
CONTRACTS TO E-CONTRACTS: TRANSITION OF TECHNOLOGY

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Prologue

Technological advancements, such as computers, are necessary for today's modern society. Agreements, economic transactions, and daily life interactions are now frequently conducted online, or via electronic media. Contracts entered into electronically have the same terms and conditions as contracts entered into through the traditional model of contracting; consequently, we must first understand what a contract is.

The term 'contract' is defined in S.2 (h) 14, which states that 'a contract is an agreement that is enforceable by law.' Thus, a contract is an agreement between two or more parties that is enforceable by law. A contract is a legally binding agreement that confers personal rights and imposes personal obligations; it is protected and enforced by the law against the contract's parties. A contract must satisfy three essential requirements: -

- Offer
- Acceptance
- Consideration

The three points above represent the most critical characteristics of a contract. Now, our subject is e-contracts.

E-contracts: -

The shift from paper-based contracts to online contracts has led to the formation of new species of contracts i.e., "electronic contracts". It means a contract is formed electronically.

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Electronic contracts facilitate transactions and contracts electronically without the parties actually interacting with each other. Thus, it means that the usual procedure of offer, acceptance and agreement is to be performed but not by physical means but by electronic ones.

Laws regulating e-contracts in India: -

Several laws in India are operating in unification and are aiming to control the business transactions of e-contracts. They are as follows:

Indian Contract Act,1872

Consumer Protection Act,1986

Information Technology Act,2000

Indian Copyright Act,1957

Essentials of an electronic contract: -

The Information Technology Act, 2000, recognises three stakeholders in the electronic transmission process:

1. The Originator
2. The Intermediary
3. The Addressee

Originator denotes “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 any intermediary.” The originator of the data message means the person by whom or on whose behalf, the datamessage purports to be delivered or generated prior to storage, if any, but it does not include someone functioning as an intermediate in relation to the data message. Simply, the originator is the person who originates the data message i.e., creates stores or sends the data message.

Intermediary with regard to any particular electronic message means any person who on behalf of any other person receives stores or transmits that message or offers any service with respect

to that message. Intermediary, with regard to a particular person, sends, receives, or stores that data message or offers other services with respect to that data message.

Addressee means a person who is intended by the originator to receive the electronic record but does not include any intermediary. The addressee of a data message implies a person who is intended by the originator, to receive the data message but does not include a person acting as an intermediary with respect to that data message. Simply, he is the person to whom the data message has been addressed which means to whom the data message has been sent by the originator and who got the message.

As in every other contract, an electronic contract also includes the following necessary requirements:

- An offer is required to be made
- The offer needs to be appreciated
- There has to be legal consideration
- There has to be an aim to build lawful relations
- The parties must be able to contract
- There must be free and undisturbed consent
- The goal of the contract needs to be lawful
- There must be conviction and possibility of performance

Classifying the e-contracts: -

Online transactions normally fall into three sorts of e-commerce contracts, and these are:

- clickwrap/click-through
- shrink-wrap, or,
- browse-wrap agreements.

Each form of e-commerce contract demands that a customer undergoes distinct processes in order to validate a transaction.

Clickwrap contracts

Such types of agreement are primarily found on the Internet, as part of the installation

procedure of many software products, or in other contexts when an agreement is sought through electronic media. The moniker “clickwrap” arose from the use of “shrink wrap contracts” in boxed software sales, which “contain a notice that by tearing open the shrink-wrap, the user assents to the software conditions enclosed within”.

In a click-wrap contract, there are four steps that are required, these are: -

1. The user must have proper notice that the proposed terms exist;
2. The user must have a reasonable opportunity to evaluate the conditions;
3. The user must have adequate notice that taking a specific, optional action reflects acceptance of the terms; and
4. The user must, in fact, do that action.

Shrink Wrap Contracts

A Shrink Wrap contract is the former licence agreement required upon the buyer when he buys software. Before he or she tears the pack to use it, he or she is made conscious by tearing the cover or the wrap that they are sure by the licence agreement of the manufacturer. The licence, which is contracted and enfolded in the goods, becomes enforceable and taken as consent before the buyer tears the package. The usual sections that are part of the shrink-wrap licence are that of:

- a) Prohibiting illegal fabrication of copies
- b) Prohibiting payments of the software
- c) Prohibition of opposing engineering, de-compilation or modification
- d) Prohibition of utilisation in more than one computer definite for that purpose
- e) Disclaimer of contracts in respect of the product sold
- f) Limitations of responsibility

Browse wrap agreements

A Browse-wrap agreement is one where the terms of an agreement are located on a website but are often connected to the main web page of the product by a hyperlink to another web page that contains the terms and conditions of the contract. Normally there is no affirmative manifestation of agreement necessary to agree with the terms provided on the connected web

page. The consumer must additionally affirmatively click the hyperlink to even access and become aware of the terms of the agreement.

The agreements are in the form of “terms of use” or “terms of service” which normally exist in the corner of a website in the form of a link.

Other forms

Over-Mail contracts

Sometimes the contractual understanding is not consolidated in a single document but can be in the form of a series of E-mails. One thing that needs to be guaranteed is that there should be a clear offer (Section 2(a) of the Indian Contract Act, 1872) and acceptance (Section 2(b) of the Indian Contract Act, 1872).

Counterparts Signed Contracts

When it is difficult and not permissible for the parties to a contract to meet physically because of living in different regions, then in such instances the agreed version of the contract can be signed and be provided to the other party in the form of a scanned copy for reference. In such instances, there can be many physical copies of the contract each signed by a side referred to as counterparts.

What is the importance of e-contracts:-

Contracts have become so ubiquitous in day-to-day life that most of the time we do not even notice that we have entered into one. Right from buying a product and renting a Cab or to buying an airline ticket online, each thing in our daily lives is governed by contracts. Electronic contracts are born out of the demand for speed, ease and efficiency.

New types of companies demand distinct organisational charters. E-contract wants an organisational charter that responds to its new marketing needs. This form of business enables enterprises to save time on product creation and device items according to the specific client requirement, track sales and obtain direct feedback from the customer. Electronic contracts/records have also obtained formal recognition under the Information Technology Act, 2000. Amongst other things it clearly provides that a contract shall not be declared unenforceable, only on the ground that electronic form or means were used for communication

of proposals, acceptance of proposals, withdrawal of proposals or acceptances, as the case may. The IT Act also acknowledges "digital signatures" or "electronic signatures" and validation of the authentication of electronic records by employing such digital signatures.

The legal legitimacy of e-contracts: -

As per Section 4 of the Information Technology Act, 2000 legal recognition of electronic records, if any Information is in writing, the typewritten or printed form is made available to a user in the electronic form for subsequent reference shall be deemed to have satisfied the requirement of law.

In simple English, this indicates that any document which is in the written or printed version would be treated the same and will have equal validity in the electronic form likewise. The Indian Contract Act, 1872 oversees the manner in which contracts are negotiated and performed in India, hence every contract made should necessarily comply with the rules of the Act, to make it legally enforceable.

Therefore, if the contractual terms and conditions are fulfilling the provisions of the Indian Contract Act, 1872 and Information Technology Act, 2000, the electronic contracts are legally binding on both the parties are contracting via electronic means.

E-contracts as contracts of “Uberrimae Fidei”:

e-contracts are contracts attracting principles of Uberrimae fidei in which the contracting parties are not dealing at arm's length but one party is entirely dependent upon the information supplied by the other party on the basis of which alone he expresses his willingness to contract. The doctrine of Uberrimae fidei should be considered the bedrock of electronic contracts, as the likelihood of misrepresentation or suppression of material facts is greatest in such transactions.

Although the Information Technology Act does not explicitly address legal capacity, the law presumes that once an online contract is concluded, both parties are presumed to be competent to do so. In other words, neither party is permitted to later assert that the contract is unenforceable due to the parties' lack of competence. In the case of electronic contracts, the doctrine of Uberrimae fidei will be strictly adhered to, and one party acting to his detriment on the representation of the other that he is competent should not be prejudiced.

Conclusion

With the advancement of technology, contracts have become so ingrained in our lives that we frequently enter into them electronically without realising it. From ordering food, groceries, and clothing to reserving railway, movie, and airline tickets online, there is something for everyone. To date, our country lacks explicit legislation or standards governing transactions conducted via electronic means. However, the Indian contract act 1872, the consumer protection act 1986, the information technology act 2000, and the Indian copyright act 1957 all address certain issues that occur during the establishment and authentication of such contracts. With an endless number of transactions occurring electronically, it is necessary for India's stakeholders and parties to have clear regulations governing them.

Indian legislation and standards are woefully inadequate on this subject. The modern era requires a regulation that encompasses all areas, from payment mechanisms to maintaining minimum standards in service delivery. True freedom cannot be savoured in any spear unless the government establishes a mechanism for the liberties and their appendages to function. Because all business conducted via contract is concluded via the Internet without any direct physical contact, the fundamental connection is the trust between the parties involved in the contract. A law in this field will identify criminals who have used the internet as a source of information. This will ensure that electronic contracts operate properly and without error. If this is not done, regulatory gaps will exist in the system, which will encourage the practise of fraud and other associated crimes.

While the rise of electronic commerce presents some intriguing problems about the precise mechanics of contract formation via e-mail and websites, the offer and acceptance model is likely to prove adequately adaptable to these new modes of communication without becoming overly complicated. By reasoning from first principles and drawing analogies to the rules governing earlier modes of communication, the courts should demonstrate that they are well equipped to address the difficulties raised by offer and acceptance in the electronic era of information technology.

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