

# VALIDITY OF E-CONTRACTS IN INDIA: A NEW MODE OF CONTRACTING

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## ABSTRACT

*This paper intends to highlight how with the evolution and tremendous development in computer systems and IT along with the increase in the scale of innovation related to internet services, E-commerce has flourished many folds in the last decades. E-contracts being an essential element of E-commerce are recognized by the Indian laws, leading to the firm trust among the consumers of E-commerce over time. Further, the paper highlights that the Covid-19 pandemic further helped to grow the E-commerce sector leading to the growth of E-contracts. As with the general handwritten contract, the E-contracts are governed by a bundle of enactments like the provisions of the Indian Contract Act, 1872, which are applicable to validate the E-Contracts similar to the general contracts. Further, the provisions of the Information Technology Act, 2000 (IT Act) give statutory recognition to E-contracts, along with the provisions of the Indian Evidence Act, 1872 making the E-contract enforceable. Further, the paper will highlight the aspects of the jurisdiction in E-contracts. Lastly, the paper will highlight how the concept of E-contracts has gelled in society and has become an inseparable part.*

**Keywords:** E-commerce, E-contracts, Indian Contract Act, 1872, Indian Evidence Act, 1872, Information Technology Act 2000, Covid-19

## INTRODUCTION

India being the 2<sup>nd</sup> largest country in terms of the population having a 17.7% of the share of the world's population, is a country where we observe that may it be a small village or big metropolitan cities like New Delhi or Mumbai people engage themselves and enter into various contracts on daily basis.

From buying a small candy to buying a big shark company to buying crude oil from any country, individuals, organizations, companies, and even governments enter into one or the other contract. Moreover, the contracts so formed are the ones that are made in good faith and with utmost trust in each other. The contracts may be oral or written and are being formed and executed in India. Further, as the covid-19 pandemic attacked the entire world and that was the moment when the E-contract reached every home, and even the same could be observed for small-to-small commodities like groceries and many others. Since the people were stuck in their places and no one was allowed to move outside their homes, the companies turned the business into E-commerce platforms and ensured the people entered into contracts with them. Other than these basic amenities, even the teaching software like zoom or Ms teams showed their terms and conditions to use the particular software which came up as the biggest example of E-contracting.

E-contracting is now turning out to be an inseparable part of our society with the entrance of E-commerce giants like Amazon, Flipkart, and many others who have now made the customers used to their platform in such a manner that the customers sitting anywhere in the world, or maybe traveling from one point of the world to another can easily buy the product they feel the need of.

But as it is said that each coin has two faces and the other face of the E-contracting has its problems or negative implications which somewhere or the other affect the economy as well as the market of a country, also in terms of the legal jurisdiction of the same in the Indian context.

## STATEMENT OF PROBLEM

In India, the people are more considerate in buying commodities themselves, and further, the people enter into a contract for various commodities moreover with the technological advancements contracting has also turned into Electronic Contracts abbreviated as E-contracts, which are considered to be a new mode of trading or contracting. The author has identified a big lacuna in the abovementioned system i.e., firstly, the jurisdictional problem in case a dispute arises, and secondly, how much have the people accepted this mode of contracting along with the traditional method of contracting. The author of this paper will try to answer the abovementioned problems.

## OBJECTIVE OF STUDY

The main objective of the paper is to:

- Understand the jurisdictional aspect in case of dispute in E-contracts; and
- Understand the acceptance of the E-contract in Indian Society.
- Understand how the E-contracts exist in the common parlance with the traditional contracts.

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## METHODOLOGY

The researcher while writing this paper has used both doctrinal and non-doctrinal methods of research to understand the intensity of trust and acceptance by the people for the E-Contracts. The researcher has himself conversed with the people in the society to understand how often the people engage in the traditional contracts and E-contracts, and how many are aware of the legal aspect of the same. Since it is the duty of the law student or anyone from the legal fraternity to aware the people about the legal aspects of daily activities, so this paper also focuses on aware people.

## LITERATURE REVIEW

Since the concept of E-contracting is an emerging and new modal of contracting, and varied aspects in its regard, so, it is not possible to consolidate all the aspects single paper. Therefore, the researcher has confined himself to the aspect of the validity of the E-contracts as the new mode of contracting and has gone through various legal articles available on the internet and other websites like “Validity of E-Contract in India: An Overview” by Mohd.Nizam Ashraf Khan; “An Analytical Study on E-contract: Its Legal Validity and Jurisdiction” by Jaimala Chahande; “Validity and enforceability of electronic contracts and electronic signatures” by Raslin Saluja and many others. Further, the researcher went through various bare act provisions like of Indian Contract Act, 1862; Indian Evidence Act, 1862, and Information Technology Act, 2000. The researcher while writing the paper went through articles and thereby the idea for the same was derived through interpretation of the same.

## HISTORICAL BACKGROUND OF E-CONTRACTS<sup>1</sup>

E-contract is an important aspect of E-commerce; hence it is necessary to examine its history before knowing about it. E-commerce is simply the sale and purchase of goods and the hiring of services through the internet. The expansion of digital technology and networking has enhanced the global growth of E-commerce. Businesses used Electronic Data Interchange (EDI) to execute E-transactions in the 1960s.

When the Internet was first utilized for business in 1991, E-commerce was largely welcomed. With the creation of the World Wide Web in 1990, a huge number of businesses began to provide their services via the website. Amazon and eBay, for example, were among the first businesses to revolutionize e-commerce.

The concept of E-commerce was originally popularised in India in the late 1990s by Rediff. The Indian Railway Catering and Tourism Corporation Limited (IRCTC) was the first corporation in India to create an E-commerce platform.

The Model Law on E-commerce was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1996. In January 1997, the United Nations General Assembly urged that nations examine this paradigm when implementing

or updating their laws.

As a result, the Indian Parliament passed the Information Technology Act in 2000 to legitimize E-commerce transactions in India and to keep up with the globalization of trade and transactions as computer technology advanced.

The following International Conventions and Conferences offer the rules and regulations that regulate E-commerce and, eventually, the E-contract.

The Brussels Convention on Jurisdiction and Recognition of Judgments in Civil and Commercial Matters, 1968; the Convention on The Law Applicable to Contractual Obligations, 19 June 1980 (known as the “Rome Convention”); the Hague Conference on Private International Law (HCPIL), 30 June 2005, issued a Convention on Exclusive Choice of Court Agreements concluded in Civil and Commercial Matters; and the United Nations Convention on the Use of Electronic Communications (New York, 2005).

## E-CONTRACTS AS A BODY: MEANING AND ITS ORGANS

With the rapid advancement of information technology, it is becoming increasingly simple to engage in an E-Contract for business transactions. It is possible to engage in such a contract quickly by exchanging electronic communication of offer and acceptance between the parties. One of the most significant aspects of E-commerce is the e-contract. E-contracts are intended to sell and deliver items and services to the addressee through the internet.

Nowadays, we all enter into E-contracts daily, for example, to buy groceries, books, vegetables, clothing, trip booking, Airlines, and railway tickets, playing games, view online movies, rent a cab, and so on, so we are extremely accustomed to the E-contract.

E-contract has the same definition as a traditional contract (paper-based contract), which is a “contract as an agreement enforceable by law.” The main difference is that it is done through an online means of communication rather than the parties meeting face to face.

According to the UNCITRAL Model Law on Electronic Commerce, “a contract can be created by exchanging data messages, and when a data message is utilized to form a contract, the legality of such contract shall not be rejected.” Electronic communication and paper-based communication are both legally protected under modern law.

## Types of E-contracts<sup>2</sup>

Following are the general types of E-contracts/Agreements

- a) **Click-wrap agreement-** These agreements require the user to give his consent to the terms and conditions of the agreement by clicking the “I accept”, “Ok”, “Allow” or “I agree” button.
- b) **Browse Wrap Agreements-** These agreements do not

require the user to give his consent to the agreement. It stated that, automatic acceptance of the agreement by using the website. In this agreement, terms or conditions of service are provided at the bottom of the website.

**c) Shrink-wrap agreements-** These agreements are formed when the user gives his consent to a printed agreement on software like CD-ROM by opening in the shrink to fit a plastic wrapper over the product. The terms and conditions in such agreements are enforced upon the user as he cannot use it without opening the wrapper.

#### **Essentials of E-Contract:-**

E-contracts may be formed either through e-mail, mobile apps, video conferencing, or other electronic media. To enter into an electronic contract requires the essential elements applicable to the traditional contract. However, such contracts are executed through online modes unlike personal meetings in traditional contracts. The following are the essentials to form an E-contract: -

**1. Offer-**A proposal is another name for an offer. It is the first and most important need for the development of an E-contract. An electronic offer can be offered by electronic means such as e-mails, for example. According to the Information Technology Act of 2000, the terms “originator” and “addressee” are used in E-contracts instead of the phrases “proposer” and “acceptor” used in conventional contracts.

An originator is a person who sends or generates the electronic message, that is, the person who originates the electronic message and transmits it to another person. An addressee is an individual who gets the electronic record that the originator sends. Section 11 of the IT Act addresses the attribution of electronic documents to the originator, whether they were sent by the originator himself, by an authorized person, or by an information system programmed on his behalf. The recipient assumed in such contracts that the electronic record was created by the originator. However, in an e-contract, the originator may not be notified of the addressee’s receipt of the electronic document after sending it. Therefore, it requires the acknowledgment of the receipt of the electronic record from the addressee.

**2. Acceptance of an electronic offer-** The originator communicates his offer or proposition to the addressee by electronic means, and the addressee, if accepting it, may convey his acceptance via electronic means or by clicking on the button ‘I agree,’ ‘I accept,’ ‘allow,’ and so on.

**3. Acknowledgement of receipt or communication of acceptance-**Section 12 of the Information Technology Act of 2000 deals with receipt acknowledgment. According to this section, if both parties do not agree on the manner of acknowledgment provided by the addressee, the addressee may acknowledge the receipt of electronic records by any communication channel to notify the originator of the addressee’s reception. It further states that an electronic record

is not binding unless the recipient acknowledges receipt of the electronic record.

If the addressee fails to acknowledge the reception within a reasonable period, the originator may notify the addressee that he has not received an acknowledgment and provide a reasonable time for receipt of the acknowledgment once again. Even if the recipient fails to provide the acknowledgment, the originator has the right to reject delivering the electronic record. As a result, no enforceable electronic contract exists.

Further, the courts in various instances have identified various aspects of the E-Contracts which made the precedent and established a new view to see to this aspect. In the case of **Bhagavandas Kedia vs. Girdharilal**<sup>3</sup>, the Supreme Court of India on the basis of judgment in **Entores vs. Miles Far East Corporation**<sup>4</sup> has held that the contract is complete only at the end of the offeror where he has received the acceptance to his offer.

In **Quadricon Pvt. Ltd. vs. Bajarang Alloys Ltd.**<sup>5</sup>, the Bombay High Court held that the communication by Fax is similar to Telex. The contract would be completed only when the acceptance is received by the offeror.

Further, the author has discussed various legal provisions in the next part of the paper to highlight how the judiciary and legislature have played their role and duty in regard to E-Contracts.

#### **LEGISLATIONS AND JUDICIAL PRONOUNCEMENTS**

As for the traditional contract to be called a valid contract, the grounds or criteria are being mentioned in the Indian Contract Act, 1872, similarly, for an E-Contract to be valid it requires that the essentials so mentioned under section 10 of the Indian Contract Act 1872 are complied with completely.

In addition to it, E-contract is validated and enforceable under Section 10-A of The Information Technology Act, 2000 and The Indian Evidence Act, 1872.

#### **Essentials of Valid E-contract**

To validate an E-contract it is a precondition to satisfy the provision of Sec. 10 of the Indian Contract Act, 1872<sup>6</sup>(ICA) as follows

1. Free consent,
2. Competent to contract,
3. Lawful consideration,
4. Lawful object,
5. Not expressly declared to be void.

**1. Free consent:** - The consent to be free must not cause by coercion, undue influence, fraud, misrepresentation, or mistake. In E-contract, face-to-face contact is not possible so the contract is made by just clicking the terms and agreements in such

contracts.

**2. Competent to contract:-** Any person is competent to contract if he is a major, of sound mind, and not disqualified by law in force to contract. In E-contract, the verification of the competence of the contracting parties is very difficult. For example, minors may enter into the contract by misrepresentation. So, the online originators should take precautions by inserting the condition as to the capacity in the term of the offer. Such terms must be confirmed first by the addressee to be true and then the offer can be accepted.

**3. Lawful consideration:-** Consideration means something in return. The Indian Contract Act provides that “an agreement without consideration is void.”

**4. Lawful object:-** Object of the contract must not be fraudulent, immoral, or opposed to public policy, etc.

**5. Not expressly declared to be void:-** An agreement must not have been declared void by any law in force in India. This shows that E-contracts are also valid like traditional contracts if it follows the above essentials.

The provisions of The Information Technology Act, 2000 (IT Act) give statutory recognition to E-contracts under Sec. 10-A<sup>7</sup>. This section provides the legal binding of the E-contract. It stated that the communication, acceptance, and revocation of proposals in an electronic form or by electronic records are enforceable. This section is based on Article 11 (Formation and validity of contracts) of the UNCITRAL Model Law of E-Commerce, 1996.<sup>8</sup>

## ELECTRONIC SIGNATURE

When the E-Contract or a written contract is made then the concept of signatures comes into the picture i.e., the normal penned signature in the case of a written contract whereas the electronic signature in the case of an E-Contract.

A digital signature is a mathematical technique to validate the authenticity of a message, software, or electronic document. An electronic contract can be created by digital signatures is recognized by the laws in India. In E-contract, it is imperative to know the authenticity of such contract, which is proved by the ‘electronic signature’ recognized under the IT (Amendment) Act, 2008.

In *J.Pereira Fernandes SA vs. Mehata*<sup>9</sup>, the defendant a Director of the company sent an unsigned E-mail to the claimant to stop the process of the company. In this case, the Court of Chancery held that an offer sent through an unsigned E-mail is not sufficient. That means to authenticate any E-contracts, it is necessary to have an electronic signature of the originator and addressee. The IT Act provides legal recognition to electronic signatures under the Sec.5 of the Act. Wherein it is provided that any matter or document shall be authenticated by affixing the handwritten signature or any mark on it is recognized as an electronic signature.

An E-contract after its execution is recorded with the executing parties in electronic form, i.e., in the electronic record. The IT Act defines the term “electronic record” under sec.2(t) as “data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated microfiche”. The IT Act also provides authentication and legal recognition of electronic records under Sec.3 and 4 of this Act.

The Indian Evidence Act, 1872 has provided legal recognition to the E-contract. Section 3 of this Act provides that the term “electronic signature”, “electronic signature certificate”, “electronic record”, “secure electronic record”, and “secure electronic signature” shall have the same meaning as provided under the IT Act respectively. Section 3 also defines the term “Evidence” as “all documents including electronic records produced for the inspection of the court are called as documentary evidence.”

The Indian Evidence Act provides admissibility of electronic records under section 65-B, any information contained in an electronic record, if printed or stored on CD is admissible in the court as evidence without further proof or production of original in any proceedings.

In *Anvar P.V. vs. P.K. Basheer & Ors.*<sup>10</sup> the nature and manner of admission of electronic records are under consideration before the Supreme Court of India. The Supreme Court held that an electronic record by way of secondary evidence shall not be admissible as evidence unless the requirements of Section 65-B are satisfied.

The court presumes that every electronic agreement is closed by affixing the parties’ electronic signatures under Section 85-A of the Indian Evidence Act. According to Section 85-B of this Act, the court must presume that “the secure electronic record has not been altered since the specific point in time to which the secure status relates,” and that “the secure digital signature is affixed by the subscriber to sign or approve the electronic record.”

**Hotmail Corporation vs. Van \$ Money Pie Inc.** is the first case where the U.S. District Court, California decided on the validity of a Click-wrap contract’s term of service through an email agreement.

In **Rudder v. Microsoft Corporation**<sup>11</sup> Ontario Superior Court of Justice, Canada, the issue was discussed about a clause that binds an individual to be upheld even if that clause is not seen and whether the Click-wrap licenses are valid or not. In this case, Rudder argued that the particular clause was not valid as it was not adequately brought to the attention of the user. The provision was important that it required special notice. The Court held that the Clause was enforceable and Click-wrap agreements “afforded the sanctity that must be given to any agreement in writing.” The validity of e-contracts is also recognized by the Indian courts in various cases. In the case of **Trimex International FZE Ltd., Dubai vs. Vedanta**

**Aluminium Ltd.**<sup>12</sup> the Supreme Court of India held that “the contract between the parties was unconditionally accepted through e-mails was a valid contract which satisfied the requirements of the ICA.”

Hence, the E-contract is valid and enforceable according to the provisions given under the Indian Contract Act; The Information Technology Act, and The Indian Evidence Act like the traditional contracts.

### **JURISDICTION OF THE COURTS UNDER E-CONTRACT**

The breadth of the court’s capacity to hear a matter, i.e., to take cognizance of the case and issue legal decisions and judgments, is referred to as jurisdiction. The court has the legal authority to settle the disagreement.

An E-contract entails the rapid communication of an offer and acceptance. Where acceptance is received at the end of the originator, the contract is concluded.

The Supreme Court of India in the case of Bhagwandas Goverdhandas Kedia vs. Girdhari Lal Parshottamdas & Co.<sup>13</sup> held that “at the place of proposer where the acceptance is received shall have the jurisdiction for enforcement of contracts entered into using computer internet.”

In India, the Code of Civil Procedure, 1908, specifies the method for defining the jurisdiction of Civil Courts, which is based on the place of domicile and the location of the cause of action. In general, contracts include a particular clause determining the geographical jurisdiction to settle disputes resulting from such transactions.

An E-contract transcends jurisdictional borders since it may be formed from anywhere on the planet. This raises the issue of the court’s jurisdiction in the event of a disagreement between the parties to an E-contract.

If there is any dispute among the parties belonging to the same jurisdiction related to E-contract, then such dispute can be resolved similar to the traditional contract disputes. However, challenges would arise when the parties to E-contract belong to different countries. The jurisdiction problem in E-contract has been resolved under IT Act in India. Specifically, Section 13 of the IT Act deals with the time and place of despatch and receipt of electronic records and electronic contracts.

#### **Section 13: Time and place of despatch and receipt of electronic record**

This section stated that “the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.” It provided the time of despatch of the digital record.

The despatch means the electronic transmission of the electronic record to the addressee. Here, ‘outside the control of the originator’ means he cannot recall it back and make any changes to it specifically when it enters into the e-mail server

of any parties. The electronic record is considered to be despatched when it communicates to the proposed addressee.

Sub-section 2 of Section 13, determined the time of receipt of an electronic record. The receipt occurs at the time when the electronic record enters the designated computer resource if the addressee has designated it. If the addressee has not designated a computer resource, then the receipt occurs when the electronic records enter the computer resource of the addressee. Sub-section 3 of the above Section stated that, the place of despatched and received of an electronic record of both the parties i.e., the originator and the addressee. An electronic record is despatched from the place where the originator has his place of business and is received at the place where the addressee has his place of business.

According to Sub-section 4, the location of computer resources is not so important in determining the time and place of despatched and the receipt of records between both parties.

As per Sub-section 5,

“if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

If both the parties do not have a place of business, his usual place of residence shall be deemed to be the place of business;

The usual place of business for corporate is the place where it is registered.”

Thus, it emphasizes on principal place of business and usual place of residence to determine the time and place of despatch and receipt of the electronic record.

In the case of PR Transport Agency vs. Union of India<sup>14</sup>, the above provision applied. In this case, the Allahabad High Court had to decide the question of jurisdiction. The respondent had sent the letter of acceptance by e-mail to the petitioner’s e-mail address. After that, the respondent sent another e-mail cancelling the e-auction due to some unavoidable reasons. The petitioner challenged this communication in the Allahabad High Court, objection was raised by the respondent about the territorial jurisdiction of the Court based on

the cause of action that had not arisen within Uttar Pradesh. In this case, the principal place of business of the petitioner was in the Chandauli district of U.P. and his other place of business was in Varanasi of U.P. The Court, based on Section 13(3) of the IT Act, held that “the acceptance of tender by e-mail would be deemed to have been received by the petitioner at Varanasi or Chandauli, which are the only two places where the petitioner has his place of business. As both these places fell within the territorial jurisdiction of the Allahabad High Court, the Court assumed the jurisdiction to try the dispute.”

Thus, it is observed that the principal place of business of the originator and the addressee become the criteria to decide the jurisdiction of the Court. However, the contracting parties

particularly in E-contracts must insert a specific clause on jurisdiction to avoid further complications.

### **RESEARCHER'S REVIEW OF THE SURVEY AND SUGGESTIONS**

The researcher while writing the research paper had gone through various papers, newspaper articles, cases, and statutes with interpretation along with the oral survey which the author had conducted telephonically to understand the mindset of the people in regards to E-Contracts and related legal aspects of the same.

Firstly, the author of the survey observed people of varied mindsets as like author asked some questions like do you read the clauses while placing an order on any online shopping website like amazon or Zomato? To which people responded negatively saying that who reads these clauses except a few who thought that they had faced certain problems earlier so they have now started reading the same. Further, the researcher asked various other questions like "in case any problem arises where will you approach?" to which there was a mixed opinion from people, from which the researcher interpreted and came to two concluding points. First, is there is a lack of understanding or awareness among the people in this regard, and secondly, the people least interested in knowing the aspect of law which somewhere deep there in daily usage but hidden.

Lastly, the author suggests that people need to make themselves aware of the abovementioned aspect and further should be careful to know where their grievances will be heard and resolved and under which laws. In 2022, when the maximum population is indulged in online buying and selling there the laws related to E-contracts is something which must know.

### **CONCLUSION**

In the recent era, E-commerce grow exponentially therefore the use of E-contract increasing day by day. online businesses unfold across the worldwide markets and reach various consumers. Eventually, E-contract becomes essential half to manipulate underneath jurisprudence to avoid any uncertain disputes in online transactions. The E-contract in India governs by many legislations to validate it. Indian Courts conjointly upheld the validity and passed the judgments within the cases regarding jurisdiction of E-contract, it becomes useful to unravel the disputes related to these issues. With the advancements in technologies, the Indian Parliament enacts laws that find it irresistible Act to change with trendy international trade transactions. there's a desire to cover all the aspects of E-contracts during a single, comprehensive, and updated legislation to the protection of customers and traders in E-commerce and for social control of E-contracts.

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