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E-CONTRACTS AND E-COMMERCE: GROWING TREND IN INDIA

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ABSTRACT

E-contracts and e-commerce have emerged as a growing trend in India, propelled by advancements in technology and changing consumer behaviour. This abstract explores the significance of e-contracts and e-commerce in the Indian context, examining their benefits, challenges, and the potential they hold for economic growth. The rise of e-contracts has revolutionized the traditional contract signing process, enabling parties to engage in transactions electronically. With the proliferation of internet access and smartphones, e-contracts have become more accessible, efficient, and cost-effective. They offer convenience, speed, and the ability to conduct business remotely, fostering a borderless digital marketplace. India's e-commerce sector has experienced remarkable growth, driven by the increasing adoption of smartphones, internet penetration, and government initiatives promoting digital transactions.

However, challenges persist in the e-contracts and e-commerce landscape in India. Issues such as privacy and data protection, cybersecurity, legal compliance, and consumer trust need to be addressed to foster a robust ecosystem. The government and industry stakeholders need to collaborate to establish regulatory frameworks and ensure the security and integrity of online transactions. In conclusion, e-contracts and e-commerce have emerged as a growing trend in India, offering immense potential for economic growth and development.

Keywords: Digital, E-Commerce, E-Contract, Enforcement, Contract etc.

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INTRODUCTION

The employment of digital contracts becomes imperative upon the exchange of digital commodities among diverse entities. The escalating demand for digital commodities such as music files, digital libraries, and e-learning materials has resulted in a corresponding increase in the necessity for digital contracts. Digital contracts serve the purpose of delineating the stipulations and provisions of a given agreement, and facilitating the mechanised execution of e-commerce dealings to a limited degree. In the context of this scholarly article, the term "digital contract" refers to a written agreement created using a digital rights language, which consists of multiple contract objects possessing distinct characteristics. The contract artefacts can be segregated into fundamental objects that possess obligatory attributes and supplementary domain-specific objects and attributes that may be incorporated based on the contract's intended purpose. The objective of this manuscript is to present a theoretical structure for the customised creation of electronic agreements, contingent upon the particular utilisation scenarios.

E-COMMERCE

The emergence of information and communication technologies has facilitated the emergence of electronic commerce (e-commerce), which experienced a surge in popularity in the 1990s in both America and Europe. The Indian government implemented the Information Technology Act, 2000 to oversee e-commerce, acknowledging its potential for expansion. Consequently, electronic commerce has emerged as the dominant force in the Indian market, providing customers with an extensive array of products at competitive rates.

E-commerce transactions entail the formation of electronic agreements among individuals, entities, and the intersection thereof. These transactions establish legal obligations between the involved parties that are capable of being enforced through legal proceedings. In the legal context, as long as the parties fulfil their respective obligations, there exists no disagreement or conflict. In the event of any discrepancy, it is possible for conflicts to emerge between the involved parties, necessitating the pursuit of a legal remedy through a judicial channel.

E-CONTRACT

The expanded scope of e-contracts has resulted in the absence of a rigid definition, unlike their conventional counterparts. The scope of e-contracts is considerably wider than that of conventional contracts, rendering the conventional definition inapplicable.

An e-contract refers to a legally binding agreement that is formed between capable parties through the utilisation of the internet. In order for a contract to possess legal validity, it is imperative that the parties involved engage in the agreement with lawful consideration, voluntary and uncoerced consent, and the absence of any malevolent motives, while also establishing a legal relationship.

The term "e-contract" may be defined as follows:

An e-contract refers to a form of agreement that is established through electronic channels, such as email or interaction with an electronic agent, such as a computer programme, and involves negotiations between two or more parties. An e-contract can be established through the interaction of two or more electronic agents that are designed to acknowledge the presence of a contract.

It has been previously noted that a comprehensive definition of e-contract is not readily available, and often only broad definitions are accessible. E-contracts are commonly known as cyber-contracts, digital contracts, or online contracts.

Etymologically, multiple definitions can be attributed to the term "e-contract"; however, its precise meaning remains undefined. In a more comprehensive context, computer-mediated contracts encompass agreements that are executed through electronic means, including email or online platforms, and pertain to computer-based goods and services, such as software and databases.

According to the International Chamber of Commerce, electronic contracting pertains to the automated mechanism of engaging in contractual agreements through the use of computers by the involved parties, regardless of whether they are connected through a network or electronic messaging. The present definition is a fusion of two distinct explications, one originating from the UN Convention on the Use of Electronic Communications in International Contracts and the other derived from the US Uniform Electronic Transaction Act and Uniform Computer Information Transactions Act, which allow for automated transactions. The term "Electronic Communication" refers to any form of communication that is transmitted through data messages. On the other hand, "Automated Transaction" pertains to any transaction that is carried out or executed, either wholly or partially, through electronic means or electronic records.

E-GOVERNANCE

The main objective of e-governance is to offer government services to the public via electronic channels, thereby enabling the transmission of information and the integration of various systems and services through the use of information and communication technologies. E-governance is a multifaceted concept that encompasses several parameters, namely government-to-government (G2G), government-to-citizens (G2C), government-to-business (G2B), and government-to-employee interactions. The parameters in question pertain to the diverse array of relationships and interactions that may transpire between the government and a range of stakeholders, such as other governmental bodies, members of the public, commercial enterprises, and personnel.

The objective of e-governance is to enhance the efficacy of governmental administration and foster transparency in its operations. The process entails bidirectional exchange of information and ideas between the governing body and its associated parties. The notion of open government was underscored in a recent e-governance conference held in India. The conference aimed to foster a government that is more transparent, participatory, and collaborative, and that actively engages with its citizenry while promoting accountability. The concept of open government aims to facilitate citizen access to government information and data, foster citizen engagement in decision-making processes, and encourage collaboration between the government and its stakeholders to achieve shared objectives. The concept of open government is composed of three fundamental elements, namely accessibility, participation, and transparency.

E-governance is a pivotal factor in ensuring equitable opportunities for all potential contenders in the distribution of government contracts, thereby eradicating any capriciousness in the administrative framework. Furthermore, this initiative reinforces the fundamental principle of the Indian Constitution, namely the establishment of a welfare state, by facilitating accessible avenues for citizen engagement in administrative procedures. Through the utilisation of e-governance, individuals can effectively interact with the government, obtain government services and information, and engage in decision-making procedures. The aforementioned measure fosters enhanced accountability and transparency within the governmental operations, consequently culminating in a more proficient and efficacious government. proceedings. The Government of India established the Second Administrative Reforms Committee, which has recently submitted a report recommending the implementation of paperless offices throughout the country by the year 2017.

In 2006, the Indian government introduced e-governance as part of the National e-Governance Plan (NeGP), which was spearheaded by the Department of Administrative Reforms & Public Grievances and the Department of Electronics and Information Technology. The principal aim of the National e-Governance Plan (NeGP) was to enhance citizen access to government services and facilitate efficiency and transparency in administrative processes. The primary objective of the National e-Governance Plan (NeGP) was to enhance the accessibility, affordability, and efficiency of government services for citizens, while simultaneously augmenting transparency and accountability in government operations.

INDIAN CONTRACT ACT, 1872 AND ISSUES

The global expansion of e-commerce has been notably facilitated by the widespread accessibility of personal computers and smartphones. The current scenario has resulted in a heightened demand for electronic transactional activities such as lease agreements, sale and purchase contracts, loan agreements, and other similar processes. The transition towards electronic transactions has given rise to a plethora of legal concerns that necessitate resolution. The aforementioned concerns manifest themselves at diverse junctures of the contractual procedure, encompassing origination, execution, standardised contractual agreements, cessation, and redress for contravention. Furthermore, there exist prospective issues pertaining to online contracting which may necessitate intervention by the judiciary. Prior to exploring these matters in depth, it is crucial to take into account specific pre-contractual elements that could potentially affect the legitimacy and enforceability of electronic contracts.

VALIDITY OF E-CONTRACT

The present discourse concerns the validity of two types of e-contracts, namely browse wrap and shrink wrap agreements, which are among the three primary categories of e-contracts. The case of Klocek v. Gateway, Inc. determined that the specific contracts under consideration were unenforceable, however, the ruling did not provide any commentary on the enforceability of shrink wrap contracts in general. In the legal case of ProCD, Inc. v. Zeidenberg, it was determined that software companies were granted some degree of relief through the enforcement of shrink wrap agreements. The prevailing view is that agreements formed through shrink wrap licences are legally binding. It can be asserted that there exists a significant level of inconsistency among courts with regards to the legitimacy of shrink wrap agreements.

The court's decision in Hoffman v. Supplements Togo Mgmt. LLC and In re Zappos.com Inc., Customer Data Security Breach Litigation, regarding browse wrap agreements, stated that in the absence of concrete proof that the plaintiffs had clicked on the Terms of Use, it was not possible to infer that they had either viewed or given their consent to the Terms of Use.

Similarly impactful is the ruling of the Court in Hill v. Gateway, wherein the Seventh Circuit determined that the contractual provisions accompanying the computer shipped to the plaintiff governed her acquisition of the product. The plaintiff was duly informed that the aforementioned terms would regulate the relationship between the parties, subject to the condition that the computer was returned within a period of 30 days. The plaintiff did not adhere to the designated timeframe for returning the computer. The court concisely presented the relevant information regarding the case. A consumer initiates a telephonic conversation, places a request for a computing device, and provides a credit card numeral for payment. At present, a package is delivered to the customer's location, which includes the computer system and a set of conditions that are to be enforced unless the customer chooses to return the computer within a period of 30 days. Do the aforementioned terms hold legal efficacy as a binding contract between the parties, or does the absence of the order-taker reading and obtaining the customer's agreement to any terms during the phone call render the contract devoid of any specific terms? The court of appeals for the Seventh Circuit determined that the provisions in question effectively dictate the nature of the contractual association between the parties, thereby affirming the efficacy of Gateway 2000's approve or return mechanism. The court ruled that Gateway's proposal necessitated acceptance through the act of retaining the computer subsequent to receiving the terms. The formation of the parties' contract was contingent upon the customer's retention of the computer for a duration of 30 days, at which point the terms accompanying the computer became binding for both parties.

It is a verifiable truth that click-wrap agreements are currently enforceable. The enforceability of specific agreements still requires contracting parties to resort to fundamental principles of contract law. The enforceability of adhesion contracts remains unchanged regardless of whether they are consummated online or in a physical retail store.Contracts of adhesion refer to a situation where a standardised form of agreement is presented to a party, who is not given the opportunity to negotiate its terms and is instead left with the choice of either accepting or rejecting the contract. Typically, these agreements are drafted by the party with superior bargaining power. Enforcement of a contract against a party who is comparatively weaker may be deemed inappropriate if the terms of the contract fall outside of the reasonable expectations of the weaker party or if the contract is deemed unduly oppressive, unconscionable, or contrary to public policy.

PERFORMANCE OF E-CONTRACTS

The fundamental principle in contract law is that a contractual party is obligated to execute precisely what was agreed upon in the contract. Similarly, in the context of electronic contracts, it is incumbent upon the party who has assumed the obligation to fulfil it. Section 37 of the Indian Contract Act pertains to the execution of e-contracts, mandating that the involved parties are obligated to fulfil their respective promises by either performing or offering to perform, unless such performance is exempted or excused under the provisions of the Act or any other applicable law.

The execution of electronic contracts poses a challenge due to the geographical separation of the parties involved. These contracts exhibit a unilateral character and are predominantly structured as SFCs. Whereas one of the parties will hold a superior bargaining position. The standard provisions that are relevant to conventional contracts are equally applicable to contracts formed online. The Information Technology Act does not provide any explicit provisions regarding the execution and efficacy of electronic contracts.

The location of execution for an electronic agreement is equivalent to that of a conventional paper-based agreement, provided that the execution entails tangible delivery or presence. The distinction pertains to the electronically conducted performance, wherein the software or e-book is downloaded without any physical delivery or presence. The temporal aspects of e-communication dispatch and receipt, as well as the identification of computer server locations, are crucial factors in accurately determining the geographical location of digital performance.

CONCLUSION

The legal doctrine of contract serves as the fundamental basis upon which the entire economic framework is constructed. The prosperity of business, trade, and commerce is contingent upon the unequivocal and lucid comprehension of the governing laws by all relevant parties. Undoubtedly, the assurance of legal certainty plays a crucial role in mitigating the hazards and expenses associated with commercial activities. The presence of a consistent level of assurance is imperative in all types of contractual agreements, regardless of whether they are established through traditional postal correspondence or contemporary electronic means. Hence, it is imperative for judges, jurists, and practitioners to undertake a comprehensive analysis of the legal framework governing e-contracts, with the aim of resolving any discrepancies and enhancing the clarity and practicality of the relevant laws.

Although e-contracts share the same basic principles as traditional contracts formed through postal communication, there are certain aspects that challenge the limits and creativity of contract law. The initial matter at hand pertains to the pertinence of the "postal rule" in relation to agreements established via electronic means of communication. The issue of jurisdiction arises as a result of the constantly evolving nature of the internet's infrastructure and operations. Consequently, designating a specific location as the jurisdiction for the contract is a contentious and problematic matter. Thirdly, there exist concerns pertaining to the evidence of the contract, specifically regarding the means by which the parties' identities can be established and their agreement to the contract can be determined.

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