INTERNATIONAL JOURNAL OF LAW

MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 6

2020

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An Analytical Study on E-contract: Its Legal Validity and Jurisdiction

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ABSTRACT

An evolution and tremendous development in the computer system and information technology along with the increase in the innovations related to the internet services, the E-commerce flourishes since last decades. E-contract is an essential part of E-commerce. E-contract is legally recognized by Law, thus the trust of consumers on E-commerce increases day by day. The COVID-19 pandemic situation further helps to grow the E-commerce and E-contracts. In India, E-contract is governed by so many Laws. The provisions of the Indian Contract Act, 1872 are generally applicable to validate the E-contracts similar to the general contracts. The provisions of The Information Technology Act, 2000 (IT Act) gives statutory recognition to E-contracts. The provisions of the Indian Evidence Act, 1872 makes the E-contract enforceable. An E-contract crosses the jurisdictional boundaries as it can be created from any place in the globe. This raises the question of jurisdiction of the court in case of any dispute between the parties to E-contracts.

This paper has analyse the E-contracts along with the traditional contracts in India. There are the issues arising in E-contracts regarding Legal Validity and Jurisdiction of E-contracts as it is created from anywhere and anytime in the World. So, this paper explains the legal validity of E-contract and describe the jurisdiction of E-contract in India.

I. INTRODUCTION

E-commerce (Electronic-Commerce) is the well-known and widespread kind of business nowadays globally. E-commerce is the transactions of business deals and selling and buying of the goods and services virtually i.e. through the online platform. An evolution and tremendous development in the computer system and information technology along with the increase in the innovations related to the internet services (5G), the businesses of the E-commerce flourishes since last decades. As E-commerce is the fastest, universal and easily accessible or executable kind of business, so it becomes popular among the people of today's

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technosavy and busy generation. E-contract (Electronic-Contract) is an essential part of E-commerce. E-contract is legally recognized by Law, thus the trust of consumers on E-commerce increases day by day.

In addition to the above developments in E-commerce, the COVID-19 pandemic situation especially during the lockdown period some consumers who were unaware and unwilling to enter into the E-commerce and ultimately into the E-contract because of the lack of faith in the online transactions, are forced to enter into the E-contract. This situation further helps to grow the E-commerce and E-contracts. Even after the starting of unlock period, most of the consumers now rely on E-commerce and enter into E-contract every day to buy their basic needs as the faith on E-contract is growing. The business communities also enter into E-contract to transact their business deals as it is fastest and trustworthy way to do business now a days. So, E-commerce and E-contracts are the need of the hour.

E-contract is the execution of commercial transactions electronically or digitally. The formation and validation of E-contracts requires to fulfil the essential conditions similar to the traditional contracts i.e. paper-based contracts, only the difference is that it is created and executed electronically by using the internet services. In India, E-contract is governed by so many Laws, primarily under the Indian Contract Act, 1872; The Information Technology Act, 2000 and The Indian Evidence Act, 1872. The Indian Courts also recognized and give judgements in the favour of E-contracts.

This paper has analyse the E-contracts along with the traditional contracts in India. There are the issues arising in E-contracts regarding Legal Validity and Jurisdiction of E-contracts as it is created from anywhere and anytime in the World. So, this paper explains the legal validity of E-contract and describe the jurisdiction of E-contract in India.

II. HISTORICAL BACKGROUND OF E-CONTRACTS

E-contract is an essential part of E-commerce, so need to study the history of it before knowing about the E-contract. E-commerce simply related to the selling and purchasing of the goods and hiring of services over the internet. With the advancement in digital technology and networking increased the growth of E-commerce globally.

In the 1960s businesses were using Electronic Data Interchange (EDI) to conduct e-transactions[2]. In 1991,[3] E-commerce was widely accepted when the Internet had used for

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[2] money.howstuffworks.com/history-e-commerce.htm The History of E-commerce BY DAVE ROOS The History of E-commerce | HowStuffWorks.
[3] www.ukessays.com/essays/information-technology/a. A Brief History of E Commerce Information Technology Essay

commerce. With the invention of the World Wide Web in 1990, a large number of companies started to provide their services through the website. For example, Amazon and eBay which were among the earlier companies that transformed E-commerce.

In India, the concept of E-commerce was first introduced in the late 1990's through Rediff. An Indian Railway Catering & Tourism Corporation Limited (IRCTC) was the first company to generate E-commerce portal in India.

The United Nations Commission of International Trade Law (UNCITRAL) adopted the Model Law on E-commerce in 1996. The General Assembly of UN in January 1997 recommended that the countries should consider this model while enacting or revising their laws.[4]

Accordingly, the Indian Parliament enacted the Information Technology Act in 2000, to legalise the E-commerce transactions in India and to keep pace with the globalisation of the trade and transactions with the development of computer technology.

The Rules and Regulations governing the E-commerce and ultimately the E-contract are provided under following International Conventions and Conferences.

The Brussels Convention on Jurisdiction and Recognition of Enforcement of Judgments in Civil and Commercial Matters, 1968[5]; Convention On The Law Applicable To Contractual Obligations, 19 June 1980 (known as "the Rome Convention")[6]; the Hague Conference on Private International Law (HCPIL)[7] 30 June 2005 has issued a Convention on Exclusive Choice of Court Agreements concluded in Civil and Commercial Matters; and United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005)[8].

III. E-CONTRACTS

With the fastest development in Information Technology, it becomes easy to enter into E-contract for business transactions. It is feasible to enter into such contract instantly by the exchange of communication of offer and acceptance between the parties by electronic mode. E-contract is one of the important parts of E-commerce. E-contracts designed to sale and transmit the products and services online to the addressee.

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[4] Prof. G. C.V. SUBBA RAO, LAW OF CONTRACT I & II, 26-27(11th ed S. Gogia & Company).

[5] See *eur-lex.europa.eu* › legal-content › TXT › uri=CELEX: 1968 Brussels Convention - EUR-Lex.

[6] For details see *eur-lex.europa.eu* › legal-content › ALL Convention on the law applicable to contractual obligations.

[7] www.hcch.net › instruments › conventions › full-text Convention of 30 June 2005 on Choice of Court Agreements.

[8] *uncitral.un.org* United Nations Convention on the Use of Electronic.

Nowadays we all enter into E-contract on a day to day life, for example, to purchase grocery, books, vegetables, garments, travel booking, Airlines and railway ticket, playing games, watching online movies, hiring a cab etc. so, we are accustomed to the E-contract very easily every day.

E-contract has a similar meaning as traditional contract (paper-based contract), i.e. "Contract as an agreement enforceable by law."[9] However, the only difference is that it carried out through online mode of communication without the parties directly meeting face to face.

The UNCITRAL Model Law on Electronic commerce stated that "a contract can be made by exchanging data messages and when a data message is used in the formation of a contract, the validity of such contract should not be denied."[10] The modern law provides equal legal treatment for the use of electronic communication and paper-based communication.[11]

Types of E-contracts

Following are the general types of E-contracts/Agreements-

a) Click-wrap agreement- These agreements require the user to give his consent to the terms and conditions of the agreement by clicking " I accept", "Ok", "Allow" or "I agree" button.

b) Browse Wrap Agreements- These agreements do not require the user to give his consent to the agreement. It stated that, automatic acceptance of the agreement by using the website. In this agreements, terms or conditions of service provided at the bottom of the website.

c) Shrink-wrap agreements- These agreements are formed when the user give his consent to a printed agreement on software like CD-ROM by open in the shrink to fit plastic wrapper over the product. The terms and conditions in such agreements are enforced upon the user as he cannot use it without opening the wrapper.

Essentials of E-Contract:-

E-contract may be formed either through an e-mail, mobile apps, video conferencing or other electronic media. To enter into the electronic contract, it requires the essential elements applicable to the traditional contract. However, such contracts executed through the online modes unlike personal meeting in the traditional contracts. The following are the essentials to form E-contract-

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[9] Sec. 2 (h) of the Indian Contract Act, 1872.
[10] Art 11, Communication of data messages, UNCITRAL Model Law on Electronic commerce, 1996.
[11] Prof. G. C. V. Subba Rao ,Law of Contract I & II , 26-27(11th ed. S. Gogia & Company).

1. **Offer**- An offer is also called as proposal. It is the first essential element for the formation of E-contract. An electronic offer can be made through electronic modes like e-mails etc. As per The Information Technology Act, 2000, the terms originator[12] and addressee[13] in E-contract are used instead of the words proposer and acceptor used in traditional contract. The originator is a person who send or create the electronic message i.e. originate the electronic message and transmit it to any other person. An addressee is a person who receives the electronic record which is sent by the originator.

   Section 11 of the IT Act deals with the attribution of electronic records to the originator, if it was sent by originator himself or by authorised person or by information system programmed on behalf of him.

   In such contracts, the addressee presumed that the electronic record is originated from the originator itself.

   However, in e-contract after sending the electronic record, the originator may not be confirmed about the receipt of electronic record by the addressee. Therefore, it requires the acknowledgement of the receipt of electronic record from the addressee.

2. **Acceptance of an electronic offer-** The originator send his offer or proposal to the addressee through the electronic modes, the addressee if accepting it may transmit his acceptance through any electronic modes or by clicking on button 'I agree' or 'I accept' or 'allow' etc.

3. **Acknowledgement of receipt or communication of acceptance-** Section 12 of the IT Act 2000 deals with the acknowledgement of the receipt. As per this section, there is no agreement about the mode of acknowledgement sent by the addressee between both the parties, the addressee may acknowledge the receipt of electronic records by any communication modes to know the originator as to the receipt of it by the addressee.

Further, it provides that an electronic record shall not be binding until an acknowledgement of receipt of electronic record is received from the addressee.

If the addressee failed to acknowledge the receipt within a reasonable time, the originator may give a notice to addressee that, he has not received an acknowledgement and again provides reasonable time for receipt of the acknowledgement. Even after that, the addressee failed to send the acknowledgement then the originator is entitled to deny the sending of

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[12] Refer Section 2(1) (za) of IT Act 2000.
[13] Refer Section 2(1) (b) of IT Act 2000.

electronic record by him. Therefore, there is no enforceable electronic contract. In the case of *Bhagavandas Kedia vs. Girdharilal*,[14] the Supreme Court of India on the basis of judgement in *Entores vs. Miles Far East Corporation*[15]*,* has held that the contract is complete only at the end of the offeror where he has received the acceptance to his offer.

In *Quadricon Pvt. Ltd. vs. Bajarang Alloys Ltd.*,[16] the Bombay High Court held that the communication by Fax is similar to Telex. The contract would be completed only when the acceptance is received by the offeror.

Other essentials like free consent of the parties, competent to contract, lawful considerations and lawful object of the Indian Contract Act discussed later in this paper in legal validity of e-contract.

Although the E-Contract is effectively addresses under the legal system in India, some issues like validity of E-Contract and jurisdiction of court for E-contract has to be discussed here.

IV. LEGAL VALIDITY OF E- CONTRACT

To enforce any contract it must be valid i.e. legally binding or accepted under law. The provisions of the Indian Contract Act, 1872 are generally applicable to validate the E-contracts similar to the general contracts. An E-contract have to satisfy all the essentials of a valid contracts as specified under the Section 10 of The Indian Contract Act, 1872.

In addition to it, E-contract is validated and enforceable under the Section 10-A of The Information Technology Act, 2000 and The Indian Evidence Act, 1872.

Essentials of Valid E-contract

To validate an E-contract it is precondition to satisfy the provision of the Sec. 10[17] of the Indian Contract Act, 1872(ICA) as follows-

1. Free consent,

2. Competent to contract,

3. Lawful consideration,

4. Lawful object,

5. Not expressly declared to be void.

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[14] Bhagavandas Kedia vs. Girdharilal, AIR 1966 SC 543: 1966 (1) SCR 666.
[15] Refer Entores vs. Miles Far East Corporation, 1955 (2) QB 327.
[16] Quadricon Pvt. Ltd. vs. Bajarang Alloys Ltd, AIR 2008 Bom 88.
[17] Refer Sec10 of The Indian Contract Act, 1872 (Bare Act).

1. **Free consent**[18]: - The consent to be free must not cause by coercion, undue influence, fraud, misrepresentation, or mistake. In E-contract, face to face contact is not possible so contract is made by just clicking the terms and agreements in such contracts.

2. **Competent to contract:-**

Any person is competent to contract[19] if he is a major, of sound mind and not disqualified by law in force to contract. In E-contract, the verification of the competence of the contracting parties is very difficult. For example, minor may enter into the contract by misrepresentation. So, the online originators should take precautions by inserting the condition as to the capacity in the term of the offer. Such terms must be confirmed first by the addressee to be true and then offer can be accepted.

3. **Lawful consideration:-**

Consideration means something in return. The Indian Contract Act, provides that "an agreement without consideration is void."[20]

4. **Lawful object:-**

Object of the contract must not be fraudulent, immoral, or opposed to public policy[21] etc.

5. **Not expressly declared to be void:-**

An agreement must not have been declared void by any law in force in India.

This shows that, E-contracts are also valid like traditional contracts if it follows the above essentials.

The provisions of **The Information Technology Act, 2000 (IT Act)** gives statutory recognition to E-contracts under the Sec. 10-A. This section[22] provides the legal binding of E-contract. It stated that the communication, acceptance and revocation of proposals in an electronic form or by electronic records are enforceable. This section is based on the Article 11(Formation and validity of contracts) of the UNCITRAL Model Law of E-Commerce, 1996.

Electronic Signature

A digital signature is a mathematical technique to validate the authenticity of message,

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[18] Refer Sec. 14 of The Indian Contract Act, 1872 (Bare Act).
[19] Refer Sec. 11 of The Indian Contract Act, 1872 (Bare Act).
[20] Refer Sec.25 of The Indian Contract Act, 1872 (Bare Act).
[21] Refer Sec. 23 of The Indian Contract Act, 1872 (Bare Act).
[22] Refer Sec. 10-A inserted by the Information Technology (Amendment) Act, 2008(Bare Act).

software or electronic documents. An electronic contract can be created by digital signatures is recognized by the laws in India. In E-contract, it is imperative to know that the authenticity of such contract, which is proved by 'electronic signature'[23]recognized under IT (Amendment) Act, 2008.

In *J.Pereira Fernandes SA vs. Mehata,*[24]the defendant a Director of the company sent an unsigned E-mail to the claimant to stop the process of company. In this case the Court of Chancery held that offer sent through an unsigned E-mail is not sufficient.

That means to authenticate any E-contracts, it is necessary to have an electronic signature of the originator and addressee. The IT Act provides legal recognition to electronic signature under the Sec.5 of the Act. Wherein it is provided that any matter or document shall be authenticated by affixing the handwritten signature or any mark on it is recognised as an electronic signature.

An E-contract subsequent to its execution is recorded with the executing parties in electronic form, i.e. in electronic record. The IT Act define the term "electronic record" under sec.2(t) as *"data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche". The IT Act also provides an authentication and legal recognition of electronic records under the Sec.3 and 4 of this Act.*

The Indian Evidence Act, 1872 has provide legal recognition to the E-contract. Section 3 of this Act provides that the term "electronic signature", "electronic signature certificate", "electronic record", "secure electronic record", "secure electronic signature" shall have the same meaning as provided under the IT Act respectively. Section 3 also define the term "Evidence"[25] *that "all documents including electronic records produced for the inspection of the court are called as documentary evidence."*

The Indian Evidence Act, provides admissibility of electronic record under section 65-B, any information contained in an electronic record, if printed or stored in CD is admissible in the court as evidence without the further proof or production of original in any proceedings.

In *Anvar P.V. vs. P.K. Basheer & Ors*.[26] the nature and manner of an admission of electronic records is under consideration before the Supreme Court of India. The Supreme Court held that an electronic record by way of secondary evidence shall not be admissible as evidence

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[23] Refer Sec.2 (ta) and 3- A inserted by the Information Technology (Amendment) Act, 2008(Bare Act).
[24] J. Pereira Fernandes SA vs. Mehata, (2006) 2AB ER 891 (Ch D).
[25] Substituted by Act 21 of 2000 and sch. II, for "all documents produced for the inspection of the court".
[26] Anvar P.V. vs. P.K. Basheer & Ors, (2014) 10 SCC 473.

unless the requirements of Section 65-B are satisfied.

Under Section 85-A of Indian Evidence Act, the court presume that every electronic agreement are concluded by affixing the electronic signature of the parties. Section 85-B of this Act, stated that court shall presume that "the secure electronic record has not been altered since the specific point of time to which the secure status relates"; and also presume that "the secure digital signature is affixed by subscriber with the intention of signing or approving the electronic record."

Hotmail Corporation vs. Van $ Money Pie Inc.[27], this is the first case where U.S. District Court, California decided the validity of a Click-wrap contract's term of service through e-mail agreement.

In *Rudder v. Microsoft Corporation*[28]*Ontario Superior Court of Justice, Canada, the issue was discussed about a clause which binds an individual to be upheld even if that clause is not seen and whether the Click-wrap licenses are valid or not. In this case, Rudder argued that the particular clause was not valid as it was not adequately brought to the attention of the user. The provision was important that it required special notice. The Court held that the Clause was enforceable and Click-wrap agreements "afforded the sanctity that must be given to any agreement in writing."*

The validity of E-contract is also recognized by the Indian courts in various cases.

In case of *Trimex International FZE Ltd., Dubai vs. Vedanta Aluminium Ltd.* [29] the Supreme Court of India held that "the contract between the parties was unconditionally accepted through e-mails was a valid contract which satisfied the requirements of the ICA."

Hence, the E-contract is valid and enforceable according to the provisions given under the Indian Contract Act; The Information Technology Act and The Indian Evidence Act like the traditional contracts.

V. JURISDICTION OF THE COURTS UNDER E-CONTRACT

Jurisdiction is an extent of the power of the court to hear a case i.e. to take cognizance of the case and to make legal decisions and judgements. It is the legal authority of the court to resolve the dispute.

E-contract involves instant communication of offer and acceptance. Wherein the contract is complete at the end of originator where acceptance is received.

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[27] Hotmail Corporation vs. Van $ Money Pie Inc., 47 U.S.P.Q. 2d 1020, 1998 WL 388389.
[28] *Rudder v. Microsoft Corporation*, (1999), 2 CPR (4th) 474.
[29] Trimex International FZE Ltd., Dubai vs. Vedanta Aluminium Ltd, 2010 (1) SCALE 574.

The Supreme Court of India in case of *Bhagwandas Goverdhandas Kedia vs. Girdhari Lal Parshottamdas & Co*[30] held that "at the place of proposer where the acceptance is received shall have the jurisdiction for enforcement of contracts entered into by means of computer internet."

In India, the Code of Civil Procedure, 1908 provides the manner of determining the jurisdiction of Civil Courts, which is based on the place of residence and the place where the cause of action arises. Generally, the contracts insert a specific clause to determine the territorial jurisdiction to resolve the dispute arising under such contracts.

An E-contract crosses the jurisdictional boundaries as it can be created from any place in the globe. This raises the question of jurisdiction of the court in case of any dispute between the parties to E-contracts.

If there is any dispute among the parties belong to the same jurisdiction related to E-contract, then such dispute can be resolved similar to the traditional contract disputes. However, the challenges would arises when the parties to E-contract are belong to the different countries. Jurisdictional problem in E-contract has been resolved under IT Act in India. Specifically Section 13 of the IT Act deals with the time and place of despatch and receipt of an electronic record and electronic contracts.

Section 13: Time and place of despatch and receipt of electronic record

This section stated that *"the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator."* It provided the time of despatch of the digital record.

The despatch means electronic transmission of the electronic record to the addressee. Here, 'outside the control of the originator' means he cannot recall it back and make any changes in it specifically when it enter into e-mail server of any parties. The electronic record is considered to be despatched when it communicate to the proposed addressee.

Sub-section 2 of the Section 13, determined the time of receipt of an electronic record. The receipt occurs at the time when the electronic record enters the designated computer resource if the addressee has designated it. If the addressee has not designated a computer resource then the receipt occurs when the electronic records enters the computer resource of the addressee.

Sub-section 3 of the above Section stated that, the place of despatched and received of an

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[30] Bhagwandas Goverdhandas Kedia vs. Girdhari Lal Parshottamdas & Co., AIR 1966 SC 543 : 1966 (1) SCR 666.

electronic record of both the parties i.e. the originator and the addressee. An electronic record is despatched from the place where the originator has his place of business and is received at the place where the addressee has his place of business.

According to the Sub-section 4, the location of computer resource is not so important in determining the time and place of despatched and the receipt of records between both the parties.

As per Sub-section 5,

> *"if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;*
>
> *If both the parties does not have a place of business, his usual place of residence shall be deemed to be the place of business;*
>
> *Usual place of business for corporate is the place where it is registered."*

Thus, it emphasis on principal place of business and usual place of residence to determine the time and place of despatch and receipt of electronic record.

In case of *PR Transport Agency vs. Union of India*[31], the above provision applied. In this case, the Allahabad High Court had to decide the question of jurisdiction. The respondent had sent the letter of acceptance by an e-mail to the petitioner's e-mail address. After that, the respondent sent another e-mail cancelling the e-auction due to some unavoidable reasons. The petitioner challenged this communication in the Allahabad High Court, objection was raised by the respondent about the territorial jurisdiction of the Court on the basis of cause of action had not arises within Uttar Pradesh. In this case, the Principal place of business of the petitioner was in the Chandauli district of U.P. and his other place of business was in Varanasi of U.P. The Court, on the basis of Section 13(3) of the IT Act, held that "the acceptance of tender by e-mail would be deemed to have been received by the petitioner at Varanasi or Chandauli, which are the only two places where the petitioner has his place of business. As both these places fell within the territorial jurisdiction of the Allahabad High Court, the Court assumed the jurisdiction to try the dispute."

Thus, it is observed that principal place of business of the originator and the addressee become the criteria to decide the jurisdiction of the Court. However, the contracting parties particularly in E-contract must insert a specific clause on jurisdiction to avoid further complications.

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[31] PR Transport Agency vs. Union of India, AIR 2006 All 23: 2006 (1) AWC 504.

VI. CONCLUSION

In the recent era, the E-commerce grow exponentially so the use of E-contract increasing day by day. Online businesses spread across the global markets and reach to the millions of consumers. Eventually, E-contract becomes essential part to govern under statutory law to avoid any uncertain disputes in online transactions. The E-contract in India govern under many legislations to validate it. Indian Courts also upheld the validity and passed the judgements in the cases related to jurisdiction of E-contract, it becomes helpful to solve the disputes related to these issues. With the advancements in technologies, the Indian Parliament enacts law like IT Act to accustom with modern global trade transactions. There is a need to cover all the aspects of E-contracts in a single, comprehensive and updated legislation to the protection of consumers and traders in E-commerce and for enforcement of E-contracts.

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