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# Legal Issues in E-Commerce Transactions- An Indian Perspective

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***Abstract*** — Recent advances in telecommunications and computer technologies have moved computer networks to the centre of the international economic infrastructure, everyone with a computer and connected to the Internet has become a potential player and a potential market. These technological developments have gone hand in hand with a trend, predominantly in the developed world, towards a post-industrial knowledge economy. The vast majority of these 'e-commerce' transactions to date have taken place in countries with advanced economies and infrastructure. For developing countries such as India, e-commerce offers significant opportunities; e-commerce diminishes existing advantages of cost, communication, and information, and may create new markets for indigenous products and services. Many Organizations and communities in India have begun to take advantage of the potential of the e- Commerce, critical challenges remain to be overcome before its potential can be fully realized for the benefit of all citizens.

***Keywords****-component****:*** *e-Commerce; IT Act 2000, Indian Contract Act 1872; Intellectual property rights*

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## I. Introduction

Digital Economy has now become a significant segment of economy around the world, including India. The Government of India develops a regulatory framework for all the stakeholders in the ecosystem. When India is becoming a digital economy, the role of the government is critical to enable a conducive and sustainable environment for the entire e-Commerce ecosystem. The e-commerce industry in India is growing at a remarkable pace due to high penetration of internet and sophisticated electronic devices. There is problems and challenged on the way of an online merchant. Factors like safety and security of online money transaction being the vital problem along with others have curbed the smooth expansion of the online industry in the country. The recent Government Initiatives such as digital India make in India, start-up India, skill India, and innovation fund and e-market platform for agro-commodities are positive steps in this direction.

## II. Review Of Literature

Wigand's(1997) define it as, "Electronic commerce denotes the seamless application of information and communication technology from its points of origin to its endpoint along the entire value chain of business processes may be partial or complete and may encompass business-to-business as well as business- to-consumer and consumer-to-business transactions. E-commerce websites operating in India are required to follow many laws of India including the Information Technology Act, 2000 (IT Act 2000). As per the IT Act, 2000 these e-commerce websites operating in India are Internet intermediaries and they are required to comply with cyber law due diligence requirements as well. The legal requirements for undertaking e- commerce in India also involve compliance with other laws like contract law, Indian penal code, etc. Further, online shopping in India also involves compliance with the banking and financial norms applicable in India. For example, PayPal .If PayPal has to allow online payments receipt and disbursements for its existing or proposed e-commerce activities, it has to take a license from Reserve Bank of India (RBI). Further, cyber due diligence for Pay-pal and other online payment transferors in India is required to be observed. With the active use of e-commerce in India, the e-commerce dispute resolution in India is required to be strengthened.

Elizabeth Goldsmith and Sue L.T. McGregor (2000) analyzed the impact of e-commerce on consumers, public policy, business and education. A discussion of public policy initiatives, research questions and ideas for future research are given. Farooq Ahmed (2001) An analytical evaluation is therefore, needed to identify the issues raised by the information technology relating to contract formation, impact of the IT Act on the principles relating to contract formation provided in the Contract Act, impact of non inclusion of the principles governing e- commerce, provided in the Model Law but not reflected in the IT Act and the jurisdictional issues which are not confined to national boundaries but have global ramifications and are bound to arise in e- commerce disputes.. Nishith Desai Associates in their report 'E-Commerce in India says that "The rapid pace of growth of the e-commerce industry is not only indicative of the increasing receptiveness of the public but has also brought the issues that the legal system of the country has been faced with". And from the initial years when internet was a new concept to

recent times where internet has become a basic necessity for every house in big cities, the ecommerce industry has come a long way. Kenneth C. Laudon and Carol Guercio Traver in their book on 'e-commerce' stated that, four major categories of issues information rights, property rights, governance and Public safety and welfare exists. Rapidly increasing internet user base, youth mentality to find online shopping easier, fuse of global geographical and time zone boundaries, and easy to reach customer are opportunities that e-commerce provides.
( G.T. Waghmer 2012) (G.T. Waghmer 2012 & Abhijit Mitra 2013) e-Commerce has unleashed yet another revolution, which is changing the way businesses buy and sell products and services. New methodologies have evolved. The role of geographic distances in forming business relationships is reduced. E-Commerce is the future of shopping. With the deployment of 3G and 4G wireless communication technologies, the internet economy will continue to grow robustly. Dr.S. Hariharputhiran(2012) states that security and privacy always remains the main concern issue for customer while internet shopping. While Rashad & et.al, Given the impact of the Internet on all aspects of economic life, it can be regarded as a source of emergence of new electronic economy with an extremely rapid growth, creating new opportunities for Industrial and business activity, increase employment opportunities. Robust economic activity on the Internet or by using its capabilities led to the emergence of a new concept-electronic commerce. Devendera Agarwal (2012), suggested how to identify fraud users by using Classification Methodologies using Bayesian Rules and generating cluster of users having fraudulent intentions.

## III. Legal Issues Relating To E-Commerce Transactions

### A. *Contracts*

At the heart of e-commerce 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.

*1) Offer and Acceptance:* The Information Technology Act, 2000 ("IT Act") deals with contractual aspects of use of electronic records, such as attribution, acknowledgement, time and place of dispatch and receipt. 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 ingredients would be applicable to e-contracts. Additionally, Internet communication does not consist of a direct line of communication between the sender and receiver of e-mail as in ordinary means of communication. The message is broken into chunks in the process of delivery. This raises issues of the exact time of communication of acceptance of the contract as such a time is critical for determination of the rights of the parties. The IT Act has laid down certain methods for determining the exact time and place of dispatch and receipt of the e-mail.

*2) Online Identity:* Transactions on the Internet, particularly consumer-related transactions, often occur between parties who have no pre-existing relationship, 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. Digital signatures, is one of the methods used to determine the identity of the person. The regulatory framework with respect to digital signatures is governed by the provisions of the IT Act.

*3) Security:* Security over the Internet is of vital importance to promote e-commerce. Companies that keep sensitive information on their websites must ensure that they have adequate security measures to safeguard their websites from any unauthorized intrusion. A company could face security threats externally as well as internally. Externally, the company could face problems from hackers, viruses and Trojan horses. Internally, the company must ensure security against its technical staff and employees. Security can be maintained by using various security tools such as encryption, firewalls, access codes / passwords, virus scans and biometrics.

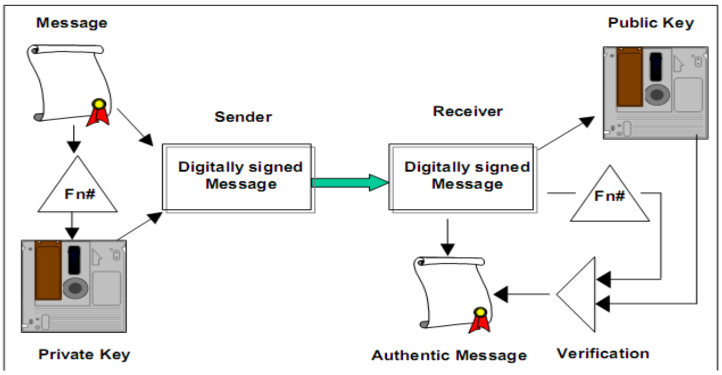
For example, a company could restrict access to the contents on its website only through the use of a password or login code. Similarly confidential information on websites could be safeguarded using firewalls that would prevent any form of external intrusion. Apart from adequate security measures, appropriate legal documentation would also be needed.

For example, a company could have an adequate security policy that would bind the all people working in and with the company. A company could also be held liable for inadequate security procedures on its website.

For example, last year, a person decided to sue Nike because the Nike's website was hacked and the contents of the domain were re-directed through the person's web servers in the U.K., bogging them down and costing the web hosting company time and money.

*4) Authentication:* Different authentication technologies have evolved over a period of time to ensure the identity of the parties entering into online transactions. However, there are some issues that need to be considered by companies

*5) Digital Signatures to be used as authentication tool:* According to the IT Act, digital signatures should be used for the purposes of authenticating an electronic contract. The digital signature must follow the Public Key infrastructure .




Source: Nishith Desai associates Report

For example, an e-commerce company that uses PKI authentication technology for online contracts with Indian consumers may use different forms of technology while entering into online contracts with consumers in other countries. In such a case, these contracts with foreign consumers may not be recognized in India as the authentication technology used is not PKI. However, such contracts may be enforceable in the foreign jurisdiction depending upon the laws of the foreign country.

*6) 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. The database includes the name of the individual or company that registered a given domain name, as well as the owner's address, the dates on which the domain was created, when it expires and when it was last updated. 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.

*7) Some of the important privacy concerns over the Internet include:*

a) Dissemination of sensitive and confidential medical, financial and personal records of individuals and organizations;

b) sending spam (unsolicited) e-mails;

c) tracking activities of consumers by using web cookies; and

d) Unreasonable check and scrutiny on an employee's activities, including their email correspondence.

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.

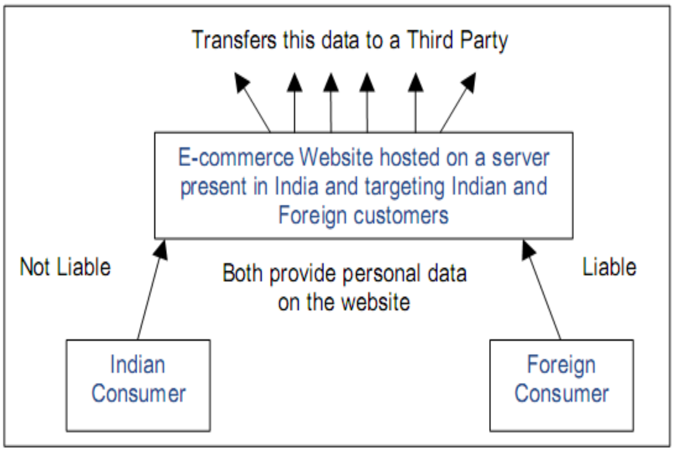



Figure 1 : Source from Nishith Desai Associate Report

For example, if an e-commerce website seeks information from a user and disseminates this information to third parties, it would amount to a violation of the privacy rights of the user and this may turn away existing and potential users from accessing the site in the future.

Moreover, when an e-commerce company caters to consumers in foreign jurisdictions, the foreign jurisdictions may have laws that could make the e-commerce company liable for violating the foreign consumer's privacy rights. For example, A Company in India, receives some personal data from a consumer in the European Union, and disseminates the information to companies in the US, may be liable for invasion of privacy rights of the consumer.

*B. Intellectual Property Rights*

Any company intending to commence e-commerce activities should bear in mind is the protection of its intellectual assets. The Internet is a boundless and unregulated medium and therefore the protection of intellectual property rights ("IPRs") is a challenge and a growing concern amongst most e-businesses. The existing laws in India that protect IPRs in the physical world, the efficacy of these laws to safeguard these rights in e-commerce is uncertain. Some of the significant issues that arise with respect protecting IPRs in e-commerce are discussed hereunder:


Figure 2: Source from Nishith Desai Associates Report

a) Copy-right
b) Patent
c) Trade mark
d) Trade Secret
e) Design

*1) Determining the subject matter of protection:* With the invention of new technologies, new forms of IPRs are evolving and the challenge for any business would be in identifying how best its intellectual assets can be protected. For example, a software company would have to keep in mind that in order to patent its software, the software may have to be combined with physical objects for it to obtain a patent.

*2) Ascertaining novelty originality:* Most intellectual property laws require that the work / mark / invention must be novel or original. However, the issue is whether publication or use of a work invention mark in electronic form on the Internet would hinder a subsequent novelty or originality claim in an IPR application for the work / invention / mark. An e-commerce company would have to devote attention to satisfying the parameters of intellectual property protection including originality requirements in its works to preclude any infringement actions from third parties who own similar IPRs.

*4) Enforcing IPRs:* It is difficult to adjudicate and decide cyber-disputes. The Internet makes the duplication, or dissemination of IPR- protected works easy and instantaneous and its anonymous environment makes it virtually impossible to detect the infringer. Moreover, infringing material may be available at a particular location for only a very short period of time. A company must also keep in mind that since IPRs are inherently territorial in nature, it may be difficult to adjudge as to whether the IPR in a work or invention is infringed, if it is published or used over the Internet, which is intrinsically boundless in nature. The electronic copyright management systems and other digital technologies evolving to prevent infringement, the recent World Intellectual Property Organization Copyright Treaty explicitly mandates that all contracting parties to the treaty shall have to provide adequate legal remedies against actions intended to circumvent the effective technological measures that may used by authors to prevent infringement of their works.

5) *Preventing unauthorized Hyper linking and Meta tagging:* The Courts are fighting with issues concerning infringement of IPRs arising from hyper linking and Meta tagging activities. Courts in certain jurisdictions held that Hyper linking, especially deep-linking may constitute copyright infringement, whereas Meta tagging may constitute trademark infringement.

6) *Protection against unfair competition:*Protection against unfair competition covers issues relevant for electronic commerce. Companies on the Internet, have to constantly adapt to and use the particular technical features of the Internet, such as its interactivity and support of multimedia applications, for their marketing practices. Problems may arise with regard to the use of certain marketing practices such as:

a) Interactive marketing practices
b) spamming and
c) Immersive marketing.

### *C. Domain Names*

A company that commences e-commerce activities would first have to get its domain name registered. While registering domain names, if the company chooses a domain name that is similar to some domain name or some existing trademark of a third party, the company could be held liable for cyber squatting. Over the past few years, domestic and international forum have handled and decided numerous cyber squatting disputes.

### *D. Jurisdiction*

According to the traditional rules of private international law, the jurisdiction of a nation only extends to individuals who are within the country or to the transactions and events that occur within the natural borders of the nation. However, in e-commerce transactions, if a business derives customers from a particular country as a result of their website, it may be required to defend any litigation that may result in that country. As a result, 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 of. The fact that parties to a contract formed through the Internet may be located in different jurisdictions may have implications for the interpretation and enforcement of the contract.

### *E. Liability: Three types of liability occurred*

a) Contractual Liability: A website that offers goods or services should contain an online contract to which the customer must assent. The contract needs to be carefully drafted to protect the website owner from liability and should address the key terms and conditions for the provisions of goods or services. The contract should clearly establish the exact time and manner of acceptance of the contract. In the event of dispute or breach of contract, the liability of the owner of the website would be limited only to the extent of the terms of the contract.

b) Statutory liability: Depending on the type of business, a website would have to comply with the provisions of the law, central or state, in that jurisdiction. But various nations differ with respect to statutory compliances and permitted activities. The website would therefore, in addition to the state laws, be required to comply with the provisions of the statutes of the countries in which the website would be vastly accessed. Failure to comply with such foreign laws may lead to liability under such law.

c) Tortuous Liability: Liability under tort may arise due to wrongful interference with the business or wrongful defamation or any remark or action that may cause injury to one's property or reputation. Thus, although no contractual relationship may exist as well as where the interference or damage is unintentional, the website owner may be liable for wrongful injury. The law of torts lays down a duty on every man to take reasonable care to avoid any harm to any person. The owner of the website also owes a duty to the user and is bound to take reasonable care to avoid any harm that may be done.

## IV. OTHER LEGAL ISSUES IN E-COMMERCE

### A. *Content Regulation*

The Internet offers a quick and cost-effective means of disseminating information. However, the unrestricted flow of content over the Internet through different jurisdictions could raise various concerns. While traditionally there are several restrictions placed on the content of information that is distributed, the challenge lies in evolving similar parameters to regulate the content of information on the Internet. Some issues that e-commerce companies should bear in mind while publishing or displaying content should be as follows:

a) Nature of Content
b) Violation of the Statutory Law
c) Licensing framework
**d)** Imposition of Liability

### B. *Advertisement*

Many websites advertise goods or services to customers. The traditional laws of advertising, which apply to ordinary sales, are enacted in the interest of all consumers to prevent deceptive and unfair acts or practices. These laws would also be applicable to advertising or marketing on the Internet. The websites may be subject to any liability that may arise due to false designations, origin, misleading description of fact that are likely to cause confusion or misrepresent the nature, characteristics, quality or geographic origin of the goods or services that are offered for sale in an advertisement. In addition to advertising laws, depending on the kind of business, the websites would also have to comply with the laws of applicable to such a business.

### C. *Electronic Payment Issues*

The growth in e-commerce activities has necessitated the evolution of electronic payment mechanisms. In addition to normal currencies, e-financial instruments / digital currencies such as cyber cash and e-cash can be used for the purchase of current as well as capital assets over the Internet and for carrying on other commercial activities. Before regulating the use of such financial instruments, it would be essential to identify the issues that these instruments pose. Some of these issues are:

a) Secure Credit Card Transactions
b) Recognition of digital currencies
c) Determining the relevant jurisdiction
d) Risk of Regulatory Change
e) Consumer-oriented risks
f) Disabling IT Act
g) No virtual banks

### D. *Foreign Direct Investment*

Indian Government has liberalized foreign direct investment in India. As per the Foreign Exchange Management Act, 1999, FDI is allowed on an automatic basis, (i.e. without any prior approval of the Ministry of Commerce and Industry) up to a certain limit or fully, in most sectors. In July 2000, vide Press Note No. 7 (2000 Series), the Government has also allowed 100% FDI in e-commerce activities. However, this investment is subject to the following conditions:

a) FDI is allowed only in companies engaged in B2B e-commerce activities and not in retail trading; and
b) 26% of the FDI has to be divested in favor of the Indian public within a period of five years, if the companies are listed in other parts of the world.

Therefore, companies engaged in B-2-C, e-Commerce activities cannot obtain FDI on an automatic basis. They would have to seek prior approvals from the Foreign Investment Promotion Board under the Ministry of Commerce and Industry, which would consider such applications on a case-to-case basis.

*E. Corporate Structure and Funding*

While structuring the business, one should evaluate the need to set -up entities in different nations, if the business is to be conducted in different nations. Such an entity may be set up as branch office, liaison office or a representative office. The pros and cons of each such entity also entails a decision making process.

a) Structure: The first step would be to determine whether the start-up company should be a partnership firm, a private company or a public company. The pros and cons of each structure should be evaluated in relation to the nature of business to be conducted.

b) Financing: A higher degree of flexibility in terms of investment in a private company or a partnership firm, as the members can take quick decisions with respect to the amount and manner of investment to be made in the company. A public company is required to follow the relevant procedures in the Companies Act. In the event that foreign equity participation or investment is proposed to be made in the company, the provisions of the Foreign Exchange Management Act, 1999 in this regard would have to be complied with as discussed in the "Foreign Direct Investment" issues.

c) Contractual relationships: The company or firm would need to enter into appropriate contractual relationships which would govern the rights, liabilities, manner of investments to be made etc. The contractual arrangements should set forth the shareholding of the promoters, strategic investors and lenders, as the case may be.

## V. Government Notifies Rules With Respect To Protection Of Data Under The Information Technology Act, 200

The Government of India recently notified the "Reasonable security practices and procedures and sensitive personal data or information Rules, 2011" under Section 43A of the Information Technology Act, 2000. These Rules have been made effective from April 11, 2011.

## VI. Indirect Tax

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

The following recommendations, including expectations under the GST regime, to resolve the challenges faced by the e-Commerce Industry:

a) Institution of Central Committee for tax policy recommendations and implementation
b) Need for clarity on characterization of tax liability
c) Need for clarity on supply of digitized products and place of supply rule
d) Registration of multiple vendors at market place warehouse or fulfillment centre
e) E-invoicing and tax credits
f) Facilitate free movement of goods
g) Uniform tax rates on supply of goods across states
h) Need for specific place of supply in GST transaction.
i) Implementation of GST

## VII. Taxation Of E-Commerce Transactions

OECD defines e-commerce transactions as commercial transactions between individuals and organizations, based on the processing or transmission of digitized data units, sound and visual images, which are carried out over open networks or closed networks with a gateway to open networks.

*A. Difficulties in taxing e-commerce transactions*

a) Determination of economic attachment
b) Identification of the existence of permanent establishment
c) Tracing commencing and end point of transaction
d) Lack of documentation to know the nature of contract.

*B. The issues involving e-commerce transactions are as follows*

a) Traditional business rests on the physical presence and delivery of goods, but e-commerce transcends geographical barriers.

b) Income out of an international transaction is subject to tax both in the Home State by virtue of "personal attachment" to the transfer and in the host State by virtue of "economic attachment" to the income itself. This gives rise to double taxation of the same income.

c) Tax treaties seek to tax profits on the basis of what is popularly known as "Permanent Establishment". However, in the case of e-commerce transactions, no establishment is required across the border to carry on business.

d) Taxable jurisdiction of any country covers its national boundaries. E-commerce takes place through satellite and the server can be in any part of the globe and in all probability.

e) For adopting the existing principles to e-commerce situations, there are two key areas:

- The extent to which a web-site can constitute a permanent establishment and how income may be attributed to it;
- The manner in which payments for digitized products are to be characterized.

## VIII. Direct Taxes

a) Characterization of income in the hands of the non-resident – In accordance with Sec 9 of the Income Tax Act, 1961 the taxation depends upon the residential status of the person. In case of royalty and professional services the person is taxable for any income accrued or arisen in India without any linking to the PE within India. However for business income the person taxable ought to have a permanent establishment within India. In the current scenario it is seen in many instances that the taxmen want to tax the business income (without any PE) under the head of royalty thereby creating artificial demands.

b) Issues surrounding PE – On the PE front, there have been issues around whether a website in India constitutes a PE for a non-resident and whether certain activities performed by an agent in India constitute a dependent agent PE.

**c)** Applicable withholding tax rates on payments made to resident e-commerce/internet companies. There has been litigation on the applicable withholding tax rates on payments to resident e-commerce companies for activities such as e-cataloging, warehousing, logistics and payment gateways. – Sec 194C which provides for 2% v. Sec 194J which provides for a 10% rate. In the Finance Act, 2016 the government has levied an equalization levy of 6% on payments exceeding One lakh rupee per year made to foreign e-commerce companies as consideration for online advertisement.

## IX. Conclusion

The growth of the e-commerce is indicative of the increasing receptiveness of the public but has also brought the issues that the legal system of the country has been faced with. Now internet has become a basic necessity for every household in most cities, the e-commerce industry has come a long way. The legal system has constantly tried to catch up especially with the enactment of the various rules under the IT Act to deal with a host of issues emerging from the use of internet. Moreover the IP issues in e-commerce transactions have taken a new form with users finding ways not only easily to duplicate material but also mislead other users. Though India has started dealing with it by enacting IT Act, 2000 but, it still lacks a lot as no specific legislation governs online transactions and IP issues in India. The Information Technology Act, 2000 provides for the admissibility of electronic records and sets out offences and penalties for cybercrimes, etc. But, this is just an enabling statute to facilitate online transactions and thus has to be read in conjunction with the Contract Act in order to determine whether an online transaction constitutes a valid contract or not. Hence, regulations are effectively updated. Therefore an in-depth understanding of the regulations and the possible issues that an e-commerce business would face coupled with effective risk management strategies are needed to thrive in this market.

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## References

[1] Abhijit Mitra (2013), 'E-commerce in India –A review', International Journal of Marketing, Financial services &Management Research, Vol. 2, No. 2, pp 126-132
[2] Chaudhury, Abijit; Jean-Pierre Kuilboer (2002). E-Business and e-Commerce Infrastructure. McGraw-Hill. ISBN 0-07-247875-6.
[3] Chitrangda (2014), 'E-commerce-Business & legal ethics', International Journal of scientific research & management, Vol.2, Issue 2, pp. 565-572
[4] Communications Convergence Bill, 2001 of India.
[5] Elizabeth Goldsmith and Sue L.T. McGregor (2000): E-commerce consumer protection issues and implications for research and education, J. Consumer studies & Home Economics Vol 24 No.-2 June 2000PP 124-127.
[6] Evolution of e-commerce in India creating the bricks behind the clicks ASSOCHAM India. (2014)
[7] Foreign Exchange Management Act, 1999.
[8] Indian Contracts Act, 1872.
[9] Indian Partnership Act, 1932.
[10] Indian Penal Code, 1860.
[11] Intellectual Property on the Internet", a survey of issues. [Copyrights and Related Issues], http://ecommerce.wipo.int/survey, WIPO/INT/02.
[12] Miller, Roger (2002). The Legal and E-Commerce Environment Today, Thomson Learning. pp. 741 pages. ISBN 0-324-06188-9.
*[13]* Music Broadcast Private v. Indian Performing Right Society Limited, *Bombay High Court*
[14] Nishith Desai Associates.(2013). E-Commerce in India - Legal, Tax and Regulatory Analysis.
[15] On line Contract, P.R. Transport Agency vs. Union of India & others AIR2006All23, 2006(1) AWC504.
[16] The Companies Act, 1956.
[17] The Information Technology Act, 2000.

## Appendix

### *A. No royalty to be paid to IPRS for broadcasting songs:*

Recently, the Bombay High Court in the case of Music Broadcast Private v. Indian Performing Right Society Limited held that the owner of copyright in relation to lyrical and musical works are not entitled to receive royalty/license fee for broadcasting of sound recording embodying such underlying (i.e. lyrical and musical) works. Over the last few years there has been a spate of litigations initiated against the copyright societies in India viz. Phonographic Performance and Indian Performing Right Society Limited for fixation of fees/royalties to be paid to them for broadcasting songs by FM radios.

*B. Indian courts have been grappling with these issues recently and two of the most relevant cases are listed below:*

E-Bay International AG vs. ADIT– Mumbai ITAT held that revenue earned from operation of India-specific websites by a Swiss company, for facilitating the purchase and sale of goods and services to users based in India, was not taxable in India under the Indo-Swiss DTAA. Though the Swiss company had entered into marketing support agreements with two sister concerns in India, the Indian entities could not be considered as 'dependent agents' of the Swiss company so as to constitute a PE in India ITO v. Right Florists P. Ltd– Kolkata ITAT held that Google (Ireland) and Yahoo (USA) cannot be taxed in India in respect of sums received by them from an Indian florist for the purpose of online advertising. ITATfound that Google and Yahoo does not have web servers in India and thus there was no PE in India, since a website does not constitute a PE unless the servers on which websites are hosted are also located in the same jurisdiction.

*C. The Supreme Court in Trimex International FZE Ltd. Dubai vs. Vedanta Aluminum Ltd.*

2010 (1) SCALE 574, recognizing the validity of e-transaction has held that e-mails exchanges between parties regarding mutual obligations constitute a 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. 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 may be in electronic form.