



Vidhyayana - ISSN 2454-8596

An International Multidisciplinary Peer-Reviewed E-Journal

www.vidhyayanaejournal.org

Indexed in: ROAD & Google Scholar

Recent Legal Issues and Challenges of E-Commerce Contract in India

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Abstract:

In recent times, e-commerce in India has started to grow up fast because it is easier for consumers to do business online. Consumers can meet electronic contracts due to time management issues and geographic restrictions. The term electronic commerce includes all efforts by businesses or companies to enable everyone to sell and buy goods and services through the use of computer and communication technology. E-commerce provides a variety of transactions in terms of time, place, distance and payment. An electronic contract is an online electronic contract. Formation of electronic contracts by e-mail, computer technology, etc. Although electronic contracts have many advantages, customers are also faced with many frauds and customers lose a lot of money due to these frauds. But there are some laws that can meet the terms of fraud.

The Indian Contract Act, 1872 is the basis of all contracts in India. Electronic contracts created in India are also subject to the Indian Information Technology Act 2000 and the Indian Evidence Act 1872. However, there are many issues and challenges in regulation of e-commerce contracts related to formation of electronic contracts in these laws, because none of these laws involve the creation of electronic contracts. The author tries to explore and analyze the problems in law and electronic contract.

Keywords: E-Commerce Contract in India, enforceability, legal issues and challenges, legality, needs of appropriate law,

Introduction:

The development of technology in the world led to changes in business and economy as industrialization, westernization and exploitation intensified. Today, trade and commerce are not affected by certain borders and there is no need to physically go to the place of agreement. This type of commerce is called e-commerce. Over the years, with the internet becoming a part of our daily lives, e-commerce has also become an important part of our lives.

The concept of electronic contract is that at least two people sign the contract electronically with a single click. E-commerce architectures have evolved over time. Electrical business includes buying, selling and paying for electricity. In this electronic age, work can be done in a minute or two. There will be no media lag and no additional travel costs. The electronic medium is not only functional but also free. Electronic contracts have legal issues, communication rights, administrative rights and more. Nothing is perfect in this



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world.

The term e-contract is a broad term that cannot be defined by a single definition. According to Sir William Anson, a contract is a legal agreement between two or more parties where one or more acts are performed by one party to acquire rights from the other party. E-contracts refer to contracts that are made between two or more parties through electronic means, such as email, computer programs, or other electronic media. E-contracts are agreements that are created and signed in electronic form. Any contract that is created, modeled, executed, or enacted through electronic software systems is considered an e-contract. The traditional principles that govern contracts also apply to e-contracts. In India, the essential elements for the governance of general contracts provided in the Indian Contract Act, 1882, are applicable to every contract entered into through electronic means. In India, contracts entered into through electronic means are considered valid.

E-commerce and electronic contract models have brought new changes in business, management, regional and international markets. This spring, we need to find out if the laws of India reflect the concerns of those concerned.

What is e-commerce contract?

An e-commerce contract refers to a legal agreement formed between parties engaged in electronic commercial transactions. With the ever-increasing prominence of online shopping and business transactions, understanding e-commerce contracts is crucial for both businesses and consumers. This essay explores the definition, key elements, and legal considerations of e-commerce contracts.

E-contract is one of the segments of e-commerce or e-business. It has a similar meaning to traditional business in which goods and services are exchanged for a fixed amount of consideration. The only additional element in it is that here the contract is done through a digital mode of communication like internet. It provides an opportunity for sellers to reach the end consumer directly without the involvement of middlemen.



Definition of E-Commerce Contract

An e-commerce contract, also known as an electronic contract, is a legally binding agreement created, signed, and enforced in the digital environment. It encompasses a broad spectrum of transactions, including online purchases, software licensing, cloud service subscriptions, and electronic fund transfers. E-commerce contracts are governed by the same legal principles as traditional contracts, but they are adapted to accommodate the unique characteristics of electronic transactions.

An e-contract is a type of contract that is formed through negotiation by two or more persons using electronic media, such as email, a person's interaction with an electronic agent, such as a computer program, or the interaction of at least two electronic agents. is programmed to recognize the existence of a contract.

Mechanism of e-commerce contract

The essential elements of an e-commerce contract mirror those of traditional contracts, including offer, acceptance, consideration, intention to create legal relations, capacity, and legality of purpose. In the digital realm, these elements manifest through electronic means such as clicking "I agree" buttons, electronic signatures, and terms of service agreements. Moreover, e-commerce contracts often involve additional elements such as privacy policies, data protection clauses, and dispute resolution mechanisms tailored for online transactions.

Pre-requisites of a valid contract:

To obtain a valid contract there must be a valid offer/proposal by the offeree [Section 2(a)] and acceptance by the offeree [Section 2(b)]. The proposal must be supported by consideration [Section 2(d)] and the agreement must be made by the free consent of the parties [Sections 13-22]. Furthermore, it is important that the parties must be capable of contracting [Articles 11 and 12)] and the object of the contract must be lawful [Articles 23-25]. Furthermore, there must be a meeting of the minds, the consensus must be ad idem, which means that both parties must agree to the same thing in the same sense. There should be no ambiguity.



Valid Offer:

Under Indian contract law, there must be at least two parties, legal or natural, capable of entering into a contract. The offer of contract must have a legal object; It must be communicated to the person for whom it is intended and must be communicated with a view to obtaining that consent. Furthermore, the terms and conditions of the offer must be specific or capable of being fixed. There must be an intention to create a legal relationship.

Valid Acknowledgment:

The offer must be communicated to the acceptor and must come to the knowledge of the acceptor before acceptance. The offer must be made to the acceptor by the offer or himself or by his duly appointed legal agents. Acceptance must be made to the offer or by the acceptor himself or his duly appointed legal agents. Also, acceptance must be made before the offer lapses [Section 6]. In the eyes of law the communication of acceptance must be complete. Acceptance may be express or implied, absolute and qualified.

Needs of E-commerce contract:

The need for legal compliance and enforceability is paramount in e-commerce contracts. Adhering to applicable laws and regulations, such as consumer protection laws, privacy regulations, and electronic signature laws, ensures that the contracts are legally binding and enforceable. Additionally, incorporating dispute resolution mechanisms, such as arbitration or mediation clauses, can contribute to the effectiveness of e-commerce contracts by providing mechanisms for resolving conflicts without resorting to lengthy and costly litigation processes.

In the realm of e-commerce, the need for data protection and security within contracts cannot be overstated. With the increasing prevalence of cyber threats and data breaches, e-commerce contracts should address the protection of sensitive customer information, data security measures, and protocols for handling potential security incidents. By emphasizing the importance of data privacy and security within the contract, businesses can establish trust and demonstrate their commitment to safeguarding customer data.



One of the primary needs of e-commerce contracts is to establish legal compliance. These contracts should adhere to the legal requirements and regulations relevant to online business transactions, thereby ensuring that the parties involved are operating within the boundaries of the law. Addressing issues such as consumer protection laws, data privacy regulations, and electronic signature requirements is crucial in e-commerce contracts to provide a solid legal foundation for business operations.

Another critical need of e-commerce contracts is effective dispute resolution mechanisms. Given the international nature of e-commerce, parties involved in online transactions may be situated in different jurisdictions, which can complicate dispute resolution. E-commerce contracts should incorporate dispute resolution clauses that outline the procedures for resolving conflicts, such as arbitration or mediation, thereby providing clarity and predictability in case disputes arise.

The needs of e-commerce contracts encompass various elements that contribute to their effectiveness, legality, and practicality in electronic business environments. Clarity, legal compliance, data protection, and scalability are among the fundamental needs that e-commerce contracts must address to provide a robust framework for online business transactions. By fulfilling these needs, e-commerce contracts can effectively mitigate risks, establish trust, and foster successful and secure electronic commerce transactions.

Issues and challenges of e-commerce contract in India:

E-commerce has given a new dimension to business practices which are no longer bound by any limitations of regional boundaries and the need for physical presence at the same place. E-commerce activities are a part of daily life of Internet users. Thanks to e-commerce, electronic contracts have become so common in everyday life. Countless day-to-day transactions are managed through e-Agreement. In the electronic age, the entire transaction can be completed within minutes and costs are reduced drastically. E-contracts are the cornerstone of e-commerce and therefore, before finalizing transactions and moving forward, attention should be paid to creating valid e-contracts. Once the legal requirements are complied with, e-contracts open various opportunities for business. Like traditional/paper-based and oral contracts, e-contracts in India are also governed within the framework of Indian Contract Law. However, e-contracts are not free from implications and burdens on the legal front. There are a plethora of legal challenges faced by contracting parties when it comes to e-contracts. Some of the key issues related to e-contracts are: choice of law; Jurisdiction; Consent; competency; valid acceptance and non-negotiable terms and conditions.



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The Indian Contract Act prohibits and incapacitates minors, lunatics and persons of unsound mind from entering into contracts. A major difficulty with online transactions is that the capacity of one party to enter into a contract is often unknown to the other party. The complex nature of e-contracts makes it impossible for one party to find out whether the other party behind a computer screen is capable of entering into a contract. The distance between the parties to the contract and the complete absence of face-to-face interaction make it almost impossible to discover the other's competence (or lack thereof). Transactions over the Internet, especially consumer-related transactions between parties who have no prior and pre-existing relationship, concern the identity of a person with respect to issues of capacity, authority and legality to enter into a contract. Although digital signature is one of the methods used to determine a person's identity, it is still not commonly used.

Generally, the law governing an e-contract is the law of the place most closely connected with the contract. However, the parties have the freedom to choose the law by which the contract and the issues arising out of it shall be governed. The choice of law available to the contracting parties is subject to the grand norm that the parties cannot contract in contravention of what is permitted by national/municipal laws. Ethics and public policy become major considerations, more so, when the contracting parties are from different countries or states governed by their own sets of laws. In order to determine jurisdiction, the place of formation of the contract must be determined. The cause of action may arise, in whole or in part, in a particular place and the contract may also terminate in a particular place. The parties have to keep in mind the consent factor while consenting to jurisdiction, i.e. whether the consent is free or defective. Defective consent is usually in the form of fraud, misrepresentation or mistake. The mistake of foreign law exception does not apply to e-contracts because the grant of such immunity is likely to be abused. Although the plea of non est factum, i.e., absence of consent, is available for mistake of fact, a party to an e-contract cannot be allowed to avoid such contracts on this ground. Chances of misrepresentation in cases of online transactions are generally higher than in traditional/paper based contracts. Therefore, it is important to consider the principle of *uberima fidei* as the foundation of e-contracts especially in the wake of increasing cases of misrepresentation in the context of insurance contracts.



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Conclusion:

The Contract Act requires mutual agreement and involvement of both parties in negotiation. In the case of e-contracts, the agreements are made between programmed computer systems. The Information Technology Act covers regulations related to the allocation, acknowledgment, transmission, and receipt of electronic records. It aims to address the specific requirements of e-contracts.

Electronic contracts have both advantages and disadvantages. Many young consumers prefer e-contracts because they are not time-consuming. In today's busy world, people prefer to save time, which is why many opt for e-contracts. Additionally, consumers can easily perform e-contracts while travelling. However, it's important to be cautious of potential fraud and to avoid getting into trouble. Therefore, it's essential to be careful before engaging in e-contracts.



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