

An Analytical Study on Remedies Available for Breach of E-Contracts in India

Prem M. Soni, Dr. F. W. Niranjane

1Research Scholar, Sardar Patel Mahavidyalaya, Chandrapur

2Associate Professor in Faculty of Commerce Janata Mahavidyalaya, Chandrapur

Abstract

The recent growth of information technology changes the living standard of people. e-commerce has made significant progress and numerous issues are fathomed through the utilize of e-commerce. Thanks to e-commerce, communication has expanded beyond geographical limits, enabling faster and wider transmission of information than ever before. E-commerce involves commercial transactions through electronic means and encompasses the buying and selling of data, goods, and services through computer-based communication networks. However, e-commerce is a comprehensive concept that encompasses not only electronic data exchange but also other communication forms like e-mail and electronic notice boards. Nowadays many people use the e-commerce for communication, information sharing, entertainment but the most common use is buying over the e platform. Most of the people uses the e commerce platform for buying many things and for that they enter into contract with the seller over the e platform here the e-contract emerges.

The utilization of e-contracts is rapidly increasing due to the continual growth of e-business. E-contracts helps e-consumer and e-seller in drafting and negotiating successful contract. E-contract is a contract made executed and negotiated through the electronic means. Contract law in India give legal recognition to the general rules of contract. But the concept of electronic contracts is still unclear and faces many challenges. As the Indian Contract Act, 1872 doesn't explicitly outline the rights and responsibilities that will be enforced by the law; however, it does indicate the principles that limit the parties' ability to establish their own rights and obligations. This study critically examines the law governing e-contracts in India and remedies available in case of breach of e-contracts in India.

Key Words: e-contracts, e-commerce, Consumers, e-Transactions, Communication, Legal issues

Introduction

The recent development of e-commerce changes the way of doing business it provides a new platform to the traditional business which is unrestricted by the geographical limits or there is no need for physical presence in the same location. In the recent years number of internet users increasing and it is integral part of everyday activities of the users. With the rise of electronic commerce number of electronic contracts are increasing rapidly and most of the time we are not even aware that we have made a contract in e-commerce. E-contract are not in paper form but in electronic form. An online contract is one that is formed, outlined, executed, and deployed by a programme system. An online contract is conceptually very similar to a traditional (paper-based) commercial contract. Electronic contracts helps in drafting, designing, formulating and implementing the policies with the e-sellers. It also contains the agreement for sale of goods and services for both parties.

In India, The Indian Contract Act, 1872 governs the formation and fulfilment of contracts. which outlines the consequences for violating contractual obligations and supervises the implementation of contract conditions. Parties may enter into a contract on whatever terms they desire as long as it is within the Act's parameters. The Indian Contract Act comprises of restrictive provisions that govern the execution, enforcement of violation, and formation of contracts. It only offers a system of laws and guidelines that control the creation and execution of contracts. The contracting parties individually determine the rights, obligations, and conditions of the agreement. In the event of non-performance, the court takes action to enforce the agreement. Since legally binding electronic contracts form the basis of electronic commerce and special care must be taken in their formation before a transaction is concluded and settled. The parties' complete power to decide on the conditions is maintained. When all legal conditions are met, electronic contracts create a plethora of business prospects. Entering into many e-contracts has become vital as a result of commercial organisations using the Internet as a means to extend and grow company activities.

Objectives of the Study:

- 1) To study the electronic contracts and essential elements of it.
- 2) To study the various kinds of e-contracts and available remedies in case of breach of electronics contracts in India.
- 3) To examine and analysis the provision of law governing breach of e-contracts in India.

Hypothesis: The present law governing e-contracts in India are falling short in case of breach of e-contracts in India.

Comparing Essentials of E-Contract with the Provisions of the Indian Contract ACT, 1872.

The essential elements of e-contracts are as follows.

i) **Proposal:** An offer is one of the most crucial components of an e- contract, just like it is in paper-based or traditional contracts. The foundation of contract is based on valid offer or proposal made by one party, referred to as the offeror. The customer submits an offer to buy products and services by perusing and selecting them from the seller's website in response to the seller's request to make an offer. Before it is accepted, an offer can be revoked at any time and revocable for any reason.

ii) **Acceptance:** A proposal or offer turns into a promise when it is accepted by the intended recipient. The proposal must be accepted in its entirety and without conditions, and it must be informed to the offeror or proposer. When it comes to online contracts, offers and acceptances can be sent via email or by submitting the necessary form that is available on the web address. o accesses the services offered, they may need to also agree to an electronic contract by clicking I Accept or I Agree.

iii) **Intention to established legal relationship:** There is no contract between the parties if they do not have the intention to form a legal relationship. It is essential for parties entering into a contract to have the intention of establishing legal relationships. The court will assess the party's intention on a case-by-case basis, based on the agreement's terms and possible

consequences. Domestic or social agreements do not establish a legal relationship; as a result, they are not contracts and are not subject to legal enforcement.

iv) Free consent: Consent as specified in Section 13 of the Indian Contract Act, 1872 is an essential prerequisite of a contract. Fundamentally it is agreed upon same thing in the same sense. The consent must not be obtained by undue influence, coercion, misrepresentation, fraud, or error. If there is no intention for it to be free. Since in-person meetings are not possible with electronic contracts, agreements are made by simply clicking on the terms and conditions.

v) Capacity of parties: The parties to contract must be able to entering into a contract. The contracting parties must be of sound mind and majority of age. They shall not be prevented from concluding the contract by any law for the time being. an individual who possesses the mental capacity and competence to negotiate a contract is considered to be of sound mind. A person cannot sign a contract after being found insolvent by any court of competent jurisdiction. A contract with minor is also void ab initio.

vi) Lawful object: The object of an agreement shall be lawful and cannot be fraudulent, immoral, or against public policy. Therefore, contracts made on a webpage intended for selling prohibited items online is considered void.

vii) Lawful consideration: Consideration means something in return. As per Indian Contract Act an agreement without consideration is void.

viii) Not expressly declared to be void: E-contracts are legally enforceable similar to traditional contracts, if the essential requirement of valid contract as provided under section 10 of Indian Contract Act, 1872. This indicates that both traditional and E-contracts are subject to the same legal standards in India.

Types of E-Contracts:

a) Click Wrap contracts: By clicking the "Ok," "Allow," or "I agree" "I accept" button, the user indicates their acceptance of the terms and conditions outlined in these agreements. Prior to commencing the use of the program, users are required to accept the terms and conditions of the agreement.

b) Browse Wrap contracts: The users are not required to give their consent to the terms of these contracts. It is stated that using the website will lead to automatic acceptance of the agreement. The terms and conditions of service included in this agreement can be found at the page's bottom.

c) Shrinkwrap contracts: When a end-user opens a shrink-wrapped product to fit a plastic wrapper over it and consents to a printed software agreement, such as a CD-ROM. Because the product cannot be used without removing the wrapper, the terms and conditions of these agreements are legally binding on the user.

Available Remedies for E-Contract breaches in India, as outlined in Indian Contract Act of 1872, are as under.

In the event of a breach of e-contracts, there is no specific remedy available, but the provisions of the Indian Contract Act, 1872 can be applied. The legal rights and obligations that arise from a valid contract can be enforced in the court of law if there is a breach of an e-contract.

The Indian Contract Act, 1872, provides remedies for breach of an electronic contract.

- **Rescission of Contract:** If the one party fails to fulfil their obligations. The other party can revoke the contract and refuse to perform their obligations under a contract
- **Damages:** The party who has suffered a loss due to the breach can claim compensation for the loss or damages caused.
- **Specific Performance:** The court can order the party in breach to perform their obligations as per the contract.
- **Injunction:** The court can issue an injunction to stop a party from doing something they promised not to do.
- **Quantum Meruit:** The party who has completed part performance of their contract can claim reasonable remuneration for the work done by him.

The Indian Contract Act, 1872, sections 73 and 74, which deal with the guidelines for the damages remedy in cases of breach of e-contract. An action for compensation may be brought by the party whose legal rights are infringe by the breach of electronic contract. Measure of damage and degree of damage are the two primary factors to be taken into account in any damages action. Rules for calculating damages are outlined in Sections 73 to 75 and are based on the well-known Hadley vs. Buxendale. The rules established in this case state that compensation for loss resulting from special circumstances can be distinguished from ordinary compensation, which naturally arises due to breach of contract in the normal course of business. Special damages, in addition to the ordinary damages act lists additional types of damages, including liquidated damages, nominal damage, and compensation for mental hurt. In situations where the aggrieved party has not incurred monetary losses due to the breach of electronic contract. The court grants nominal damages as a recognition of the party's rights. However, if the parties knew about the pre-contract expenses, they could be recovered as damages. The predetermined damages that the parties agreed upon when the contract was formed are known as liquidated damages. The sum that will be reimbursed in the event that the contract is broken.

Conclusion: According to the Contract Act, there must be a consensus and two parties must engage in negotiation as a fundamental presumption. The collision of minds with e-contracts involves computer systems that have been specifically programmed. The Information Technology Act incorporates provisions for acknowledgment, attribution, delivery and receipt of e-records. The IT Act has attempted to address the requirements of e-contracts, but there are still unresolved legal issues and significant gaps in the law pertaining to e-contracts that require attention. Once an e-contracts are finalized, parties to contracts are presumed to be legally competent to enter into it. Neither party can later argue that the contract is unenforceable due to lack of competency. To prevent either party from being disadvantaged by a factual error, the law should establish a presumption in Favor of the offeree. Any website offering goods or services needs to have an electronic contract that outlines the important terms and conditions for providing the goods or services. It's crucial to draft this contract carefully to protect the website owner from potential liability. The agreement should clearly specify the exact date and

manner in which the contract is accepted. If disagreement arise or a contract is broken, the website owner's liability would be restricted to the e-contracts.

References:

- 1) Nishith Desai Associates, “E-commerce in India, Legal, Tax and Regulatory Analysis” available at:
http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/E-Commerce_in_India.pdf
- 2) Dr. Jyoti Rattan, “Law Relating to E-commerce: International and National Scenario with Special Reference to India” 1(2) IJSSEI 7 (2015).
- 3) Indian Contract Act, 1872.
- 4) Information Technology Act, 2000.