

JUSTIFICATION OF E-CONTRACTS WITH SPECIAL REFERENCE TO AUTHENTICATION OF ITS DOCUMENTS UNDER INDIAN LAWS: A LEGAL CHALLENGE



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Abstract:-

The world economy is in great change, with uncertainty being only constant across borders, industries and markets. The imperative for business and all over the globe and in India in particular is to understand the nature of this change and leverage it effectively to achieve corporate goals of its driving the next wave of economy growth. To take advantage of that growth, we will have to not only apply new technology but also new thinking and information technology allows and encourages the conduct of many aspects of commercial activity by electronic means, at least in part. The forms of agreement and other contractual documents are likely to be created using computer and may be transmitted in electronic form anywhere in world. From the legal perspective, one of the most significant issues in electronic commerce is how to create enforceable digital contracts for the sale of goods and services or to ensure that a digital transaction will be at least enforceable and valid as traditional contracts. So the need of the hour is to know about the order technologies used to make contracts unlike traditional contracts and its authentication of documents and to prove before the court of law. The modern contracts are formed through intermediaries, the definition of intermediary is intended to cover both professional and non-professional intermediary (other than the originator and addressee) who may perform any of the functions of an intermediary.

Keywords:-

Contracts ,authentication ,legal Challenge

I. INTRODUCTION

The information technology furnishes as apt example of what has been stated above. The main application of such technology in regard to information consists in its use for the recording, storage and dissemination of data. The electronic recording of information creates legal controversies, when the attempt is made to steal such information. On the other side information technology gives rise to a variety of legal problems which are not themselves novel, in their essential character, but they deserve special treatment.

The unprecedented growth of information and communication technologies has produced several far reaching implications on the formation of e-contracts. The communication of offer and acceptance is a complex phenomenon in the e-contracts, as compared to the traditional contracts. All emails, hard copy of documents scanned with the help of computer and transmitted electronically or any other type of e-records downloaded from the internet or website by the authorised user will qualify to be electronically disseminated documents. In this regard, fax machines, copier machines, computer mainframes or laptops and mobile phones would be vital importance in electronic transaction.

II. OBJECTIVE:

The present paper analysis how e-contracts are formed and authenticity of its documents is considered by the courts in India. Normally in traditional contracts documents are part and parcel of it which are attested by witness, but considering formation of e-contracts there has been some uncertainty with regard to documents because there may be chances of being altered before producing in courts.

III. METHODOLOGY:

The present paper has been prepared by using secondary data collected from websites, journals, newspapers, reporters. It is descriptive method it gives scope to study the whole formation of e-contracts and how its documents can be judged to determine the rights of parties.

IV. INSTANTANEOUS MODE OF COMMUNICATION:

The electronic communication is difficult to ascertain because of techniques, for the operation of many existing rules of law it is important to ascertain the time and place of dispatch and receipt of information. In addition, the location of certain communication system (e.g. laptops where message may be downloaded and viewed) may change without either of parties being aware of change. Therefore, the Act reflects fact that location of information systems is irrelevant and sets forth more of objective criterion, namely place of business of parties.

V. CONCEPT OF ATTRIBUTION:

Very often data messages are generated automatically by computers without direct human intervention. The computers are programmed by the person (originator) which is covered by the Act through incorporation of concept of "attribution" of electronic records. In the electronic world an unauthorised person may send message but the authentication by code, encryption of the like would be accurate. The provision therefore deals with attribution of data message by establishing presumption that under certain circumstances data message would be considered as a message of originator and goes on to qualify that presumption in case addressee knew or ought to have known that data message was not that of originator.

VI. ACKNOWLEDGEMENT OR RECEIPT OF DATA MESSAGE:

In electronic contracts, technology permits use of functional acknowledgement which would parallel the system as "Registered Post Acknowledgement Due" (RPAD) in the conventional post system. The IT Act does not impose the use of any such procedure however taking into account the commercial value of system of acknowledgement of receipt and widespread use of such systems in the context of electronic commerce, the act address the legal issues arising from the use of acknowledgment procedures.

VII. AUTHENTICATION OF E-DOCUMENTS:

It is pertinent to make at this juncture that in the physical environment, evidence recorded or stored by availing the electronic gadgets were given by the secondary evidentiary status. For instances: voice recorded with the help of a tape recorder. The emergency of information and communication technology witnessed the sea change by elevating status of evidence recorded, generated or stored electronically from the secondary to primary evidence status. As regard presumption of e-agreements section 85A has been inserted to the Indian Evidence Act, 1872 which read as "the court shall presume that every electronic

record purporting to be an agreement containing the digital signature of the parties was so concluded by affixing the digital signature of the parties.”

FURTHER THE SECTION 3 INCLUDES:

a) All statements which the court permits or requires to be made before it by witness, in relation to matters of fact under enquiry; such statement are called oral evidence;
b) All documents including electronic records produced for the inspection of the court.
Such documents are called documentary evidence, the word ‘evidence’ means instruments by which relevant facts are brought by the court viz., witness and documents by means of which the court is convinced of these facts. The contents of electronic records may be proved in accordance with provision and it prescribes the mode for proof of contents of electronic records. A computer output is deemed document for purposes of proof and sub-section (1) that any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by computer output shall be deemed to be a document.

VIII. EVIDENTIAL STATUS OF ELECTRONIC DOCUMENTS IN COURTS:

A court of law will only allow evidence to be placed before it if it is admissible in accordance with what generally can be put as evidence. A general exclusion on copies of original documents is no longer fitting. Indeed, in some cases a documents may be unintelligible in its original form without its being converted and displayed on screen or printed out for example in the case of a document stored digitally on magnetic disk. However, the original must be produced if it is available this rule would apply where original has been destroyed.

The validation and verification of electronic information is considerably significant subject for judicial and legal system. It is called by many names such as digital rights management, digital signature, secure computing and others. It is suffice to say in courts need to know if the document is complete and has not changed. Businesspeople and consumers should know that legal validity, court admissibility, and enforceability are not the same thing. Each concept has a distinct definition, set of requirements, and, most importantly, contribution to the outcome of a legal dispute. Certain criteria must be met in order for an e-signature to be admissible in court. Any person who hopes to present an electronically signed contract in front of a judge needs to be able to prove the intent of the signatory and the security of the signed document. If the document could have been tampered with or altered in any way after it was signed, there is a high likelihood that a judge will refuse to allow it to be admitted in court. Specifically, an e-signed document may be legally valid but ruled inadmissible in court due to weaknesses in security, audit logs, or authentication. This is why it is critical that businesses select an e-signature solution that is highly reputable and meets the highest standards of technical integrity. Lastly, the enforceability of a contract depends not only on its validity and admissibility, but also the contents of the agreement itself. In a dispute, a judge may examine whether: the terms of a particular agreement were clear and consistent, there was consideration (an exchange of value between parties), the parties had legal capacity (ability) to sign, whether a party was under duress or undue influence, and whether a party signed by mistake or without knowledge of the agreement’s meaning. Most businesses have an attorney draft or review their agreements prior to execution with these criteria in mind, in order to maximize enforceability in the future should the contents of the document face scrutiny in court.

IX. CONCLUSION:

As the above study reveals that e-contracts is the need of the day due to significance of this emerged technology lot of international initiatives have been launched and legislators around the world struggle to find best regulatory scheme to regulate e-contracts were time and money would be saved to follow legal formalities. But there is complex issues are involved such as digital signature which too takes time and on the other hand Judges in India to be trained to handle such complex contract as it needs the good knowledge of technology.

The e-contracts takes place without the physical existence of contracting parties there may be chance of hacking, cheating and fraud. The e-contracts may be local or international there is nothing to prevent it. One of the toughest challenges for businesses that are trying to conduct transactions electronically is to know how far they should go when vetting and authenticating signatories. For many companies, the ultimate goal is to create a contract that is legally valid and admissible in court without establishing a process that is cumbersome to the people whose signatures are needed to complete the transactions.

Striking this balance can be difficult, which is why many companies select a trusted e-signature software platform when conducting important business matters online. By using established technology, businesses can rest assured that contracts are legally valid and admissible.

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ACTS REFERRED:

- 1.Indian Evidence Act.
- 2.Information Technology Act.

SITES VISITED:

- 1.www.ElectronicSignature.com