

Validity of E- Contract in India: An Overview

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Abstract: The emergence of disruptive technology has assured that the country has powerful e-commerce. The use of innovation without an appropriate legal structure, however, will contribute to greater chaos and will render detrimental to the business. The key laws that evaluate the legitimacy of an e-contract are the Indian Contract Act, 1872, the Information Technology Act, 2000, and the Indian Evidence Act, 1872. Agreements are created via the communication by way of e-mails and through online agreements. Browse wrap, shrink wrap, and wrap agreements by clicking. The paper aims to discuss the potential issue that can emerge in domain of E-contract. It will answer a few of the issue and address how Indian law seeks to manage the e-contract to ensure that e-commerce proceeds to expand and thus encourage the expansion of a healthy economy.

Key words: E-Contract, E- Commerce, Economy, Indian Legislation, Guidelines, Information Technology.

Introduction

The means by which people interact has been revolutionised by the Internet. Other than that, the way business is conducted has been changed by the Internet and digital data sharing. A modern mode of trade and commerce, called e-commerce, has been introduced in. The contracts or agreements that actually occur via e-commerce, without encountering the parties on face, to the deal, are electronic contracts. The software framework models, defines, implements and deploys the E-Contract. The involved parties meet face to face while entering into agreements with each other; it would be less difficult to keep apart from errors than as the parties are at a distance and execute agreement as a mechanism via electronic medium or net.¹

E-commerce is flourishing with the great standard of internet accessibility across the globe and the popularity of the internet among users is skyrocketing. The fast mobility and lack of regional boundaries the internet's key strengths, have added a great deal to e-commerce development.

Discussion

The usage of virtual methods for conducting and implementing contracts has grown popular within India with a major increase in e-commerce. This poses the dilemma of whether, under Indian law, an electronic contract can render as a contract of valid nature. As the Indian Contract Act 1872("ICA") doesn't really expressly address or forbid the notion of "electronic" contracts. The electronic contract is also regulated mainly by the ratified ICA provisions applied to contracts in common.²

Validity

- *Essential*

An electronic contract shall not be actionable by law if it lacks the compliance with all the contractual provisions, such as (a) "Offer" and "Acceptance"; (b) Legal consideration; (c) Legal object; (d) Free consent (e) Competence of the parties (f) Create legal relationships (g) Certainty (h) should not be declared "void" in the light of the law (i) Check compliance with other existing laws regulating the agreement/Contract. With reference to the Indian Contract Act, other regulations regulating the electronic contract must be interpreted.³

¹ P. R. Krishna and K. Karlapalem, "Electronic contracts," *IEEE Internet Comput.*, 2008

² A. Meier and A. Meier, "eContracting," in *eDemocracy & eGovernment*, 2012

³ T. Pikkarainen, K. Pikkarainen, H. Karjaluoto, and S. Pahnla, "Consumer acceptance of online banking: An extension of the technology acceptance model," *Internet Research*. 2004.

- *Recognition under Indian Statutes*

The Information Technology Act, 2000 ('IT Act') grants e-contract legal approval. In particular, it implies that a contract is not considered to be invalid by statute, solely on the justification that electronic form/means have been used to convey the proposal, approve the proposal, accept the proposal and revoke the proposal or accept it.⁴

The Indian Evidence Act, 1872 ('Evidence Act'), in compliance with the requirements of the Evidence Act, the issue of electronic documents can be proven in evidence by the participants. Indian Courts are allowed to presume that an email document sent by the sender by e-mail to the receiver to whom the message proposes to be addressed correlates to the message served for dissemination on his computer; without assumption as to the individual by whom the communication was done.⁵

Online Contract Development or Electronic Contracts

Online contracts are implementable e-agreements comprising of an offer and acceptance, equivalent to an ordinary contract. The actions of the participants, such as exchanging e-mails or acknowledging a condition or conditions, or uploading, etc., may also mean a contract. A number of electronic/online contract forming procedures are available such as:

1. Email:

The parties may create a legal contract by exchanging e-mail correspondence. Offers and acceptances may be shared via e-mail in full, or may be coupled with paper records, faxes and oral conversations.

2. Website Forms:

In many instances, an e-commerce website provides goods or services for sales that are ordered by the consumer by fulfilling and communicating the order form shown on the computer. A contract is established once the vendor acknowledges the order. The goods and services can then be shipped off-line manually. The terms of use of a site will also become a binding contract until the user clicks on "I Agree" to acknowledge the very same.

3. EULA:

The End User License Agreements often form valid contracts in which "I Agree" or "I Accept Terms" buttons are clicked in the form by the end customer.

Kinds of E-Contracts

1. Browse Wrap Agreements:

This agreement is regarded as a browser wrap agreement that, by the operation of the website, is supposed to be effective upon the party with respect to a contract. It includes user policy and terms of operation for sites such as Flipkart or Amazon which are in the shape of a 'Terms of Use,' a 'User Agreement,' or a 'Terms of Service,' which can be utilized as links at the bottom or corner of the webpage.

2. Shrink Wrap Contracts

These contracts are a licencing agreement under which the contracting parties are regulated by the terms and conditions laid down in contract which are typically depicted on the packaging or in the manuals surrounding the software goods that are purchased by the customer.

⁴ S. Verma, "Electronic government procurement: a legal perspective on the Indian situation," *Electron. Gov.*, 2004

⁵ Anon, "UNCITRAL Model Law on electronic commerce," *EDI Law Rev.*, 1996.

3. Click Wrap Agreements

These agreements enable the user to adhere to the terms and conditions known as the End User Agreement, and by pressing the "Ok" or "I agree" button restricts the licenced use of the device. There are some forms of checks that guarantee that the contracting parties are bound by the terms of the contract.

Conclusion

Contracts by electronic means, such as by e-mail correspondence or either through any electronic channel, have sometimes been recognised by the Court of India for their success and implementation of the contract. In *Shakti Bhog Foods Limited v. Kola Shipping Limited*,⁶ the Supreme Court concluded that the presence of an arrangement concerning arbitration between the parties could be determined from an agreement agreed by the parties or from an interchange of letters, telexes, telegrams or other means of communication documenting the contract.

The law overseeing electronic agreement is as yet developing and as indicated by existing situation may not completely cover all part of e-contract. The perspective on creator is basic administrative and legal purpose seems, by all accounts, to be that any legitimately substantial acts that are usually performed would keep on being legitimate regardless of whether performed electronically or carefully, as long as such electronic/computerized execution comprises of the multitude of qualities of lawfully legitimate agreement, as might be recommended under the relevant laws. EULA: The End User License Agreements often form valid contracts in which "I Agree" or "I Accept Terms" buttons are clicked in the form by the end customer.



⁶ AIR 2009 SC 12