CHAPTER 6
CONCEPTUALIZATION OF E-CONTRACTS

6.1. INTRODUCTORY

Till now we saw history and fundamental principles of contract law. Now it’s time for us to discuss e-contract with respect to laws in India. With the increase in usage of internet there is increase in e-commerce, which is ultimately resulting in increase in new challenges to contract regime. Day by day, new obstacles are emerging. This is a high time for all nations to tackle with these issues. Especially for India as it is high time because usage of internet is increasing at the speed of light. People are getting addicted to internet.

6.1. INDIAN CONTRACT ACT, 1872 AND ISSUES

The personal computer has evolved from being an exclusive, expensive commodity to one that is easily accessible to most of the developing countries population. Apart from that, even cell phones are making internet easily accessible. A natural consequence of this has been the astounding growth of global e-commerce transactions and web advertising. In a global commercial environment, parties are constantly entering into different types of transactions. These may include lease agreements, contracts governing the sale and purchase of goods, negotiable instruments, loan agreements and the like. As commerce moves to internet, there is an inevitable and ever-increasing need to conduct such transactions in that electronic medium. Undoubtedly, process of entering into a transaction using electronic means will give rise to a host of legal issues, hitherto not confronted with.
This segment is divided in following manner, firstly, formation of e-contracts, secondly, performance of e-contracts, thirdly, standard form of e-contracts, fourthly, termination of e-contracts, fifthly, remedy for termination and sixthly, online contracting & possible judicial problems. Prior to dealing with above subject-matters in detail, let us deal with few pre-contractual considerations.

6.2.1. PRE-CONTRACTUAL CONSIDERATIONS

Pre-contractual considerations would encompass the actions that have to be undertaken before forming a contract. Such prior considerations would entail e-businesses to create e-presence on internet through a website, newspaper group advertisement, e-mail list and the like. E-commerce is like any other form of commercial activity, and is bound by the same regulations and legal principles regarding pre-contractual behavior. Further, e-business may need to verify the identity of their customers, as they may not necessarily want to contract with all people from all jurisdictions. It is a misconception that any e-business is obliged to transact with any visitor to the site; failure to observe this consideration can have a major impact on the performance and enforceability of any subsequent e-contract. At the same time, consumers are also required to pay due attention to terms and conditions and other declarations made by the e-business on its website before entering into an e-contract or confirming the order they have placed. The information requirements here would include —

- The technical steps necessary to conclude the contract,
- The language of the contract,
- The identification and correction of errors, and
- The filing and accessibility of the contract
Having discussed about preliminary aspect of pre-contractual aspects, now we will move further to understand some concepts viz. unilateral and bilateral e-contracts, express terms, and collateral contracts.

6.2.1.1. UNILATERAL AND BILATERAL CONTRACTS

Usually, contracts are bilateral in nature, implying that both parties are bound, as there is an exchange of a promise for a promise.¹ For example, suppose a person orders a pair of shoes from a website, a bilateral contract is formed because the merchant promises to send the goods in exchange for the consideration that the customer promises to pay. However, online contracts may create unilateral contracts, where only one party, namely the advertiser, is bound. An announcement, which is considered as a standing offer, which offers money or some other reward for the performance of an action, would be termed as a unilateral contract. In such a case, the accepting party does not need to notify the advertiser but he/she only needs to do the required act.

The well-known case of Carlill v. Carbolic Smoke Ball Co.,² would be a relevant example with reference to unilateral contracts. In this case the Court enforced the contract. Thus, unilateral contracts are dangerous not only because of a careless advertisement creating unwanted legal obligations, but also because multiple parties can enforce them.

Therefore, online advertisements need to be carefully drafted to ensure that customers (and Courts) interpret them as advertisements and not unilateral contracts. Perhaps, online merchants can use disclaimers to

¹Chitty on Contracts, 26th Ed., Sweet and Maxwell, London, 1989, p.34
²(1893) 1 QB 256
emphasize that the ‘web-advertisement’ is not an offer or unilateral contract, but only an advertisement or an invitation to treat.

6.2.1.2. EXPRESS TERMS

Courts have, on a number of occasions, been encountered with the problem of whether a representation made prior to the creation of a contract constituted an express term even though the written contract did not contain it. Though the ‘parol evidence rule’ seems to restrict the possibility of such prior representations, verbal or oral online statements made by e-mail or on web pages prior to contract formation may be interpreted as express terms, despite their absence from the ‘actual’ contract written or otherwise. Thus, if an online customer enters into a contract due to some representation made by the e-business, the courts have many ways of holding the e-businesses liable, whether such representation is by way of an express contractual term part of a collateral contract or is considered to be a misrepresentation.

6.2.1.3. COLLATERAL CONTRACTS

A collateral contract is one that is independent of, but subordinate to, an agreement affecting the same subject matter. If representation induces a person to form a contract with a third party, the court may hold that there was a collateral contract with the representation. For example, a leading corporate business group, A, decides to purchase a microlite form B, a specific maker of such aircraft. In the construction of such microlite, the company specifies that some material be procured from particular

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4 The parol evidence rule, as stated in Goss v. Lord Nugent, (1833) 5 B & Ad. 58: ‘if there is a contract which has been reduced to writing, verbal evidence is not allowed to be given so as to add to or subtract from, or in any manner to vary or qualify the written contract.’
company, C. in the event of such material turning out to be faulty, A may successfully sue B for damages under a collateral contract.

Even product statements on a website may constitute grounds for collateral contract to be formed. Thus, even a website being used for purely promotional purposes, without anticipating the creation of contracts online must take care not to make representations.

### 6.2.2. FORMATION OF E-CONTRACTS

Usually speaking e-contracts are formed through, click wrap, shrink wrap and browse wrap. Fundamental principles envisaged in the Indian Contract Act, 1872 are equally applied to online contracts. In addition to these principles procedures advocated by Information Technology Act, 2000 must also be applied to it. As we have already discussed fundamental principle of contract law now there is no point in discussing once again. It is already stated above that to enter into a valid contract there are following essentials, but they are dealt from perspective of e-contracts.

- Agreement (Offer and Acceptance)
- Capacity
- Free Consent
- Consideration and
- Lawful Object

#### 6.2.2.1. OFFER

When a person makes an offer he/she is expressing a desire to enter into a contract, based on specific terms and conditions, on the understanding that if the other party accepts it, the agreement will be legally binding. In
many transactions (whether online or conventional) the offer is not made directly one-on-one. The consumer ‘browses’ the available goods and services displayed on the merchant’s website and then chooses what he would like to purchase. The mode of making an offer differs from contract to contract. This can be understood to through the illustrations.

**Illustration for E-mail Contract:** Aryan sends a proposal to Preeti by using his e-mail account that he is willing to buy her laptop for Rs. 30,000/-.

**Illustration for Click Wrap Contract:** A click wrap agreement is mostly found as part of the installation process of software packages. A party posts terms on its website pursuant to which it offers to sell goods or services. To buy these goods, the purchaser is required to indicate his assent to be bound by the terms of the offer by his conduct—typically the act of clicking on a button stating “I agree.” Once the purchaser indicates his assent to be bound, the contract is formed on the posted terms, and the sale is consummated.
A. INVITATION TO OFFER

Invitations to treat are advertisements that promote the sale of products, but are neither offers in themselves nor unilateral contracts. A similar principle is likely to apply to websites and e-mail price lists. While websites are the electronic equivalent of shop windows and catalogues, e-mail price lists are analogous to circulars in real-world commerce. However, in order to minimize unfavorable risks, websites and e-mail lists should have statements explicitly defining them to be invitations to treat and not offers.

Whether a statement on a website amounts to an offer or an invitation to offer will largely depend on whether the person making such statements intended to be bound or appeared to have intended to be bound. Therefore e-commerce websites or e-mails should make their intention
very clear. Also communication agreements between parties using EDI should make sure that they are certain about the status of the information being provided.

One more deciding factor whether the statement amounts to an offer or otherwise is the distinction that arises where the delivery of the goods take place offline or the where the delivery of the products take place online. For example, in the case of goods or services like downloadable music, information, and software etc.

Invitation to offer or treat is more like browse wrap agreements. For example, flipkart.com or ebay.com is the online shopping websites. These websites offer sales of products online. The advertisements on these websites are nothing but invitation to treat, here the websites – flipkart.com or ebay.com– are not giving any offer.

In traditional business display of goods or goods put up in a self-service store would amount to invitation to treat. The buyer here makes the offer and it’s for the seller to decide whether he wants to sell or not. However in case of online contract or e-commerce sale, the seller has an option to cancel or reject the order as his status is still that of a person receiving order.
B. COUNTER OFFER

It is an established rule that making a counter offer essentially means rejections of the original offer. An acceptance is an unequivocal acceptance of all the terms of the offeror, any additional or modified terms indicate the creation of counter offer, and thus no contract may be formed on the basis of the original offer. As e-transactions usually involve the application of their own standard terms and conditions, such a situation will rarely occur in standardized web-contracts, though they may definitely occur during e-mail negotiations, resulting in what is known as a ‘battle of the forms’. As a consequence of the complex nature of such disputes, online businesses should refrain from any action that may even implicitly indicate acceptance of the other party.

C. REVOCATION OF OFFER

5Hyde v. Wrench (1840) 3 Beav. 334
6The rule that offer and acceptance must correspond gives rise to problem where one or both of the parties wish to contract by reference to a ‘standard form’ contractual document. Supra Ref.4 p.34
7Supra Ref. 6. p.3
As not all offers are accepted, the offer might lapse after a specified time or event, or it might be revoked by the offeror. The offeree may also reject the offer, or propose a counter offer. According to the Indian Contract Act an offer may be revoked before the acceptance of such offer is complete as against the offeror. This withdrawal must be communicated actually to the offeror. That is to say that if the website is intending to withdraw any of its offers then the same must be communicated to the buyer making the offer.

In the context of e-contract such offers could be withdrawn by sending e-mails. It should however be confirmed by the website sending such mail that the e-mail has been received by the concerned person.

This revocation of the offer can be applied only when the website owner knows of the person to whom such offer has been sent, that is to say when the promotion or details of the offer has been sent over e-mails.

However if the offer is through a web page it is generally accessible to a number of offerees and it becomes difficult to individually communicate to each of the offeree as to the withdrawal of the offer.

However in practice this may not happen because of the fact that generally what is contained in a webpage is an invitation to treat and not an offer. What a website has to note is that this fact has to be categorically laid down in the website.

Depending upon the nature of the transaction, either the consumer can accept the offer and wait for delivery of the goods or he/she may withdraw the offer made.
6.2.2.2. ACCEPTANCE

Contract law stipulates that after an offer has been made the offeree accepts same and thus creates a contract. Acceptance in cyberspace, however, is a contentious issue because the offeror and the offeree are distanced in time and space. How does one ascertain where the contract was actually formed and how it was formed?

What are the ways in which acceptance may be communicated? These are some basic questions to be answered in relation to the creation of an online contract. Assuming that the website is an invitation to treat this section assumes that the customer response is an offer and thus it is the vendor who accepts and forms the contract online.  

Acceptance is the unconditional agreement to the presented offer. Speed and reliability of the method of acceptance are taken into consideration when determining whether a particular method is ‘reasonable’ in particular circumstances. In most cases, accepting an offer by the same means by which it was originally communicated should be sufficient, unless otherwise specified in the contract.

Most online contracts are accepted by ‘click wrap’. A click wrap is where the contract is presented in a window online, and the customer is asked to click an ‘Offer’ or ‘I Accept’ button. A US District Court has held such

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8 The United Nations Convention on Contracts for the International Sale of Goods provides provisions on the rules of acceptance under Article 18(2): An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.
agreements to be enforceable in America. An online merchant can implicitly accept a customer’s offer through some form of action and though generally, acceptance cannot be assumed from silence, in online transactions, if the terms are rigidly specified by the supplier, silence may be construed as acceptance.

In ‘browse wrap’, a contract is created when a website visitor performs certain actions on the site. Supposing if a visitor wants to download a song from a website, for example songpk.com, if he downloads so, it will be concluded that the visitor has accepted the ‘term and conditions’ of website, virtually contracts comes into existence.

Thus, acceptance is a final and unqualified expression of assent to the terms of the offer. In the case of online contract more particularly in the case of business over the net this is not a very problematic proposition. Generally when orders are placed via a website it is usually through an order form on the seller’s website and the buyer fills it completely and sends it across, and when there is an EDI involved the parties agree to the form and status of messages to ascertain whether the offer has been accepted.

It is equally necessary to note when the communication of acceptance is complete. Generally different solutions have been provided in different circumstances. If the website is interactive in nature, then, when an order is placed over the net before the acceptance of the same has been communicated as against the offeror an automatic order. This ensures instantaneous communication between the parties and the customer is also aware if the order has been accepted or rejected.

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One must note here that this gains more importance in the use of e-commerce for financial transaction where the acceptance may reach lately if the e-traffic is high or there is a high probability that further trading might take place on the same instrument.

Most important factor to be noted in applying the fundamentals of contract to online contracts is the fact that even in the case of electronic contracts as regards to that portion of the postal rule that the acceptance becomes effective only when posted to the right address will hold even in this case. For example if a mail is addressed correctly or is not transmitted due to a faulty server then the acceptance will deem to have not taken place.\(^\text{11}\)

**A. POSTAL RULE\(^\text{12}\) V. ACCEPTANCE RULE\(^\text{13}\)**

Traditionally, English courts have been in favour of the postal rule because the court felt that the acceptance rule might result in each side waiting for confirmation of receipt of the last communication *ad infinitum*. This would not promote business efficacy. Therefore, in order to promote business efficacy, it would be much better if, as soon as the letter of acceptance was posted, the offeree could proceed on the basis that a contract had been made and take action accordingly.\(^\text{14}\) In the court’s view the conduct of business will in general be better served by giving the offeree certainty. In *Household Fire and Carriage Accident Insurance Co. v. Grant*,\(^\text{15}\) it was held that even if an acceptance was lost and it never arrived at its destination the

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\(^{11}\) *Entores Ltd. v. Miles Far East Corporation*, (1955) 2 All ER 493
\(^{12}\) The postal rule was laid down in England in the case of *Adams v. Lindsell*, (1818) 1 B & Ald 681
\(^{13}\) The acceptance rule was laid down in *Entores Ltd. v. Miles Far East Corporation*, (1955) 2 All ER 493
\(^{15}\) (1879) 4 Ex D 216
contract was still concluded. This is still the rule under English contract law. However, the postal rule itself has limitations. It only applies to acceptance, and not to any other type of communication such as offer or counteroffer. Communication of the offer is required in virtually all situations as the person to whom the offer is addressed must be aware of it. In short, the postal rule was created to provide certainty in contractual formation at a time when the communication system involved unavoidable delays, because the postal stamp enables us to determine easily the time of posting an acceptance.

In the era of information technology, accepting an offer can be through electronic means and there are some similarities between email and post. For instance, dispatching an email is identical to dropping a letter in a post box. Just like the sender of a letter, the sender of an e-mail will have no control over it after having pressed the send button, as it will be transmitted to his internet service provider (ISP).

However, an issue which arises when parties are communicating by electronic means is whether an offer can be revoked, or if the offeree can reject as offer once an acceptance has been sent and when it is received. Some jurists are arguing that e-mail and click wrap agreements are different and have to be treated in a different way. They proposed that the postal rule should apply to e-mails, whilst click wrap agreements should employ the acceptance rule. 17

The receipt acknowledgement of e-mail, such as ‘your message has been received or delivered’, performs on this occasion similar functions as

16 Supra Ref. 17 pp. 39-42
‘recorded delivery’ mail, creating again an element of certainty. This will have, unlike the postal rule, the advantage of enabling both parties to know that there is a contract. Thus, taking account of the above features of email, the acceptance rule should prevail over the traditional postal rule in the electronic communication environment. That is, the acceptance takes effect when it reaches the offeror.

Due to the characteristics of electronic communications, it would be convenient and harmonious to apply the acceptance rule to electronic transactions. English courts have already accepted that the postal rule should not be applied where it would lead to ‘manifest inconvenience or absurdity’.

This position is also supported by the Indian Contract Act, which provides that acceptance given on telephone or other medium of substantially instantaneous two-way communication is governed by the principles applicable to acceptance where the parties are in the of each other. Thus, the acceptance rule—that the acceptance becomes effective when it reaches the offeror—should be applied in electronic contracting, especially click wrap agreements because it is as instantaneous as face-to-face or oral interactions. The question then arises as to whether we should apply the same rule to e-mail agreement.

If the acceptance rule is applied, then another issue must be answered: Is there a contract when the acceptance is received by the server or when it is actually received and read by the offeror? There are three possibilities applying the acceptance rule in electronic mail communications:

- Firstly, at the earliest stage, the contract is concluded when the acceptance is received by the offeror and it is available to be read.

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18 Holwell Securities Ltd. v. Hughes, [1974] 1 WLR 155 at 161
• Secondly, at the middle stage, the contract will be formed when the acceptance is received by the offeror and is assumed to be read by him within a reasonable time.

• Thirdly, at the latest stage, the contract will be established when the acceptance is received and actually read by the offeror.

It is submitted that acceptance rule should be applied to only click wrap, browse wrap and shrink wrap agreements. And in the case of e-mail agreements postal rule should be applied. Sometimes acceptance rule can be applied to e-mail contracts in above stated circumstances.

Further, it can be stated that only Indian Contract Act is not sufficient to deal with the issue of postal and acceptance rule. In supplementary to Contract Act one should also refer to Information Technology Act.

In fact, Information Technology Act is verbatim of the UNCITRAL Model Law.

6.2.2.3. VALIDITY OF E-CONTRACT

As it is already stated that there are mainly three kinds of e-contracts, shrink wrap, browse wrap and click wrap, with regard to validity of these contract, browse wrap and shrink wrap agreements are dealt with here. In Kloczek v. Gateway, Inc.\(^{20}\), it was found the contracts at hand unenforceable, but did not comment on shrink wrap contracts as a whole. Further in ProCD, Inc. v. Zeidenberg\(^{21}\) court gave bit of relief to the software companies by enforcing shrink wrap agreement. It held that shrink wrap agreements are enforceable. Here it can be stated that there is a lot of

\(^{21}\) 908 F. Supp. 640 (W.D. Wis. 1996)
discrepancy between courts themselves as to validity of shrink wrap agreement.

Whereas with regard to browse wrap agreement in *Hoffman v. Supplements Togo Mgmt. LLC*, 22 and *In re Zappos.com Inc., Customer Data Security Breach Litigation*, 23 the court held that “without direct evidence that Plaintiffs click [sic] on the Terms of Use, we cannot conclude that Plaintiffs ever viewed, let alone manifested assent to, the Terms of Use.

For the first time in history the click wrap agreement was presented to the court in *ProCD v. Zeidenberg*, 24 wherein Zeidenberg purchased a CD-ROM, created by ProCD, which contained a compilation of a telephone directory database. Upon purchase of this CD-ROM, Zeidenberg installed the software onto his computer then created a website which offered to visitors the information contained on the CD-ROM at a price less than what ProCD charged for the software. Prior to his purchase of the software, Zeidenberg may not have been aware of any prohibited use or dissemination of the product without consent by ProCD. However, upon preparing to install the software onto his computer, the software license appeared on his computer screen and would not allow him to continue with the installation without indicating acceptance by clicking his assent in a dialog box. The court held that Zeidenberg did accept the offer and the terms contained within the license by clicking through the dialog box. Zeidenberg had the opportunity to read the terms of the license prior to clicking the acceptance box. The court further stated that Zeidenberg could have rejected the terms of the contract and returned the software.

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22 18 A.3d 210 (2011)
24 86 F.3d 1447 (7th Cir. 1996)
Of like effect is the Court’s decision in *Hill v. Gateway*,25 where the Seventh Circuit held that plaintiff’s purchase of a computer was governed by contract terms shipped to her along with the computer. Plaintiff had received notice that the terms would govern the parties’ relationship unless the computer was returned within 30 days. Plaintiff had failed to return the computer within the allotted time. The court succinctly set forth the pertinent facts of the case. ‘A customer picks up the phone, orders a computer, and gives a credit card number. Presently a box arrives, containing the computer and a list of terms, said to govern unless the customer returns the computer within 30 days. Are these terms effective as the parties’ contract, or is the contract term-free because the order-taker did not read any terms over the phone and elicit the customer's assent?’ The Seventh Circuit held that the terms do indeed govern the parties’ relationship, validating Gateway 2000’s ‘approve or return’ device. The court held that Gateway’s offer required acceptance by retaining the computer after receipt of the terms. As such, the parties’ contract was not formed until the customer retained the computer for a period of 30 days, and the terms provided with the computer bound the parties.

The fact is that now click-wrap agreements can be enforced. Contracting parties must still turn to ordinary contract law principles to determine the enforceability of particular agreements. The contracts of adhesion are no more enforceable when consummated over internet than if consummated in a retail store. ‘Contracts of adhesion arise when a standardized form of agreement, usually drafted by the party having superior bargaining power, is presented to a party, whose choice is either to accept or reject the contract without the opportunity to negotiate its terms. Such a contract will not be enforced against the weaker party when it is (1) not within that

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25 2000, Inc., 105 F. 3d 1147 (7th Cir. 1997)
party’s reasonable expectations; or (2) is unduly oppressive, unconscionable or against public policy”.26

In spite of Hotmail, ProCD and Hill, there is a continued uncertainty about the enforceability of click-wrap agreements. The following precautions will enhance the enforceability of online contracts:27

A. Contract or license terms should be displayed to the prospective purchasers on the offeror's website;
B. The purchaser should be asked to accept or reject those terms by clicking on buttons saying “I agree” or “I do not agree”;
C. The purchaser should not be permitted to purchase the product (or gain access to pay-per-view information) unless he/she has indicated assent to be bound by the terms of the contract;
D. The offeror’s contract should include a representation or warranty that the party entering into the contract is authorized to do so on behalf of any entity he is seeking to bind thereto;
E. The terms of the proposed contract should be measured against traditional contract principle.

6.2.2.4. INTENTION

An understanding of the contracts formation process is crucial to online businesses. A contract that fails to satisfy any of the essential requirements may be rendered unenforceable. However, the courts might also construe certain actions by consumers or e-businesses as constituting the said

27 Martin Samson, Click-wrap Agreement Held Enforceable, as available at http://www.internetlibrary.com/publications/cwahe_art.cfm, last visited on December 11, 2012
essential elements, even though there was no desire to make an offer or acceptance at the time.

In an explicit contract for a commercial transaction, intention is automatically presumed. It is only when some part of a letter or offer specifically mentions that disputes regarding this requirement usually arise.\textsuperscript{28} For contracts created over the Internet, intention should not create any specific difficulties. In the context of e-commerce, intent normally automatically exists as it usually involves commercial contracts. A possible exception, however, is where an unclear or possible deceptive website induces a consumer into making an unwanted contract.

For example, an online merchant offering a digitized service may construct a makeshift website which gives no purchasing information and merely displays the product and a ‘Save’ or ‘Download Now’ button, an unsuspecting customer may unwittingly assume that the service is free and unintentionally create a contract when he/she clicks the button. To avoid such a possibility, websites of e-businesses should ensure that the prices and terms of the digitized services are explicitly stated. Ideally, the consumer should go through a sequence of web pages detailing the terms of the transaction, ending in a final screen where the consumer either submits the offer or cancels it without any legal consequences. Online contracts may be better enforced if such a framework is established.

Intention in the case of online contracts would not pose many difficulties. There may only be certain difficulties where EDI is used. The problem may occur when there is an automatic online creation subject to certain conditions. This is generally in the case of inventory when the stock reaches a certain level. In such a case the person making the order may be

\textsuperscript{28}Rose and Frank v. Crompton [1923] KB 2, 161
unaware that the order has been generated. This has however been negated by the courts on the grounds that the parties have agreed to an automatic order generation, which is intent enough.

6.2.2.5. CONSIDERATION

The element that transforms a mere promise into a legally binding contract is consideration. It is often defined as the exchange of something of value, but can include a detriment to the promise or a benefit to the promisor. For normal commercial transactions online, consideration will not figure as a problem but a complication may arise where a website requires a customer to agree to certain terms and conditions before delivering a digitized service, as an in the case of web wrap or click wrap agreements.

Consideration is a very crucial factor is the formation of a contract and the payment and delivery terms, generally spell out the kind of consideration that the parties intend to enter into to ensure fulfillment form either side. Generally, in online contracts the policies of the website and the commitment given by the website of delivery of the chosen goods forms the consideration against the commitment of the purchaser on payment for the said goods purchased.

6.2.2.6. COMPETENCY

In this respect it is very important that the purchaser is a major and generally the purchaser is needed to confirm details of his age in the website which is commitment on his behalf.

Minors, under the law, would include any one under the age of 18 years. In cyberspace, assessing whether a potential customer is ninety year old or merely nine years old, has proven to be difficult resulting two complications for online merchants. Firstly, because the sale of certain
goods and content to minors is unlawful, such as alcohol and pornography. For example, website owners might find themselves liable to civil or criminal sanctions, if they do not ensure that their customers are adult with the aid of adequate security measures. Secondly, Indian law stipulates that contracts made by minors for things other than necessities, are void and these contracts are unenforceable against the minor they are enforceable against the merchant. Thus, online companies have to fulfill their contractual obligations but have little remedy if the minor defaults on payment.

6.2.2.7. CONSENT

Another very important ingredient in formation of a contract is the consent of the purchaser. Usually there are some factors enlisted by the Contract Act of 1872 that vitiates the consent and renders the consent either void or voidable. The most important ones that will be applicable to online contracts are discussed here below.

A. MISREPRESENTATION

A victim of misrepresentation may affirm the contract or seek a remedy in the courts and obtain damages or recession of the contract, depending on whether such misrepresentation was made fraudulently, negligently or innocently and e-commerce does not raise any new issues in this matter. The section 18 of Indian Contract Act has clearly laid down what constitutes misrepresentation.

B. FRAUD PREVENTION AND SECURITY

Before a person is allowed to make withdrawals or move funds, the case of financial and banking services, it is imperative that such identity is verified. When a specific person is to be authenticated in such a case the
customer will usually possess an ongoing existing relationship with the online service provider and have a password, PIN (personal identification number), digital signature key, or some other form of identification. Authentication is usually based upon: 29

- Something they know (password or PIN)
- Something they have (magnetic card, for example)
- Something they are (voiceprint or fingerprint).

Though various forms of security measures exist, it is often disastrous when suppliers reduce authentication security in order that a wider market may be reached. Thus, for appropriate security measures to be determined professional risk assessment has to take place so that specific facts and circumstances may be taken account of.

**C. MISTAKE**

As parties to online contracts rarely meet, the establishment and acceptance of the identities of such parties involved is a core issue that is at the heart of e-commerce. The impact of mistaken identity on the validity of online contracts is not negligible. For example, in UK, Argos advertised that a 21-inch television set carrying a company price £ 299 on its website but by mistake the price was shown only £ 2.99. The mistake was noticed only after £ 1 million orders were taken. One buyer alone placed an order for 1700 sets. 30

Such issues of mistake or mistaken identity can easily occur in a medium such as the computer. For instance, imagine a customer who wishes to use

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29 Supra Ref. 6 p.3  
the services of reputed travel company called Jolly Holidays. It is easily
considered to be the best travel agent in India and the customer wants to
plan a luxury family holiday to Nepal with them. The customer
enthusiastically logs onto the internet and connects to
www.jollyholidays.com, the home page of a new start-up travel agency
also the same country. Having made all the travel arrangements with this
company, the customer discovers, to his horror, on arriving in Nepal, that
the hotel bookings have been confirmed in a sub-standard lodge with bare
minimum facilities. Furious, the customer returns to India and on further
verification realizes that the travel agency that he intended to use was
actually at www.JollyHolidays.com. Therefore, the reputation of the
company itself, in this case mistaken for another, induced the customer to
enter into a contract with, what he thought was, the reputable Jolly
Holidays.

However, a contract may be void in case of a mistake such as this if the
mistake is ‘fundamental’, being induced in the contract itself and if such
mistake was ‘operative’ in terms of the contract. In order to be considered
operative, the mistake must satisfy three criteria:

- Where a reasonable person could not infer the intention of the
  parties involved in the transaction;
- Where one party knew of the other’s mistake; or
- Where one party negligently, directly or indirectly induced the
  others to mistake.

In order to avoid such mistakes to surface, European Commission’s e-
commerce Directive imposes a duty on the e-merchant to make available
appropriate means that are effective and accessible to the purchaser to
enable him to identify and correct handling errors and accidental transaction before the conclusion of the contract.\textsuperscript{31}

Further the Information Technology Act of India has adopted the theory of appearance by applying principles of attribution.\textsuperscript{32} It is provided that an electronic record shall be attributed to the originator if it was sent by (a) the originator himself, (b) a person having authority of the originator and (c) an information system programmed by or on behalf of the originator to operate automatically.\textsuperscript{33} This rule of attribution incorporated in the Information Technology Act is rigid and is bound to cause inconvenience in many situations such as: where an addressee knew or had reason to know that the message received by him is not that of the originator or where the originator has sent notice to the addressee before acting upon the message, that the message received by him is not of his or where error is apparent on the face of the record.

The Information Technology Act make originator strictly liable for transmission errors caused even without the fault of the originator, and even in circumstances were addressee was notified or the addressee knew or had reason to believe that the message is not that of the originator. This rule is bound to cause hardship to the innocent originator and its impartibility is likely to surface once electronic commerce takes firm roots in India.

\textbf{6.2.3. STANDARD FORM OF E-CONTRACTS}

Normally contracts are entered after negotiating face-to-face and fulfilling all requirements of contract. But there is contract wherein the parties need

\begin{itemize}
\item\textsuperscript{31} European Initiative in Electronic Commerce, COM (1999) 427 Final
\item\textsuperscript{32} Supra Ref. 33 p.54
\item\textsuperscript{33} Section 11 of the Information Technology Act, 2000
\end{itemize}
not negotiate face-to-face it is called ‘standard form of contract’ (hereinafter referred as SFC). In SFCs generally the terms of the contract are pre-drafted. They are also called ‘unilateral contracts’. These SFCs are normally found in B2C transactions. In our daily life, we come across many instances of these contracts, e.g. insurance contract, movie tickets, cloak room receipt, railway tickets, etc. Generally these kinds of contract are concluded within minutes.

In modern world there is drastic increase in electronic commerce. Due to increase of e-commerce there is an increase in e-contract too. It is not unknown to everyone that contract on internet are long distance in nature, wherein, the parties don’t negotiate face-to-face. In almost all cases the parties enter into contract by signing a pre-drafted contract or giving assent to such contract by click button ‘I accept’ or ‘Agree’. Today entire banking system, multinational companies, all corporate & govt. contracts are generally carried out in this fashion. These contracts are called Standard Form of E-contract.

Businesses usually wishes to enter into these contracts, because they may have drafted their contracts to meet their own product, service, project, technical, commercial and legal requirements. Standard terms or general terms are often referred to pejoratively as ‘boilerplate’. The boilerplate terms appear on the reverse side of the contract and are usually ignored until a dispute arises. In SFCs the party supplying a product or service spells out the terms on which the party does business and which in expects the other party to accept.

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34 Boilerplate means general conditions, whilst ‘front-form’ refers to essential or important conditions. Supra Ref. 22 p. 1
In normal course of time the SFCs contain exemption clause which speaks about limited liability of supplier of goods or seller of product. Every time the seller while entering into contract tries to decrease his liability by putting exemption clause. The fact is that these SFCs are drafted unilaterally by seller and often presented to consumers only after purchase. Further it can be added that the buyer of product will always be a weaker party in these contracts. These SFCs openly declares to consumers that you take it or leaves it. These kinds of pro-seller contracts exploit buyers or weaker party. From scholarly studies,\textsuperscript{35} it was proved that consumers normally ignore reading of these SFC ex ante (e.g., at the time of purchase or installation)\textsuperscript{36} but have general tendency of reading ex post (e.g., if there is a breakdown in service or functionality).

The most crucial issue here is, whether a contract exists with conflicting terms? The courts have evolved certain rules to protect the interest of the weaker party and as remedy against conflicting terms.

**Contractual Document:** The document must be of class which either the party receiving it knows, or which a reasonable man would expect, to contain contractual conditions. Thus, a cheque-book, a ticket for a deck-chair, a ticket handed to a person at a public bath house, and a parking-ticket issued by an automatic machine have been held to be cases where it would be quite reasonable that the party receiving it should assume that


\textsuperscript{36} Lord Denning MR pointed out in *Thornton v. Shoe Lane Parking Ltd.* (1971) 1 All ER 686 CA, that,

No consumer in a thousand ever read the conditions. If he had stopped to do so, he would have missed the train or the boat.
the writing contained no conditions and should be put in his pocket unread.37

**Reasonable Notice:** It is the duty of the person delivering a document to give adequate notice to the offeree of the printed terms and conditions. Where this is not done, the acceptor will not be bound by terms. Normally in browse wrap agreements the seller tries to hide the clauses of agreements, under such circumstances it can be stressed that such contracts are not binding on the buyer or consumer. This rule was laid down by the House of Lords in *Henderson v. Stevenson.*38 The House of Lords observed that the plaintiff could not be said have accepted a term ‘which he has not seen, of which he knew nothing, and which is not in any way ostensibly connected with that which is printed and written upon the face of the contract presented to him’.

**Notice should be Contemporaneous with Contract:** Notice of the terms should be given before or at the time of contract. A subsequent notification will indeed amount to a modification or the original contract and will not bind the other party unless he had assented thereto. Almost all time in online contracts the notice is given after purchase of product. Under this situation the consumer is forced to accept the conditions. Hence the online SFCs virtually violating rule laid down by Lord Denning MR pointed out in *Thornton v. Shoe Lane Parking Ltd.*39

**Theory of Fundamental Breach:** It is a method of controlling unreasonable consequences of wide and sweeping exemption clauses. Even where adequate notice of the terms and conditions in a document has been given, the party imposing the conditions may not be able to relay on them if he

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37 *Supra* Ref. 4 p.34  
38 (1875) 32 LT 709  
39 (1971) 1 All ER 686 CA
has committed a breach of the contract which can be described as ‘fundamental’.\textsuperscript{40} The rule has been stated by Lord Denning LJ:

These exempting clauses are now-a-days all held to be subject to the overriding proviso that they only avail to exempt a party when he is carrying out his contract, not when he is deviating from it or is guilty of a breach which goes to the root of it. Just as a party who is guilty of a radical breach is disentitled from insisting on the further performance by the other, so too he is disentitled from relying on an exempting clause.

\textbf{Strict Construction:} Exemption clauses are construed strictly particularly where a clause is so widely expressed as to be highly unreasonable. Any ambiguity in the mode of expressing an exemption clause is resolved in favour of the weaker party.\textsuperscript{41}

\textbf{Unreasonable Terms:} Another mode of protection is to exclude unreasonable terms from the contract. A term is unreasonable if it would be defeat the very purpose of the contract or if it is repugnant to public policy.\textsuperscript{42}

Here it can be said that courts have tried to protect the interest of weaker party in enforcing SFC. The above analyzed points are also applicable to e-contract, because e-contract is nothing but a contract. The seller must keep in his mind above points prior to drafting electronic SFCs. Further, it can be suggested that while drafting SFCs the seller should be fair enough, he should not think of undue advantage for himself.

\textsuperscript{40} Gokulesh Sharma, \textit{The Crisis of Standard Form Contracts}, available at \url{http://drgokuleshsharma.com/pdf/STANDARD%20FORM%20CONTRACTS.pdf} (last visited on December 12, 2012)
\textsuperscript{41} Lee (John) \& Sons (Grantham) Ltd v. Railway Executive, (1949) 2 All ER 581
\textsuperscript{42} Suisse Atlantique case (1967) 1 AC 361; Lilly White v. Mannuswami, AIR 1966 Mad. 13
6.2.3.1. BATTLE OF FORMS

It is quite frequent in commercial transaction that both the offeror, when making the offer and the offeree when accepting it, each seek to contract on their own standard terms. If the offeror does not expressly accept the offeree’s standard terms. To be more illustrative it arises where two companies are in negotiation and as part of their exchanges they each send standard forms, but these two sets of forms are incompatible. That is, a battle of forms arises when each party has his own standard terms of trading or business that he wants to prevail over the other party’s standard terms.43

The battle of forms is not one of the complicated issues in traditional contract law, made even more difficult due to the divergent treatment among jurisdictions. In an English leading battle of form case Butler Machine Tool Co. Ltd v. Ex-Cell-O Corp (England) Ltd.,44 the seller offered to sell a machine tool to the buyers, the offering being on the standard terms which ‘shall prevail’ over any terms and conditions in the buyers’ order and which included a price variation clause for increased costs. The buyers’ order form contained standard terms materially different from those of the sellers and stated that the agreed price was fixed. Lord Denning suggested a three-step solution to the battle forms: first, whether there is an expressed term or implied term from conduct of the last form sent; second, whether the offeree’s reply materially affects the contract and he fails to draw the offeror’s attention; and third, if there is a concluded contract but the forms vary, the forms can be reconciled so as to give

44 [1979] 1 WLR 401
harmonious result whilst the conflicting terms may have to be scrapped and replaced by reasonable implications.

However, the battle of forms will be even more complicated in electronic contracts because of the features of instantaneous electronic communications. In electronic contracts battles of forms will be related to the issues of dispatch and receipt of an electronic communication, validity of offer and acceptance, availability of contract terms, and errors in electronic communication.45

When a buyer submits an order on the seller’s website, the seller is able to present its standard terms and conditions to the buyer. Then there are three possibilities; firstly, the buyer can simply accept the standard form, so the contract is concluded with the standard terms of the seller. Secondly, the buyer can reply to the seller with a notice of another set of standard terms that are posted at a designated URL (Uniform Resource Locator). For example, the buyer might reply to the seller asserting that ‘assent is withheld unless the seller assents to the terms and conditions located at http://www.company.co/terms&conditions.html’. Thirdly, the buyer may have no immediate indication of a failed attempt to communicate, and the seller may well only receive a message saying that the email has not been delivered at some time later.46

Under the first possibility it is equivalent to a click wrap agreement presenting standard terms. However, the second possibility is the battle of URLs in the contract. If an acceptance is followed by a separate email or telephone call, the separate email or telephone call should become part of the contract, if it is does not materially alter the original contract. If an

45 Supra Ref. 22 p. 70
46 Ibid.
agreement is only partially integrated, extrinsic evidence of consistent additional terms is admissible.\textsuperscript{47}

UNCITRAL Model Law and the UN Convention on International Contract are silent on battle of forms in electronic commercial transactions. Same way the Information Technology Act is silent on battle of forms. Article 19 of the CISG speaks somewhat about the battle of forms. It provides that a replay to an offer that contains additions limitations or other modifications constitutes a counter-offer. The default rule under the CISG is to turn a modified acceptance into a counter-offer that rejects the previous offer. Thus the original contract does not exist if an acceptance contains additions, limitations or other modifications.

6.2.3.2. FREEDOM OF CONTRACT VIS-À-VIS STANDARD FORM OF E-CONTRACT

According to Atiyah, the idea of freedom of contract embraced two closely connected, but none the less distinct concepts. In the first place, emphasized that contracts were based on mutual agreement, while in the second place, it stressed that the creation of a contract was a result of a free choice unhampered by external control such as government or legislative interference.\textsuperscript{48}

Here a question arises to once mind that, whether freedom of contract available in e-contract. There is obvious reason for one to ask this question, because, e-contract in itself is a contract. The examination of e-contracts with regard to freedom of contract is necessary.

\textsuperscript{47}\textit{Ibid.}
At first it can be said that the online contracts doesn’t comprises of mutual agreement, because, in these one party will be a higher and dictating position while the other party will be at weaker position. The party with dictating position will be imposing his terms and conditions of sell on the consumer by way of standard form of e-contract. There are likely chances of incorporating harsh clause in SFC. It is seen that, in case of online contracts consumers have lost the confidence. The reason is very simple in e-contract parties won’t be meeting face-to-face and they will be staying far. Under these circumstances it is difficult to expect one to have confidence in e-contract. Further there is always a fear among the consumers that they will get cheated if they contract online.

Second factor is whether free choice is available in e-contract? It can be said that with the advent of e-contracts among consumers there is increase in free choice. Now consumers are shopping online with all possible free choice. But the problem fastened here is with SFC. SFCs have created obstacles against free choice. Consumers are taken back from the free choice. Consumers are suspicious about the terms and conditions of SFCs.

At last it can be said that if sellers starts incorporating pro-consumers clauses in SFCs, then automatically there will be increase in confidence about online contracts. And same way there will be increase in freedom of choice also.

6.2.3.3. IDENTITY OF PARTIES

Internet based e-commerce has besides, great advantages, posed many threats because of its being what is popularly called, ‘faceless and borderless’. For instance, sending an e-mail message does not require disclosure of the identity of the sender, nor can a recipient ordinarily be able to know the sender. Furthermore, e-mail messages being like a post
card can be interpreted at any place on line, modified, altered, changed and even made to appear to have come from a person other than the actual sender. Similarly a business can set up its own website over which goods or services can be offered without revealing its identity. Again businesses can set up a website in one country but appear to have premises in another country.

These apprehensions are now no mere hypothetical and have started surfacing in the countries where e-commerce has gathered momentum. There are chances of getting defrauded from the sham websites. In market there are many fake website, which are created for deceiving people.

If the disclosure of the identity of the contracting parties over internet is so possible, then many of the fundamental principles of the common law for contract formation will be either inapplicable or simply irrelevant. Whether in a physical environment where parties are at distance or in cyberspace, before executing a contract, the contracting parties must be sure about the (1) party sending or receiving the communication as the case may be (2) communication and (3) time of communication. If A and B communicate offer and acceptance for executing a contract over Internet; B must be sure that the: (a) offer received by him is the offer sent by A, (b) offer received by him is the sent to him by A. In other words, offer has not been corrupted in transit, (c) of dispatch of offer, (d) offer received is meant for his. Similarly A must have the same surety when he receives acceptance from B.

The technology which produces many risks for the parties interested in making contract over Internet provides solution also. However, the Information Technology Act provides no alternative for the parties except
to adopt asymmetrical cryptosystem and hash function. This asymmetrical cryptosystem is also called public key encryption and is based on an Algorithm known as RSA.

The asymmetric cryptosystem, as the name suggests, has two different but mathematically related keys called the private key and the public key. The private key is also known as secret key and must be known only to the person holding the key pair. The public key is meant for public use. This key pair works in two ways. A message encrypted by the private key can be decrypted by the public key and the message encrypted by the public key can be decrypted by the private key. This key pair is unique to the person holding it. So a person using public key for decrypting a message will be sure that the message is of the person having its related private key because mathematically related keys can decrypt a message. If a person knows the private key holder, he will be sure that the message has come from that person.

Asymmetric public cryptosystem based on RSA is slow and is seldom used alone. To save time, RSA is used in combination with another cryptographic algorithm such as hash function. This hash function when applied to a message of any length creates short fixed value which is known as message digest or hash value. It is unique to the message and the given private key. The hash function produces the same hash value each time when applied to the same message. It is also called one way process because it is computationally infeasible to reconstruct the same message from its value. The chances of two messages producing the same hash value are insignificantly small. If there is a slight change in the

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49 Section 3(2) of the Information Technology Act, 2000
50 RSA was invented in 1977 by Ron Rivest, Adi Shamir and Leonard Adleleman on the ideas of White Field Diffie and Martim. Hellman is a person who developed public key cryptography in the mid 1970 at Stanford.
message contents, entirely different hash result will be produced. Once the hash result of the message is computed by the signer’s software it is then transformed into what is known as digital signature by the signer’s private key. This works as follows:

Suppose A is interested in making an offer to B. A, instead of encrypting the whole message, will apply the hash function to produce a hash result. The hash result will be transformed into what is technically known as a digital signature by the private key of A. Then he will send that offer to B along with its electronic signature. B will apply the same hash function to the offer to get its hash value. Then using the public key of A and the hash value thus produced, B will verify (1) whether the electronic signature was created using the corresponding private key (2) whether the hash value produced by him matches the hash value sent to him by A which was transformed into the electronic signature.

This technology ensures the integrity of the message but does not prevent impersonation. In the above example, suppose B does not know A. Applying asymmetric cryptosystem even with a hash function will not enable B to know A. Anyone can generate a key pair by impersonating another. In order to prevent this, there must be a trusted third party who will independently confirm the identity of the parties, their location and legal status.

The Information Technology Act has assigned this job to certifying authorities who must be licenses. These certifying authorities will be supervised by the controller who will be appointed by the Central Government. The certifying authority is empowered to issue an electronic signature certificate in favour of a person who makes application to that effect and satisfies conditions laid down in the Information Technology Act. The person in whose favour the electronic signature certificate is issued is called a subscriber. The subscriber may publish his digital signature certificate on his own or through any other person or may make
it available in the repository of the certifying authority so that anyone interested in establishing legal relationship with the subscriber can confirm his credentials.51

6.2.4. PERFORMANCE OF E-CONTRACTS

The general rule is that a party to a contract must perform exactly what he undertook to do. Same applies in case of e-contract also the party who undertook, he should perform so. For performance of e-contract Section 37 of the Indian Contract Act is applicable, which says, the parties to a contract must either perform, or offer to perform, their respective promises, unless such performance in dispensed with or excused under the provision of this Act, or of any other law.

There is always difficulty in performing e-contracts because parties will be in long distance. Further these contracts are unilateral in nature, almost in all cases they are SFCs. Wherein one party will be high at bargaining position. The general provisions which are applicable to traditional contracts, same are applicable to online contracts. The Information Technology Act is silent about performance of e-contract.

Place of performance of an electronic contract is the same as a traditional paper based contract if the performance itself involves physical delivery or presence. The difference lies in the performance that is conducted electronically, i.e. downloading software or an e-book without physical delivery or presence. In this case the time of dispatch and receipt of e-communications and the determination of the place of computer servers become significant factors to predict and ascertain the actual place of digital performance.

51 Sections 36(b) and 41(1) of the Information Technology Act, 2000
6.2.5. DISCHARGE OF E-CONTRACTS & REMEDIES

Under Indian scenario, the e-contract is discharged by same way as it is in conventional contracts, i.e., by performance, by impossibility of performance, by agreement and by breach. Other than these there are no other ways to discharge from e-contract except above stated. In most of the e-contracts the discharge is made by recession. The parties to the contract can rescind the contract by mutual agreement. A rescission of this nature must be distinguished from repudiation by one party, which the other party may elect to treat as a discharge of the obligation, and from the right to rescind which is given to one party in cases of fraud, misrepresentation and under influence, and in certain cases of mistake.

Further in case of remedy for breach and rescission of contract is as same as conventional contract. There is no other law which speaks about remedies for breach of contract. In addition to Indian Contract Act, 1872, the Specific Relief Act, 1963 gives remedies for breach of contract.

It is worth to mention here that online contracts have created a kind of confusion with regard to remedies under Specific Relief Act. As it is in case of breach one of the remedy is ‘injunction’, it is quite inferred here that how the parties are going to bring action for injunction.

Apart from injunction, rest of the remedies applies as same as it in case of traditional contract. The party can claim damages from the breaching party. Even he may go for specific performance of contract or declaratory decrees.

A. SETTLEMENT

As it is known to everyone that the adversial system of judiciary consumes lot of time to settle a dispute, so for that reason online contracting parties
prefer to go with alternative dispute resolutions (ADRs), like, arbitration. It is stressed that in almost all e-contracts arbitration clause is incorporated. A special stress should be made to standard form of contract wherein we commonly come across arbitration clause. In that clause seller will be specifying who will be a arbitrator and other things.

In the age of technology, ADRs have moved further. They are no more called ADRs, they are called as Online Dispute Resolutions i.e. ODRs. In most of the consumers contracts ODRs are playing vital role. The settlement process is taking place fast. If ODRs are not possible the parties are opened to go the court of law. But most of the time parties will be thinking to resolving dispute as early as possible.

6.3. SOCIAL AND CULTURAL IMPACT

With the advent of internet there is an increase in usage of e-commerce and social networking sites. Most of the people are spending much of their time on internet. It is agreeable that internet has both merits and demerits. When we talk of electronic commerce, we can conclude that there is a quite a good impact of electronic commerce on the global economy and society. The more usage of e-commerceis building a gap between sellers and buyers. Due to which simplified of the process of shopping or trading is eloping.

This distance is creating such a problem because of which, people are going away from each other. It has been claimed that online social relationships may indirectly hurt offline (face-to-face) or actual social relationships, because people will take less time and make less effort to engage in face-to-face interaction. It has also been claimed that online social relationships tend to be less profound, valuable and durable than
offline relationships and that computer-mediated communication less expressive and authentic than face-to-face communication.\textsuperscript{52}

Nowadays most of the people are inculcating themselves on social networking sites.\textsuperscript{53} They are spending most of their time on social networking sites, rather than building social relationship offline. People are even entering into contract through social networking, they are getting economic benefits, but they are losing valuable asset called affection.

When we look in terms of psychological perspective, it has been claimed that the relative anonymity (or pseudonymity) by which actions can be performed in cyberspace can lead to antisocial behavior that is performed without retribution. It is suggested that people should not spend so much of their time on net. And while making contract they should also build up a social relation.\textsuperscript{54}

So far we discussed about application of principles of Indian Contract Law to e-contracts taking place in India, and social and cultural impact of e-contracts. Now, we will analyze the e-contracts from the perspective of Information Technology Act, 2000 in coming chapter.

\textsuperscript{52} Hubert Dreyfus, \textit{Anonymity versus Commitment: the Dangers of Education on the Internet}, Ethics and Information Technology, Vol.1, Issue 1, 1999, pp 15-20
