

# E-Contracts in India: The Legal Framework, Issues and challenges

N L Gurjar

Department of Law

Vivekananda Global University, Jaipur

Email ID: n.l\_gurjar@vgu.ac.in

**ABSTRACT:** *In India, e-commerce is gaining momentum with growing customer demands to purchase various varieties of goods and services from the worldwide pool. This plays a very significant role in a contract and the contract is the most sensitive and important in terms of company legal matters. The barrier of contact leading to broad acceptance of these contracts has been reduced by the growth of technology, computer programmes and the internet. The e-contract has multiple benefits over conventional contracts. Such agreements are based on individuals, legal intent, legal consideration, etc., and there are few critical elements needed to form electronic contracts that are legally binding. This article deals with an accurate description of e-contracts, contemporary problems faced by them, and an overview of their enforceability in our region. This data will help to identify the obstacles that electronic contracts face, with judicial prospects for these scenarios.*

**KEYWORDS:** *E-contract, Information Technology, enforceability, contemporary issues.*

## INTRODUCTION

Electronic commerce has existed since the 1990s in India, but this trend has gained traction in recent years. In parallel with the governmental policies of Indian digital India, globalisation has a successful outcome for the Indian economy. In new business countries from 2013 to 2018, a survey shows a 53 percent rise in the Compound Annual Growth Rate (CAGR). The country's consumers were even more likely to purchase and sell online products with the development of multiple digital platforms such as Flipkart, Myntra, Amazon, OLX, etc. With the advent of numerous digital channels such as Flipkart, Myntra, Amazon, OLX, etc., customers in the country have become more likely to purchase and sell online products. The basis of these contracts or business agreements is the agreement that is the basic documents that provide a legal obligation for the parties to enforce it with the capacity to execute it again with legal force.

Simple access to the internet, technical devices, mobile phones, etc. has resulted in electronic contracts for the country's citizens either by clicking or email, etc. These agreements are embraced internationally, bridging, for example, the distance between the parties; Mr. X, an American company who wants to purchase India's Khadi goods, may easily enter into an e-contract. This paperless contract has eased business in terms of time and resources. Therefore, legislation that can govern and monitor such contracts effectively has prompted the greatest need. In fact, the laws regulating e-contracts in India are the Indian Contract Act, 1872 and the Information Technology Act, 2000, along with the Proof Act, 1872. This paperless contract has eased business in terms of time and resources. Therefore, legislation that can govern and monitor such contracts effectively has provoked the greatest need. In fact, the laws regulating e-contracts in India are the Indian Contract Act, 1872 and the Information Technology Act, 2000, along with the Proof Act, 1872. As a result, we have a strong obligation not to carry out bad deeds, but no reciprocal duty to act to avoid them.

According to the Indian Contract Act, the "contract" of 1872 is described as a "law-enforceable agreement." However, the definition is not fully applicable when defining the term 'e-contract' since it has a wider superiority over conventional contracts and can even be understood as 'any contractual agreement between parties having legal object and appreciation of their contact with various networks such as email, audio file MP3, multimedia message, etc. Therefore, because the legislator has not established an e-contract in any legislation, his interpretation is the only prevailing opinion with regard to its context.<sup>1</sup>

<sup>1</sup> Section 2(h), Indian Contract Act of 1872

## DISCUSSION

### *Essentials of valid e-contract*

There might be an absolute need to satisfy all the requirements set out in the Indian Contract Act of 1872, read in the Information Technology Act of 2000, to constitute a legally binding agreement: First, there should be a legitimate "offer" to be made when one party expresses its willingness to do or abstain from doing something in order to obtain the consent of the other party to such act or abstain from doing something.<sup>2</sup> In E-contract, when it falls within the knowledge of the offeree, a bid is considered to be made. "In a simple sense, what they offer to the public is "invitation to offer" while going through an online shopping website, our acceptance of their terms and conditions for purchasing any item at the fixed price is "offer or proposal."<sup>3</sup>

Under Section 2(b) of the Indian Contract Act of 1872, if an offer is received by the person, "acceptance" is considered. Acceptance letter to the bidder is expected. Linking to the E-Contract is a form of approval when we agree by clicking on "I agree" to all the supplier's terms and conditions.

"Consideration," meaning the gain or benefits for which the parties have agreed to satisfy the contract's legal duty, is another essential necessity. Section 2(d) of the Indian Contract Act of 1872 describes a pledge as any act where the promisee agrees on the promisor's request to do or refrain from performing any act. In addition, in compliance with section 23 of the Indian Contract Act of 1872, there should be a legitimate reason for entering into a valid contract.

The parties to the contract should be able to enter into a valid agreement. As defined in section 11 of the Indian Contract Act of 1872, the parties must have reached the age of majority, be of a sound mind and not excluded by statute. However, in the case of an e-contract, the seller is responsible for ensuring that the other party has authority to enter into the contract. In addition, the contract ought not be ambiguous, unclear, or almost impossible to achieve.<sup>4</sup>

In e-contracts ascertaining the consent of the parties is difficult, and as it is executed between strangers therefore, the consent can only be presumed.

### *Types of e-contract*

- **Click Wrap Contract:** The agreement for wrapping the wrap is extracted from them. Such an e-contract is concluded between the parties until one of them agrees to the terms and conditions defined by the portals by clicking on 'I Agree' or by writing in the dialogue box their agreement. It has pre-determined terms and conditions where the customer has no bargaining power, as in the traditional contract, they can either completely accept or reject it. In other words, the express consent of the party is necessary to constitute any contract, and after downloading any game or software, we are required to explicitly acknowledge the terms and conditions, refusing us access to the game or software as well.
- **Browse Wrap Contract:** "It is similar to the click-wrap contract definition, as the terms and conditions of the contract are pre-determined, but the consumer does not need explicit consent. The website normally includes a hyperlink at the bottom of the page, linking visitors to the page with click-through terms and conditions. Following the opening of a hyperlink, the act of browsing the website is inferred as their agreement to contract"<sup>5</sup>
- **Shrink Wrap Contract:** "Shrink wrap" means thin plastic wrapping around a package or container. The technology wrapped licence agreement applies to the shrink wrap arrangement. "The users consent to the contract is inferred by the scrapping of the wrap for the product opening. The customer has little bargaining leverage in this form of contract, either he can approve it by shredding the wrap or refuse it by returning the product."<sup>6</sup>

<sup>2</sup> Section 2(a) of Indian Contract Act of 1872

<sup>3</sup> Section 23, Indian Contract Act of 1872

<sup>4</sup> Section 10, Indian Contract Act of 1872

<sup>5</sup>E-contract – An Overview, available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/38507/9/09\\_chapter%202.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/38507/9/09_chapter%202.pdf), (Visited on November, 13, 2019)

<sup>6</sup> What is a Shrink Wrap Agreement? available at: <https://www.legalmatch.com/law-library/article/shrink-wrapagreements.html>, (Visited on November 13, 2019)

- E-mail contracts: “This type of contract is entered into by means of electronic correspondence and is similar to the conventional form of contracts, as the parties have the ability to discuss the terms and conditions in this regard between themselves. In order to form such a contract, it is important for electronic communications to be treated and thus fall under the category of non-instant communication. It is regulated under the 2000 Act on Information Technology.”<sup>7</sup>

### *Issues faced by e-contract*

Trade in various countries, especially India, has been affected by the Virtual World concept. Fast access to the internet, fax, computer programmes or smartphones has been serving as blood in our country's e-commerce industry. A regulatory and governance framework was provided for it by the enactment of the 2000 Information Technology Act.

But, because it can only be perfect in just this entire universe, this sculpture also has some shortcomings related to the growing problems of the country surrounding such e-contracts. There are only a few problems faced by digital contracts to our country:

- **JUDICIAL ISSUE:** Paperless transactions such as e-contract are borderless, so it becomes difficult to determine the jurisdiction, i.e. the scope of the court's cap on any claim or appeal at the time of violation of e-contracts.<sup>8</sup> According to section 13(3) of the Information Technology Act of 2000:
- the place of business of the originator will be deemed to be place where the information was dispatched, and
- place of business of the addressee will be deemed to place where the information was received.
- “This means that there is no role in deciding the jurisdiction of the case for the position of the computer sources from which it was dispatched and obtained. The power granted by Section 20 of the Code of Civil Procedure, 1908, is, however, limited by this section. As Section 20 "clause c" states, the suit may be brought in the court under whose local jurisdiction the cause of action has been initiated. Consequently, the issue arises as to the jurisdiction of the courts, since the cause of action may occur in the case of an e-contract at the place where the electronic information was sent, irrespective of the fact that it is the principal place of business.”<sup>9</sup>
- “Since electronic transactions have no borders, the issue of jurisdiction has become difficult to deal with, especially when both parties belong to different parts of the world. The new e-contract legislation has failed to address questions regarding the jurisdiction of which country in the event of a dispute, the rule to be applied to the settlement of the conflicts (suppliers or consumers) or what the decision will be implemented in both countries.”<sup>10</sup>
- **Parties to Contract:** Electronic contract transactions are between parties that are strangers to each other. This puts all the contracting parties at risk. Paperless transactions such as e-contracts become borderless, so the jurisdiction, i.e. the scope of the court's limit on any argument or appeal at the time of breach of e-contracts, is difficult to assess.
- **Signature authentication:** — “The Indian Contract Act of 1872 acknowledges both oral and written contracts and, thus, it is not necessary for the parties to sign a binding contract under this statute. In conventional contracts, the signature represents the party's intention to constitute the contract and, in the eyes of law, has more legal meaning. Some laws, however, allow for the signature of the contract by all parties, such as in the case of the Indian Copyright Act, 1957, etc. E-contracts created by electronic means can not historically be signed by the parties, so electronic signatures or digital signatures as defined in section 3-A 35 or section 536 are required.
- **Loss due to technical error:** E-contracts are transactions entered into something and processed by the parties via sending information in the virtual world. But the world's stored information, such as paper transactions, does not have protection. However, it is believed that everything that enters the

<sup>7</sup>Emails and contracts - communication and validity, available at: <http://www.legalservicesindia.com/article/2326/Emails-and-contracts---communication-and-validity.html>, (Visited on November 13, 2019)

<sup>8</sup> All that you must know about E-Contracts, available at: <https://blog.ipleaders.in/all-that-you-should-know-about-e-contracts/>, (Visited at November 13, 2019)

<sup>9</sup>Legal regulation of E-contract in India, available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/38507/14/14\\_chapter%207.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/38507/14/14_chapter%207.pdf), (Visited on November 13,2019)

<sup>10</sup>Legal regulation of E-contract in India, available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/38507/14/14\\_chapter%207.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/38507/14/14_chapter%207.pdf), (Visited on November 13,2019)

digital environment still survives and never gets lost, yet there are no organisational, legal or judicial regulations on the scenario in which any or part of the data is lost due to technological failure.<sup>11</sup>

## CONCLUSION

Technological innovation has enabled the population of the nation to embrace the growing wave of the Internet. Such innovations have rendered blood and sweat for India's e-contract industry. Nonetheless, to effectively implement and manage such contracts in India, these changes require strict guidelines. The Information Technology Act of 2000 did not create laws for phishing, identity theft, privacy protection, data protection for internet banking, etc. In India, strict and independent e-contract governance laws covering the shortcomings of the current legislature and providing institutional framework for the technical and legal aspects of these contracts are required.



<sup>11</sup>Information technology act, 2000 — a contractual perspective, available at: <https://www.ebcindia.com/lawyer/articles/2004v1a2.htm>, (Visited on November 13, 2019).