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# UNCITRAL Model Law on E-Commerce: Bringing Uniformity and Harmony to E- Commerce in the Contemporary World

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## ABSTRACT

*The main purpose of UNCITRAL model law is to provide the national legislations a set of internationally accepted rules. This helps the nations create a more secure legal environment, most of the national laws are outdated and do not include laws related to ecommerce. Unsatisfactory legislation at national level creates obstacle for the nation while doing trade at international level, and may have an adverse effect on the economy. But proper laws help the nations to decrease legal obstacle and legal predictability. The main objectives of this model are to have modern ways of communication through electronic means and to have a national set of rules on how they can remove barriers and secure a legal environment for trade.*

**Keywords:** *Legal issues, employment, internationally accepted rules.*

## I. INTRODUCTION

The genesis of e-commerce proved to be a revolution in the traditional market. E-commerce refers to the practice of online selling and buying of things. The first e-commerce transaction took place in 1994 by a guy named Phil using his MasterCard<sup>2</sup>, since the “the internet is open”. Ecommerce has eased the shopping experience for the customers, where now instead of going to the traditional markets they get everything that they need with few clicks on their phone. The price and quality comparison has also become easy as the products of all sellers are available at one single platform. For the seller it has proved to be a boon as now they can sell their products to customers all over the world. E-commerce has removed all the geographical barriers from the world markets. With rise in ecommerce there needed to be laws that would govern the e-market for its smooth functioning. Legislations such as the Foreign Exchange Management Act, 1999 Companies Act, 2013, Information Technology Act, 2000, Consumer Protection Act, 1986, Income Tax Act, 1961, Indian Contract Act, 1872 etc. govern the Indian

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<sup>2</sup> E-COMMERCE GUIDE <https://ecommerceguide.com/guides/what-is-ecommerce/>

e commerce market. The international ecommerce market on the other hand is governed by United Nations Commission on International Trade Law (UNCITRAL) model law, the Vienna convention on law of treaties, 1969, WTO etc.<sup>3</sup>.

The main purpose of UNCITRAL model law is to provide the national legislations a set of internationally accepted rules. This helps the nations create a more secure legal environment, most of the national laws are outdated and do not include laws related to ecommerce. Unsatisfactory legislation at national level creates obstacle for the nation while doing trade at international level, and may have an adverse effect on the economy. But proper laws help the nations to decrease legal obstacle and legal predictability. The main objectives of this model are to have modern ways of communication through electronic means and to have a national set of rules on how they can remove barriers and secure a legal environment for trade.

UNCITRAL model law was the first legislative text that was adopted for the fundamental principles of non-discrimination, functional equivalence and technological neutralization that are the founding elements of e-commerce law<sup>4</sup>.

The legislation is divided into two parts, the first part deals with electronic commerce in general and the second part deals with specific areas of electronic commerce. It has so far achieved the objective of making computer evidence admissible in the court of, validating contracts made via electronic means, validating originality and retaining the documents in their own electronic form and making electronic signature valid for electronic and commercial purposes.

## II. IMPORATNAT ARTICLES

According to me “UNCITRAL Model law on e-commerce is to bring about uniformity and harmony at international level relating to e-commerce in the contemporary world” this statement is correct. Further in this paper I shall try to prove the credibility of this statement to support my answer. The Model law has seventeen articles in total. Article 5 of the legislation deals with legal recognition of data messages and stated that no information shall be denied to be invalid or unenforceable merely on the ground that is available in the form of data message. The article is based on the principle of non-discrimination and has considerably widened the scope of e-commerce.

Article 6 of the model law states that whenever law requires information to be present in writing

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<sup>3</sup> Anjali *E-commerce laws and regulations in India* VAKIL SEARCH <https://vakilsearch.com/advice/e-commerce-laws-and-regulations-in-india/>

<sup>4</sup> *United nations commission on International Trade* UNITED NATIONS [https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic\\_commerce](https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce)

and data message is available providing the same information that data message shall be used provided that the information present therein is useful and can be assessed for subsequent purpose as well. Article 7 talks about signature, it states that in traditional paper based documentation world signatures are used to show agreement to a document and to verify its authenticity, but if this requirement of signature is met, in a reliable manner via an electronic document it can be used to identify and indicate approval. UNCITRAL has a separate set of entire model law based on digital signature, the flexibility of which was established via Article 7<sup>5</sup>. Earlier every nation required documents in written form and signatures were considered authentic only when they were in hand-written form, this process was not only time consuming but was also a burden on the economy. Model law has saved both time and money of the nations by bringing in Article 6 and 7.

Further Article 8 states that electronic documents shall be considered as legal documents if there is a reliable assurance regarding the integrity of the information contained therein and the information is capable of being properly displayed to the person to whom it has to be presented. The test of reliability shall depend on case to case basis and on the facts as to what is the purpose of the document. Integrity of a document is said to be intact if the document has been received complete and there are no alterations apart from addition of endorsements and any other alternations that may occur in the normal course of communication, storage and display<sup>6</sup>.

Online contracts have been in existence for a very long time now and a thousand of online contracts are entered into every day. Despite the popular usage there is an uncertainty among the sellers and the buyers regarding the legal implications of the “I agree” button at the end of the contracts. Model law removes this doubt through Article 11 and states that unless the parties have an agreement stating otherwise an offer and acceptance in the form of electronic data is very much valid<sup>7</sup>. The Article states that offer and acceptance of and online contract cannot be denied merely on the ground that it is in the form of a data message<sup>8</sup>.

### **III. SIGNIFICANCE AND SUGGESTIONS**

With the above mentioned Article in consideration the UNCITRAL model law on e-commerce has proved to be a boon to the electronic market, some of the major advantages and relief that

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<sup>5</sup> UNCITRAL MODEL LAW ON E-COMMERCE November 2015, TORNIO <https://www.ugurlegal.com/wp-content/uploads/2020/12/THE-UNCITRAL-MODEL-LAW-ON-E-COMMERCE.pdf>

<sup>6</sup> GHEIST Michael, “Internet Protocol Attachment 4- A guide to E-Commerce Law”, University of Ottawa, Faculty of Law Director of E-commerce Law, Goodmans LLP (2011),16

<sup>7</sup> GHEIST Michael, “Internet Protocol Attachment 4- A guide to E-Commerce Law”, University of Ottawa, Faculty of Law Director of E-commerce Law, Goodmans LLP (2011),17

<sup>8</sup> 3 United Nations, UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998 (2nd edn, UN Publications,2000)8.

the legislation provides are as follows-

- The Model law helps the nations in adopting national laws in such a way that they are applicable in the international market, thus helping them play a part therein.
- Article 7 speaks about e-signature and states that even if paper based signature are not available e- signature can be used provided they have a proof of authenticity, therefore the manual transfer of the documents is not mandatory.
- Article 11 speaks in the favor of e-contracts and states that a contract shall not be deemed to be invalid merely because it is in the form of data message, this has made the process of offer and acceptance faster and cheaper as paper work need not be transferred from one part of the world to another.
- Model law creates an environment for paperless transactions that helps the countries both in saving time and finances that would be consumed in traditional transactions. And has also provided homogenous rules and principles for International trade that is defiantly a step forward in creating a fair world market for e-commerce<sup>9</sup>.

E commerce as we have discussed above UNCITRAL Model law on e-commerce has greatly helped to bring in peace and harmony in the international business, having said that there are few changes that could be made to make the law a lot more effective and efficient. Some of these are –

- There are no legislation as such that helps to deal with e-commerce as a whole, so this might result in uncertainty as to its scope and form.
- Every country has its own laws and policy which they adhere to, therefore sometimes it becomes difficult to follow the rules laid down by the UNCITRAL model so in this context we need to have rules which every national can follow as some nations might not have the legislation in their country, which might create a barrier at international level.
- Every country have their own privacy and security policy such as Europe have GDPR, California have CCPA, India has its own laws, and so on, in this way, one country might not agree to the privacy rules of another and might cause clashes between their trade and security.

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<sup>9</sup> Alan Davidson *The Law of Electronic Commerce* HEINONLINE <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jlinfo20&div=11&id=&page=>

- The fourth suggestion is that we cannot buy every product available in different countries as china have few e-platforms which India or America might not allow to their citizens to use and vice versa<sup>10</sup>.
- E-commerce is a highly competitive market platform where, due to differences in taxation policies and currency value of different countries, a product that is cheaper in a developed country may cost a fortune to the people in underdeveloped countries.
- Also might limit access of some business to expand at international markets due to uncertainty of legal policies.

#### IV. CONCLUSION

The electronic commerce has grown abundantly in the last few decades and is expected to grow a lot more in the coming years. The United Nations Commission on International Trade (UNCITRAL) Model law on e-commerce has with its legislations enabled the e commerce market with to grow with ease and speed. There had always been ambiguity and threat with regards to ecommerce and its laws but with the model law taking a step forward and making laws regarding the legal validity and enforceability this problem has been solved. Non-discrimination, functional equivalence and technical neutrality have always been the guiding principles for this legislation and with these it has helped in creating a fair market and has eased the process of e-commerce to a great extent. With above stated suggestions taken into consideration the model law will help the nations all the more and will fulfill its agendas in a better and would prove to be a near perfect legislation.

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<sup>10</sup> Rishabh Aggarwal *UNCITRAL model law on e-commerce* LEGAL BITES <https://www.legalbites.in/uncitral-model-law-on-e-commerce/>