

Innovation and Legal Implications of Contract Law in the Era of Commerce

Sachin Madhukar Shirke¹ and Dr. Gizala Hashmi²

¹Research Scholar, Department of Law

²Assistant Professor, Department of Law
Sunrise University, Alwar, Rajasthan

Abstract: *Electronic contracts, or "smart contracts," are new. As "E-contracts," these legal agreements are remarkable because computers execute them. This legal study covers smart contracts, e-commerce, and e-contracts. This article describes smart contracts and contract law compliance. Strong and weak smart contracts differ in revocation and modification costs. Smart contracts are proactive self-help; therefore, courts and politicians shouldn't resist them, study shows. Despite absurdities, courts and legislatures should treat smart contracts like conventional contracts. The quality-of-life changes greatly with e-commerce.*

E-commerce is flexible. Transaction location, time, space, and distance depend on market circumstances. With e-commerce, e-contracts are growing. E-contracts provide fast information utilizing a variety of methods, so businesses may simply reengineer. E-contracts demonstrate how intricate and adaptive law is to society. E-contracts help society despite obstacles. E-contracts may progress in India with laws and court decisions. This research investigated e-contract benefits and downsides. The article finishes with ideas for enhancing and exploiting e-contracts' advantages.

Keywords: Contract Law, E-commerce, Digital Agreements, Electronic Signatures

I. INTRODUCTION

Both parties must agree and participate in talks, according to the Contract Act. The agreement is between computer programs, with the exception of e-contracts. Provisions for the allocation, recognition, dispatch, and receipt of electronic records are included in the Information Technology Act. The goal of the IT Act was to appropriately handle the requirements of e-contracts¹.

E-contracts have both benefits and drawbacks. E-contracts provide the advantages of saving money, time, and improving service quality by minimizing paperwork. Nevertheless, provisions requiring parties to enter into legally binding agreements are disregarded by the laws regulating e-contracts.

The lives of people have improved to an unparalleled degree as a result of developments in computers, electronics, telecommunications, and information technology. Contact is no longer restricted by time or location. The speed at which knowledge is being given and received has never been higher. Businesses may be more flexible with regard to time, place, distance, and payment methods thanks to electronic commerce. Online purchasing and selling of goods and services is referred to as e-commerce. It alludes to online commercial transactions that are conducted electronically. The system aids in the integration of markets.

The usage of e-contracts has grown significantly with the growth of e-commerce. However, there are a lot of issues with implementing electronic contracts in three stages: logical, philosophical, and implementation. The scope, prevalence, and legality of e-contracts are among the topics covered in our research.

Online agreements are referred to as "e-contracts" or "electronic contracts." Parties may interact by computer programs, electronic agents, or email when drafting a contract. The Standardized Information Technology Act specifies requirements, including specific language, for drafting and managing e-contracts. E-contracts are subject to the rules and remedies of contract law.

E-contracts demonstrate how complicated and flexible the law is to satisfy social demands. E-contracts are a common legal instrument that serves the interests of the general public in spite of obstacles and worries. By putting the required laws and court rulings into effect, India can help e-contracts progress.

From the beginning to the end, e-commerce consumer contracts for the sale of products are intricate and fraught with legal issues. The growing subject of e-commerce contract rights and duties for goods sales is examined in this article. In order to determine the direct and indirect links between contract parties, this research use content analysis. The interactions between parties involved in consumer contracts for the sale of items via e-commerce are examined in this study.

Q society has been invited to a party hosted by smart contract developers. Compared to the party down the street, this one has better food, beverages, and music. Although everyone is at the other party, the facilities are not as good. Whether society will attend this new event is still up in the air. This is due to the fact that legacy systems provide a function. They are functional by definition. Uncertainty and high switching costs prevent new technologies from being widely adopted. Nonetheless, such a change is more likely to take place if the new technology offers enormous advantages.

IMPORTANCE OF E-CONTRACT

The rapid growth of e-commerce has made it necessary to create dynamic and efficient regulatory frameworks in order to fortify the legal environment that is essential to e-commerce's success in India. It has long been said that the inability of the Indian e-commerce sector and Indians to enjoy a business-friendly and consumer-friendly e-commerce environment is due to the country's inadequate cyber security laws and ineffective e-commerce regulatory framework. The nation lacks comprehensive e-commerce regulatory law, with the exception of the IT Act, which regulates e-commerce and transactions in India.

In order to encourage both domestic and foreign trade in India while preserving basic rights like privacy, intellectual property, fraud prevention, consumer protection, and so on, the government should create a legal framework for e-commerce. The Indian legal community needs the requisite expertise to advise clients, business owners, and even judges. The constantly growing market module is able to adhere to current laws that normally govern business dealings in ordinary modules. There is still broad consensus that specialized legislation regulating and controlling certain facets of e-commerce is a necessary and exclusive requirement, and it should simultaneously make sure that the advantages of technology are not impeded by the prudent development of law through the learned interpretation of the court.

E-CONTRACTS UNDER INDIAN, MALAYSIAN AND AMERICAN LAWS³

The Information Technology Act of 2000 mandates that electronic documents be sent at the designated time and place, acknowledged upon receipt, and credited to the original creator. Three sectors or perceived requirements for the digital era are the main goals of the IT Act:

(a) Make it possible for companies and customers to transact online. (b) Make e-governance transactions between people and government agencies easier. (c) To regulate the internet and lessen criminality.

Electronic contracts must be accepted as evidence by courts. The case of *Essar Industries & Others v. Société des Produits Nestlé S.A.*⁴. The acceptance of computer-generated evidence is presently covered under Sections 65A and 65B of the Indian Evidence Act. Eliminating problems with electronic contracts and other forms of electronic evidence was the aim. In the matter of *Mohd. Afzal and others v. State*. "Electronic records are acceptable in court" was the ruling.⁶.

ONLINE CONTRACT VALIDITY

All e-contracts in India must comply with the Indian Contract Act of 1872, which requires voluntary consent and legal consideration. How e-contracts meet Indian Contract Act criteria is the question. The 2000 Information Technology Act ('IT Act') reinforces e-contracts' legality. According to the Indian Contract Act of 1872, legitimate contracts must meet

certain conditions. The ICA covers all contract laws. This legislation fulfills all contract criteria. Standard contracts that fulfill ICA requirements and are electronic or paperless are e-contracts. These agreements are legitimate as written ones. E-contract regulatory inquiries will be answered.

The parties should freely agree to the agreement. The deal needs legal review. The parties should be able to contract. Contracts aim to be legal. The e-commerce platform's terms and conditions are crucial to making the deal legitimate. If the Indian Contract Act of 1872 was followed, click wrap agreements were binding and lawful unless specifically banned.

The Indian Contract Act does not need signed contracts. Unique statuses include signature criteria. The nature of e-commerce is that it is nearly impossible to verify the age of a trader online, which poses problems and liabilities for e-commerce platforms because under Indian law, a minor cannot enter into a contract. Any instrument used to generate or transfer rights in India must be stamped. Stamp duty laws in several Indian states are also applied on the instrument. Information Technology Act of 2000. The Information Technology Act of 2000 makes India the twelfth nation with complete e-commerce laws. The Act modernizes the Indian Penal Code, Evidence Act, and RBI Act for digital transactions.

Section 10A of the 2000 IT Act covers electronic contract validity. It declares that a contract created, conveyed, or revoked in electronic form or records is not unenforceable because of that.⁷

2007 Payment and Settlement Act:- Online payments and technology have reduced the need to carry cash. Payment and Settlement Act, 2007 was introduced to balance vendors' online payment methods. Additionally, the Reserve Bank of India requires all online payment gateway transactions to be registered under the program.⁸

Electronic Commerce Act, 1998: with some beneficial modifications, the government of India and the union legislature were anticipated to debate and adopt certain essential changes in the current legislation constraining the nation's laws and helping the populace. Abu Fazal Advisory convened the declined and supported the revision in the Indian Contract 1872 order to meet the new advances needed by Indian society.

The Indian Parliament solved it by finishing another order that revived India's laws based on national interest. E-contract problems were addressed by the 1998 Electronic Commerce Act. It trusted the chamber's proposal that future agreements will be mostly made online and via electronic communication and affirmation due to its speed and accuracy. Developed nations like Florida, Utha, United Nations State of Texas, Malaysia, Illinois, and Singapore were targeted by the Electronic Commerce Act, which was later amended to help states navigate electronic agreements. This Act was drafted with online activities, obligations, and rights in mind and passed. This statute includes 15 sections.

Genuine e-contracts must meet several conditions in this Act. Here are some:

It is necessary to present strong and valid E-records. All the E-records shall be keep safely.

Trustable digital imprint should be present there.

E-record should be made and proper electronic signature shall be used for the authentication of the contract.

The electronic administrators shall be made available who can certify or illustrate the e-contracts in the proper manner to all the parties involved in that.

With the unification of the laws above discussed the e-contracts has helped a lot of people in many different ways. This has reduced the difference between the buyer and seller in the many ways.

The most important challenge which should be pointed out in the way with the purpose of helping the dependents of the electronic trades, specially while proposing the items

E-CONTRACTS IN MALAYSIA

Despite regular marketing development, barriers remain to impede progress. A preventive is linked to electronic agreements. This provides a vulnerability if e-contracts follow conventional rules relating to the changed legislation. E-contracts vary worldwide because of this⁹.

Providing dependability in electronic trades and contracts, particularly when giving things with the obligations and liabilities of the contractual parties, depends on their declarations.

The e-contracts and e-agreements formed this time are distinct from offline or paper agreements and highlight contemporary legal challenges. Based on Malaysian implementation and the UNCITRAL¹⁰ Model on Electronic Commerce, as well as UK and EU web trade laws, this paper examines and recognizes challenges related to offenses related to E-Contract development.

This outlines all the conversations to construct an agreement that appropriates a postal run and its services via email, including e-marks.

E- CONTRACT IN AMERICA

Many nations legalised electronic contracts and trademarks between 1998 and 2002. A few emerging nations are accomplishing this target. Despite internet business contract regulations, many companies and customers are unsure whether they apply.

Electronic contracts in the US are governed by the following laws. Electronic contracts may be subject to global laws if legally bound parties agree. The U.S. Uniform Electronic Transactions Act (UETA) is fundamental to electronic contracts. Articles 3 and 4 limit UETA to business, government, and electronic exchanges.¹¹

The 2001 U.C. E-Sign Act. Electronic agreements and mark fusion are legal under the Act. The Act attempted to make electronic contracts like paper ones. UCITA sets rules for electronic contracts incorporating electronic materials, termed as "computer data exchanges" in the US¹².

E-contracts are recognized in several countries than America. E-commerce is a growing industry. E-contracts, electronic media, and other internet-based commercial and non-commercial items have changed significantly due to the growing E-commerce business.

CHALLENGES IN FORMATION OR CONTRACTING UNDER ELECTRONIC CONTRACTS

Where there are pros there are cons of the things which are faced by the individuals in the daily making and drafting of Electronic Contracts and Commerce has to face. Some them are discussed below: -

PARTIES COMPETENT TO CONTRACT

Competence of parties to enter into the contract is one of the essential ingredients of both traditional as well as e-contracts. It's mandatory that a person who is becoming the party to the contract should be lawfully competent to become the part of an agreement. In E-Contract there is an anonymous person becoming the part of an agreement. The individual sitting on the other side of the contract have no idea about the person who clicked on "I Agree" icon okay bar is lawfully skilled to become the part of an agreement. The Capacity of the parties to enter into the contract is the most essential point of the contract considered under Section 10, Section 11 and Section 12 of ICA 1872.¹³ These sections of the Act discuss about the topics related to the capacity of the parties to enter into the contract.¹⁴ Such Contracts are legally void if the parties are not competent to enter into the contract. The case may occur where the new-born child who is not mature gets into the contract by clicking on the "I agree" Tab or text in the E-contract.

FREE CONSENT OF THE PARTIES

A significant agreement is said to need the free consent of the contractual parties. Regarding the parties' consent exchange, there is no extension in e-contracts. For the customers and the parties entering into the contract, this is seen as an amazing obstacle. However, the consumers are often given the option to "live with or without it." "In spotted line contracts, there should not be any fragile gathering to deal as to accept the equivalent bartering power," the Honorable Supreme Court of India said. According to the dabbed line contract, the parties must either accept the absurdity or relinquish the administration till the end of time. Therefore, it is generally accepted that the client should exercise caution while providing his permission or assent in order to protect himself from any losses or problems that could arise as a result of this problem.

SECURITY AND PRIVACY CHALLENGE

As the India's web-based business is increasing day-by-day, in India they permit shoppers to purchase the goods through exchanges that are concurred, moved and gotten comfortable an open virtual organization climate. Therefore, there are many securities and protection give that are of great worry.

PROTECTION OF DATA

The innovation and development have a fantastic part in upgrading the limits of the web associations and organizations to collect and dissect major measures of information recognizing the clients who only visits their websites. Due to this the major concern pops out related to the usage of personal information by the websites. Before coming of the web organizations used to keep the watch on the client's buys exclusively & carefully the positions. For example, many organizations demand their clients to list the website of the organization for individual data of the clients. Still, there are many websites that decay the administrators to clients in the event that they will not enroll with them.

If any individual is availing the profit of choosing to register then there is no warranty that could be done with the use of those details. It is very regular that the corporates are likely to send the details to the third party for some restricted and unlawful act.

IDENTITY THEFT

The issue and fear of theft of identity is big for the buyers who face the encroachment on their privacy in this practical world. The theft of identity is the wrongdoing of getting the personal or monetary data of someone else to use their personality to submit or commit the extortion, for example, making of unapproved exchanges or buys. Farud data is submitted from the various points point of view and the outcome is that the causalities are regularly left with the serious finance losses. The criminal uses the products and enterprises are charged and the buyer has to pay endless loop of money related to the mis happening that the customer faces due to the identity theft.

Section 66 read with Section 43 of IT Act¹⁶ manages the digital robbery which states that if a person falsely or unscrupulously does any demonstration that makes computer harm or harms the framework of the computer without the permission of the owner, at that time the person is liable with either imprisonment for the span of 3 years or fine of Rs. 5 lakhs or both.

II. CONCLUSION

With remarkable advancements, electronic contracts, or E-Contracts, have established themselves in the worldwide market, particularly since the days when contracts were made offline. given India's trend of advancement in digital and e-banking. The legislation that covers the main terms of e-agreements is now the most important issue. Everything is made possible by digital media, from downloading a little program to creating and launching one.

We must create laws that can identify all members of the public who frequent and utilize the various websites as a primary means of making money in order to advance and monitor this area of law. It could also be useful for creating various trades and contracts. Similar to this, someone with the necessary expertise is required to sit in consumer courts and resolve everyone's issues with electronic agreements.¹⁷

People will be more conscious as a result, register complaints in consumer tribunals, and get prompt resolution of their issues. In order to provide confidence in the form of a guarantee that the growth won't be impeded, e-contracts are reserving space in business areas for development with the leading participants in the markets.

E-contracts might thus be the primary driver of the nation's growth and advancement with the right policies in place.

REFERENCES

- [1]. Information Technology Act, 2000
- [2]. Research Paper on Electronic Contracts In India By: Shubhada Gholap
- [3]. U.C. Electronic Signature Global and National Commerce Act (E-Sign Act),2001.

- [4]. Société des Products Nestlé S.A v. Essar Industries & Others. 2006(33)PTC469(DEL)
- [5]. State vs. Mohd. Afzal and Ors. 107 (2003) DLT 285.
- [6]. Kavish Arora, E-contracts: Understanding its Implementation and Challenges, <http://www.penacclaims.com/wpcontent/uploads/2020/04/Kavish-Arora.pdf>.
- [7]. Harsh Arora & Raj Nandini, India: Understanding E-Contracts, MONDAQ, <https://www.mondaq.com/india/contracts> and commercial-law/993976/understanding-e-contracts.
- [8]. Payment and Settlement Act, 2007.
- [9]. U.C. Electronic Signature Global and National Commerce Act (E-Sign Act), 2001.
- [10]. United Nations Commission on International Trade Law.
- [11]. UNICITRAL, Model Law on Electronic Commerce, 1996.
- [12]. S.R. Shubashini, Shajim M, Legal Issues arising in E- Contract in India: An Analysis, International Journal of Pure and Applied Mathematics Volume 120 No. 5 2018, 4601-4618.
- [13]. Indian Contract Act, 1872.
- [14]. Section 10, 11 and 12 of Indian Contract Act, 1872.
- [15]. LIC of India vs. Consumer Education and Research Center, 1995 AIR 1811, SCC (5) 482.
- [16]. Information and Technology Act, 2000.
- [17]. E-Contract in India: The Legal Framework, Issues and Challenges by Sethuram Sundaram.
- [18]. Ibid