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Brief Introduction to E-Contracts

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ABSTRACT

Electronic Contract alludes to an agreement that happens web-based based business, frequently without the gatherings meeting one another. It alludes to business exchanges directed and finished up electronically. A client drawing cash from an ATM illustrates an electronic agreement. One more occasion of e-contract is the point at which an individual orders some item from an internet shopping site. Globalization and dispersion of innovation have sped up the presence of internet business organizations all through the world. Online sales are likewise acquiring prominence by which trading happens through to utilize utilizing the Internet.

I. INTRODUCTION

The era in which we live today has undergone massive development in the fields of software and information technology, telecommunication technology, and computer technology thus changing our standard of living in incredible ways. Our day to day communication is no more restricted due to the hindrance of geography and time. Information is being sent and received more widely and at a gallop than ever before.

This was the time when electronic commerce came into the frame offering flexibility to the business environment in terms of place, time, space, distance, and payment. E-commerce is associated with the buying and selling of information, products and services via the electronic network. It is a tool that helps in the functioning of business electronically, which is, generally over the Internet. It is a tool that helps in 'enterprise integration'. Rapid development in E-Commerce has led to the development in the use of E-Contracts. But being E-contact deployed, it possesses a lot of challenges on 3 levels, namely conceptual, logical and implementation.

What is a contract?

Any agreement which is enforceable by law is known as a Contract.

What is E-Contract?

An E-Contract is a contract modelled, specified, executed and deployed by a software system. E-contracts are conceptually very similar to traditional (paper-based) commercial contracts.

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Vendors present their products, prices and terms to the interested buyers. Then, The Buyers consider their options, negotiate prices and terms (wherever possible), and then place orders and subsequently make payments for the same. Then, the vendors deliver the purchased goods to the consumer.

When an E-Contract Does takes place?

E-contract does take place when:

- 1) E-commerce by the interaction of two or more individuals using electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program.
- 2) Interaction of at least two electronic agents that are programmed to recognize the existence of a contract.

Governance

The Information Technology Act, 2000 and the Indian Contract Act provide rules regarding the formation, governance, and basic terms of an e-contract. Traditional contract principles and remedies for the same will also apply to e-contracts.

E-contracts are well suited to facilitate the re-engineering of business processes occurring at many firms involving a composite of technologies, processes, and business strategies that aids the instant exchange of information. The e-contracts have their own merits and demerits. Usage of E-Contracts has helped businesses around the globe to, reduce costs, save time, fasten customer response and improve service quality by reducing paperwork, increasing automation and reducing dependency on humans thus leading to fewer chances of peccadillo.

Definition - What does Cyberspace mean?

According to Technopedia, "Cyberspace refers to the virtual computer world, specifically, it is an electronic platform used to form a global computer network to facilitate online communication worldwide." It is a large computer-based network system made up of many worldwide computer networks that employ TCP or IP protocols to facilitate communication and data exchange activities.

Cyberspace's core feature is to provide an interactive and virtual environment for a broad range of participants who are in it.

Cyberspace allows users to share information on the social platform, interact via online means, swap ideas, play games online, engage in discussions or social forums online, conduct E-business and create intuitive media, among many other activities. The term cyberspace was introduced first time by William Gibson in 1984 in his book, "Neuromancer." Gibson criticized

the term in later years, calling it “evocative and essentially meaningless.” Nevertheless, the term “cyberspace” is still being used widely to describe any kind of facility and/or feature that is related to the Internet.

According to many IT specialists and experts, including F. Randall Farmer and Chip Morningstar, cyberspace has gained a fair share of popularity as an interface for social interaction, rather than its technical execution and implementation.

II. CYBERSPACE AND E-CONTRACT

Currently, Commercial activities in cyberspace, of which most of them takes place on the World Wide Web, are increasing rapidly. Such commerce poses different problems for conventional mechanisms of public contract enforcement. One, which is likely to be important in the near future, is that cyberspace has no geographical boundaries. Purchasing goods or services from the other side of the world is as easy as purchasing them from your next-door neighbour. Delivery of physical goods is more costly from the other side of the world--but a considerable part of cyberspace commerce is in information goods and services, which can be delivered online just as they were purchased online. It follows that an increasing fraction of commercial transactions, especially of transactions by private individuals, will be between parties in different countries.

Public enforcement of these contracts between the parties in different countries is more expensive and undeterminable than public enforcement within a single jurisdiction. Furthermore, we live in a world today where geographical lines are invisible, and parties who have publicly enforced the contract will frequently not know under what laws those contracts enforced are likely to fall under. Hence public enforcement, while still possible for future online contracts, will be less workable than for the real space contracts of the past.

The next and perhaps the more serious problem may arise in the future as an outcome of technological developments that are already in existence and are now going into common use. The most fundamental grain of these technologies is public-key encryption, which makes the online world a possible place where many people do business anonymously, with reputations attached to their cyberspace like (Amazon, Alibaba etc.)And not with their real space, but digital identities.

There is a great number of reasons why people may in the future wish to avail themselves of such technologies. First and foremost is privacy; many people don't want others to know what they are reading, writing, selling, buying, listening to, or saying online. Secondly to help themselves evade taxes because it is hard for the government to collect taxes on those activities

which the government cannot see. Another reason is to evade regulations--whether commercial regulations in India or religious regulations in a country controlled by the respective religious fundamentalists. Anonymity is likely to be most attractive to people living in most parts of the world, especially there, where property rights are insecure, making secrecy a valuable asset for protection. If for these or other reasons, a significant amount of commerce becomes anonymous, public enforcement of contracts will become increasingly irrelevant; it is hard to sue someone when you do not know who he is or what continent he lives on.

III. UNCITRAL MODEL OF E-CONTRACT

The United Nations General Assembly Resolution No. A/ RES/51/ 162, dated 30th January 1997, Chapter III and specifically Article 11 sets about the formation and validity of E-contract.

Article 11 states that in the context of the contract formation unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of the data message. Where a data message is used in the formation of a contract that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.

Simultaneously, Article 12 states that as between the originator and the addressee of a data message, a declaration of will or another statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in form of a data message.

According to UNCITRAL Model Law, Article 11 does not intend to interfere with the laws on the formation of contracts but rather helps to be an aid to promote international trade by increasing value to the legal status as of the conclusion of contracts by electronic means.

In some international states, a provision along with the lines of provisions of Article 11 might be regarded as merely stating the obvious, which is an offer and an acceptance, like any other expression of will, but can be communicated by any means, which in such case may also include data messages.

IV. I.T. ACT, 2000 ON E CONTRACT

Under the provisions of the Information Technology Act, 2000, under Section 10-A, an electronic contract is considered valid and enforceable in the eyes of Law.

Also, the courts in India have given due regard to electronic contracts under the provisions of the Indian Evidence Act, 1872.

The provisions of the Information Technology Act, 2000 (also known as **IT Act**) give the legal status & recognition to an electronic contract (**E-Contract**). Under the provision of section 10-A of the IT Act states E-Contract as:

"Section 10-A: Validity of contracts formed through electronic means. -

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."

The above provision stated, was being introduced by the Information Technology (Amendment Act), 2008 after recognizing the growing dependence on electronic means, for the purpose of undertaking commercial agreements. This applies where contract formation, communication of the proposal and acceptance is carried out via electronic means.

How E - Contracts Can Be Entered Into?

E-Contracts can be entered into through modes of communication such as e-mail, internet and fax. The only essential requirement to validate an E-Contract is compliance with the necessary pre-requisites provided under the Indian Contract Act, 1872. Which are:

- **Offer and Unconditional Acceptance** - This may be made online or by e-mail communication.
- **Lawful Purpose and Consideration** - A contract is enforceable by law only when it is made for a lawful purpose and for some consideration. It must not defeat any provision of law and must not be fraudulent in nature.
- **The capacity of Parties and Free Consent** - Parties to a contract are capable of entering into a contract, if they satisfy the requirements of Section 11 and 12 of the Indian Contract Act, 1872 (capacity to contract), and consent of the parties must be free as per Section 13 of the Indian Contract Act, 1872.

Types of E-Contract

There are mainly 4 types of E contract:-

- 1) Electronic Data Interchange
- 2) Click Wrap Contract
- 3) Shrink Wrap Contract
- 4) E-Mail Contract

Electronic Data Interchange

- Oldest form of contract between B2B transactions.

- These kinds of contracts consist of standard business code or messages being transmitted from one computer to another of the agreed parties to the contract.
- Purchase order, pay bills, invoices, export information, import information, waybills, carrier to carrier waybill information and others are few of the many examples of such types of E-Contracts.
- Such types of contracts were applicable and were used before the introduction of the Internet and cyberspace.
- Parties may enter into such a contract relating to the validity of such information.

Click Wrap Contract

- The idea behind such a contract came from **the Shrink Wrap Agreement**. An Example of such an agreement is --tearing down the cover page of a CD which incorporates the license agreement, where it is presumed that once the cover page is torn the customer agrees to the terms and conditions.
- In the present times any kind of software or document purchased or downloaded by us, there are times when to do so one has to accept its terms and condition or else the retailer or provider refrains from its service.
- Such types of contracts are being covered under Click Wrap Contract as mentioned above.
- Such Contracts are also known as one-sided contracts because one has complete authority and the other (in these cases) customer does not have much scope for a bargain for himself/herself.
- Cases filed under the question of the validity of Click Wrap Contract are—Hotmail V. Money Pie Inc., CompuServe V. Patterson, Specht V. Netscape Communication Corp., Register.com Inc. V. Verio Inc. and many others.

Browse Wrap Contract

- It is again derived from the shrink Wrap Contract and is quite similar to the Clickwrap contract.
- The only difference between Click Wrap Contract and Browse Wrap Contract is that the Browse Wrap contract does not require express consent, unlike Shrink Wrap Contract.
- In Browse Wrap Contract once you access a file or software that was being accessed through this contract, it is being presumed as be the acceptance of the Contract.

- On downloading the material the terms and conditions are displayed at the bottom of the screen which is opened on another page.
- Just like Click Wrap Contract the Browse Wrap Contract does not give any bargaining power to its customer.
- Cases filed under the question of the validity of the Browse Wrap Contract are-- Specht V. Netscape Communication Corp.

Email Contract

- It is very much similar to the traditional contract which is being formed under the Indian Contract act, 1872.
- Just like in traditional form as there are generally 2 or more different parties and they have plenty of time to discuss, analyse, bargain about the terms and conditions and the terms of services, the kind of different product and services being done in the contract.
- The only reason they have been classified under Information Technology Act, 2000 and the Indian Contract Act, 1872 is that the contract is being generated via electronic means.

It has 2 main parties –

Addressee-who receives the electronic message intended by the addressee

Originator-who sends, generates, stores or transmits any electronic message or causes any electronic message to send, generated, stored or transmitted to any other person.

- The formation of these contracts falls in the category of non-instantaneous service.
- Cases filed under the question of the validity of the E-Mail Contract are—Trimax International FZE Ltd. And V. Vedanta Aluminium Ltd.

V. REFERENCE

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