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THE NATURE AND EXPLICATION OF ELECTRONIC CONTRACTS

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Abstract

Contract, the term and the concept with which everyone is familiar with. It means an agreement between two or more parties which is legally valid and enforceable¹. The concept of contract prevailed in medieval world as well. During medieval as well as some period of modern time, agreement are based on the papers further leads to forming a contract which is also in offline mode that is based on the paper. These agreements and contracts are governed by different laws like Mughal laws, laws of different Hindu rulers and then finally by Indian Contract Act of 1872². With the unremitting development of the world as well as India, there were several major advancements in technologies and that's eventually gives birth to the concept of E commerce. E commerce in most simpler terms called the business carried out in online mode. Many business man of both small scale as well as large scale started shifting their business on internet. They started advertisement as well as selling of their products on different websites and online market hubs. These all phenomena gave rise to the concept of E – Contract. Electronic Contract (e contract) is the type of contract signed between two or more parties at electronic medium. According to Sir William Anson definition of E contracts is; “A contract is a legally binding agreement executed between two parties or more than two parties by which rights are acquired by one or more acts of forbearances on the part of the other party or parties.” The concept of Electronic Contract is not much different from the traditional form of contract which is based on the paper. A brief outline is prepared in online form of contract as well and here also amenities and products are exchanged for some consideration. Apart from amenities and consideration, both the parties should agree on the same thing in the same sense, then only E contract could be bring into the force/effect. Hence, almost all the things are similar in e contract as that of traditional form of contract but the major difference among two of them is that Electronic Contract transaction always takes place through internet or online

¹ Indian Contract Act, Section 2(h), No. 9, Act of Parliament, 1872 (India)

² Indian Contract Act, No.9, Act of Parliament, 1872 (India)

portals. In Electronic Contract there are different processes for getting into the contract. Initially, a proposal must be sent to the other party, then acceptance from them in the form of digital signature along with some sought of consideration (can be in any form). After all these, an outline was drafted & formed which further get enforced by the rule of law.

Key Words – Electronic Commerce, Electronic Contract, Modernization, Globalisation

Introduction

In the last 2 to 3 decades, E Commerce upsurge in the world due to rapid growth and development. E commerce although exist even earlier than that but its not so significant. E commerce in general means buying and selling of any types of goods and services in online mode rather than conventional mode of commerce. This change from conventional form to modern one came in greater significance when the internet giants started influencing our life style in mass way. Before the transaction of goods and money takes place, it is essential to form a valid contract between the two parties. Similarly, in E commerce, a legal agreement must form in between the parties and that is achieved by creation of an electronic contract. In electronic contract, the assent is given by the parties by clicking on one key which states “I Agree” which means the addressee gives the consent by reading the documents and terms related to the contracts.

E Contracts came into larger significance with the major developments of some online shopping as well as food apps. Apps like amazon, flipkart, snapdeal etc. offers many different kinds of product to their consumers. So, in general terms they are making offers and when consumer selects any particular item and clicks on BUY icon and also made a payment for that, then the offer is said to be accepted and hence the contract is made which exist in electronic form. These all-major development in e commerce and e contracts took place recently around the year 1980s and subsequently after that because of transforming world.

Although, the upgrowth and development took place severely in the field of electronic commerce, but the cases of online robbery and fraud also surges with the same pace. The consumers or the customers are protected from buyers under COPRA but is the same applied to the electronic platforms also. If so, then why such cases are rising with such a higher pace. Not only this much, we have separate set of laws for this named, IT Laws and Acts but the implementation should be made in the better way because if we left the electronic contract and commerce unregulated then it will harm the people in more dangerous way rather than providing ease to them.

Research Question

The Researcher through his dedicated and detailed research tried to find out the history, significance and further up surge and development of electronic contracts. Along with all these, the author also tried to find the related cases which shows the legal perspective of electronic form of contract.

Research Methodology

The writer in the research paper not only confined his study on e - contracts and its significance with modernizing world, rather the author also tried to site various different case laws which clarifies the concept in a better way. In the paper, the author collects data from secondary sources which includes articles, research paper which also includes case laws and examples.

Scope Of The Study

The exploration and study about electronic commerce as well as electronic contract is very vital in today's era. It is because with the modernization and globalisation, many business started developing themselves at online platform and the existing ones started shifting which clearly shows the shift from offline mode to online mode. In this process, the COVID upsurge the essentiality of electronic commerce as well as contract. Hence, the knowledge of e contract and the laws related to it is necessary in developing world to protect ourselves from various fraud and scams.

Literature Review

- 1) J.Pereira Fernandes SA vs. Mehata³– Mr Mehata, who is also the defendant in this case, sent an email to the company to stop some process. In that email he didn't put his electronic signature the process didn't get stopped even after that. The court held that if e signature is absent from such e mails then the order or offer is considered as invalid one.
- 2) Anvar P.V. vs. P.K. Basheer & Ors⁴– In this case, the apex court is of the opinion that, any record which is present in electronic form if presented as evidence in the secondary

³ J.Pereira Fernandes SA vs. Mehata, (2006) 2AB ER 891 (Ch D).

⁴ Anvar P.V. vs. P.K. Basheer & Ors, (2014) 10 SCC 473

form, then the same is not considered as evidence if the requirements stated under section 65 – B of IEA⁵ is not fulfilled.

- 3) Hotmail Corporation vs. Van \$ Money Pie Inc⁶ – This case is one of the landmark cases for the electronic commerce and contract area. The case was registered under the jurisdiction of district court of California. The court in this case checked and upheld the legality of Click wrap contracts terms and services which is provided by the e mail agreement way.
- 4) Trimex International FZE Ltd., Dubai vs. Vedanta Aluminium Ltd⁷ – The honourable apex court of law in this case held that if the legally binding agreements is assented from the parties of both side through electronic mail or any other electronic form, then also, the contract is treated as valid one as it satisfies the provision of Indian Contract Act.
- 5) LIC of India V Consumer Education and Research centre⁸ – Dotted Line contracts are those contracts in which there is no option for the weaker parties in contract to bargain for the price. The only option available is to either accept or reject the offer presented by offeror. The Supreme Court agrees to this point and hence opined that the other party should give consent by properly investigating the terms and condition embedded in the contract.
- 6) JAIMALA CHAHANDE, An Analytical Study on E-contract: Its Legal Validity and Jurisdiction – In this article, the author mentioned the evolution and rapid development of electronic commerce, electronic contracts and how it gains importance in recent years. The author also mentioned the historical development, its types and legality in different parts of the world.

⁵ Indian Evidence Act, Section 65(B), No. 1, Act of Parliament, 1972 (India).

⁶ Hotmail Corporation vs. Van \$ Money Pie Inc, 47 U.S.P.Q. 2d 1020, 1998 WL 388389

⁷ Trimex International FZE Ltd., Dubai vs. Vedanta Aluminium Ltd, 2010 (1) SCALE 574

⁸ LIC of India V Consumer Education and Research centre, 1995 SCC (5) 482

PART B

History Of E Contracts

Electronic Contract existed in the world from very long time and even some of the esteemed companies even used the electronic data of the consumers and provides them the facility to make their payments in online way, which is quite common these days. But the trend is so new for majority of them at that time. The reputation and position of Electronic Contract surges in late 1950s and early 1960. Although E-Contract existed much before that period but the significance grows swiftly after major advancement in technologies (technological revolution). Around the year 1990 and 91, several major companies of the world comes up and joined the trend of providing facilities in both online as well as offline mode and they started getting positive response more from online mode than the conventional mode. After this incident, many more companies switched to online mode and hence their profits increased severely. The primary reason that many companies switched to online mode is the invention of WWW in 1990. It provides the company a very easy method to create their website and started advertising and selling their products on that. Amazon and E bay were one of the first largest companies which completely switched themselves to electronic commerce.

In India, the concept of electronic commerce hits lately and also the development took more time than usual. IRCTC, online ticket and other services booking site of Indian Railway was among the first Indian Company which provides online services through electronic commerce platform to their customers or service takers. The rules and regulation which governs the formation and breaking of electronic contracts came up in the year 2000 by the name of Information Technology Act. This act provides the set of rules and regulations which governs the formation of an electronic contract between the parties. Also, it checks the legality of an electronic contract as well.

The importance of electronic commerce and electronic contract increased severely when the whole world is badly hit and affected by covid pandemic. The world is in lockdown for few months but the life should be going on, and to make this phrase true, online companies and stores continued their work and many companies who were not operational in online mode switched to the mode and hence the craze of electronic commerce and contracts upsurge during the pandemic period.

Electronic contract developed through the portals, websites and applications of e commerce. E contracts formed by the interaction of two or more parties in online mode or by the use of electronic devices. Electronic Contract can takes place through e mail or through any other

websites and computer programme. The rules and regulations that are applicable to electronic contract are same as that applied in traditional form of contracts.

Essentials Of E Contracts

The major requirements to enter into the contract is called essentials of the contract and these are almost similar for both traditional form which is based on paper and modern form which is electronic based. The listed below are the essentials of the contract:

(I) Offer – It is the foundation of any type of E Contract. Offer simply means the expression of views of one person towards other to do some work or to abstain from doing it. In Electronic Contract, the expression of offering any item or idea may be different but the purpose always remains the same. In general, the person who is giving the offer is known as promisor/ offeror whereas the other person to whom offer is made is known as promise / offeree whereas the criteria is little different in terms of E Contracts. IT Act of 2000⁹ primarily governs the formation and development of E Contract and in terms of same, the person who sends the offer is known as originator and the person to whom it is made is called addressee.

(II) Acceptance – Anyone made some offer to any other person or company. So, the other person to whom the offer is made must have to accept the offer in way or the other then only both the parties get legally binded and hence contract is made. Similarly, here also, the acceptance should be made to the online offer by the originator by ticking on I agree switch.

(III) Communication or Acknowledgement – The communication by the addressee is the vital part in forming an E contract between the parties. If the addressee fails to acknowledge the receipt by originator, then the contract is not binding in nature. Therefore, the acknowledgement by any way is very much essential. **Section 12** of IT Act deals with the same and provides the provision of non- binding of any agreement if communication of acceptance is not made.

(IV) Along with all the above mentioned essentials, several other provisions like Consent, Competency, Consideration in Lawful manner & electronic signature plays a very crucial role in the construction and development of electronic contracts. Among all these, Electronic Signature is the most vital part because if it is absent from the mail or from any other electronic document then, the contract is not considered as valid one. E Signature is well recognized under section 5¹⁰ of Information Technology Act which was passed in the year 2000.

⁹ Information Technology Act, No.21, Act of Parliament, 2000 (India)

¹⁰ Information Technology Act, Section 5, Act No. 9, Act of Parliament, 2000 (India)

Types Of Electronic Contracts

The revolution in the technology sector helps in the development of internet and other several related things which in turn brings the globalisation and modernization in today's world. Due to revolution and recent developments in various different sectors, the life of the people becomes easy. Today we can search anything and also get answer of any of our queries on the internet, which subsequently makes our life much more easier than it was before. The world reached at the next level due to development in IT sector.

Among all the major developments which resulted due to revolution, electronic commerce is the most vital one. Today in the modern world, we just sit in one room and order our choices and we get delivery in the less time we expected without any effort. The electronic commerce received its approval and significance around the year 1980 at the international level. The craze rises and further necessary developments in the electronic commerce takes place during the pandemic period. Electronic contract, the most significant part associated with electronic commerce. In the world before revolution and modernization in IT sector, when any commerce took place then there is an legal agreement in between the parties. Similarly, in e commerce, this contract takes place in virtual form which is termed as e contract.

As soon as electronic commerce upsurges, the need of e contract also rises simultaneously which in turn rang the bell at both national and international level that there are need of some rules which regulate the terms and conditions of e commerce and contracts. To bind the electronic commerce and contract within rules and regulations at international level, United Nations forms an association named as UNCITRAL. The commission was supposed to draft and pass laws on electronic commerce. On the 12th day of June 1996, a model law was adopted internationally which further regulates the electronic commerce and ensures that everyone getting equal chances to represent their company and product and along with this, the law also aims to remove the trade barriers which persist in online mode of commerce. The model law not only deals with e commerce rather it had provisions for e contracts and its types as well. It laid down several provisions which ensures that all the things should be lawful and consent should be free of both the parties.

Electronic contracts came into existence as soon as someone either tried to buy the goods or render the services provided. There are various different types or the ways through which one can enter into e contract:

(1) E Mail / Browse Wrap: A legally binding agreement can be made through electronic mail very easily and speedily as well. The written matter which is present in the mail is considered

similar to those which are written in a letter. Also, the advertisement as well as offer can be made through an email very easily and it can be accepted through e mail only by replying on the message of offer.

Although there were some limitations and hindrance in forming a contract through email. First is, sometimes some kinds of interruptions may be possible in sending an electronic mail and second is an email may not reach to the receiver due to technical and network error on the part of sender. One another kind, which is very much similar to email is Browse wrap. In this, the other party need not require to click any bottom for giving the consent on the offer. Rather by reading or ignoring also the given terms and conditions, the legally binding agreement takes place in between the parties as soon as buyer pays the amount.

(2) Click Wrap - It is very different from the above discussed types which are email & Browse Wrap. In the Click Wrap contract, the other party who intends to make a contract should press the bottom I agree or I accept in order to give the consent to the contract. The click wrap one is mostly found in world wide web. In the click wrap agreement, a series of events takes place before signing the final contract in between the parties. Initially, the company or some sellers who want to sell their goods and services placed them on the websites and mark the particular amount for which they want the particular goods to be sold. By making the advertisement, they impliedly makes the offer to the buyer and when the other party or the buyer visits the platform and gives the consent to the offer by pressing I agree and buys the product by clicking on the key "Buy now" then, the legal agreement binds both the parties and hence the contract forms in between them.

(3) Shrink Wrap - It is very much different from normal forms of electronic contract. It is the combination of offline as well as online mode as in this type, the agreements or the terms and conditions of the contract are printed on the CD ROM and other software's of similar kind. These products are fitted inside a plastic coating and as soon as the coating is removed by the user or the promisee, then the T&C gets legally enforced upon the parties and hence the contract is formed. Apart from all these, one major advantage resides on the side of user or customer is that if he or she didn't like the product or the items in software then full refund return or exchange policy is always available.

Concluding Remarks

The topical growth and development of the internet and online facilities lead to the modernization of the world hence this further helps in up rising the living standard of the individuals. With the modernization and globalisation, electronic commerce developed and thrived swiftly in the last two decades. Although the existence was from since 1950s but the recognition and upsurge of electronic commerce and contract is a recent phenomenon. E contracts is just similar to the contract which is signed in the offline mode but the slight difference among them is that, electronic contract is drafted and executed in the online mode. Commercial websites like Amazon, flipkart, E bay, Swiggy etc all works on the principles of electronic contract. The online commercial websites offered various range of products on their site and the customers or the users when select and agree to buy the services or goods, then electronic contract comes into existence which is executed as soon as customers clicks on the I agree key as the parties agrees to the terms and conditions. The craze of electronic contract goes up during the pandemic period as the major countries are under lockdown and the necessary items to support life is needed. These online commercial platforms provided them with every necessity and hence it intensifies the users. Last but not the least, these commercial websites although flourished rapidly in world as well as in India but it should not be free from any kind of jurisdiction. Therefore, to make them under laws and statutes, many different laws were drafted and passed in different parts of the world as it also safeguards the right and dignity of individuals and also protects them from unlawful activities of these commercial websites.