

Legal Regulation of Electronic Contracts a Study in India, United States and European Union

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Abstract

This paper clarify the requirement of uniform rules governing electronic contract formation unswervingly affects the lack of use of this type of contract. In particular is exposed as Community law does not address the issue of execution of the contract, in a precise way. Which implies that the internal rules of transposition give different solutions? Each progression makes a few records which depict the norm of the procedure at a state of time. An Electronic Contract is one of these archives. In spite of the fact that business-to-business exchanges have an imperative impact in web based business showcase, a share of web based business incomes in created nations is produced from business to buyer exchanges. Web based business gives numerous advantages to the purchasers in type of accessibility of products at lower cost, more extensive decision and spares time. This paper tries to discover an answer for the specialized viewpoint and also for the legitimate part of this exchange. On one hand it will demonstrate the issues that turn up when e-Contracts might satisfy the necessities of today's agreement law and give a few thoughts how contract law ought to be advanced. Then again it will talk about the components that must be incorporated into a specialized answer for Secure Electronic Contracts.

Keywords: *Legal system, e-contracts, Contract formation, International Commerce, transposition.*

Introduction:

The use of electronic tools for the exploitation of product associated services has immersed a revision and an adaptation of the present restrictive framework to eliminate the legal insecurity that antecedently enclosed these transactions. The aim of my paper is to extend fraction of e-commerce at intervals every country is conducted by firms that area unit closely-held and controlled from outside its borders which typically conduct business in dozens of states. Presently in India the e-commerce is developing at a high speed. The conventional law doesn't solve the problems related to e-contracts, so there is need for separate and stringed law to regulate it. These days with the recent advancement within the areas of technology, telecommunications technology, code and data technology have resulted in ever-changing the quality of living of individuals in associateunthinkableapproach. The communication is not any a lot of restricted because of the constraints of geographics and time. Data is transmitted and received wide and faster than ever before.

And this can be wherever the electronic commerce offers the flexibility to business setting in terms of place, time, space, distance, and payment. This e-commerce is related to the shopping for and commerce of data, product and services via pc networks. It's a method of transacting business electronically, usually, over the net. It's the tool that results in 'enterprise integration'. With the expansion of e-commerce, there's a fast advancement within the use of e-contracts. However reading of electronic contracts poses a great deal of challenges at 3 levels, specifically abstract, logical and implementation. In our article we've mentioned the scope, nature and lawfulness and varied alternative problems involving e-contracts.

Regulation over the completion of the electronic contract in India:

Among the advancements in computer technology, telecommunication and information technology, utilize of computer networks has gained considerable popularity in the recent past. Computer networks serve as channels for electronic trading across the globe. Goods and services of diverse nature are being offered to the businesses inter se or to the consumers globally via internet. With the fast emergence of internet, the whole world has become a market where everything is available on a click of a mouse on your laptop.

Electronic contracts encompasses all kinds of commercial transactions that are concluded over an electronic medium or system, basically, the Internet and E-commerce covers three main types of

transactions, i.e. business-to consumer (B2C), business-to-business (B2B), and business-to-government (B2G). For every business transaction, there must be a contract- verbal or in writing, to formulate it legally enforceable, so is with regard to e-commerce for which the transactions are done through e-contract. Nowadays, creating an email ID or chatting with friends by using a social networking site is very common. Use of websites like Google, Yahoo, Facebook, Twitter are very common for accessing an information as well as to communicate with others, same is the use of websites like Amazon, Tradus, Quicker, Olx and many more for the sale and purchase of goods and services online. Whenever information is accessed from a website or a simple click is done on a hyperlink, it leads to a valid contract which a person never thinks while doing so and its legal consequences are rarely pondered upon. On-line commerce is one of the fastest growing components of Western economies. The way a Government chooses to regulate e-commerce is, therefore, of central importance to that country's economic policy. If regulation is too heavy-handed, they risk stifling entrepreneurial activity, causing a slow-down in the e-commerce sector. If regulation is too weak, they risk damage to consumer confidence, leading to an equally dangerous downturn. At the heart of the development of the e-commerce lies the ability for consumers to enter into and perform contracts online.¹A

¹ Andrew Murray, "Regulating Electronic Contracts: Comparing the European and North American Approaches" also see, <http://www.itu.int/en/ITU-D/Projects/ITU-ECACP/HIPCAR/Documents/FINAL%20DOCUMENTS/ENGLISH%20DOCS/etr>

large number of countries have enacted electronic contracts and electronic signatures legislation and distinct approaches have emerged. All these approaches will influence the future development of electronic signature technologies, electronic contract, technological innovations and the market. A number of countries around the world have introduced legislation that enables an electronic or digital signature in order to satisfy legal formalities that require a signature to be provided in an electronic transaction or a document. Most legislation on electronic contracts, electronic signatures, transactions and electronic commerce are based on the Model Law on Electronic Commerce.²

Due to the uncertain legal environment as to the Internet, the businessmen think twice before venturing forth into the world of the Internet. Those who venture into the virtual world of e-commerce face with challenges- whether contract is concluded or not, contract is enforceable or not, whether communication is by the person from whom it is expected, whether e-records will be admissible in the court and the biggest and the haunting question is to which nation's jurisdiction, parties will be subject to? Without legal enforceability, no commercial transaction can take place by traditional ways or by ways of

internet and, if takes place, the commercial activity doesn't have legal significance attached with it. Therefore, the need to provide a solid and balanced legal foundation upon which e-commerce may flourish persuaded the United Nations to provide a Model Law designed to afford certainty and security for all parties involved in electronic data transactions which was ultimately finalized in 1996 as the UNCITRAL Model Law on Electronic Commerce which is used by all the countries as the basis upon which individual national regulations are being made. Similarly, UN has also adopted Model Law on Electronic Signature and arbitration etc. to provide more certainty in the online world. Due to international character of electronic contract, the Law of England and United States are also studied.

One of the issues talk about is whether the computer-generated agreements should be enforceable as legally binding contracts or not. The Indian Contract Act, 1872 is the basic law encompassing all rules dealing with the formation of a contract. Laws prevalent don't lay down any express provision when it comes to formation of computer-generated agreements and the difficulties arise only because of the legal doctrine of contract law which is based on an idealized model of communication between natural persons. Generally, web advertisements³ are treated at par with the shop displays. As such web advertisements will be invitations to offer, however, it may indicate that the web

ansactions_assessment.pdf (last visited on 12th Aug, 2013)

² FarisaTasneem, L.L.M (Monash University), PhD Candidate, RMIT University (Royal Melbourne Institute of Technology), Research Assistant, Monash University, Melbourne, Australia.

³ Partridge v Crittenden [1968] 1 WLR 1204.

advertiser intends to be bound upon the acceptance⁴ converting it to an offer rather than invitations to offer. The essential requirement of “Meeting of mind” for contract formation is also absent in case of contracts entered through electronic agent. With regard to communication of offer or acceptance online, section 12 compels that the communication is complete on the receipt of acknowledgement by the originator which impliedly results into a conflicting situation than that is prescribed in the Indian Contract Act concluding that communication of offer or acceptance will not be complete unless acknowledgement is received by the sender. The situation is further complicated by the section 13 of the IT Act which provides that the time of receipt of acceptance is (i) when it reaches the designated information system or (ii) information system of the addressee (if not designated) or when it is retrieved by the addressee (if sent to the system other than designated). Receipt happens when it enters the information system not at the time when received by the addressee. By analyzing the rule, it can be very clearly concluded that neither receipt nor dispatch rule is applicable to the electronic contracts.

In Indian setting, one might say that Information Technology Act, 2000 (hereinafter alluded as IT Act) has comprehended a portion of the impossible to miss issues that emerge in development and verification of electronic contracts. IT Act has brought changes to various enactments, such

⁴ Something along the principle of *Carlill v. The Carbolic Smoke Ball Co. Ltd* (1893) 1 QB 256

as, Indian Evidence Act, Indian Penal Code, Criminal Procedure Code, Reserve Bank of India Act, and some of others. Here some of the enactment enactments will be analyzed in the context of electronic contracts⁵. As showed by a couple of reviews one of the best piece of business usage of new media in business is the nonattendance of trust of customers in the honest to goodness authority of electronic contracts. Another hindrance for further spread of internet business is the absence of trust in the security of the electronic correspondence all in all. Our current society depends on a financial framework that is for the most part in view of the system of agreements. At this moment our mechanical and administration society is changing to a much more present day data society. A standout amongst the most essential pointers that demonstrates this change is the developing advanced economy.

Legal Framework relating to E-Contract:

With the rising importance and value of e-contract in India and across the world, the diverse stakeholders are endlessly identifying and evaluating the nuances of legal outline relating to it. The participation of different service providers in the transaction of e-contract, which includes a payment gateway, the main website, the bank or card verification website, the security authorisation website and the final service provider which can also comprise the shipping agent has made the E-contract business more complex. Therefore,

⁵ Turban, E., King, D., Lee, J., & Viehland, D. (2002). *Electronic commerce: A managerial perspective* 2002. Prentice Hall: ISBN 0, 13(975285), 4.

the need for amendable it has augmented. In India, till date there are no definite legislations or guidelines protecting the buyers and sellers of goods and services over the electronic medium.⁶ However, several laws acting in amalgamation are trying to regulate the business transactions of E-contract. They are as follows:

- Indian Contract Act, 1872
- Consumer Protection Act, 1986
- Information Technology Act, 2000
- Indian Copyright Act, 1957

Like any other types of business, E-contract business also works on the basis of contracts. It is therefore, structured by the Indian Contract Act, 1872. Any valid and legal E-contracts can be designed, completed, and enforced as parties replace paper documents with electronic parallels.⁷ The contracts are move in between the service providers or sellers and buyers. The authority of the transactions of E-contract is established under the Information Technology Act, 2000 (IT Act, 2000). In a bid to maintain security, the government has made digital signatures necessary in several E-contract transactions mainly in the government to government (G2G) or government to business (G2B) framework with a view to safeguarding the identity of the transacting parties. E-contracts transactions on these modes require digital signatures as essential parts. They are used for

⁶Akshat Razdan, The Future of E-Commerce in India, LAW WIRE

⁷ Aashit Shah & Praveen Nagre, Legal Issues in E-commerce

the verification of the electronic contracts. These are controlled by the IT Act, 2000 which provides the outline for digital signatures, their issues and verification. The most important order in this regard was the application of second factor verification in all Indian Payment Gateways. Commonly recognized as Verified by Visa or MasterCard Secure Code, this had made card transactions on the internet moderately more secure.

Transposition of the EC directive to European legal systems:

The transposition of the Directive on electronic business has occurred through various controls expressed underneath: As indicated by the discoveries of the preparatory assessment completed by the Commission, the transposition of the Directive is, all in all, acceptable. There are however different focuses which either are not satisfactorily settled through the inside enactment of the Member States which transposed the Directive, or whose determination is diverse relying upon the Member State included. This is the situation for the execution of electronic contracts, a point which is not given a uniform arrangement under European enactment. The treatment given to the arrangement of electronic shrinks by the diverse EC enactments in the normatives which transpose the Directive will be analyzed in detail underneath. It will turn out to be evident that the snapshot of finish of an agreement contrasts between the Member States and is dependent on different elements⁸.The

⁸ Knill, C., & Lenschow, A. (1998). Coping with Europe: the impact of British and German

transposition of the Directive to Spanish Law happens through Services of the Information Society Law (SISL). This Law expresses that: Contracts finished up electronically will deliver every one of the impacts gave by law, when assent has been allowed alongside whatever other conditions vital for its legitimacy. In the Spanish lawful framework, an agreement is administered by the guideline of self-rule. This is unaltered when managing mechanical advances; however the types of indication of offer and acknowledgment are changed, so an agreement is closed when one gathering makes an offer and another acknowledges. In managing electronic contracts this matter is more intricate not slightest due to the trouble of assurance and the distinctive strategies for both making and tolerating an offer.

In addition, proceeding with the investigation of the transposition of the Directive and the assurance of when electronic contracts are shaped, in the UK the Regulation 2013/2002 on Electronic Commerce, which came into constrain on August 21st, 2002iv transposes the Directive. On the matter of agreement legitimacy, the Regulation obliges the gathering pitching the products or offering the support of recognize receipt of the request to the beneficiary of the administration immediately and by electronic means. The control additionally expresses that the affirmation of receipt may appear as the arrangement of the administration paid for, that

administrations on the implementation of EU environmental policy. *Journal of European Public Policy*, 5(4), 595-614.

is to state from the minute installment is gotten, the agreement is perceived as formalized and hence substantial. Along these lines an agreement is viewed as substantial as existing apart from everything else an installment is made for the products or administrations obtained on-line. Here untruths the distinction with the Spanish SISL, where an on-line contract is detailed as existing apart from everything else when the data on the acknowledgment shows up in the beneficiary's email inbox, autonomously of regardless of whether installment has been made.

As to Italian legitimate framework, the Directive was transposed through Legislative Decree 70 ninth April 2003 v identifying with some legal parts of data society administrations, specifically, electronic trade, on the household advertise. Article 12 of the Decree is important to this review as it builds up the vital conditions for conclusion of an agreement. Here, an archive is viewed as sent and got by the beneficiary in the event that it is transmitted to the email address beforehand given. It must be viewed as that the date and time of arrangement, transmission or receipt of an electronic report attracted up understanding with the arrangements of the standard will be compelling against outsiders. It additionally states in this statute that the transmission of a processed report electronically, if future receipt is guaranteed, is equal to notice through email as allowed by law. This standard ends up being even less particular than the past two, given that the legitimacy of the agreement comes down to an exceptionally non specific issue, for example, "that the message be dispatched to the address given by the beneficiary".



On account of French law it is the Law on Confidence in the Digital Economy, n° 2004-575 21st June 2004vi which transposes the European Directive on electronic business. This standard does not acquaint huge advancements relating with the change of electronic contract. The adjustments made to the French Civil Code with a specific end goal to adjust to the European standard shed some light on the matter. These changes, in any case, are as yet nonexclusive, given that there is no determination made to the minute when it is comprehended that the gatherings to whom the affirmation of acknowledgment of an offer and the affirmation of receipt are tended to can get to them (Schultz, 2005). This minute could be comprehended as, when the message of acknowledgment is stored in the email inbox of the beneficiary, when affirmation is sent that the archive has been perused and so on. Every residential control transposing the Directive 31/2000 offers an alternate answer for the issue of deciding the exact minute when an electronic contract is thought to be executed. In this way there is no certain, uniform sign existing apart from everything else an agreement is executed, obstructing the information of when the gatherings end up noticeably tied by said contract, from one viewpoint, and forestalling, on the other, the making of a prevision over the legitimate capability or law appropriate to the universal contract drawn up by electronic means. The Community administrator must offer clear standards about the key debatable issues confronting this sort or strategy for global contracting. This would have positive repercussions on the utilization of Virtual

Stores in the EC, uplifting their degree, while lessening exportation costs and enhancing the internationalization of olive oil organizations.

Law administering electronic trade can be partitioned into various classifications. A few laws empower internet business by managing genuine or saw snags exhibited by the current authoritative document like the prerequisites for composed records and composed marks or some other obstacles relating to suitability in proof of electronic records and mark. Others may direct the nitty gritty structure of specific electronic records and mark strategies while certain different laws may look to broaden or adjust existing control of business action to cover similar to parts of internet business like security, tax collection, protection and so forth. It is correlated to note that numerous pundits are of the view that an innovation unbiased approach is to be trailed by lawful direction, i.e. one which does not separate between types of innovation like paper and advanced or electronic record. Another period of exchange, correspondence and exchanges is coming to fore with the quick improvement of web based business influencing our social and monetary exercises in expansive way. This is by virtue of significant impact that is rendered by data innovation. There are various essential lawful viewpoints that the Information Technology Act, 2000 touches after running from electronic government exchanges to encouraging electronic exchanges fundamentally. The arrangement which is epitomized in the IT Act is one of perceiving both paper and electronic trade on a similar balance and keeping up an innovation

nonpartisan approach. In this fragment we won't examine IT Act in detail. Here we will keep ourselves to arrangements managing e-contracts. The Preamble of the IT Act, 2000, states that it is an Act to give legitimate acknowledgment to exchanges completed by methods for electronic information trade and different methods for electronic correspondence, ordinarily alluded to as 'electronic business'. This may incorporate the utilization of contrasting options to paper-based strategies for correspondence and capacity of data to encourage electronic recording of archives with the Government Agencies. Further, IT Act will seek to amend the Indian Penal Code, the Indian Evidence Act, the Banker's Book of Indian Act, and the Reserve Bank of India, for related matters⁹.

The Act, as set down in the Preamble, additionally takes after nearly on the heels of the Model Law on Electronic Commerce received by the UNCITRAL. The previously mentioned Model Law prescribes that all States give ideal thought to the said Law when they institute or change their laws, in perspective of the requirement for consistency of the law relevant to contrasting options to paper based strategies for correspondence and capacity of data. In addition, it has been stipulated that the said determination might be offered impact to and productive conveyance of Government administrations finished, by methods for solid electronic records. The Model Law gives a beginning stage to ID and talk of ranges where the law could be refreshed

⁹Act, A. (2000). Preamble and International Center for Transitional Justice (p. 46). supra note 9.

to consider new innovation, and also including certain universally settled arrangements for managing those issues and:

- Establishes that approve and perceive contract contracts shaped through electronic means;
- Sets default rules for contract development and administration of electronic contract execution;
- Defines the qualities of a substantial written work and a unique record;
- Provides for the acknowledgment of electronic marks for legitimate and business reason; and
- Supports the affirmation of PC confirmation in courts and discretion procedures.

Relevant Provisions Governing E-Contracts:

- Electronic or Digital Signatures comprise of cryptographic procedures which guarantee protection and confirm the beginning and respectability of the message; the methods usually utilized are a blend of calculations, keys and codes. Symmetric cryptography utilizes only a solitary key to encode and unscramble the messages, then again uneven strategy utilizes two keys one of which is open (since it is known by the gatherings) and one, which is private (only one of the gatherings knows it). Most present day marks depend on hilter kilter strategies, portrayed as an extraordinary entryway that must be opened with four key bolt, two on either side. Once both sides have bolted the

keys into the entryway, it is conceivable to open entryway and for the gatherings to make sure that they can consult through that open entryway securely. Marks fill the needs of proof, endorsement, and effectiveness and coordinations.

- To accomplish these fundamental purposes a computerized signature must be fit for Signer and Document verification, these strategies are instruments used to bar impersonators and falsifiers and are basic elements of what is frequently called non-renouncement benefit. This keeps a man from singularly ending or making changes to lawful commitments emerging out if a PC based exchanges.

Validation of electronic records is managed under Section 3 of IT Act, by method for appending an electronic mark. It is stipulated that such validation might be accomplished by utilizing the unbalanced crypto framework and hash function⁶¹ whereby the underlying electronic record is changed into another electronic record. In this way, computerized necessities ought to have, as least prerequisites, the accompanying qualities:

- A crypto system which is asymmetric
- The initial electronic record transforming into another electronic record
- Hash function and hash result
- The hash function's stability
- The hash function's safety
- Public Key and Private Key

Regulation of Electronic Contracts in the United States and the European Union:

States are particularly cautious about coordination of electronic-commerce-related laws because many view the area as so new that no laws currently exist to harmonize. In fact, there is need of detailed rules in the US and EU member countries until recently shows the void in substantive law and the absence of general principles which can be elevated to an international standard.¹⁰ Although many argue that electronic contract standards should evolve from the business community through practice and self-regulation, legislative attempts to strengthen consumer and industry confidence are emerging. The United Nations Commission on International Trade Law (UNCITRAL) is currently addressing electronic-commerce-related issues through framework legislation ready for adoption by states. Most significant to writing and signature supplies are the *Model Law on Electronic Commerce* and the *Model Law on Electronic Signatures*.¹¹ The Model Law and its background documents are recognized as influencing law reform in many nations.¹² This influence has not produced a

¹⁰Amelia H. Boss, 'Electronic Commerce and the Symbiotic Relationship Between International and Domestic Law Reform', (1998) 72 *Tul. L. Rev.* 1931, at 1943-1944.

¹¹Both of which are available through the UNCITRAL website at <http://www.uncitral.org/en-index.htm>.

¹²Christopher T. Poggi, 'Electronic Commerce Legislation: An Analysis of European and American Approaches to Contract Formation', (2000) 41 *Va. J. Int'l L.* 224, at 227.

coherent uniform standard, however, whether at the domestic level in the US or internationally. Even within the European Union, which has as its object the creation of a single market with a free flow of goods services and capital, contains significant divergence in approaches to binding electronic contracts. In both regions, there is debate over the issue of whether the state should tie new legislation to specific existing technology, thereby defining 'writing' and 'signature' as including a certain type of communication. Those who oppose that approach feel that electronic documents and signatures can be addressed through the application of a functional equivalence analysis.

The technology-specific debate versus technology-neutral legislation is well illustrated by the US practice. For the time being, and in the foreseeable future, replacements for pen and paper will likely be accompanied by electronic or digital signatures. These two are frequently used interchangeably, but a key difference exists. Electronic signatures are unique identifying marks electronically attached to a communication. The problem is that not every form of electronic signature provides assurance of who affixed it and when. Digital signatures on the other hand, do just that. The process, based on asymmetric cryptography, involves a public and private key to decode the message. The sender uses a 'private key' to encode a message that can be decoded by the corresponding public key. The backbone of this system is the participation of independent third parties, known as certificate authorities, who supply digital certificates to the recipient

of the sender's message. A digital certificate is an electronic record, verifying the sender's name and public key as well as the time and unaltered state of the message. With a correctly authorized certificate, the receiver can be reasonably certain that message and signature are authentic. While there are currently no specific technology requirements for electronic or digital signatures in the existing federal legislation, many states have focussed on public/private key cryptography with digital certificates supplied by designated certificate authorities.¹³ Utah, for example, was first out of the gate enacting the Utah Digital Signature Act in 1995, which equates electronic form with writing only if it is coupled with a digital signature provided by a licensed certificate authority.¹⁴ As a result of choosing the public/private key approach, Utah is not only technology specific, but is relying on the deemed writing as opposed to the more flexible useful similarity approach. This can be contrasted with the 1997 amendment to section 2.108 of the Texas Business and Commercial Code. This part make out electronic or digital signatures as meeting the signing requirements if they are merely identifiers intended by the person to have the same force and effect as a manual signature.¹⁵

¹³Kate Marquess, 'Sign on the Dot-Com Line: Electronic Signature Act Facilitates Commerce over the Net', (Oct. 2000) 86 *ABA J.* 74.

¹⁴Utah Code Ann. § 46-3-101 (1995) *et seq.*

¹⁵See Jeff Dodd and James Hernandez, 'Contracting in Cyberspace', (Summer 1998) *Computer Law Review and Technology Journal*, available online at <http://www.smu.edu/~csr/articles.html>, at 23-24.

Some argue that, in the interest of certainty, digital signatures using certificates should be adopted because there is already a growing infrastructure, and its reliability would encourage more widespread adoption by states.¹⁶ In theory, the transaction benefits derived from a technology-specific Act will enhance commerce by alleviating fears between parties by providing certainty in obligations.¹⁷ On the other side of the debate it is argued that technology choices should be left to the market because legislation always develops slower than technology.¹⁸ Furthermore, specifying technology forces businesses to use methods that may be out of date, or more expensive than necessary to achieve the goals of such requirements, not to mention stifling competition and innovation in the online security industry.

Recognizing the split in legislative attitudes toward these questions, UNCITRAL created the Model Law on a technology-neutral and functional equivalency basis, but

¹⁶Marquess (2000), *supra* note 6, at 76.

¹⁷Dodd and Hernandez (1998), *supra* note 8, at 23.

¹⁸Marquess (2000), *supra* note 6, at 76. (While the public/private key infrastructure is currently regarded as the safest system commercially available, there is no telling where security technology will be tomorrow. For example, Dr Michael Rabin, a computer scientist at Harvard, says he has found a way to send coded messages that cannot be deciphered, even by an 'all-powerful adversary' with unlimited computing power. He and his PhD student, Yan Zong Bing, have discovered a way to make a code based on a key that vanishes even as it is being used; *New York Times*, Feb. 20, 2001.

left it broad enough to be adapted to specific rules by individual states. Unfortunately, this creates an atmosphere of uncertainty because there is nothing to prevent states from adopting rules which exclude equivalent methods or even identical methods if foreign.¹⁹ The persuade of the Model Law and the cooperation of drafting committees are indicators that at least partial coordination of approaches to writing and signature requirements for electronic contracts is considered desirable by law reformers. This does not mean, on the other hand, that trade people are presently able to enter agreements with certainty that is backed by hard law. Industry practice and mutual advantage are the current force behind faith in the paperless system. The legal regimes in place are not yet uniform. Therefore, this paper is planned to demonstrate two themes in relation to coordination as recommended by UNCITRAL through its Model Law. First, I will examine the present systems in the United States and the European Union and point out the key differences. Second, I will show why these differences continue to exist and how this will affect the substance and timeliness of law reform.

UNCITRAL Model Law:

The Model Law on Electronic Commerce was adopted by UNCITRAL in 1996. Its purposes are to help states enhance their legislation with respect to electronic

¹⁹Richard Horning, 'Symposium Presentation: Legal Recognition of Digital Signatures - A Global Status Report', (2000) 22:2 *Hastings Comm. & Ent. L.J.* 191, at 199 regarding the German system.

communications and to serve as a reference aid for the interpretation of existing international conventions and other instruments in order to avoid impediments to electronic commerce.²⁰ According to Article 1, the law 'applies to any kind of information in the form of data message used in the context of commercial activities', but allows for exceptions to be made by individual countries.

In order to examine the European experience, it is necessary to review the recent use of electronic-contract-related directives and the subsequent treatment by key member states. There are two directives relevant to this study: the Electronic Commerce Directive 2000 (ECD), which must be implemented by member states before January 17, 2002,²¹ and the Electronic Signatures Directive 1999 (ESD), which must be implemented by July 19, 2001.²² Although transactions made under the purview of the Distance Contracts Directive 1997 will certainly involve electronic forms, it is geared to monitoring the content of contracts from a consumer

protection standpoint, rather than setting out standards of legally recognized media. Indeed, it does not specify the type of communication to be used and therefore will be subject to the ECD and the ESD. Whereas this paper is confined to the formal validity of electronic forms, it is not concerned with the content of the Distance Selling Directive, which is directed toward the rights of parties after formation. The dimensions which affect comparative analysis of these issues include culture, society, economy, history, politics and legal logic.²³ Legal logic must be considered in light of the other factors and also with consideration of legal processes, institutions and actors.²⁴ A further consideration is whether the legal issue is addressed entirely by the identified statutes or if there are other rules that supplement the solutions. Given the infancy of the electronic-contract-related statutes, it is not yet possible to accurately predict how other rules will supplement the proposed and recent amendments to domestic legal systems.

Conclusion:

Despite the fact that the contracts executed in an electronic form greatly accelerate and contribute to efficient business activities, provision of such contracts security is important. Each domestic regulation transposing the Directive 31/2000 offers a

²⁰ Christoph Glatt, 'Comparative Issues in the Formation of Electronic Contracts', (United Kingdom) (Spring 1998) 6:1 *Int'l J.L. & Info. Tech.* 34, at 57.

²¹ Council Directive 2000/31/EC, [2000] OJ L178/1, available online at EUR-LEX site http://europa.eu.int/eur-lex/en/lif/dat/2000/en_300L0031.html (implementation Art. 22(1)).

²² Council Directive 1999/93/EC, [2000] OJ L013/12, available online at EUR-LEX site http://europa.eu.int/eur-lex/en/lif/dat/1999/en_399L0093.html (implementation Art. 13(1)).

²³ Hugh Collins, 'Methods and Aims of Comparative Contract Law', (1991) 11 *Oxford J. Legal Stud.* 396, at 398.

²⁴ John Henry Merryman, 'Comparative Law Scholarship', (1998) 21:4 *Hastings Int'l & Comp. L. Rev.* 771-784.

different solution to the problem of determining the precise moment when an electronic contract is considered to be executed. Therefore there is no apparent, uniform suggestion of the moment a contract is executed, impeding the knowledge of when the parties become together by said contract, on the one hand, and preventing, on the other, the creation of a prevision over the legal competence or law applicable to the international contract drawn up by electronic means. The group of people legislator must offer clear rules about the key open to discussion issues facing this type or method of international contracting. This would have positive repercussions on the use of Virtual Stores in the EC, heightening their scope, whilst reducing exportation costs and improving the internationalization of olive oil companies. The bottom line is that electronic contracts are being accepted as valid. Evidentiary issues differ from state to state, but that does not mean that the different solutions are irreconcilable. Ultimately, economic growth and increased interdependence of states will create a common core of legal solutions, even if by differing means, so that competitive advantages will not be made permanent. On one occasion there is a ordinary least standard in electronic documents and signatures, there will be even more scope for coordination through industry-led regulation of the technical requirements for reliability in a given country. Until that time, however, such self-regulatory measures remain speculative.

Suggestions:

1. A clear provision should be incorporated specifying the time when the communication of “offer” or acceptance” will be completed. The requirement of “Acknowledgement” should not be binding.
2. As the knowledge element necessary for determining the time for communication of acceptance in postal communications is irrelevant in case of electronic communications. As Sections 12 and 13 don’t deal with the term “knowledge”, it is suggested that, as it is contrary to the Contract Act, it should have been clearly mentioned in the IT Act.
3. Determining the time of contract formation is essential since it identifies the moment of transfer of ownership and risk, among others. With regard to the rule of acceptance, need is to specially incorporate a provision specifying that only, receipt rule “is to apply whether the means of communication is instantaneous like website, chat etc. or no instantaneous like email, unless otherwise agreed by the parties.
4. Section 13 of The IT Act has prescribed the mode of sending acknowledgement. In absence of acknowledgement, offer is treated as not sent which seems totally absurd. Hence, the suggestion is that instead of mentioning „never been sent“, it should be mentioned as “not accepted”.
5. The IT Act contains merely three sections dealing with e-contract which, too, are creating unnecessary conflict with the traditional law. Need is to have more elaborate provisions clarifying the

situation regarding formation of e-contract.

6. The IT Act has provided for an elaborative and cumbersome procedure for the appointment of the foreign certifying authorities which may hamper the smooth expansion of e-commerce. US is technology neutral, UK has adopted rules providing easy recognition to foreign certifying authorities. Hence, it is suggested that the procedure for establishment of certifying authorities should not be too cumbersome.
7. The need is to train law officers and judges to comprehend the admissibility of e-signatures and equip them to look into the admissibility of e-signatures on case by case basis as the e-evidence in India may be considered not adequate as the courts might find it too difficult to understand due to the lack of competence of judges.
8. E-courts can also be a viable solution to settle online disputes.

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