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Research Article

Protection Of The Consumers In The Age Of Internet: Validity And Enforcement Of E-Contracts And Jurisdictional Issues In Consumer Disputes

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Introduction

Computers, internet and information technology played significant role in every sphere of human life and consumers are also affected by this environment. This virtual environment has facilitated the consumers in many ways, but unfortunately it has also raised certain problems. The term "e-commerce" has become very popular in business circles. The allure of utilizing a website to conduct international business has been too strong to resist. Ironically, the ability of a page on the World Wide Web to reach users in every state in the nation and possibly every country in the world raises the question of where a person who has an issue based on an online transaction may file a Case.[1] Thus, this situation created the issues with internet contracts' legality and the jurisdiction over domestic and international consumer disputes.

In olden times, society was composed of different people who were dependent on each other for their needs. The scope of needs of human was limited only to available goods and services. But after industrialisation and globalisation the world has become a small village, which resulted in enlargement of the extent of markets. It ultimately led to an increase in the demand from the consumer side. So, the traders supplying the goods in the market deemed themselves to be superior to the consumers. The traders started various unfair trade practices against the consumers like under weighing, black marketing, adulteration in goods etc. These unfair trade practices ultimately need to be rectified by the law for which various enactments were made by the different governments at national and international level.

In India, the interest of the consumers is protected by dozens of enactments.[2] Inspite of all these enactments the right of consumers cannot be said to be fully protected, the reason is simple that majority of population is not aware of laws and protections provided to them. If anyone is aware he is confident that he will not get justice by simple means, because the procedures provided for protection of rights are very lengthy, technical and expensive. The seller/trader/ service provider is in the safest position and the consumer is the serving party.

The formation of a valid contract requires a proposal from one party and its acceptance from the other party. But now as in E-commerce the consumer is in a pitiful condition. The seller is selling the product to the consumer for which the consumer must follow the conditions as provided by the seller. The process of online purchasing by consumers is as follows:

1. The consumer has first to visit the website of the seller.
2. The consumer must make his login ID.
3. He will select the product.
4. Then to select the option, “I have read this agreement and ready to the terms and conditions.” (Most important where the interest of the consumer is being taken out with his consent and buyer has no option except to agree with the terms of seller).
5. Finally, the goods are purchased.

Here the conditions of all the companies are providing that the consumer cannot return the product other than the technical fault, jurisdiction shall be subject to the place of the seller and other conditions by which he will be in superior position than the consumer. So, one of the essentials of a valid contract, i.e. freedom of will and equality between the parties is missing in the online contracts.

To protect the right of innocent consumer the General Assembly of United Nations (UN) adopted A few guidelines in 1983. In 1985, it passed a resolution asking all the member countries to formulate laws for the safety of customers and their education in their respective territories.

The Consumer Protection Act (CPA), 1986 was passed by the Indian Legislature, which has made several changes in the consumer protection movement in the country. The purpose of the Consumer Protection Act

was to make available easy and fast solutions to consumer disputes. The fundamental purpose of the Law is to give consumers better safety and protection. In the history of socio-economic laws of India, CPA is a turning point of consumer movement.
The Supreme Court (SC) in case of *Secretary, Thirumurugan Co-operative Agricultural Credit Society v. Lalitha*[3] has said that "the remedies available under the Consumer Protection Act are in addition to the remedies available under other Laws. Therefore, the fact that a remedy is specifically provided for under another statute would not necessarily oust the jurisdiction of the appropriate authority under the Act."

Formation and Validity of Online and Offline Contracts

In simple words contact means an agreement between two or more parties competent to contact to do a lawful act with free consent of all. The contract can take place orally or in writing or by conduct or by means of one or more of the means. It also means a conscious, voluntary, and binding contract between two or more competent parties.[4] Section 10 provides that "All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and not hereby expressly to be void."[5]
The essentials of a valid physical contract are:

1. An agreement i.e. proposal and acceptance.
2. There must be free consent of parties to the contract.
3. The parties must be competent to contact i.e. must be major, of sound mind and not suffering from any other legal disability.
4. A contract must be made for lawful consideration.
5. The contract must be made for lawful object.
6. The contract must not be expressly declared to be void.

In the physical mode of a contract the parties must be personally present and sign the document or the document is sent by post to the other party for acceptance, but in electronic contact the parties need to sign the documents by electronic mode. It is done to overcome the delay in postal services and to avoid the moving of a person from a distant place only to sign the document and it has led to speedy formation of contract between the parties. E-Contracts (contracts that are not written on paper but rather in electronic form) are the result of need for efficiency, speed, and convenience.[6]
A contract can only come into existence if it is lawful and the consent of all the parties to it is free and properly communicated to the other party. But to conclude a contact there must be communication of same. The place of formation of contract will be based totally on the communication of proposal and acceptance. The communication of proposal is complete when it comes to the knowledge of the person to whom it is made.[7]
Further, when the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted.[8] The communication of acceptance is complete:

- As against the proposer, when it is put during transmission to him and is out of the power of the acceptor
- As against the acceptor, when it comes to the knowledge of the proposer.[9]

In *ONGC* v. *Modern Construction and Company*,[10] it was held that "if there is an acceptance of a tender by telegram, the contract becomes concluded where the telegram is dispatched and therefore the place of contract is that where the acceptance telegram begins its journey." But this postal rule seems to be harsh on the proposer. Sometimes, even if there is delay on the part of postal department the proposer suffers.
To overcome it, communication was made somewhat faster by means of the telephonic or telex mode. This point was made evident in *Bhagandas Goverdhandas Kedia* v. *Girdharilal Purshottamdas Co.*[11] the Court held that in telephonic conversation, the position is same as the parties are in each other's presence and rule of post is not applicable to such matter. The contract is complete when the acceptance is received by the offeror in his place. So, the place of the offeror is the place where the contract is concluded and the court in that place has jurisdiction to determine the matter.
Further in *Entores Limited v. Miles Far Eastern Corporation*,[12] Denning L.J. observed, "when a contract is made by post it is clear law throughout the common law countries that acceptance is complete as soon as letter is posted into post box, and this is place where contract is made. But, in telephonic or telex mode the communication is instantaneous and is complete at the end of the proposer." Thus, it has been accepted by the courts that contracts can be concluded online, and these are valid contracts. The combined reading of Indian Contract Act (ICA) 1872 and Information Technology Act (IT Act) 2000 has also similar results.
"In reference to contracts made orally as by telephone, or in writing as by telex or fax, that the contract is complete when and where the acceptance is received.[13] But these principles can apply only where the transmitting terminal and the receiving terminal are at fixed points. In case of e-mail, the data (in this case acceptance) can be transmitted from anywhere by the e-mail account holder, it goes to the memory of a 'server' which may be located anywhere and can be retrieved by the addressee account holder from anywhere in the world and, therefore, there is no fixed point either of transmission or of receipt."[14] It has been explained by the new legislation that what would be the time for sending and receiving of data in case electronic mode of communication.[15]

Types of E-commerce Disputes

Electronic commerce brings both comfort and distress to its users. The comforts include instantaneous sales and purchases, affordable prices, convenience, time saving, etc. The distress includes fraud and cybercrimes committed against online shopping users. At times there are disagreements and dissatisfactions as well among buyers and purchasers that cannot be settled using conventional legal methods.[16] Therefore, it can be said that disputes will inevitably arise in the course of the life of a business, whether it be online or offline.[17]

Determination of Jurisdiction in E-Commerce and the Information Technology Act, 2000

Historically, the matter regarding the jurisdiction was based on territorial principles. The place of jurisdiction was based on the physical existence of the subject matter. Like in case of dispute in relation to land or immovable properties, the place where the land or such property is situated, in case of movables, where such movable is and where the dispute arose or according to the physical existence of the person claiming. A valid contact comes into existence when one party i.e. offeror/proposer makes an offer and the other party i.e. acceptor/offeree gives his acceptance to such offer. The main requirement for making a contract is unqualified communication of the acceptance and this is the main point to determine the jurisdiction of the matter.

The place, where the cause of action has arisen is a key factor in deciding the jurisdiction of courts in contractual disputes. The location where the contract is made is considered a place where the part of the issue has arisen. A contract is created at that location where an offer is accepted and sent, in the non-instantaneous communication mode.

Whereas, a contract is created at a place where the acceptance of the offer is received, when communication is instantaneous. To identify the place of formation of e-contact and decides the place of cause of action and jurisdiction of courts, Section 13 of the IT Act 2000 includes provisions to identify the place of despatch and receiving of electronic communication.[18]

Further, section 13(5)(b) of the IT Act provides the following provision which reads as:

"if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;"

Thus, it can be concluded that in electronic commerce, a contract is formed at the place of business or the location of residence of a consumer, the place where the consumer receives acceptance to his offer in electronic commerce, by applying the principles of section 13 of the IT Act and the principles of contract legislation. Thus, in the case of a consumer dispute in e-commerce, the cause of action partly arises at the consumer's place of business or residence of the consumer (where the consumer makes the offer, and the e-trader accepts that offer).

Therefore, the consumer may knock on the door of the court having territorial jurisdiction over his place of business or place of residence as per the provisions of section 13 of the IT Act, rules of contract law and rules of the cause of action. However, Section 13 of the IT Act gives an upper hand to the e-trader to override the default rules provided in this section however the provisions under the section are subject to the contract between the parties.

In India, the jurisdictional matter regarding all civil matters has been prescribed by Civil Procedure Code (CPC) and regarding Consumer matters by the Consumer Protection Act (CPA), but to determine the jurisdiction, we had to determine first the place where the contract has been concluded. Under the civil law/consumer law jurisdiction can be determined based on the place where the opposite party resides or where dispute arises. But in cyberspace or online contracts both these are difficult to establish.

If the parties agreed by contract to confer the jurisdiction on some definite court, then that court has the jurisdiction to determine the matter, but it does not mean that it will oust the jurisdiction of the other courts. "Where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law, their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agree to submit to would not otherwise be proper, jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy."[19]

It is not open to the parties by agreement to confer jurisdiction on any court which it did not otherwise have under the Code of Civil Procedure (Code). But where two courts have under the Code jurisdiction to try a case an agreement between the parties that the dispute between them shall be tried in one of such courts is not contrary to public policy. This type of agreement does not violate the section 28 of the ICA, 1875.[20]

So far as exercising jurisdiction over international e-traders is concerned, the IT Act makes provisions for the extraterritorial application of the Act. Section 75 of the IT Act broadens its applicability outside the nation.[21]

However, it has been observed that the abovementioned provision is applicable relating the offences and violations as provided under the IT Act. Since the IT Act is an industry-based legislation, hence it does not solve the issues of local consumer problems and disputes. Second, it is not clear under the existing provisions of the IT Act, whether the authority formed under the IT Act would have jurisdiction over international e-traders who enter an online contract with consumers.

In civil cases, it is accepted principle that by the agreement between the parties, parties may choose applicable law and jurisdiction. However, in the absence of such terms in the contract, the jurisdiction may be determined based on the following objective principles:
1. Place of business or habitual residence of the person who has to perform the contract.
2. For the performance of the contract, the place where the necessary step was taken.
3. A place where an invitation to enter a contract or an advertisement was received.
4. A place where an agency or a branch is located.

Nonetheless, in the case of a consumer contract, it has been recognised that necessary rules of domestic law shall apply regardless of the choice of law.

Thus, in an internet dispute, each party and service provider may come from different jurisdictions and the effect of its transaction might be felt altogether in a different jurisdiction; therefore, it is justifiable for the state to assume jurisdiction over internet-based disputes. The internet allows everyone to deal with the people of every country in the world. Even without soliciting any customer in any state, simply with a website, one can receive an order for illegal goods, and bets for any prohibited services or behaviour from any jurisdiction. Due to the pervasiveness of the internet, without really trying, it may be everywhere. Thus, without accepting the burden of being held liable wherever they do business, one cannot take the benefit of the convenience of the internet.[22]

Though in absence of a specific provision in the IT Act, the Delhi High Court in the *Banyan Tree* case[23] tried to evolve principles to determine the jurisdiction of the court in internet-related activities, however, the following issues remain unanswered: (a) the issues concerning jurisdiction to regulate foreign e-commerce platforms doing businesses in India; (b) use of legality of jurisdiction exclusion clause or choice of law clause (by foreign e- traders) in e-commerce consumer contracts; (c) the issue concerning anonymity in internet resulting in lack of clarity about the geographical location of e-commerce platforms; (d) the issue of enforcement of Indian court‘s judgment in a foreign nation.

Thus, the Indian legal position is ambiguous and unclear without any specific principle for the court concerning the jurisdiction of courts in e-commerce. Hence, concrete principles are needed to determine the jurisdiction of Indian courts in the virtual world.[24]

Judicial Views on Jurisdictional Issues in Cyberspace

Jurisdiction on the internet is an all-pervasive issue. Regardless of what substantive legal issues one is dealing with, whether it be copyright or defamation or privacy, jurisdiction is an issue that is constantly looming so much so that it has been said that the internet is one big jurisdictional problem.[25] The main challenge of internet jurisdiction is the existence of numerous parties in different regions of the world who have only a virtual nexus with one another.

The unsettled matter at international level is that, in case of involvement of jurisdiction of more than one country *where to sue*?

There is no difficulty for the application of law and jurisdiction if both the parties are citizens of the same country. But if one of the parties is resident of a foreign country or non-citizen the problem may arise which is likely to occur in case of online contracts. Now, another the question is when one country wants to allow its citizens an option to file a case against non-resident in local courts, whether it is feasible?

This could be evident in *International Shoe v. Washington*[26] in which SC of U.S.A. upheld a Massachusetts Statutes, presuming those non-residents using the roads of Massachusetts allowed to be sued in that state. After examining the perspective of natural person, the court held that "a state may sue a non-resident foreign corporation provided the corporation has 'Minimum Contact Test' with the forum state and if exercise of jurisdiction does not violate the 'principle of fair play and justice'. This case permits the exercise of jurisdiction in the light of 'virtual' presence of defendant within a sate."[27]

In so far as the position in India is concerned, there is no law as such which deals with jurisdiction as regards to non-resident defendants. However, there are many cases where Courts have exercised jurisdiction over non-resident defendants.

The Supreme Court in the case of *Oil and Natural Gas Commission v. Utpal Kumar Basu*[28] decided the question of jurisdiction in case of online contract. "Where the cause of action arises from contract, and the parties have not effectively selected the governing substantive law, the relevant criteria in choice of law analysis are: (l) the place of contracting, (2) the place of negotiation of the contract, (3) the place of performance, (4) the location of the subject matter of the contract and (5) the location of the parties."[29]

In case of *Lilly ICOS LLC v. Richie Laboratories Ltd.*[30] Delhi High Court has again decided similar case regarding jurisdictional issue.

"The Delhi High Court held mere fact that a website is accessible in a particular place may not itself be sufficient for the courts of that place to exercise personal jurisdiction over the owners of the website."

In *Kusum Ingots and Alloys Limited v. Union of India and Anr.,*[31] it was observed that "if a small part of the cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits. It was further observed that in appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens."*

One of the fundamental provisions of Section 75 of IT Act, 2000 which provides for offences or violations committed outside India. According to this provision, "this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India." Thus, this Act provides the extra-territorial jurisdiction to the Indian Courts. But there is one important condition for the cognizance of case that for the act there must be use/involvement of a computer, computer system/computer network placed in India.

Conclusion

On one side, the Consumer Protection Act is protecting the rights of consumers from the scrupulous dealings of clever traders and on the other hand scammers are developing loopholes of laws. The Consumer Protection Act is an effective device to protect the interest of innocent consumers and an effective means for the growth of business/commerce in the country. The IT Act 2000 has helped the existing laws.

Technology has also helped the consumer in various ways. E-commerce has revolutionized the commercial field, and it is very easy for the consumers to know about the product and to purchase the suitable one. But it has also created problems and various initiatives have been taken to overcome those problems but still consumers are humiliated, harassed and degraded. Sometimes in the enforcement of online contracts and sometimes courts are helpless due to lack of jurisdiction. In various cases if courts have taken the cause, then there are many difficulties in enforcing the order of the courts.

The solution to this problem can only be made by combined efforts of all the countries, by entering treaties, whereby the citizens of those countries who are using internet, will come under 'Uniform Law of Internet' and be punished by a definite authoritative body whose decision will be binding on all the parties. For this end Online Dispute Resolution (ODR) and the concept of E-courts should also be developed, which will be helpful to solve cross-border consumer disputes. Many a time, decisions are given by the courts but same could not be executed, which ultimately undermined the power of law. The law is required to be enforced; otherwise, there will be no international security and harmony. The person who is purchasing goods or availing services from another person shall be treated as a consumer and there shall be no discrimination on the grounds of nationality.

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13 Halsbury's laws of England 4th ed., Vol. 9(1), P. 434-435

14 P.R. Transport Agency v. Union of India, 2006 (1) AWC 504

15 According to Section 13(3) of the IT Act, 2000, 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.

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18 Section 13(3) of the IT Act reads as:

"(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched 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."

19 A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, SALEM 1989 SCR (2) 1

20 Hakam Singh v. M/S. Gammon (India) Ltd. 1971 SCC (1) 286

21 Section 75 of the IT Act reads as:

Act to apply for offences or contraventions committed outside India: - (1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.

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