



## CONTEMPORARY ISSUES IN CONTRACT LAW

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### I. **ABSTRACT :**

Today, due to the electronic agreements are evolved and it is affected mainly in the field of economic. A contract issue is any form of disagreement or problem that may arise in the time of formation or performance of the contract. Every facet of your business will require contracts of some kind. In general, every people thinks like, if we enter any form of business, partnership firm, associations, etc. then make a legal contract between the parties. But, now a days so many cases were large related to fraud, cheating etc.. that's a reason everyone aware about it and make it. We also know about, only people who are at least 18 years and sound mind may enter into contract legally. If any violation of the basic requirements occurs a contract is not enforceable. In every contract intention must also be made plain and clearly defined. With the help of emergence of industrial evolution, westernization and totally its development, the technology is mainly advances around the whole world it has led to be the major drastic changes in the present scenario and it affects mainly in the commerce and trade either positively or negatively sometimes it will affect both. Today, The E-Commerce is developed enormously it helps lot for economically developed to some of the countries. And another hand this also one of the issues in some of the major circumstances. These leads to be increased the cases relating to crime and fraud. There are many issues and challenges in regulation of e-contract. Moreover, e contracts are electronic and it is not safe to enter into any form of business. In every contract must follow the confidentiality about our contract and its terms and conditions and it is a very sensitive information. This electronic contract sometimes fraudulently and demand for bribery.

II. **KEYWORDS :** - Confidentiality, Awareness , Sensitive information, Bribery, Hyperbole, e-commerce, e- contract, Advice, Fraudulent.

### III. **INTRODUCTION :**

As of now the internet has become the part of our daily lives, but we don't know about it's misleadings properly. Only experts know about this, like who are the masters in operating the internet. Some other places cyber, computer hacking is one of the major issues this is effect on dealing the any form of business through online. In few years back, we suffer and faces lot of problems regarding the covid-19 virus on that time the usage of internet connection is more. The online contract that is e-contracts are made easy our life and other hand it is also increase the cases of crime and fraud. Commercial companies use these

internet as a tool to the disseminate and extent business practices, entering into many more e-contracts for developing their identity towards the world becomes important. The Government of India needs to addresses these type of loopholes to facilitate the growth of e-contracts in the present society and its also the citizens should be aware of the laws and rights available to them while they are part of an e-contracts. A contract is lovely bounded by thought, which is Shields to players from suit and errors. Moreover, a section that serves Miss fortune responsibility is regularly remembered for the choice of interaction.

#### IV. THE DIFFERENT TYPES OF CONTRACT

##### ISSUES:

- 1) Breach of contract
- 2) Unfair contract terms
- 3) Undue influence
- 4) Restraint of trade
- 5) Mistake
- 6) Bribing
- 7) Confidentiality
- 8) Sensitive information .

##### A. Breach of contract:

It occurs when one party in a binding agreement fails to do according to the terms of the agreement. The breach of contract can happen in both return and oral contract. In a contract both parties can resolve the issue among themselves or it can be file to resolve before the court of law.

##### B. Unfair contract terms:

It is not binding on any consumer if, contrary to the requirements of good faith, they cause significant imbalance in the party's rights and duties and also their obligations to be detriment of the consumer.

##### C. Undue influence:

It is an equitable doctrine that involve one person taking advantages of a position of power over another person. This is leads to be a person who is affected other one, they cannot enter into a contract will fully and it is legal in nature.

##### D. Restraint of trade:

If any of the person restraint to do something regarding the any agreement, Love full profession, trade or business is that extent to be void.

##### E. Mistakes:

Section 21 of the Indian contract Act 1872 is not voidable if it was caused by mistakes as to law in India.

##### F. Bribing:

The contracts are obtained by means of bribery can be annulled. The unlawful payment of money or other things of value in

order to influencing the government officials in their official decision making. It is a legal act.

##### G. Confidentiality:

The set of rules and regulations are make promise to each other usually executed through very confidentiality agreements that will be known only the person who is there into contract not third party.

##### H. Sensitive information:

If any matter regarding that is proprietary or unique to the companies, this matter is also a very confidential when it is confidential it is leads to be an legal contract<sup>14</sup>.

#### V. FRUSTRATED CONTRACT:

A frustrated typed contract is a contract which is in capable of performance after its formation, due to this events which the parties could not have for seen at the time of they entered into their contract.

##### GN Nwaoliash v. PNwabufoh<sup>15</sup>.

The frustration occurs whenever the law recognizes that without default of either party, a contractual obligation has become in capable of being performed because the circumstances in which performance is called for food render it radically different from what was Undertaker by the contract.

##### Union of India v. Indian agro marketing co-operative Ltd<sup>16</sup>.

This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (Act) challenges the award dated 24.12.2020 passed by the Arbitrator Sh. Aditya Vaibhav Singh, whereby, petitioner was directed to refund a sum of Rs. 6,57,000/- with simple interest @ 12% per annum w.e.f. 16.04.2016 (date of encashment of bank guarantee) till the date of payment. Counter claim of the petitioner was dismissed.

<sup>14</sup> BBA LLB, law of contract class , lecturing by Santhosh at Vidya vikas institute of legal studies. Mysore,2020.

<sup>15</sup> 2011 law pavilion electronic law report (LPELR) 2115(SC).

<sup>16</sup> July 2022.

**M/s N. N. Global Mercantile Private Limited  
v. M/s. Indo Unique Flame Ltd. & Ors<sup>17, 18</sup>**

Wherein it held that an unstamped instrument in need of stamping is not a contract and not enforceable in law. Therefore, the arbitration clause contained therein is also unenforceable. Similarly, an arbitration agreement, which attracts stamp duty but is not stamped or insufficiently stamped, cannot be acted upon. Interestingly, the decision has not been unanimous since two Hon'ble Judges have dissented.

**Percept Finserve Private Limited v.  
Edelweiss Financial Services Limited<sup>19</sup>.**

In this backdrop, the latest judgment of a Division Bench of the Bombay High Court assumes relevance, as the Bombay HC has upheld the enforceability of a put option clause in a share purchase agreement ("SPA"), that was executed prior to the October 2013 Notification.

**Loop Telecom and Trading Limited v Union  
of India and Another<sup>20, 21</sup>**

The Supreme Court denied the Appellant restitution of certain sums paid by it under a void agreement. The Court, while rejecting the claim for restitution u/s 65[2] of the Indian Contract Act, 1872 ("Act"), placed reliance on the doctrine of 'in pari delicto', and reiterated that courts shall not assist a party who has paid the money or handed over the property in pursuance of an illegal or immoral contract.

**VI. ONLINE AGREEMENT:**

Online agreement is one of the e-contracts. The online agreements are of totally three kinds. They are like,

1. The click wrap agreement.
2. Shrink wrap agreement.

<sup>17</sup> 25 April 2023.

<sup>18</sup> BBA LLB, law of contract class, lecturing by Sowmya at Vidya vikas institute of legal studies. Mysore, 2023.

<sup>19</sup> 2023 SCC OnLine Bom 319.

<sup>20</sup> 2022 SCC OnLine SC 260.

<sup>21</sup> <http://corporate.cyriamarchandblogs.com>.

3. Browse wrap or web wrap contracts.

**A. The Click Wrap Agreement:**

A party subsequently to experience in the rules and regulations regarding that any contract between the persons mentioned on the system need basically to demonstrate their own will or consent is in front of the corresponding, by clicking the "I agree" symbol or it will become decrease by clicking on "I disagree".

This has been done normally prayer to the accepting such product and it is one of the form of acknowledgement. But the thing is any person before clicking the button either "I agree" or "I disagree" be aware about it. And make it clear ends of every information. There has been a very famous case in which clicking wrap agreement was accepted his valid and enforceable.

**Rudder v. Microsoft cooperation<sup>22</sup>.**

The Hon'ble Court discovered that, the member agreement was enforceable because skimming some of the pages was like turning some pages of the big paper based on contract and by not maintaining the proper agreement, there is the possibility of tumult with in commercial Centre, render inadequate e-trade and subvert the uprightness of any understanding went into thereby.

**B. Shrink wrap agreement:**

It is an offer to have software in the shop, like e-mail it has brought about the any significant number of specific type of enforcing agreements.

**Interglobe aviation Ltd v. N. Satchidanand<sup>23</sup>.**

All things considered, the High Court didn't consider the details of the Indigo Carriage simply because the individuals when buy ticket are not expected to peruse the terms. In any case, the Supreme Court overruled that thinking. The purchaser is in this manner,

<sup>22</sup> 1999 OJ NO 3778 (Sup ctj).

<sup>23</sup> SC 2011.

expected to peruse the terms in instances of shrink wraps also.

### C. Browse wrap or web wrap contracts:

The contract where the online client can be discover the rules and regulations regarding that, at any place on the web page which offers to sell items and travelling.

### VII. DECREASE IN DISTANCE BETWEEN BUYER AND THE SELLER:

Now a days, technology is place an important role in everywhere, people can sit at home and done work within a second by usage of fastest network of technology, our world is most of the people dependent on the availability of the internet in our daily lives. Any type of product cancel and by between the any Nations, everything can be done one click with in a minute.

While sitting at home only and every individual can earn lakhs together due to the availability of electronic media. These are all goes through the e-contracts. Due to this e contract no intermediate between the buyer and seller so that very distance will be created between the buyer and seller. But no one knows its effect our business, also health, society and these are all the offences leads to be socio economic crimes.

### VIII. SECURITY AND PRIVACY CHALLENGE:

Today, everything will be done through the internet or technology only. It was the main resource to everywhere and throughout the world. But it is not protected our data and there is no clue to find out the person who is hacking our electronic media are theft our data and all things. If the any of the person availing the benefit choses to register then there is no warranty that could be done with the use of that details. It is very few of the companies are likely to send these details to another third party for some prohibited and unlawful act. Innovation has assumed a fantastic part in upgrading the limit of web associations and organizations to gather and dissect tremendous measures of information

identifying with the clients who only visit their sites. Accordingly, this raises a lot of worries about how this information is dealt with and utilized.<sup>24</sup>

### IX. THEFT OF IDENTITY:

The main and big issues is that the theft of Identity, for the buyer who face encroachment on their privacy in this practice environment. This theft a identity is the wrong full act of getting an individual or monetary data of some other person else to utilize their personality to submit extortion. These are all the wrong full act having a punishment as prescribed under the Indian penal code 1860. There are different procedure by which information robbery can be submitted.

Further, there is intellectual property rights theft also happens where in robbery of material that is copyright or robbery of proprietary advantages will be happens. One of the most well known result of IP robbery is fake merchandise and theft. It has occurs in two stage- an unfair assortment of character of an individual and afterwards the intelligence utilization of such data with an expectation to cause and legitimate mischief. Since, wholesale fraud including burglary and misappropriation , the arrangements of fabrication under Indian penal code 1860 is fraudulently conjured.

Fabrication, notoriety, making bogus achieves, utilizing as real a fashioned report and ownership of a records are known to be manufactured and expecting to utilize it as real can be coupled and pursued with the different areas of the Information technology Act.

The sections from the Information technology Act that would be manage digital robbery incorporate Section 66 red with Section 43 which is expressly that if any individual, falsely, does any type of demonstration that makes harm the computer system of framework without the proprietor's consent, at that circumstances that person is liable with

<sup>24</sup> Current issue of contract law research work 2023 by using news papers, websites.

either 3 years of imprisonment or Rs 5 lakh fine or both.

Section 66(b) gives discipline to any individual who disparity or inconsistency gets taken the computer assets and its specialized gadgets. Section 66 (c) accommodate the discipline of theft of others identity as whomever falsely Utilizes some other electronic mark, other interesting ID highlights will be imprisoned for 3 years or 1 lakh fine.<sup>25</sup>

#### **Hakam Singh v. Gammon (India) Ltd<sup>26</sup>.**

The court held that the agreement was not opposed to public policy and did not contravene Section 28, and consequently, the lawsuit filed at Varanasi was dismissed.

#### **Shiv Satellite Public Co. v. M/s Jain Studios Ltd<sup>27</sup>.**

The Supreme Court held that that part of the arbitration clause which relates to arbitration disputes is severable and is not void.<sup>28</sup>

#### X. **CONCLUSION:**

In many of the times, a threat of fraud can emerge out of now here. Potential fraud might be described as dishonestly in the business relationship. A key performance measure for state and local mental health authorities should be the proportion of mental health crisis that rely on law enforcement. In contract law fundamental changes are needed. Create a security rights to everyone, who want to enter into an agreement for their secure future obligations. Punishment will be provided more towards cyber criminals. Then the contract will be valid and the controversial or legal issues are decreased.

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<sup>25</sup> <https://blog.ipleaders.in>.

<sup>26</sup> 1971 AIR 740, 1971 SCR (3) 314.

<sup>27</sup> 2006.

<sup>28</sup> The Indian penal code 1860, Ratanlal Dhirajlal, 36<sup>th</sup> edition, Lexis Nexis publication, 2020.