

“E-CONTRACTS IN THE DIGITAL AGE: LEGAL IMPLICATION”

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Abstract

Over the past few decades, e commerce has grown significantly. Since e contracts are a fundamental component of e commerce and are recognized by Indian law, e commerce consumers have gradually grown to trust it. An e contract is a tool for creating and negotiating agreements for consumer and commercial e commerce and associated services. Over the past 10 Years, e contract usage has grown dramatically in other nations as well as in India, especially in the wake of the COVID crises. Future contracts will be e - contracts. In the fact - paced world of today, everyone wants a quick and simple way to draft contracts or legal papers. The process of drafting e - contracts using electronic means is currently being widely adopted by people. The Indian Contract Act of 1872, The Information Technology Act of 2000 and the Bharatiya Sakshya Adhiniyam 2023 are the major legislation that determines the authenticity of an e - contract. This paper will explore questions regarding the validity, enforceability and legality of e - contract in India.

Key words

E- Commerce, E- Contract, The Indian Contract Act of 1872, The Bharatiya Sakshya Adhiniyam 2023, The Information Technology Act of 2000.

Introduction

A legally binding agreement made and performed electronically - through email, international or digital software that does not require paper document is known as e - contract. These digital contracts are enforceable by electronic signature and are based on the same legal concepts as traditional contracts, which include offer, acceptance and consideration. E- Contracts are a practical and necessary component of today's digital economy and e- commerce transactions because they provide numerous advantages such as improved accessibility, cost effectiveness and decreased paper work.

One subset of e - commerce is e - contract. It is comparable to a conventional business in which products and services are exchanged for a specific sum of money. The fact that e - contract is executed via digital communication is a crucial component. It gives sellers the chance to communicate directly with the customer.

Kinds of E - Contracts

E - Contracts are specific to the nature of the business. There are various types of e - contracts executed depending on the structure of the business. Below are a few of the most common type of e - contracts -

1 - Shrink wrap agreements - Shrink wrap agreements are the End User License Agreements (EULA), which are packaged with the products. The technique of enclosing the product in a plastic wrap is called shrink wrap which declares that the customer purchasing it is bound by the EULA.

Usage of the product is deemed acceptance by the user. Interestingly, the acceptance is by default once the product is purchased along with the packaging being ripped and utilized. An example of Shrink Wrap Agreements is Software drives. ¹

2 - Browse Wrap Agreements - An agreement designed to bind the party utilizing the website is known as a browser wrap agreement. Customers can access the rules and regulations via a hyperlink on any page of the website and by using the site going forward, customers are deemed to have accepted them.

3 - Click wrap Agreements- Click wrap agreements are a form of agreement used for software licensing, website and other electronic media. When the user logs in to a website the terms and conditions or the privacy policies of the website are to be accepted by the user as legal consent. Though the user is intimated in this method about the existence of certain terms and conditions and is required to accept the same, there is no power of negotiation. The user clicks "I agree" to be bound by the legal obligations. Some prominent examples of click wrap agreements are Amazon and Flipkart.

1 - <https://blog.ipleaders.in>

Parties of E - Contract

There must be two parties for regular Contracts - an offer or and an acceptor. Regarding E - Contract the phrases originator and addressee are employed in place of offer or and acceptor. Three parties - the creator, the intermediary and the addressee are engaged in transferring electronic records. The need for this has arisen as a result of e- Contract. These terms are defined under the I.T. Act 2000 -

1 - Originator

"Originator" means a person who sends, generates stores or transmits any electronic message, or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary. ²

2 - Addressee

"Addressee" means a person who is intended by the Originator to receive the electronic record but does not include any intermediary. ³

3 - Intermediary

"Intermediary ", with respect to any particular electronic records, means any person who on behalf of another person receives stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, search engines, online market places and cyber cafes. ⁴

- For an electronic message, the sender is the originator.
- The recipient of the message is the Addressee.
- The function of an intermediary is that of a facilitator through whom the electronic message passes from the originator to the Addressee.

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² - Section 2 (za) of the Information Technology Act, 2000

³ - Section 2 (b) of the Information Technology Act, 2000

⁴ - Section 2 (w) of the Information Technology Act, 2000

Essentials of E - Contract -

In the case of paper based contracts, certain essential elements must be fulfilled. In e - Contract, there are important elements that are required for its formation. These essential elements are listed as follows -

- 1 - an offer and acceptance has to be made.
- 2 - There should be a lawful consideration.
- 3 - There should be a free consent between the parties to a Contract.
- 4 - The object of the agreement should be lawful.
- 5 - Parties must be competent enough to contract.
- 6 - The Contract must be enforceable by law.
- 7 - for any e - contract, an electronic signature are required from both the parties.

Laws Governing E - Contract in India

There is no legislation governing e - Contract in India some elements of the Information Technology Act 2000, the Bharatiya Sakshya Adhiniyam 2023 and the Indian Contract Act of 1872 recognize and regulate electronic Contract -

Information Technology Act, 2000

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.⁵

Any Contract must have the signatures of both Parties to be legally binding. The use of an electronic signature is necessary for e - Contract. The Information Technology Act defines an electronic signature as the authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature. ⁶

5 - Section 10 - A of the Information Technology Act, 2000

6 - Section 2 (t a) of the Information Technology Act, 2000

Where any law provides that Information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such Information or matter is authenticated by means of electronic signature affixed in such manner as may be prescribed by the Central Government.⁷

Bharatiya Sakshya Adhiniyam, 2023

Any Information in an electronic record printed on a paper or stored or recorded or copied in optical or magnetic media produced by a computer shall be deemed by a document. It further states that such a document can be admissible as evidence in any proceedings without additional proof original.⁸

Indian Contract Act, 1872

Every Contract made in India must abide by the terms of the Indian Contract Act, 1872 to be legally enforceable.

All agreements are Contracts if they are made by the free consent of Parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.⁹

In this Case, the Supreme Court held that offer and acceptance conveyed via email will be deemed to be valid.¹⁰

In this case, the Madras High court applied several laws pertaining to the I T Act, 2000 and stated that contractual liabilities can arise by any electronic means and that such contracts will be valid and enforceable in the eyes of law.¹¹

7 - Section 5 of the Information Technology Act, 2000

8 - Section 63 of the Bharatiya Sakshya Adhiniyam, 2023

9 - Section 10 of the Indian Contract Act, 1872

10 - Timex international FZE Ltd. Dubai Vs. Vedanta Aluminum Ltd. (2010)

11 - Tamil Nadu Organic private ltd. and ors. Vs. State Bank of India (2019)

Conclusion

As the world becomes increasingly digital, e - Contracts have emerged as a vital aspect of conducting business. A person must understand the types of e - Contracts, their legal implications and best practices to navigate the challenges posed by the digital age effectively.

With the growth of e - commerce comes an increase in the use of e - Contracts. E - Contract are well suited to facilitating the re - engineering of business process at many firms. Involving a blend of Technologies, processes and business strategies that facilitate the instant exchange of Information. E - Contract save money and time and increase service quality by eliminating paperwork and boosting automation.

The growing importance of e - Contract necessitates continuous learning and adaptation to ensure that legal professionals remain at the forefront of this rapidly evolving field.

References

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