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## **I. INTRODUCTION:**

*“The swift advent of industrialization, globalisation and technology established a solid foundation for the advancement of technology and the rise of the digital revolution. One of its products is electronic commerce, which is of key economic importance of the twenty-first century<sup>1</sup>. Thus, the internet is a new culture that has surely arrived and, as it does so, alters our own culture. COVID-19 has undoubtedly pushed all nations farther toward digitization. Online seminars, webinars, work from home opportunities, and electronic contracts have all become the new standard. Since the internet is no longer restricted to only communication or computing and analysing data, online contracts, also known as **E-Contracts** or electronic contracts, are now the new normal. E-contracts are a critical component of E-Commerce that cannot be left uncontrolled. When transacting via the electronic media, there are significant hurdles. These concerns and obstacles must be adequately handled in order to provide a safe and secure electronic platform<sup>2</sup>”.*

## **II. ONLINE CONTRACTS:**

Online contracts are those that take place through e-commerce without the parties to the contract meeting in person. These contracts are often quite similar to paper-based commercial contracts, with the exception that business transactions are undertaken and finished electronically. In the case of an online contract, the seller who desires to sell their items presents their products, pricing, and terms of purchase to potential buyers. In turn, buyers who are interested in purchasing the items can either select or click on the **'I Agree'** or **'Click to Agree'** option to indicate approval of the seller's conditions, or they can sign electronically. The transaction can be finalised after the terms are approved and money is paid. Communication takes place primarily between two computers via servers. The online contract is introduced into the scenario to assist individuals in establishing and executing commercial contract regulations

<sup>1</sup> Ref, TD Purohit, “Contracts Via E-mail-A Note of Caution”, Corporate Law Cases”, 221, 223 (Vol 9, part II, 2018).

<sup>2</sup> *Ibid.*

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inside internet-based businesses. Online Contract is designed for the sale, purchase, and delivery of goods and services to both consumers and business partners. All the essential conditions of a valid contract like offer, acceptance, Intention to create legal relationship, free consent, lawful object, lawful consideration, Capacity of parties are also essential for a valid online contract.

## **II.I LEGAL ASPECTS OF ONLINE CONTRACTS:**

*The Indian Contract Act, 1872*<sup>3</sup>, the Indian Evidence Act, 1872<sup>4</sup> and the Information Technology Act, 2000<sup>5</sup>, all recognise online contracts as legal in India. These acts have all laid the groundwork for e-contracts in India in some fashion. The clauses of these legislation improve the use of online contracts in India. According to the *Indian Contract Act of 1872*<sup>6</sup>, a contract is legitimate if it is made by competent parties with their voluntary assent for a lawful aim and consideration. There is no set method for expressing offer and acceptance; it can be done orally, in writing, or even by behaviour. Thus, oral contracts are just as legitimate as written contracts; the only need is that they contain all of the fundamental elements of a valid contract.

In the case of *Bhagwandas Goverdhandas Kedia vs. Girdharilal Parshottamdas*<sup>7</sup>, it was determined that "normally, it is the acceptance of an offer and the intimidation of that acceptance that leads in a contract." This indication must be made by some visible manifestation that the law considers sufficient. As a result, even in the lack of explicit law, e-contracts cannot be contested because they are just as legitimate as traditional contracts. As a result, there is no provision in this Act that precludes the enforceability of electronic

<sup>3</sup> Indian contract act, 1872.

<sup>4</sup> Indian evidence acts, 1872.

<sup>5</sup> Information technology act, 2000.

<sup>6</sup> Indian contract act, 1872.

<sup>7</sup> *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas*, 1966 AIR 543, 1966 SCR (1) 656.

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agreements, provided that the basic components of a legal contract are included in such agreements<sup>8</sup>.

Electronic contracts are governed by the rules of the *Indian Evidence Act of 1872*, in Indian courts. The Indian Evidence Act grants contract recognition, and the word "document" includes any information included in an electronic record that is written on paper, saved, recorded, or duplicated on optical or magnetic media created by a computer<sup>9</sup>.

Such information satisfies the requirements of Section 65B of the Act, and it shall be accepted in any proceedings without additional proof or presentation of the original document before the competent authority, and it shall be treated as evidence of any content of the original or any truth indicated therein of which direct evidence would be allowed. *The Information Technology Act, 2000*, has laws for the legitimacy and formation of online contracts, but no separate legislation for the validity of online contracts has been introduced in India<sup>10</sup>. The provisions of the Information Technology Act, 2000, specifically section 10-A of the IT Act, provide legal recognition to an electronic contract.

In India, there are no clear court precedents governing the legitimacy and enforcement of online contracts. In the case of *Rudder vs. Microsoft Corporation (1999)*<sup>11</sup>, the court of Ontario gave legitimacy to online contracts and asserted that scrolling through several pages was similar to having to turn through several pages of a multi-page paper contract, and failure to uphold the agreement "*would cause chaos in the marketplace, render electronic commerce ineffective, and undermine the integrity of any agreement entered into through this medium.*"

<sup>8</sup> Ref, Surendra Malik, "Supreme Court on Contract and Specific Relief - Since 1950 to 2014" (2nd ed, Eastern Book Company, 2014).

<sup>9</sup> Indian Evidence Act, 1872.

<sup>10</sup> Information technology act, 2000.

<sup>11</sup> Rudder v. Microsoft Corp. [1999] OJ No 3778 (Sup Ct J).

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The Supreme Court ruled in the case of *LIC India vs. Consumer Education and Research Center*<sup>12</sup>, that "*under dotted line contracts, there would be no necessity for a weaker party to bargain as to assume equal negotiating strength.*" In accordance with the conditions of the dotted line contract, he must either accept or reject the service or products. His options would be to accept the unreasonable or unjust terms or to discontinue the service permanently.

## **II.II CHALLENGES TO ONLINE CONTRACTS:**

### **II.II.I COMPETENCY OF THE PARTY:**

One of the main components of an online contract is that the individual who is becoming a party to the agreement is legally able to do so. The person on the other side has no clue that the person who clicked on the "*I Agree*" mark is legally competent to become a party to an agreement<sup>13</sup>. It is possible that a 10-year-old youngster who is not mature enters into the contract by clicking on the "*I Agree*" text or symbol.

### **II.II.II FREE CONSENT OF THE PARTY:**

Free consent is an essential element of a valid contract. In case of online contracts, the chance for negotiation is very restricted so the chance of free consent is hindered. This creates a problem in performing a valid contract. The only possible option with the acceptor is to accept the offer with free consent as it is or to leave the offer.<sup>14</sup> It is generally agreed that to avoid hassles, the party should exercise caution when providing his assent.

### **II.II.III DATA PROTECTION:**

The protection of data is a major problem in case of online contracts since these contracts are virtual so companies are very likely to transfer this information of the party to a third party for some forbidden and illegal act. There is no warranty that the information will not be leaked.

<sup>12</sup> LIC of India V Consumer Education and Research centre 1995 SCC (5) 482.

<sup>13</sup> Ref, Sethuram Sundaram, E-Contract in India: The Legal Framework, Issues and Challenges.

<sup>14</sup> Ref, S.R. Subhashini, Legal Issues Arising in E-Contracts in India: An Analysis.

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#### **II.II.IV DATA FRAUD:**

In many cases of online contracts, the parties provide their information and that information is used for extortion. This puts the party in misfortune of losing money.

#### **II.II.V CREDIBILITY OF THE COMPANY:**

In case of online contracts, there are many things which are unknown to the party. There might be a situation in which the party entering into the contract does not know about the reputation of the company and also about whether the company is a registered company or what is the credibility of the company. This poses a great challenge on the parties.

#### **III. PSEUDO CONTRACTS:**

A pseudo contract is a retroactive arrangement between two parties who have no previous obligations to one another.<sup>15</sup> It is created by a judge to correct a situation in which one party acquires something at the expense of the other. The contract's purpose is to prevent one party from wrongfully gaining from the circumstance at the expense of the other. When a party accepts goods or services but does not seek them, these agreements may be imposed. The acceptance then develops a payment expectation.<sup>16</sup> Pseudo contracts outline the obligation of one party to another when the latter is in possession of the original party's property.<sup>17</sup> These parties involved may not necessarily have had any previous agreement with one another. When Person A owes anything to Person B because they come into possession of Person A's property indirectly or by accident, the agreement is imposed by law through a court as a remedy.

Now, the contract becomes enforceable if Person B agrees to keep the item in question without paying for it. Since the contract is constructed in a court of law, it is legally enforceable, so no party has to agree to it. The core aim of the pseudo contract is to render a fair result in a situation

<sup>15</sup> Ref. Keener, Pseudo-Contracts.

<sup>16</sup> Ref, Digest of Just., 14.

<sup>17</sup> Holdsworth, History of English Law, Vol. 3.



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where one party has an advantage over another. The respondent—the party who acquired the property—must pay restitution to the plaintiff who is the wronged party to cover the value of the item. Pseudo contracts are also called implied contracts, they are implied because they create such obligations which resemble those created by contracts.<sup>18</sup> The fundamentals for the establishment of a contract are absent but as outcome resembles those created by a contract, they are called pseudo contracts. Under English Law, they are also referred as Constructive Contracts or Contracts in Law, etc. Indian Contract Act terms pseudo contracts as certain associations similar to those created by contingent contracts and are found under sections 68 to 72.

**There are three inherent principles to a pseudo-contract<sup>19</sup>:**

- The plaintiff must show the proof of the goods or services they should have been compensated for.
- The defendant must have taken those products or services and received some form of advantage from them.
- Finally, the defendant must have accepted these goods or services under unfair conditions in which the plaintiff received no reimbursement.

### **III.I EVOLUTION OF PSEUDO CONTRACTS UP TILL PRESENT**

#### **SCENARIO:**

The law is indeed "*a seamless web.*"<sup>20</sup> This is exceptionally true of pseudo-contractual obligations. Legal duties form one large class, within which there are many different sorts. No doubt it serves a valuable purpose to define these sorts and to treat them under separate headings and in separate volumes. So, duties and obligations arising out of an agreement of two parties are called contractual, the fact of agreement and its communication being called a

<sup>18</sup> Anson, Contracts, chapter on pseudo-contracts.

<sup>19</sup> Ref. Avtar Singh, Law of Contracts.

<sup>20</sup> Holland, juris., Chaps. 12 and 13.

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contract; and the duties and obligations arising from illegal acts causing injury to others are called delictual, the illegal act being called a tort. But our judiciary and courts have long enforced other obligations that do not willingly fall within the foregoing classes. Centuries before the time of Justinian, Roman jurists were referring to these set of rules, duties and obligations as pseudo-contracts. From that day to this, however, jurists have very generally used these terms without drawing distinct lines between their various arenas, and without showing any very clear bond of unison within the limits of any one field.<sup>21</sup>

The history of pseudo contract can be traced back to the Middle Ages, under a practice that was referred to back then as *indebitatus assumpsit*.<sup>22</sup> In that period, the law spoke that a plaintiff would receive a sum of money from the respondent, in an amount dictated by the courts, as if the respondent had always agreed to pay the petitioner for his goods or services. The courts adopted *Indebitatus assumpsit* to force one party to pay another as though a contract had been formed between the two parties.<sup>23</sup> The law implied the defendant's commitment to be bound by a contract requiring compensation.<sup>24</sup> The early days in the history of pseudo contract saw such contracts being used to enforce obligations and to impart duties related to restitution.

It may be doubted whether the term is well understood or in very common use among the great body of attorneys at law throughout the United States. But it has long been used by judges who have had some knowledge of the Roman law, and who have been able to conceive of the possibility of a legal obligation neither contractual nor delictual in character. A basic, standard and legal contract would typically set out conditions agreed upon by both parties before the services were rendered, or the goods received. A pseudo contract, however, comes into play when either party never had any intention of entering into a legal contract. This is when the court steps in to draft a contract and ensure fairness among the parties concerned.

<sup>21</sup> Holdsworth, *History of English Law*, Vol. 3.

<sup>22</sup> Ref. *Lectures on Equity and Forms of Action*.

<sup>23</sup> *Ibid*.

<sup>24</sup> Avtar Singh, *Law of Contracts*.

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### **III.II CHALLENGES TO PSEUDO CONTRACTS:**

There are circumstances when there is no contract between the parties. Still, even then, certain social relationships create specific set of duties and obligations that some parties are required to perform by order of the respective court. These obligations are known as the pseudo-contracts since the same obligations are created as that would have created in case of the regular contract.<sup>25</sup> These Pseudo-contracts are created based on principles of justice, equity, and good conscience. The benefitted party will not be held liable in the cases where the benefit received by him was given negligently, unreasonably, and by the miscount. It is commonly formed only to the extent it was necessary for preventing unjust enrichment, and the plaintiff has to forgo all the expected benefit which he would have earned in case there exists a whole expressed agreement or contract between the parties involved.<sup>26</sup>

Pseudo-contracts fall in *Chapter V* under the heading "*Of Certain Relations Resembling Those Created By Contract*" of the Indian Contracts Act, 1872. Although the term "pseudo-contacts" is not specifically mentioned, it can be assumed that the legislators were referring primarily to the concept of a pseudo-contract and the law of unjust enrichment.

In *Hari Ram Seth Khandsari vs. Commissioner of Sales Tax*<sup>27</sup>, the Court concluded that, notwithstanding the absence of the phrase in this chapter, this chapter is about the doctrine of pseudo-contracts.

In the case of *Moses vs. MacFarlane*<sup>28</sup>, the concept of a pseudo-contract was first considered (an English case). In this case, Lord Mansfield contended that such a responsibility was established on both the law and fairness in order to avoid undue gain to one person at the expense of another.

<sup>25</sup> Black Law Dictionary, ed. 8th, 2012.

<sup>26</sup> Patterson, Edwin W. "Columbia Law Review." Columbia Law Review, vol. 37.

<sup>27</sup> Hari Ram Seth Khandsari v. Commissioner of Sales Tax 2005 139 STC 358 All.

<sup>28</sup> Moses v. MacFarlane (1760) 2 Burr 1005.

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In the case of *Challenge Air Transport, Inc. vs. Transportes Aereos Nacionales*<sup>29</sup>, it was held by the court that in order to constitute unjust enrichment the following elements must be proved:

- a) Lack of an adequate remedy at law.
- b) A benefit conferred upon the defendant by the plaintiff coupled with the defendant’s
- c) appreciation of the benefit i.e., an “enrichment”.
- d) Acceptance and retention of the benefit under circumstances that make it inequitable for him or her to do so without paying the value of it. Each of these aspects has the potential to cause complex problems for innocent people.

#### **IV. CONCLUSION:**

By virtue of electronic trade, the criteria for electronic contracts have been enhanced. Commercial transactions and enterprises benefit from the simplicity and flexibility provided by digital commerce. Electronic contracts are particularly suited to facilitating the engineering of business process outsourcing at a number of organisations, involving a mix of technology, procedures, and business regulations that will allow for the rapid sharing of information.

However, the E contract regime is confronted with several concerns and obstacles that must be solved effectively. The principles of unjust enrichment and quantum meruit underpin the idea of quasi contract. The primary idea of this principle is that no one should prosper at the expense of others. Despite the fact that quasi contracts are incorporated in the Indian Contract Act under a different term, the core and basics remain same. As a result, quasi contracts are an essential component of the contract act. Online contracts may soon become the standard. As a result, instead of depending on traditional contract laws and cyber laws to manage them, it is critical to establish a framework for the administration of online contracts on their own.

<sup>29</sup> Air Transport, Inc. v. Transportes Aereos Nacionales 1 (1988) S.A., 520 So. 2d 323.