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Electronic Contracts in India: Challenges and Complexities

KHUSH BHACHAWAT¹

ABSTRACT

In the current times, e-contracts have become a common way of contracting. Rapid advances in the areas of computer technology, information technology and telecommunications technology has improved the general standard of living and has allowed more and more people to take advantage of the benefits of online contracts. Increased penetration of the internet in all corners of the world as well as rapid development of e-commerce primarily have led to a rise in the use of e-contracts. Communication is not restricted due geographical or time limitations and information is transmitted and received more efficiently and speedily than ever before. A contract can be formed in seconds, with both parties meeting all essentials of a contract over the internet.² Though such types of contracts have become a part of our daily lives, people are unaware of the legal challenges and complexities that surround such contracts. In view of these challenges, a comprehensive law dealing with electronic contracts is a must. Many legislatures around the world have realized this and have passed laws to recognize and enforce electronic contracts.³

In this paper, the author aims to understand and analyse what an e-contract is, what are the different types e-contracts, the laws that govern such contracts in India, judicial precedents surrounding e-contracts, and the various issues involved in the functioning of such contracts.

Keywords: E-Contract, jurisdiction, rule of acceptance, email, IT Act.

I. WHAT IS AN E-CONTRACT?

An e-contract is a contract modelled, specified, executed, controlled and monitored by a software system.⁴ In e-contracts, all (or a number of) activities are carried out electronically,

¹ Author is a student at NALSAR University of Law, India.

² S.R. Subaashini & Shaji.M, *Legal Issues Arising in E-Contracts In India*, Vol. 120 Issue 5 INT JOURNAL OF PURE AND APP MATH, 4601 (2018), <https://acadpubl.eu/hub/2018-120-5/4/377.pdf>.

³ Devesh Pathak & Dr. L. S. Rajpoot, *Legal Impact of Technology on E- Contracts Communication in India*, Vol. III Issue I, ASCENT INTERNATIONAL JOURNAL FOR RESEARCH ANALYSIS, 84.1, (2015), <http://ijcms2015.co/file/2018-Vol-III-Issue-I/AIJRA-VOL-III-ISSUE-I-84.pdf>.

⁴ Karlapalem K., Dani A.R., Krishna P.R. (2001) *A Frame Work for Modeling Electronic Contracts*, In: S.Kunii H., Jajodia S., Sølvberg A. (eds) *Conceptual Modeling — ER 2001*. ER 2001. Lecture Notes in Computer Science, vol 2224. Springer, Berlin, Heidelberg. https://doi.org/10.1007/3-540-45581-7_16.

usually on the internet, and are drafted and signed in an electronic form. E-contracts can be of various kinds ranging from contracts formed on email or through interaction between an individual and an electronic agent such as a computer program or through the interaction between two or more electronic agents that are programmed to recognize the existence of a contract.⁵

II. LAW GOVERNING E-CONTRACTS IN INDIA

The primary law that governs all kinds of contracts in India is the Indian Contract Act, 1872⁶ (hereinafter, Contract Act). Every contract, be it a traditional paper-based contract or an electronic contract, has to follow the elements and requirements given in the Contract Act. Since the act was passed in 1872, it was not possible for the legislators to foresee a swift mode of communication like the internet and hence the act does not specify internet as a means to enter into a contract. It is the Information Technology Act, 2000⁷ (hereinafter, IT Act) that recognizes the validity of e-contracts and facilitates the governance of various related aspects like electronic records and electronic/digital signatures among other things.

(A) Information Technology Act, 2000

The IT Act was passed keeping in mind the Model Law on Electronic Commerce⁸ adopted by the United Nations Commission on International Trade Law (UNCITRAL). The Act provides legal recognition to transactions carried out by means of electronic data interchange and other means of electronic communication and intends to create a mechanism for the smooth functioning of e-contracts. The IT Act uses the term ‘electronic record’ in place of terms like ‘offer’ and ‘acceptance’. An electronic record is defined under Section 2(1)(t) of the Act and simply refers to communication that takes place in an electronic form. The two parties to an e-contract are: the originator and the addressee. An originator is a person who sends, generates, stores or transmits an electronic record whereas an addressee is a person who is intended by the originator to receive the electronic record.

An amendment to the IT Act in 2008 added Section 10A⁹ which specifically recognizes the validity of e-contracts. It says that when contracts are formed through electronic means i.e., when communication of offer and acceptance as well as revocation of offer and acceptance

⁵ Shubhada Gholap, *Electronic Contracts in India: An Overview*, Vol. 6 Issue 8 IMPACT: INT. JOURNAL OF RESEARCH IN HUM, ARTS AND LIT, 251 (18 Aug 2018).

⁶ The Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872 (India).

⁷ The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

⁸ UNCITRAL Model Law on Electronic Commerce with Guide to https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf (last visited Apr 14, 2021).

⁹ The Information Technology (Amendment) Act, 2008, No. 10, Acts of Parliament (India).

happens in an electronic form or by means of an electronic record, such contract is not unenforceable solely on the ground that electronic form or means were used to enter into the contract. If an agreement otherwise meets all the criteria laid down in the Contract Act, one cannot challenge its validity solely on the ground that it has been entered into through electronic means.

However, there are certain subject matters to which the provisions of the IT Act do not apply. These matters are specified in the First Schedule of the Act and include “*a negotiable instrument (other than a cheque), a trust, a power-of-attorney, a will, and any contract for conveyance or sale of immovable property or any interest in such property.*” Such transactions cannot be executed electronically and require a traditional paper-based document following the relevant laws applicable to the documents.

It is imperative to note that the IT Act does not in any manner interfere with the established principles of contract formation but only provides an enabling mechanism for formation of contracts by electronic means.¹⁰ The aim of the act is to confer increased legal certainty to electronic contracts. Therefore, it provides various procedural and administrative guidelines and regulates the provisions regarding e-contracts. These provisions include the process of authentication of documents through electronic or digital signatures, and computer data protection among other things. Such provisions are needed in order to avoid any uncertainties which might arise in the functioning of electronic contracts.

For example, uncertainties might arise in situations where offer and acceptance are generated by computers automatically without any human intervention which might give rise to doubts about whether parties had the intention of sending these messages in the first place. To avoid such doubts, Section 11 of the Act provides three conditions in which an electronic record can be attributed to its originator:

1. *“if it was sent by the originator himself;*
2. *if it was sent by a person authorized to act on behalf of the originator in respect of that electronic record or*
3. *if it was sent by an information system that operates automatically, provided it was programmed by or on behalf of the originator.”*

This shows that even if computer systems are automated and send out emails automatically,

¹⁰ Sikha Bansal & Timothy Lopes, *All about Electronic Contracts*, VINOD KOTHARI CONSULTANTS PVT. LTD, (17th November, 2020), <http://vinodkothari.com/wp-content/uploads/2020/11/All-about-Electronic-contracts.pdf>.

these emails can be attributed to the person on behalf of whom these systems work. The originator cannot evade responsibility by claiming that the system sent out a mail automatically without its authorization if the system was programmed to work on his behalf in the first place.

(B) Electronic Signatures

The IT act has comprehensively dealt with the legalities surrounding electronic signatures as defined u/s 2(p) of the Act. Section 3A of the Act provides that any subscriber (a person in whose name the electronic signature Certificate is issued) may authenticate an electronic record by an electronic signature. The said Section provides general guidelines as to when shall an electronic signature or electronic authentication technique be considered reliable. It enables the Central Government to prescribe the procedure for ascertaining the authenticity of the signature and add or omit any authentication technique. Further, Section 5 of the Act provides for legal recognition of such electronic signatures. The recipient of a digitally signed electronic record/message can verify the originator of the message as well as whether the message has been altered either intentionally or accidentally since after it was signed.

(C) Indian Evidence Act, 1872

Electronic records also have evidentiary value and are admissible as evidence under Section 65(B) of the Indian Evidence Act, 1872¹¹ (hereinafter, Evidence Act). Section 85A of this Act¹² also recognizes the validity of agreements entered into through electronic modes. It provides an assumption that every electronic record that is meant to be an agreement between parties and contains electronic signature of the parties, gets concluded when the electronic signatures of the concerned parties are affixed to it.

III. ELEMENTS OF ONLINE CONTRACTS

E-contracts have to meet all essential elements of a valid contract given in the Contract Act. As discussed above, the IT Act is just an enabling provision which compliments the Contract Act for the governance of e-contracts.

(A) Offer

Offer is defined under Section 2(a) of the Contract Act. In contracts formed through email, any communication made in nature of the offer will constitute an offer. What needs to be seen is whether by supplying the information, the person intends to be legally bound by it or not.¹³ On business websites, it is also important to establish whether advertisements and other

¹¹ The Indian Evidence Act, 1872, No. 1, Acts of Parliament (India).

¹² *Id.*

¹³ *ijcms*, *supra* note 2, at 1.

information posted, amount to an offer and or merely an invitation to offer.

A combined reading of Section 12 and 13 of the IT Act suggests that an electronic record (offer) gets communicated when it enters the computer resource of the addressee (offeree) and when the originator (offeror) receives an acknowledgement that the offer has been received by the offeree. The requirement of acknowledgement of receipt of the offer u/s 12 corresponds to Article 14 of the Model Law¹⁴. The model law clearly states that the provision about acknowledgement only establishes that the data message has been received by the offeree and does not intend to deal with the legal consequences that may accompany with either sending or omitting to send an acknowledgement. Mere acknowledgement does not mean that the offer has been accepted. For a valid acceptance, it must meet the conditions laid out in the Contract Act.¹⁵

(B) Acceptance

Acceptance is defined under Section 2(b) of the Contract Act. The offer needs to be accepted in order for it to become a promise and the acceptance must be absolute and unqualified.

There are two rules of acceptance: postal mode of communication and instantaneous mode of communication. The applicability of these two rules on emails is a vexed issue and has generated considerable controversy. If someone sends a message through email or through Facebook and the opposite party replies instantly it seems to be instantaneous communication. However, if the opposite party, does not check the mail or does not reply instantly or if the delivery of the email is delayed for some reason, then the communication seems to be non-instantaneous in nature.¹⁶ In such a situation, it becomes difficult to categorize emails under a particular category.

(C) Postal Rule v. Instantaneous Rule

Contrary to the common opinion, it is submitted that the postal rule of acceptance applies to email contracting. To explicate, one first needs to understand the process of transmission of an email. An email message is transmitted to various intermediate servers before finally getting delivered to the recipient's mailbox. When you click on the 'send' button, the message is transmitted from your computer to the server associated with the recipient's address. Often, multiple servers are involved in the process of transmission and hence the servers function as

¹⁴ UNCITRAL, *supra* note 7, at 2.

¹⁵ Vinod, *supra* note 9, at 3.

¹⁶ Ayush Pandia, *Is Section 4 of Contract Act, 1872 in pace with 21st century*, The SCC Online Blog (May 1, 2021, 5:00 PM), <https://www.scconline.com/blog/post/2018/03/13/is-section-4-of-contract-act-1872-in-pace-with-21st-century/>.

a post office in the real sense. The message is transmitted to the recipient's mailbox through these servers. Therefore, the process of sending an email virtually is similar to that of sending a post in real time though a post office.

In a Singaporean case of *Chwee Kin Keong and Others v Digilandmall.com Pte Ltd*¹⁷, the court explored the issue of which rule of communication of acceptance is applicable to emails. Though the court did not take a definitive view on this issue, it opined that -

“An e-mail, while bearing some similarity to a postal communication, is in some aspects fundamentally different. Furthermore, unlike a fax or a telephone call, it is not instantaneous. E-mails are processed through servers, routers and Internet service providers. Different protocols may result in messages arriving in an incomprehensible form. Arrival can also be immaterial unless a recipient accesses the e-mail, but in this respect e-mail does not really differ from mail that has to be opened.

Once an offer is sent over the Internet, the sender loses control over the route and delivery time of the message. In that sense, it is akin to ordinary posting. Notwithstanding some real differences with posting, it could be argued cogently that the postal rule should apply to e-mail acceptances; in other words, that the acceptance is made the instant the offer is sent”

The court also said held that while this issue is heavily debated in common law jurisdictions, most civil law jurisdictions lean towards the recipient rule. This is because, email communication, unlike post offices, is completed in a relatively shorter period of time. Hence, the application of the instantaneous rule is more convenient in the context of both instantaneous or near instantaneous communications.

It is submitted that the delivery of an email may be delayed or prevented because of various reasons like overloaded and busy servers, hacking of mail by third parties, failure of networks, or incorrect email address of the recipient.¹⁸ Therefore the communication is not instantaneous at all times. And even though the email has been transmitted without any delay, the offeree does not know whether the email has come to the knowledge of the offeror or not. Even if he gets an automatically generated receipt of the email, the sender does not know whether the receiver opens the email instantaneously or after sometime.

On the other hand, in telephonic means, the communication happens in real time where both the parties can instantly hear and respond to the other. Similarly in web-wrap agreements also

¹⁷ Chwee Kin Keong and Others v. Digilandmall.com Pte Ltd [2004] 2 SLR 594f.

¹⁸ Atul Kumar Pandey, *E-Contracts: Mail Box Rule and Legal Impact of the Information Technology Act, 2000*, 1 ROSTRUM'S L.R. (July 30, 2014) (discussing the reasons for delay of transmission of emails).

(discussed later in the article), the position appears to be clearer and less controversial. In web-wrap agreements, the order placed, is processed automatically and the person is notified of the same instantaneously.¹⁹ Even if the chain of communication between the parties is broken for whatever reasons, the other party will be immediately notified. Therefore, in web-wrap contracts, unlike email contracting, the instantaneous rule of acceptance is applicable.

It is imperative to note the applicability of the postal rule or instantaneous rule on electronic contracts especially on email contracting is a vexed issue. No strong judicial precedent exists in India comprehensively addressing this issue.

IV. JURISDICTIONAL CHALLENGES IN E-CONTRACTS

Jurisdiction of courts is decided based on Section 20 of the Code of Civil Procedure, 1908²⁰ which talks about, among other things, the place where cause of action arises. According to this Section, a suit can be instituted in the Court within the local limits of whose jurisdiction, the cause of action arises. The place of formation of contract is a part of the 'cause of action' and a suit can be filed at the place where the contract was formed.

In the case of *PR Transport Agency vs. Union of India*,²¹ the petitioner received the communication of acceptance of tender through email in Chandauli. Some dispute arose and a case was filed in the Allahabad High Court. The defendant contended that the petitioner was awarded a tender in Jharkhand. Even though the acceptance of the PRTA's bid was received at Chandauli in UP, since the tender had taken place in Jharkhand, no cause of action arose in UP and therefore the Allahabad High Court did not have the jurisdiction to take up the case. However, the petitioner contended that since acceptance was received in Chandauli, the contract got concluded in Chandauli and since place of contract is one of the determinative factors for deciding territorial jurisdiction, the Allahabad HC had the jurisdiction to decide the matter. The court did not explore the difference between contracts entered through email and contracts made orally as by telephone, or in writing as by telex or fax and held that the contract was complete when and where the acceptance is received (thus applying the instantaneous rule of acceptance).

An ancillary issue that the court talked about was the difficulty arising in determining the place where the contract got completed given the nature of email contracting. It said that this rule of acceptance can only be applied when the transmitting and the receiving terminals of the device

¹⁹ Chwee, *supra* note 16, at 7.

²⁰ The Code of Civil Procedure, 1908, No. 5, Acts of Parliament (India).

²¹ *P.R. Transport Agency v. Union of India (UOI) and Ors.*, AIR 2006 All 23.

or the computer resource are at fixed points. In cases where contract is formed through an email, the data is actually saved on the memory of a server which may be located anywhere in the world and can be retrieved by the addressee from anywhere around the world. The data can also be transmitted by the account holder from one place to the other. This shows that there is no fixed point of either transmission or receipt. It is also possible that the computer resource of the addressee may be at a place different than his place of business but the other party might not be aware of its exact location. To solve such difficulties, the court referred to Section 13(3) of the IT Act which says that, in such cases, the electronic record is deemed to be dispatched or received where the originator or the addressee respectively has his place of business and held that the petitioner had only two places of business: Allahabad and Chandauli and the Allahabad HC had jurisdiction over both the places.

Section 13(5) of the IT Act covers situations where the originator or the addressee have multiple places of business. In such cases, the principal place of business will be considered their place of business.

V. OTHER ELEMENTS OF A CONTRACT

As pointed out earlier, an electronic contract, like a traditional paper-based contract has to abide by all the rules laid down in the Contract Act. Therefore, an e-contract has to meet the relevant rules for revocation of offer and acceptance, consideration, competency to contract, free consent, lawful object, and certainty of terms given in the Contract Act. These rules are not modified by the IT Act.

VI. TYPES OF E-CONTRACTS

(A) Contracts Formed over E-mail

As seen earlier, contracting through emails is a very common practice. Such contracts are formed by sending offers and acceptances through email. Keeping in mind the Contract Act and the IT Act, the Supreme Court in the case of *Trimex International Fze. Limited, Dubai v. Vedanta Aluminium Limited, India*²² discussed the validity of such contracts. In this case, the parties communicated their offers and acceptances through email and the court held that “*mere absence of a signed formal contract would not be a problem provided an unconditional acceptance is given either orally, in writing, or through e-mail.*” The Court, in this case, also talked about how when there is no signed agreement present between the parties, proof of the existence of a contract can be established from documents approved by the parties in the form

²² *Trimex International Fze. Limited, Dubai v. Vedanta Aluminium Limited, India* (2010) 3 SCC 1.

of exchange of e-mails, telex, letters, telegrams and other modes of telecommunications.

In the case of *Mehta v. J Pereira Fernandes*²³ decided by the Chancery Division of the England and Wales High Court, the appellant had sent an email offering a personal guarantee of a debt due from his company but did not sign the email. The only place where his name was written was in the email address from which he sent the mail. The court held that though the email was not signed, it would be enforceable. The court considered email address to be equivalent of a fax number and said that it was enough to show an intention to be bound by the terms of the document.

This shows that though Indian Courts have not conclusively dealt with the issue of which rule of acceptance would be applicable to contracts formed over email, there is adequate legal authority which recognizes the fact that contracts entered through email are legally enforceable.

(B) Shrink-Wrap Agreements

Shrink wrap agreements derive their name from the shrink wrap packaging which is used to cover goods. The consumer effectively accepts the terms and conditions of the enclosed product by removing or tearing open the shrink wrap. The terms of use are kept inside the shrink wrap which means that the purchaser does not get a chance to read them before he purchases the software. Therefore, the key question is whether this ‘money now, terms later’ approach is permissible.²⁴

In India, there is no clear precedent which establishes the legitimacy of shrink-wrap agreements. However, other jurisdictions around the world have established that shrink wrap agreements are valid forms of contracts.²⁵ In the case of *ProCD Inc. vs. Zeidenberg*²⁶ decided by the United States Court of Appeals for the Seventh Circuit, the defendant purchased from the plaintiff CS-ROMs which were packed in a box along with a user’s manual. The manual contained the terms and conditions of use of the CD and also limited the use of the software for commercial purposes, a condition flouted by the defendant. The lower court held that the contract was not enforceable because the shrink wrap license was inside the boxes rather than printed outside. The contract concluded when the purchase was made and hence no hidden terms could be included after that. The appellate court however rejected this analysis and said that the contract wasn’t formed until the defendant opened the box and used the product. It was

²³ *Mehta v. J Pereira Fernandes SA* [2006] EWHC 813 (Ch).

²⁴ Dale Clapperton & Stephen Corones, *Unfair Terms in ‘Clickwrap’ And Other Electronic Contracts*, 35 AUS BUSINESS L. REV., 152, (June 2007), <https://eprints.qut.edu.au/7650/1/7650.pdf>.

²⁵ Kaanchi Ahuja, *E-Contracts in India*, Indian Law Watch: Legal News & Analysis (May 5, 2021, 6:30 PM), <https://indianlawwatch.com/practice/e-contracts-in-india-valid-as-per-section10-a-of-the-it-act/>.

²⁶ *ProCD Inc. v. Zeidenberg* 86 F.3d 1447 (7th Cir. 1996).

held that in this way shrink wrap contracts are formed when the purchaser opens the seal and uses the product.

(C) Click-Wrap Agreements

Click wrap agreements are those where the user is required to click either ‘Accept’ or ‘Decline’ in order to accept or reject the agreement respectively. Click-wrap agreements have come to replace shrink-wrap agreements because an increasing amount of software is sold and distributed electronically.²⁷ In these types of agreements, one of the two parties usually lacks bargaining power. He/she has to accept the terms as are given and cannot negotiate for change. Though judicial precedents for click wrap agreements in India are lacking, in a 2017 judgement given by the Income Tax Tribunal, the tribunal discussed in passing the enforceability of clickwrap agreements whose terms of the bargain are unreasonable. This was the case of *Mumbai vs Gujrat Pipavav Port Ltd* ²⁸, where the tribunal held that click wrap licenses are unenforceable if they are in conflict with any law or are a result of an unconscionable or unreasonable bargain.

Because of lack of judicial precedents, assistance can also be taken from cases related to adhesion contracts like *LIC India vs. Consumer Education and Research Centre*²⁹ or *Central Inland Water Transport Corporation Limited and Ors. Vs. Brojo Nath Ganguly and Ors.*³⁰ The court has generally been unfavourable to such contracts and has held them to be unconscionable. However, it is important to note that such a decision depends on a case-to-case basis.

Besides these, the validity of click wrap agreements has been dealt with in the United States in the landmark cases of *Hotmail Corporation vs. Van \$ Money Pie Inc*³¹ and *LAN Systems Inc vs. Netscout Service Legal Corporation*.³² In both the cases, the courts have held that click wrap agreements are enforceable when the party clicks on the “I Agree” icon and accept the terms and conditions of the agreement.

(D) Browse-Wrap/ Web-Wrap Agreements

Browse-wrap agreements do not require users to affirmatively click a button consenting to the terms of use. Assent is inferred from their continuous use of the website. Usually, the terms of

²⁷ Clickwrap, *supra* note 23, at 11.

²⁸ *Mumbai v. Gujrat Pipavav Port Ltd* ITA No.7823/Mum/2010 for (Assessment Year:(2007-08).

²⁹ *LIC of India and Ors. v. Consumer Education and Research center and Ors.* AIR 1995 SC 1811.

³⁰ *Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors* AIR 1986 SC 1571

³¹ *Hotmail Corporation v. Van \$ Money Pie Inc* 1998 WL 388389 (N.D.Cal.)

³² *LAN Systems Inc v. Netscout Service Legal Corporation* 183 F. Supp. 2d 328 (D. Mass. 2002)

use are displayed at the bottom of the website and can be viewed by the users by clicking on the hyperlink.³³ The difference between browse-wrap and click-wrap agreements is that clickwrap agreements require the user to actively click on 'I Accept' to show that he has consented to the terms. Most of the courts have held browse-wrap agreements to be unenforceable because consent is assumed by continuous use of the website even in instances where the user does not get a chance to read the terms of use.

In a United States case of *Brett Long v. Provide Commerce, Inc.*³⁴, plaintiff purchased a flower arrangement from the defendant's website. Due to some dispute, the plaintiff filed a case against the defendant. The defendant responded by saying that according to the browse-wrap agreement on the website, any dispute would be referred to arbitration. The defendant claimed that the agreement could be accessed by the customers by clicking on a hyperlink that read "Terms of Use" at the bottom of each page of the website. The plaintiff contended that he was not bound by the terms of the agreement because he never read and agreed to the them before placing the order. The court held that merely adding a hyperlink for 'terms of use' at the bottom was not sufficiently conspicuous to provide the consumer with an opportunity to read them. It further said that browse-wrap agreement shall be enforceable only if a reasonably prudent user receives an intimation about the terms of use when he is browsing on the website.

VII. CONCLUSION

With the spread of information and computer technology to the general public, more and more individuals are getting the chance to enter into contracts electronically. As seen above, the realm of electronic contracts in India is being governed by the combined application of the Contract Act and the IT Act. However, still several issues related to such contracts remained unresolved. Indian courts have not sufficiently appreciated the difference between email contracting and other means of instantaneous communication, as a result of which there is still uncertainty over which rule can be applied in the Indian scenario. Although, contracts formed over email have gained adequate legal authority, Indian laws do not specifically provide for rules governing shrink-wrap, click-wrap and browse-wrap agreements. There is a lack of strong judicial precedents that recognize the validity of such contracts and foreign precedents only have a persuasive value.³⁵

³³ *E-contracts: Click Wrap and Browse Wrap Contracts – Illusion of Consent*, Commercial Law Blog, Agama Law Associates, (April 9, 2021, 5:05 PM), <https://agamalaw.in/2016/08/22/e-contracts-click-wrap-and-browse-wrap-contracts-illusion-of-consent/>.

³⁴ *Brett Long v. Provide Commerce, Inc.*, 200 Cal. Rptr. 3d 117 (2016).

³⁵ *Manish Gupta & Nupur Nadir*, E-contracts: Does clicking 'I agree' really work?, Law.Asia (April 14, 2021, 4:00 PM), <https://law.asia/e-contracts-does-clicking-i-agree-really-work/>.

Apart from this, since online contracts lack face-to-face interaction, it is difficult for parties to verify whether the other party is competent to contract and whether their consent has been obtained legally. With the spread of internet and the rise in e-commerce, more and more minors are being exposed to the various kinds of online agreements, the complexities and consequences of which are unknown to them.

While the advent technology has made it easier to enter into contracts, the chances of occurrence of mistakes due to human error are always high. Unknown programming or software errors also cannot be ruled out. The question that arises is: who would bear the risks of such unknown errors? While it is impossible to foresee each and every type of risk, it is important that the legislature comes up with comprehensive laws to deal with the issues related to electronic contracts.
