

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

Narendra Rajouriya, Yogendra Singh

Assistant Professor of Law

Indore International College Indore.

ABSTRACT

A new technology named "smart contracts" Or E- Contracts has arisen. These legal agreements are novel as they are executed automatically using computers which are termed as E- Contracts. This research paper looks at smart contracts from a legal standpoint which includes E-commerce and E- contract. This paper discusses how smart contracts operate and how they fit within existing contract law. It distinguishes between strong and weak smart contracts based on the cost of revocation and modification. The paper suggests that smart contracts are a type of proactive self-help and should not be opposed by lawmakers or judges. Judges and policymakers should consider smart contracts as any other type of agreement, even if certain outrageous cases arise. However, because to E-commerce, people's quality of life has completely transformed. Electronic commerce offers adaptability. The market climate relates to location, time, space, distance, and space in transactions. E-contracts are becoming increasingly popular as e-commerce grows. E-contracts facilitate company reengineering by utilising a combination of techniques, practices, and procedures to transmit information instantly. E-contracts highlight the complexity and adaptability of law to meet societal requirements. Despite challenges and concerns, e-contracts are a popular legal tool that caters to the interests of the general public. India can contribute to the advancement of e-contracts by implementing necessary legislation and judicial precedents. Therefore this paper has also discussed about the merits and demerits of E-Contract. At the end of this paper the author has also given his suggestions suggesting the ways to improve and use of positive aspect in E-contract.

KEY WORDS- E-contract, Internet, IT ACT, Laws, Courts, Agreements.

INTRODUCTION

The Contract Act requires a meeting of minds and the participation of both parties in negotiations. Except for e-contracts, the meeting of minds is between computer programmes. The Information Technology Act includes provisions for electronic records allocation, recognition, dispatch, and reception. The IT Act aimed to correctly address the specifications of e-contracts¹.

There are advantages and disadvantages to e-contracts. The benefits of E-contracts include cost savings, time savings, and improved service quality by reducing paperwork. However, the legislation governing E-contracts ignores clauses that require parties to enter into legally enforceable agreements.

Advancements in computer, telecommunications, electronics, and information technology have led to unprecedented improvements in people's lives. Geographical and temporal constraints no longer limit contact. Knowledge is being transferred and received more quickly than ever before. Electronic commerce provides businesses with flexibility in terms of location, time, space, distance, and payment options. E-commerce refers to the online buying and sale of products and services. It refers to electronic business transactions via the Internet. The system contributes to market integration.

With the rise of e-commerce, the use of e-contracts has increased dramatically. However, deploying electronic contracts in three stages (philosophical, logical, and implementation) presents

¹ Information Technology Act, 2000

significant problems. Our study addresses various aspects of e-contracts, including their magnitude, presence, and legality.

E contracts, often known as electronic contracts, are types of contracts that take place online. During contract formation, parties can communicate via e-mail, computer applications, or electronic agents. The Standardised Information Technology Act outlines criteria for creating and administering econtracts, including particular phrases. Contract law's principles and remedies apply to e-contracts.

E-contracts highlight the complexity and adaptability of law to meet societal requirements. Despite challenges and concerns, e-contracts are a popular legal tool that caters to the interests of the general public. India can contribute to the advancement of e-contracts by implementing necessary legislation and judicial precedents.

E-commerce consumer contracts for the sale of goods are complicated and involve legal difficulties from formation to conclusion. This article examines the rising topic of e-commerce contract rights and obligations for selling products. This study uses content analysis to identify the relationships between contract parties, both directly and indirectly. This research analyses the relationships between parties participating in e-commerce consumer contracts for the sale of goods.

Smart contract developers have invited Q society to their party. This party boasts superior food, drinks, and music compared to the one down the street. The other party has all of the people, but the amenities are not as wonderful. It remains to be seen whether society will attend this new celebration. This is because legacy systems have a purpose. By definition, they are functional. Adoption of new technologies is hindered by high switching costs and uncertainty. However, if the benefits of the new technology are tremendous, such a shift is more likely to occur.

Importance of E-contract

Rapid expansion in e-commerce has necessitated the development of lively and effective regulatory frameworks to strengthen the legal environment critical to the success of e-commerce in India. It has long been stated that India's deficient cyber security legislation, as well as the lack of a competent e-commerce regulatory system, are to blame for both Indians and the e-commerce industry's difficulties in enjoying a consumer-friendly and business-friendly e-commerce atmosphere². Except for the IT Act, which oversees e-commerce and transactions in India, the country lacks comprehensive e-commerce regulatory legislation.

As a result, the government should establish a legislative framework for e-commerce in order to promote local and international trade in India while protecting fundamental rights such as privacy, intellectual property, fraud prevention, consumer protection, and so on. The legal community in India requires the necessary skills to guide entrepreneurs, customers, and even courts. The continuously expanding market module can comply with existing regulations that typically applies to commercial transactions in standard modules. Simultaneously, it should ensure that the benefits of technology are not hampered by the judicious evolution of law through the learnt interpretation of the court, and there is still widespread agreement that specialised law governing and controlling some aspects of e-commerce is an obligation and an exclusive requirement.

E-Contracts under Indian, Malaysian and American Laws³

According to the Information Technology Act of 2000, electronic records must be attributed to the originator, acknowledged upon receipt, and dispatched at the specified time and location. The IT Act primarily aims to address three areas or perceived needs for the digital age: (a) Enable e-commerce transactions between businesses and consumers. (b) Facilitate e-governance transactions between government entities and citizens. (c) To reduce cybercrime and control the internet.

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.

Courts must recognise electronic contracts as evidence. The case of Société des Produits Nestlé S.A v. Essar Industries & Others⁴. The Indian Evidence Act now includes Sections 65A and 65B, which address the admission of computer-generated evidence. The goal was to eliminate issues with e-contracts and other electronic proof. In the case of State vs. Mohd. Afzal and other⁵s. It was determined that "electronic records are acceptable in court".⁶

Online Contract Validity

The Indian Contract Act of 1872:- governs all e-contracts in India, mandating particular requirements for a legitimate contract, such as free consent and legal consideration. The issue to be addressed is how the Indian Contract Act's standards can be met using e-contracts. Furthermore, the Information Technology Act of 2000 ('IT Act') improves the legitimacy of e-contracts. According to the Indian Contract Act of 1872, some of the fundamental requirements of a legal contract are as follows. The ICA encompasses all contract-related rules. This law covers all the necessary requirements for forming a valid contract. An e-contract is any standard contract that meets the ICA specifications and is in electronic or paperless format. These contracts have the same legal standing as written agreements. Any regulatory enquiries regarding e-contracts will be resolved.

The parties should enter into the agreement with their free consent. The agreement should be examined legally. The parties should have the authority to form contracts. The contract's objective is to be lawful. The terms and conditions associated with the e-commerce platform are critical to ensuring that the e-commerce agreement meets the requirements of a legal contract. Unless expressly prohibited, click wrap agreements would be binding and legal if the provisions of a valid contract as outlined in the Indian Contract Act of 1872 were met.

The Indian Contract Act does not need written contracts to be physically signed. However, the unique statuses do include the signature criterion. Furthermore, the very essence of e-commerce is that it is virtually impossible to verify the age of someone who trades online and poses problems and liabilities to e-commerce platforms because under Indian law, a minor is not qualified to enter into a contract and such an agreement is not enforceable against a minor. In India, any instrument used to produce or transfer rights must be stamped. The instrument is also stamped in accordance with appropriate stamp duty legislation imposed by various Indian states. Information and Technology Act of 2000.- The Information Technology Act of 2000 made India the world's twelfth country with comprehensive e-commerce regulations. The Act updates the Indian Penal Code, Indian Evidence Act, and RBI Act to align with digital transaction criteria.

Section 10A of the 2000 IT Act addresses the validity of electronic contracts. It states that if a contract is formed, communicated, or rescinded in electronic form or records, it will not be considered unenforceable solely due to the use of electronic means.⁷

Payment and Settlement Act, 2007:- With the availability of the online payments and growing technology the need of carrying cash with our self has been lowered down. To balance down the payment path used by the vendors for paying the money via online mode the legitimate composition was brought up in the form of payment and settlement Act, 2007. Further, the Reserve Bank of India made some rules stating that every single transaction done by any of the online payment gateway has to be register under the given demonstration⁸.

Electronic Commerce Act, 1998: with the happening of some positive changes, the government of India and the union legislature were expected to discuss and pass some critical change in the present lawful restricting the laws of the nation and help overall population need. Abu Fazal Advisory gathered the declined and endorsed the change in

⁴ Société des Produits 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/up](http://www.penacclaims.com/wpcontent/uploads/2020/04/Kavish-Arora.pdf) loads/2020/04/Kavish-Arora.pdf.

⁷ Harsh Arora & Raj Nandini, India: Understanding E-Contracts, MONDAQ, <https://www.mondaq.com/india/contracts-andcommercial-law/993976/understanding-e-contracts>.

⁸ Payment and Settlement Act, 2007.

the existing order of the Indian Contract 1872 so that they can meet the new enhancements as per the need of the Indian society.

The Indian Parliament found the solution of it by completing the another order which had given the new life to the existing laws of the India as per the interest ups and downs in the nation. To overcome the challenges related to the e-contracts, the Electronic Commerce Act, 1998 was brought into the picture. It trusted the recommendation of the chamber that the future agreements would by and large be established on the web and electronic kinds of correspondence and affirmation in the light of its speed and perfection. The Electronic Commerce Act was made with an aim to gained precisely from developed nations like Florida, Utha, United Nations State of Texas, Malaysia, Illinois and Singapore and later it was amended as per the necessity of the states of nation to overcome the various sorts of electronic agreements. While drafting this Act all the online activities and all the duties and rights were kept in mind and then it was passed. This act has been divided into 15 divisions.

This Act mentions some of the essential requirements of the genuine e-contracts. Some of them are mentioned hereunder: -

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

Regardless of a way in which the marketing is developed in the normal basic pace, various obstacles continue to hamper the improvement. One prevention is co-joined with the advancement in an electronic-agreements. This leaves the weakness that if as per the e-contracts, the customary guidelines related to the laws that have brought the change. Due to this there are many variations in the formation of e-contracts in different countries around the globe⁹.

The challenge that pointed out in the way for the purpose of helping in the way of dependability regarding the electronic trades and contracts, especially while offering the items with the duties and liabilities of the contracting parties will depend on the statements made amongst them.

The e-contracts and e-agreements made this time are not like the ordinary or the offline or paper agreements, that points out the different recent issues related to law or legal problems. Taking consideration of Malaysian implementation and the relationship with the UNCITRAL¹⁰ Model on Electronic Commerce and furthermore laws in United Kingdom and European Union Directives on the web trade, this paper tries to attempts in the examination and recognition of challenges relating to offences related to the concern over the development of E-Contract.

This combines all the discussions to form an agreement which appropriates a postal run and what are its functions over E-mail are formed agreement necessarily e-marks, are outlined.

E- contract in America

Between 1998 and 2002, many countries changed their domestic business laws to recognise electronic contracts and trademarks as legally valid. Some developing countries are still meeting this goal. Despite rules governing online business contracts, many organisations and clients are unclear about whether laws apply to their contracts.

⁹ U.C. Electronic Signature Global and National Commerce Act (E-Sign Act), 2001.

¹⁰ United Nations Commission on International Trade Law.

The accompanying statutes form the fundamental legal framework of electronic contracts in the United States. Global laws may also apply to electronic contracts if legally binding parties chose to comply with them. The Uniform Electronic Transactions Act (UETA) is a crucial U.S. law that governs electronic contracts. Articles 3 and 4 specify that UETA only applies to business, government, and electronic exchanges.¹¹

The U.C. Electronic Signatures in Global and National Commerce Act (E-Sign Act) of 2001. The Act recognises electronic agreements and the fusion of electronic marks as legitimate. The Act aimed to make electronic contracts comparable to paper-based ones. The Uniform Computer Information Transaction Act (UCITA) outlines standards for electronic contracts involving electronic materials, sometimes known as "computer data exchanges" in the US¹².

Apart from America also, there exists many countries that recognises E- contract in this era. As E- commerce being one of the emerging sector in today economy. The enhancing growth of E- commerce industry has made major significance changes and that can be seen in commercial market such as E- contract, electronic media and other internet based commercial and non-commercial things.

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:

Free assent of the contracting parties is considered as an essential part of a substantial agreement. In E-Contracts there is no extension regarding the exchange of the consent of the parties. This is considered as an incredible hinderance for the clients and the parties contracting the same. But the alternative "live with or without it" exchanges the consistently to the clients. The Honourable Supreme Court of India gave the judgement that "In spotted line contracts there should not be any fragile gathering to deal as to accept the equivalent bartering power.¹⁵" As far as dabbed line contract is considered parties has to either accept the preposterous or till the time ends, renounce the administration. Hence, it tends to be said that the client to be judicious while giving his consent or assent to be safe from the losses or the inconveniences that may be raised due to this issue.

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.

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.

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 Act 16 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.

Conclusion

Electronic Contracts or E-Contracts has made its place in the global market with amazing developments especially from the time where the contracts were made in offline mode. With the pattern of progress with the digital and E-banking in India. Currently, the most essential point is the law that covers major provisions of E-agreements, starting from the downloading of a small application to developing and launching one, everything is possible by digital medium.

To develop and check this field of law, we need a legislation to be formed which can find that the entire public who visits and use the different websites as major path in minting the cash. It may also be helpful in the making of the different contracts and trade. Similarly, there is need of a person who is an expert to solve the problems of all the people with respect to the Electronic Agreements by sitting in the consumer courts.¹⁷

Due to this the people will be more aware and will file the complaints in the consumer courts and will get a fast remedy of the problems. E-contracts which are creating the space in the business fields booked for the development with the predominant players in the markets to give assurance in the form of guarantee that the development won't be obstructed.

Hence, with the proper and correct approach and laws the E-Contracts could be the biggest factor of development and progress of the country¹⁸

¹⁶ Information and Technology Act, 2000.

¹⁷ E-Contract in India: The Legal Framework, Issues and Challenges by Sethuram Sundaram.

¹⁸ Ibid.