

Research Article

Enforceability of E-Contracts in India

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Abstract - An E-Contract is a tool for creating and negotiating agreements for consumer and commercial e-commerce and associated services. It is a contract that a software system model specifies, executes, and deploys. Technological advancement has ensured that the country has a strong e-commerce infrastructure. E-Contract usage has increased significantly over the past ten years, not just in India but in other countries, particularly in the wake of the COVID issue. E-contracts are the contracts of the future. E-contracts like shrinkwrap, clickwrap, email contracts, etc., are used by businesses in the trade, software, and commerce sectors. The technology-law relationship is becoming more intriguing because of the growth of technology. Everyone wants a quick and easy way to create contracts or legal documents in today's fast-paced environment. People are now adopting the method of creating e-contracts by electronic methods, which is in full effect today. The Indian Contract Act of 1872, the Information Technology Act of 2000, and the Indian Evidence Act of 1872 are the major legislation that determines the authenticity of an e-contract. Since many contracts and agreements are formed electronically using Gmail, and the agreement is acknowledged by the mail itself, this research paper will explore questions regarding the validity, enforceability, and legality of E contracts in India.

Keywords - Digital signatures, E-contracts, EDI, E-signatures, Types of electronic contracts.

1. Introduction

Today, advances in computer technology, telecommunications technology, software, and information technology have resulted in inconceivable changes in people's level of living. Communication is no longer hampered by geographical and time restrictions. Information is being broadcasted and received more broadly and quickly than ever before. And this is where electronic commerce provides the business environment with flexibility regarding location, time, space, distance, and money. Ecommerce refers to the purchasing and selling information, products, and services using computer networks. It is a method of conducting business online, most commonly using the Internet. It is the means through which 'enterprise integration is achieved. With this, the usage of e-contracts is rapidly expanding as e-commerce grows. However, the application of electronic contracts presents several obstacles on three major levels: conceptual, logical, and implementation. This paper will explore the extent, nature, and validity of e-contracts and other concerns.

2. What are Electronic Contracts?

Traditional contract definitions cannot be used to E-contracts because the domain of E-contracts is significantly larger than the realm of traditional contract definitions. To put it simply, an E-contract is any agreement entered into through the internet by competent parties for lawful consideration, free consent, and the creation of a legal relationship.

It can further be defined as a kind of contract formed by negotiation of two or more individuals through the use of electronic means, such as email, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract (E-Contract Law and Legal Definition, n.d.). Though it is not an exhaustive definition of e-contract, cyber contracts, digital contracts, and online contracts can also be referred to as e-contracts. Examples include purchasing things online from stores like Amazon and Flipkart.

The international chamber of commerce defined "electronic contracting" as the automated process of entering into contracts via the parties, computers whether networked or through electronic messaging (General Usage for International Digitally Ensured Commerce, n.d.).

3. Essentials of a valid E-contract

The essential elements of contract law that have evolved through time via judicial judgments apply to all contracts, whether formed electronically, orally or through paper-based interactions. The major concern is how these traditional contract law ideas will be applied to modern types of technology. An e-contract, like any other contract, needs the following elements:



3.1. Offer

Section 2(a) of The Indian Contract Act speaks of the offer. “When one person signifies his willingness to do or to abstain from doing anything to obtain the assent of that other to such act or abstinence, he is said to make a proposal (The Indian Contract Act, 1882).” The offer, invitation to offer, counteroffer, etc., are all made electronically in an e-contract and this type of communication results in an agreement.

3.2. Acceptance

The most challenging aspect of signing an electronic contract is determining when an agreement has been achieved. A contract is formed once an offer is accepted, except for the postal acceptance rule. The general rule that a contract must be disclosed to the offeror before acceptance is an exception to the postal acceptance rule. According to it, a contract is deemed to have been accepted when it is posted. As a result, the message of acceptance is complete in favour of the proposer when it is sent to him and in favour of the acceptor when it comes to the proposer's awareness or when the acknowledgement enters the specified computer resource (Pathak & Rajpoot, 2015). As can be observed in *Lalman Shukla v. Gaurie Datta Sharma*, there is no distinction between Indian and Common law in this area. In this case, despite discovering the youngster whose uncle had given Rs. 501 to anybody who found him, he was refused the prize since he learned about it only after finding the boy (*Lalman Shukla v. Gaurie Datta Sharma*, 1913).

3.3. Lawful Consideration

The Indian Contract Act of 1872 states that in the current situation, the consideration is executed, and the need is fulfilled when an item has been delivered, and the payment has been made. When the consideration is solely executory, issues might occur. This situation occurs when the seller's computer has only "promised" to supply that thing. Of course, the purpose to be bound by the promise, or, in other words, the aim to establish legal relations, is a vital intention that underlies such a promise. When an autonomous computer is employed, the Contract law may not always be fully applicable to e-contracts (Reddy, 2021).

3.4. Intention to create legal relations

The parties must enter a legally binding arrangement in which the agreement's rights and obligations are enforceable.

3.5. Competency with parties

The competency of the parties to contract is one of the most crucial elements for making a contract legitimate and enforceable in a court of law. A contract entered into by a party who is not mentally capable of understanding its nature and effects is void at the outset.

3.6. Free Consent

Consent must always be freely given. It is said to be free when consent is not obtained through force, fraud, misrepresentation, undue influence, or fraud. Only after it is guaranteed that all of the components mentioned above are present is an e-contract certified. A contract cannot exist without these components, a legitimate object, and a reasonable chance of performance.

3.7. Lawful Object

Such a contract must serve a legitimate purpose. The courts will not uphold agreements that are illegal or go against public policy. Such agreements are regarded as void. A contract that demands a crime's conduct is unlawful and therefore void. For instance, a person could not force another party to set a house on fire. Additionally, unlawful and void is a contract that calls for the doing of civil wrong.

4. Parties of E-contract

There must be two parties for regular contracts—an offeror and an acceptor. Regarding electronic contracts, the phrase's originator and addressee are employed in place of offeror and acceptor. Three parties—the creator, the intermediary, and the addressee—are engaged in transferring electronic records. The need for this has arisen as a result of electronic contracts. These terms are defined under the Information Technology Act, 2008.

Originator “means is the 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” (Section 2(za), Information Technology Act, 2008) as defined under Section 2(za) of the IT Act.

Intermediary, “with respect to any particular electronic records, means any person who on behalf of any other person receives, stores or transmits that record or provides any service for that record and includes telecom service providers, search engines, online payment sites, online auction sites, online market places and cyber cafes” (Section 2(w), The Information Technology Act, 2008).

Addressee “means a person who is intended by the originator to receive the electronic record but does not include any intermediary” (Section 2(b), The Information Technology Act, 2008).

- For an electronic message, the sender 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.

5. Electronic Data Interchange (EDI)

Electronic data exchange, or EDI, is the process of sending business documents between companies in a standardised format. A common electronic format that substitutes paper-based documents like purchase orders is the most basic definition of EDI. Organizations may save time and eliminate expensive mistakes brought on by human processing by automating paper-based transactions. In EDI transactions, data is transferred directly from one organization's computer application to another organization's computer programme. EDI standards specify the position and hierarchy of information inside a document format. Data sharing may now be done automatically rather than taking hours, days, or even weeks as it would with paper papers or other ways.

Industries now communicate various document types via EDI connectivity, including purchase orders, invoices, requests for quotes, loan applications, and more. As members of their supply chains and business-to-business (B2B) networks, these businesses often function as trade partners that routinely exchange goods and services (IBM, n.d.).

6. Benefits of EDI

All firms that employ EDI get access to a wide range of advantages. Business cycles may be sped up by 61 percent with EDI. Thanks to technology and transactions, transactions may now be completed in minutes instead of days or weeks. Personnel can perform higher value work and be more productive by automating paper-based processes. By automating data sharing, the company can ensure that crucial data is provided on time and tracked throughout your supply chains. They may decrease inventory by speeding up order processing and delivery. Because there is no more need to spend on paperwork, ink, copies, filing and storage, shipping, and document retrieval, using EDI lowers transaction costs. Thanks to this, the company might save more than 35% on transaction costs. Due to early payment reductions, handling a significant number of transactions may also help you save millions of dollars. Using EDI technology also eliminates mistakes that can be very expensive, such as missing orders, wrongly accepted phone orders, data entry mistakes, and unreadable faxes.

As a result of shorter order-to-cash cycles and faster cash flow, sellers gain from EDI, which enhances supplier relationships. Your partner will spend less time and energy dealing with data disputes if you reduce inaccuracies (Murphy, n.d.). Seeing the status of transactions in real-time makes it simpler to make data-driven choices more quickly, which has various strategic advantages for your business.

7. Laws Governing E-contracts in India

There is no legislation governing electronic contracts in India. But some elements of the Information Technology Act of 2008, the Indian Evidence Act of 1872, and the Indian Contracts Act of 1872 recognise and regulate electronic contracts.

7.1. Information Technology Act 2008

Section 10A of the Act states that “Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose” (Section 10A, The Information Technology ACT, 2008).

Any contract must have the signatures of both parties to be legally binding. The use of an electronic signature is necessary for e-contracts. The Information Technology Act defines an electronic signature as the “authentication of any electronic record by a subscriber using the electronic technology described in the second schedule, which includes a digital signature” (Section 2(ta), The Information Technology ACT, 2008). Additionally, suppose a law requires that a signature be affixed to a document or that information be validated in any other way. In that case, it is considered satisfied when this need is accomplished as stated under section 5 of the IT Act. An electronic signature serves the same purpose as a handwritten signature.

7.2. Indian Evidence Act, 1872

Section 65B of the Indian Evidence Act, 1872 states that “any information in an electronic record printed on a paper or stored or recorded or copied in optical or magnetic media produced by a computer shall be deemed by a document. It further states that such a document can be admissible as evidence in any proceedings without additional proof original” (Section 65 B, Indian Evidence Act, 1872).

7.3. Indian Contracts Act, 1872

Every contract made in India must abide by the terms of the Indian Contract Act, 1872 to be legally enforceable. This Act regulates how contracts are formed and executed in India. Such transactions are covered by the Indian Contract Act's broad provisions. Unless otherwise agreed upon by the parties, an offer and acceptance of an offer, or any of them, may be represented in the context of contract formation by data messages or electronic records. The simple justification that data messages were employed for that purpose cannot invalidate or render unenforceable a contract that was formed using an electronic record (Davidson, 2009). A will or other statement should be valid and enforceable between the maker and the recipient of the electronic record, even if it is a database.

8. The distinction between Electronic Contracts and Traditional Contracts

The importance and role of agreements in online commerce remained constant, but their nature underwent a remarkable shift.

- (1) Conventional contracts took place in the real world, where the parties could negotiate with attorneys. Electronic contracts, however, took place in a virtual environment where the parties would never actually meet in person and where people might even be unable to determine whether the exchange is fair. Their reputation will be determined by an accrediting body or secret key validation.
- (2) The agreement's kind has changed. Electronic contract data in information messages cannot be signed and sealed using traditional methods since there is no distinction between firsts and duplicates (Seth, n.d.).

The agreement has special rights and obligations for the meetings. Not only were the formal rights and commitments of the content governed by the electronic contract, but a unique sort of agreement emerged from those formal rights and commitments, such as the legal connection between digital markings. Some customary contracts do not provide the substantive rights and commitments of legal interactions the same weight as the rights and commitments in electronic transactions, such as data disclosure commitments and insurance of protection promises (Pragadeeswaran & Rajan, 2018).

9. Types of Electronic Contracts

There are three types of electronic contracts: -

9.1. Clickwrap Agreement

To proceed with this agreement, each party must check the box next to "I Agree" or "I Disagree" in front of the other party. They usually admit this way before obtaining the goods. This type of agreement, known as agreeing by lead, was used on the internet whether it was used to permit browsing a webpage, downloading a product, or selling something through a website. By selecting one of them, he either accepts or rejects the terms. If he disagrees, the circle is broken. In *Rudder vs Microsoft Corporation* (Rudder v Microsoft Corporation, 1999), the aggrieved parties filed a lawsuit alleging that Microsoft had violated several particular payment terms in the MSN Member Agreement. The agreement may be considered an online "click-wrap" arrangement, on which everyone should scroll down and read all the instructions before providing permission to the management by clicking the "I Agree" button. In pursuing the matter, the aggrieved party contended that the decision was made with the aid of law and gathering persistence provisos whose permission was examined by Microsoft, even

though the party to the contract claimed to want to rely on certain provisions of the Member Agreement. The injured side claimed that it was true that they could not have implemented the entire member agreement at once since they were unfamiliar with such a contract and unable to do so. The Hon'ble Court determined that the Member Agreement was enforceable because reading some pages was like turning some pages of a large paper-based contract, and because if the agreement were not upheld, there would likely be turbulence in the financial sector, insufficient E-Trade, and a threat to the integrity of any agreement that had been entered into (Taneja, 2021).

9.2. Shrink Wrap Agreement

In contrast to the Click Wrap Agreement, the Shrink Wrap Agreement is a tangible document. The bought package comes with the terms and conditions. The terms and conditions of using the goods are known as shrink wrap contracts. Most of the time, they may be found on the instruction manuals or on the product's outside plastic covering. For instance, a CD-ROM. The contract is said to be completed when the buyer opens the package or unwraps the CD (Gautam).

10. How does a Shrink Wrap Contract operate?

A consumer or customer cannot see the terms of a shrink wrap agreement until the shipment has been accepted and paid for is one of its characteristics.

Even in legal proceedings, the issue of whether or not shrink wrap agreements are binding has persisted. While some courts concur that because the customer pays for and accepts the product, he thus consents to the conditions of a shrink wrap agreement. Others believe that because the consumer is unaware of the conditions until the shrink wrap is removed, he could not have given his agreement to them. An End User License Agreement illustrates a shrinkwrap agreement (Gordon, 2022).

10.1. Browse wrap Agreements

A browsewrap agreement is a licence agreement that controls how content from a website or downloaded product can be accessed and used. You cannot indicate your acceptance of the terms and conditions of a browsewrap agreement by ticking the "I accept" box. Instead, a website user gives consent only by using the product, such as by going to a certain internet page or downloading applications. Browsewrap agreements cover the contract's terms, so they are not obvious before the commodity is purchased. The terms and conditions governing the use of the website are referenced on the website via a hyperlink in Browse Wrap agreements. In general, these terms and conditions assert that the user has willingly agreed to be bound by the conditions listed by using the website. For instance, e-commerce companies like Amazon, Flipkart, Myntra, Snapdeal, and

others include links on their websites under the "Terms and conditions" or "Terms of Use" button. The client/customer is taken to a page with a detailed explanation of the terms and conditions by clicking the hyperlink (Gautam). By using the website, the client expresses his approval of all of the terms and conditions of the website, according to a clear declaration in the conditions.

11. Issues Faced by Electronic Contracts

There are various issues observed regarding which usage of electronic contracts:

11.1. Capacity to contract

First and foremost, a person must be legally competent and able to engage in an agreement. However, when it comes to online agreements, anonymous users frequently sign contracts without the service provider knowing who they are. Sections 10, 11 and 12 of the Indian Contract Act of 1872 provide that competence, and its requirements must be adhered to; however, there is no identification of the person's capacity in this instance.

11.2. Free consent

Free consent is seen as one of the necessary conditions for entering into a contract or agreement, and the absence of any room for discussion in the case of online agreements is a significant problem for the parties and users. Additionally, the Supreme Court said that *"In dotted line contracts, there would be no necessity for a weaker party to bargain as to pretend to have equal negotiating strength"* in the case of *LIC of India vs Consumer Education and Research Centre* (LIC of India v. Consumer Education and Research Centre, 1995). Finally, it may be claimed that the user party should exercise caution while providing consent.

11.3. Authentication

Due to external or third parties or unauthorized access to the domain, sites, or agreements, the electrification authentication feature became rather unreliable. Due to technological advancement, certain persons can access official websites easily, leading to unauthorized authentication (Jayasurian, 2020). In addition, because of nameless access, the service provider is unaware of the authentication process and the user's response.

The use of digital contracts has increased due to numerous dynamic variables such as technological advancements and globalization. These reasons have functioned as catalysts for the rising trend of digitalising commercial business models and transactions. It has resulted in a considerable increase in digital contracts and electronic documents. To perform and finalize transactions online, e-commerce enterprises rely on digital contracts.

12. Journey of E-signatures so far under the IT Act

The three steps of the journey of signatures under the IT Act so far are:

- Digital Signatures in Phase I (the year 2000 onwards)
- Electronic Signatures in Phase II (the year 2008 onwards)
- Phase III: E-hastakshar, an electronic signature service (Sept. 2016 onwards)

Only for the sake of clarity are the stages divided into different categories. Otherwise, the Phase I digital signature certificate system and Phase III's E-sign online signing service remain in place (SBSC).

13. Digital Signatures

The IT Act of 2000 introduced the concept of digital signatures under Sec. 2(1)(p) as *"authentication of any electronic record by a subscriber, i.e., a person in whose name the Digital Signature Certificate' (DSC) is issued by means of an electronic method or procedure following the provisions of Sec. 3"* (Section 2(1)(p), The Information Technology Act, 2008). A digital signature serves the same purpose as a handwritten one.

14. Authentication using Digital Signature

Identification and authentication go hand in hand. The entities and the information itself fall under the purview of this function. Digital signatures and signature certificates are used to accomplish this. By producing a digital signature, which is a mathematical statement of the content of a message, one may verify electronic data (Chodankar, 2022). Cryptography secures data privacy by substituting the original data with a modified form that can be redone to disclose the original data only to someone with the right key.

A key is a configuration that controls how cryptographic transformations are carried out. It comprises both encryption and decryption procedures. The transformation of plain communication into a cypher text is known as encryption. Many chipper texts are inserted into the original message during decoding.

15. Digital Signature Certificate

A digital signature certificate (DSC) equals a physical or paper certificate. DSC is a process for demonstrating the legitimacy of electronic documents. It must be delivered electronically to prove identification, gain access to data, or digitally sign a document. The Controller of Certifying Authorities, who will authorise the Certifying Authorities to issue DSC to the user, has been appointed by the Central Government.

16. Types of Digital Signature Certificate

Based on the security level, there are three digital signatures: class 1, class 2, and class 3 certificates.

Certificate of Class 1: It is not accepted by the law. It is not based on direct verification but confirmation of a legitimate email.

Class 2 certificate: This is based on the individual's identification, which must be checked against a reputable pre-verified database.

In the presence of the Registration Authority, a person can demonstrate his identification using a Class 3 certificate.

Finally, companies in India are signing papers, including invoices, reports, contracts, agreements, HR letters, and other similar documents utilising digital signatures (DIGITAL SIGNATURE LAWS IN INDIA, n.d.).

17. E-Signatures

Although electronic signatures ("ES") are less secure than digital signatures ("DS"), they are more frequently employed for confirming than for securing, in contrast to DS. ES is a safe and legally binding digital version of a "wet ink signature," but it should be noted that it does not follow any encryption standards. A scanned signature, picture, symbol, or other mechanism are some forms of ES attached to communication or document to verify the recipient's identity and obtain their consent. It is not often permissible to do ES authentication since no reliable certificate authority, or verification service providers do so. Comparatively speaking, ES is simpler to utilise than DS (Balasubramanian & Singh, n.d.).

The term "Electronic Signature" is defined under *section 2(1) (ta)* of the IT Act as "authentication of any electronic record by a subscriber through the electronic technique specified in the Second Schedule and includes the digital signature" (Section 2(1)(ta), The Information Technology Act, 2008).

18. Electronic Contracts and Customer Rights by the Court

Indian courts have seen instances where the contractual parties have unequal bargaining power. The Indian Contract Act states that a transaction cannot be legal if the consideration or goal of the transaction is unlawful, immoral, fraudulent, or results in injury to the person or property of another. According to the courts, the person in the dominant position may be required to prove that an unfair position did not influence the contracts in these situations.

The court determined that a limitation of liability clause printed on the back of a laundry bill which restricted the laundry's liability to 50% of the market price of the goods in the event of loss, was against public policy and thus invalid. This ruling was made in the case of *Lili White v. R*

Munuswami (*Lily White v. R Munuswami*, 1966). Further, the Supreme Court, in the case of *LIC India v. Consumer Education and Research Centre*, ruled that some sections in the policy, which limited the benefits of the coverage to only government employees, invalid under Article 14 of the Constitution (*L.I.C. Of India & Anr v. Consumer Education & Research*, 1995).

18.1. Contracts that are prohibited online

It should be noted that some contracts cannot take place in the online format. In India, the Information Technology Act 2000 does not apply to Negotiable instruments such as power of attorney. A power of attorney cannot be granted by an electronic message or document. Another example is Trust which cannot be framed digitally and thus falls outside the scope of the Information Technology Act. Similarly, Wills made through electronic documents are invalid as the IT Act does not apply to wills.

18.2. Case Laws

18.2.1. Trimex International FZE ltd Dubai v. Vendanta Aluminium Ltd (2010).

The parties communicated the offer and subsequent acceptance in this case through email. The Supreme Court of India held that once a contract is fulfilled, a formal contract written and initialed by the parties would not affect the contract's implementation, acknowledging the validity of an internet transaction.

18.2.2. Tamil Nadu Organic Private ltd. And others v. State Bank of India (2019)

The IT Act's regulations were carefully followed, and the High Court ruled that commercial obligations might materialize through electronic means. The validity and enforceability of such contracts were addressed in further depth. It was found that Section 10A of the IT Act allowed the use of electronic records for contract conclusion in addition to approving E-contracts.

18.2.3. The state of Punjab and others v. Amritsar Beverages ltd and others (7SC20)

The Supreme Court of India noted in this ruling that Section 63 of the Evidence Act covers the admission of computer outputs in various media, including paper, optical, or magnetic forms. It also entails the process of offering electronic records as proof.

18.2.4. Sudarshan Cargo Pvt ltd v. M /s. Techvac Engineering Pvt .ltd (2013)

According to the Karnataka High Court judgement, if the material is in writing, it nonetheless complies with Section 4 of the IT Act of 2000. It continued by stating that Section 2(b) of the IT Act of 2000 permits communication by email. As a result, sending a confession by email from the address or to the receiver is a legitimate electronic communication.

18.2.5. *Interglobe Aviation Ltd. v. N. Satichidanand (2011)*

In this instance, it was argued that a user's inability to comprehend the words did not absolve them from adhering to the rules. Since customers cannot read the terms when paying a fare, the High Court did not consider the provisions of the Indigo Carriage. The Apex Court did not accept this reasoning. Shrink wraps need the buyer to decipher the written text.

19. Conclusion

Today, advances in computer technology, telecommunications technology, software, and information technology have resulted in unimaginable changes in people's standard of living. Communication is no longer hampered by geographical and time constraints. Information is being transmitted and received more widely and quickly than ever before. And this is where electronic commerce provides the business environment with flexibility regarding place, time, space, distance, and payment.

With the growth of e-commerce comes an increase in the use of e-contracts. E-contracts are well suited to facilitating the re-engineering of business processes at many firms, involving a blend of technologies, processes, and business strategies that facilitate the instant exchange of information. In India, however, no explicit law authorizes the E-contract or a norm that establishes the contract's acceptance, the business's location, the court's jurisdiction, etc. These E-contracts have several advantages and disadvantages. On the one hand, they save money and time and increase service quality by eliminating paperwork and boosting automation. However, the legislation governing e-contracts lacks important aspects, such as there is nothing to assess the parties' desire to engage in a legally enforceable contract. E-commerce is projected to boost participating firms' productivity and competitiveness by offering unprecedented access to a global marketplace with millions of clients and thousands of products and services. To safeguard consumers and merchants in online commerce and to ensure that E-contracts are enforced, it is necessary to include all elements of E-contracts in a single, complete, and updated piece of law.

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