is said that William Gibson first used the term in his science fiction novel *Necromancer*, published in 1984 to describe the online world of computers and the constituents of society that use these computers.


the domain name COM (Commercial). Commercial activities conducted through electronic media is generally termed e-commerce or electronic commerce.\(^{10}\) It is understood to mean the distribution, marketing, sale or delivery of goods and services by electronic means. An E-commerce may include business transactions between two business entities, a business entity and a consumer, a consumer and a business entity, the business entity and the government, and the like. All the stages of a commercial transaction beginning from advertisement, the offer of goods, searching for goods, ordering and payment and finally, the delivery of goods, are all conducted through electronic media. The development of technology has facilitated this type of commerce recently.\(^{11}\)

In short, the whole gamut of commercial activities taking place in the cyber medium can be called e-commerce. As R.K. Singh points out, ‘electronic contracts are born out of the need for speed, convenience and effectiveness.’\(^{12}\) Internet is an accessible, user-friendly, cost-effective and efficient means of transacting business.

The unlimited possibilities of the internet are made use by the corporate, to reach every nation on earth through the World Wide Web. Since in e-commerce, the parties never meet each other face to face in e-commerce there may arise obvious trust issues. It is the law’s concern to ensure that people conduct business legally and that the parties act lawfully in such commercial activities.\(^{13}\)

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\(^{10}\) Today e-commerce through mobile phones has tremendous growth that it is recently termed as m-commerce or mobile commerce.


3. **Electronic Payment**

E-payment means different modes of online payment today, such as internet banking, credit cards, digital cash, Stored Value Cards (SVCs) (including smart cards), email payments, electronic wallet, and virtual wallet e-cheques, mobile payments, and the like. The e-payment helps the electronic transfer of value between the parties and makes e-commerce transactions easy and effortless. A paramount concern when using such electronic payment systems is security, such as ensuring secure payment, keeping the customer’s personal information, and the like. These security issues are to be effectively addressed ‘without losing all of the benefits that accrue from the Internet’s open structure.’

4. **Benefits of E-commerce**

E-commerce has quickly become a way of life, revolutionising the way consumers buy goods and services. E-commerce helps to customise the goods and services according to customer requirements. With the introduction of the virtual market, a single physical market place has become irrelevant. The operational costs and the cost of creating, processing, distributing, storing and retrieving paper-based information and advertising costs have decreased considerably. A customer has innumerable possibilities to get information regarding a product online and quick access to consumer reviews on consumer websites and blogs. Cheap internet facilities and net banking facilities and lower costs of e-payments have given further impetus to e-commerce. Other benefits include 24-hour access, more choices, price comparisons, improved delivery process, among others. People now

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have access to their money and what they need to buy from home using a mobile.

5. E-Contracts

During e-commerce, a person may conclude several contracts as part of the business transactions. Such agreements, using email or other electronic means, can be between a customer and a seller or a business entity or between an individual and an electronic agent, such as a computer program, or between two electronic agents programmed to recognise the existence of a contract.\(^{15}\) Though created, wholly or partly, in electronic form, rather than in a paper-based deal, it is an enforceable agreement.\(^{16}\) These contracts will have all the requirements of contract such as offer, acceptance or consideration.

5.1. Means of Making E-Contracts

E-contracts are those agreements which make use of electronic media. There are various ways of making e-contracts. The important ones are the following:

5.1.1. E-contract through Website

Many e-contracts take place through simple sale contracts online. The most common form of such agreement is a “click-wrap” contract in which a user has to click on “I agree” or “I accept” button after registering his details and contact information. The user is supposed to read the terms of service, privacy policy and disclaimers mentioned.


\(^{16}\) R.K. Singh, *Electronic Contracts*, p. 87. Though the expressions ‘e-contracts’ and ‘online contracts’ are synonymously used, it must be noted that e-contract is a broader expression, which includes within its ambit ‘online contract’. E-contracts may be concluded by exchange of any type of electronic record, such as MP3 audio file, Short Message Service (SMS), Multimedia Message Service (MMS) or emails, using a mobile phone, computer or similar devices. They are, generally, used to connote contracts (including all their implications) that emerge on account of transactions.
on the website before clicking on “I agree” or “I accept” button. There are possibilities of making payments online using a credit card or through net banking. Some distributors give the option of pay on delivery. The order is to be confirmed by the purchasing party as per the terms and conditions. On accepting the terms and conditions, the transaction is complete. One may terminate the transaction by clicking ‘I decline’ icon.

There is another mode of contract called “browse-wrap” contracts, in which the terms of the agreement are generally accessible through a hyperlink. However, unlike “click-wrap” contracts, mere browsing on the website may constitute consent, which results in the conclusion of the contract without the users being aware of it.¹⁷

Still another mode of e-contract is the “shrink-wrap” contracts. The terms and conditions of the agreement are displayed on the box in which the product is sold. The purchaser must read the terms and conditions before he/she opens the box. The use of the product or the failure to return it to the seller will result in the conclusion of the contract.¹⁸

5.1.2. E-Mail Contracting

Here the parties negotiate over the terms via email and once they agree, i.e., after the acceptance of a valid offer by a customer, the contract is concluded. The email messages serve as the document for the offer and the acceptance of the terms conditions. An online signature can confirm the agreement.¹⁹

¹⁷ However, in India, the Consumer Protection (E-commerce) Rules 2020, Rule 4 (9) requires that for recording the consent of a consumer for the purchase of any good or service offered on its platform an explicit and affirmative action on the part of the consumer is needed. Consent cannot be recorded automatically, including in the form of pre-ticked checkboxes.

¹⁸ Seth, New Technology Laws, pp. 64-68.

¹⁹ Seth, New Technology Laws, p. 70.
5.1.3. Other means of e-contracts

We may refer to Electronic Data Interchange (EDI), which is concluded between two computers, exchanging information or data in electronic form without any paperwork. Data is formatted employing standard protocols and is frequently used to transmit standard purchase orders, acceptances, invoices, and other records. Still, another possibility of e-contract is through electronic agents. One may instruct the computer to carry out transactions robotically without any human involvement. For example, when something becomes out of stock, the computer having the stock list contacts the supplier’s computer and orders replacement in a supermarket. The order, acceptance, as well as the print outs of the worksheets and delivery sheets for supply, are made automatically.

6. Enforceability of E-Contracts in India

E-contracting, as we have seen, is the practice of forming enforceable agreements through electronic media. The legal force of a contract depends upon the law that governs the contract. Its enforceability relies on the law of the place in which one is attempting to enforce it. There may be numerous differences found among various legal systems. Some of these may have a considerable impact on the validity and enforceability of a contract in or under the laws of the country or countries applying such a system.

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21 Singh, *Electronic Contracts*, p. 91. In these types of electronic contracting, which are not quite regular or frequent in India, the courts have not given a clear answer regarding their legal status. However, if the computer tool is programmed with the owner’s authority and consent the intention to take up the contractual responsibility is to be presumed (Alan Davidson, *The Law of Electronic Commerce*, Cambridge University Press, 2009, p. 73). The rules regarding agency may be applied here.
22 As per the Indian Contract Act, 1872, section 2 (h) only those agreements enforceable by law is called a contract.
Regarding binding contracts, civil law and common law based jurisdictions\(^{23}\) tend to apply different criteria. In any contract, the intention to create a legal obligation is essential. An offer from one party and the acceptance from the other party of such offer indicate the conclusion of any contract.\(^{24}\) If the second party proposes modifications to the proposal, that is considered a counter-proposal or offer. It is up to the other party to accept this or put forward yet another counter-proposal. The contract is concluded when there is *consensus ad idem*, i.e., meeting minds on the same matter and under the same terms and conditions.\(^{25}\) As per the civil law jurisdictions, as soon as the formal requirements for establishing a contract have been complied with, a contract becomes binding. Here also the intention of the parties to bind themselves to specific terms is essential. So even those terms are to be sufficiently clear to create binding obligations.

\(^{23}\) There are two types of legal systems in the world: The first one, the common law system, in which the applicable law consists not only of written legislation but also of the body of case decisions rendered by learned judges over the centuries to interpret such written legislation. Common law judges rely on their predecessors’ decisions to guide them in applying the law. This system is based upon English law and is practiced in the UK, the US, Australia, New Zealand and other countries once under the influence of the UK or other common law jurisdictions, such as Hong Kong, Singapore, Malaysia, India and parts of Africa and the Pacific Islands (For an extensive reading on Common Law: Roscoe Pound, *The Spirit of the Common Law*, New Brunswick, N.J.1999). The second one, the civil law system, is based primarily on written laws and regulations only, combined with an underlying duty of good faith. This system has its origins in Roman law, and it sets out a comprehensive system of rules, usually codified, that are applied and interpreted by judges. This is practiced in most European countries and those jurisdictions once under their influence and a few others as well (See “Civil Law (legal system)”: http://www.newworldencyclopedia.org/entry/Civil law, accessed on 20 June 2020).

\(^{24}\) As per section 2 (a) of the Indian Contract Act, 1872, when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinance, he is said to make a proposal. The proposal when accepted becomes a promise (section 2 (b)). The person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee” (section 2 (c)).

\(^{25}\) The Indian Contract Act, 1872, section 13 defines “Consent” as follows: “Two or more persons are said to consent when they agree upon the same thing in the same sense.”
6.1. Recognition and Validity of E-Contracts in India Under Information Technology Act, 2000

The preamble of the IT Act, 2000 clearly states that it aims “to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as “electronic commerce”, which involve use of alternatives to paper-based methods of communication and storage of information,... .” The 2008 amendment to the Information Technology Act (IT Act), 2000 introduced section 3A to insert the possibility of electronic signature. As per section 5, the requirement for a signature is fulfilled by authentication through an electronic signature.26 According to section 4 of the Information Technology Act, 2000 the requirement to provide any information in writing or typewritten or printed form shall be deemed to have been satisfied if the information is made available in an electronic format and made accessible for use for a subsequent reference.27 Section 10A provides a greater acceptance to the electronic contract. It establishes, without doubt, the enforceability of such agreements. The statement that a contract will not be declared unenforceable only because it has used electronic means to enter into it supports this argument.28 However,

26 See IT (Amendment) Act, 2008, Act 10 of 2009, sections 2, 5 and 6, (w.e.f. 27-10-2009).

27 In Golden Ocean Group Ltd v Salgaocar Mining Industries [(2012) EWCA Civ 265 (CA)] the issue was whether a contract of guarantee was enforceable where it was contained not in a single document signed by the guarantor, but in a series of documents, i.e. chain of emails. The Court of Appeal, upholding the High Court’s ruling said that an enforceable guarantee could be created by a series of emails authenticated by the online signature of the guarantor.

28 It was inserted by IT (Amendment) Act, 2008, Act 10 of 2009, section 9. Section 10 A states: “ 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.” In Shaktibhog Foods Ltd. v Kola Shipping Ltd (2009 (2) SCC 134, AIR 2009 SC 12) the Supreme Court admitted the validity of contract entered into through exchange of emails. The Court held that according to the provisions made under
while resorting to such electronic means the context and circumstances are to be taken into account.29 Even if a signed agreement between the parties is lacking, various documents duly approved and signed by the parties in the form of exchange of emails or other means of telecommunication suffice to prove the existence of a concluded contract.30 The sections 11, 12 and 13 of IT Act, 2000 deal with electronic records, acknowledgement of receipt of such documents and the time and place of its dispatch and receipt. The existence of all these norms further ascertains the validity of e-contracts.31

There is no provision in the IT Act, 2000 regarding contracts made through an automated process using Electronic Agents. However, section 11 of the IT Act, 2000 establishes that an electronic record

Section 7 of the Arbitration and Conciliation Act, 1996 the existence of an arbitration agreement can be inferred from a document signed by the parties, or an exchange of letters, telex, telegrams or other means of telecommunication, which provide a record of the agreement. This is an appeal by special leave against the judgment and order dated 15 June 2007 of the High Court of Andhra Pradesh (CRP No. 6618 of 2006), whereby the High Court had affirmed the order dated 30 November 2006 of the III Additional District Judge, Kakinada in IA No. 3861 of 2005 arising out of OS No. 34 of 2005 allowing an application filed by the respondent under section 45 of the Arbitration and Conciliation Act, 1996.

29 In Dr. Mandeep Sethi v Union Bank of India [AIR 2013 P&H 82, (2013) 170 PLR 137]) though the Court held the e-auction to be valid as per Sections 4 and 10 A of the Information Technology Act, 2000, the Debt Recovery Tribunals were directed to adopt the process of e-auction preferably in the case of properties in municipal areas where many people are IT literate, and computer and internet are accessible.

30 In Trimex International Fze Limited, Dubai v Vedanta Aluminum Ltd [(2010) 3 SCC1: (2010) 1 SCC (Civ) 570: (2010) 2 CTC 581 (SC)] the Supreme Court recognized the formation of the contract through the exchange of emails. The Court ruled that once a contract was concluded orally or in writing, the mere fact that a formal contract had to be prepared and initialed by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract had never been initialed.

31 Here we see the expressions ‘originator’ and ‘addressee’ unlike the terms ‘promisor’ and ‘promisee’ in the Indian contract Act, 1872. Here one has to take notice that the originator and addressee of an electronic record need not always be the same as a promisor and promisee in a contract. The former terms refer only to the parties involved in the electronic communication process (See Singh, Electronic Contracts, p. 147).
sent by ‘an information system programmed by or on behalf of the originator to operate automatically’ can be attributed to the originator.\textsuperscript{32}

6.2. Validity of E-Contracts As per the Indian Contract ACT, 1872

There are provisions in the Indian Contract Act, 1872 on invalid/void contracts due to vitiating elements like coercion, undue influence, fraud, misrepresentation or mistake. In India, electronic contracts are held to be valid and enforceable, provided they satisfy the requirements of the law regarding valid contracts. As per section 14 of the Indian Contract Act, 1872, valid consent for a contract requires that it be free from the vitiating elements such as coercion, (defined in section 15), undue influence (defined in section 16), fraud (defined in section 17), misrepresentation (defined in section 18) or mistake (subject to the provisions of sections 20, 21 and 22). Section 23, which deals with lawful considerations\textsuperscript{33} and objects, is also applicable in e-contracts.

Section 23 of the Indian Contract Act, 1872 deals with unlawful consideration, which renders a contract void. A consideration or object of an agreement is unlawful in the following circumstances: 1) it is forbidden by law; 2) it is of such a nature that, if permitted, it would defeat the provisions of any law; 3) it is fraudulent; 4) it involves or implies, injury to the person or property of another; 5) the court regards them as immoral; 6) it is opposed to public policy. Even if the considerations and objects are only partially illegal, the agreement will be void as per section 24.

\textsuperscript{32} The IT Act, 2000, section 11 (c).
\textsuperscript{33} The Indian Contract Act, 1872 defines consideration as follows in section 2 (d): “When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.”
6.3. Acceptance, time and place of E-contracts

As per section 4 of the Indian Contract Act, 1872, “the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. The communication of an acceptance is complete, as against the proposer when it is put in the course of transmission to him, so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.” One may revoke a proposal at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. One may revoke an acceptance at any time before the communication of the acceptance is complete as against the acceptor, but not after that.\textsuperscript{34} To be concrete, if a person proposes, by a letter sent by post, to sell his house to another person, he may revoke his proposal at any time before or at the moment the acceptor posts his letter of acceptance, but not afterwards. The acceptor may also revoke his acceptance at any time before or at the moment the letter communicating acceptance reaches the person who made the proposal, but not afterwards. This is generally called the postal rule. However, the postal rule is inapplicable to email messages, since the latter is instantaneous. We find the reflection of this principle in sections 12 and 13 of the IT Act, 2000.

The Information Technology Act, 2000, section 13 (2) allows the originator and the addressee to make a specific agreement regarding the time of receipt of an electronic record. If there is no such agreement, the law establishes that if the addressee has designated a computer resource for receiving electronic records receipt occurs when the electronic record enters the selected computer resource. Suppose the electronic record is sent to the addressee’s computer resource that is not the designated computer resource. In that case, receipt occurs at the time when the addressee retrieves the electronic record. If the addressee has not designated a computer resource along with

\textsuperscript{34} The Indian Contract Act, 1872, section 5.
specified timings, receipt occurs when the electronic record enters the addressee’s computer resource. The proposer may revoke the proposal before the addressee transmits the acceptance. The addressee can revoke his acceptance before such acceptance comes to the knowledge of the originator. In short, a contract through computer internet is complete only when an endorsement is received at the end of the originator.35 Here, in contrast with the Contract Act, “an acceptance would be binding on the offeree as soon as the acceptance enters an information system outside the control of the offeree.”36

As per the postal rule adopted in the Contract Act, a contract is concluded where the letter of acceptance is posted. However, in instantaneous communications, the Indian courts have held that the contract shall be formed where the communication of acceptance is received.37 As per section 13 (3) of the IT Act, 2000, if there is no other specific agreement 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. It is considered to be received at the place where the addressee has his place of business. If the originator or the addressee has more than one place of business, the principal place of business shall be the place of business. If the originator or the addressee does not have a place of business, his usual place of residence shall be the place of business. Concerning a body corporate, the usual place of residence means the place where it is registered.38 In short, the regular place of business or residence of the sender and the recipient is the place of dispatch and receipt as per the law, irrespective of the actual place of receipt (which may be a cyber café or any other place other than office or residence).

35 As per the IT Act, 2000, section 2 (za) an originator means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary.
36 Karnika Seth, New Technology Laws, pp. 77-78.
6.4. Authentication through electronic signature

Authentication means establishing a person’s identity, for which usually a signature is used to give validity to a written agreement. E-signature gives legal validity and authentication to an e-contract. Section 3(1) and (2) of the IT Act, 2000 provide for authentication of electronic records through digital signatures using ‘asymmetric cryptosystem and hash function which envelope and transform the initial electronic record into another electronic record’. Section 3 A, which was added in 2009, allowed authenticating an electronic record by such electronic signature or electronic authentication technique which is considered reliable. The electronic authentication assures an environment of trust and confidence in electronic transactions. Since the internet is an open network, authentication tools can provide greater security and authenticity. However, in a country like India, where the digital divide is conspicuous, prescribing conditions for the reliability of electronic signatures will be a challenging task.

Today e-commerce is facilitated by e-signature in online transactions. Electronic signature has vital importance in the cyberspace, especially when it comes to the matter of e-contracts. However, the IT Act, 2000 does not apply to transactions such as a negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881, a power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882, a trust as defined in section 3 of the Indian Trust Act, 1882, a will as defined in clause (h)
of section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called and any contract for the sale or conveyance of immovable property or any interest in such property. However, for registration of ownership of immovable property, retina scanning is being adopted as a means of authentication. Some government offices use the digital sign on electronic digipad for authentication and identification. In short, the electronic signature has vital importance in the cyberspace, especially when it comes to e-contracts.

6.5. Jurisdictional Issues

Jurisdiction means the power of a court of law or an official has to carry out legal judgments or enforce laws. In other words, it is the power, right, or authority to interpret and apply the law. In disputes, for a court to adjudicate in a case, the court must have power over the subject matter in dispute (subject matter jurisdiction) and authority over parties before the court (personal jurisdiction). “Jurisdiction is the extent of the power, authority and competency of a court to entertain suits, to enquire into the facts, to apply law/s to the case, to pronounce a judgment and to carry it into execution.” The basis of jurisdiction can be either the nationality, domicile, presence or residence in a geographical area, possession of the property in a specific geographical area of the parties in a dispute, or the place of the cause of action. Jurisdiction involves the three prerequisites such as jurisdiction to prescribe, to adjudicate and to enforce laws.


As already mentioned, jurisdiction can be *in personam* or personal jurisdiction, or *in rem* jurisdiction or subject matter jurisdiction. An *in personam* jurisdiction refers to the authority of a court to hear and decide a case against a particular person or set of persons. An *in personam* suit is one in which relief is sought against a specific person, and only compensatory benefits are awarded. Sections 19-20 of the Civil Procedure Code, 1908 (CPC), which set forth the basis for Indian courts to exercise *in personam* jurisdiction, applies to e-commerce disputes. Section 19 deals with suits for compensation for wrongs to person or moveable. Suppose a person commits a wrong within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court. In that case, the plaintiff has the option to institute a suit in either of the said Courts. For all other lawsuits, the competent forum shall be where defendants reside, or cause of action arises.  

A suit related to a specific property, and not against an individual is an action *in rem*. The case will be a claim to the title of a property. For example, a suit can be brought against the property of a debtor who owes money. An *in rem* action, however, does not deal with personal liabilities associated with the property. The court with jurisdiction over the territory where the property is situated is the competent forum to file an action *in rem*.  

Subject matter jurisdiction refers to the authority of a court to deal with a specific subject matter. Here, the court’s power to hear and decide cases is categorised in a particular subject matter domain

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47 In India sections 16-18 of the CPC provide for the in rem jurisdiction of a court over physical property. Cases brought under section 16 include suits for recovery of immovable property, partition of immovable property, foreclosure, sale, or redemption in the case of mortgage or a charge upon immovable property, for the determination of any other right to or interest in the immovable property, for compensation for wrong to immovable property, and for the recovery of movable property actually under attachment.
as in the civil and the criminal courts. So also there are family courts, MACT Courts, Special courts and special tribunals. Section 16 of CPC deals with subject matter jurisdiction.

Pecuniary jurisdiction refers to a court’s jurisdiction based on the amount of claim made in a proceeding. In India Section 6 of CPC refers to the pecuniary jurisdiction, that is, the monitory limit of amount or value of the subject matter involved that the courts can try. Section 6 provides that, unless otherwise expressly provided, nothing in the CPC shall operate to give a court jurisdiction over the suits where the value of the subject matter exceeds the pecuniary limits of its ordinary jurisdiction.

In an e-contract, persons physically located in different places or countries enter into a contract. This may give rise to challenges in determining the competent forum having jurisdiction and the applicable law. Suppose an Indian company, for example, enters into a contract with an American company to have certain services in Germany. In that case, there may arise different possibilities for jurisdiction, if a dispute occurs. If both companies have their Internet Service Provider (ISP) in another country, jurisdiction becomes more complicated. The parties may choose a valid forum already when they enter in an agreement. However, in many cases, the defendant may not have any physical presence in any forum. On certain occasions, the choice of law would be challenging for the parties involved in the contract. In cyber jurisdiction, the principles of international jurisdiction are extended to the cyberspace.

6.5.1. Personal Jurisdiction in India

In the absence of express contractual stipulation,\(^\text{48}\) it is not easy to determine which law is applicable in a dispute. In such situations, the law courts resort to choice of law rules to determine the proper

\(^{48}\) For example, in \textit{National Thermal Power v Singer Company} (1993 AIR 998; 1992 SCR (3) 106), regarding the expression “proper law of a contract” the Supreme Court said that it refers to the legal system by which the parties to
law of contract to be applied. That means, “the State which has the most intimate contact with the issues arising in the case” shall be preferred. The Indian Contract Act, 1872 does not state which proper law applies to a contract between parties of two different countries. Instead, in India 'conflict of laws' is part of private international law and can be determined only by analysing case laws. To determine the personal jurisdiction, the courts take into account criteria such as, the place of contract, the place where the contract is performed, the place where the parties reside or where they do business, the country in which a company is incorporated, the object of the contract, and so forth. The parties can choose a law subject to principles like *bona fide*, public policy, etc.

the contract intended their contract to be governed. The intention can be either express or implied. It should be expressed *bona fide* and it should not be against public policy. Every country has its own private international law and sometimes this gives rise to a bit conflicting situation. See another example in which the High Court of Delhi declined to assume jurisdiction: In *Renaissance Hotel Holdings v B. Vihaya Sai* (2009 in CS (OS) No. 103/2009) a US based hospitality company approached the Delhi High Court seeking a restraint on an Indian Hotel at Bangalore from using trademark “Sai Renaissance” as domain name on internet. An online booking of a room made from Delhi was presented as the reason for moving the Delhi High Court. The High Court of Delhi declined to assume jurisdiction since Delhi was not the place of business of the respondent, which was to be given prime consideration.

Private International law is concerned with disputes between individuals or companies of different countries or between individuals/companies and the state. In contrast, public international law is concerned with the disputes between nations.

Here one may refer to different considerations, such as the territoriality principle, the principle of nationality, protective principles, and so on (Seth, *New Technology Laws*, p. 28). For a brief study on the jurisdictional issues see Ankit Majmudar, “A Global Medium in a Territorial World - Jurisdiction and the Internet,” in: Nandan Kamath, ed. *A Guide to Cyber Laws*, pp. 19-53. In *India TV, Independent News Service Pvt. Ltd. v India Broadcasting Live LIC* [(2007) 145 DLT 521], the Delhi High Court observed that it is not possible to assume personal jurisdiction over a foreign website owner or a non-resident entity only because a website is accessible from a particular place. However, if the website is interactive, permitting the users not only to access the information but also to subscribe to the services of the website, the jurisdiction can be assumed and will be justified. There should be a definite criteria to determine this interactivity.


50 Private International law is concerned with disputes between individuals or companies of different countries or between individuals/companies and the state. In contrast, public international law is concerned with the disputes between nations.

51 Here one may refer to different considerations, such as the territoriality principle, the principle of nationality, protective principles, and so on (Seth, *New Technology Laws*, p. 28). For a brief study on the jurisdictional issues see Ankit Majmudar, “A Global Medium in a Territorial World - Jurisdiction and the Internet,” in: Nandan Kamath, ed. *A Guide to Cyber Laws*, pp. 19-53. In *India TV, Independent News Service Pvt. Ltd. v India Broadcasting Live LIC* [(2007) 145 DLT 521], the Delhi High Court observed that it is not possible to assume personal jurisdiction over a foreign website owner or a non-resident entity only because a website is accessible from a particular place. However, if the website is interactive, permitting the users not only to access the information but also to subscribe to the services of the website, the jurisdiction can be assumed and will be justified. There should be a definite criteria to determine this interactivity.
The basis of the territoriality principle is the power and the authority and exclusive jurisdiction of a sovereign State over the persons and property within its territorial boundaries. Even if the person does not belong to a particular territory, if a person is physically within its domain when the process is served, the court of that territory will have personal jurisdiction.\(^{52}\) If a person has property within the territory of a State, that State will have jurisdiction in rem. Regarding territory, the Information Technology Act, 2000, is applicable in the whole of India.\(^{53}\) That means it is applicable everywhere, in India without any exception to the State of Jammu and Kashmir. It also applies to any offence or contravention committed outside India by any person, without having regard to his nationality, if an act or conduct that amounts to a crime or contravention involves a computer, computer system or computer network located in India.\(^{54}\)

The nationality principle is applied when an alleged offender who belongs to a particular State violates its laws. According to Indian Penal Code 1860 (IPC), an Indian national is liable to prosecution in India for offences committed outside, which is punishable under Indian law. According to section 3 of the IPC, any person liable under any Indian law, to be tried for an offence committed outside India, shall be dealt with as if he committed the wrongful act within India. If an Indian citizen commits an offence without and beyond India, or any person commits a crime on any ship or aircraft registered in India, or without and beyond India targeting a computer resource located in India, section 4 of the IPC is applicable.

\(^{52}\) In *Casio India Company Limited v Ashita Tele Systems Private Limited* [(2003) 27 PTC 265 (Del); (2003) 106 DLT 554], the High Court of Delhi ruled that in order to attract territorial jurisdiction of the Court it is enough to access a website from Delhi and that as in a passing-off case the plaintiff was not to prove that actual deception took place in Delhi.

\(^{53}\) The IT Act, 2000, section 1 (2).

\(^{54}\) The IT Act, 2000, section 75 (1), (2). This provision grants only prescriptive jurisdiction to Indian courts. In order to get enforcement jurisdiction India has to sign a multilateral treaty or bilateral treaty with another country for e-crimes (See Seth, *New Technology Laws*, pp. 446-447).
The Code of Civil Procedure (CPC), 1908 has the following prescriptions regarding jurisdiction of courts:

a. First of all, jurisdiction in a case depends on the criteria where the subject matter is situated.\(^{55}\)

b. If the suit is for a tortuous act committed in one jurisdiction, while the defendant resides in another jurisdiction, the plaintiff has a choice.\(^{56}\)

c. In other cases, the jurisdiction lies where the defendant actually resides, or carries on business, or personally works for gain, or the cause of action wholly or partially arises.\(^{57}\)

It is also vital to see how the Indian courts admit foreign judgments. The Code of Civil Procedure, 1908, section 13\(^{58}\) provides for the enforcement of foreign judgments in all cases, except in the following circumstances:

a. The court that pronounced judgment did not have jurisdiction;

b. The judgment given was not on the merits of the case;

c. The proceedings were founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;

d. The proceedings which passed the judgment were opposed to natural justice;

e. The judgment has been obtained by fraud;

f. The judgment has not taken into account any law in force in India.

\(^{55}\) The Code of Civil Procedure, 1908, section 16.

\(^{56}\) The Code of Civil Procedure, 1908, section 19.

\(^{57}\) The Code of Civil Procedure, 1908, section 20.

\(^{58}\) The Code of Civil Procedure, 1908, section 13, (a), (b), (c), (d), (e), (f).
Suppose an Indian court has to verify the authenticity of a foreign judgment. In that case, the decision shall be based on section 14 of CPC, 1908, which states that the court shall presume to be true any document purporting to be a certified copy of a foreign judgment. The court may also take for granted that a Court of competent jurisdiction pronounced the sentence unless the contrary is proven.

As per section 44A\textsuperscript{59} of CPC, if an application for the execution of a decree of any of the superior Courts of a reciprocating territory\textsuperscript{60} has been filed in a District Court, the decree may be executed in India as if the District Court had passed it. Similarly, the orders of Indian courts shall be enforceable in those countries that have entered into reciprocal agreements with the Government of India.

7. Consumer Protection

With the increase and worldwide acceptance of e-commerce, consumer protection concerns in business to consumer contracts also augments. Though there are the Model Laws drafted by the United Nations Commission for International Trade Law (UNCITRAL), each State has to enact norms necessary to protect the consumers’ interests and rights. In India, the Consumer Protection Act, 2019 aims to protect

\textsuperscript{59} This was originally inserted in the Code of Civil Procedure 1908 by Act No. 8 of 1937 and later amended by Act 71 of 1952.

\textsuperscript{60} Reciprocating territory means “any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of section 44 A” (See CPC, 1908, section 44 A, Explanation 1). The Central Government has in exercise of the powers conferred by Explanation I to section 44-A CPC declared the United Kingdom of Great Britain and Northern Ireland to be reciprocating territory for the purposes of the said section, and the High Court in England, the Court of Sessions in Scotland, the High Court in Northern Ireland, the Court of Chancery of the Country Palatine of Lancaster and the Court of Chancery of the Country Palatine of Dar ham to be the Superior Courts of that territory (see the Central Government Notifications Nos. 47 to 51, dated the 25 February, 1953, and 1st March, 1953, respectively, published in the Gazette of India): https://highcourtchd.gov.in/sub_pages/left_menu/Rules_orders/high_court_rules/vol-I-pdf/chap12partSV1.pdf, accessed on 18 December 2020.
consumers from unfair trade practices and customer service deficiency. As per section 94 and 101 (2), (zg) of the Consumer Protection Act, 2019 the Central Government has enacted the Consumer Protection (E-Commerce) Rules, 2020 to prevent unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers.

We may categorise the disputes in cyberspace as e-disputes. They include commercial disputes or breach of an e-contract. The jurisdictional issues involved in these disputes led to the emergence of a new concept of Online Dispute Resolution (ODR). ODR aims to resolve disputes, particularly small- and medium-value cases, using digital technology and alternate dispute resolution (ADR), such as negotiation, mediation, and arbitration. ADR is an out of court settlement method. Section 89 of the Code of Civil Procedure,61 intends to encourage such practices to decide disputes between the parties using arbitration, conciliation, judicial settlement including Lok Adalat or mediation. The government amended order X of the first schedule inserting Rule 1A, 1B and 1C. If ADR failed, the matter would again be referred to the court.

The Arbitration Act 1996 was drafted based on UNCITRAL Model Arbitration Law and UNCITRAL Conciliation Rules to enhance out of court settlement of disputes. If parties agree to a settlement and sign a contract, the same is enforceable in a court of law.62 Part II of this Act deal with the enforcement of specific foreign awards made in pursuance of a submission to arbitration. All these legislations point out that the parties to a contract may effectively use the out-of-court settlement to solve online disputes.

61 Inserted by Act 46 of 1999, Code of Civil Procedure (Amendment) Act, 1999, section 7 (w.e.f. 1-7-2002),
62 See the Arbitration Act 1996, sections 35, 36.
An intergovernmental membership organisation called the International Consumer Protection and Enforcement Network (ICPEN) enables the members to establish and implement laws and regulations intended for consumer protection. It has three types of participants, including members, partners who await membership and observers. As at December 2019, ICPEN has member authorities representing 64 countries and four partner organisations with membership pending. It has six observer authorities too. India is one of the partner organisations.63


The Consumer Protection Act, 2019, section 94 directs the Central Government to take necessary measures to prevent unfair trade practices in e-commerce, direct selling, and protect the interest and rights of consumers.64 Also, section 101 (1) empowers the Central Government to make necessary rules for carrying out this Act’s provisions. As per these provisions the Ministry of Consumer Affairs, Food and Public Distribution (Department Of Consumer Affairs) published the Consumer Protection (E-Commerce) Rules 2020 on 23 July 2020.

63 For further details see the official website of ICPEN: https://icpen.org/who-we-are, accessed on 18 December 2020.

64 As per section 2 (9) of the Consumer Protection Act 2019, “consumer rights” includes: (i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property; (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices; (iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices; (iv) the right to be heard and to be assured that consumer’s interests will receive due consideration at appropriate fora; (v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and (vi) the right to consumer awareness.
7.1.1. The Scope of the Consumer Protection (E-Commerce) Rules 2020

Rule 2 (1) explains the scope of these rules as follows: These rules shall apply to:

(a) all goods and services bought or sold over the digital or electronic network including digital products;
(b) all models of e-commerce, including marketplace and inventory models of e-commerce;
(c) all e-commerce retail, including multi-channel single-brand retailers and single-brand retailers in single or multiple formats; and
(d) all forms of unfair trade practices across all models of e-commerce: Provided that these rules shall not apply to any activity of a natural person carried out in a personal capacity not being part of any professional or commercial activity undertaken on a regular or systematic basis.

7.1.2. E-commerce entity not established in India

Rule 2 (2) permits to apply these rules to an e-commerce entity not launched in India, but systematically offers goods or services to consumers in India. Rule 4 further goes on to enumerate the duties of such e-commerce entities. They are obliged to appoint a nodal person of contact or an alternate senior designated functionary who is resident in India, to ensure compliance with the Act’s provisions or the rules made here.\(^{65}\)

7.1.3. Grievance redressal mechanism

Rule 4 (4) requires every e-commerce entity to establish an adequate grievance redressal mechanism considering the number of grievances ordinarily received by such entity from India. They also

have to appoint a grievance officer for consumer grievance redressal and shall display the name, contact details, and designation of such officer on its platform. This officer has to acknowledge the receipt of any consumer complaint within forty-eight hours and redress the complaint within one month from the date of receipt of the complaint.\textsuperscript{66} An e-commerce entity that offers imported goods or services for sale has to mention the name and details of any importer from whom it has purchased such goods or services, or who may be a seller on its platform.\textsuperscript{67}

7.1.4. Cancellation charges:

Another rule in the consumers' interest is that the e-commerce entity shall not impose any cancellation charges on consumers for cancelling after confirming the purchase. If the e-commerce entity also bears similar costs to cancel the purchase order unilaterally for any reason, they are excused.\textsuperscript{68}

7.1.5. “Browse-wrap” contracts:

The “browse-wrap” contracts, in which mere browsing on the website constitute consent is not acceptable in India for, as per rule 4 (9) automatic recording of the consent is not valid. Every e-commerce entity shall only record a consumer’s consent expressed through an explicit and affirmative action to purchase any good or service offered on its platform.

7.1.6. Liabilities of market place e-commerce entities:

Rule 5 regulates the liabilities of market place e-commerce entities. They shall provide the consumer with the information regarding the sellers, the name of their business, facts regarding registration, geographic address, customer care number, any rating available

\textsuperscript{66} Consumer Protection (e-commerce) Rules 2020, Rule 4 (5).
\textsuperscript{67} Consumer Protection (e-commerce) Rules 2020, Rule 4 (6).
\textsuperscript{68} Consumer Protection (e-commerce) Rules 2020, Rule 4 (8).
regarding the seller, so that the consumers may be able to make informed decisions the pre-purchase stage. Even after the purchase, if a consumer requests in writing, the e-commerce entity shall provide him with information regarding the seller, including the principal geographic address of its headquarters and all branches, name and details of its website, its email address and any other information necessary for communication with the seller for effective dispute resolution.

7.1.7. Unfair trade practices:

There are regulations to control unfair trade practices, including posting fake comments and reviews by the entity to feign the quality or features of any goods or services. They cannot decline to take back goods or withdraw or discontinue services. There are also provisions to check the refusal to make refunds for defective goods or deficient services or belated delivery as per the schedule given. The stipulations also intend to prevent imposing on consumers unjustified price to gain unreasonable profit.

7.1.8. Duties of sellers:

The rule further stipulates the duties of sellers to appoint a grievance officer for consumer grievance redressal. The officer has to acknowledge the receipt of any consumer complaint within forty-eight hours and redress the complaint within one month from the date of

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69 As per Consumer protection Act 2019, section 2 (10) “defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression “defective” shall be construed accordingly. Section 2 (11) defines “deficiency” as any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes— (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and (ii) deliberate withholding of relevant information by such person to the consumer.

receipt of the complaint.\textsuperscript{71} Other requirements to be fulfilled by the seller and the e-commerce entities are stipulated in rules 6 and 7.

\textbf{7.1.9. Penal provisions:}

In violation of these rules, the provisions of the Consumer Protection Act, 2019 shall be applicable. Any attempt to make a false or misleading advertisement by a manufacturer or service provider, if it is prejudicial to the interest of consumers, shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees if they do it for the first time.\textsuperscript{72} For every subsequent offence, the punishment shall be imprisonment for a term that may extend to five years and fine, extending to fifty lakh rupees. The penalty for the manufacture, import, sale or distribution of a product containing adulterant\textsuperscript{73} shall be imprisonment for a term that may extend to six months and fine, up to one lakh rupees, even if such action does not result in any injury to the consumer. If it causes injury not amounting to grievous hurt to the consumer, they shall be punished with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees. If the injury results in grievous hurt to the consumer, the punishment shall be imprisonment up to seven years and fine, which may extend to five lakh rupees. If it causes a consumer’s death, the punishment shall be imprisonment for a term that shall not be less than seven years, but which may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.\textsuperscript{74} The court may suspend any license issued to the person who is the manufacturer, seller or distributor, under any law for the time being in force, for a period up to two years

\begin{footnotesize}
\begin{itemize}
  \item Consumer Protection (e-commerce) Rules 2020, Rule 6 (2), (3), (4).
  \item The Consumer Protection Act 2019, section 89.
  \item The Consumer Protection Act 2019, section 90 (1).
  \item The Consumer Protection Act 2019, section 90 (1), (a), (b), (c), (d). The offences under clauses (c) and (d) of sub-section shall be cognizable and non-bailable.
\end{itemize}
\end{footnotesize}
or cancel the license, considering the number of precedent convictions of the same entity.\textsuperscript{75}

**Conclusion**

Online contracts play an important role in e-commerce as they stipulate the terms and conditions governing the business transaction. India recognises the legal validity of e-contracts, which is evident in both the judicial approach and legal actions. The Information Technology Act enacted in the year 2000 recognises electronic contracts as legally valid documents that are duly enforceable in a Court of Law. Several amendments have been made to this Act and the Evidence Act, the Indian Penal Code, etc., to adapt them to the changing situations in the modern world of technological development. The Consumer Protection Act 2019 and the Consumer Protection (E-commerce) Rules 2020 further protect the consumers’ interests and rights.

The provisions of the Contract Act is applicable in any form of contract, whether online or written. That means valid transactions that formulate or initiate contractual negotiations include not only the written word. The law of offer and acceptance applies to new modes of contract in the modern era, like the past “old-mode” contracts. Therefore, it is necessary that the parties engage in e-contracts should have clarity regarding the terms and conditions stipulated therein.

There are many issues related to contractual dealings, especially in connection with international commercial transactions using the internet. In the past, only the commercial entities engaged in such transactions. Today the vast possibilities offered by the internet transactions and the consequent increase in the business to consumer dealings and even consumer-to-consumer transactions across jurisdictional borders necessitate further scrutiny and strict

\textsuperscript{75} The Consumer Protection Act 2019, section 90 (3).