

E-Commerce in India : Drawbacks In Frame Work Mechanism

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Abstract - In this study an attempt has been made to examine the law and challenges relating to electronic commerce in India with special reference to the “Information Technology Act, 2000”. Since the Information Technology Act” is not an exhaustive code of law relating to electronic commerce an attempt will be made to find out and explain the provision of other laws relating to electronic commerce in India. Recent emerging jurisdiction issues and consumer affairs are the biggest challenge for e-commerce sector along with that certain ambiguity in online contract mechanism making it worse .

Index Terms - E-Commerce , E-Contract, IT Act, Jurisdiction ,Consumer

The gamut of electronic-commerce has not been completely encompassed by the Information Technology Act, 2000 rather the pitfalls are often being addressed and appreciated by other subsidiary laws of the land. Increasing trends of consumerism started to rely much upon online marketing forums like amazon, flipkart, snapdeal etc. Information and Technology Act has captured the regulatory norms relating to electronic communicative parts but the changing dynamics of trade across the globe has caused to evolve the new dynamics of law of contracts viz; determination of jurisdiction, protection and remedies in case of breach of performance, etc. as well in order to ensure the liability in case of default or breach. Thus, revisit to the existing legal norms to accommodate the changing choices, preferences and behavioral-patterns of trade and commerce becomes important and in the present discussion that has been undertaken to elaborate the thrust areas that need attention of the legislators of the country.

Second upcoming economy and population India should align its regulatory mechanism more agreeable to both the sellers/service providers as well buyers/consumers for smooth operations of business transactions. The evolution of virtual markets with the wake-up call of ‘Make in India’ mission necessitates to blend the advance technologies and regulatory norms of the country more easy-going to promote trade and commerce. The ‘Digital India’ mission’ has urged RBI to revamp its regulatory norms from time to time however, piecemeal attention has been paid relating to the issues regarding online operations and online business in the virtual-markets which are equally keeping pace with up-growing market practices through e-commerce.

The framework mechanism for E-Commerce is still not sufficient enough to deal with all aspects of it. The issues regarding e-contract, Jurisdictions of redressal forums, Consumer protection are yet to be elucidated.

Fundamentally there are four platforms to carry out the day-to-day business most of what have already achieved the digitized status viz: a) Dealing Platforms, b) Payment Platforms, c) Service Platforms, and lastly d) Grievance Redressal Platform. Emerging of such virtual markets in i) commodity, ii) financial, iii) service and management, and iv) speculative spheres earnestly solicit reconfiguration of regulatory norms for promoting the 'Ease-Doing' business which is the recent official opinion in India. The present discussion deals with the commodity market only.

2. Legality of Online Transaction

The bottom-line of enforcement of rights and liabilities of the parties to transaction can be ensured in any legal framework only if the evidences could be procured in support of such claim(s), what with the gradual progression of mode of electronic communicative avenues implores customization of existing legal frameworks. For example, correspondence through "e-mail", responding to the invitation to offer on accessing to the Commercial websites have become a daily practice in the businesses or transactions related to virtual-markets pertaining to commodities. The business communities are relying on "Electronic data Interchange" for business contracts. "Electronic data interchange (EDI) electronic transfer of information from computer to computer by using an agreed standard to structure the information." By accessing to various web-portals of such virtual-markets of commodities there is sufficient scopes to be an informed consumer however the fundamental aspect, i.e., the power of bargaining has got restricted. The consumers/buyers had little option to exercise the right of 'bargain' rather to wait for some reduction or downturns of the price of the products so opted and such reduction or offer-sale is affected with some other contributory forces. As the contract and business transactions are being done through internet, hence the regulatory mechanism of the country should be more congruent to such advanced process of doing business.

The comprehensive reading of the "Information technology Act, 2000" and the "Indian Contract Act, 1872" have clarified to perceive a "valid electronic contract" but the challenges appear while construing the legal precepts of some of the basic principles of a valid contract, like jurisdiction to confine the binding forces of contract, breach in time-performances or dispute-resolution etc. For example, in a case where offer made on accessing to the web-portal of one of such market-players in virtual-market and due to either congestion or distortion in network-connectivity such offer failed to complete the electronic process to conclude a binding contractual relationship. "Information technology act" deal with the validity of E-Contract which says -

"Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract

shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.”¹

The Information Technology Act, 2000

Numerous legitimate standards expect the presence of paper records and archives, marked records, unique records, physical money and up close and personal gatherings. Electronic exchanges require new types of record, and acknowledgment of new types of correspondence. The Information Technology Act 2000 depends on the Model Law on online business received by the United Nations Commission on International Trade Law (UNCITRAL) The embodiment of the Act is caught in its long title: “An act to provide for the legal recognition of transactions carried out by alternatives to paper-based methods of communication and storage of information”² The act is consist of three main ingredients which are-

- Legitimate acknowledgment of electronic records and correspondences: “authoritative structure, evidentiary angles, computerized marks as the strategy for validation, rules for deciding time and place of dispatch and receipt of electronic records.”³
- Direction of Certification Authorities (CAs): “arrangement of a Controller of CAs, concede of licenses to CAs, obligations vis-a-vis endorsers of computerized signature certificates, acknowledgment of foreign CAs.”
- Digital Negotiation: “civil and criminal violations, penalties, establishment of the Adjudicating Authority and the Cyber Regulatory Appellate Tribunal, and so on. Furthermore, the Act amends the Indian Penal Code, 1860, the Indian Evidence Act, 1872, Bankers Book Evidence Act, 1891 and the Reserve Bank of India Act, 1934.” The primary reason for these alterations is to address the related issues of electronic violations and prove, and to empower advance direction as respects electronic funds exchanges. Not at all like comparable enactment, the Act additionally tries to direct the web in some shape by making distribution of profane data in electronic frame an offense, and for giving offenses of hacking and of wrecking or modifying information. It is likewise to the credit of the Indian governing body that the Act was one of the primary bits of enactment in India to be tossed open for open remark, before it being finished.

2.1 Formation and Validity of Online Contract

With the propel utilization of web and electronic business, online contracts have expected significance for

¹ Section 10 A Link 1.

² Subhajit Basu & Richard Jones, (2010)7–24

³ Subhajit Basu & Richard Jones, (2010)7–24

the most part as far as reach and variety. Online contract or an electronic contract is an understanding demonstrated, marked and executed electronically, usually over web. An Online contract is conceptually the same as and is drafted in a similar way in which a conventional paper-based contract is drafted “Online contracts can be of three types mainly i.e. shrink-wrap agreements, click or web-wrap agreements and browse-wrap agreements.”⁴A contract always can be formed through an agreement and an agreement usually consists of an offer, which is accepted further. Offer can be made in three ways which are directly “to the person to whom offer is made or through a mass e-mail or through a web page”⁵.But Offer and invitation to offer both are different. As example a contract which is being made directly may be an offer, But The offer is made through mass email may be an offer or may be an invitation to offer. The main difference is when offer is made directly the contract can be formed when the acceptance is made by the other party, in case of invitation to offer the parties are invited to make an offer for the acceptance. A contract is concluded when if any offer which is made through wave is accepted unconditionally If the advertisement is made on wave to invite the parties to make an offer than the parties who are interested can make an offer. It is up to the party who made the invitation to make an offer whether he should accept such offer or not.

When “The UNCITRAL Model Law” was adopted by the “Information technology Act,2000” it was the very clear principle established by IT Act that “unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of ‘electronic records’.”

For the formation of a valid online contract or e-contract four important elements are required which are “e-offer, e-acceptance, e-consideration and intention to create legal relationship”. In the process of establishing e-contract the first step is registration.

E-Offer - An offer is made when the electronic data or record or information which is offered enters to information system of which was allotted by the addressee. If no allotment was given and the information is sent to other system and the addressee retrieves it from there than it can be also said that the offer is made. The IT Act,2000” defines any electronic information or record is to be considered as it is caused by “the originator” if it was sent “by originator, by a person who had the authority to act on behalf of the originator in respect of that electronic record, or by an information system programmed by or on behalf of the originator to operate automatically.”⁶ By this it is understood that an intelligent agent is programmed to perform as an offerer on behalf of any individual. But the above lines are not saying anything about another situation when any file of offer is found by another.

⁴ Ajay Thakur(2017) Link 2

⁵ Subhajit Basu & Richard Jones, (2010)7–24

⁶Section 11 of The Information Technology Act, 2000, Link 3

E-Acceptance - There are four ways by which an acceptance can be made in e-contract which are “by sending an e-mail message of acceptance; by delivery online of an electronic or digital product/service; by delivery of the physical product; or by any other act or conduct indicating acceptance of the offer.”⁷ According to “Information technology Act,2000” when the acceptance is not in the control of offeree than the acceptance is binding on him and the offerer is responsible for it when acceptance is received by him .

Revocation of E-Contract - According to section 5 of Indian Contract Act, 1872 “A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.” Online contract which is regulated by information technology Act which is based on the principle of “UNCITRAL Model” states that when the receipt is done by the offeror than he is bound by it. But No valid Acceptance can be made after the revocation of offer enters in the information system of the offeree before the offeree makes any acceptance.

How E-Contract is Concluded - There is no specific provision in “the Indian Contract Act, 1872” for where a contract is to be concluded. It is guided by the common principle of law which is accepted by Supreme Court. A contract is communicated when the acceptance is received by the offerer. The contract is suppose to be placed at where the contract is received. But for electronic contract “the information Technology Act, 2000” defines in “section 13’ that -

“Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. the time of receipt of an electronic record shall be determined if the addressee has designated a computer resource for the purpose of receiving electronic records and receipt occurs at the time when the electronic, record enters the designated computer resource, or if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee.If the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.An electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.If the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business.If the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business.”⁸

Now from this it is not cleared that in electronic contracts, when the contract is concluded. It is concluded in the time of dispatch of acceptance or at when it is received the offeror. The ambiguity regarding the meaning

⁷ Subhajit Basu & Richard Jones, (2010)7–24

⁸ Ministry of Electronics and information technology, Link 4

of “computer resource” is still there which may cause certain practical problem in the real world as example “Closing of bids the last time of receiving of acceptance”⁹.

In Electronic contract the acceptance is made through via email or by “pressing accept or buy icon”. It seems ambiguous that in which location the receive of acceptance is made by the offeror. Can it be considered that the communication of contract is made where the offeree made acceptance by pressing acceptance icon or the location of communication of contract is same as the servers’ location? These ambiguities regarding electronic contract is not cleared yet.

2.2 Law for E-Document - For the physical mode of contract the most essential element of it is that it should be in writing or to be in the evidence of writing “Section 3(65)” of “General Clause Act,1897” says that -

“Expressions referring to “writing” shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.”¹⁰

There is still no clear provision in general clause act about the electronic contract regarding its essential element as the traditional form of contract is defined specifically in “The General Clause Act,1897”.

But it can be argued that the electronic mode of information can be rendered as writing if it is printed out or viewed. Section 4 of “Information technology Act” defines that -

“Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is rendered or made available in an electronic form; and accessible so as to be usable for a subsequent reference.”¹¹

For the further interpretation section 3(18) of “The General Clause Act,1897” can be quoted here which says

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“Document shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose or recording that matter.”¹²

Here it can be interpreted that the electronic documents are comes under the definition of document provided by General Clause Act, 1897. The electronic document which stored as Bytes which symbolizes the size of

⁹ Subhajit Basu & Richard Jones, (2010)7–24

¹⁰General Clause Act ,1897, Link 5

¹¹ Section 4, IT Act,2000, Link 6

¹² General Clause Act,1897 ,Link 7

the document is the figure or mark of it. So the electronic document comes under the purview of General Clause Act.

2.3 Digital Signature and Encryption - One of the biggest challenges in the development of e-commerce sector is security of any activity done through electronic mode. The parties who are getting into any contract or getting involved in any online transaction must use certain kind of technique to secure their activity in the internet. "Cryptography" is the one of the most reliable secured pattern to protect the e-commerce sector. The use of cryptography can be distinguished in two ways one is to make confidentiality of messages and other one is for the digital signature. The most effective method of using encryption is encryption and decryption which involves two types of key which are private key and public key. The encryption method is regulated by the Information Technology Act, 2000 through DoT. With the evolving e-commerce sector the Government Encryption policies are also developing to protect electronic functioning from cyber crimes.

Some other process should be used to identify authentication of the transaction while the encryption and decryption are providing security to the e-commerce. The signature plays the role of authentication in the physical form of contracts. But the digital mode of signature can play such role is also a matter of question. Section 3(56) of General Clause act, 1897 defines Sign as

"Sign, with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark", with its grammatical variations and cognate expressions."¹³

For the acknowledgment of authority a person can use scanned copy of his signature which can be rendered as signature. If Section 2(p) and section 3 is read together it can be understood that a signature can be sent through cryptography by using public key. For that the identity of the sender with signature and digital certificate issued by certification authorities should be attached for the surety of the identity of the sender.

Gradually various changes regarding the rules of certification authorities in various countries occurred. Many countries have their own digital signature regulations. In some cases the security procedure which is established by a central government differs from the parties agree for it. This practice creates certain ambiguity regarding the issue of certificate by licensed Certification Authority. Maximum e-commerce sites in India secured their certificates from international Certification Authorities which is not valid under Information technology Act. Only Foreign CAs who has office in India can get license to issue the certificate for Indian e-commerce Company. This rule created problems for many e-commerce business entities that already have the certificates issued by international non Indian certification Authorities. The transaction with these business entities are not possible due to recognized CAs. This process raises many questions regarding the contract between the parties which have valid digital signature or not.

¹³ General Clauses Act, 1897, Link 8

3. E-Commerce and Jurisdictional Aspect

The term jurisdiction usually means “A government’s general power to exercise authority over all persons and things within its territory”. The jurisdiction of court is also plays the same role. Within some specific “Geographic Area” the court shall function and resolve the disputes. But The “Cyber Jurisdiction” is different from the physical form of jurisdiction of court. “Cyber jurisdiction generally encompasses the system operators or users power to frame rules and enforce them in an “apparent virtual community” interacting in cyberspace, or virtual space in the cyber world which is perceived as a place on the Internet and is independent from the normal government regulations.”¹⁴ This cyber jurisdiction for the cyber world within which e-commerce market is established is the part of virtual world. From the virtual world any person can access any computer from anywhere to get in to a e-contract. It is general perception that every e-commerce activities are being done through online mode. But not necessarily be the process is always be like this. Sometimes when two parties enter into a e-contract the obligation created from that contract is done by physical mode .But the most important part of the online contract is the conclusion of contract should be done online. In such cases, question regarding the time and place of contract arises which identifies the jurisdiction of the contract. Parties from different countries can enter into a online contract in cyber world. But here the question comes which country have the jurisdiction to resolve any issue if arises .Such situation is not different if the contract is made within the country. Then also the genuine question arises that which state have the jurisdiction. In e-commerce sector in a contract many parties from different location enters into one contract for any specific purpose. Among those parties if any party have any kind of legal dispute with another party of same contract than where such party can sue the other party is question which still remained unanswered. According to common law a suit can be filed where the defendant resides and the place where the cause of action has been arise and such concept is defined under “Civil Procedure Code, 1908” in India .But in e-commerce sector where numbers of parties are involved in a contract and cause of action can be arise in various places the determination of place of sue is not easy.

“Section 75” of Information Technology Act states that “Act shall apply also to any offense or contravention committed outside India by any person irrespective of his nationality.”¹⁵ But this provision is not providing solution to all the issues. “Section 20” of “Civil Procedure Code, 1908” which deals with the jurisdiction of the Civil Court when “cause of action arises in more than one place” can be interpreted with the jurisdiction of e-commerce related issues. One of possible way is The Parties to the any e-commerce transaction can decide any court of their choice in India or any “Neutral Forum” in case of international transaction but the parties should be aware that the forum or the court should have the jurisdiction for future disputes.

¹⁴ Chetan Karnatak,(2014) , 1-7

¹⁵ Section 75, Information technology Act,2000 ,Link 9

There are certain initiatives are being taken by Indian Judiciary in various cases regarding jurisdiction of e-commerce.

Certain Decision by Judiciary Regarding Jurisdiction of E-Commerce Till Now

In "*Banyan Tree Holding (P) Limited vs A. Murali Krishna Reddy & Anr.*"¹⁶ In this case, the objection was made regarding the "jurisdiction of Delhi High Court" to trial this case. The Plaintiff argued with the interpretation of "Section 20" of "Civil Procedure Code, 1908" that the court have the jurisdiction because the defendant offered the services through brochure to the resident of Delhi. Plaintiff also argued that the website of the defendant is accessible from any place of India and the "universality, ubiquity, and utility" of the "Internet and the World Wide Web" shows that the court have the requisite jurisdiction for this case. In this case Delhi High Court held that-

"For the purposes of a passing off action, or an infringement action where the Plaintiff is not carrying on business within the jurisdiction of a court, and in the absence of a long-arm statute, in order to satisfy the forum court that it has jurisdiction to entertain the suit, the Plaintiff would have to show that the defendant *purposefully availed* itself of the jurisdiction of the forum court. For this it would have to be prima-facie shown that the nature of the activity indulged in by the Defendant by the use of the website was with an intention to conclude a commercial transaction with the website user and that the specific targeting of the forum state which resulted in an injury or harm to the Plaintiff within the forum state. Mere hosting of a website which can be accessible from anyone from within the jurisdiction of the court is not sufficient... Also a mere posting of an advertisement by the Defendant depicting its mark on a passive website which does not enable the Defendant to enter into any commercial transaction with the viewer in the forum state cannot satisfy the requirement of giving rise to a cause of action in the forum state."

In the "*Dhodha House v. S.K. Maingi*" Supreme Court clearly interpreted the meaning of "Carrying on Business" concerning the evolving concept of e-commerce and its market. It was held in this case that a mere presence of a person in particular place for "carrying a business" is not needed. Only three essential elements are required to be satisfied which are "the agent must be a special agent who attends exclusively to the business of the principal"; "the person acting as agent must be an agent in the strict sense of the term" and "to constitute 'carrying on business' at a certain place, the essential part of the business must be performed at that place".

¹⁶ JURISDICTION OF COURTS IN ECOMMERCE TRANSACTIONS IN INDIA: WHERE TO DECIDE THE CONFLICT OF SPACE IPLEADERS INTELLIGENT LEGAL SOLUTION (2015) LINK 10

In the “*Christian Louboutin v Nakul Bajaj*”¹⁷ where the defendant sold the plaintiff’s products without permission through its website www.darveys.com, thus creating doubts as to the quality of those products in the minds of consumers. The plaintiff alleged that the defendant’s activities also affected the reputation of its brand and consumer goodwill towards it, and that continued use of its name would cause its luxury brand irreparable harm. The court granted an interim injunction restraining the defendant from selling unauthorized products.

In the *P.R. Transport Agency Vs. Union of India and Others*.¹⁸ An e-auction for coal in various lots was held by the Bharat Coking Coal Ltd(BCC) on which the bid of P.R Transport Agency(PRTA) was accepted for 4000 metrics tons of coal. PRTA got the acceptance letter by email. PRTA deposited the full amount of Rs. 81.12 lakh through a cheque in favour of BCC. But BCC did not delivered the coal to PRTA stating the reason that the e-auction in favour of PRTA stood canceled due to certain technical problem in the computer programming. Certain bid which was higher than the PRTA was not recorded during the e-auction. PRTA filled a suit in the Allahabad High court.

In this case the court considered that the contract is complete if its made through telex or fax or telephone when and where the acceptance is received and this principle is applicable when the both the transmitting and receiving terminal are in fixed point. In case of email the transmission and receive of such data both can be made anywhere in the world therefore there is no fixed point for both transmission and receipt. The acceptance of the tender will deemed to be received by PRTA at Varanasi and Chandauli which are the business place of PRTA. The High Court of Allahabad have the territorial jurisdiction as the part of the cause of action had arisen in U.P.

Hence the concept of “Online Dispute Resolution” is emerged in India but it is in it infancy stage . The innovative initiatives like the “Consumer Protection in Cyber Space” , “Digital Dispute” , “Cyber Arbitration” are being taken by the government to make a proper dispute resolve mechanism for online commercial sector. But a uniformed law with proper clarity are yet to come for regulating such huge emerging sector.

3.1 E-Commerce and Consumer Protection

The main objective of “Consumer protection Act, 1986” is to protect the rights of the consumer in relation to the goods and service providers. After the emergence of e-commerce sector the ambiguity regarding the consumer protection act is not cleared yet. It is not clear that the online service providers who are involved in

¹⁷ JURISDICTION OF COURTS IN ECOMMERCE TRANSACTIONS IN INDIA: WHERE TO DECIDE THE CONFLICT OF SPACE IPLEADERS INTELLIGENT LEGAL SOLUTION (2015) LINK 10

¹⁸ Legal issues involved in e-contract (2015) Link 11 Accessed 1 November 2018

a e-commerce market are comes under the purview of the “Consumer Protection Act, 1986”. On such ambiguity “The Minister of State for Consumer Affairs, Food and Public Distribution” stated that -

“All business transactions by consumers, whether online or otherwise, is covered under the CPA and complainants can approach various consumer fora provided under the CPA for resolution of their grievances.”

But it is required to be understood that the CPA is enforced to deal with issues when consumer is having dispute regarding the product and services which he got from seller by physical mode. From the above discussion it is cleared that the issues regarding traditional consumers and online consumers are different. There is no provision for online consumers in Consumer Protection Act, 1986. It also doesn't have any exclusive dispute redressal mechanism. In “*Make My Trip(India) Pvt. Ltd.Vs. Dr. Ravi Ghai and Ors.*”¹⁹ the ticket is purchased through online only the forum under which territorial jurisdiction the headquarter of appellant is situated , have authority to decide the complaint. The one of the main objective of Consumer Protection Act is to give convenient, inexpensive and speedy redressal facility to consumer. If the above pronouncement by the court in “*Make My Trip Case*” is accepted, the objective of CPA, 1986 is getting contradicted. A Person can book ticket from anywhere in India. But when any problem arises from that certain thing He have to come to the only place where the headquarter of the party is situated. It may be expensive or hard for transportation . These situation may arise which can not be denied. In “*Lucknow Development Authority vs. M.K.Gupta*” the Supreme Court of India opined that The Provisions of CPA, 1986 is for benefit of consumer and to fulfil the purpose of the enactment as it is the “social benefit oriented legislation”.

Hence, the new “Consumer Protection Bill, 2015” will substitute the thirty years old Consumer Protection Act, 1986. The new law is going to give importance on e-commerce, e-tailing along with physical mode of transactions. However, the law is not been enforced yet.

The online business forum is also started taking some initiative for consumer's protection of Interest. Now Flipkart made changes to the text of a returns policy that had appeared to restrict refunds on a swathe of popular items, clarifying ambiguities and restoring a more customer friendly system. Buyers can now rest assured that they will get refunds for products such as books, home décor, lifestyle and fashion products, fitness equipment, musical instruments, automotive parts and pet supplies that they want to return for any reason.

3.2 Electronic Payment Related Issues-

With the growth of e-commerce sector the e-payment system is also developed. It is easy, transparent and time saving method to make payment. The Government of India is also promoting the “cashless transaction”.

¹⁹ No 529 On 25 January, Link 12

Various e-payment companies are emerging which are providing proper reliable payment process to online customers. But the proper awareness is still needed to be habituated with such new process. The poor server or lack of knowledge to use the e-payment methods and the apprehension of violation of right to privacy are the measure issues.

4. Conclusion

With regarding to electronic contracts the IT act has provided with the very specific definition of the term addressee, originator and intermediaries. It is also provided with specific provision to deal with attribution acknowledgment of e-records. The IT Act has remained silent about certain issues of e-commerce. It leads to a lot of ambiguity. There are hardly any case laws in India with regards to e-contracts. Emails cannot be considered as proper medium of transaction. In the case of messages sent through click wrap or shrink wrap mechanism the poster rule is not applicable as compared to email contracting because the line of communication in the case of click wrap is continuously verified which means the communication once sent is instantly received.

Some times certain issues come where the onus of the offence is hard to identify. who is to be blamed for the damage made is not always identifiable. It is hard to specify in which sphere of the transaction the damage is made. Though many online commercial forum are providing refund facility in B2C system but sometimes it is not reliable enough. The consumer can easily be manipulated by the such business model. For redressal of such issues many initiative are being taken but the systematic regulation is needed in which the online transactions and consumers can be protected like the physical mode of business.

Though The IT Act is dealing with certain issues yet the jurisdictional issues and security issues regarding e-payment is still ambiguous. Though certain initiatives are being taken by the Indian judiciary but no uniformed guideline is established for jurisdiction issues. Certain reforms are made after amendment in 2008 regarding online consumer protection and the consumer protection bill, 2015 yet to enforced. But the IT act is needed to be reformed more and establish certain guidelines on which it is ambiguous. The evolving e-commerce sector needs a proper transparent reliable mechanism which is yet to be developed.

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