

CONTEMPORARY LEGAL ISSUES IN E-COMMERCE - AN OVER VIEW OF INITIATIVES IN INDIA

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Abstract : Gateway to the cyberspace i.e. World Wide Web (www.) is the gift of Information Communication Technology to the humankind. The vehicle of this cyberspace is the internet which will take us anywhere on our command. Cyberspace is designed keeping in view of our physical world where we live. The most important advantage of this virtual world is that it saves our precious time. The popularity of these virtual market is growing day by day, in fact, it is truly irresistible, online shopping website and various mobile apps are most popular among youths, Facebook, WhatsApp, tweeter etc. are becoming part of our daily life. However, on the other hand, it cannot be ruled out that these facilities to involve certain risks and/or problems which will be discussed in this paper.

Index Terms - E-Commerce, Data Protection, Contract, Consumer Protection, I.T Act 2000, Online Dispute Resolution.

I. INTRODUCTION

The Internet has joined the world together as a global village and India is already moving in a transition phase of digital revolution where the internet has become an integral part of its population. Gone those days when international and national commercial transactions had to face many difficulties. The development brought by Information Communication Technology has revolutionised the way of doing business and commercial transactions. Such activities conducted through electronic means is known as electronic commerce (in short *e-commerce*). However, it cannot be ruled out that e-commerce has brought with its number of legal, socio-economic and consumer protection related issues. This paper highlight these issues in the light of the current legal and regulatory framework for e-commerce in India.

II. RESEARCH METHODOLOGY

In the present study doctrinal method of research is used and secondary data from various text books, journals and web sites is collected.

III. DEFINITION

There is no specific definition of e-commerce provided in any statute. However, Asia Pacific Economic Cooperation (in short APEC) defines e-commerce to include all business activities conducted using a combination of electronic communications and information processing technology. Also, the United Nations Economic and

Social Commission for Asia and the Pacific (in short UNESCAP) defines e-commerce as the process of using electronic methods and procedures to conduct all forms of business activity.

E-commerce business modules are of four types;-

- (I). B2B (Business to Business)
- (II). B2C (Business to Consumer)
- (III). C2C (Consumer to Consumer)
- (IV). C2B (Consumer to Business)

III. LEGAL ISSUES

(a) Data Protection

Recently in the landmark case of Justice K.S Puttaswamy (Retd.) and Anor V Union of India and Ors, the constitution bench of the Hon'ble Supreme Court has held Right to Privacy is a Fundamental Right, subject to certain reasonable restrictions. For data protection or privacy, there is no express provision in India. However, Personal Data has not been defined in any Indian statute, the relevant law in India dealing with data protection are the Information and Technology Act, 2000 (in short I.T. Act, 2000) and the Indian Contract Act, 1872. The I.T Act 2000 deals with the issue relating to wrongful disclosure and misuse of personal data and violation of contractual terms in respect of personal data and prescribes for payment of compensation and punishment. Further, a body corporate who is possessing, dealing or handling any sensitive personal data or information if found negligent resulting in wrongful loss or wrongful gains to any person may be held liable under section 43A. Likewise under section 72A, the disclosure of information, knowingly or intentionally, without the consent of the concerned person and in breach of lawful contract is also punishable with imprisonment for a term extending to three years and fine which is extended up to Rs5,00,000/-. The Government of India has notified the Information Technologies (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rule, 2011. These rules deal with "protection of sensitive personal data and information of a person" which includes Password, Financial information (bank account, credit card or debit card and other payment instruments), Physical, Physiological and mental health conditions, Sexual orientation, Medical records and history, Biometric information.

The exception to the above rule

Under section 69 of the I.T Act, 2000 of the government is satisfied that if it is necessary for the interest of The Sovereignty or the integrity of the nation.

Defence of India

Security of the State

Friendly relation with foreign state or

Public order or

For preventing incitement to the commission of any cognizable offence relating to above or

For investigation of any offence, the government may by order intercept, monitor or decrypt any information including information of personal nature in any computer resources. Digital India, Aadhaar and Demonetization, has already opened the gate of data exchange with Government and other Private Players in such scenario, the absence of express law and/or inadequate law/laws on the issue amounts to prejudice with the rights of the citizen.

(b) Formation of Contract on the internet.

To govern traditional commercial transactions there already exists statutory rules and common law including various case laws establishing certain principles on the issue around the world. With specific reference to India electronic contracts are also governed by the basic principles of Indian Contract Act, 1872 further Section 10A

of the I.T Act 2000 provides legal recognition to such electronic contracts. Likewise, Section 3 of the Indian Evidence Act, states that evidence can be accepted in electronic form. Hon'ble Supreme Court of India in Times International FZE Ltd. Versus Vedanta Aluminium Ltd, has held that E-mail exchange between parties regarding mutual obligation constitutes a contract. However, on sale over the internet, both the display and the actual sale are often fused together, which creates a confusion in respect of a particular product or services, for e.g. a display is meant to just draw the attention of a buyer and is not in itself an offer.

(c) Cybercrime.

Any crime which is done using computer and telecommunication technology or where either the computer is used as an object or subject in cyberspace is a cybercrime. Which is of three types:-

(I) Cybercrime against person (II) Cybercrime against property and (III) Cybercrime against the government. To deal with these crimes there was an urgent need of a cyber law in India and as result I.T Act 2000 was drafted, which *inter alia* provides the legal framework to all electronic records. Cybercrime posed many challenges to e-commerce and made internet transactions insecure and vulnerable as a result Information Technology Amendment, Act 2008 was drafted and enforced, which provides additional focus on information security by adding several new sections on offences including Cyberterrorism and Data Protection. National Crime Report Bureau under Minister of Home Affairs Government of India in its "Statistic report 2016" indicated a dramatic rise in the cases of cybercrime in India (NCRB) proves that direct and effective law which address the issue of cybercrime in India is a need of an hour.

IV. CONSUMER PROTECTION

Any person who buys goods and avail services for his/her own use or consumption is a "consumer". The only legislation which governs the rights of the consumer in India is Consumer Protection Act, 1986 (in short CPA) which is completely consumer oriented in its nature. However, the digital revolution could not remain untouched with consumer and consumerism around the globe. Organisation for Economic Co-Operation and Development (in short OECD) recommends that "same level of protection provided by the laws and practices that apply to the other forms of commerce should be afforded to consumers participating in commercial activities through the use of global network" Since consumer protection is facing daring challenges from the revolution brought by the internet. Major consumer issue raised by internet transaction system includes Security, Privacy, Terms & Conditions, Access, Dispute Resolution, Fee & Charges, Fraud and the most important jurisdiction. In such scenario, the substantive question of law which arise is, whether the Consumer Protection Act, 1986 is adequate enough to address all the above issues of Indian consumers in the context of e-commerce?

V. ALTERNATIVE DISPUTE RESOLUTION

The Hon'ble Supreme Court of India in M/S Times International FZE Ltd. Dubai V Vedanta Aluminium Ltd. held that all consumer disputes including dispute where a trader/ supplier/ manufacturer/ service provider/ is keen to maintain his business/ professional reputation and credibility or product popularity can be referred to ADR. E-Commerce and E-Governance have been given legal recognition in India by the I.T Act, 2000. Similarly, the traditional India law on arbitration has been redesigned and replaced by Arbitration and Conciliation Act, 1996. It is pertinent to mention here that both these legislations have been formulated after considering the UNICTRAL Model Law. Likewise Civil Procedure Code, 1908 was amended wherein section 89 was introduced to provide a chance to the litigating parties for settling their dispute amicably outside the

Court. In this digital world Alternative Dispute Resolution (in short ADR) process is also transforming into Online Dispute Resolution (in short ODR) process, having its two main characteristics;-

(i) Use of information and communication technology (ICT) (ii) Distance communication.

The complainant begins the ODR process by registering the complaint online with an ODR provider. The ODR provider will then contact the other party using the information provided and invite the other party to participate in the ODR process. If the other party accepts the invitation he/she will file a response to the complaint. ODR may adopt either adjudicatory (where the award is binding) or non-adjudicatory process (where the award is not binding). Parties communicate through e-mail, discussion boards, instant messages, audio video conferencing etc. ODR mechanism is an innovative tool in this digital world to resolve disputes between the parties located in different part of the world. However, it is felt that entire e-commerce which is the gift of information communication technology, designed and created in the virtual world by and large depends on "TRUST". Hence, the government must take appropriate steps for building trust in the ODR process which will aid in the development of ODR in India and it may certainly become one more step towards the policy of minimum government maximum governance.

VI. CONCLUSION

After the Liberalisation, Privatization and Globalisation (in short LPG) of the Indian economy. New avenues for trade and commerce were opened and simultaneously the Information Communication Technology revolution and the advent of the internet, i.e. World Wide Web (in short www) helped this enterprise to reach its heights, crossing all the man-made territorial limits, border and boundaries. In other words, there is no Line of Control (in short LOC) between any nations in the virtual world, as a result, no express regulation can be applied therein. However, most of the nations have already come up with their own laws and regulations which can be applied in the virtual world but interestingly no one can rightly say that, whose law will apply in the cases of a dispute between the parties belonging from different nations.

Growing business activity carried out by electronic means resulted in the enactment of I.T Act 2000, by the Parliament of India, which is quite comprehensive and well defined. However, issues such as IPR, Domain Name Dispute, Protection of e-consumers, Privacy are not directly addressed by the said legislation. Which further means that there is no any direct and expeditious legislation governing these issues in India. The concept of Democracy in the contemporary world is a "Welfare State" where the role of the government is the "facilitator", hence, to tap the benefit of e-commerce by the citizens of India our country must address these issues seriously and adequately in the interest of the people at large.

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