



APPLICATION AND RELEVANCY OF LAW RELATING TO ONLINE-CONTRACT IN INDIA

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1. INTRODUCTION

Commerce can be defined as exchange of goods and services on a large scale and if such transaction happens via electronic mode i.e through internet they are termed a online-contract. Online-contract does not only mean online exchange of goods and services but other activities including online auctions, internet banking, payment gateways, and online ticketing

The era in which we are living is constantly changing every now and then and due to the fast-moving world even commercial world has seen a drastic shift. From having offline marketing and to moving on to online platform, buying and selling of goods has seen a new dimension wherein buyer and seller do not see each other face to face nor see the goods physically the whole transaction is carried out with the help of online platform. The entire transaction is carried out with the help of online-contract.

Online-contract has made it very easy for customers to see the goods and services sitting at home. The quality, prize and size of the product are made available to the customers by the manufacturers, distributors, suppliers and service providers through catalogue present on the website. The customers can surface the website and find their products after comparing it with their relevant once.

2. INTERNATIONAL EFFORTS ON ONLINE CONTRACT

The United Nations Commission on International Trade Law(UNCITRAL) developed model laws related to electronic Commerce and electronic signature so that Countries should use then in order to favors the harmonization of electronic commerce legislation , UNCITRAL model law on electronic commerce 1996 the UNCITRAL model law on electronic signature 2001 and the United Nations Convention 2005.¹The World Trade Organization has begun to consider Internet

¹“United Nations Convention2005” available at <http://www.iccwbo.org/UN/Conventions> (last visited on March 13,2019).



trade as a global trade issue. In March, 1998, it released the Secretariat study, *Electronic Commerce and the Role of the WTO*. The study was written to provide background information for the WTO members. It notes that WTO members have now only begun to explore how they should deal with questions of electronic commerce. The WTO Ministerial Conference in May, 1998 adopted the *Declaration on Global Electronic Commerce*,² which requested that the General Council establish a work program to examine all trade related issues concerning global electronic commerce and to report to the Third Ministerial Conference in late 1999.³ In 1997, at its *Vancouver Conference*,⁴ the leaders of APEC (Asia-Pacific Economic Cooperation) issued a declaration reiterating the importance of electronic commerce to trade and economic development and their commitment to foster its growth through support of the private sector. The *International Telecommunication Union*⁵ and the *World Intellectual Property Organization*⁶ are concerned with infrastructure and intellectual property aspects of Internet Trade. In USA Nov 1998, the Clinton Administration released the *First Annual Report of the US Government Working Group on Electronic Commerce*.⁷ The report reviews various actions implementing the principles and policies enunciated in the Framework Report. Besides this in USA, Electronic Commerce directly is being regulated by these Acts- The Federal Trade Commission Act, 1914, The Controlling the Assault of Non-Solicited Pornography & Marketing Act, 2003 and The Communications Decency Act 1996. In UK these are the main statutory enactments dealing with Electronic Commerce Financial Service Authority, The Electronic Commerce (EC Directive) Regulation 2002. Australia is being regulated these laws i.e., The Australia Consumer Law and Fair Trading Act, 2012, The Australia Consumer and Competition Act 2010. And in Canada, The Personal Information Protection and Electronic Document Act, 2000 cover many aspects of electronic transaction.

²Declaration on Global Electronic Commerce, (WTO, March 20, 1998) available at <http://www.answersite.com/declaration/global/economic/commerce> (last visited on March 15, 2019).

³“The United States supported this request concerning Trade-Related Electronic Commerce (TREC)” available at <http://www.ustr.gov> (last visited on March 20, 2019).

⁴“APEC Leaders Declaration (Vancouver Conference, November 25, 1997)” available at <http://www.ecommerce.gov.in/Vancouver/conf> (last visited on April 21, 2019).

⁵“Telecommunication in the Era of Global Electronic Commerce, (Speech by Pekka Tarjanne, Secretary-General of the International Telecommunication Union)” available at <http://www.mofa.go.jp> (last visited on March 28, 2019).

⁶“A Conference sponsored by WIPO on electronic commerce and intellectual property will take place in Geneva in September 1999” available at <http://www.answersite.com/geneva/conference> (last visited on April 5, 2019).

⁷“First Annual Report of the U.S. Government Working Group on Electronic Commerce” available at <http://www.doc.gov/ecommerce> (last visited on April 12, 2019).



3. THEORETICAL/CONCEPTUAL APPROACHES TO ONLINE-CONTRACT

Every concept has always has been derived through many theoretical approaches. Online-contract has also derived itself through five different approaches. Which can be further explained as:

I. Transaction Cost Theory

Under the TC theory, transactions have been classified as those that help in getting proper coordination between the buyers and sellers and also support the coordination within the firm. Transaction cost theory possess a typical market hierarchy starting from manufacturer to wholesaler to retailer and ending in the consumer. According to many economists' transaction depends on many factors⁸ such as parties interest in the transaction, and the specifications of the assets listed for buying. This theory also suggests that if transaction cost are high very less or no economic activity will occur. The transactional cost can be classified as follows:-

- Search costs- This costs includes searching for products, sellers, and buyers .⁹
- Contracting costs-This cost includes setting up and carrying out the contract .
- Monitoring costs- This cost includes ensuring that the terms of the contract have been met .
- Adaptation costs– This cost includes the cost incurred in making changes during the life of the contract

II. Marketing

Marketing can be defined as an activity which has been undertaken to promote the buying or selling of a product or service. The basic premise on which the concept of marketing is based on is the fact that consumers have specific needs which can fulfilled by other firms.The concept of marketing revolves around three orientations namely:

- **Customer orientation**

Customer orientation basically implies how the firm determines what its customer wants by analysing their attitude and pattern of conduct.¹⁰

⁸Almeida, G. A. A. et al (2007). Promoting ECommerce in Developing Countries. [www. diplomacy.edu](http://www.diplomacy.edu).

⁹ Bairagi, A. K. (2011). "Utilization of Online-contract can Change the Auction Culture of Bangladesh Specially in Public Sector". IJCIT, Vol. 2(1), pp. 55- 61.

¹⁰Bangladesh Association of Software and Information Services. <http://www.basis.org.bd/>.



- **Product orientation**

Product orientation is based on the belief that consumers choose between different products based on getting the best quality for the price paid and thereafter bestow their patronage on firms.

- **Profit orientation**

Profit orientation is basically the method of pricing based on maximizing profit by creating high demand among the customers.¹¹

III. Diffusion

The next concept can be understood as a process by which an innovation is communicated through certain channels over time among members of a social system. This process clearly believes that a task or transaction needs to be communicated to a set of firms or customers within a market or an industry. The communication channel typically chosen for the present purposes is the electronic platform.

4. CHALLENGES IN ONLINE-CONTRACT

Any new change brought up in the society suffers from many challenges before itself. Therefore, the major challenges that the seller and the buyer face while carrying out e-transactions are:

- I. One of the biggest challenges faced by Online-contract industry is the lack of cooperation from both Private and public corporation in order to grow the business of online-contract. Such joint initiatives usually help in bringing credibility inside people which in turn helps the online-contract industry to flourish¹²
- II. Online-contract business suffers from security issues as most of the people consider it to be a less reliable source. It so happens that at times customer loses their money if the website of ecommerce site is hacked since most of these websites do not have enough cyber security.

¹¹ Bhowmik, R. (2012). "The Present Online-contract Situation In Bangladesh For B2c Online-contract". International Journal of Economic Research, Vol. 3(5), pp.77-91.

¹² Chavan, J. (2013). "Internet Banking- Benefits and Challenges in an Emerging Economy". International Journal of Research in Business Management, Vol. 1(1), pp. 19-26



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- III. The next challenge faced by the online-contract industry is lack of support from the financial institutions as they do not take active role in promoting such industries. However, the merchants in reality need the support of these financial institutions and banks to strengthen and broaden their reach to a greater mass and to prevent any time of financial fraud or loss of any asset due to hacking. But these are even more problematic in places where credit cards are not commonly used.¹³
- IV. The next challenge faced by online-contract industry is namely in developing countries where people believe in traditional approach of buying and selling which is through negotiation with the seller and that is not at all possible in case of online-contract¹⁴.
- V. Yet another challenge faced by the online-contract world is the high cost of internet. Most of the countries do not have cheap internet facilities which acts as a hindrance for these websites as their efforts of trying to keep the internet cost low is never fulfilled due to the high cost incurred in spreading the network and their day-to-day operating expenses¹⁵.
- VI. Trust is the next challenge faced by the online-contract industry. The traditional rules regarding commerce create an uncertainty regarding the validity and legality of such online transactions in the minds of customer. However, in some developed world modern laws that have been implemented have been based on trust, but sadly such is not the case of developing countries¹⁶. As in many developing countries people still do not trust online mode of financial transaction and rely on cash on delivery.

¹³ Clayton, T. et al (2002). *Electronic Commerce and Business Change*.

¹⁴ Embassy of Denmark in Bangladesh: *The Trade Council (2014): ICT and commerce booming in Bangladesh*.

¹⁵ . Hasan, A.H.M., Saidul. et al (2010). "Adoption of Ebanking in Bangladesh: An exploratory study." *African Journal of Business Management*, Vol. 4(13), pp. 2718-2727.

¹⁶ Harris, L. and Spence, L. J. (2002). "The ethics of Banking". *Journal of Electronic Commerce Research*, Vol. 3(2).



5. BENEFITS OF ONLINE-CONTRACT

The main benefit that the online-contract world provides the customers time saving and any easy access to websites from anywhere at any time. The main benefits of ecommerce for customers are as follows:

- Online-contract helps in reducing transaction costs
- Online-contract helps in increasing comfort by allowing the transactions to be made available 24 hours a day, without requiring the physical interaction with the business organization
- Online-contract helps in saving time by allowing the customer to buy or sell any product at any time with the help of internet.
- Online-contract provides quick and continuous access to information for its customers by checking it through various websites made available at the click of a button.
- Online-contract provides convenience to its customers as all the purchases and sales can be performed from the comfort sitting at home or working place or from the place a customer wants to.
- Online-contract provides customers to switch to other companies if the service of a company is not satisfactory.
- Online-contract helps customers to buy a product which is not easily available in the local or national market thereby giving customers a wider range of access to product than before.

6. PRESENT SCENARIO OF ONLINE-CONTRACT IN INDIA:

Online-contract business in India is still growing and further strengthening itself in India. The online-contract business had started its operations in India in the late late nineties among business-to-business users (B2B). Whereas it had entered the Business to Consumers (B2C) user base in the year 1996 in the form of matrimonial portals. However, it could not grow rapidly at that time due to the high cost and low speed of internet at that point of time. The first Online-



contract website in India was rediff.com, which was one of the most marketed portals for both Indians and non – residents Indians. Over the last decade India has seen a rise in the number of companies that have actively incorporated online-contract technologies and the internet in India.¹⁷ Major Indian portal sites have also shifted towards online-contract instead of depending on advertisement revenues. Today Online-contract has become an integral part of the Indian society by tons of new emerging websites providing any number of goods and services for their potential customers. These websites provide almost all categories of goods and services on a single site itself.

7. LEGAL MECHANISM FOR ONLINE-CONTRACT IN INDIA:

(A) Constitution of India

Our Constitution contains many provisions regarding freedom of trade and Commerce either expressly or impliedly under Article 19(1)(g) which provide guarantees to every citizen, inter-alia the freedom of trade and business and this right can be reasonably restricted by law in the Interest of general Public Act 301 of the Constitution ensures freedom of Inter-State trade and Commerce (Online-contract also include) through the restriction laid down under article 304 and 305. Article 302 empowers the Parliament impose restriction on the power provided under Article 301.¹⁸

(B) Indian Contract Act, 1872

Contracts law in India are governed by the provisions of the Indian Contract Act 1872¹⁹ However the Act only provides a set of rules and regulation, which govern, formation and performance of Contract, Including possible Consequences of its breach. The rights and duties of parties in relation to object to be achieved through Contract and terms of agreements are decided by the Contracting parties themselves²⁰. But there is no specific/patent provision relating to Electronic Commerce in India.

(C) The Electronic Commerce Support Act, 1998

The Electronic Commerce Support Act, 1998 was passed by the Parliament to manage the issue of electronic commerce. The Act depends on the suggestion of the Council of experts, that future

¹⁷ . Laudon, K. C., and Laudon, J. P. (2013). Management Information Systems: Managing the Digital Firm. Twelve Edition. Pearson. Delhi.

¹⁸ *Supra* note 23.

¹⁹ Act No. 9 of 1872.

²⁰ *Supra* note 4.



Contracts would to greet extent be founded on the web and electric type of Correspondence and acknowledgement because of Its smoothness and speed.²¹

(D) Information Technology Act, 2000

Information Technology Act 2000²², provides legal recognition to electronic records as well as to electronics signature²³. Those are the foremost steps to facilitative paperless trading under this Act Ministry of Electronic and Information technology also has information Technology Act 2000, for reasonable, sedulity practice and procedure

(E) Information Technology (Amendment) Act, 2008

One of the objectives of the Information Technology Act²⁴ was to legalize Online-contract²⁵. This objective is reiterated in the objectives of the IT (Amendment) Act, 2008. Suprisingly, there was no express provision in the original IT Act 2000, to validate the contracts executed electronically²⁶. This lapse was in spite of the fact that there was an express provision to this effect in the UNCITRAL model law on Electronic Commerce 1996²⁷. Which forms the basis of the IT Act as claimed in its statement of objections and reasons. Section 10A was inserted by the 2008 Amendment to the IT. Act which provides that where in a contract formation, the communication of proposals and acceptance thereof, the revocation of proposals and acceptance as the case may be expressed in electronic forms or by means of an online-contract such contract shall not be deemed to be unenforceable solely on the ground that such electronic forms or means was used for that purpose. The effect of this provision is that now electronic contracts are legally valid contract in our country .²⁸

(F) The Electronic Commerce Policy 2018:

The retail sector in India is one of the most regulated sectors and due to the Involvement of a huge populations, It is also politically and socially sensitive. The Government has often sought

²¹“Electronic Commerce Support Act 1998”, available at www.ecommerce.gov.in (last visited April 17, 2019).

²² Act No 21 of 2000.

²³ Preamble of the Information Techonology Act,2000.

²⁴ As Amended by Information Technology Bill 2006 passed in Lok Sabha on Dec.22nd and in Rajya Sabha on Dec 23rd of 2008.

²⁵ Information Technology Act,2000.

²⁶ Amir Farooq & M . Tariq Bandy, *Emerging Issue of Online-contract*374(Commonwealth Publisher, New Delhi, 2010).

²⁷“UNCITRAL Model LAW on Electronic Commerce,(1996 as amended 1998)” at <http://www.un.or.at/uncitral/en-index.htm>. (last visited on April 19,2019).

²⁸ Kunal Singh, “Click Wrap Agreements in India Contract Law,” available at <http://lex-warrier.in/> (last visited on April 21, 2019).



and tried to make policies which tent to restrict retail trade by foreign Companies²⁹ The Online-contract policy of 2018 introduced by DIPP (Department of Industrial Policy and Prosnton) under the Ministry of Commerce is one such policy which governs foreign direct Investments (FDI) In Online-contract sector and thereby restrains online retails giants like Amazan, Walmart owned flipkart etc and forces them to revamp their trade practices. There are speculations that due to this policy, business In India will no longer be viable for these retailers ³⁰

(G) Others Statutory Enactments Which Regulating Online-Contract:

There are many other legislations which expressly and impliedly deal with contract and Online-contract. These are: Indian Penal Code, 1860³¹, Indian Evidence Act, 1872³², Code of Civil Procedure, 1908.³³ . The Sales of Goods Act, 1930³⁴, The Insurance Act, 1938³⁵, The Industrial Dispute Act, 1947³⁶, The Copy Right Act, 1957³⁷, Income Tax Act, 1961³⁸, Code of Criminal Procedure, 1974³⁹, Consumer Protection Act, 1986⁴⁰, Foreign Exchange Management Act, 1999⁴¹, Consumer Protection (Amendment) Act, 2002⁴², Competition Act, 2002⁴³, Copy Right Amendment Act, 2012

8. CONCLUSIONS

With the increase in demand of electronic transaction and its every day increasing popularity the online-contract industry is climbing the stairs of success and will continue to in the upcoming years as well. The sudden revolution created by online-contract has primarily changed the traditional business of busying and sellers and has also broken many boundaries. It has changed life of people and has made commerce very easy. While giving benefit to customer and seller,

²⁹"New Electronic Commerce Policy" available at <http://www..mondaq.com/commerce/policy/2018> (last visited on April 21, 2019)

³⁰"Electronic Commerce and New Industrial Revolution" available at <http://www.ibef.org/industry> (last visited on April 22, 2019)

³¹Act No.45 of 1860.

³²Act No. 9 of 1872.

³³Act No.5 of 1908.

³⁴Act No.3 of 1930.

³⁵Act No.4 of 1938.

³⁶Act No.14 of 1947.

³⁷Act No.14 of 1957.

³⁸Act No.43 of 1961.

³⁹Act No.2 of 1974.

⁴⁰Act No.68 of 1986.

⁴¹Act No.42 of 1999.

⁴²Act No.62 of 2002.

⁴³Act No.12 of 2002.



online-contract is giving challenges to traditional business for competitive position. The main obstacle is faced by developing countries as people still do not trust online mode of financial transaction and rely on cash on delivery. The next challenge faced by the online-contract industry is lack of support from the financial institutions as they do not take active role in promoting such industries. However, the merchants in reality need the support of these financial institutions and banks to strengthen and broaden their reach to a greater mass and to prevent any time of financial fraud or loss of any asset due to hacking. But these are even more problematic in places where credit cards are not commonly used Yet another challenge faced by the online-contract world is the high cost of internet. Most of the countries do not have cheap internet facilities which acts as a hindrance for these websites as their efforts of trying to keep the internet cost low is never fulfilled due to the high cost incurred in spreading the network and their day-to-day operating expenses.