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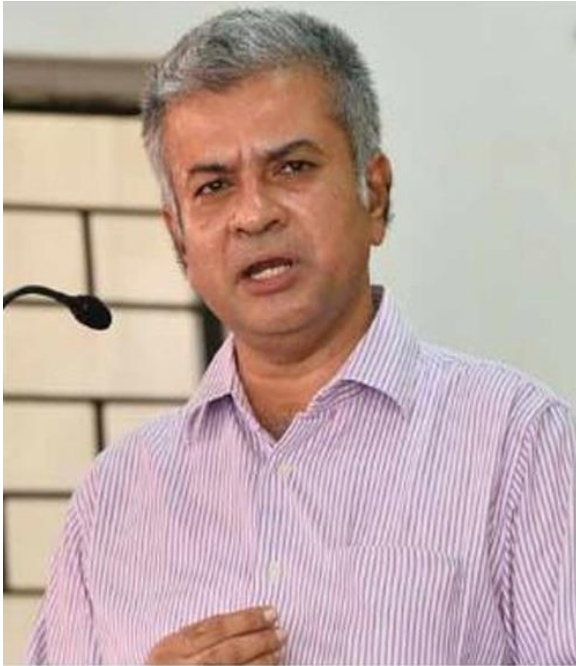
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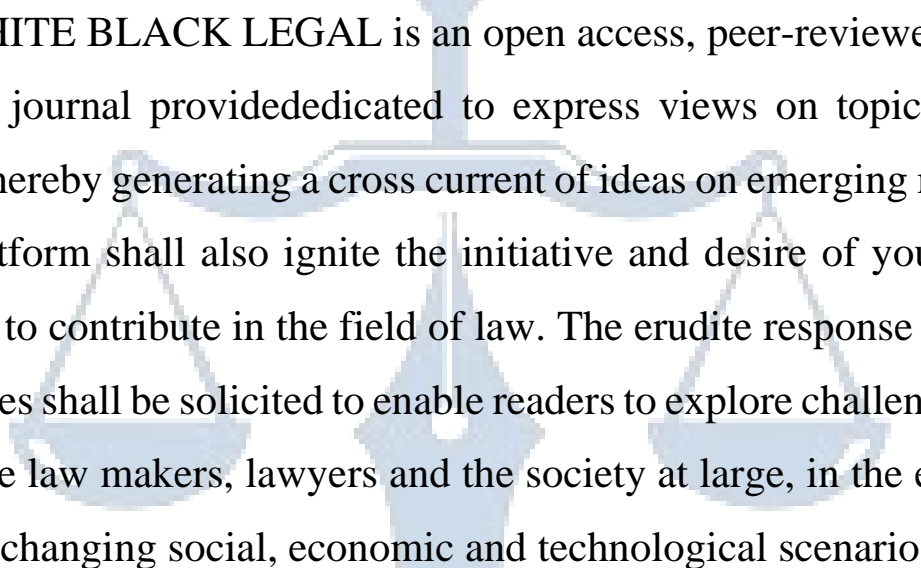


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

A COMPARATIVE STUDY OF LAWS

RELATING TO ELECTRONIC SIGNATURES AND ELECTRONIC CONTRACTS IN THE US, U.K., AND INDIA

Authored By - Ritika Panwar

ABSTRACT

One of the rapidly growing parts of Western economies is online commerce. Therefore, how governments regulate e-commerce is a matter of debate. Western countries' economic policies are critical; when the level of control is excessive, they may stifle entrepreneurial activity if they are too heavy-handed in e-commerce. In the E-Commerce industry, newcomers encounter a variety of obstacles. Whether a contract is enforceable or not, whether the deal is finished? And the most significant and nagging concern is to which court it will be admitted. The main objective of this research is to analyze if the laws in US, UK, and India need any amendments or changes. The result of this research is to contribute to the evolution of law to go incongruence with updated technologies and to harmonize Indian law with the laws of the US and UK. The researcher used the doctrinal type of research method which includes primary sources like Indian, US, and UK laws and secondary sources like books, journals, and articles.

Keywords: Electronic Communications, Electronic Contracts, Electronic commerce, Electronic Signatures, UNCITRAL Model Law

INTRODUCTION

During the last two decades, the business has seen a technological transformation known as electronic commerce (E-commerce). Businesses throughout the world have benefited from this change, which has allowed them to do business in various ways. Twenty years ago, that was unimaginable. Today, the growth of the Internet is tremendous with a wide range of products and services exchanged through the Internet around the world. Rapid advancements in internet technology have created a plethora of new opportunities.¹

Everything in the world is now available at the press of a button. So every person is getting updated

¹ Paul R. Rice, *Electronic Evidence: Law and Practice*, (2005), ABA Publishing, Washington DC.

with new technologies day by day. Online trade is one of the important developments in this era. Online trade is called E-commerce, and a contract is needed to make E-commerce legal.² It is as simple as clicking a button to create an e-mail address or communicate with friends via a social media site regularly. Internet search engines like Google and Yahoo, accessing and sharing information via Facebook and Twitter are regular practices. There are several apps like Quikr and Olx to buy and sell products and services online. Similarly, many such online services are there which all take a lot of personal information for the services obtained.

The Internet, which is made up of thousands of interconnected networks, has grown into a vital resource and a globally accessible means of exchange throughout the past few decades. The Internet is greatly interlinked with the everyday lives of people in this generation. However, on the downside, the global level of development of E-commerce also brings several legal concerns, including how to incorporate a company's contracts, e-contract validity, e-contract authenticity, laws, jurisdiction, etc. Authorities must conventionally apply their laws or broaden the legal framework. Due to the worldwide character of international relations, it is difficult to maintain control over them through the Internet. Several legal concerns are briefly examined in this study. One of the fastest-growing segments of the economy is E-commerce. Western economies are more important; as it mandates how a government regulates e-commerce. Because of this, economic policy in that country is of the utmost importance.³

An impact on e-commerce growth is expected when there are more legislative risks. The capacity to conduct e-commerce is at the heart of growth in today's economy. Consumers engage in contracting and performing contracts for other consumers via the Internet.

OBJECTIVES

The objective of this research is

1. To make a comparative study of the laws relating to the E-signatures and E- contracts among the US, UK, and India.
2. To determine the possible gaps in the existing laws concerning the US, UK, and India that needs to be upgraded.
3. To make recommendations for how those laws can be improved to better meet present and future needs.

² Preston Gralla, *How the Internet Works*, (4th ed. 1998), QUE Publishing, Indiana.

³ Bainbridge, *Introduction to Computer Law* (4th edn. 2000), Longman Pearson Education, London.

HYPOTHESIS

1. Online contracts can be safer and more reliable if international laws are consistent.
2. To stay up with worldwide standards, Indian legislation must be revised.
3. When it comes to jurisdiction over foreign persons, the rules must be consistent with those in other jurisdictions.
4. It is possible to resolve contractual problems using online dispute resolution.

RESEARCH METHODOLOGY

Doctrinal research methodology is used in the study's gathering and arrangement of primary and secondary source material. The analysis is based on primary sources such as Indian legislation and U.S. and U.K. laws, rules, and regulations. Treaties signed by countries worldwide, various charters, conventions, resolutions, and declarations have been appropriately referred to in this case study. Books, articles, and journals have also been used in this research. The author has analyzed and investigated the legal literature available in India and around the world. The comparison between US, UK, and India w.r.t. E-contracts and E-signatures have been widely discussed. Numerous web databases and search engines were used to archive the research. According to what we've seen so far, the study is not affected by a wide range of data.

LITERATURE REVIEW

- **A COMPARATIVE STUDY OF LAW RELATING TO E-CONTRACTS AND E-SIGNATURES⁴**By Dr. P Sree Sudha.

This monograph examines the legal frameworks for e-contracts and e-signatures in the United States, the European Union, and India. To begin with, the book's structure is as follows: The first section concentrates on the most common types of e-contracts, and the second section examines whether or not they can be concluded. E-contracts in the United States and the European Union are discussed in parts three and four, respectively. Indian law on e-contracts is discussed in the fifth section; the sixth section examines the validity of adhesion contracts in e-commerce; the seventh section deals with general contractual terms used on e-contracts, and the eighth section focuses on cross-border transactions in e-commerce and the choice of law. Last but not the least, a conclusion is made at the end of the ninth section, which deals with conventional contracts in e-commerce and e-signature legislation in the E.U., USA, and India.

⁴ Dr. P Sree Sudha, A comparative study of the law relating to e-contracts and e-signatures.

- **THE LAW OF E-COMMERCE: E-CONTRACTS, E-BUSINESS⁵**, by Dr. Abdulhadi M. Alghamdi

Several legal difficulties arise while conducting electronic commerce, including whether the contract must be in a certain form or validated, validity, time and location of transmission, cross-offers, and the battle of forms. Internet-based contracts, such as those made through clickwrap agreements and electronic payments, provide a unique set of legal challenges that must be addressed and have been discussed in this book. The later part of the book examines the concerns relating to the common law perspective, the SICG, UNIDROIT Principles, PECL, UNCITRAL Model Law, and the Uniform Commercial Code.

COMPARISON BETWEEN THE UNITED STATES, THE UNITED KINGDOM, AND INDIA

- **COMPARISON BETWEEN UK AND INDIA:**

In the year 2000, both India and the UK were in a similar position when it came to the presence of statutory law governing online retail, except that the UK, in addition, had the Unfair Contract Terms Act of 1977. In the next 23 years, however, both countries have chosen to adhere to different paths. The Indian approach has lagged by almost two decades in creating a strong framework to regulate online retail, especially when it comes to updating the Consumer Protection Act and the Indian Contract Act to cope with changing needs of the consumer in an increasingly globalized world. This failure to upgrade is not justifiable or reasonable as the changes to be made are readily available in the form of bills, and suggestions by the law commissions and various independent organizations. By failing to update the aforementioned legislations or introducing new ones in their place, a disservice has been done to both the judiciary and the common man. The case of Justice K. S. Puttaswamy v. Union of India recognized privacy as a fundamental right and recognized 'informational privacy' as an important aspect of the right to privacy that can be claimed against state and non-state actors. However, there is no appropriate legislation covering informational privacy and data protection in India as the Personal Data Protection Bill, 2018 is yet to be passed. This lack of change has resulted in a need for judicial activism in various cases concerned with online retail and has complicated a process that can easily be made simple. Therefore, this

⁵Dr. Abdulhadi M. Alghamdi, The Law Of E-Commerce: E-Contracts, E-Business.

comparative study has led to the conclusion that the statutory laws currently in force in India do not provide for the protection of the rights of the electronic consumer sufficiently. They do not cover the scope of online retail satisfactorily. It is indeed high time that the aforementioned Consumer Protection Bill and Data Protection Bill are passed by the Indian Parliament.

- **COMPARISON BETWEEN US AND INDIA:**

American law on electronic contracts appears to have resolved the doubts previously applicable to e-contract types of 'shrink wrap' and 'click-wrap' contracts. Difficulty may arise in determining the appropriate jurisdiction for the execution and performance of a contract that has been entered into electronically. For example, if a resident of Malaysia entered into a contract with a resident of France by 'executing' a click-wrap agreement, was the contract executed in Malaysia or France? Few U.S. courts have addressed the question of whether merely entering into a contract over the internet is enough for a party to the jurisdiction of the courts of the other party in another U.S. state. Merely entering into an electronic contract, by itself, does not establish 'minimum contacts' with another state. The exercise of personal jurisdiction by a state may be premised on the existence of the electronic contract, coupled with a party's deliberate and repeated contact with the forum state. Negotiating, entering into, performing, or breaching a contract may be sufficient to subject a party to personal jurisdiction under the 'long-arm' statutes of many states.

Contract provisions have been struck down by US courts on several occasions because they were unconscionable. The E-Sign Act and the Uniform Electronic Transactions Act (UETA) are the two main acts in the United States that deal with the notion of electronic signatures and electronic contracts. The E-Sign Act also covers transactions between US states and international countries.

UETA and the E-Sign Act:

- A contract may not be void just because it is in the form of an electronic record;
- a signature may not be void solely because it is in electronic form.
- Electronic signatures and electronic records will be accepted as evidence in court.

E-contracts in India are governed by the Indian Contract Act, 1872, which lays out the necessary elements for a contract to be legitimate. The contracting party must be given appropriate terms and conditions. E-contracts are likewise protected by the IT Act of 2000. The concept of electronic signatures satisfies the requirement of contracting parties' signatures in contracts. The IT Act also

links electronic signatures to physical signatures⁶. Apart from that, it is nearly hard to check one of the Contract Act's contracting conditions, which is to check the age of a person agreeing. The legal issues and problems arising from cyber contracts have not so far been properly addressed or adjudicated by our courts in India and so the skepticism of the contracting parties regarding the legal principles to be applied is not well founded even though the information Technology Act 2000 and the allied amendments to Indian Penal Code, 1860; the Indian Evidence Act, 1872; the Bankers Book Evidence Act, 1891 and the Reserve Bank of India Act, 1934 is a timely legislative attempt to tackle some of the complicated legal issues and problems. The Information Technology Act is supplemental to the existing provisions of Contract Act 1872.

E-contracts in India are not governed by a well-developed legal framework. E-contracts are governed by certain requirements of the contract legislation. "Contracts will be finalized at the site where the acceptance is notified," according to *Bhagwan Goverdhandas Kedia v. Girdharilal Parshotthamdas & Co*⁷. In general, the burden of proof falls on the individual in a position to control another's will.

The Internet has made it unnecessary to contract into the physical world in current times. However, the concept of E-commerce is still fraught with security concerns. Misuse of electronic signatures, data privacy concerns, identity theft, and impersonation are all challenges that people confront when using e-contracts. Such offences are punishable under the IT Act and the IPC. The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data) Rules, 2012, are one of the numerous rules in India that protect data privacy.

The method of forming contracts may still occur through offer and acceptance with the exchange of valid consideration. However, the formation of an e-contract necessitates an additional rule, such as a digital signature, and perhaps the assistance of a few special rules, such as a reversal of the mailbox rule and a clear line between an 'offer' and an 'invitation to treat'. The issues of the formation of an e-contract are not properly dealt with by our existing legislation. Uncertainty continues to exist as to when an e-contract is formed, or whether an advertisement on a website constitutes an offer or an invitation to treat. On the whole, since online contracting is becoming commonplace, current legislation needs to be amended to keep up with the technology as the protection of e-consumers has to be properly addressed for an expedient transaction and to increase confidence and trust in online business dealings. Thus, the notion of having a comprehensive law on e-commerce is paramount as it will ultimately benefit the e-consumers.

⁶ Section 5 of the IT Act, 2000

⁷ AIR 1996 SC 543

ABOUT UNCITRAL MODEL LAWS ON E- CONTRACTS AND E- SIGNATURES

The foundation of all countries' economies is commerce. Regulations are being put in place at a national level. An example of this is the adoption of Model Law introduced by the United States, along with the new Model Legislation. The Model Law is intended to help states modify and modernize their mediation procedures laws. It establishes uniform rules for the mediation process to increase the use of mediation while also ensuring better predictability and assurance⁸. The new Model Legislation, like the UNCITRAL Model Law on Electronic Commerce, is a legislative text that is suggested to States for integration into their national law. The Model Law is not intended to interfere with the ordinary operation of private international law rules. Unlike an international agreement, model legislation does not need the implementing state to notify the United Nations or other states that may have enacted it as well. States, on the other hand, are strongly encouraged to notify the UNCITRAL Secretariat of any new Model Law legislation (or any other model law resulting from the work of UNCITRAL).

A State may amend or exclude some of the model legislation's elements when implementing the text into its legal system. The ability of States parties to make changes to the uniform language (generally referred to as "reservations") is significantly more limited in the event of a convention; trade law conventions, in particular, frequently prohibit reservations or allow just a few, specific ones. The flexibility inherent in model legislation is particularly beneficial in circumstances where the State is likely to want to make numerous changes to the uniform language before enacting it as national law. Modifications are likely to occur, especially when the standard text is strongly linked to the national judicial and procedural system. This, however, means that the degree of harmonization accomplished through model legislation, as well as the degree of clarity regarding it, is likely to be lower than in the case of a convention. This relative disadvantage of model legislation may, however, be offset by the fact that the number of States enacting model legislation is likely to be greater than the number of States subscribing to a convention. States should make as few changes as possible when incorporating the new Model Law into their legal systems, and they should pay attention to its basic principles, such as technology neutrality, non-discrimination between domestic and foreign electronic signatures, party autonomy, and the Model Law's international origin, to

⁸ Uncitral.un.org. 2022. *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018* | *United Nations Commission On International Trade Law*. [online] Available at: <https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation#:~:text=The%20Model%20Law%20is%20designed,was%20initially%20adopted%20in%202002.> [Accessed 14 May 2022].

achieve a satisfactory level of harmonization and certainty. In general, it is recommended to stick as closely as possible to the uniform text while adopting the new Model Legislation (or the UNCITRAL Model Law on Electronic Commerce) to make the national law as transparent and familiar to international users as possible.

The legislation to Regulate Electronic Transactions is UETA- (The Uniform Electronic Transactions Act). It was the first national effort made to define rules for electronic transactions and that too state-wise. This act determines the legality of electronic signatures and gives them the same legal weightage as written signatures.

Discussing in detail, UETA has been granted federal recognition by Section 102(a) of the Internal Revenue Code. State law has the authority to override or influence E-communications. E-contracting sign clauses can only be used in certain circumstances. All federal states in the United States are regulated by a combination of federal and state laws. The government is responsible for enforcing commercial regulations. UETA is a matter for individual states, not the federal government. Although interstate trade requires a standard response from all parties, the cornerstone of the Uniform Commercial Code is found in state legislatures. For sales and leases, commercial paper, and other transactions, you can also use letters of credit and other types of financial documentation. The United States Conference of Catholic Bishops (UCC) is required from time to time to be reinvigorated and updated to take advantage of the most recent developments in both practice and technology.⁹

The act provides uniform rules to govern transactions in electronic commerce. The rules are primarily for electronic records and signatures relating to a transaction that occurs on and after the act's effective date. "Transaction" means an action or set of actions occurring between two or more people relating to business, commercial, or governmental affairs. UETA applies only to transactions where the parties have agreed to conduct business electronically. The context of the agreement and the surrounding circumstances are the determining factors when the parties' agreement to conduct a transaction electronically is at issue.

UETA does not apply to

(1) wills, codicils, or testamentary trusts;

⁹ Howard, Bagshaw, et al., Phipson on Evidence, (15th Edn. (2000), Sweet and Maxwell, London.

(2) the UCC, other than sections 1-107 (rights after a breach) and 1-206 (statute of frauds), and Articles 2 and 2A (sales);

(3) transactions governed by UCITA; or

(4) transactions states identify as not being covered.

Moving on to the European Union Directives¹⁰: The European Union's Electronic Signatures Directive 1999/93/EC governed the use of electronic signatures (e-signatures) in electronic contracts inside the EU. The directive's most important component is article 5, which states that electronic signatures are considered equivalent to written signatures. Electronic signatures have the following legal implications. Member States must ensure that advanced electronic signatures created by a secure-signature-creation device and based on a certified certificate:

(a) satisfy the legal criteria of a signature regarding electronic data in the same way that a handwritten signature does about paper-based data; and

(b) are admissible in legal actions as evidence.

Coming to the Indian scenario, E-mail is the most common method of creating an e-contract or webpage. Web-wrap agreements are agreements based on the Internet, and they necessitate a party's agreement by clicking on the "I agree" or "I confirm" button as soon as it's done. When it comes to creating these multi-party e-contracts, it is required to examine the most fundamental legal issues relating to the contracts that are saved as provided in the Indian Contract Act, 1872 (I.T.) Act 2000 (adjusted in 2008) explicitly states the opposite. Sections 11, 12, and 13 of the I.T. Act's Chapter IV deal with electronic contracts.¹¹

In addition to Sections 12 and 13, Attribution of electronic records, Section 11 is the subject of Section 12 and 13. In Section 12, the electronic record is acknowledged, and in Section 13, it deals with the time and place of sending and receiving electronic records. Additionally, the Indian Penal Code, 1860, the Banker's Books Evidence Act of 1891, and the Reserve Law are impacted by digital standards transactions. Computer-generated agreements are a topic of discussion. Whether or not they can be enforced in India as legally binding contracts Act of 1872 is the foundational piece of legislation governing the establishment of a corporation. Laws now in effect don't explicitly address this issue. The challenges that come only from creating computer-generated agreements are because

¹⁰ DIRECTIVE 2006/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006 on services in the internal market.

¹¹ Nandan Kamath, Law Relating to Computers, Internet and Ecommerce, (4th ed. 2009), Universal law Publishing Pvt. Ltd., New Delhi.

of the idealized paradigm that underpins contract law's legal theory of communication between human beings. Advertising on the Internet is common.¹²

A web ad will be an invitation, but it may also indicate that a company is looking for a new employee. Upon Acceptance, the online advertiser expects to be legally obligated to alter its form to that of an offer instead of a series of solicitations to accept it. Contract formation is also missing in the case of contracts entered using electronic means by an electronic agent. Section 12 deals with online communications of offers and acceptances. It ensures that the exchange of information is complete whenever an acknowledgment is received from the creator, which implies a contradictory circumstance in determining that the Indian Contract Act requires the transmission of an offer or counter-offer. Acceptance isn't complete until the recipient acknowledges it. Section 13 of the Information Technology Act adds to the confusion. Acceptance is received when it reaches its final destination.

Receipt occurs when the item is entered into the computer system, not when it leaves the recipient when it receives the message. By examining it, it's easy to see how the rule works.. Asymmetric cryptography is used to establish a digital signature, which is technology-specific. The integrity of the content and the integrity of the hash function of this digital signature, and hence the authenticity of the individual affixing it. An electronic signature might be a basic password or something complex. However, a simple PIN or even a retina scan or fingerprint can suffice.¹³

A case-by-case review of electronic signature authentication is required. Electronic records' evidential value is affected by the underlying premise. A trail of paperless proof was introduced to the Indian Evidence Act, 1872, with the introduction of the I.T. Act in 2000 to bring it in line with current developments in technology.¹⁴ Two new sections were added to the India Evidence Act: Sections 65A and 65B. Computer printouts were useful for documentation because they showed how to tell originals from non-existent copies. The data in the document can be leaked for various reasons, including personal motives, as part of a larger conspiracy, or even for no reason at all or through the dissemination of unconfirmed rumors. When it comes to the rule of thumb, there is none for determining the trustworthiness or authenticity of the data in the electronic record.

¹²Dr. Abdulhadi M. Alghamdi, The Law Of E-Commerce: E-Contracts, E-Business.

¹³ Reddy k. Jayachandra, Alternate Dispute Resolution, in Alternate Dispute Resolution: What It Is, And It Works (P.C. Rao and William Sheffield eds., 1997), Universal Law Publishing House, New Delhi.

¹⁴ Rahul Matthan, The law relating to computers and the internet (Edn. 2000), Butterworths, India.

CONCLUSION

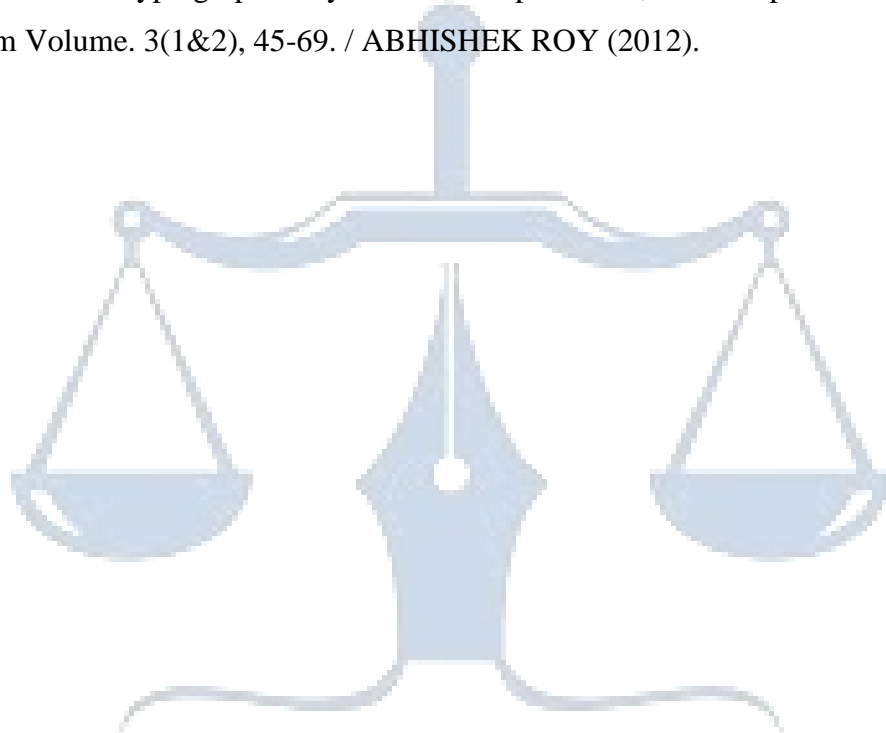
The IT Act does not cover all aspects of e-contracts. As an illustration, if a vendor has promoted on a website that lists products and services, is it an offer or an offer to treat, given its price and other circumstances? An offer, whether automated or not, is valid only if that offer is accepted. The agreement has been signed and sealed. In the event, however, an advertisement is interpreted as an invitation to make an offer, yet it just serves to attract others to engage in conversation. Offers for the offered goods or services can be made by users. The person that invited the offer has the last say on whether or not to accept the offer. Not many precedents are available to evaluate the situation. There is a need to determine how the IT Act's basic principles are affected by the provisions in the Indian Contract Act. Information technology has been around for a long time in the United States and the United Kingdom. For example, as it is in India Electronic contracts have not been the subject of court rulings as it is in the United States and the United Kingdom. An analytical investigation must be carried out to identify the concerns posed by Information and Communication Technology and Contract Creation Technology. The principles outlined in the Indian Contract Act about contract creation was in 1872, when electronic contracts were authenticated and their evidential significance was not even established.

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