



E-CONTRACTS IN INDIA: THE LEGAL FRAMEWORK, ISSUES AND CHALLENGES

AUTHOR – SOYAB KHAN, IIMT COLLEGE OF LAW, GREATER NOIDA

BEST CITATION – SOYAB KHAN, E-CONTRACTS IN INDIA: THE LEGAL FRAMEWORK, ISSUES AND CHALLENGES, *ILE LEX SPECULUM (ILE LS)*, 1 (1) OF 2023, PG. 119-122, APIS – 3920 – 0036 | ISBN – 978-81-964391-3-2.

ABSTRACT:

E-commerce is growing rapidly in India as customers increasingly need to purchase a variety of products, goods and services from all over the world. It plays a very important role in the contract and the contract is the most sensitive and important instrument in relation to corporate law issues. Barriers to communication lead to widespread acceptance thanks to the development of technology, computer programs and the Internet, the number of contracts has decreased. There are several electronic contracts which have more advantages over traditional contracts such agreements are based on personal, legal intent, legal considerations, etc., and there are few key elements required to form a legally binding electronic contract. This article deals with an exact a description of electronic contracts, current issues they face and an overview of their enforcement in our region.

KEYWORDS: E-Contract, Information Technology, contemporary issues, websites, enforceability

I. INTRODUCTION:

The traditional pen and paper contracts have evolved into the modern E-Contracts in the same way that everything else in this world is becoming more digital to keep up with the demands of this fast-paced world. Everything is done with the click of a mouse, from the straightforward registration of household gasoline forms to the highly complex registration of patents.

In India, electronic commerce has been around since the 1990s, but this development has picked up steam recently. Globalization has produced positive results in tandem with the government policies of Indian digital India to benefit the Indian economy. As a result of the introduction of numerous digital channels like Flipkart, Myntra, Amazon, and OLX. etc. customers in the nation are increasingly likely to buy and sell products online which laid the foundation of these agreements, also known as business contracts. These contracts are the fundamental legal documents in which the parties are required to enforce it with the ability to execute with legal force. Simple accessibility to the internet, gadgets, mobile phones, etc. has

led to these E- contracts for citizens of the nation via email, clicking, etc.

II. DEFINITION OF E-CONTRACTS:

The "contract" of 1872 is defined as a "law-enforceable agreement" in accordance with the Indian Contract Act. Since the term "e-contract" has a wider meaning, the definition is not entirely applicable when defining it. It has much more superiority over traditional contracts and could even be interpreted as any contract between parties with a legal purpose who are aware of their contacts on various networks, including email and audio files, the MP3, multimedia message, etc. Thus, an E-Contract is an agreement that is legally binding and is created, negotiated, and executed entirely digitally. E-Contracts are entirely digital, as opposed to conventional contracts, which are paper-based. Despite the parties' inability to physically meet, a meeting of the minds exists in an E-Contract. Internet or telephonic media are used by the parties to communicate with one another. A step up from conventional pen-and-paper contracts, an E-Contract is created using digital and electronic channels.

III. ESSENTIALS OF VALID E-CONTRACT:

As much as we are used to fulfilling our contractual obligations in the conventional manner, in the modern era, we are also becoming more open to the concept of E-contracts, largely because such transactions are hassle-free and primarily because it is recognized by the Indian Judicature. The relationship between Indian Contract Act of 1872 (section 10) and the Information Technology Act of 2000 (section 10-A) must be emphasized in order to better understand how an E-Contract is recognized legally under Indian law. The essential requirements for a Contract's legal validity are laid out in Section 10 of the Indian Contract Act of 1872.

A Contract must meet the requirements listed in Section 10 of the Contracts Act, i.e.

- A. Offer
- B. Agreement to Accept
- C. Competency of Parties
- D. A Legal Consideration

E-Contracts should have the same elements as conventional contracts. It should be noted that the Indian Contract Act expressly excludes references to electronic contracts. We can ensure the legality of contracts created using electronic means thanks to Section 10-A of the Information Technology Act, 2000.

"Information Technology Act of 2000 (Section 10-A): Validity of agreements made electronically. In the event that a contract is formed and proposals, acceptances, and revocations of proposals and acceptances, as applicable, are communicated electronically or through the use of an electronic record, the contract shall not be deemed unenforceable solely on the basis that such an electronic form or means was used for that purpose."

The relationship between Income Tax Act (Section 10-A) and Indian Contract Act (Section 10) is that when an E-Contract complies with Section 10 of the Indian Contract Act's requirements, under Section 10-A of the Income Tax Act, its legal validity cannot be questioned

solely on the grounds that it was created and executed digitally. Therefore, when a contract satisfies all of the requirements, it cannot be disregarded as invalid because it was created electronically. Briefly put, E-Contracts are recognized as valid contracts that are enforceable under the law. An E-Contract's legal standing must be established in order to take legal action in the event of a breach, which is why it is important.

IV. KINDS OF E-CONTRACTS:

Electronic contracts are specific to the type of business. Different types of electronic contracts are executed depending on the business structure. A combination of traditional contracts and technical skills creates electronic contracts. Some of the most common types of E-Contracts are:

- a. Shrink wrap contracts
- b. Click wrap contracts
- c. Browse wrap contracts
- d. Rolling wrap contracts
- e. Sign-in wrap contracts

a. Shrink Wrap Contract: "Shrink Wrap" refers to a thin plastic wrap around a package or container. The Technology Packaging License Agreement applies to shrink wrap arrangements. Acceptance of the contract is concluded by tearing off the packaging of the product. In this e-contract, the customer has little bargaining power, either he can confirm it by breaking it up pack or reject when returning the item.

b. Click Wrapping Contract: The literal meaning of this contract is to pull up the wrapping agreement. Such E-contracts are signed before either party agrees to the terms and conditions. Determined by the portal by clicking "I agree" or typing your consent in the dialog box. The terms and conditions are predetermined and the customer has no bargaining power e.g. traditional contracts that they can directly accept or reject. In other words, express the consent of the parties is a necessary condition of any contract and is

required before downloading games or software, we must expressly acknowledge the terms and conditions that deny us access.

c. Browse Package Agreement: This contract meets the definition of a click package agreement because the terms and the terms of the contract are predetermined but do not require the express consent of the consumer. This contracts contain Websites which usually have a hyperlink at the bottom of the page that directs the visitor to that page Click on Terms and Conditions. The websites conclude that they agree to enter into a contract.

d. Rolling wrap contracts: A Rolling wrap contracts requires the user to scroll the license agreement, which means that the user has read the agreement by scrolling down the terms and conditions before accepting or rejecting it.

e. Sign-in wrap contracts: The Sign-in wrap contracts is an electronic contract that the end user accepts when logging in to an online service or logging in to use a product.

V. ELECTRONIC SIGNATURES:

In electronic contracts, digital signature or electronic signature is an auxiliary function that receives a lot of attention. Acceptance of digital signatures varies around the world, so it is very important to ensure the validity of electronic signatures before digitally executing an international contract. The reproduction of a signature by clicking a button or checking a box digitally is called an electronic signature.

Electronic signatures are offered digitally, which is unconventional compared to the traditional Wet Signature. The Information Technology Act, 2000 recognizes the legal validity of Digital Signature Certificates (DSCs) under Indian law.

VI. STAMPING OF E-CONTRACT:

Under the Indian Stamp Act, 1899, stamp duty is levied on "instruments". The term "instrument" includes all documents evidencing title or obligation, except bills of exchange, letters of credit, checks, promissory notes, bills of lading, insurance policies, stock transfers, bonds, powers of attorney and receipts.

Note that the term "document" also includes any electronic record as defined in section 2(1)(t) of the Information Technology Act 2000. In India, stamping of electronic documents is done by printing the document on stamp paper or by free stamping method or electronic stamping method by purchasing a stamp duty receipt.

VII. CHALLENGES OF E-CONTRACT:

Electronic contracts (e-contracts) are becoming increasingly prevalent due to the growth of online transactions and digital commerce. Several contemporary issues were emerging in the realm of e-contracts. Some of the Key challenges of E-contracts are:

1. Validity and Enforceability: One of the primary concerns with e-contracts is ensuring their legal validity and enforceability. Questions arise regarding whether electronic signatures and methods of contract formation meet the requirements of traditional paper-based contracts, especially considering varying laws across jurisdictions.

2. Consent and Authentication: Establishing the identity of the parties involved and ensuring their genuine consent to the contract terms is essential. Without proper authentication mechanisms, there is a risk of fraud and disputes over the validity of agreements.

3. Data Privacy and Security: E-contracts often involve the exchange and storage of sensitive personal and financial information. Ensuring the privacy and security of this data is crucial to protect parties from potential cyber threats and data breaches.

4. Cross-Border Transactions: Conducting e-contracts across international borders raises complex legal and jurisdictional issues. Different countries may have diverse regulations and requirements for electronic transactions, creating challenges for businesses operating globally.

5. Electronic Signature Standards: While many countries have adopted laws recognizing electronic signatures, the lack of uniform international standards can complicate cross-

border transactions. Harmonizing these standards can facilitate smoother e-contract execution.

6. Digital Accessibility: As digital contracts become the norm, it's crucial to consider the accessibility of these agreements to all parties, including those with disabilities or limited access to technology.

7. Amendment and Termination: Managing amendments and terminations in e-contracts can be more challenging than with traditional contracts. Ensuring proper documentation and tracking changes are essential to avoid disputes.

8. Evidence and Record Keeping: Maintaining clear and reliable records of e-contracts is essential for evidentiary purposes in case of future disputes. Establishing robust record-keeping practices becomes increasingly important in a digital environment.

9. Automated Contracts and Smart Contracts: The rise of automated contracts and smart contracts, which are self-executing agreements based on predefined conditions, brings new legal and technical challenges, such as coding errors and unintended consequences.

10. Consumer Protection: E-contracts often involve consumers, who may be less familiar with digital transactions and their rights. Ensuring that consumer protection laws adequately cover e-contracts is essential.

It's important to note that the legal landscape surrounding e-contracts is continuously evolving, and it will be seen that some of these key issues will be solved with time.

VIII. CONCLUSION:

As the world is steadily moving towards complete digitization and the concept of remote working is rapidly evolving in all fields, it is safe to say that electronic contracts (E-Contracts) are the next powerful revolution that is ready to completely take over the business world.

Technological innovation has allowed the nation's population to embrace the rising tide of internet. Such innovations have been the blood and sweat of India's e-contracting industry. However, for these changes require strict guidelines to effectively implement and manage such contracts in India. The Information Technology Act of 2000 does not provide for anti-phishing, identity theft, privacy, Data protection for internet banking, etc. Strong and independent e-contract management laws in India could fill the gaps in the current legislature and create an institutional framework for technical legislation. Thus Legal aspects of these contracts are required.

IX. REFERENCE

1. Vasundhara Sivini, E-contracts, <https://blog.ipleaders.in/e-contracts/>. (Last Accessed on 26^h July 2023 at 07:14 p.m.)
2. N L Gurjar, E-Contracts in India: The Legal Framework, Issues and challenges, <https://www.jetir.org/papers/JETIREO06190.pdf>. (Last Accessed on 29^h July 2023 at 06:40 p.m.)
3. Pooja, Essentials of a Valid Contract, <https://www.legalserviceindia.com/legal/article-6411-essentials-of-a-valid-contract.html#:~:text=Therefore%2C%20for%20a%20valid%20contract,competent%20to%20enter%20into%20the>. (Last Accessed on 29^h July 2023 at 05:09 p.m.)
4. Ayushi Singh, E-CONTRACT IN INDIA: ISSUES AND CHALLENGES, <https://www.researchpublish.com/upload/book/E-CONTRACT%20IN%20INDIA-7286.pdf>. (Last Accessed on 29^h July 2023 at 06:20 p.m.)