



E-CONTRACT AS PER INFORMATION TECHNOLOGY ACT-2000

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Abstract: The very rapid emergence of industrialisation, globalisation and technicalities formed with the rise of this computer technology. One of the products of E-commerce is E-contract, examples are Online shopping, online banking, online auction etc. In this age of IT, the whole transaction can be completed in seconds, with both parties simply affixing their electronic signatures to an electronic copy of their contract and this type of contract is legally valid under Information Technology Act 2000. But in whole over the Act none of the section says about parties eligibility to perform the online contract, only section 11 of the IT Act said about attribution of the electronic record to the originator. For getting the legally eligibility of the parties we have to consult The Indian Contract Act 1872. It is one of the great defect of IT Act 2000, which also create confusion among the parties on legally validity of their contract. And under certain circumstances parties were under confusion to whom they will blame in case of breach of online contract because the parties didn't know each other face to face and the digital signature of the person affixed on their contract might be of a minor, or of a unsound person.

INTRODUCTION:

An E-Contract is an agreement created and 'signed' in an electronic form-no paper is used. Electronic contracts (e-commerce) are born out of the need for speed, convenience and effectiveness. One may just envision a contract that an Indian exporter and an English importer wish to enter into. The option is that one party first draws up two copies of the contract, signs them and sends (through postal and courier services) them to the other, who in turn signs both copies and sends one copy back. E-Contract is any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic.

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 1998 lays down the meaning of "Data Message". According to this Article "Data Message" means information generated, sent, 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 UNICTRAL 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.

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 agrees 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. E.g.. If a travel agency in his website promise to organise 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.

LEGAL ASPECTS OF E-CONTRACT:

Section 11,12 and 13 of the Information Technology Act 2000 says about the legal aspect of E- Contract. The ‘proposer and ‘accepter ‘under the Indian Contract Act here known as ‘originator’ and ‘addressee ‘ in E-contract. Section 11 of the IT Act says about the attribution of electronic record to the originator. An electronic record shall be attributed to the originator:-

- (a) If it was sent by the originator himself ;
- (b) By a person who had the authority to act on behalf of the originator in respect of the electronic recordor
- (c) By an information systems programmed by or on behalf of the originator to operate automatically.

Section 12 provides provisions for the manner in which the acknowledgement of receipt of an electronic record by various modes shall be made. If their is no specific mode of acknowledgement of receipt is mentioned in the agreement than the acknowledgement is given by any communication by the addressee, sufficient to indicate the originator that the electronic record has been received.

Section 13 says about the time and place of despatch and receipt of electronic record:-

- (1) Save as otherwise agreed to between the originator and the addressee,the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.
- (2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows namely-
 - (a) If the addressee has designated a computer resources for the purpose of receiving electronic record :-
 - (i) Receipt occurs at the time when the electronic record enters the designated computer resources,
 - (ii) if the electronic record is sent to a computer resources of the addressee that is not the designated computer resources, receipt occurs at the time when the electronic is retrieved by the addressee.
 - (b) If the addressee has not designated a computer resource along with specified timings,if may , receipt occurs when the electronic record enters the computer resource of the addressee.
- (3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.
- (4) The provisions of sub-sec(2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-sec (3)
- (5) For the purposes of this section—
 - (a) If the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business,;
 - (b) If the originator or the addressee does not have a place of residence shall be deemed to be the place of business.
 - (c) “usual place of residence “ in relation to a body corporate, means the place where it registered.

CONCLUSION AND SUGGESTIONS :

The IT Act 2000 cannot stand on its own feet, always it has to take the help of The Indian Contract Act 1872 to judge the validity of a online contract or E-contract. In other word it can be said that IT Act is not sufficient for making an online contract always it have to take the help of Indian Contract Act for working practically because none of its section says about eligibility of parties to perform E-contract. To rectify this lack the Act must be amended and new section must be inserted which will say about the eligibility of parties for online contract or E- Contract and no more we have consult The Indian Contract Act while deciding the eligibility of the parties for E-contract.

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