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Sealing the Deal Digitally Evolution and Enforceability of E-Contracts in India

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ABSTRACT

In this modern age of digital transformation, Electronic Contracts have become absolutely central in facilitating commercial transactions. The effect of the same can be observed across various sectors, from E-Commerce to the critical software licensing industry. However, with an ever-increasing adoption of E-Contracts in commercial transactions, issues have arisen with respect to their compliance with the traditional Contract Law prerequisites and the adequacy of the existing legal framework in regulating them. This paper seeks to thoroughly analyze the evolution, legal recognition and enforceability challenges with respect to E-Contracts in India. In order to determine the enforceability, the recognition of E-Contracts under the Indian Contracts Act, 1872, Information Technology Act, 2000 and Bharatiya Sakshya Adhiniyam, 2023 and Sale of Goods Act 1930 shall be evaluated. At the same time, the paper shall assess and evaluate the recognition of different forms of E-Contracts before Indian Courts. This research through analysis of legislations, judicial precedents and comparative analysis with other legal systems seeks to address the gaps which exist with respect to complete recognition of E-Contracts, proposing thereafter systematic legal reforms from attaining an ideal balance between technological advancements and judicial integrity. A key finding throughout the paper has been that although Indian laws generally recognize the legitimacy of E-Contracts, uncertainties persist regarding the legal status of digital signatures, the binding nature of standard-form contracts, and the determination of jurisdiction in international transactions. To address these concerns, the paper suggests amending the Information Technology Act, establishing dedicated dispute resolution mechanisms, and harmonizing domestic regulations with global e-commerce standards to strengthen the enforceability of digital contracts in India.

Keywords: digital signatures, enforceability, E-Contracts, Indian Contracts Act, 1872, Information Technology Act, 2000

I. INTRODUCTION

The With a rapid development of digital technologies in the current times thereby providing simpler internet accessibility, Electronic Contracts have become an essential part of the

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modern commercial transactions in India. There has been an internet boom along with smartphone penetration in India with the total number of internet connections increasing to around 820 Million at present². As a result, most of our day-to-day transactions can now easily take place across the Internet and other digital platforms. To facilitate these E-Commerce transactions, E-Contracts are an essential component. An E-Contract is required to be mandatorily executed between the customer and the vendor, or user and service provider, in case of the purchase of any product or service through any website or online app. The essence of a traditional pen-and-paper contract, where goods and services are exchanged for a specific sum of money, has remained intact even in case of E-Contracts.³ However, the main issue is with respect to the overall validity of E-Contracts and their recognition under various statutory provisions in India. This Article seeks to define Electronic Contracts and assess their enforceability in India.

II. WHAT IS AN E-CONTRACT?

An E-Contract or the short form of an Electronic Contract refers to a legally enforceable agreement that is executed, drafted, and negotiated digitally.⁴ Unlike the traditional pen and paper Contracts, these are entered into digitally between the parties. It hasn't been explicitly mentioned under any of the statutes, yet it is legally valid and recognized in India. In these times especially after the pandemic, E-Contracts have become the most convenient form of entering into a Contract as there is no requirement for parties to interact with each other physically in order to determine terms of offer, consideration, mode, etc.⁵

At the same time, with several video-conferencing applications and digital software being widely accessible, offer and acceptance, which are the essential elements of a Contract can be made in real time and the receipt rule can be directly applied as given in the case of **Bhagwandas Kedia v. Girdharilal**⁶. Further, it provides flexibility in terms of time and cost which shall also be discussed in detail in later sections. It is essentially a step ahead of traditional pen-and-paper Contracts, which come into existence via a digital medium.

² Annapurna Roy, How India is using the Internet?, Economic Times, published 10th March 2024, accessed 30th June, 2024 Available at: <https://economictimes.indiatimes.com/tech/technology/how-india-is-using-the-internet/articleshow/108354854.cms?from=mdr>

³ Sikha Bansal, All about Electronic Contracts, Vinodkothari.com, published in September 2015, accessed 3rd July, 2024, Available at: <https://vinodkothari.com/wp-content/uploads/2020/11/All-about-Electronic-contracts.pdf>

⁴ Shaam P Thellapilly, Beyond Pen and Paper: Looking into the Stamping of E-Contracts in India, RGNUL Student Review Research, Published 26th August 2023 accessed 20th June, 2024 Available at: <https://www.rsrr.in/post/beyond-pen-and-paper-looking-into-the-stamping-of-e-contracts-in-india>

⁵ The Electronic Contract, M Nasser Law and Partners, mnasserlaw.com, published 17th December 2023 Available at: <https://mnasserlaw.com/the-electronic-contract/>

⁶ Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas and Co, (1965) SCC OnLine SC 38

III. RECOGNITION AND ENFORCEABILITY OF E-CONTRACTS IN INDIA

E-contracts are considered to be valid in India as the essentials of the parent act for Contracts in India i.e., the Indian Contracts Act, 1872⁷ is directly satisfied by it. Apart from this act, several other statutory provisions can be made applicable for proving the validity of E-Contracts in the eyes of law.

A. Indian Contracts Act, 1872

As per Section 2(h)⁸ of the Indian Contracts Act, 1872, any agreement enforceable by law is a Contract. An E-Contract that has been executed digitally is certainly enforceable in the eyes of law, primarily because it fulfills several essentials laid down under Section 10⁹ of the Act.

The essentials of a valid Contract under Section 10 are:

- a) Free consent of both parties
- b) Lawful Consideration
- c) Lawful Object
- d) Both parties must be competent to Contract
- e) Not expressly declared as void

At the same time, there must be a meeting of minds between the parties i.e., both parties must have understood the terms of the Contract in the same sense as per Section 11¹⁰ of the Act. If these conditions are not met, the Contract shall cease to be enforceable and hence void.

In case of an E-Contract, all these essentials can be easily met. The essence of a traditional Contract under Section 2(h) of the Act shall still be met with the only difference being the mode in which an E-Contract is generally enforced between the parties. Further, nowhere in the Act has it been mentioned that the Contract has to be executed physically itself. Even though there is no physical meeting between the parties, there is surely a meeting of minds across digital media that can essentially take place.¹¹ This is so because the parties can essentially communicate with each other over the internet or other sources such as telephonic media.

Since all essentials of a Contract laid down under this are capable of being satisfied, E-

⁷ Indian Contracts Act, No 9 of 1872

⁸ Section 2(h), Indian Contracts Act, No 9 of 1872

⁹ Section 10, Indian Contracts Act, No 9 of 1872

¹⁰ Section 11, Indian Contracts Act, No 9 of 1872

¹¹ Varun Kumar, Role of Indian Contract Act, 1872 in Digital World, International Journal of Innovative Research in Engineering & Management (IJIREM) ISSN: 2350-0557, Volume-8, Issue-6, November 2021 <https://doi.org/10.55524/ijirem.2021.8.6.197>

Contracts shall be considered valid Contracts.

At the same time, there are several other statutes containing several provisions directly applicable to E-contracts and governing their enforceability in India.

B. Bharatiya Sakshya Adhiniyam, 2023

This Act¹² provides for the admissibility of Electronically executed Contracts in the Court of Law. In other words, even electronic evidence such as E-Mail Contracts, text messages, or any other form of communication through an electronic device shall be considered admissible in the Court i.e., the Court can consider the same for adjudication and investigation purposes.¹³

In the case of **Société des products Nestlé S.A v. Essar Industries & Ors**¹⁴, Sections 65A and 65B were inserted in the Indian Evidence Act, 1872, which allowed for the admissibility of computer-generated devices. The same provisions have been accommodated under Sections 61¹⁵ and 63¹⁶ of the new act.

While Section 61 of the Act lays down the special provisions as to the admissibility of electronic records, Section 63 lays down certain conditions for the admissibility of Electronic records before the Court of law. As per Section 63(4), there is a requirement to publish a certificate while furnishing any electronic record. The certificate shall:

- a) Identify the electronic record containing the statement and the manner in which it is produced
- b) Giving particulars of the electronic device involved in producing that electronic record
- c) Dealing with any of the matters connected therewith and incidental thereto

This certificate is required to be published mandatorily while producing any electronic record as evidence. At the same time, any form of oral evidence under such circumstances shall not be sufficient or admissible before the Court of Law.¹⁷

This was further reasserted in the case of **Anvar P v. PK Basheer**¹⁸ in which the Court directly stated that the sources of electronic evidence provided under Section 65B of the

¹² Bharatiya Sakshya Adhiniyam, No 47 of 2023

¹³ Harsh Arora, Understanding E-Contracts, HSA Advocates, hsalegal.com, published 12th October 2020 accessed 25th June 2024

Available at: <https://hsalegal.com/article/understanding-e-contracts/>

¹⁴ Société des products Nestlé S.A v. Essar industries & Ors, 2016 SCC OnLine Del 4279

¹⁵ Section 61, Bharatiya Sakshya Adhiniyam, No 47 of 2023

¹⁶ Section 63, Bharatiya Sakshya Adhiniyam, No 47 of 2023

¹⁷ Ravinder Singh @ Kaku vs State of Punjab, 2022 LiveLaw (SC) 461

¹⁸ Anvar P. v. P. K. Basheer & Ors., (2015) 10 SCC 473

previous Act (Section 63 of the current Act) are exhaustive and no other source shall be permissible. The act shall not allow proof of electronic evidence via any form of oral evidence. The certificate is to be mandatorily published to establish proof of electronic evidence.

Despite this case, there were several questions regarding the interpretation of Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023. One major question was concerning the requirement of a certificate in cases of primary and secondary evidence.

This was clarified in the case of **Arjun Panditrao Kotkar v. Kailash Kishanrao Kotkar**.¹⁹ The Court in this case explicitly held that a certificate shall be required only in cases where an electronic record is being produced as secondary evidence. If the electronic record being produced serves as primary evidence, submission of a certificate is not required. The owner of the electronic record can directly produce evidence by testifying that he owns or operates the device in which the information/electronic evidence was originally stored.

Hence, any electronic evidence shall be admissible before the Court of Law provided that a certificate is required to be furnished before the Court of Law as proof while producing any electronic record. The Indian Evidence Act mainly deals with these aspects of the submission of electronic records and their admissibility.

C. Sale of Goods Act, 1930

With E-Commerce at its peak, there are questions as to the applicability of the provisions of the Sale of Goods Act, 1930²⁰ to digital products or even physical products acquired online through E-Contracts. Chapter IV²¹ of the Sale of Goods Act, 1930 consists of provisions dealing with 'Performance of Contract', which is equally applicable to E-Contracts as that of any ordinary contract for the acquisition of physical or digital products and services. At the same time, it is pertinent to note that the subject matter of an E-Contract can not only be digital products and services. It can even be executed to acquire physical goods and services.²²

Various provisions as applicable to Electronic Contracts are as follows:

a) Section 31²³

This section states that 'it is the duty of seller to deliver the goods and a reciprocal duty of the

¹⁹ Arjun Panditrao Kotkar v. Kailash Kishanrao Kotkar, (2020) 7 SCC 1

²⁰ Sale of Goods Act, No 3 of 1930

²¹ Chapter IV, Sale of Goods Act, No 3 of 1930

²² Biswajyoti Pal, Brief Introduction to E-Contracts, International Journal of Law Management and Humanities, Volume 3 Issue 5, pp 1841-1849

²³ Section 31, Sale of Goods Act, No 3 of 1930

buyer to accept and pay for them.’ This section, in other words, primarily deals with the reciprocity of duty commitments of buyer and seller, and for a valid Electronic Contract as well, these conditions have to be mandatorily satisfied.

b) Section 32²⁴

This section emphasizes upon the previous section to further state that payment and delivery of goods or services are concurrent conditions that are to be always met alongside. Under this section, there is no mandatory requirement for the seller to be in actual possession of the goods or services.²⁵ Even if the seller has control over the goods or services they can cause its delivery.

c) Section 33²⁶

This section focuses on the fact that delivery can be made in any given manner, which, as per the agreement between parties, shall be capable of being treated as delivery or which has the effect of putting goods in the possession of the buyer or any other authorized person on their behalf.

For instance, A entered into a Standard Form Contract with an e-commerce platform to purchase a bag, making the payment online via UPI (Unified Payments Interface). Anticipating his absence from town on the expected delivery date, A requests the e-commerce merchant to hold the goods for two weeks and deliver them upon his return. According to Section 33 of this Act, this arrangement constitutes delivery since the parties have agreed that the goods will remain with the merchant until A's return.²⁷

d) Section 34²⁸

This section deals with part delivery of goods. Whenever a part delivery of goods has been made in furtherance of delivery of the whole, it shall be considered as complete delivery under the Act. The whole delivery, however, in this case, shall be intended and at the same time shall be agreed upon between the parties.

At the same time, if the delivery has been made with an intention of severing that part of the goods from the whole, then it shall not be considered a complete delivery.²⁹ However,

²⁴ Section 32, Sale of Goods Act, No 3 of 1930

²⁵ Paras Gupta, India's E-Commerce Rise: Performance of E-Contracts under Sale of Goods Act, 1930, *International Journal of Law Management and Humanities*, Volume 5 Issue 1, pp 1421-1428

²⁶ Section 33, Sale of Goods Act, No 3 of 1930

²⁷ Supra Note 25

²⁸ Section 34, Sale of Goods Act, No 3 of 1930

²⁹ Vidit Mehra, Sale of Goods Act, 1930 Performance of the Contract (Section 32 To Section 40) in relation to E-Commerce and its implications, *Journal of Legal Studies and Research*, Volume 2 Issue 2, April 2016, pp 79-87

acceptance of goods by the buyer shall amount to constructive possession of the entirety of the goods or services that were intended to be delivered.

e) Section 35³⁰

The focus area of this section is that positive affirmative actions should be taken by the buyer to effectuate the sale of goods or services by applying for their delivery. In other words, where there is no express contract between the buyer and seller, the seller shall not be bound to deliver the goods or services till the buyer doesn't apply for the delivery.³¹

The buyer in such case shall have no cause of action against the seller and would also be required to identify the appropriate cause of action in their plaint in order to establish their case in the Court of Law. Any demand for delivery made by third party shall be invalid in this respect.

f) Section 36³²

This section provides the rules of delivery of goods, ranging from place of goods, mode of delivery, and expenses for the delivery of goods.

Time of Delivery- The seller shall have an obligation to deliver goods to the seller within a reasonable time period. Wherever the time period of delivery has been provided in the Contract, the goods have to be delivered within that given time period. Reasonable time period shall be determined while taking into consideration a variety of factors such as the type/nature of goods, transport facilities, and geographical distance between the place of delivery and the place of production.³³ If the prescribed time period lapses, it shall amount to a breach of Contract. In case of an E-Contract, the buyer shall be free to cancel the Contract if they are of the view that the delivery has not been made within reasonable time period. However, this shall be carried out only after providing notice to the seller.³⁴

Place of Delivery- The goods are to be delivered to the buyer from the place where these have been stored such as the warehouses of the seller. There has been no explicit mention of the mode of delivery of such goods. The seller shall however adopt all reasonable means to deliver goods to the buyer within a reasonable time period.

³⁰ Section 35, Sale of Goods Act, No 3 of 1930

³¹ Supra Note 25

³² Section 36, Sale of Goods Act, No 3 of 1930

³³ Parul Sinha, Electronic Contracts and Consumer Protection: Does Legislation Provide Adequate Consumer Protection, *Bharati Law Review*, April-June 2017, pp 12-30

³⁴ Supra Note 29

g) Section 41³⁵

This section provides buyers with the power to inspect and examine the goods when the goods delivered to them have not been previously examined. Upon delivery, the buyer is not deemed to have accepted the delivery until and unless they are provided with a reasonable opportunity to examine goods to determine whether these are in conformity with the Contract.³⁶

However, this right or power given to the buyer is generally absent in the case of E-Contracts before purchasing the goods. However, in such Contracts for purchase of goods, there is a mandatory return policy provided wherein the buyers after delivery shall have the right to return the goods if they are of the opinion that goods are not in conformity with the agreement.

For instance, if an individual purchases a shirt from Myntra and discovers it is torn upon delivery, they have the right to claim a refund or return the shirt for a replacement free from any defects, within a reasonable time period.

Hence, these are some of the provisions of the Sale of Goods Act, 1930 concerning the delivery of goods and services which are directly or indirectly applicable even in the case of Electronic Contracts.

D. Information Technology Act, 2000

Based on the lines of United Nations Model Law on E-Commerce, 1996, the Information Technology Act, 2000 seeks to ensure and establish legal recognition of E-Contracts as well as E-Signatures in India vis-à-vis traditional pen and paper contracts. Its objective, similar to that of the Model Law, is to ensure **technological neutrality**, **functional equivalence**, and **non-discrimination** with respect to digitally executed contracts.³⁷ There are several sections under the IT Act, 2000³⁸ which primarily focus on E-Contracts and more specifically the procedural aspects relating to the same.

- 1) As per Section 10(A)³⁹ of the Act, the validity of a Contract is recognized by taking into account aspects of offer, acceptance, contract formation, etc. Once such a Contract is executed, it is to be considered enforceable and is recorded in an Electronic form as an Electronic record. An amendment has been brought about in the Act in 2022 which broadened the scope of Section 10(A) of the Act. The term ‘any contract for the sale or

³⁵ Section 41, Sale of Goods Act, No 3 of 1930

³⁶ Supra Note 33

³⁷ Yogesh Prasad, A Review of Information Technology Act, 2000, SSRN Papers, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2611827

³⁸ Information Technology Act, No 21 of 2000

³⁹ Section 10(A), Information Technology Act, No 21 of 2000

conveyance of immovable property or any interest in such property' was omitted from the first schedule.⁴⁰

- 2) Section 4⁴¹ of the Act explicitly states that any requirement of any physical record of Contract which is to be in a printed form is said to be satisfied when it is in an electronic form. In other words, it provides legal recognition for several Electronic Records. However, there are certain documents that are to be necessarily provided in a physical form such as the Power of Attorney, Sale deed of Immovable Property, etc.

Admissibility of E-Signatures

Offer and acceptance are the necessary components required in each and every Contract. For constituting a formal offer and acceptance, the parties are required to affix their Electronic Signatures on the E-Contract for it to be valid.⁴² These signatures must be put up by the person authorized to do so and have all the information necessary for signing the document. The phrase was initially known as Digital Signature which was later renamed to Electronic Signature for increasing the overall scope covering major aspects under the IT Act.⁴³

As per Section 2(1)(p)⁴⁴ of the Information Technology Act, 2000 a digital signature means authentication of an electronic record by means of any given electronic procedure. In other words, the basic purpose of a Digital Signature is to authenticate or verify any electronic message, media, etc, primarily for its admissibility in the Court of Law. With respect to Contracts executed in India, E-Signatures are going to be considered legally valid for authenticating all digital records. These are however, going to obtain the binding force between the parties only when a digital signature certificate (DSC) which acts as the identity of an individual entering into the Contract is issued by the Controller of Certifying Authority as per Section 35 of the Information Technology Act, 2000⁴⁵. These certificates can further be divided into three types⁴⁶:

- a) Class I Certificate issued to private individuals who intend to apply for giving their digital signatures.

⁴⁰ Nikhil Nair, E-Contracts, Indian National Bar Association, accessed 25th June, 2024

Available at: <https://www.indianbarassociation.org/e-contracts/>

⁴¹ Section 4, Information Technology Act, No 21 of 2000

⁴² Ishika Agrawal, Stamp Duty Implications of E-Agreements, Vinod Kothari Consultants, published 19th January, 2020 accessed 1st July 2024

Available at: <https://vinodkothari.com/2020/01/stamp-duty-implications-on-e-agreements/>

⁴³ Vijay Pal Dalmia, Law of Digital Signature in India, Indian Legal Advisor

Available at: <https://www.linkedin.com/pulse/law-digital-signatures-india-vijay-pal-dalmia-2a4fc/>

⁴⁴ Section 2(1)(p), Information Technology Act, No 21 of 2000

⁴⁵ Section 35, Information Technology Act, No 21 of 2000

⁴⁶ Supra Note 2

- b) Class II Certificate which is issued to business and private individuals upholding that the information provided for in the application doesn't conflict with the information given in customer databases.
- c) Class III certificate which is issued for providing the highest degree of assurance. These are majorly issued to corporations but can also be issued to individuals only when they physically present themselves before the Certifying Authority.

Preconditions of a Valid E-Signature

Certain mandatory requirements for a valid E-Signature have to be satisfied in order to ensure its overall legal enforceability. These primarily include overall reliability and use of an authentication technique provided in the Information Technology Act, 2000. The authentication can be carried out through⁴⁷:

- Aadhar E-KYC Services,
- Third-Party Services
- obtaining a digital certificate from an appropriate certifying authority.

An Electronic Signature shall be considered reliable only if:

- a) The signature creation data is in sync with the context of the agreement in which it is being specifically used.⁴⁸
- b) Any alteration made after providing the E-Signature on the Contract/Agreement is significantly detectable i.e., any post-signature changes shall be capable of being tracked.⁴⁹
- c) There is an audit trail of steps taken for the purposes of overall authentication of the Electronic Signature as well as the overall execution of the Contract.⁵⁰

Stamping of E-Contracts

The general requirement for making a Contract legally enforceable is to get it stamped and to pay the requisite amount of stamp duty to the Government. Hence, stamping acts as a source of revenue for the Central and State Governments. At the same time, stamping aims to ensure

⁴⁷ Tanisha Gautam, Clickwrap, Browsewrap, and Shrinkwrap Agreements in India, 1 JUS CORPUS L.J. 208 (2021).

⁴⁸ Paul R. Schapper, Mercedes Rivolta & Knut Leipold, Authentication: International Scope and Non-Discrimination in Government Commerce vs. PKI, 2 DIGITAL EVIDENCE & ELEC. SIGNATURE L. REV. 55 (2005).

⁴⁹ Digital Signature Legal Requirements, Sectigo.com, published 9th September 2021 accessed 15th May 2024 Available at: <https://www.sectigo.com/resource-library/digital-signature-legal-requirements>

⁵⁰ Supra Note 7

that proper authorization has been attained for the Contract and there is no scope for any form of forgery or misuse.⁵¹ Further, it is only the stamped agreements that shall be admissible as evidence in the Court of Law.

While these provisions are directly applicable in case of physical contracts, the stance of stamping has not been clarified in respect of E-Contracts. There are absolutely no provisions under the Information Technology Act, 2000 to deal with this aspect and there is also no direct solution to it.

While one plausible solution to it can be making digital stamps and affixing it via an online procedure, the commonly followed pattern till now has been taking physical prints of the E-Contract and affixing the stamp on the same.⁵² This shall ensure that there are both physical as well as electronic copies of the Contract/agreement both of which shall be equally enforceable in the eyes of law.

Some Landmark Judgements

a) Trimex International FZE Ltd. v. Vedanta Aluminium Ltd⁵³

In this case, the Court explicitly held that even a Contract entered into between parties through an Email shall be considered legally enforceable even though it has neither been stamped nor has there been any form of electronic signature on the part of either party. The basic purpose of the same is to facilitate increased transactions through Contracts, which can be a boost for the businesses in the Country. Further, there is a need to ensure that the requirements of stamping shall not have a deterrent impact upon the parties from entering into Contracts by making the E-Contracts enforceable and admissible in the Court of Law even in case of the absence of a stamp or seal on it.

b) N.N. Global Mercantile Private Limited v Indo Unique Flame Ltd⁵⁴

This case effectively overruled the judgement laid down in the Trimex case. This case held that in case of an unstamped agreement, the Court shall not be inclined to act. Even in the case of E-Contracts for which there is a possibility of being physically stamped, the requisite amount of stamp duty and, in cases of delay, penalties have to be mandatorily paid to the Government for the agreement to be legally enforceable.

⁵¹ Seema Jhingan, Electronic Contracts: Applicability of Stamp Duty, Mondaq.com, published on 8th December 2016 accessed 15th June, 2024 Available at: <https://www.mondaq.com/india/contracts-and-commercial-law/551162/electronic-contracts--applicability-of-stamp-duty>

⁵² The Electronic Contract, M Nasser Law and Partners, mnasserlaw.com, published 17th December 2023 Available at: <https://mnasserlaw.com/the-electronic-contract/>

⁵³ Trimex International FZE Ltd. v. Vedanta Aluminium Ltd (2010) 3 SCC 1

⁵⁴ N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) SCC OnLine SC 495

In other words, an Electronic Contract will not be enforceable till the time stamp duty has been paid for the purposes of enforcing the Contract.

c) *Great Offshore Ltd v. Iranian Offshore Engineering and Construction Co*⁵⁵

This case as decided by a single bench was a deviation from the NN Global judgement and stated that the basic purpose of digitalization of Contracts will be defeated by mandating stamp duty and seal on even Electronically executed contracts. Additionally, this will directly affect the efficiency and comparatively reduced costs that were generally involved in E-Contracts.

However, since the last judgement was pronounced by a single judge, the NN Global judgement at present holds binding value. In other words, it acts as a valuable precedent before the Court of Law. Hence, even for enforcing an electronic contract, there is a requirement for mandatory payment of stamp duty and seal on the physical copy of Electronic Contract.⁵⁶

IV. DIFFERENT TYPES OF E-CONTRACTS

There are several forms of Electronic Contracts that we might come across in our daily lives while purchasing goods or services online. Even businesses located across different regions carrying out online transactions enter into these forms of Contracts. Most of these Electronic Contracts are in the form of Standard Form Contracts in which there are certain unilateral conditions that are to be agreed upon by the buyer before they can enter into the Contract.⁵⁷

1. Click Wrap Contracts

These forms of digital contracts are generally used in cases of online software and web licensing. In such contracts, the buyer/user will be required to agree to certain terms and conditions that have been set by the other party by clicking upon the 'I agree' option provided to them.⁵⁸ It is only after this that they can access any information provided on their website, purchase their software, or make any in-app purchases.

⁵⁵ *Great Offshore Ltd. vs. Iranian Offshore Engineering. & Construction Co.*, (2008) 14 SCC 240

⁵⁶ Vikash Kumar Jha, *Final Word on Enforceability of Unstamped Arbitration Agreements*, Cyril Amarchand Mangaldas, Available at: <https://disputeresolution.cyrilamarchandblogs.com/2024/03/final-word-on-enforceability-of-unstamped-arbitration-agreements/>

⁵⁷ *E-Contract and Its Types: Its Validity and Enforceability Under Indian Laws*, Burgeon Law, published on 27th March, 2023 accessed 13th June 2024

<https://burgeon.co.in/blog/e-contract-and-its-types-its-validity-and-enforceability-under-indian-laws/>

⁵⁸ Archana Balasubramanian, *E-Contracts in India*, Agama Law Associates, Mondaq, published on 24th August, 2021 accessed 20th June, 2024, Available at:

<https://www.mondaq.com/india/contracts-and-commercial-law/1104590/e-contracts-in-india>

Several mobile applications and websites also contain this option to ensure that there is complete transparency and the users are informed about all significant information before they make any decision regarding access or purchase of service.

In the case of **Feldman v. Google**⁵⁹, the Court held that when the user clicks on the 'I agree' option with the intention of accepting the offer provided by the seller, it shall be considered a valid contract. However, in India, the enforceability of such contracts still remains uncertain.

2. Browse Wrap Contracts

These Contracts are quite similar to Click Wrap Contracts. In these contracts as well, the user would be required to agree to certain terms and conditions without which they won't be able to browse on their website.⁶⁰ However, these terms and conditions won't be provided directly to user and no express consent will be obtained from the user. They shall be required to access the terms through a separate hyperlink and consent will be implied on the part of the user through continuous use of the website.⁶¹

Hence, unlike Click Wrap Contracts the 'I agree' option is not provided and the website generally consists of the following clause which doesn't require any consent to be obtained from the user:

'Continuing to use the website, the user has read and accepted the terms and conditions provided by the owner of the website.' A prominent example of such Contracts is the privacy policy of the website which is provided in a separate hyperlink. The user is presumed to have consented to the privacy policy by accessing the website.

3. Shrink Wrap Contracts

These Contracts are generally in the form of terms and conditions affixed on physical software CDs and consumer goods. These conditions are enclosed upon the package of the goods and services and become applicable as soon as the package of the product has been opened. The terms generally consist of clauses that prohibit illegal copying of the goods, reverse engineering, use in multiple products, etc.⁶² The user shall be made liable in case of Intellectual Property Rights violations upon opening the package.

4. E-Mail Contracts

These are the most common form of Electronic Contracts which are executed in the present

⁵⁹ Feldman v. Google Inc., 513 F Supp 2d 229, 247 (ED Pa 2007)

⁶⁰ Supra Note 16

⁶¹ Sreeja Chatterjee, Types of E-Contracts and Their Legal Compliance: Guiding Netizens towards Fair and Transparent Internet Usage, 4 INT'L J.L. MGMT. & HUMAN. 1548 (2021).

⁶² Supra Note 16

day. These Contracts shall be enforceable and legally binding upon the parties as soon as all the general elements of a Contract have been fulfilled, such as offer, acceptance, and consideration.⁶³ These are the most effective form of Contracts, specifically in cases of cross/inter-country contracts for the import or export of software or even physical commodities.

For example, A Ltd, based in India, entered into a contract with B Ltd, which has its registered office in the USA, for the purchase of SAAS (Software as a Service). The inquiry was made via email, and B Ltd responded with a quotation through the same channel. Offer and acceptance were completed within the stipulated timeframe, and payment was made via net banking. This constitutes a valid contract since both the offer and acceptance were communicated through email.

These are the various forms of Electronic Contracts that are recognized globally and can be entered into between the parties. Their enforceability varies from one jurisdiction to another. Further, even in India, the stance regarding the enforceability of most of these is still uncertain due to lack of provisions under the relevant acts specifying the same.

V. ENFORCEABILITY OF E-CONTRACTS IN INDIA

Click Wrap Contracts are enforceable in India and are to be considered as binding in India. However, the terms have to be clear and absolutely transparent otherwise these agreements shall not be accepted. The users have to be provided with clear and reasonable notice regarding all terms and should also be provided with a reasonable opportunity to review them before their acceptance.⁶⁴ These contracts have also been recognized in several International jurisdictions such as in the United States of America as well as in UK. However, there is an issue in such contracts because the users are not provided with any option to negotiate the terms and will be compelled to agree to the terms in order to continue accessing the website or even for the purpose of making purchases of goods and services from the platforms.⁶⁵

The enforceability of Browse Wrap Contracts is a matter of even more consideration in comparison to Click Wrap Contracts because there are two issues involved. While there is already a lack of negotiating power on the part of user regarding the terms of use since it is a Standard Form Contract, there is an added problem of lack of explicit consent of the user.⁶⁶

⁶³ S. Tharani, A Critical Study on Various Aspects of E-Contracts in India, 3 INDIAN J.L. & LEGAL RSCH. 1 (2021).

⁶⁴ Mahesh Singh G., The Legal Implications of Overlooking Vital Elements of a Contract in E-Contracts, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

⁶⁵ Ibid

⁶⁶ Manav Kirtikumar Thakkar, An Analytical Study of E-Contracts: With Special Reference to E-Commerce, 4

Issue may arise because the user would not have read through the terms and policies of the service provider and might suffer later because of any unfair terms. At the global level, such form of Contracts generally have lesser acceptance and several jurisdictions provide for a notice to be given to the users to review the terms before acceptance.⁶⁷ In India, its enforceability is still not clear and this passive acceptance under such contracts is likely to lead to mixed legal outcomes.

Shrink Wrap Contracts also have certain issues in their enforceability because of a lack of negotiating power on part of the user.⁶⁸ Their consent to the terms is implied upon the purchase of the product or services. Its enforceability varies across different jurisdictions in the world. While these are enforceable in some states of USA and the whole of UK, there are several countries that have still not recognized these Contracts as enforceable in their respective jurisdictions.⁶⁹

Lastly, E-Mail Contracts have the highest degree of enforceability and are the most common form of E-Contracts executed in India. The power to negotiate is equally provided to parties on either side. Through discussions and deliberations via email, they can negotiate the terms of the agreement and accordingly execute it.⁷⁰ As per the Information Technology Act, 2000 electronic evidence of these contracts shall be admissible in the Indian Courts.

VI. ISSUES IN E-CONTRACTS

There are certain issues that may arise while executing or entering into any E-contract with another party, which can mainly be divided into two components:

1. Issue of Jurisdiction

The first issue is with respect to the appropriate jurisdiction where any dispute in respect of E-contracts arises. The primary question is which forum shall the aggrieved party approach and what shall be the place where the cause of action arose. This issue further gets aggravated in the case of cross-country Contracts i.e., E-contracts entered into between parties located in two different countries.

In such circumstances, the jurisdiction can be mutually determined between the parties via an

INDIAN J.L. & LEGAL RSCH. 1 (2022).

⁶⁷ Sakshi Gupta, Validity of E-Contracts in India, A New Mode of Contracting, Available at: <https://gitarattan.edu.in/wp-content/uploads/2023/05/Chapter-15.pdf>

⁶⁸ Supra Note 23

⁶⁹ Supra Note 6

⁷⁰ Enforceability of electronically executed contracts in India, Ikigai Law, published on 1st April, 2020 accessed 24th June, 2024 Available at: <https://www.ikigailaw.com/article/315/enforceability-of-electronically-executed-contracts-in-india>

agreement.⁷¹ Additionally, in case of lack of an agreement, the jurisdiction shall be determined on the basis of any treaty or agreement that may be signed between the parties. The place of E-Contract has been stated to a certain extent under the Information Technology Act, 2000⁷².

- a) The place of business of the service provider shall be considered as the place from where the services have been dispatched.
- b) The place of business of the user/addressee shall be the place where the information has been received by them.

In the case of **PR Transport Agency v. Union of India**⁷³, the Court held that acceptance of the offer for entering into an E-contract had been made through email and had been sent to Chandauli whereas the principal place of business was also in Benaras (Uttar Pradesh). Therefore, the Court held that the jurisdiction for the dispute shall lie in Uttar Pradesh.

2. Lack of Negotiating Power

Another major issue observed across different types of E-contracts was the lack of negotiating power with the user or the buyer. This issue is primarily because of the nature of such contracts and interaction between buyer and seller not being possible under most circumstances.⁷⁴ Further, it is not possible for the service provider to personally interact and negotiate the terms with every individual user, so they frame uniform terms that all users must agree to. Hence, under such circumstances, Click-Wrap and Browse-Wrap Contracts can't be effectively changed/modified as providing negotiating power isn't possible under most circumstances.

3. Possibility of Unlawful Contracts

Given that e-signatures are not mandatory for e-contracts and only the requisite stamp duty needs to be paid, there is a significant risk of entering into agreements where one or more parties may be fictitious. This also substantially increases the likelihood of forgery and fraud in such contracts.

4. Insufficient Legal Framework

India lacks comprehensive laws explicitly addressing e-contracts, leading to an over-reliance on the Indian Contracts Act, 1872, and the Information Technology Act, 2000. These statutes

⁷¹ Mitul Soni, Legal Issues and Jurisdiction Involved in E-Contracts: An Analysis, (August 2, 2023). Available at SSRN: <https://ssrn.com/abstract=4528990>

⁷² Supra Note 13

⁷³ PR Transport Agency v. Union of India, AIR 2006 ALL 23

⁷⁴ Dr. Manoj Kumar Sadual, Electronic Contracts: Legal Issues and Challenges, 8 IJRAR 3, July 2021

do not clearly emphasize the enforceability of e-contracts or outline mandatory conditions for their validity. Consequently, parties are often unaware of their duties and obligations beyond those specified in the agreement, and courts lack explicit provisions for adjudicating disputes arising from e-contracts.⁷⁵

5. Technical Errors

There might be some technical errors that might arise while entering into any E-contract through any digital medium such as E-Mail, website of the service provider, etc. This is because of some of the ill effects of modern technology such as glitches or stoppages because of increased traffic.

VII. RECOMMENDATIONS

1. Inclusion of E-contracts in the IT Act

The Information Technology Act, 2000 shall define the different kinds of E-contracts including Shrink Wrap, Browse Wrap, Click Wrap Contracts, etc, and also lay down their scope for overall protection and enforceability. Considering the huge number of electronic contracts that are executed in current times, this is the need of the hour.

2. Admissibility of electronically Stamped E-contracts

Those E-contracts that have been electronically stamped (digital stamps) shall also be admissible before the Court of Law and shall be considered enforceable for the parties. Under the Bharatiya Sakshya Adhiniyam, 2023 the same has been ensured to the maximum and further amendments with changing nature of E-Contracts can be brought about for the purpose of effectively recognizing electronically executed contracts as valid evidence before the Court of law even with its changing nature.

3. Clarity on jurisdiction

The Information Technology Act, 2000 shall specify the jurisdiction for disputes arising out of E-contracts based on either the principal place of business of both parties or the location of the service provider. This will play a vital role in ensuring the effective resolution of disputes. In current times, the borderless nature of Cyberspace has brought about issues with respect to the appropriate tribunal for resolution of disputes and the same has to be curbed for effective redressal of grievances specifically in case of electronically executed Contracts. Hence, there is an urgent need for clarity upon the same.

⁷⁵ Id at 73

4. Separate Dispute Resolution Mechanism

Considering the significant growth in the number of E-contracts over the past few years, there is a requirement for a separate mechanism for the resolution of disputes. This can include online arbitration or mediation proceedings which can be initiated. These shall consist of judges or arbitrators having pertinent knowledge of digital contracts and shall be skilled enough to adjudicate. Further, training programs must be initiated for judges to impart necessary skills to them which shall facilitate an effective resolution of disputes.

5. Align with International Laws

There is a need to align Indian Laws governing E-contracts with International standards and policies to ensure uniformity in enforcing these contracts. An example of the same can be UNCITRAL Model Law on E-Commerce and in modern times the Information Technology Act, 2000 has also been based on lines of the modern law to a large extent. At the same time, this will facilitate global business transactions without creating any ambiguity. The government of India can also enter into treaties with other nations for cooperation and coordination in this subject area.

VIII. CONCLUSION

E-Contracts have completely revolutionized the ecosystem in E-Commerce and has combined convenience with overall efficiency. As businesses are increasingly adopting electronic means for executing E-Contracts, the legal infrastructure surrounding E-Contracts must also evolve accordingly to ensure fairness and enforceability for all concerned parties. Though several developments have been made under the IT Act, 2000 for its recognition, there are still several issues prevailing. Hence, it becomes important to ensure careful structuring of the laws and robust digital procedures. This will fulfill the two-fold purpose of achieving a balance between the promotion of technological advancement on one hand and legal integrity on the other.
