

ONLINE CONTRACTS: LEGAL ISSUES AND CHALLENGES WITH RESPECT TO INDIAN SCENARIO

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Abstract

E-Commerce has given a new dimension to the business practices in modern era. Now, there is no any boundation by any limitation of the territorial boundaries and requirement of physically presence at the same place. These activities became the day-to-day lives of the internet users. The purchase and sale of products and services through the computer application is associated with this E-commerce. It is a system which has integrated modern market. With the emergence of e-commerce, there is a rapid progress in the use of e-contracts. On the other side, this has created a lot of challenges too. In this article, we will discuss all these legal issues confronting to the Indian Scenario.

Keywords – E-Commerce, Click Wrap agreement, Browse Wrap Agreement, Shrink Wrap Agreement, Free Consent, Choice of Law, Electronic Authentication.

Introduction –

In the layman language, one can say E-Contracts, as a contract which is performed through the online mode. It can either be done through e- mail, by Computer application, or two electronics agent designed to form the contracts. An electronic Contract is a document that has been produced and signed in electronic form i.e., no paper or other hard copies are used.

Now, every business has standardized them electronically to an extent. Some of its day-to-day examples are goods being delivered at door steps, ordering food, booking tickets of train, buses, flights, movies etc., and Sending gifts to love ones. Now there is no need to stand in long queues to withdraw money through visiting bank branch as online transaction are widely accepted and used now-a-days.

A Brief Insight into E-Contracts-

In India, every form of contract is governed by the legislation known as 'Indian Contract Act,

1872'. Contract is defined under section 2(h) of this act as 'an agreement enforceable by law'. E-Contracts are basically the digitalized form of this traditional contract. It is any types of contract formed by the interaction of two or more through an electronic medium. It is quite similar to that of the contracts formed under Indian Contract Act, 1872, the only difference between the two is only the medium through which takes places. The traditional contract mandates the physical presence of parties whereas the E-Contracts do not required physical presence of parties necessarily.

There are two parties basically in e- contract, originator and the addressee as mentioned in the section 2(i)(za) and section 2(i)(b) respectively of the Information Technology Act, 2000. The originator is the party's one who sends, generates, stores or transmits the data to the addressee without the intermediary being involved. The addressee is the party one who is intended to receive the record sent by an originator without any intermediary being involved.

E-Contracts has reduced the paper workload, costs expend in travelling for contracts. But on the other side everything has some disadvantages too and so here in this article; it will also be discussed later.

Forms of E-Contracts –

Generally, there are three forms through which E- Contract are being formed and these are-

1. Click Wrap Agreements-

Under these types of agreement, the terms and conditions are given by one party, which the other parties agrees to it by clicking “I accept” or “Ok” or “Allow” or “I agree”. If the user does not click on these options, then they are not given any access. Even if the user clicks to agree without reading the terms and Conditions, it will be considered as user has read all those terms and conditions.

2. Browse Wrap Agreements-

Whenever a user is using is using the app or website from a long period of time, there are sets of agreement which gets accepted automatically. If the user does not agree with those terms and conditions then he/she has not given any access to use that website. These are mentioned generally at the bottom of the website.

3. Shrink Wrap Agreements-

These are the types of agreements in which the terms and conditions automatically impose on the buyer as soon as he/she opens the package. The terms and conditions are written usually inside the wrapper of the item. It is generally observed in buying any software products.

Essential Elements of E-Contracts –

To validate any E- Contracts under the Indian Contract Act, 1872, there are some essential elements. Some of this are-

- Two or more parties
- Offer and acceptance
- Lawful object
- Lawful consideration
- Parties competent to contract (minor, unsoundness of mind)

- Certainty of terms
- Free Consent

Issues related to E-Contracts –

On one hand if E-Contract save times and labour, save from paper work, travel costs and many things that everybody witnesses in their day to day life, on the other hand, it has some limitations and drawbacks too. Here we go through them one by one-

1. Capacity to Contract

It is one of the essential elements to enforce any agreement to become a Contract. Section 10,11 and 12 of the Indian Contract Act, 1872 deals with these provisions which states that Soundness of mind, major person (person who attained the age of 18yrs.) and not disqualified by law are the person who are competent to form contract. These essentials are also governed under E-Contract as basic requirements while forming the Contract. The main issue arises in the E-Contract are that both the parties are unknown and unfamiliar of each other. The party who are selling any products or services have no any idea about the person who wants to purchase those products or services are competent to contract or not. Eg- if a minor of 15 years age order something through E-Commerce sites.

2. Choice of Law-

It is one of the issues when both the parties in the E-Contract belong to two separate nations or states. There is a possibility that both the nation have separate rules and due to this a national clashes arises in case of any dispute arises. It becomes difficult to choose the proper law by which such a dispute can be resolved. It is also difficult for the court to adjudicate the matter by applying the jurisdiction where the bulk contracting transaction occurred. It becomes complex issues for fixing a surety as to choice of law when the dispute occurs. Ex- one (Originator) contracting party is from India and other (addressee) is from USA.

3. Free Consent –

It is the essential element for binding a Contract on both parties. Section 13 of the Indian

Contract Act, 1872 talks about it whereas there is no provision given under Information Technology Act, 2000 for free consents to form an E-Contract. It is possible only in physical contracts. The Apex Court of India in the case of Life Insurance Corporation of India v. Consumer Education and Research held that the user should be careful while giving the consent to avoid implication in future as the duty of the user only to accept or reject in E- Contract.

4. Theft of Identity –

As its name suggests, when the identity of the original user is driven by any other person either knowingly or unknowingly. The theft of Identity is wrongdoing for the purpose of money. Section 66 along with Section 43 of the Information Technology Act, 2000 express that if this type of activity occurs or found than the doer will be awarded either Imprisonment for 3 years or fine of 5 lakhs or with both.

5. Electronic Authentication –

Previously the Contracts were done through the pen and paper by following the rules mentioned in Indian Contract Act, 1872, but nowadays after the innovation of electronics most of the contracts are done through this medium. Therefore, to regulate this new regulation must be made by the parliament to regulate these electronic medium. Later, in the year 2000, the Information Technology Act was enacted by the parliament which contains the specific guidelines to ensure the authentication of E-Contracts. The things validated under this law are electronic signatures, electronic documents and electronic records. If the guidelines are not followed by any of the parties or both than the contract will lose its legal validity.

Conclusion –

E-Contract is one of the global needs in the modern scenario. The developments of many sectors have taken place after the introduction of E-Contracts like Google Pay, Phonepay, and UPI etc. Now-a-days everything is possible through digital medium in day to day life. The increase in use of this digital medium also increases some of responsibilities. Contracts surveillance should be there and it should be

monitored on a timely basis to reduce crimes and fraud either online or offline like setting up of CCTV cameras. The trust of clients should be the utmost priority and it should be provided by the service providers. A minor can also click and enter into Agreement, so that there should be something to protect from these types of acts. The security of data is also a major problem. Despite of these loopholes in the E-Contract, it is one of the major factors for increase in progress of country by providing growth in Indian economy.

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