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ELECTRONIC CONTRACT- INDIA'S GROWTH**Introduction****India's Transformation to a Digital Economy**

India is a growing economy, which has seen evolution in its financial and technological policies since its inception back in 1947. With the changing governments in the Union, some crucial amendments took place in the span of time. In the last decade we have seen a great deal of evolution on India transforming itself into a digital economy, where most of the transaction be it anything happens online. The victory of the NDA in 2014 paved the way to the emphasis on making "Digital India". Since then e-commerce websites and the digital payment portal have never failed to provide a flawless interface to the users to conduct all kinds of operations may it be buying something from Amazon or paying a vegetable vendor through Paytm.

What all constitute as an Electronic Contract

To witness the growth of different e-commerce and e-learning platforms, we need to first perceive the various essentials required to contemplate these as e-contracts. There has to be an intention to create a contract legally. The parties must be competent to contract. Consent should be achieved without coercion, concealment of facts and the obligation for which the contract has come into existence should be legal. So based on these essentials we can ponder upon 2 among many instances which are e-commerce and e-learning. According to Indian Brand Equity Foundation, the Indian e-commerce will be achieving the landmark of 99 billion USD in the next 3-4 years with grocery and fashion being the main contributors in the driving force and the Indian e-learning platforms are also booming taking the pandemic condition into consideration and creates 1.92 billion USD with 9.5 million users.¹ Many of us may have a dilemma to consider e-learning a part of electronic contracts. But technically it is, even if the user is minor but the contract machines between the parent and the platform.

Contracts that are paper based and are digital in nature are known as e-contracts. These contracts are conventionally made to provide convenience to the parties or to expedite the contracting process. These construct best between parties residing in the distant corners and must reach at an understanding to conduct any sort of operation.

¹ Available at: <https://www.ibef.org> Last Visited: 21 July 2021

In an electronic contract, the offer, counter offer, and acceptance all are done electronically and the result is a contract. In this dynamic transition of the world around us, there are times when we are not able to apprehend and we enter into a contract, it can be purchasing a gadget from Amazon or booking a ticket from Make my Trip.

There are 2 parties in any electronic contract, the first is the original or who sends, creates or transmits any message and addressee is the person who receives the electronic signal.

India's status and growth in terms of Electronic Contracts

Reckoning with the wide range of diversity in the Indian mainland, we can ponder upon the opinion that India is a continent with many different countries within it. The cultures, traditions, choices of the people in India they keep changing every few 100 kilometers. But what holds us together is the sense of brotherhood and our long grown glorified history. Now in the outset of such humongous cultural outfit, India has turned out to be one of the world leaders in all aspects be it economy, technology etc. India caters to a wide range of transactions at every second round the clock, which made the Indian policy makers to conceive and envisage the introduction of the concept of electronic contracts and that is highlighted in Section 10A of the Information Technology Act, 2008, which gives legislative authority to E-contracts. India has always been an acceptor for any sort of heterogenous culture around the world. The number of contracts entered upon by Indian citizens is myriad in nature, it is then thought to introduce electronic contract to ease out the conducts of its people.

Electronic contracts unlike any other traditional contracts does not necessitate physical appearance to sign for a contract, here digital signature does the work efficiently which is governed by Section 5 of the Information Technology Act, 2000. The electronic contracts as its name insinuates is formed digitally and the parties to the contract does not have to come in contact, which reverberates around from the very definition of electronic contracts. E-contracts suffice for environmentally efficient measures as no paper based formalities exist and thus making it economically viable and time efficient.

In this fiendish and vying world where people construct their conduct in ways to surpass the other to behold any position or property and resort to a number of unscrupulous measures to make believe and give clarity to their intentions, there are instances before the court which accentuates the matters of forgery in any contract; "*Damodar Sahu and Anr v. The State*"², 20 April 1955, is one such case where thumb impression of a person was forged to make the court believe that the one has consented for a particular contract. There are many such cases which highlight instances like this. E-contract has come up with provisions like One Time Password etc., which all parties to a contract receive when there is any attempt for a change in the provisions of the contract or signature (as the form of testimony). Thus making it much more secure.

Types of Electronic Contracts

Electronic Contracts can be further furcated into different types.

- Click Wrap contract: This type of contract comes into existence when a potential buyer clicks on the 'I Agree' button on any platform like e-commerce, social networking, sites which establishes the acceptance to the terms of any contract by a party. There is

² AIR 1955 Ori 156, 1955 CriLJ 1373

no instance where the consumer gets a chance for negotiation, its just to move ahead with the contracting obligations. It is a contract which mostly machines on the terms of “take it” or “leave it” scheme and does not give one party an equal chance to bargain. It is mostly used on platforms where we argue on certain terms and conditions relating to the downloading of any software or application online or when we are involved in the purchasing of goods and services through e-commerce websites.

To get a look at the far bound impact of click wrap agreements in India we can take into account the verdict pronounced by the Income Tax Tribunal in the 2107 in the “*Ddit (It) 3(1), Mumbai vs Gujrat Pipavav Port Ltd, Mumbai*”³ where in the contract clickwrap type of agreement was taken into account in order to deal with instances of copyright.

- **Shrink wrap Contract:** This is the legal agreement designed between the vendor or owner of a software and the end user or consumer of the product or service. The agreements are prominently attached with the product so that the end user can see through the plastic wrapping. It is designed in such a way that when the purchaser opens or tears off the packaging, he/she by virtue of opening the packet is termed or understood of accepting the terms and conditions of the agreement without giving themselves ample scope to reading it. So a major backdrop of these types of contracts is that the legal position regarding the acceptance of the terms and conditions of the agreement by the end user is uncertain to an extent the reason being firstly he/she is unaware of the T&Cs and secondly these information are deliberately stated by the copyright owner or the software vendor in a way to keep the end users in darkness and not to give them quite some amount of opportunity to aptly bargain or take into effect the various rights and liabilities associated.
- In the present scenario, when things are really jumbled up, where people are mostly inclined towards the online contracts, we find electronic contracts to have an upper hand in terms of forming employment contracts which binds the employees or potential employees and the management or employer of the company based on terms and conditions to reach at a proper conclusion and ease out conducts both in the employer and employee’s part.

Conclusion

With the world experiencing a large scale technological advancement and India making a full-fledged contribution in taking this driving force ahead, electronic contracts have erased all geographical or territorial limits.

From the fact that administering the various aspects of electronic contract and governing them in terms with the India standards and India Legal System, like if we talk about Sec 85A, 85B, 88A, 85C, and 90A of the Indian Evidence Act which deals with electronic records of evidence. This confirms the validity of electronic contracts and its growing demands at the onset of the transformation of the world into a digitally and electronically connected web.

Precedents of the Supreme Court also establishes the stance of electronic contract in the Indian society like if we take into consideration “*Trimex International FZE v.*

³ Available at: <https://indiankanoon.org/doc/115941294/> Last visited: 23 July 2021

*Vedanta Aluminum Ltd, India, 2010*⁴, where the plaintiff and defendant entered into a legally binding contract via email. But later when dispute arose between the parties of the contract the defendant refused to comply with the T&Cs and was not convinced to involve into a judicial proceeding as they were of the opinion that the fact being they entered into the contract through email, and not following any conventional or traditional contracting process, there was no accomplished contract between them. Here the Supreme Court in its verdict made it clear that the contract decided upon, over email is valid and thus enforceable taking into consideration that it followed all essentials required to give shape a contract.

The judiciary getting involved in instances of electronic contract in order to govern the conducts under it makes it crystal clear that India as a global leader is emerging at a speed at par with any world leader in terms of carrying out operations and transactions electronically.



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⁴ 2010 (2) AWC 1170 (SC), JT 2010 (1) SC 474, (2010) 1 MLJ 1322 (SC), 2010 (1) SCALE 574, (2010) 3 SCC 1, 2010 (2) UJ 655 (SC)