

ELECTRONIC CONTRACTS: LEGAL ISSUES AND CHALLENGES

Dr. Manoj Kumar Sadual

Associate Professor, Department of Law, Utkal University, Bhubaneswar, Odisha

Received: May 27, 2021

Accepted: July 02, 2021

ABSTRACT: *It is very common to that entire computer is sterling innovation of man world inventions of computer innovation of internet has also bring many changes in the field of information technology. Almost everywhere internet is being used like sending mail, chat Blogs, dispute resolution, electronic commerce, social networking, internet etc. With all these one of the greatest significant of the internet is electronic-commerce. The word E-Commerce contain all the diligence of a business or firm and any individual may carry on such as selling and buying of products and services by Exercising of computers and communication technologies. It may involve a number of activities such as automation electronic payment, supply chain management, shopping etc. With the outgrowth of e-commerce vendor can go any part of the world and purchaser has infinite choice to approach to any vendor. Efficacy has been widely increased, paper work has been lower down time lag has been reduced expenses has been lessened. It is value to state that e-contract make a part parcel of e-commerce. So before Discuss about e- contract' it is important to discuss once part of e-commerce. The term e-commerce can be explained as e-commerce brings in a digital form or Electronic platform or buying or selling goods or services on internet.*

Key Words: *Innovation, E- Commerce, E- Contract, Information technology.*

Introduction:

The internet computer and the data network have collaboratively bring out changes in the Arena of information technology Internet is the all in all computer based Internet Communications and data storage that is available through computer network. Generally information technology touched all the form of controlling and handling data to produce information. 1 Apart from this it also contains connecting of computers and databases Swapping, and devouring information amongst another .Information technology changes. Significantly the way of living of people. Development in the field of information technology has intense effect on economic condition of a nation and also on a status of a people's life . One of their main regions when it comes to the information technology Has made an enormous repercussion is business and commerce. Information technology has invented a unique approach in which businesses can connect to client vendors, associates and originators. An e- contract is the computer based aid and mechanization of a contract in a cross-Establishment of a business a advancement. It is the latest technique to control and Assist online business relationship among business associates and it is formed designate Performed, represented, managed, and supervised by a software process. Technically e-contract is bear a resemblance to traditional (paper based) business contract .Then by all means in view of the fact that an e-contract means an electronic form ,fully or partially.

Kinds of Electronic-Contracts:

Widely, 'electronic-contracts' can be classified into following three kinds:

- Clicks wrap Agreements.
- Shrink-wrap Agreements.
- Browse -wrap / web -wrap Agreements.

Click-Wrap Agreements:

A 'Click-Agreements is a electronic copy of the shrink-wrap licensing agreements. It takes place into shrink-wrap agreements. It brings into effect at what time by an electronic means purchaser and consumer lick on thus while surfing the net user and vendee click on 'I Agree' push button on website to buyback or I Agree on the button on the internet site to buy and upload the software programmed. Individual products shall be considered to be the approbation of the term and condition for sale of contract. The customers all the times has a choice to go back to the software program in the case of new designation is not likely to complete refund. Such contracts Are usually comprise in CDROM or in computer software, and making use of CD ROM is agreements first and foremost discovered as well as the part of software system such Kind of contracts are uncompromising in character and there can be no possibility of Bargaining in it.

For the reason that customers of this kind of software has one and only two choice, simply select agree and apply that specific program or to deny along with end user license agreement.

Shrink – Wrap Agreements:

This kind of contracts is compact with the goods or products. Take into consideration the approval of those operating conditions.

Browse -Wrap Agreements:

This agreements or contracts are commonly found to be in the webpage or upload able manufactured goods, this type of contracts are circulated on a especial website and we have to search for that particular terms and conditions by means of surfing the internet. By reason of particularly such contracts or agreements are obscure. An electronic-contract is contracts formed and 'signed 'off an electronic form .In other way no any piece of paper or other hard copies document required. For instance, if we write a contracts on our computer and send it or mail to a business partners or associates and business partners emails it back along with an digital Signature which signifies acceptance. An 'electronic-contract' may also be constitute in 'Click to Agree 'contracts, generally utilize with uploaded software. For the time being contracts creation consideration focus on the utility of information Technology by means of conversation between accepting parties. A lot more difficult problem is started to appear with the mechanization of a contracting process itself. Conventional contracts focused on the necessity of the Mutual understanding. The participation of more than one person bargaining on the other hand eye to eye or by any method of transmission is an fundamental Assumption. On the other hand present time technology develop with a aim of Eradicating people's difficulty or participation in transaction.

Aims and objectives:

The main objectives of this article has been the research the useful and lawful situation relating to creation and functioning of Electronic-contract. Electronic-Contract has a great influence in present scenario. This assignment explain the main Purpose that all the person should know about the electronic-contract`

Categorization of electronic-contract:

Contract may be divided into two parts of contracts performed by : Cyber contracts and Electronic Data Exchange.`

Cyber-Contracts:

This type of contract performed by fully or partially by means of I intercommunication through computer world .it can be executed wholly through e- mails when it comes to an proposal or agreement is indisputable or it can also by a form by a composition of computer-mediated communications, copy paper, record fax ,conversation .The most frequent technique utilized in transmission of business are commercial webpage and e -mails . Cyber contracts include the following:

Electronic-Mail or E-Mail :

Electronic-mail generally known as e- mail is a procedure of interchanging online information over the computer network or internet throughout the world that connotes transmitting of information across information space. It can be explained as 'interchange of computer based collected information by communications technology. E-Mail is probably classified among the primary exercise the internet and it is yet well-known. E-Mail is a business apply to receive and send information or message speedily and safely by an data network or cyberspace . In electronic-data processing, e-mail is a convenience that permit more than one person to interact with one another by communication that are deliver or accept through computer network or alike device. E-Mail is a essential element of Electronic-commerce. It is a most recent idea of interchanging information, files ,messages, pictures ,voice, documents, recording from one data network to other through website .it is a quick ,susceptible or certain way of distribution of information. An E-mail includes of two integral parts, that is the message body and message header which is a e -mail content. Any person who is interested in a rendering of service details by an e-mail should have mail address for which he or she has to register themselves with the internet service provider who works consistently susceptible mail service.

Electronic data interchange:

It means the exchange of business structured information in standard electronic format from one computer to other computer .It means the transfer of communication from one computer to other by electronic means .this contracts give direct interchange of service information between the parties through computer network.

Definition:

EDI may be explained as a group of standards apply to interchange service communication among the computers and conduct business deal in electronic form-the electronic exchange of device process capable to structured data which has been composed as stated in agreement standards and that has been communicated directed among other computer network with the help of a information transmission or in the absence of person interaction. Electronic data Interchange includes various contractual relationships: - The fundamental business association, like sales of goods. The e-contracts managing electronic interchange of information, which form the intercommunication relationship among the parties known as interchange Contract or business partners agreements. The technique set of rules or web contracts which controls the connection among each electronic data interchange associates and with its VAN. Electronic data exchange permit all the computer based contract, although not entirely electronic communication form a contract. Communications which absolutely provide information in substance would not form an digital contract. Instances of computer based documents by means of proposal and approval indications are :

- a) Broadcasting of goods and services.
- b) Bills
- c) Price
- d) Obtain orders
- e) Submit document in electronic form with Government.

Method approachable for creating electronic contract includes:

A) E-Mail: Proposal and acceptance may be interchanged completely by e-mail, or can be incorporate with telecommunication , paper documents ,fax etc .

B) Web site forms: The vendor can provide goods and services by the websites . The consumer places an order by executing and dispatching the order form given on the webpage. The product may be delivered physically later or delivered immediately electronically.

C) Online Agreements: Customers may require to approve an online consent for the purpose of afford benefit of services example clicking on 'I accept 'when uploading software or clicking 'I agree' at the time of signing up for an e -mail account .

Bhagwandas kedia: unlocked the entrance for the electronic-contract:

Foregoing to the verdict of this case the contract Act of 1872 was pertinent to conventional conditions of contracts, that means contract registered face to face among the capable parties . with the purpose of conclude the Kedia case, it is important to talk about Entores Ltd. Vs. Miles Far East Corporation. It is the case on which Kedia Case judgment depend . The Court laid down that tele printer is a way of instant communication between the parties is dissimilar from the rule about the post. The contract is only accept when the agreement is received by the proposer, and the contract is formed at the place when the agreement is received .

Reasoning and Judgment:

Dispute was pronounced by a three judges Bench consisting of J.C.Shah, Justice K. N. Wenchow and Justice Mohd. Hidayatullah . The judges instituting majority of view, favored to follow the English rule as mentioned in the Entores case . Shah, J. Observed: Forming of an proposal at a place which has been receive in another place does not create a part of the right of an action in a case for compensation for non performance of the contract . Generally it is the acquiescence of offer and implication of that acquiescence which effect in a contract . The implication must be by same disclosure which the law thinks as competent.

Essential elements of valid E-contract are as follows:

(1) Offer : There must be an offer and the offer here is not made by a website displaying items for sale at a particular price ,it is known as 'invitation to offer 'and hence it is revocable at any time before the time of acceptance. In E- Contract offer is made by the customer when they put the product in the virtual 'basket or 'shopping cart for payment. (2) Acceptance of offer: Acceptance of offer is complete when the seller agree to sell the product according to the offer made by the consumer who put the product in his shopping cart. (3) Consideration: The consideration must be lawful. (4) Parties : The parties to the contract must be legally capable to contract they must not be minors, lunatics or unsound etc. (5) Free-Consent : The parties to the contract must give their consent freely to perform the contract.(6) Object : The object of the contract must be legal and it is not against the public policy. (7) Certainty and Possibility to Perform. The contract to be performed must be certain and possible to perform. If a travel agency in his website promises to organize a tour in moon and for that, the tourist is booking the ticket. This type of contract is not possible

to perform .So it is void. (8) Legal relationship: The parties to the contract must intended to create a legal relationship otherwise the contract will be void.

E- Contract Is A Valid Contract Under Indian Law Or Not?

There was no express provision in the original IT Act regarding the validity of E-Contract. Later in the IT (Amendment) Act 2008, section 10A is inserted, which says about the validity of contracts entered electronically i.e, Electronic Contracts. Section 10A states that “ 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”.

Article 2(a) of UNICTRAL MODEL LAW on electronic commerce was framed in 1996 and later was amended in 1998lays down the meaning of “Data Message”. According to this Article“Data Message “ means information generated, send , received, or stored by electronic, optical or similar means including, but not limited to electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

Article 11 of UNICITRAL Model Law on E-commerce provides that 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.

Conclusion:

Computer has a huge influence on trade and has administered the development of E-Commerce. A nation like India, with its greatly adept working population, has unique opportunities to acquire advantage out of E-Commerce. There is a increasing knowledge amongst the business community in our country about the chance offered by E-Commerce .Electronic-Commerce is a part of the information science change became greatly utilize in the world trade in common and Indian income in specifically. Important Indian portal site have also been moved towards E-Commerce. Electronic-Contract can serve as an machine for advancement in the 21st century and as an powerful tool to assist us to get all the objective of millennial generation.

References:

1. Dr.S.R.Myneni, IT Law (cyber Law), 2013 edition, Asia Law House ,Hydrabad.
2. IT Act 2000,Bare Act ,Universal publication
3. The Indian Contract Act 1872, Bare Act, Kamal Law House
4. BabuSarker ,IT and Cyber Law in India,2014 edition, Moon Law Agency
5. Vikram Sing Jaswal and Shweta Thakur Jaswal,Cyber crime and Information Technology Act2000, 2014 edition, Regal Publication.
6. Nandan Kamath, Law Relating to Computers Internet and E- Commerce, 2007 edition, Universal Law Publication.
7. Dr. R.K. Bangla, Contract -1, 2019 edition, Allahabad Law Agency
8. www.legalserviceIndia.com
9. www.Indialawoffices.com
10. www.advocatekhoj.com
11. www.Indiankanoon.org
12. www.lawctopus.com