NOTES ON ELECTRONIC CONTRACTS

(E-CONTRACTS)

Traditionally, contracts were paper based, but with the introduction of internet, businesses are departing from the notion of traditional paper based contracts and are going online. Those shift from paper based contracts to online contracts has led to the emergence of new species of contract i.e. “electronic contracts”. It means a contract formed electronically. An E-Contract is a contract modelled, executed and enacted by a software system. Computer programs are used to automate business processes that govern E-Contracts.

Benefits of E-Contracts

- Electronic contracts enables the speediest mode of communication between parties
- Since they move so quickly, they can be reviewed and approved faster.
- For dealers, e-contracts facilitates faster funding and the dealer can spend on other necessities, such as staffing and marketing.
- E. Contracts will be comparatively free from mistakes since everything is verified.
- Saves the time of dealers.

E-Contract- Law

- Indian Contract Act 1872,
- Information Technology Act 2000

Contracts Prohibited On line

In India, the Information Technology Act 2000 is not applicable to 1) Negotiable instruments (other than a cheque), 2) power-of-attorney, 3) trusts, 4) wills, 5) contracts for the sale or conveyance of immovable property or any interest in such property. So such on line contracts are also prohibited.
1) **Negotiable Instruments**

According to Section 13 of the Negotiable Instruments Act 1881, a "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

- **Promissory note**
  
  A promissory note is an instrument in writing containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. In a promissory note only two parties are involved, the maker of the note and the payee, or the party to whom the note is payable. With a promissory note, the maker promises to pay a certain amount to the payee. Since the IT Act is not applicable to promissory note, nobody can give a valid promissory note through an electronic document.

- **Bill of exchange**
  
  A "bill of exchange" is an instrument in writing, containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. In a bill of exchange, three parties are involved. The party who drafts the bill of exchange is known as the drawer. The party who is called on to make payment is known as the drawee, and the party to whom payment is to be made is known as the payee. Since the IT Act is not applicable to bill of exchange, a bill of exchange cannot be created in electronic form.

- **Cheque**

  According to section 6 of the Negotiable Instruments Act, as amended by the Negotiable Instruments (Amendments and Miscellaneous Provisions) Act, 2002, "cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of truncated cheque and a cheque in the electronic form."

  - **Electronic Cheque** is a cheque in electronic form (as against the usual paper instrument in writing). A cheque in electronic form is defined in Explanation 1 (a) of section 6 of the Negotiable Instruments Act as follows:

    "A cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum...
safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system."

- **Truncated Cheques**
  Cheques are truncated for the purpose of avoiding the physical movement of the paper instruments and instead transmitting the electronic image of the truncated instruments thereby ensuring faster clearing of the instruments and reduction in the cost of processing. In truncation of cheques, cheques will be scanned and the electronic image, instead of the physical cheque, will be transmitted in the clearing. The Information Technology Act is applicable to truncated cheques. The bankers can transmit the electronic image of the truncated cheques instead of sending paper cheques for processing.

Electronic cheques and truncated cheques are permitted for online transactions.

2) **Power-of-Attorney**
According to the definition given in section 1A of the Powers-of-Attorney Act, 1882, "power-of-attorney" include any instrument empowering a specified person to act for and in the name of the person executing it. Since the IT Act is not applicable to power-of-attorney, nobody can give a valid power of attorney through electronic communication or document.

3) **Trust**
A Trust is a legal entity that can hold title to property for the benefit of one or more other persons or entities. As per the definition given in section 3 of the The Indian Trusts Act, 1882, a "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. The person who reposes or declares the confidence is called the "author of the trust". The person who accepts the confidence is called the "trustee" and the person for whose benefit the confidence is accepted is called the "beneficiary". The subject-matter of the trust is called "trust-property" or "trust-money.

A trust cannot be created through an electronic document since it falls outside the purview of the Information Technology Act.
4) **Wills**

Will or a Testament is a document made by person whereby he disposes of his property, but such disposal comes into effect only after the death of the testator. According to section 2 (h) of the Indian Succession Act 1925 "will" is the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. A Will ensures that the testator’s wishes with respect to his assets and property are followed after his death. Since the IT Act is not applicable to wills, nobody can create a valid will through electronic document or communication.

**Transfer of immovable property**

Transfer of immovable property cannot be done through electronic communications. Transfer of any interest in such property like mortgage or lease also cannot be done through electronic documents. Contracts for the sale or conveyance of immovable property or any interest in such property is expressly excluded from the purview of the Act. However, contracts for goods and services involving movable property may be entered into through an online contract. Contracts for sale and purchase of electronic materials like software, music, images, voice, text etc can also be done online.

**Enforceable Contracts on line**

- An online contract can be enforceable if its terms can be proven and it is not for an illegal purpose.
- The law relating to paper contracts substantially applies to online contracts.
- In order to enforce an on line contract one must first prove the existence of the contract.
- In the absence of a formal written contract, there can be a dispute as to the existence of an agreement or the exact terms of agreement. So the terms of the contract must be specific and clear.
- An agreement should state each party’s obligations, what payments must be made and when, and the precise details of the work that will be done or goods to be sold and when.
- Copy of the contract may be stored electronically or in paper form.
Types of Online Contracts

Online contracts may be in the form of EDI Contracts, Access contracts, click–wrap contracts “browse-wrap” contracts and shrink wrap contracts.

Electronic Data Interchange (EDI)Contracts

It is a viable means of expediting and facilitating binding contractual relationships between commercial parties. It refers to the process of electronic paperless contracting by the exchange and conduct of routine business transactions in a computer-processable electronic format.

Eg. purchase orders, acknowledgments, pricing schedules, order status inquiries, shipping, receiving, scheduling, confirmation, invoices and payments.

If the parties intend EDI transactions to be enforceable as contracts, the transactions must contain all the information traditionally necessary to form a paper contract.

Access Contracts

Access contracts are contracts enforced by Internet Service Providers on subscribers for providing facility of internet access.

Access contracts are also referred as content and interactive service contracts.

Such contracts facilitate electronic access to information from the computer system of another person or agency.

Access contracts are visible on the websites in the form of a link or an icon and provide legal clause pertaining to notice, disclaimers, warranties, eligibility conditions and registration.

Click Wrap Contracts

Click Wrap Contracts are often used in connection with software licenses.

- In a click wrap agreement a person can click on a statement either “I agree” or “I accept” or “Submit” in order to enter into a legal relationship.
They are basically a process whereby a person must take an affirmative step to agree to a set of terms and conditions on which information may be used or good or services may be sold.

The terms and conditions in a click-wrap agreement should be disclosed to a potential customer before a transaction is completed.

The terms and conditions in a click-wrap agreement must be clear, easy to read and easily to view.

Some websites include terms and conditions in the transaction process and require customers to click on a “next page” or “next” button to complete a transaction.

**Browse-Wrap Contracts**

Websites offer information to users. They claim that merely by using the Web site, the user is agreeing to the terms and conditions of the license agreement.

The license agreement spells out the permitted and restricted uses by visitors.

The license may restrict the user from distributing, copying or preparing derivative works from a posted material in the website.

**Shrink Wrap Contracts**

When we open the wrapper of the product certain terms and conditions are included. Shrink wrap contracts are contracts packaged with products; usage of the product is deemed as acceptance of the contract.

**Essentials of valid e-contracts**

All the requirements of a valid contract are essential for a valid electronic contract also. Otherwise, the e-contract becomes unenforceable before a court of law. The only difference is in the form of communication – one is on paper and the other is through electronic records.

**The Requirements of a Valid Contract**

In order to form a valid, binding contract, there must be
• two or more parties to the contract,
• parties must agree with each other (consensus ad idem)
• there should be an offer and acceptance
• Communication of acceptance
• there has to be a consideration.
• the parties must intend to create a legal relationship

Section 10 of the Indian Contract Act 1872

All agreements are contracts if they are made by the free consent of parties, competent of contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.

Agreement

• Every promise and every set of promises, forming the consideration for each other, is an agreement.
• To constitute an agreement two parties are necessary viz the offeror and acceptor.
• There must be a promise and acceptance supported by valid consideration.

Free Consent of Parties

• Free Consent is one of the essential ingredient required for a contract to be valid in the eye of law. It must be made with a free mind.
• Two or more persons are said to consent when they agree upon the same thing in the same sense.
• There must be consensus ad idem or meeting of minds
• Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation and mistake.
• If the contract is not made with the free consent of parties it is not a valid contract.

Competency of Parties

The parties must also be capable in the eye of law to enter into a contract.

Every person is competent to contract who is of the age of majority and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. Minors are generally unable to be bound by an agreement. So before entering into any formal agreement, business agencies should ensure that the customer is not a minor as they are able to escape from liability under many contracts.

Lawful Consideration

There must be consideration to make a contract valid. 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. A contract without consideration is a nullity.

Lawful Object

The purpose of the contract must be to do something lawful. There must not be an intention to do an illegal act. The object must be capable of lawful achievement. Unlawful agreements are void.

Void Agreements

• There are some agreements which are expressly declared by law as void.

• Accordingly the following are void agreements.

• agreement in restraint of marriage,

• agreement in restraint of trade,

• agreement in restraint of legal proceedings
• agreements which are uncertain and
• agreements by way of wager

**Electronic Contracts**

• In the case of ordinary contracts two parties are necessary *viz* the offeror and acceptor.
• In the case of online contracts, instead of offeror and acceptor the terms originator and addressee are used.
• In the transmission of electronic records three parties are involved *viz*, the originator, intermediary and addressee. This has become necessary because e-contracts are executed between computers linked to a network.

**Originator**

As per section 2 (za) of the ITAct

"originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary.

**Intermediary**

According to S.2(w) of ITAct,

“intermediary”, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.

**Addressee**

As per the definition given in S.2(b) of IT Act, “addressee” means a person who is intended by the originator to receive the electronic record but does not include any intermediary.
For an electronic message, the sender of electronic message is the originator,

the recipient of the message is the addressee.

The function of an intermediary is that of a facilitator through whom the electronic message passes from the originator to the addressee.

**Attribution of Electronic Records**

Section 11 of the Information Technology Act attributes electronic records to the originator

(a) if it was sent by the originator himself

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

**Acknowledgment of Receipt of Electronic Record**

The electronic record sent by the originator should be duly acknowledged by the addressee. Section 12 of the Information Technology Act makes it clear that where the originator has not stipulated that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by

(a) any communication by the addressee, automated or otherwise or

(b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

**Binding e-Contract**

Where the originator has stipulated that the electronic record is binding only on receipt of an acknowledgment of such electronic record by him,

then unless acknowledgment has been so received, the electronic record is deemed to have been never sent by the originator.
• If the originator has not stipulated on such acknowledgment, and if no acknowledgment is received within a reasonable time he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

Communication of offer

An offer (proposal) when accepted the result well be a contract.

• The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

• The communication of an acceptance is complete, as against the proposer, when it is put in a course of transmission to him and

• as against the acceptor, when it comes to the, knowledge, of the proposer.

Time of Despatch

E-mails provide speedy communication of electronic records. Section 13 (1) of the Information Technology Act provides that

• the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

• The computer resource outside the control of the addressee may be that of an addressee or an intermediary.

Receipt of Electronic Record

• The originator and the addressee can have a mutual understanding through agreement regarding the time and place of receipt of electronic record.

• If there is no such agreement as per section 13(2) of the Act the time of receipt of an electronic record is determined as follows.

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records
(i) receipt occurs at the time when the electronic, record enters the designated computer resource or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

Place of Contract

Information Technology Act, 2000 in Section 13(3) provides that

- Save as otherwise agreed to between the originator and the addressee,
- an electronic record is deemed to be dispatched at the place where the originator has his place of business,
- and is deemed to be received at the place where the addressee has his place of business."
- If the originator or the addressee has more than one place of business, the principal place of business, is treated as the place of business. If they do not have a place of business, his usual place of residence is deemed to be the place of business. Usual place of residence, in relation to a body corporate, means the place where it is registered.

In *P.R. Transport Agency v Union Of India* (AIR 2006 All 23), the question arose whether the Allahabad High Court has territorial jurisdiction to entertain a writ petition relating to a contract through e-mail. The Court held that since the communication of the acceptance of the tender was received by the petitioner by e-mail at Chandauli (U.P.), where the petitioner has his place of business the contract from which this dispute arose was completed at Chandauli and hence the Allahabad High Court has jurisdiction to entertain the petition.

E-Auction and Acceptance through e-Mail-
In *P.R. Transport Agency v Union of India* (AIR 2006 All 23), the case of the petitioner was that respondents held an e-auction for certain coal in different lots. The petitioner submitted its tender or bid in the said auction and the petitioner's bid was accepted. The acceptance letter was issued by e-mail at the petitioner's e-mail address. Acting upon the said acceptance, the petitioner deposited the full amount through cheque and The cheque was accepted and encashed by respondent. Subsequently, instead of delivering the coal to the petitioner, respondent sent an e-mail to the petitioner saying that the sale as well as the e-auction in favour of the petitioner stands cancelled "due to some technical and unavoidable reasons". This communication has been challenged in a writ petition filed before the Allahabad High Court. The Court held that the respondents were bound by their concluded contract and they were also bound by the principle of promissory estoppel, in as much as the petitioner acting upon the communication of acceptance sent to it by these respondents, by depositing large amount of money by cheque which has also been encashed by the respondents.

**Authentication of e-contracts**

Section 3 of the Information Technology Act empowers the subscriber to authenticate an electronic record by affixing his digital signature. Once, the digital signature is attached on an electronic document, the sender cannot repudiate the fact that it was sent by him. A digital signature makes the electronic document more authentic and secured. But most of the dealers and customers who visit e-commerce websites do not have digital signatures to authenticate and secure their electronic contracts.

**Problems Relating to E-Contracts**

1) Since e-contracts contain personal information of parties to the contract they give chances of hacking and misuse of data for online Identity Theft, Phishing and online banking frauds.

**Hacking**

A hacker is an unauthorized user who attempts to or gains access to an information system. There are three categories of hackers- White Hat Hackers, Black Hat Hackers and Grey Hat Hackers. White hat hackers use their hacking skills for good reasons and do no harm to the computer system. But the Black hat hackers gain unauthorized access to a computer system.
for private gain, profit, political motivations, money or other malicious intention. They cause damage to the system and data and misuses data for personal gains. A grey hack hacker is a skilled hacker who sometimes acts legally, sometimes in good will and sometimes not.

In India, the Information Technology Act 2000 provides that

**Information Technology Act. S.43 & 66**

In India, the Information Technology Act 2000 section 43 prohibits a wide range of illegal activities like hacking, computer trespass, violation of privacy, unauthorised digital copying, downloading and extraction of data, theft of data held or stored in any media, disruption, denial of service attacks, spamming, virus attacks etc. Compensation up to rupees five crores should be given to affected persons if damage is done to the computer, computer system by such wrongs. (IT Act S 46(1A). The very same wrongs if done dishonestly and fraudulently will be treated as hacking under section 66 of the Act punishable with imprisonment up to three years, or with fine which may extend up to five lakh rupees, or with both.

**Identity theft**

Identity theft means, procurement of identifying information without permission and using it fraudulently to obtain goods and services. Hackers use different techniques to collect such information from databases and online transactions. The main method to commit identity theft is *Phishing*.

**Phishing**

Phishing means procurement of identifying information under the guise of offering one a helping hand. Usually it involves phishing or online fraud for a person’s banking information and using that to order goods or transfer money to another bank account.

**eg. Pune Citibank MphasiS Call Center Fraud**

In US $ 3,50,000 from City bank accounts of four US customers were dishonestly transferred to bogus accounts in Pune, through internet. Some employees of a call centre gained the
confidence of the US customers and obtained their PIN numbers under the guise of helping the customers out of difficult situations. Later they used these numbers to commit fraud.

2) **Privacy concerns**: The Internet and its ability to marshal and sort vast amounts of information, without the online consumer even knowing is a new and potent threat to traditional privacy values.

3) **Many standard contracts contain complex legal clauses**, such as choice of forum clauses and exclusion clauses that consumers may struggle to fully comprehend. As a result, they generally do not read the terms and conditions of the contracts they enter into. Further, consumer protection laws have created consumers who do not take the time to seek to protect their interests.

4) **Online Jurisdiction** Because electronic commerce respects no borders, cooperation and coordination in international law enforcement, using domestic legislations for protection often becomes difficult.

5) **Insecurity**: It is pertinent for consumers to note that all computer systems cannot be hundred percent secure; there is always a degree of risk involved in using the Internet for buying goods. Thus, it requires a strict and user-friendly law, which not only provides the security at the time of shopping, but also protects the interest of the e-consumer post transactions.

**Remedies Available for Breach of online Contracts**

All the remedies available for breach of contract can be invoked by the parties of online contracts. Depending on the nature of the breach, different remedies available.

- The parties may be permitted to rescind the disputed contract and a new one may be formed to meet their needs.

- Damages may be claimed to compensate to the non-breaching party for losses due to the breach.

- If compensation in money is not an adequate relief for the loss sustained a suit for specific performance of contract may be filed before a court of law.
Specific Relief Act 1963

Specific Performance of contract can be enforced through a decree requiring the breaching party to perform their part of the bargain in the contract.

- For example, if one party has paid for delivery of goods, but the other party did not ship them, a specific performance decree might require the goods to be properly delivered. The Specific Relief Act 1963 provides remedies under sections 10, 12, 14(3), 19, 21, 22, 23, 42 for Specific performance of contracts.

- Under Section 31 and 32 of the Specific Relief Act, the parties may file a Suit to declare a whole or part of the Written Instrument / contract, as void or voidable and get it cancelled.

- Where a person who has invaded or is threatening to invade the rights of another, the aggrieved person, by virtue of Section 36, 37, and 38 of the Specific Relief Act, may file a Suit for temporary and permanent injunction.

- Under Section 40 of the Specific Relief Act, 1963, the aggrieved person, in addition to or in lieu of injunction, may seek damages.

- In order to prevent the immediate and imminent breach of an obligation, the obligation whether arising from contract or Statute, and where it is necessary to compel the performance of certain acts, which the court is capable of enforcing its performance, then, under Section 39 of the Specific Relief Act, a Suit for Mandatory injunction may be filed.

The Sale of Goods Act 1930

From e-commerce websites things are purchased by customers. The provisions of the Sale of Goods Act 1930 is applicable to such transactions.

- A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. (The Sale of Goods Act section 5(2))
- “Goods” means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming
part of the land which are agreed to be severed before sale or under the contract of sale. 
Sale of Goods Act section 2(7)).

*Caveat Emptor* and e-Consumers

- In sale of goods the buyer is expected to be careful while purchasing the goods and seller is not liable for any patent defects in the goods sold by him. The principle of *caveat emptor* - ‘buyer be aware’ saves the seller from liability.

**latent defects in the goods**

The principle of *caveat emptor* is not applicable to latent or hidden defects in the goods. The principle of *caveat emptor* is embodied in section 16 of the sale of Goods Act which makes it clear that there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. But two exceptions have been recognised to this rule.

**Exception- 1**

As per section 16(1) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller’s skill or judgment, and the goods are of a description which it is in the course of the seller’s business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose.

**Exception-2**

Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. (S. 16(2))

**Liability for e-goods**

Through e-commerce one can purchase physical goods as well intangible goods like software. In the digital world the buyer cannot touch the goods to ensure quality of the goods. The only alternative is to purchase the goods in good faith by relying on the seller’s assurance regarding
the quality of goods. But if the goods unfit or not of merchantable quality, liability can be imposed on the seller by relying upon the exceptions provided in section 16 (1)-(2) of the Sale of Goods Act.

**Rights of Buyer- Sale of Goods Act 1930**

- It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale. (section 31).

- Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods. (section 32)

- Contract of Sale is completed not by mere delivery of goods but by acceptance of goods by buyer. ‘Acceptance’ does not mean mere receipt of goods. It means checking the goods to ascertain whether they are as per contract.

- Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. [section 41(1)]

- Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract. [section 41(2)].

- Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. (s.57)

- Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the
goods; but he may set up against the seller the Breach of warranty in diminution or extinction of the price or sue the seller for damages for breach of warranty (s. 59(1)).

- The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage. (s. 59(2))

**Rights of Seller**

After goods are sold and property is transferred to buyer, the only remedy with seller is to approach Court, if the buyer does not pay. He can sue the buyer for breach of contract. The Sale of Goods Act does not specify how to measure damages. However, since the Act is complementary to Contract Act, measure of compensation and damages will be as provided in sections 73 and 74 of Indian Contract Act.

**Compensation for loss or damage caused by breach of contract**

As per section 73 of the Indian Contract Act, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

**Compensation for breach of contract where penalty stipulated for- S.74 of IC Act**

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for (S.74 of IC Act)
The Consumer Protection Act 2019

As per s Section 2. (16) of the Consumer Protection Act 2019, "e-commerce" means buying or selling of goods or services including digital products over digital or electronic network. In spite of the assurance given regarding quality if the goods purchased from e-commerce websites if the consumer receives defective goods, he can invoke the provisions of the Consumer Protection Act 2019 to redress his grievance. As per section 2(7) of the Consumer Protection Act 2019, consumer" means any person who buys any goods for a consideration or hires or avails of any service for a consideration. The expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing. The consumer can file a complaint claiming compensation for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller. (S.82 -83).

Liability of the Product Manufacturer

Section 84 of the Consumer Protection Act 2019, imposes absolute liability on the product manufacturer even if,

(a) the product contains a manufacturing defect; or

(b) the product is defective in design; or

(c) there is a deviation from manufacturing specifications; or

(d) the product does not conform to the express warranty; or

(e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

Liability of the Product Service Provider

As per s Section 85 of the Consumer Protection Act 2019, a product service provider is liable in a product liability action, if

(a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or

(b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or

(c) the service provider did not issue adequate instructions or warnings to prevent any harm; or
(d) the service did not conform to express warranty or the terms and conditions of the contract.

**Liability of the product seller**

As per Section 86 of the Consumer Protection Act 2019, a product seller who is not a product manufacturer is liable in a product liability action, if
(a) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
(b) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or
(c) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or
(d) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or
(e) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

**Charge back**

Online consumers use credit cards, debit cards, Master cards, Automatic Teller Machine (ATM) cards, Smart cards etc. for making payments for various products.

- If the product is different from what was described or promised the consumer can claim back the amount paid, through the process of charge Back.

- Chargeback is a reversal of a payment card transaction initiated by the consumer who holds the card or the bank that issued the card used in the purchase.

- A chargeback usually occurs when a consumer files a dispute with their bank or credit/debit card provider.
In cases of credit card fraud, the merchant loses the goods or services sold, the payment, the fees for processing the payment, any currency conversion commissions, and the chargeback processing fee.

**Online Dispute Resolution**

Online Dispute Resolution (ODR) is an innovative way to resolve grievances, issues or disputes. Litigation before Court of law involves a lot of technicalities, time consuming and is not a quick and effective remedy for disputes arising out of e-commerce transactions and other dealings through Internet. Websites such as Cybersettle, SettlementOnline and clickNsettle offer services that are entirely online and focus primarily on negotiating monetary settlements.

- An aggrieved person can initiate a claim by logging on to such websites for resolution of disputes within a specified period.
- The service provider then emails the other party requesting him to settle the dispute.
- The party can either accept or decline to participate.
- If they decide to participate they gain access to the ODR website and submits a demand.
- Computer software automatically compares the demand with the settlement offer and emails both parties to show whether they are within the “range” of settlement or whether there has been any movement towards settlement. This leads to the settlement of disputes.
- In India odrindia is a service provider designed to aid in dispute resolution.
- It provides a platform where even trivial disputes or issues can be resolved easily, efficiently and satisfactorily.

**Liability of Internet Service Providers (Intermediaries)**

Internet Service Provider is an intermediary in electronic transactions. As per the definition given in section 2(1)(w) of the IT Act, intermediary with respect to any particular electronic
record means any person who on behalf of another person receives, stores or transmits electronic records or provides any service with respect to that record. Service providers of telecom, internet and web hosting, search engines, online payment sites, online-auction sites, online-market places and cyber cafes are also included in the category of intermediary.

**Duty of Intermediary**

Intermediary is under a duty to preserve and retain such information for a specified duration in a prescribed manner and format (ITAct,s.67C(1)) Contravention is punishable with imprisonment up to three years and also with fine.( S.67C (2))

**Exemption- S.79 -Information Technology Act**

However, section 79 provides that the intermediaries are not liable in certain cases if

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted;

(b) the intermediary does not initiate the transmission, select the receiver of the transmission, and select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties and also observes the guidelines prescribed by the Central Government.

This exemption from liability is not applicable in cases where

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or authorise in the commission of the unlawful act;

(b) upon receiving actual knowledge that the data is being misused the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

**Penalty for Breach of Confidentiality and Privacy**
Unauthorised access to electronic documents is also made punishable. According to section 72 of the Information Technology Act, any person who, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person is punishable with imprisonment up to two years or with fine up to one lakh rupees or with both. The punishment is more if such unauthorized disclosure is made by an intermediary or provider of services under the terms of a lawful contract.

**Liability for Failure to Protect data**

- Intermediaries should follow the security practices and procedures designed to protect such information from unauthorised access, damage, use, modification, disclosure or impairment. As per section 43 of the ITAct,

- if any person without permission of the owner or any other person who is in-charge of a computer, computer system or computer network accesses or secures access to such computer, computer system or computer network he is liable to pay damages by way of compensation to the person so affected.

**Lawful Contracts to Secure Information**

Incorporated companies enter into several agreements with other companies, clients, agencies or partners to keep their information secured. Agreements such as ‘non circumvention and non-disclosure’ agreements, ‘user license’ agreements and ‘referral partner’ agreements are entered into by them which contains confidentiality and privacy clauses and also arbitration clauses for resolving the disputes. These agreements help them in the smooth running of business.

- Section 72-A of the Information Technology Act prescribes punishment for disclosure of information in breach of lawful contract. The punishment is imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.
Encryption to Secure Data

Section 84-A of the IT Act empowers the Central Government to prescribe the modes or methods of encryption for secure use of electronic medium and for promotion of e-governance and e-commerce. If encryption is used with originator’s public key, data confidentiality is protected from every body else. If it is encrypted with the recipient’s public key, data confidentiality is ensured against every one other than the intended recipient.

The Personal Data Protection Bill, 2019

In India also apart from the provisions of the Information Technology Act, bills have been introduced in the Parliament for the protection of personal data. Personal data relates to characteristics, traits or attributes of identity, which can be used to identify an individual. The Personal Data Protection Bill, 2006 was introduced in the Rajya Sabha on 8th December 2006. The purpose of this bill was to provide protection of personal data and information of an individual collected for a particular purpose by an organization and to prevent its usage by other organization for commercial or other purposes. But the bill was not passed. In August 2017, the Supreme Court observed that privacy of personal data and facts is an essential aspect of the right to privacy and it is part of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. In July 2017, a Committee of Experts, chaired by Justice B. N. Srikrishna, was set up to examine various issues related to data protection in India. The Committee submitted its report, along with a Draft Personal Data Protection Bill to the Ministry of Electronics and Information Technology in July 2018. The Personal Data Protection Bill, 2019 (Bill No. 373 of 2019) is a modified version of the above bill. The Bill seeks to provide for protection of personal data of individuals, create a framework for processing such personal data, and establishes a Data Protection Authority for the purpose. The bill has been introduced in Parliament and referred to a Joint Parliamentary Committee for detailed examination. It is yet to be passed by the Legislature.

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