



## Online contract laws in India and other developed countries in contemporary scenario

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### Abstract

Online contracts have assumed a great importance mainly in terms of reach and multiplicity with advance use of internet and electronic commerce. Online contract or an electronic contract is an agreement modeled, signed and executed electronically, usually over internet. An Online contract is conceptually very similar and is drafted in the same manner in which a traditional paper-based contract is drafted. In case of an online contract, the seller who intends to sell their products, present their products, prices and terms for buying such products to the prospective buyers.. Electronic signatures can be done in different ways like typing the name of the signer's in the specific signature space, copying and pasting the scanned version of the signature or clicking an option meant for that purpose. Once the terms are accepted and the payment is made, the transaction can be completed. The communication is basically made between two computers through servers. The online contract is brought to the scenario to help people in the way of formulating and implementing policies of commercial contracts within business directed over internet. Online Contract is modeled for the sale, purchase and supply of products and services to both consumers and business associates. The Information Technology Act-2000 regulates the provisions relating to e commerce in India. The Act contains various administrative and procedural guidelines for all electronic or computer data related transactions. These include electronic documents authentication by way of electronic signature, data protection or deterring heinous crimes like child pornography. Electronic contracts are born out of the need for speed, suitability and efficiency. Imagine a contract that an Indian exporter and an American importer wish to enter into. One option would be that one party first pulls up two copies of the contract, signs them and couriers them to the other, who in turn signs both copies and couriers one copy back. The other option is that the two parties meet someplace and sign the contract. In the electronic age, the whole contract can be completed in seconds, with both parties simply attaching their digital signatures to an electronic copy of the contract.

**Keywords:** Online Contract, E-Contract, Digital Signature, Information Technology Act-2000 Internet Email, Fax, Computer data related transactions Damages Remedies etc.

### 1. Introduction

In recent technological advancement, there is an immense change in the standard of living of people. Thus, communication is no more restricted within its geographical limits and information is transferred much widely and quickly than ever before. Electronic commerce has made its way and many problems are removed through the use of e-commerce which flow as a traditional data. Electronic commerce is a means of the transaction of business electronically and is associated with the buying and selling of information, products and services over computerized communication networks. Though, it is a much broader term encompassing not only Electronic Data Interchange but also other forms of communications such as Electronic Mail and Electronic Bulletin Board With the emergence and steady growth of e-commerce, there is a quick elevation in the use of e-contracts. But the concept of e-contract is still not unclouded, it faces lot of challenges. The law of contract in India gives a statutory recognition to the common contractual rule. In recent times, the conventionally functioned models of business have become out-of-date and in many cases are not execution enough income to the owners or shareholders of the company. A usual example of such a situation in the business of newspaper in the United State of America wherein many of the noticeable newspaper have shut down or have lifted purely to the online medium.<sup>1</sup> New and inventive models and type of business need to be

invented and worked. Existence of e-contract in the market is accomplishing the need for innovativeness in the traditional business segments. Businesses, both existing and new are trying to create an online individuality and an e-contract stand keeping in view the needs of the modern times.<sup>2</sup> E-contract is one of the divisions of e-business<sup>3</sup> It holds a similar meaning of traditional business wherein goods and services are switched for a particular amount of consideration. The only extra element it has is that the contract here takes place through a digital mode of communication like the internet. It provides an opportunity for the sellers to reach the end of consumer directly without the involvement of the middlemen.<sup>4</sup> New models of business demands different organisational charters.

1. Suzane M. Kirchoff, The U.S. Newspaper Industry in Transition (Sept. 9, 2009)

2. T.P. Rama Rao, E-commerce and digital divide: Impact on consumers

3. Rajiv Shah, E-commerce

4. Richard duncom

### B. Objective of the study

1. E-contract demands an organizational charter which caters to its new marketing needs. This mode of business enables businesses to save time on product design and device products according to the individual customer requirement, track sales and get immediate feedback from the customer
2. Contracts have become so common in day-to-day life that

most of the time we do not even recognize that we have entered into one. Right from buying a vegetable and hiring a Cab or to buying an airline ticket online, uncountable thing in our daily exists is governed by contracts. 3. The Indian Contract Act, 1872 rules the way in which contracts are made and completed in India. It rules the way in which the requirements in a contract are implemented and codifies the effect of a breach of contractual provisions.

### C. Formation of online contract

The Indian Contract Act, 1872 gives a lawful status to the common contractual rule. A valid contract is formed by free consent of competent parties for a lawful object and consideration. This Act does not prescribe any specific provision for communicating offer and acceptance. It may be made in writing or by word of mouth or inferred from the conduct of the parties and the circumstances. Express contract is said to be expressed and entered into by words spoken or written where the offer and acceptance are expressly agreed upon at the time of formation of the contract. When the contract is inferred from the conduct of the parties, a contract is said to be implied. Such contract comes into existence on account of conduct or act of the parties. The Information Technology Act, 2000 has made certain provisions for the validity and the formation of online contracts but no specific legislation has been incorporated for the validity of online contracts in India. Even if no specific provision is made for the validity of online contracts, it cannot be challenged based on technical grounds. There are few processes available for forming an electronic contract such as e-mail by which offers and acceptances can be exchanged. An online contract can be formed by completing the website form provided for availing good or services offered by the seller in the website for example air tickets. The person who intends to avail the good or services offered in the website can place an order on the website by filling the concerned form and communicating such. The goods offered can be delivered directly through electronic means for eg. e- tickets or may be later for eg. clothes Online contract is formed through new modes of communication such as e-mail, internet, fax and telephone. The requirement of essential element such as offer and acceptance in online contract formation is as much essential as it is for the formation of paper based traditional contract. Contract formation over websites is quite different from the earlier ways of contract formation. Online contract formation mainly raises issues in relation to the applicability of the offer and acceptance rule. It is the website which acts as the retailer and responds as per the consumer's action.

### D. Basic elements of online contract

The basic elements of online contract is discussed below:

1. **Offer** – Just like paper made or conventional contract, one of the most essential elements of online contract is the requirement of an offer to be made. There must be a lawful proposal or offer made by one party known as the proposer and it is the starting point of a contract. By browsing and choosing the goods and services available on the website of the seller, the consumer makes an offer to purchase such in relation with the invitation to offer made by the seller. A proposal must be distinguished from the invitation to offer or treat and must be made with an intention to create legal relationship. An offer or proposal is revocable and can

be withdrawn at any time before it is accepted because once it is accepted by the other party, it becomes a promise.

2. **Acceptance** – When a proposal or offer is made is accepted by the person to whom the offer is made, it becomes a promise. The acceptance of the proposal must be unconditional and absolute and must be communicated to the proposer or the offeror. In case of an online contract, offer and acceptance can be made through e-mails or by filing requisite form provided in the website. They may also need to take an online agreement by clicking on „I Agree“ or „I Accept“ for availing the services offered.
3. **Intention to create legal relationship** – If there is no intention of creating legal relationship on the part of the parties to contract, there is no contract between them. It is an essential element of valid contract that parties to the contract must have intention to create legal relationships. The intention of the parties is to be considered by the Court in each case and must be ascertained from the terms of the agreement and surrounding consequences. Agreement of social or domestic nature do not create legal relationship, hence they are not contracts and are not enforceable by law. In the case of arrangements regulating social relations, it follows as a matter of course that parties do not intend legal consequences to follow. For example, an invitation for marriage to a friend or family through e-mails or fax or through any means of telecommunication is not a contract.
4. **There must be a lawful object** – Parties to the agreement must contract for a legal object. A contract is only enforceable by law only when it is made for a lawful purpose. It must not defeat any provision of law and must not be fraudulent in nature. Thus a contract on a website designed for the purpose of selling illegal substances online is a void contract. If an agreement is made to cause injury to any person or his property, such agreement is not lawful and therefore to be considered as void. If any competent Court regards any agreement as opposed to public policy, it is a void contract
5. **There must be a legal or lawful consideration** – Consideration is one of most important element of a contract. The basic rule is that when a party to a contract promises to perform his promise he must get something in return for the performance of his promise. Consideration is something of some value in the eyes of law. It may be of some benefit, right, interest or profit given to the party as inducement of promise. An act constituting consideration must be moved at the desire of the promisor and must be legal, real and not imaginary. Promises that are physically impossible to perform cannot have real consideration. For eg. an online site that offers purchase of land in moon.
6. **Capacity of parties** – Parties to a contract must be capable of entering into a contract. He must attain the age of majority and must be of sound mind. He must not be disqualified from contracting by any law for the time being in force. In our country an agreement where either party is a minor has no significance. It is considered as void ab-initio. As per Section 12 of the Indian Contract Act, 1872, any person who is in a position to judge and safeguard his own interest is of sound mind and capable enough to enter into a contract.

When a person is declared insolvent by any competent Court, he cannot enter into a contract relating to his property. In the old age foundation case of <sup>5</sup> it was held by the Privy Council that an agreement by a minor is void.

7. **There must be free and unaffected consent** – Consent which is defined under Section 13 of the Indian Contract Act, 1872 is an essential requirement of a contract. It is basically the meeting of minds of the parties. When both agree upon the same thing in the same manner, they are said to consent. In case consent is caused by coercion, it is voidable at the option of the party whose consent was so caused. Coercion includes physical compulsion, threat, and violence. Consent has to be free and genuine and not induced by misrepresentation, undue influence i.e a case where one person is in a position to dominate the will of another. But in case of online contract there is a narrow scope of physical communication between the website and the customer availing their service, they just give consent by clicking the option that ensures free and genuine consent.

5. Mohori Bibee vs. Dharmodas Ghose (1903) 30 Cal. 539

**E. Possibility of performance:** The terms and conditions of agreement must be certain and not vague and must also be such as are capable of performance. An agreement to do an act impossible in itself cannot be enforced as per section 29 of the Indian Contract Act, 1872. It is the general rule that the promisor's of the contract to perform the promise but there other persons also who may perform under certain circumstances such as an agent if appointed by the promisor for this purpose, legal representative in case of death of a promisor. The time, place and manner of the performance of contract are fixed generally at the desire and conveniences of the parties. Various rules regarding the time and place of contract are laid down under section 46 to 50 and section 55. When the time is the essence of contract, a promisor is expected to perform his promise with the stipulated time period and if he fails to do so, the contract becomes voidable at the option of the prom

#### F. Classification of online contract

Online can be categorized into three types mainly i.e. browse or web wrap contracts, shrink wrap contracts and click wrap contracts. Other kinds of online contracts include employment contract, contractor agreement, consultant agreement, Sale re-sale and distributor agreements, nondisclosure agreements, software development and licensing agreements, source code escrow agreements. Though these online contracts are witnessed in our everyday life, most of us are not aware of the legal complexities connected to it; the use of online contract faces many technical and legal challenges.. In our everyday life, we usually witness these types of online contracts. Other types of online contracts include employment contract, contractor agreement, consultant agreement, Sale re-sale and distributor agreements, non-disclosure agreements, software development and licensing agreements, source code escrow agreements.

1. Shrink-wrap agreements are usually the licensed agreement applicable in case of software products buying. In case of shrink-wrap agreements, with

opening of the packaging of the software product, the terms and conditions to access such software product are enforced upon the person who buys it. Shrink-wrap agreements are simply those which are accepted by user at the time of installation of software from a CD-ROM, for example, Nokia pc-suite. Sometimes additional terms can be observed only after loading the product on the computer and then if the buyer does not agree to those additional terms, then he has an option of returning the software product. As soon as the purchaser tears the packaging or the cover for accessing the software product, shrink-wrap agreement gives protection by indemnifying the manufacturer of the product for any copyright or intellectual property rights violation. Though, in India, there is no stable judicial decision or precedent on the validity of shrink-wrap agreements.

2. Click- wrap agreements are web based agreements which require the assent or consent of the user by way of clicking "I Agree" or "I Accept" or "Ok" button on the dialog box. In click –wrap agreements, the user basically have to agree to the terms and conditions for usage of the particular software. Users who disagree to the terms and conditions will not be able to use or buy the product upon cancellation or rejection. A person witnesses webwrap agreements almost regularly. The terms and conditions for usage are exposed to the users prior to acceptance. For agreement of an online shopping site etc.
3. An agreement made intended to be binding on two or more parties by the use of website can be called a browse wrap agreement. In case of browse wrap agreement a regular user of a particular website deemed to accept the terms of use and other policies of the website for continuous use.

Though these online contracts have become common in our daily, there are no precise judicial precedents on the validity and enforceability of shrink-wrap and click-wrap agreements. Other countries have dealt with these online agreements such as courts in the United States have held that as far as the general principles of contract are not violated, both shrink-wrap agreements and click- wrap agreements are enforceable.

**G. Authentication of documents in online contract:** The Information Technology Act, 2000 provides various procedural, administrative guidelines and regulates the provisions relating to all kinds of electronic transactions. These include computer data protection, authentication of documents by way of digital or electronic signature. Though electronic contracts have been given recognition by the IT Act, 2000, but majority feels it less secured to get into any kind of online contracts as there are no concrete judicial precedents for the validity and enforceability of online contracts in India. In case of browse wrap contracts, we usually accept the terms and conditions of the contract by clicking the button that indicates „ I Agree“ and in case of shrink wrap contract or purchase of a software product, assent is given by the consumer or the purchaser with tearing of the wrapper and using it. Many have the tendency of not reading the terms and conditions carefully before agreeing to such. However courts in other countries such as US, have dealt with validity and enforceability of contracts

such as shrink wrap and click wrap contracts. It was held in the famous case of 6 “that the very fact that purchaser after reading the terms of the license featured outside the wrap license opens the cover coupled with the fact that he accepts the whole terms of the license that appears on the screen by a key stroke, constitutes an acceptance of the terms by conduct.”

6 ProCD. Inc. versus Zeidenburg 86F.3d 1447 (7th Cir. 1996)

Thus it is confirmed that shrink wrap agreements are valid contracts and are enforceable against the purchaser of the software. But the enforceability of the shrink wrap agreement is extended as far as the general principles of contract are not violated. The validity of click wrap agreement was first considered when the Court for northern district of California upheld in the famous case of Hotmail Corporation that “the defendant is bound by the terms of the license as he clicked on the box containing “I agree” thereby indicating his assent to be bound”<sup>7</sup> It was also held by the Appellate Division of Superior Court of New Jersey, that by clicking the “I Agree” option given in the dialogue box the plaintiff has entered into a valid and binding contract and can be made liable for the terms and conditions laid down in the contract. Click wrap agreements are thus valid and enforceable in US as long as the offer and acceptance rule is taken into consideration. In the year 2015, an initiative known as „Digital India“ was launched by Narendra D. Modi, the present Prime Minister of India. This campaign was launched to ensure that government services available to the citizens of our country in any electronic way which will lead to the improvement of online infrastructure and internet connectivity in our country. The initiative of Digital India aims to connect rural areas with high speed internet networks and consists of three components such as the creation of digital infrastructure, Delivery of services digitally and digital literacy. Its main object is to make our country digitally empowered in the field of technology. With the wide spread expansion and globalization of technology, existence of online contract has become regular in our life right from buying daily groceries from the market to withdrawing money from an ATM. Electronic contracts by use of technology is much cost effective and delay can be instantly removed in comparison to traditional paper based contracts. There is less chance of committing errors as it is much automated. It provides an opportunity to the seller to reach millions of consumers irrespective of distance and most importantly without the involvement of middlemen or any brokers. The Indian Contract Act, 1872 provides a basic contractual rule that a contract is valid if it is made by competent parties out of their free consent for a lawful object and consideration. There is no specific way of communicating offer and acceptance; it can be done verbally, in writing or even by conduct. Thus oral contracts are as valid as written contracts; the only condition is they should possess all the essentials of a valid contract. It was held in the case of<sup>8</sup>, “that ordinarily, it is the acceptance of offer and intimidation of that acceptance which results in a contract. Hence, even in the absence of any specific legislation validating e-contracts cannot be challenged because they are as much valid as a traditional contract is.”

7. Hotmail Corporation v. Van \$ Money Pie Inc, *et al* 47 U.S.P.Q.2d (BNA) 1020, 1998 US Dist. LEXIS 10729, 1998 WL 388389 (N.D. Cal. Apr. 16, 1998).

8 Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas 1966 AIR 543, 1966 SCR (1) 656

An online contract is simply a communication between two parties in regard to transfer of goods/services. And as per Indian Evidence Act any e- mail communication and other communication made electronically is recognized as valid evidence in a Court of law. By considering the points, it can be concluded that the contract that follows the communication is valid too and Indian law thus recognizes the validity of online contracts. The citizens of India are encouraging the concept of Digital India, but there are no definite legislations relating to the transactions done over computerized communication networks. Several laws such as The Indian Contract Act, 1872, Information Technology Act, 2000, Indian Copyright Act, 1957 and the Consumer Protection Act, 1986 to some extent are working and acting on resolving issues that arise relating to the formation and validation of online contracts. The Information Technology Act, 2000 is the Act that governs the transactions conducted over internet and explains the considerable mode of acceptance of the offer and provides the rules for revocation of offer and acceptance in a vague or indefinite manner. Hence, a separate law for regulating contracts based on electronic devices is highly recommended.

#### **H. Evidentiary value and admissibility of electronics records of online contract**

In a country like India, where the literacy rate is not so high, the concept of „Digital India“ is a far reach. People still feel insecure to do online based transactions mainly because the terms and conditions of such contracts are not transparent. Another major issue is the nature of the law governing the electronic contracts. Even if the IT Act, 2000 has legalized electronic contracts, there are no definite provisions mentioned in the Act. Documents are mainly registered for conservation of evidence, assurance of title and to protect oneself from fraud. The evidentiary value of electronic contracts has been given recognition and can be understood in the light of various sections of Indian Evidence Act. Sec 65B of the Indian Evidence Act deals with the admissibility of electronic records. As per Sec 65B of the Indian Evidence Act any information contained in an electronic record produced by the computer in printed, stored or copied form shall be deemed to be a document and it can be admissible as an evidence in any proceeding without further proof of the original subject to following conditions are satisfied such as the computer from where it was produced was in regular use by a person having lawful control over the system at the time of producing it, during the ordinary course of activities the information was fed into the system on a regular basis, the output computer was in a proper operating condition and have not affected the accuracy of the data entered. Section 85A, 85B, 88A, 90A and 85C of the Indian Evidence Act deal with the presumptions as to electronic records. Sec 85A has been inserted later to confirm the validity of electronic contracts. It says that any electronic record in the form of electronic agreement is concluded and gets recognition the moment a digital signature is affixed to such record. The presumption of electronic record is valid only in case of five years old record and electronic messages that fall within the range of Section 85B, Section 88A and Section 90A of Indian Evidence Act.

### I. Remedies for breach of online contract

There is no specific rule in case of breach of online contract but the rules regarding remedies for breach of contract can be followed as provided in The Indian Contract Act. A valid contract gives rise to co- relative rights and obligations and they are enforceable in the court of law when infringed on breach of contract. The Contract Act mainly talks about two remedies for the breach of contract such as Damages and Quantum Merit. But few other remedies are also available as provided in the Specific Relief Act such as specific performance of contract and injunction restraining the other party from making a breach of contract. Sec 73 and Sec 74 of the Indian Contract Act, 1872 deals with the rules regarding the remedy of damages on breach of contract. The person whose rights are infringed by the breach of contract may bring an action for damages or compensation in terms of monetary value for the loss suffered by the party. There are two main aspects to be considered when any action of damages i.e remoteness of damage and measure of damage. Sec 73 to 75 provides rules regarding the assessment of damages based on the famous case <sup>9</sup> According to the rules laid down in this case, there can be damages which naturally arose on the usual course of things from such breach of contract and can be called ordinary damages and secondly, damages for loss arose from special circumstances i.e special damages. There are also other kinds of damages mentioned in the Act such as nominal damage, pre- contract expenditure, compensation for mental agony and liquidated damages. Nominal damages are those substantial damages awarded by the Court in recognition of right of the aggrieved party in cases where the party has not suffered any monetary loss on the breach of contract. Whereas, pre-contract expenditure may be recovered as damages if such is within the knowledge of the parties. Liquidated damages are those pre-determined damages decided by the parties at the time of formation of the contract i.e amount of compensation payable in the event of breach of such contract. When a person has done some work under a contract and the other party repudiates the contract or at the occurrence of an event that makes further performance of the contract impossible, the party who has performed his work can claim remuneration for the work already done. And under such circumstances the party can file suit upon quantum merit and claim for the value of work he has done.

9 Hadley vs. Baxendale [1854] EWHC J70, (1854) 156 ER 145

### J. Legal framework relating to e-contract

With the growing importance and value of e-contract in India and across the world, the different stakeholders are continuously identifying and evaluating the nuances of legal outline relating to it. The participation of different service providers in the transaction of e-contract, which includes a payment gateway, the main website, the bank or card verification website, the security authorization website and the final service provider which can also comprise the shipping agent has made the E-contract business more complex. Therefore, the need for amendable it has augmented. In India, till date there are no definite legislations or guidelines protecting the buyers and sellers of goods and services over the electronic medium.<sup>10</sup> However, several laws acting in unification are trying to regulate the business transactions of E-contract. They are as follows:

1. Indian Contract Act,1872

2. Consumer Protection Act,1986
3. Information Technology Act,2000
4. Indian Copyright Act,1957

Like any other types of business,E-contract business also works on the basis of contracts. It is therefore, structured by the Indian Contract Act, 1872. Any valid and legal E-contracts can be designed, completed, and enforced as parties replace paper documents with electronic parallels.<sup>11</sup> The contracts are move in between the service providers or sellers and buyers. Earlier, there was no definite law to regulate the intermediaries such as verification service providers and shipping service providers to safeguard that the product or service is actually delivered. However, the government has recently acquainted the Information Technology (Intermediaries Guidelines) Rules 2011.<sup>12</sup> The actual scope of the security provided under these regulations would only be known after judicial interpretation of the provisions. However, now it has been explained that even foreign intermediaries delivered to provide service can be sued in India.<sup>13</sup>

10. Akshat Razdan, The Future of E-Commerce in India, LAW WIRE.

11. Aashit Shah & Praveen Nagre, Legal Issues in E-commerce

12.] PTLB, Information Technology (Intermediaries Guidelines) Rules 2011 of India

13. Id.

The payment gateways which footing a very important position as the primary processor of the payment for the merchants were brought into the legal framework after proclamation of the Payment and settlement Systems Act, 2007 (PSS Act, 2007). The PSS Act, 2007 as well as the Payment and Settlement System Regulations, 2008 made under the Act came into effect from August 12, 2008<sup>14</sup> Further, the Reserve Bank of India, issued additional guidelines initiating all such gateways and payments processors to register under the said act. The authority of the transactions of E-contract is established under the Information Technology Act, 2000 (IT Act, 2000). It explains the reasonable mode of acceptance of the offer. IT Act, 2000 also rules the revocation of offer and acceptance.<sup>15</sup> However, definite provisions that regulate E-contract transactions conducted over the internet, mobile phones, etc. are vague. With numerous cross border transactions also being conducted over the internet, specific law guarding the Indian customers and Indian businesses are essential and Indian laws are gravely insufficient on this issue. In a bid to safeguard security, the government has made digital signatures necessary in several E-contract transactions mainly in the government to government (G2G) or government to business (G2B) framework with a view to safeguarding the identity of the transacting parties. Econtracts transactions on these modes require digital signatures as essential parts. They are used for the verification of the electronic contracts. These are controlled by the IT Act, 2000 which provides the outline for digital signatures, their issues and verification. The Act thus tries to safeguard that trust between both the parties is maintained through verification of identities and help prevent cybercrimes and ensure cyber security practices.<sup>16</sup> In the light of the above discussion, it is to be said that the present laws in respect of the guidelines of E-contract and its related operations are not suitable serving the purpose. Propagation of laws is creating a confusion in the smooth procedures of

the E-contract accomplishments. Further, the present laws are salient on features of e-contract such as payment instrument and delivery instrument and present standard practices which have been settled by the industry. The Reserve Bank of India, however, has tried to support the electronic payment mechanism through various orders, but such orders can only act as a stop-gap procedure.<sup>17</sup> The most important order in this regard was the application of second factor verification in all Indian Payment Gateways. Commonly recognised as Verified by Visa or MasterCard Secure Code, this had made card transactions on the internet moderately more secure.

14. Reserve Bank of India, Overview of Payment Systems in India

15. Vikas Asawat, Information Technology (Amendment) Act, 2008 : A New Vision through a New Change

16. Dr. Shuchi Singhal, Digital Signatures: Bringing a Paradigm Shift in E-Banking, 5(1) PACIFIC BUSINESS REVIEW INTERNATIONAL 61,62 (2012)

17. Bienu Vaghela, RBI Secures online credit and transaction, BUSINESS STANDARD

### **K. Are online contracts legally binding**

This was addressed when federal legislation enacted the Electronic Signature in Global and International Commerce Act.<sup>3</sup> *min read Are online contracts legally binding?* The answer to this question was addressed in 2000 when federal legislation enacted the Electronic Signature in Global and International Commerce Act. The e-signature law made electronic contracts and signatures legally binding in the same way a paper contract is a binding document. For companies that provide household, financial, and insurance services online, contracts and e-signatures are an important part of their business structure. Business-to-business contracts benefit those who need enforceable agreements when services and supplies are needed. For these types of companies, the law helps them conduct business entirely on the internet. This results in savings that can be passed on to consumers. To form a binding contract, a signature is not always required. When one is required, whether the e-signature is considered legally binding depends on the intent of the party as well as their consent. For e-signatures to be valid and enforceable, the electronic document itself must be valid and enforceable. This means the electronic document must not be altered in any way. The document must be complete, which means it has been signed by all parties. It must also be available to each party as a savable and printable document that can be retrieved at a later time. An online contract has the same challenge practices as a paper contract signed and dated by hand. In a court of law, it can be challenged that the contract was altered after it was signed. With online contracts, it is presumed the e-signature is valid unless it can be proven otherwise. Evidence that steps were taken to preserve the integrity of the signed document would be considered in a situation where the signature is being questioned.

### **L. Electronic contracts and signatures**

With online electronic contracts, the document is created to be read and signed electronically with no paper involved. An example would be to create a contract for products or services on the computer and emailed to a business. An authorized representative of the business then reads the contract, electronically signs it, and returns their acceptance via email. There are also e contracts that have a "Click to Agree" option. This type of electronic contract is typically

used with downloaded software. After reading the contract, the user clicks the "I Agree" button. This is usually displayed as a button on the page containing the contract's terms and conditions. Once the button is clicked, the contract is in effect. Providing a traditional ink signature by hand is not possible with an online contract. Signing an electronic form requires one of the following options:

- Typing your name into the signature box.
- Pasting a previously scanned version of your signatures into the signature box.
- Clicking the "I Agree" button.
- Typing a code or personal identification number into the signature box associated with a particular person.
- Using cryptographic scrambling technology. Using this type of technology to create an e signature is often called a "digital signature." Cryptographic Signatures use a public key infrastructure, which security experts consider to be the most secure method for signing online contracts.

**M. Contracts that must be on paper** In some instances, online contracts are considered invalid and are unenforceable. Examples include:

1. Testamentary trusts, wills, and codicils.
2. Family law, adoption, and divorce contracts.
3. Court documents.
4. Termination or cancellation of utility services.
5. Foreclosure, default, eviction, or repossession notices.
6. Termination of life or health insurance.
7. Recall notices of products that affect safety or health.
8. Documents legally required for the transport of hazardous materials.

These documents must be provided in traditional paper and ink format.

### **Federal Versus State Law**

Some states have adopted the Uniform Electronic Transactions Act. The act establishes electronic signatures and contracts as valid in a manner similar to federal law. The federal law will not override the Uniform Electronic Transactions Act adopted at the state level unless the law is significantly different from that of the federal law. In such a case, the federal law overrides the state law. This is to ensure electronic contracts and signatures are valid in all states. It is not dependent on where the party lives or where the contract is executed. If you need help with online contracts, you can post our legal need on Up Counsel's marketplace. Up Counsel accepts only the top 5 percent of lawyers to its site. Lawyers on Up Counsel come from law schools such as Harvard Law and Yale Law and average 14 years of legal experience, including work with or on behalf of companies Google, Stripe, and Twilio.

### **N. International scenario and developed countries in respect to Econtract**

New intimidations to consumer protection call for new protecting rules and measures. We should distinguish the fact that better consumer protection in online environments shall have an optimistic impact on the further development of electronic commerce and thereby on merchants. Generally speaking, if electronic commerce is to increase, consumers must be provided with at least the same guarantees they would be provided with in the older market place. The US and the EU have affirmed the importance of

protecting a new type of consumers. With the rise of electronic commerce, the role of consumers has changed affectedly. While consumers were formerly a quiet body, today they have power in businesses. Sellers are now in a comparatively submissive position. Their job is too merely to paste that product information it becomes the accountability of consumers to evaluate and make active decisions upon. Where the precise field of argument firmness is concerned, both the US and the EU realize the best way to safeguard consumers could be to provide them with suitable measures for recompense. Consumer protection groups have created mediums where consumers can both acquiesce e-mail based complaints when discontented with advertisements, goods or services, and allege violators of self-regulatory codes of beliefs. While consumer protection can take on diverse forms, dispute resolve mechanisms are its final insurance. Principles for dispute management are finally more attractive to devices than less formal intended arrangements since they can encourage more reliable conduct of consumer benefits. In light of government practise, protection accessible by state power is important. Some consumers even seek reserve in the court. In order to quarter the special character of modern business without drifting too far from tradition, ADR mechanisms for dispute firmness very cleverly entail state application support. Procedure for consumer protection in electronic commerce dispute firmness must extend outside national limits. Individual states privation the ability and initiative to adequately address issues related to consumer protection in the background of electronic market. Many of the issues that arise from cross border disputes are impaired by the fact that misleading marketing practice laws vary from one jurisdiction to alternative. Possible standard electronic consumer policies should be pertinent to cross-border dealings to which all or most countries can subscribe. OECD Member States have acknowledged the necessity of an international synchronized approach to deal with the issue of dispute firmness in electronic business. In one imperative document framed by the OECD, Procedures for Consumer Protection in the Context of Electronic Commerce, procedures for consumer protection in dispute firmness and amends aim to safeguard consumers contributing in electronic business without founding barriers to trade. The rules serve as a reference to governments, businesses, consumers, and their councils of the characteristics of active consumer protection for electronic business. The rationale behind them is alike to that of the US and EU. Firstly, applicable law and jurisdiction are singled out for likely amendment. No broad creation of the new applicable law or principle of jurisdiction is pointed out, but the rules do define features of suitable modifications. Equality, they suggest, is one of the most important features in understanding consumer safety. The purpose of the fairness is to offer consumers a level of protection not less than that afforded in other forms of commerce and to provide consumers with eloquent contact to fair and timely dispute resolution and redress without undue cost or burden. To complete fairness, one must provide a framework for correcting unfairness. As said in the guidelines, businesses, consumer councils, and governments should work collected to endure to use and develop fair, effective, and clear self-regulatory and other measures, which provide consumers with the choice of mechanisms to firmness their disputes ascending out of

consumer dealings. Moreover, these efforts should be followed at an international level. To attain the maximum reimbursements of the new arrangements, modern technology should be used to improve consumer awareness and freedom of choice. From the breakdown above, we can determine that the international community has touched a harmony on the general approach toward consumer protection. While making developments on court procedures and the application of principles, new means should be found out to quarter the new needs of electronic business.

**O. Position of e-contract in India:** Indian Railway Catering and Tourism Corporation Limited (IRCTC) is certainly the major ecommerce site in India and in India's answer to private capitalist ventures.<sup>18</sup> IRCTC was set up as a subsidiary of the Indian railways for the exclusive purpose of providing catering services and ticketing services for the Indian Railways. However, of late, it has extended its wing and now covers sectors such as flights and hotel bookings. The flagship was established in 2002 and has transformed the online travel booking business in India. IRCTC functions both in the business to business and business to consumer segment. According to the data released by IRCTC, it has more than 4-4.5 lakh reservations per day. In 2010-11, IRCTC sold tickets value more than Rs. 8000 Crore. It claims to switch more than 8 lakh equivalent transactions thereby speaking volumes about the prominence and the size of their business.<sup>19</sup> The site offers the only link for purchasing Indian railway tickets online and even agent sites (B2B) have to link them to IRCTC to provide online booking services for customers. IRCTC offers a large option for consumers for payment of buying tickets online. IRCTC however, is one of the few enduring ecommerce sites which charged transactions charges from customers, which is different bank to bank. Through IRCTS several customer enter daily into a new dimension of contract i.e. E contract. E-contract now plays an important role both for the customer and the seller. Customer has a lot of choice to choose a product and seller through e-contract reach to large customers. the service to the consumer. And lastly, on making the appropriate payment, the contract is completed between the consumer and the retailer's website for the particular transaction.

<sup>18</sup>Anirban Chowdhary, IRCTC Became the Largest Contributor to E-Commerce, BUSINESS STANDARD

<sup>19</sup>Viraj Desai & Hasmiran Julka, We are sensitive to user's pain from congestion on IRCTC Website: Rakesh Kumar Tandon, THE ECONOMIC TIMES

## P. Conclusion

An online contract is designed and enacted with an aim to provide security to online transactions. It is formed to check frauds to promote and build confidence in genuine online transactions and to give a legal status to the concept of digital signature. Online contract is a much efficient concept in the interest of time and money in comparison to the traditional method of paper and writing contract. But to keep a pace with the fast advancement of the technology, a separate legislation in regard to electronic or online contract has to be enacted in India. E-contract in India has definitely came a long way from the days of bazee.com which underway as the first large online retail website. At present, with the increase in number of internet user, e-contract is organised to grow further. The growing trend of internet

banking and credit or debit cards along with the rise in the number of educated and computer literate persons will further support this growth. The need of the hour is law which covers all the aspects of e-contract extending from payment mechanism and maintaining minimum standards in the delivery of services. Such a legislation will help to restraint the growth of websites which rise within a few days and then stop functioning in the absence of suitable funds for sustenance. As all business through econtract sites is ended through the internet without any direct physical interfaces, the main basis connections is the trust of the customers which should be engaged at any cost. A law in this field will detect the criminals who have used the internet as a source for making quick money. This will also act a defence for the genuine e-contract websites and help in further growing of business. There is also a need for the creation of an authority in the consumer court to look into the grievances arising out of e-contract transactions. Such an authority should have experts in area such as payment security. This will embolden speedy redressal of disputes and promote e contract transactions. E-contract which is a developing segment in the commercial arenas scheduled to grow and it is the accountability of the prevailing players to ensure that growth is not hindered by their acts and policies. The absence of influence of stamping laws and the Information Technology Act has resulted in lack of legal infrastructure to facilitate paperless stamping of electronic documents. The extent of evidentiary value conferred to an electronically executed contract attested by other forms of signature, is also ambiguous. All of these factors hinder Indian business from marring towards a paperless world and renders most e business initiatives largely futile. Considering that India, has a huge business potential in the coming years, initiative towards bettering the technological infrastructure and the legal framework regulating the same would be highly beneficial. This world has also attracted more cross border transactions, further benefitting economy of the country.

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