

APPLICATION OF SECTION 10 OF THE INDIAN CONTRACT ACT, 1872 TO E-CONTRACTS

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ABSTRACT

Due to a wide spread of technology, E-contracts have emerged as a major player in the e-commerce industry. In India, E-contracts are regulated the same as usual paper contracts. If these electronic contracts meet the essentials of paper/traditional contracts then they can be considered valid. Still, there are certain elements of an E-contract that are not regulated and there's a lack of advancement from the Indian Judiciary as well. It has its pros and cons both. Here in this research article, the application of section 10 which mentions essential elements of an agreement is applied to E-contracts and certain issues related to its application is being discussed.

INTRODUCTION

The extensive and widespread growth of technology advanced the mode of communication between the masses. This advancement in technology revolutionized the mode of communication from paper to electronics. It made the functioning of trade, commerce, and business activities trouble-free. From telegraph or letter post to mobile phones, e-mails, fax, etc. communication made a shift. Such electronic mediums are used for the exchange of goods and services etc. which lead to a drastic change in our lives.

The legislatures to regulate E-contracts in India are Indian Contract Act, 1872, and Information Technology Act, 2000. Such contracts bridge the gap of distance between the parties to the contract, making it easy and time-saving. The Indian contract was made keeping in mind the traditional ways of making a contract but over time as we see e-contracts there is a need to regulate and check the issues related to e-contracts.

E-CONTRACTS

E- contracts also known as electronic contracts are legal agreements with lawful consideration and a lawful object which is made on electronic means like email etc. and are

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not made as a traditional contract. In an E- contract offer, an invitation to offer, counter offer or acceptance, etc. are all by electronic means and such communication leads to an agreement.¹ They are used by firms, businesses, etc. as an easy mode. They are made on electronic devices like smartphones, PC, laptops, etc. These contracts are created, signed, and enforced electronically (online). E- contracts are advantageous as they are labor-saving, reduce the costs of the process, save resources, bridge the gap of distance between the parties, and provide easy access.

ESSENTIALS OF A VALID E- CONTRACT

For an E- contract to be valid certain conditions of the contract under the Indian contract act, 1872 are to be met.

Offer: An offer is said to be made when one party expresses his willingness to do or abstain from doing something in order to receive the assent of the other party to such an act or abstinence.² In online websites when the goods are displayed on the site it is an invitation to offer but when they are added to the cart and the terms and conditions are accepted by the parties, it becomes an offer.³

Acceptance: When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.⁴ When the parties agree to the terms and conditions the offer is said to be accepted.

Legal consideration: When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.⁵ These are gains or rewards given for which parties agree to fulfill legal obligations.

Lawful object: The object of an agreement would be lawful when it is not forbidden by law, does not defeat the provisions of law, is not fraudulent, does not involve or implies injury to a

¹Nikhil Nair, E-contracts, *available at*: E-Contracts (indianbarassociation.org) (April 8, 2023)

² Indian Contracts Act, 1872 s. 2(h).

³ShreyansRanka, All about E- contracts, Meaning, type, and law, *available at*: All About E-contracts- Meaning, Types, and Law (taxguru.in), (April 9, 2023)

⁴ Indian Contracts Act, 1872 s. 2(b).

⁵ Indian Contracts Act, 1872 s. 2(d).

person or property and the court does not regard it as immoral or against the public policy.⁶ If an online website sells illegal drugs, therefore the object would not be lawful and the contract would be void.

Parties competent to contract: Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.⁷ In E- contracts it is on the seller or the party forming the contract to ensure that the other party is competent enough to form a contract by captcha or T&C of accepting the age of majority etc.

Free consent: All agreements are contracts if they are made by the **free consent** of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.⁸ The consent should be free from fraud, misrepresentation, undue influence, coercion, or mistake.

TYPES OF E-CONTRACTS

Browse wrap agreements: In such agreements, a party agrees to accept the terms by browsing the website.⁹ This agreement gives access to the use materials of the website. It does not require assent to agree to the T & C¹⁰. Such agreements require no clicking and no interaction on behalf of a party.

Clickwrap agreements: These are take-it or leave-it agreements meaning the party agreeing to the terms have no bargaining powers. It requires a click on the "I agree" button to do anything on the website.¹¹ It is used to give assent to the T & C. Unlike shrink-wrap agreements, all the terms are accessible to the party before accepting them.

Shrink wrap agreements: It contains T & C of usage of the product, these terms are accepted after opening the package of the product. Like click-wrap agreements they are take-

⁶Indian Contracts Act, 1872 s. 23.

⁷ Indian Contracts Act, 1872 s. 11.

⁸ Indian Contracts Act, 1872 s. 10.

⁹ Howard Schulman, clickwrap vs browsewrap: What's the difference, available at: Clickwrap vs Browsewrap: What's the Difference? | Lightico, (April 9, 2023)

¹⁰ Terms and conditions

¹¹ Archana Balasubramanian, E-contracts in India, E-Contracts In India - Contracts and Commercial Law - India (mondaq.com), (April 9, 2023)

it or leave-it agreements meaning the party agreeing to the terms has no bargaining power. This is disadvantageous as the assent is implied.¹²

EVOLUTION OF E- CONTRACTS IN INDIA

The validity of E- contracts, and E-documents is recognized by Information Technology Act (ITA).¹³ Section 4 of the IT Act, 2000, says that if any law that is applicable in India required a document or information to be in handwritten, Typewritten, or Printed form then they have to consider such document or information valid if it is in the electronic form and can be used for future references.¹⁴ Section 10(A) of the IT Act, 2000 states the validity of contracts formed through electronic means. It says 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 through 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.¹⁵ There are two main parties to an E- contract: the originator and the addressee. **An originator** is a person who sends, generates, stores, or transmits any e-message to be sent, generated, stored, or transmitted to any other person and does not include an intermediary. **An Addressee** is a person who is intended by the originator to receive the electronic record but does not include any intermediary.¹⁶

In *Tamil Nadu Organic Private Ltd. And Ors. Vs. State Bank of India*¹⁷, the HC of Madras held that contractual liabilities could arise by way of electronic means and such contracts are enforceable by law. The court in *Trimex International FZE Ltd. Dubai vs. Vedanta Aluminum Ltd*¹⁸ held that the offer and acceptance delivered through emails are valid.

However, primarily they are governed by Indian Contract Act, 1872. For a contract to be legally valid, it should meet the conditions of section 10 of the Indian Contract Act, 1872 which talks about the essentials of a valid contract. Similarly, an electronic contract would be

¹² Tanisha Gautam, *Clickwrap, Browsewrap, And Shrinkwrap Agreements In India*, Jus Corpus Law Journal (JCLJ), (VOL. 1 ISSUE 3 ISSN 2582-7820)

¹³ Asst. Prof. Mrs. Neeta Pramod Ghadge, A study of Formation and challenges of electronic contract in cyberspace, *available at*: A study of Formation and challenges of electronic contract in cyberspace (legalservicesindia.com), (April 10, 2023)

¹⁴ Information Technology Act, 2000, s. 4.

¹⁵ Information Technology Act, 2000, s. 10(A).

¹⁶ Nikhil Nair, E-contracts, *available at*: E-Contracts (indianbarassociation.org) (April 8, 2023)

¹⁷ Tamil Nadu Organic Private Ltd vs State Bank Of India, 2014 SCC OnLine Mad 423

¹⁸ Trimex International Fze ... vs Vedanta Aluminium Limited, India, (2010) 3 SCC 1

considered valid if it fulfills the essential elements of section 10 of the Indian Contract Act, 1872.¹⁹ Indian Evidence Act, 1872 provides regulating provisions for E-contracts as well.

APPLICATION OF SECTION 10 OF THE INDIAN CONTRACT ACT ON E-CONTRACTS

Section 10 of India Contract Act, 1872 states, all agreements are contracts if they are made by the **free consent of parties competent to contract**, for a **lawful consideration** and with a **lawful object**, and are **not hereby expressly declared to be void**. Nothing herein contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.²⁰ Here free consent means consent that is made without coercion, undue influence, fraud, misrepresentation, or mistake. People of sound mind, of the age of majority and not disqualified by law to come into a contract are the parties competent to contract. In E-contracts this can be checked via captcha or through T & C. A lawful consideration and a lawful object should not be forbidden by law, fraudulent, against the public policy, or immoral. The main essentials followed to form an E-contract are an offer that is made while browsing through the website and acceptance that could be sent through email. A legal relationship is clear that if one party for example fails to pay for the product which he/she purchased through an e-commerce website then they could be held liable as they failed to fulfil their legal obligation. All these elements are followed for traditional paper-based contracts similarly can be used for e-contracts as well.

ISSUES IN THE APPLICATION OF SECTION 10 ON E-CONTRACTS

Competency of parties to enter into a contract: Sections 10, 11, and 12 of the Indian Contract Act, 1872 deal with the essentials of a competent party to enter into a contract. There are highly likely chances of an anonymous person entering into a contract without being competent enough.²¹ Due to the lack of provisions to check the sanity and majority of a person or whether he/she is legally qualified to enter into one, it is strenuous to check the validity of it. If a person entering into a contract is not competent then the contract would be declared void.

¹⁹LALSANGLIANI, *Analysis of Section 10 of the Indian Contract Act in relation to E-Contracts*, International Journal of Law Management & Humanities, Vol. 4, Issue 6, 1293.

²⁰ Indian Contracts Act, 1872 s. 10

²¹Astha Dwivedi, Legal issues involved in e-contracts, Legal issues involved in e-contracts – iPleaders

Free consent of the parties: E contracts are take-it or leave-it in nature, it is up to the client to either accept it or leave it completely. Whereas in offline/traditional contracts the contracts are formed with due negotiation and counter offers that are suitable for both parties. Here in E-contracts, there's a lack of bargaining or negotiating power on the part of the person coming into a contract.

Lawful objects: There can be chances of people buying banned products easily through online websites. Due to the lack of weak age verification provisions, a minor can buy liquor or cigarettes, or other age-banned products easily.²² Therefore complete checks and balances are necessary to ensure such issues.

CONCLUSION

E-contracts ease the process of making contracts and are the soul of business and e-commerce. It reduces paperwork and has many pros however, the provisions related to privacy, data protection, etc. are not talked about and such regulations related to it are in need. A proper legal framework for E-contracts is still burgeoning. Indian courts have recognized e-contracts but due to lack of recognition, there is a higher dependency on foreign judgments for regulating them. It is an absolute necessity to form specific provisions to regulate E-contracts.

²² LALSANGLIANI, *Analysis of Section 10 of the Indian Contract Act in Relation to E-Contracts*, International Journal of Law Management & Humanities, Vol. 4, Issue 6, 1293.