

FORMATION AND CHALLENGES OF ELECTRONIC CONTRACT IN THE LIGHT OF CYBERSPACE.

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ABSTRACT - Discoveries, Inventions and spread of new Information Technologies brought about by computers, internet and cyberspace widen the scientific horizon but it create new challenges and created problems for the legal world in all aspects of law. The challenges that we facing today are not only in traditional legal system but also in contract law, criminal law, Law of torts etc.

Therefore, many countries have already laid down cyber laws to regulate this global mode of communication, India is proud to be one of them. In India, all cyber laws are contained in the Information Technology, Act 2000. The Act was made to provide the legal infrastructure for e-contract in India. One of the unique features of the Act is that it promotes the use of digital signatures for the growth of E-Commerce and E-Governance. However, the Act still does not deal with some major legal issues such as Jurisdiction, protection of domain name, infringement of copyright law etc. This led the formation of various challenges before Indian Legal system. Therefore, a practical approaches required to minimized the difficulties and for resolving all cyber disputes, happening in our cyberspace. Researcher has find out social media & Indian cyber law approach that, In India, there has been a lot of controversy over the last few months over Section 66A of the Indian Cyber law being the amended Indian Information Technology Act, 2000 on different occasions.

KEYWORDS - electronic contract, cyberspace, Information technology, digital signature, electronic commerce.

I) Introduction

Today with the modern development in the area of information technology have resulted in changing the life style of people. The communication and commercial transaction is no more restricted because of time and geographical changes. Information is transmitted and received broadly and more speedily than ever before. This is possible due to the electronic commerce offers the flexibility to business environment in terms of place, time, space, distance, and payment. This e-commerce is related with the buying and selling of information, products and services via Internet. It is an instrument that leads to 'enterprise integration' but use of electronic contracts creates a lot of challenges in way of conceptual, logical and implementation. In research paper discussed the formation and challenges of electronic contract in cyberspace. Researcher has explained that, India's Information Technology Act 2000 recognizes the legal validity of E-documents, E-signatures and E-contracts, and also promotes E-government. E-documents are not allowed in wills, trusts, and sales of real property, negotiable instruments and powers-of-attorney.

An E-document may be used to satisfy a statutory requirement of: writing; authentication; retention; publication; and governmental filing, issuance or payment. Formation of electronic contract through three agreements click wrap, web wrap and shrink wrap agreement. A digital signature complies with a statutory requirement for a handwritten signature to be affixed on paper. The Information Technology Act 2000 includes E-contract rules relating to attribution, acknowledgement of receipt, and time and place of transmission and reception of an electronic message. Due to improper elements of formation of electronic contract challenging in area of cyberspace and give birth to cyber crime.

II Research Objectives

The present study aimed with following objectives:

1. To know the electronic contract features in cyberspace
2. To know the formation of electronic contract under Information Technology Act 2000
3. To know the applicable law that is Information Technology Act, 2000 has cover and regulate to electronic contract
4. To Know challenges of electronic contract as per legal and jurisdictional issue under cyberspace.

III. Methodology

This research is Doctrinal. Research questions are deriving by using resources for its investigation from both primary and secondary. For the analysis of legislation related to e-contract primary resources such as Information Technological Act 2000, and Information Technology (Amendment) Act 2008, The Secondary sources are like books including e-books and Journal. It has been used in this research paper.

IV) Review Criteria

This research is Doctrinal. The Secondary sources are like books including e-books and Journal. It has been used in this research paper. Summary of Literature review is as following used in this research paper.

• Dr.Farooq Ahmed

In his book titled Cyber law in India (Law on Internet) is the only work which tells about e-contracts. There are eleven chapters under this book. It includes early development of Digital Computer, its potential, problems, Importance, object, scope of Information Technology Act 2000 in simple and lucid style.

In his book Computer Contracts and Information Technology laid down comprehensive information relating to important legislations which across the globe. Through first two chapters of this book, he introduces the meaning, principle and limitation of information Technology, and also to information laws and the fundamentals of information.

• **Rohas Nagpal -**

Rohas Nagpal is head of Asian School of Cyber Law. He is writing a book on the e commerce. It is basically deals with legal issues of electronic contract. He also pointed out major kinds of electronic contract such as email service contract, Domain purchase contract, online share trading contract, online shopping contract. He laid down essentials of electronic contract with illustrations and case laws. He makes the reader understand certain basic legal and practical problems while emerging business is still in the exploratory and planning stage with introducing relevant provision of Information Technology Act 2000.

• **Karnitha Seth (Cyber law and Expert)**

In his book Computers, Internet and New Technology Laws have meant to bring together process of forming contracts by electronic means. The book is divided into twelve chapters. Among themes chapter 1st discusses the evolution of cyberspace. Some of the chapters shortening the online contract law of key jurisdictions about the world. Chapter 3rd contains contracting online. These are illustrative of documents that are presently in use.

• **R.K.Singh**

In his book named Law relating to electronic contract clearly elaborated the concept and legal issues relating to electronic contract. He discussed major issues of electronic contract that have evolved as result of emergence of electronic contracts.

IV) Operational Definition of electronic contract.

Researcher has defined The term electronic contract may be defined as, it is contract executed by software system in electronic form enforceable by law. Enforceable includes offer and acceptance, free consent, capacity of parties, lawful object, creation of legal relationship with online contract before clicking I Agree button all terms and Conditions in respect of electronic contract, all this concepts are necessary. It must be include legally for the formation of electronic contract. Even today still Information Technology does not consider such conditions.

V) Significant forms of E-Contract

Electronic contract raise some interesting issue. They only makes through instruments provides for its formation. Such Instruments are available like Website, Internet or Electronic Data Interchange. "Website contains three form of electronic contract known as The Click-wrap, Web-wrap Agreements and The Shrink-wrap Agreements." These technical instruments establish electronic contract but they need legal support for its legal recognition to settle dispute regarding online commerce.

a) Click wraps Contracts

It is important mechanism process of software method known as Click Wrap agreements. It is run through click process. Under this process user must type they accept. There are particular words which is on display box of processor and it considered acceptance in the term of clicking process agree or I do not agree so choice for the users.

b) Browse wraps Contracts

In browse-wrap contracts, the internet users will find a terms or conditions hyperlink somewhere on web pages that proposes to sell goods and services. By these terms and conditions, using the place for buying the goods or services offered (or just visiting the site) constitutes acceptance of the conditions contained therein.

c) Shrink Wrap Agreements.

This is very different kind of electronic contract under the classification of an Internet contract known as Shrink Wrap Agreement. These contracts are license agreement, terms and conditions are only read if once opening the product it's held under its acceptance. In this method terms explains on the plastic wrapping used to coat software boxes. So it is wrapped by plastic box or sealed. If client will purchase this agreement without opening the seal he can return sealed software package a refund will be obtained but once parties open the seal of this agreement & find attached CD will not proper he could not obtained refund.

D) Electronic Data Interchange:

Electronic Data Interchange is method of data transfer which is useful for electronic contract. These contracts used in commercial transactions which make the transfer of data from one computer to another. each transaction by way of trading cycle (for example, commencing from the receipt of an order from buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods) can be processed with almost no paperwork. Electronic data Interchange is also important method of formation of electronic contract.

VI) E contract formed in cyberspace

E-contracts facilitated in various firms for the purpose of commercial transaction. The e-contracts have their own features and demerits. They decrease money saves time, fasten consumer response and develop service quality by reducing paper work. It leads to development in Indian economy and business environment. E-commerce is expected to improve the productivity and competitiveness of participating businesses by providing unprecedented access to an on-line global market place. Millions of customers and thousands of products and services use this method for commercial transaction. Thus electronic contract, the proposal focuses not on humans who make decisions on specific transactions, but on how risk should be structured in a cyber environment. Therefore the object is to create default rules for attributing a message to a party so as to avoid any fraud and discrepancy in the cyberspace.

Use of the internet and Information technology across borders, various issues related to cyberspace has cropped up on legal front. Some of the major issues are determination of jurisdiction, cyber crime, intellectual property, cyber forensic, E-commerce, Electronic Evidence, privacy and contract. One of the greatest lacunas for resolving these issues are the absence of comprehensive law anywhere in the world. The problem is further aggravated due to disproportional growth ratio of Internet and cyber law. Though a beginning has been made by the enactment of Information Technology Act and Amendment made to Indian Penal Code, Indian Evidence Act etc, problems associated with regulation of cyber crime continues to persist.

VII)Challenges of E contracting in cyberspace

In India, The information Technology Act, 2000 (ITA) and amendment in several existing laws through ITA does enforce and control a level of cyber related problems. However, it has shown inadequacy of law while dealing with information technology itself. The Information Technology Act in many ways does not follow International standards. Therefore loophole of Information Technology cannot be ignored. It can lead to some destruction for individual as well as nation. New provisions added through

Information Technology (Amendment) Act, 2008 could be a way out from such challenges but several changes are still needed for the Act to make sure both legal and technological neutrality. This research paper mainly highlighted legal and jurisdictional challenges of electronic contract in cyber area.

a) Legal Challenges: In many countries the laws related to cyberspace have already been developed. Foreign countries have their own legislations in the context of cyberspace. In India there is quite confusion of cyber laws. Mostly find out that cyber crime committed over the Internet. It could be against the government, property and against any person in various forms. Nowadays, the law enforcement agencies are facing difficulties in dealing with cyber crime. In India, Information Technology Act, 2000 is the legislation that deals with issue related to cyber crime. But there is no specific provision mentioned under said Act regarding cyber issues.

Now days, India has emerged as a major player in the computer software and resources segment. Data shows that India will have the largest number of internet-users in Asia in near future. In all e-commerce, the validity and the formation of contract is very essential. However, several practical problems arise when we form a contract. Thus, there is no requisite of writing for the validity of contracts except for cases which are specifically required by law to be in writing. Therefore, it would show that the Information Technology Act avoids incorporating any specific provision giving validity to online contracts.

b) Jurisdictional Challenges:

In the cyberspace, there is no geographical boundary. It establishes instant long-distance communications with anyone who can have access to any website. No judicial body exists to deal with legal commercial problems arising between citizens of different countries there is lot of awareness among the people about judicial delivery system of cyber cell.

VIII) Conclusion.

It is important to note that the Internet as with all path-breaking technological developments gives us all the opportunity to act as a global community, advertise and operate across all frontiers, over borders and beyond the control of any national government, but it also created serious problems, challenges for the legal world in all aspects of law due to its borderless nature. Hence, there is an urgent need to redefine the cyber laws in India as per International standards. There are few major areas in cyberspace in which many challenges have been cropped up on legal front. "We need to promote and facilitate the fair use of cyber space among general masses, to educate civil society groups about the legal constitutional issues, to assure citizens regarding their concern on privacy, personal liberties, to make citizens aware of various kinds of commonly committed cyber offences such as Fraud, Identity Theft, Hacking, Phishing etc. and freedoms and also there is an immediate requirement of skilled investigators and trained judges for fair and effective dispute resolution.

IX) Suggestions

- India needs to identify the possible areas of conflict and operational problems of electronic contract in cyber area and in the light of Information Technology Act 2000.
 - To address various doubts, quarries; issues relating to cyberspace and the most appropriate way to start is the creation of a comprehensive legislation which should address broad area of cyberspace.
 - Taking into consideration of expert in Cyber, institutional and individual requirements.
 - The proposed Communication Convergence Bill, 2001 could be a milestone in answering all these questions.
 - The amendments in several laws by the IT Act are a good beginning but several changes are still needed for the act to ensure both functional equivalence and technological neutrality.
 - International agreements by way of convention and cooperation are required for various dispute resolutions in International arena.
- Innovations with legal and technical support make authenticated electronic contract in cyberspace.

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