

A STUDY ON E-CONTRACT WITH REFERENCE TO INDIAN CONTRACT  
ACT 1872

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Submitted by

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July, 2022

## CERTIFICATE

This is to certify that ANJALI DASH has completed her dissertation titled "A STUDY ONE-CONTRACT WITH REFERENCE TO INDIAN CONTRACT ACT 1872" under my supervision for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam.

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## DECLARATION

I, ANJALI DAS, do hereby declare that the dissertation titled "A STUDY ON E-CONTRACT WITH REFERENCE TO INDIAN CONTRACT ACT 1872" submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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1882 – Indian Evidence Act

2000- Information Technology Act

1872- Indian Contract Act

1998- Electronic Commerce Act

2019- Personal Data Protection Bill

1986- Consumer Protection Act 1986

1930- Sale of Goods Act

1860- Indian Penal code

1899- Bombay Stamp Act

1908-Civil Procedure code

1996- UNCITRAL Model Law

## TABLE OF ABBREVIATIONS

IT	Information Technology
EDI	Electronic Data Interchange
UNCITRAL	United Nation Commission on International Trade Law
PC	Personal Computer
ICA	Indian Contract Act
IRCTC	Indian Railway catering & Tourism corporation Limited
ICT	Information and communication Technology
WTO	World Trade Organisation
E-CONTRACT	Electronic Contract
EFT	Electronic Fund Transfer
CRM	Customer Relationship Management
E-sign	Electronic Signature
NCCUSL	National Conference of Commissioners on uniform state Laws
OECD	Organisation for Economic co-operation and Development
UCITA	Uniform Computer Information Transformation Act

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## CHAPTER 1

### INTRODUCTION TO ELECTRONIC CONTRACT

#### 1.1 BACKGROUND

As a result of the growth of industrialization, westernization, and development, all of which were preceded by technological advances, significant transformations have occurred in global trade and commerce. It is only when we try to do something unusual, like buy plane tickets or groceries from an online store, that we realize we've become part of this system of E-commerce. E-contracts, a new form of contract, were introduced to us to streamline the regulation of it and to make work more efficient. To a large extent, Electronic contracts are no different from conventional ones, except that everything is done electronically rather than with paper and pen. Convenience, time savings, and productivity are all advantages of these types of contracts. It takes less than a minute to complete the transaction by affixing parties' "digital signatures to an electronic copy of the contract". Since most countries have adopted their own laws to recognise electronic contracts, the situation is very different from what it was in the beginning. As the foundation upon which e-commerce is built, the development of a valid e-contract receive adequate attention before transactions are finalized and carried out. Electronic contracts are essential for commercial enterprises since they use the Internet to disseminate and grow their company activities. In India, e-contracts, their creation, and the remedies available in the event of a breach are all governed by specific legislation.

This paper deals with the issues and the various challenges faced in execution of E-Contract, the conceptual analysis of "e-contract", and the various forms in which e-contract is concluded, the Acts governing the laws related to it in India and the loopholes in the act related to e-contract so as to suggest what should be done to properly regulate the various problem associated with e-contract. It tries to provide insights as to E contracts with the different types of e contracts in the light of it usefulness in business and commercial transactions. How the traditional contract evolved to e-contract and the form and approaches as to different ways to form a contract is also discussed in the paper. The paper mainly aims to study the validity of e-contract and further analyze the rules and provisions under the ICA and IT Act.

The primary goal of this paper is to examine the legality of e-contracts. It then goes on to analyse the ICA and IT Act's regulations and requirements before attempting to list the many types of e-contracts.

This paper enunciates that today with the recent development in the areas of computer technology, telecommunications technology, software and information technology have resulted in changing the standard of living of people.

Considering a deal that an Indian exporter and a foreign buyer want to make. One alternative would be for one party to write the contract, sign two copies, and send them by courier to the other, who would then sign the copies and return one by courier. The other option would be to meet face to face and “sign the agreement”.

In the technological age, the entire transaction can be done in a matter of minutes by both parties just signing an electronic version of the contract. In such a case, there is no need to invest for the courier service and the unnecessary trip expenses. With advancement in computer technology, “media transmission, and data innovation”, the use of computers has grown significantly in popularity recently; they serve as highways for electronic communication around the globe. The use of electronic contracts has rapidly become widespread in recent years.

In a highly commercialized society, the use of electronic contracts is very appropriate. It is possible to legally enter for the parties a binding and enforceable contract over the internet even if they do not discuss the terms and conditions of the contract or meet face to face. Therefore, these novel types of contracts are well recognized all over the world and are accepted as the contracts substitute that are written on paper. Technological development has converted paper transactions into paperless transactions. Information Technology has set up new requirements of pace, efficiency and accuracy in communication

“E-commerce” has resulted a new dimension to expand business as the territorial restrictions have been removed. E-contracts have become commonplace because of “e-commerce”, and the number of people to enter into E-contracts using internet facility is rapidly increasing. Most of the time, we enter into contracts without even realizing it because they are so prevalent in daily life. Numerous aspects of our daily life, from renting a taxi to purchasing airline tickets online, are governed by e-contracts.

Electronic contracts have a plethora of benefits, including the ability to save time, to stimulate the economy, to expand business opportunities, to facilitate communication, and many other benefits. On the other hand, the regime that governs e-contracts is plagued with significant gaps in coverage, sometimes known as loopholes. Because of the technological complexities and labor-intensive processes involved in e-commerce, it is necessary to provide an outline of the potential legal guidelines that apply to contracts made online. All of these concerns and potential loopholes call for some serious consideration. In order to have a contract that can be upheld in court, it is necessary to ensure that it satisfies the fundamental requirements of a legitimate and lawful agreement. In the paper, an attempt is made to provide a concise overview of the gaps and issues that are present in digital contracting media.

## **1.2 STATEMENT OF PROBLEM**

Variety of issues and challenges arise when trying to apply the rules to e-contracts because the various laws don't address the method by which an electronic contract is made. The study help to better comprehend the many legal aspects of Indian e-contracts. There is a number of benefits that E contracts have,still it became important to critically analyze the position of the law with respect to "E contracts" . The use of e-contracts has quickly increased with the introduction and continuous expansion of e-commerce. But there are still many uncertainties surrounding the idea of an electronic contract. The study aims to address the legal issues that E-contracts encounter. The judiciary is not well-equipped to manage the techno-legal concerns as a result of the rapid advancements in information and communication technologies. Consequently, research in this field is required to comprehend Indian legal regulations in respect of electronic contract.

There are numerous problems that need to be solved. The Information Technology Act of 2000 is effective against cybercrimes, but it doesn't do anything to address e-contracts. There is no specific law for E-contract which relies on a number of specific legislations. The paper mainly tries to focus the validity and the problems associated with the jurisdictions of E-contract.

### **1.3 LITERATURE REVIEW**

The article “A critical study on operational aspects of E-contract” by Neha Saini and Dr. Arvind P. Bhanumakes an effort to explain the importance of E-contracts. The author attempts to provide an overview of E-contract by critically analysing its important components.

The concept of an e-contract was introduced in the article " Legal issues arising in E-contract in India : An analysis " by S.R. Subaashini and Shajim .The author of this article discusses legal agreements relevant to business to customers and online business displays from the perspective of the customer. It stated the existing Indian law was insufficient to defend the purchaser's rights also interests when they were purchased in electronic form.

The article “Electronic contract in India:An overview ”by Shubhada Gholap differentiated between the traditional contract and E-contract . Giving the conceptual analysis of E-Contract the author in the article divided into basic research issues in e-contract , the laws which governs the e-contract in India ,how consumer’s protection in E-contract is also governed is cited by the author.

The article “Critical Study on Different Types of E-Contract with Special Reference to the Remedies Available on Breach” based on an overview of E-commerce as a tool for conducting business electronically was undertaken by M.Pragadeeswaran and AswathyRajan. The report talks that there has been a quick rise of E- contracts with the development and continuous growth of E-commerce. The article provided a general review of the law ‘governing electronic contracts’, including the many difficulties it faces and the numerous remedies available in disputes involving electronic contracts.

The article “From Contracts to E-Contracts: Modeling and Enactment” byP.RadhaKrishnaa and Kamalakarkarlapaleplaces an emphasis on conceptualising E-contracts and presents a model for business process and E-contract implementation. The author provides an overview of how an electronic contract is modelled and carried out by a computer programme.

The article "Electronic form of Contract: An Ingenious Goal in Business " by Dr. Ujwala Bendale and Ms. Rashmi Dubey focuses on electronic form of contract and enunciates that with the fresh progress in the areas of computer technology, telecommunication technology, signature and IT have resulted in changing the standard of living of people.. The author emphasizes that Electronic contract are born because of the need for fast, efficiency in this growing world.

The enforceability of E-contracts is discussed in the paper "Legal Impact of Technology on E- Contracts Communication in India" by Devesh Pathak and Dr. Ls Rajpoot. Here, the author intends to provide clauses pertaining to the creation of E-contracts wherever electronic communication is made. Here, the author tries to prove that e-contracting is a problem with the timing and location of the contract's formal creation or conclusion. The author addresses concerns regarding the enforceability of e-contracts and discusses their legality here.

The article "Contracts : Legal issues and challenges " by Dr. Manoj Kumar Sadual here discusses about the significance of E-contract along with E-commerce that with the growth of e-contract and e-commerce, seller or the vendor can move anywhere and start the business through e-commerce platform and the buyer has plenty of choice available to approach the seller. Here the author give an overview of the significant impact of E-contract .

"A Brief Study on cybercrime and Cyber Laws of India" – By Animesh Sarmah, Roshmi Sarmah and Amlan Jyoti Baruah (2017) present helped to understand that why we need the various laws for the E-commerce and the personal data protection. It also helped to be aware of the future perspective of the E-commerce and the personal data protection.

The article "Electronic contract and Consumer Protection: Does Legislation provide Adequate Protection" by Ms. Parul Sinha. tries to examine whether Indian Law, as it currently stands, sufficiently governs the various commercial transaction in today's era that affect consumer. Here the author conducted various problems associated in Electronic Contract about consumer rights such as imperfect products, not safe products, unfair contract terms, deprived quality services and tries to answer whether

the existing law effectively deals with the issues associated with it. It also gives an overview about the comparative study with legislations in other jurisdiction in order to provide suggestions on how the existing law governing electronic contract can be reformed to meet the challenges on 21<sup>st</sup> century.

The "E-contracts: Understanding its Implementation and Challenges" by Kavish Arora examines several E-contract kinds and establishes the country's legality and enforceability of E-contracts. Although the author discusses the importance of electronic contracts, it also made clear that there are numerous difficulties that must be overcome when entering into a contract. It was stated that while it re-engineers and helps E-commerce flourish, it also presents a problem for technical and legal comprehension.

Avtar Singh in his book "Contract and Specific Relief Act" (2019) talks about the regulation of Indian Contract Act. It talks about the various regulations relating to formation of Contract and the relief for its breach.

Avtar Singh in his book "Principles of the Law of Evidence" (2018) cited about the various principles and the law relating to Evidence and also the evidentiary aspects of Electronic Transaction.

#### **1.4 RESEARCH AIMS AND OBJECTIVES**

1. To comprehend how traditional contract concepts developed in the context of India and how they can be applied to e-contracts.
2. To comprehend how well the Indian Contract Act 1872 and the Information Technology Act, 2000 deal with e-contracts in India.
3. Researching the Validity of e-contracts in India.
4. To comprehend the broad legal structure and challenges that the Indian Judiciary is likely to face while determining e-contract disputes.
5. To determine whether e-contracts that are completed utilizing various forms of electronic communication are subject to the same legal principles.



6. To comprehend international developments concerning e-contracts.
7. To Study the scope of E-commerce in India and the different difficulties looked by online business in India.
8. To study the various law protecting the personal data online.
9. To identify the circumstances where E-contract fails.
10. To suggest strategies for effective implementation of E-contracts practices.

## **1.5 SCOPE AND LIMITATION**

### **SCOPE**

In the era of digitalization, when almost everything is being done electronically, e-commerce has evolved and with this has evolved the contracts being electronic. The judicial system now faces fresh obstacles as a result of this expanding trend. The current Indian legal system is not equipped to address these new e-contract challenges.

As a result, this research is being done to investigate any potential problems with e-contracts in India under the umbrella of e-commerce. Electronic contracts and the basic requirements for creating a legally-binding electronic contract are the focus of this research. The IT Act and the Indian Contract Act of 1872, which regulate electronic contracts, are the main subject of this study.

### **LIMITATION**

Additionally, the focus of this research is limited on understanding the fundamental concepts of Indian Contract Law with an emphasis on electronic contracts and e-commerce.

The scope of this study is restricted to basic e-commerce and contract law ideas. Important international conventions and treaties will be examined in the research. Additionally, it will assess the Information Technology Act of 2000's suitability or

lack thereof for handling e-contracts. Only the e-contract perspective is used to assess other related Indian laws.

The report would also examine potential difficulties and issues for the Indian legal system. The study is intended to talk about India's e-contract legal framework. The IT Act of 2000 and the Indian Contract Act of 1872 will be a major focus of the study.

## **1.6 RESEARCH QUESTION**

1. Do the Indian Contract Act 1872 and the IT Act of 2000 cover and govern E-contracts in Indian circumstances?
2. Is the Indian court system sufficiently prepared to resolve disputes resulting from E-contracts, given that these contracts are Techno-legal in nature?
3. What problems are most likely to obstruct the legal system?
4. What are the legal challenges governing E-contract?
5. Do E-contracts fall under Indian legislation, such as the IT Act 2000 and the Indian Contract Act of 1872, and if so, what remedies are available in the event of a breach?
6. This study aims to determine whether or not a contract made via an electronic medium is valid.

## **1.7 RESEARCH HYPOTHESIS**

The IT Act has made an effort to adequately address the needs of e-contracts. However, several legal issues have not yet been resolved, and the legislation has not yet addressed or closed some significant holes related to e-contracts. We have IT Act, Indian contract act, Indian evidence act, consumer protection act for handling the disputes arising out of E-contracts but this particular Act is not sufficient as it does not fulfill all the securities which are needed on an online platform. It however needs major amendments under various provisions.

## **1.8 RESEARCH METHOD**

The "Doctrinal Method" has been primarily used by the researcher. Libraries, books, gazettes, magazines, law reports, and other legal reference materials have all been examined and scrutinised.

Through the use of the various literary sources available, the study keeps track of the most recent advancements and trends in the subject of study. The study is conducted with the aid of many books, including ebooks, produced by Indian and foreign writers, as well as national and international law and information technology periodicals. Different web sites were also employed to conduct this investigation. Internet sources and various websites were an immense help. Additionally, the relevant journals produced by academics from various universities and other sources, including research were used.

Primary Sources such as, judicial decisions ,Statutes/Enactments , International Conventions and other sources of compulsory legal authority have been used in the study and Secondary Sources such as Textbooks, Books of renowned authorities, magazine, articles, histories, criticisms, commentaries, Journals, News Papers and other Publications have also been used.

The Oscola(fourth edition) has been used.

## **1.9CHAPTERISATION**

**Chapter 1** deals with the introduction of E-contract, Statement of Problem, research aims and objective.

**Chapter 2** deals with the "Historical" background of E-contract . In this chapter, how the traditional contract evolved to E-contract are discussed and also introduces what is e-contract and e-commerce.

**Chapter 3** is about the conceptualization of E-contract and also the fundamentals requires for the formation of E-contract. As the formation and performance of e-contract requires the fulfillment of various essentials cited in the Indian Contract Act ,the essentials specific to E-contract are discussed. Along with its various types ,advantages and if breach happened between the parties to E-contract the various remedies are also discussed.

**Chapter 4** deals with the introduction of e-commerce,its kinds and the various reason for its growth.The rapid growth of e-commerce calls for data protection and so the chapter discussed about the data protection and position of India in protecting data ,

the various laws deals with data protection and also the remedies available to the victim of E-commerce.

**Chapter 5** deals with the Legal position of E-contract in India and the various Acts like the consumer protection act, Indian contract act, Indian evidence act information technology act talks about e- contract and what laws relating to e-contract are cited under the act. The chapter also talks about the loopholes of the various act discussed so that suggestion about the same can be given.

**Chapter 6** of the work deals with the legal issues and challenges in the formation of e-contract .The various jurisdictional ,legal and other challenges in forming e-contract are discussed.

**Chapter 7** of this work deals with the position of e-contract around the globe like in US,INDIA and EU what laws are there for e-contract and its legal recognition.

**Chapter 8** Conclusion and Recommendations.

## CHAPTER -2

### EVOLUTION OF E-CONTRACT

#### 2.1 Historical Background of traditional and electronic contract.

Since the E-contract is a crucial component of electronic commerce, its history must be studied before understanding it. E-contracts simply refer to the online buying, selling, and hiring of products and services. Global adoption of E-Contracts rose with the development of digital technology and networking. Businesses started adopting Electronic Data Interchange (EDI) in the 1960s to carry out electronic transactions. E-Contracts were widely recognised in 1991, the first year that the Internet was utilised for business.<sup>1</sup>As soon as the World Wide Web was developed in 1990, many businesses began offering their services online. For instance, amazon and flipkart, two of the businesses to revolutionise e-commerce. The idea of electronic contracts was originally introduced in India through Rediff in the late 1990s. The first business in India to produce an E-Contracts platform was the “Indian Railway Catering & Tourism Corporation Limited (IRCTC)”. The Model Law on E-Contracts was adopted by UNCITRAL, the “United Nations Commission on International Trade Law” in 1996. In January 1997, the UN General Assembly advised that nations should take this model into account when passing or amending their legislation. In order to authorize Web-based commercial exchanges in India and keep pace with the globalisation of exchanges and the expansion of PC innovation, the Indian Parliament enacted the Data Innovation Act in 2000. The Guidelines and Guidelines overseeing the Online business and at last the E-contract are given under following Global Shows and Meetings. The Brussels Show on Locale and Acknowledgment of Requirement of Decisions in Common and Business Matters, 968.

It is significant that the Web, along with its ground-breaking technological advancements, gives us the opportunity to function as a “global community”, advertise globally, and carry out our work independent of national boundaries and public authorities. However, because of its global reach, the Web has also created

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<sup>1</sup>Neha Saini, Arvind P. Bhanu ‘ Operational aspects of E-contract : A critical study ’Amity University, Noida, India (International Journal of Management)Vol 11, Issue 5, May 2020, pp. 1721-1734. Article ID: IJM\_11\_05\_161 Available online at <<http://iaeme.com/Home/issue>> accessed 15 june 2022

challenging problems for the legal community in all areas of regulation. There is a need to promote and work with the ethical use of the internet by the general public, educate common society groups about legal sacred issues, reassure citizens regarding their concern for protection and individual freedoms, and make citizens aware of various types of commonly committed digital offences like extortion, fraud, hacking, and other opportunities. In addition, there is an urgent need for talented examiners and researcher during 1968.

India necessities to distinguish the potential areas of contention and functional issues, to resolve different inquiries; issues' connecting with the internet and the most suitable method for beginning is the production of a far-reaching regulation which ought to address unreserved area of the internet thinking about organizationl, institutional and individual prerequisites. The Correspondence Union Bill, 2001 could be an achievement in responding to this multitude of inquiries. The revisions in a few regulations by the IT Act are a decent start, however a few changes are as yet required for the demonstration to guarantee both practical proportionality and mechanical impartiality. Peaceful accords via show and collaboration are expected for different debate goals in Global field.

There are now numerous tests being conducted for various email clients to manage spam via channels. As a result, they have examined the definition of spam, the needs of the client and the function of the spam channel in light of the needs and stated requirements. Exams are challenging since standards, criteria, and methods for evaluating spam channels were still developing. They review their efforts and their results. There were many vulnerabilities that still exist that have an impact on sorting spam methods and determining the legitimacy of spam, which need to be taken into account for the security of online contracts.

### **2.1.1 Traditional Contract**

Man has been familiar with the concept of contract ever since the dawn of human civilization. The human thought process changed dramatically as civilization advanced. Man started to assert the power over the possessions as man became aware of them. This caused a shift in thinking and allowed the aspect of gain and profit to

take over daily activities. Transactions that had before seemed commonplace and usual took acquired a profit- or gain-oriented attitude. As time went on, man became more and more aware of his ownership of his possessions. Every time he engaged in commerce, he traded his products for items of a different person's choosing that were valued at an equivalent amount<sup>2</sup>. The term "barter system" is often used to describe this arrangement. The trading of commodities, goods, and even services were conducted using this method. As society developed, people were divided into distinct classes according to their social standing. With this, there was a shift in how people perceived their rights, which now varied depending on their class or rank. Transactions between people were frequently based primarily on trust, faith, and kindness. The social structure was very straightforward, and people conducted all of their business verbally with complete faith in one another. The highest moral behaviour was thought to be playing one's role, and society always valued high moral behaviour. Also failure to fulfil one's duty was viewed as a sign of low morality. People held high moral standards, and those who did not uphold such standards were hated by their fellow citizens.

The foundational pillars of contract itself serve as the foundation for contract law. There was no such thing as modern-day contract law in ancient India. Every religious organisation has its own contract law. Hindus were subject to Hindu law of contracts, whereas Muslims were subject to Muslim law of contracts, which only became apparent with the arrival of the Mughal era in India. The remaining provisions of the legislation were still in effect. In Hinduism, the Damdupat rule holds true, according to which a lender cannot charge more than double the amount in interest. Under the cover of "Equity, Justice, and Good" conscience, the concepts of English contract law were embraced as a rule of contracts for Indians when the British arrived and established their empire in India. The First Law Commission made every attempt to develop an appropriate code of contracts for India; as a result, on their proposal, the "Contract Act 1872" was created to prevent contradictory contract laws for various populations in India. It was implemented primarily to ensure the fair fulfillment of expectations raised by the parties' commitments and the execution of the responsibilities outlined in their agreement. "Sir Edward Ryan, R. Lowe,

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<sup>2</sup>G.W. Paton, A Textbook of Jurisprudence (4th edn, Oxford University Press London 1972) 308

J.M.Macleod, Sir W.Erle” (followed by Sir W.M. James), and Justice Wills (followed by J. Henderson) were the original members of the of British India, which was established in 1861 under the leadership of its chairman “Sir John Romilly” who had presented the report on contract law for India as “Draft Contract Law (1866)”. The Indian Contract Act, 1872 took effect on September 1st, 1872<sup>3</sup>.

The Charter given to the East India Company by King George I in 1726 governed contract law in the Presidency Towns of Madras, Bombay, and Calcutta. After it, the British government's Act of Settlement took effect in the Presidency Towns in 1781.<sup>4</sup> Contractual matters were primarily handled in Presidency Towns. In the case of Hindus, the party were determined “according to Hindu law”, and in the case of Muslims, “according to Muslim law”. The English Contract Laws were mostly used to handle contract-related issues outside of presidency towns, and the principles of justice, equity, and good conscience were upheld.

Man got more creative and began to search for new ways to conduct his business as trade and commerce increased. The pattern of transactions gradually changed as civilization continued to develop. Written documentation gradually took the role of spoken interactions.<sup>5</sup>

Sir Henry Maine presented a thesis on the concept of contract in his classic work Ancient Law. Maine contends that status determines an individual's legal situation in early societies, both static and progressive, and that as societies evolve, status disintegrates and an individual's legal state is established through free negotiation on his side.

Maine asserts that whereas the family served as the foundation of old civilization, society were built around the individual. As a result, the family system collapsed, people stopped depending on the familia, and contractual relationships between people began to arise. The person were its best judge of his own welfare. During the 18th and 19th centuries, the importance of contract law increased with the development of commercial and industrial culture. Thus, the free contract theory

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<sup>3</sup>Indian Contract Act,1872

<sup>4</sup>M.P. Jain, Outlines of Indian Legal Constitutional History( 6th Ed., LexisNexis Butterworth Wadhwa Nagpur, Gurgaon,2009) 473-474

<sup>5</sup>V.D. Mahajan, Jurisprudence and Legal Theory (5th Ed., Eastern Book Company, Lucknow, 2010) 275



found widespread application in the field of commerce. The idea of a free contract of agreement between the people and the rulers served as the foundation for social contract theories.

Contracts are regarded as rights in personam now. A contract is, in general, a promise or series of commitments for which the law provides a remedy or whose fulfillment the law somehow recognises as a duty. Salmond referred to the relationship between contracts and title as "acts in the law," but Paton called it a "juristic act." According to Paton, legal persons can change or abolish rights and obligations by doing legal acts, which has an impact on other legal persons.<sup>6</sup>

Contracts can be divided into two categories: unilateral and bilateral. Bilateral acts require the will or consent of both parties, whereas unilateral acts depend on the will or consent of just one party.

### **2.1.2 Electronic Contract**

Contract law was not exempt from the rapid advances from Information and Communication technologies (ICT) that affected all aspect of life. Information and communication technology advancements like these were put to use for business purposes. Because there is no particular law to deal specifically with e-contracts, the law of contracts serves as the tool for electronic transactions.

The electronic transactions are governed by the fundamentals of contract law. What we hear and see, how we behave, and what we believe, Information is key in everything. Nowadays, a laptop or personal computer can be found in nearly every home. Technology is developing quickly. The current generation in the developed countries cannot comprehend living without computers and the internet. Computers become connected to a person before they are born when a scanner identify the birth or determine the gender, and they sometimes stay connected even after the individual has passed away while insurance concerns are resolved.<sup>7</sup> A significant portion of the population is currently addicted to social networking sites. Every departmental task, including awarding contracts for purchases and publishing exam results, is done

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<sup>6</sup>G.W. Paton, A Textbook of Jurisprudence (4th edn, Oxford University Press London 1972) 200

<sup>7</sup>Shubhada Gholap' Electronic Contract in India : An overview' Yashwantrao Chavan Law College, Pune, Maharashtra, India IMPACT: International Journal of Research in Humanities, Arts and Literature' (impact: ljrhak) ISSN (P): 2347-4564; ISSN (E): 2321-8878 Vol. 6, Issue 8, Aug 2018

online.<sup>8</sup>The impact of computers on all facets of human life has been so rapid that the legal and judicial systems were unprepared for it. The fundamental legal principles, which were effective before the introduction of this technology, are being tested by the most recent advancements in information and communication technologies.

The law of contracts has evolved throughout the years in order to keep up with changes in the economy, politics, and technology. The industrial revolution and the emergence of mass marketplaces brought about one of the most fundamental changes. Years ago, business process re-engineering breakthroughs in information technology took the lead in eliminating inefficiencies within organizations.

Businesses are under constant pressure to deliver higher-quality results at lower costs and faster rates. A standard business process is just insufficient in this new era of collaborative commerce and collaborative sourcing. The use of electronic contracts to establish new business connections and the fulfillment of electronic contracts online are significant trends. But e-contracting is not a novel idea. Its past can be examined from a legal and technological perspective. An important breakthrough for electronic commerce in the early 1990s was the development of Electronic Data Interchange (EDI). It was decided that the word "EDI" only applies to contracts and transactions that take place electronically. The development of E contracts is significantly influenced by "EDI".<sup>9</sup>

"EDI" is defined as, "The electronic interchange of machine process able structured data which has been formatted according to the agreed standards and which can be transmitted directly between different computer systems with the aid of telecommunication interface with or without human interference".<sup>10</sup> Modern electronic technology and the development of new technical innovations have opened up new possibilities for the creation of E contracts. The main building block for the development of electronic contracts is information that is communicated and kept in the context of legal contractual obligations.

According to this perspective, E-contracts are not only legally binding agreements between a customer and a seller, but they may also be used to integrate various web

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<sup>8</sup> S.K.Verma and Raman Mittal, ' Legal Dimensions of Cyber Space, Indian law Institute', New Delhi International Journal of Pure and Applied Mathematics' 2009 vol 4

<sup>9</sup> "Overview of Electronic Data Interchange (EDI) Services" <<http://www.tid.gov.hk>>.accessed 18 june 2022

<sup>10</sup>Farooq Ahmed, cyber law in India- law on internet, (2nd edn ,New Era Law Publications 2005) 8

services across various corporate business processes and work flow systems. Even if their end goals are similar, concepts of e-contracts in a network context differ from those for conventional paper contracts in a number of distinct ways.

A software system models, specifies, executes, and deploys a contract called "e-Contract." It shares a lot of conceptual similarities with conventional (paper-based) business contracts. Vendors inform potential customers on their goods, costs, and terms. Buyers weigh their alternatives, negotiate over terms and prices, place orders, and send money. Deliveries are made by vendors of the products. Electronic commerce presents some new, technical and legal difficulties because of the manner in which it departs from traditional trade.

### **2.1.3 The Electronic Commerce Act, 1998**

The Indian Government and Legislatures had to consider how to implement substantial changes to the country's existing legally enforceable laws in order to strengthen them to meet the rising requirements of the population. The Justice Abu Fazal advisory panel rejected to recommend any changes to the Indian Contract Act, 1872's current structure in order to make them relevant to the most recent technological advancements.

The Indian Parliament found a solution by enacting a new law that updated the country's current regulations in response to the Internet uprising. The parliament approved the "Electronic Commerce (Harlow and Rawlings) Act, 1998" to regulate the issuance of electronic contracts.

According to the council's idea, future contracts would be heavily dependent on the internet and electronic forms of correspondence and acknowledgment due to their efficiency and speed.

The Electronic Commerce Act was enacted while taking into account all electronic transactions that result in an agreement as well as the rights and obligations it secures. It states that, with a few exceptions, electronic records and marks should be treated equally to paper records and marks for the purposes of complying with legal requirements for written work, signatures, evidence, and record-keeping.

According to the Electronic Commerce Act, a valid electronic contract must include the following characteristics:<sup>11</sup>

1. That there should be a complete, reliable electronic record.
2. That electronic records should be extremely secure.
3. That a reliable electronic signature should be completed. If the archive is marked with sophisticated markings, it should be considered to have a safe electronic signature and may thus be safe electronic record.
4. That electronic operators that confirm or provide evidence should communicate.

## **2.2 How Traditional contract evolved to E-contract**

Traditional paper-based contracts no longer have much significance in the modern world. Although traditional paper contracts are preferred by old-fashioned schools, electronic contracts have eclipsed paper-based contracts as the popularity of e-commerce and internet business has grown. As opposed to traditional paper-based contracts, electronic contracts have a wide range of benefits. In the context of a dispute between parties, the same document was seen as solid evidence.<sup>12</sup> Traditional contracts were much more straightforward. Parties once believed they were bound by the same. The business's nature was likewise not very complicated. The laws governing offers and acceptances, consensus ad idem, the location of acceptance dispatch, terms and conditions, and laws governing breach of contracts have changed and evolved alongside societal changes. Due to the complexity of business contracts in the technological age, the fabric of traditional contracts has gradually changed. Additionally, the development of “online contracts” in the “e-Commerce” space is replacing the same. The modern corporate complexities, tax regimes, and legal norms of interpretation have altered contract scenarios and increased preference for “electronic contracts”.

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<sup>11</sup>Ankit Majmudar , Law Relating to Computers, Internet and e-Commerce: A Guide to Cyber Laws and the Information Technology Act, 2000 ( 6<sup>th</sup> edn, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2007) 20

<sup>12</sup>R. M. Lee ,A Logic Model for Electronic Contracting, Decision Support Systems & Cyber law (2<sup>nd</sup> edn,New Era Law Publications1998) 4

In traditional contracts, the parties must physically meet to explain the terms and conditions of the agreement to one another and any middlemen they hire. The process of adjustment and final drafting takes a while because there are many discussions and back-and-forth draughts. However, in E-contract Parties only need to fill out the very minimum of information .As soon as both sides digitally sign the agreement, it is finished. Conventional contracts are written down by an individual. This relates to the potential for mistakes to be made and contract errors. E-contracts reduce middlemen and the associated costs of paper, printing, power, etc. By employing e-contracts, this gives the user or parties cheap transaction costs. These are only a few of the many benefits that e-contracts have over conventional contracts. E-contracts are simple to sign, and a digital copy can be delivered to the other party. They cannot be changed or altered without committing fraud or cheating. There are no additional costs for paper, power, etc., which is economical and effective. Due to their fascination with the advantages of e-contracts, businesses and individuals are switching from conventional or paper contracts to electronic ones.<sup>13</sup>

Traditional paper-based contracts no longer have much meaning in the modern world. Although traditional paper contracts are preferred by old-fashioned schools, electronic contracts have eclipsed paper-based contracts as the amount of e-commerce and internet business has increased. As opposed to traditional paper-based contracts, electronic contracts have a wide range of benefits. The contracts were written on paper and signed by the parties involved in earlier eras when society was less complex. In the context of a dispute between parties, the same document was seen as solid evidence. Traditional contracts had a very straightforward structure. Parties previously believed they were bound by the same. The business's nature was likewise not very complicated. <sup>14</sup>The laws governing offers and acceptances, consensus ad idem, the location of acceptance dispatch, terms and conditions, and laws governing breach of contracts have changed and evolved alongside societal changes. Due to the complexity of business contracts in the technological age, the fabric of traditional contracts has gradually changed. Additionally, the development of online contracts in the e-Commerce space is replacing the same. Modern company complications, tax

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<sup>13</sup>Shubhada Gholap 'Electronic contracts in India: An overview'(International Journal of Research in Humanities, Arts and Literature (Impact : ljrhal) Vol. 6, Issue 8, Aug 2018, 251-260ISSN (P): 2347-4564; Issn (E): 2321-8878

<sup>14</sup>"E- Contracts in India" iPleaders Blog. < <https://archanabala.com/2015/06/03/e-contracts-in-india>> accessed 2 Jun. 2022

laws, and legal interpretation guidelines have altered contract circumstances and increased preference for electronic contracts. The electronic contracts fit nicely in a society that is highly commercialized. The parties can engage into a legal and enforceable contract online even without discussing the terms and circumstances of the agreement or meeting in person. As a result, everyone in the world recognizes and accepts these unique sorts of contracts as being the same as paper-based contracts. An electronic contract is perfectly suited and fulfils the needs of the business. The current demand is for electronic contracts.

Thus the current demand is for electronic contracts.

### **2.3 Introduction to E-contract and E-commerce**

Electronic contract is the contract that takes place through e-commerce. Both online business and online contract plays a major role in our life. So it becomes necessary to know the concept of both.

#### **2.3.1 E-Contract**

E-contract is a contract that is completed and also “enacted by software” in the sense that the "seller" and "buyer" or "provider and consumer" do not meet face to face to formulate, to negotiate, and to implement the terms of their contract. <sup>15</sup>Contracts involving goods or services that are finalised between a supplier and a customer by distance sale may be considered an e-contract because of the use of distance communication methods including the internet, e-mails, and phone calls to the point of the contract's conclusion .A type of contract known as a "e-contract" is one that is negotiated between the parties using electronic tackle like email, such as a person interacting with a computer programme, or at least two electronic agents that have been configured to recognise the existence of a contract. E-contract is a subset of e-business or e-commerce. It has a similar connotation to conventional commerce, where products and services are exchanged for a specific sum of money. The contract in this case is just different in that it is communicated over a digital medium, such as the internet. It gives sellers a chance to interact directly with customers instead of going via middlemen.

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<sup>15</sup>Ujwala Bendale ‘Electronic form of contract: An ingenious goal in business world’ New Law College, Bharati Vidyapeeth, Pune<: <https://ssrn.com/abstract=4001851> 2>accesed 9 june 2022

The term "Electronic Contract" describes a legal agreement made over the internet, frequently without the parties' physical presence. It relates to business dealings carried out and completed electronically. A client withdrawing cash from an "ATM" is an illustration of an "electronic contract". When a consumer purchases a goods from an online retailer that is an additional instance of an electronic contract. The spread of technology and globalisation have boosted the number of E-Contract businesses in existence. Online auctions, where purchasing and selling are accomplished through online bidding, are also rising in popularity.

<sup>16</sup>The doctrine of Uberrimaefidei ought to be regarded as the cornerstone of e-contracts. To put it another way, neither party is permitted to protest later on that the agreement is void for lack of competence on the side of the parties. In the case of an electronic contract, the doctrine of Uberrimaefidei will be strictly followed, and one party acting unfairly because the other claimed to be competent should not be given any advantage. The internet is used to create E-contracts in an electronic manner. A software system models, executes, and enacts a contract as a "e-contract." <sup>17</sup>Electronic contracts are governed by business procedures that are automated by computer programmes.

It aims :

To establish a safe environment for online transactions that offers an alternative to paper and pen.

To develop an electronic documentation system that will protect the parties to a contract on a par with traditional contracting methods.

For the electronic transactions, to establish legislative status monitoring/verifying agencies.

To prevent scams, both intentional and unintentional, and to boost trust in legitimate online transactions.

To provide the required legal framework to supervise these transactions and set forth uniform norms and regulations for the efficient operation of online transactions. Incorporating digital signatures into the current legal framework of

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<sup>16</sup>P. Radha Krishna & kamalakar 'From Contracts to E-Contracts: Modeling and Enactment' International Institute of Information Technology, Gachibowli, Hyderabad 50019, India Information Technology and Management 363-387, 2005

<sup>17</sup>S.K. Verma and Raman Mittal, ' Legal Dimensions of Cyber Space, Indian law Institute', New delhi International Journal of Pure and Applied Mathematics 2009 vol 4

contracts, sales of commodities, proof, and consumer acts in order to give them legal validity.<sup>18</sup>

### 2.3.2 E-COMMERCE

As electronic commerce grew in the 1960s, the word "e-commerce" was established to describe the buying and selling of things via the transmission of knowledge via electronic data exchange. It's been fifty years and e-commerce has transformed the way goods and services are sold in society. Organizational reorganizations necessitate new business models. E-business includes a variety of specialties, including e-contracts. Businesses can save a lot of time on product design and design items that are tailored to the particular client's needs, track sales, and get rapid feedback from the customer with this type of business model.<sup>19</sup>

E-commerce can define as transaction of business in which clients buy and sell products and services using an electronic medium without the need of any paper documentation. Throughout the world, e-commerce has ushered in a new era of global business. In spite of the rapid growth of the Indian e-commerce business in recent years, the world continues to face major hurdles. <sup>20</sup>"Economic cooperation and development" (OECD) has characterized electronic commerce as an alternative to traditional forms of business, defining it as the exchange of goods and services via networks using open standard protocols, such as the Internet .

Everyone is aware that the computer is one of civilization's greatest creations. The development of the Internet, in addition to computers, has completely changed the field of information technology. The internet is utilized for everything and anywhere, including electronic commerce, social networking, conflict resolution, sending emails, chatting, blogging, and more. Electronic commerce is one of the key features of the Internet among the previously listed features. E-commerce is described as trade carried

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<sup>18</sup>Manoj Kumar Sadual 'electronic : Legal issues and challenges ' Utkal University, Bhubaneswar, Odisha Issn 2348 –1269, Print Issn 2349-5138 Vol 8 issue 3  
<<http://ijrar.com/>> accessed 2 july 2022

<sup>19</sup>Sneha J. Joshi, 'A Study of Challenges and Benefits of Electronic Commerce', International Journal of Research in Humanities, Arts and Literature (Impact Ijrhal) Vol 6, Issue 8, 32, 2018

<sup>20</sup>S.K.Verma and Raman Mittal, ' Legal Dimensions of Cyber Space, Indian law Institute', New delhi International Journal of Pure and Applied Mathematics "vol 4 (2009)



out digitally or on an electronic platform, as well as the sale and purchase of goods and services over the Internet.

The term “E-Commerce” includes buying and selling of the products and services undertaken by the firm companies or the individual using the online .As e-commerce developed very fast a seller sitting anywhere can reach anywhere and do the business alternatively buyer also have the opportunity to choose from ample of choices from different sellers.

<sup>21</sup>The Electronics commerce is the result of Internet. It converts the traditional ways of doing business into digital ways; electronically. As the Internet “brought revolution” in the field of information and communication,E-Contractshas brought similar revolution in the international and national fields of business transactions. Its importance has been recognised not only by the world bodies like WTO and ICC but also by the respective national governments.

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<sup>21</sup>Ankit Majmudar , Law Relating to Computers, Internet and e-Commerce: A Guide to Cyber Laws and the Information Technology Act, 2000 ( 6<sup>th</sup> edn, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2007) 20

## CHAPTER – 3

### CONCEPTUALIZATION AND FUNDAMENTALS OF E-CONTRACT

E-contract is a subset of e-business or e-commerce. It has a similar connotation to conventional commerce, where products and services are interchanged for money. The contract in this case is just different in that it is communicated over a digital medium, such as the internet. It gives sellers a chance to communicate with customers directly, independent of intermediaries.

#### 3.1 E-contract

A type of contract known as a "e-contract" is between two or more parties which negotiate the conditions and enter into a binding contract using electronic tools like email, interacting with an electronic agent like a computer programme.

In recent years, typical business models have grown obsolete and in many cases do not generate much income for the company's owners or shareholders.<sup>22</sup>one prominent newspaper has closed and moved solely online in the United States over the past few decades. New and innovative business models and types must be developed and implemented. Existence of e-contract on the market fulfils the need for innovation in the traditional business areas of the market place. In order to meet the demands of today's consumers, both established and new businesses are striving to establish an online identity and an e-contract stance. E-business includes a variety of specializations, including e-contract. It has the same connotation as traditional commerce, in which products and services are exchanged for a certain sum of money.<sup>23</sup>In this case, the contract is made via the internet, which is the sole additional ingredient rather than relying on intermediaries, sellers can reach their final customers directly through this platform. Organizational charters have to be rethought in light of new business models. Electronic contracts require an organisational charter that is

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<sup>22</sup>“All You Know Need To Know About Online Contracts”-iPleaders Blog. <<https://blog.ipleaders.in/all-you-know-about-online-contracts>>. Accessed 28 June. 2022

<sup>23</sup>E- Contracts in India iPleaders Blog. <<https://archanabala.com/2015/06/03/e-contracts-in-india>> accessed 2 Jun. 2022

tailored to their unique marketing requirements. Product creation time is reduced, items are customized to meet the needs of each unique consumer, sales are tracked, and customers can provide quick feedback. Every day, we get into contracts without even realising it since they've become so commonplace. Contracts control nearly every aspect of our everyday lives, from buying a vegetable to taking a taxi to booking a plane ticket online.

<sup>24</sup>India's contract law dates back to 1872 and governs the formation and completion of legal agreements in the country. It governs how a contract's requirements are put into action, as well as the consequences of a clause being violated. The speed, ease, and efficiency demanded e-contract which is not paper based but in electronic form. If we imagine that an Indian manufacturer and an American exporter are interested in signing a deal together. – Alternatively, the contract may be drawn up by one party, signed and sent to the other, who would return the signed copy and send the other one back. Or, the contract can be signed in person by both parties.

### 3.1.1 Kinds of E-Contract

**a) Web-wrap or click-wrap** -This type of agreement is used to “obtain the user's consent regarding the terms and conditions of the contract with the use of "Ok" and "I Accept" options<sup>25</sup>. Agreements are those in which a party, after reviewing the terms and conditions provided in the website or programme, must typically indicate his assent to” .Before a person begins using a specific piece of software, these agreements are displayed. Thus if the user reject the term he cannot use it, if he accept the term he accept the agreement.“In case of click wrap agreements, all the terms and conditions are accessible prior to acceptance, if the terms are hidden either in the same window or through a hyperlink.”<sup>26</sup>

**b) Shrink wrap** -The term "**shrink wrap agreements**" refers to contracts in which delivery of an “electronic record, as defined in Section 13(2) of the IT Act”,

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<sup>24</sup>Avtar Singh, Law of contract Act and specific relief (12<sup>th</sup> edn, EBC publication 2019) 230

<sup>25</sup> "Contract Law Terms: Definitions & Contract Types - Video & Lesson “  
<<https://study.com/academy/lesson/contract-lawterms-definitions-contract-types.html>> accessed 2 Jun. 2022

<sup>26</sup> Rashi chandok ‘Different types of e- contract ‘ <<https://blog.iplayers.in/different-types-e-contracts>> accessed 5 July 2022

by the addressee constitutes receipt of an offer or acceptance in the web-click mode. It is a form of online contract that is typically used for a licencing contract when buying software. These agreements outline the terms and circumstances of the transaction, which the buyer must abide by. The contract is a license agreement in which the consumer is subject to its terms and conditions as soon as he opens the package. These agreements are typically seen when purchasing software goods.

**c) Browse-wrap agreements** are those that are regularly observed on the internet.

These contracts are meant to bind two parties to a contract through a website. The user must accept the website's conditions in order to access it on an ongoing basis. The terms are presented as "terms of use" or "terms of service" and contain the "user policies" and "terms of service" of the website. “Despite the absence of judicial precedent in India, agreements can be upheld if the fundamental or overarching principles of contracts are observed”<sup>27</sup>.

**d) The Electronic Data Interchange-** EDI stands for “Electronic data interchange” which refers to the computer-to-computer transfer of organised business data.<sup>28</sup> It refers to the electronic transmission of data between computers that is organised according to a predetermined standard. These agreements allow for the direct communication of business information between the parties via computers in a format that can be processed by computers, and they are typically utilised by parties with ongoing commercial relationships. These contracts are used in trade transactions, allowing data to be transferred from one computer to another, therefore eliminating the need for paper in the processing of each transaction in the trading cycle.

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<sup>27</sup> Ujwala Bendale ‘Electronic form of contract: An ingenious goal in business world’ New Law College, Bharati Vidyapeeth, Pune <: <https://ssrn.com/abstract=4001851> > accessed 14 june 2022

<sup>28</sup> Sankalp jain ‘ Electronic contracts : Nature, types and legal challenges’ vol 3 <: <http://ssrn.com/abstract=2786438> > accessed 7 june 2022

### 3.2 Advantages of e-contract

With electronic contract Conventional contracts and commercial transactions require a variety of office supplies and equipment, which electronic contracts can reduce the Paper work, the acquisition of printing equipment, Repairs and maintenance of printing equipment Ink refills, printing Electricity, Postage, Organizing and storing documents.

The majority of the time, we do not even realize that we have entered into a contract because they have become so commonplace in daily life. Numerous aspects of our daily life, from ordering a taxi to purchasing airline tickets online, are governed by contracts. Today's consumers have access to online shopping through e-commerce.

When possible, buyers bargain conditions and pricing before placing orders and making payments. Consider a deal that an American buyer and an Indian exporter want to make. One alternative available would be to courier the document and make document sign, again return the copy, other alternative would be to meet and sign the agreement .The best alternate available is e-sign .<sup>29</sup>In the technological age, the entire transaction can be finished in a matter of minutes by both parties just signing an electronic version of the contract. In such a case, there is no need for sluggish couriers or unnecessary trip expenses. Legislative bodies were first reluctant to acknowledge this cutting-edge technology, but now several nations have passed legislation recognising “electronic contracts”.

“E-commerce” has given business operations a new dimension because they are no longer constrained by territorial restrictions and the need for constant physical presence. In the past ten years, online shoppers have incorporated e-commerce into their daily lives .Most of the time, we enter into contracts without even realizing it because they are so prevalent in daily life. Numerous aspects of our daily life, from renting a taxi to purchasing airline tickets online, are governed by contracts.

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<sup>29</sup>Sneha J. Joshi, ‘A Study of Challenges and Benefits of Electronic Commerce,’ *International Journal of Research in Humanities, Arts and Literature* 2018 (impact : ijrhal) Vol 6, Issue 8, , accessed 18 June 2022

Electronic contracts, or agreements that are made electronically rather than on paper, were created to meet the demands for efficiency, speed, and convenience. A software system models, specifies, executes, and deploys a contract as a "e-contract."

When possible, buyers bargain conditions and pricing before placing orders and making payments. Since legitimate e-contracts are the foundation of electronic commerce, considerable thought must be given to their creation before concluding and moving forward with transactions. The parties' freedom to choose the terms is completely intact. E-contracts open up a wide range of commercial prospects once the legal prerequisites are met. It is necessary to enter since commercial companies use the Internet as a channel for disseminating and expanding company practices, Creating numerous e-contracts becomes required.<sup>30</sup>

Because of globalisation, electronic contracts are becoming increasingly important and valuable. One person in one country can do business with another person in a different country in a matter of minutes. Because of developments in communication technology. In addition to saving money on the cost of the cruise, any delays, and any misunderstandings that may emerge during the course of the contract, this saves time as well. E-contracts are governed in India by a combination of the 1872 "Indian Contract Act, the 2000 Information Technology Act", and other pieces of legislation. With the development of technology, people are now putting their businesses online, which carries a bigger risk than traditional forms of company. E-contracts have been implemented in order to reduce this risk and to ease the numerous online transactions. A contract that is created and signed electronically is known as a "e-contract" or "electronic contract." Additionally, these contracts are carried out online. E-contracts can be used as non-disclosure agreements, distribution agreements, consulting agreements, employment agreements, and contracts for services. There are electronic contracts all over the internet.

Contracts have become so commonplace in our life that we frequently are unaware that we have entered into one. Numerous incalculable aspects of our daily lives are represented by contracts, from renting a car to buying plane tickets online. "E-

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<sup>30</sup>Shubhada Gholap 'Electronic contracts in India: An overview'(International Journal of Research in Humanities, Arts and Literature 2018(Impact: ijrhal) Vol. 6, Issue 8, Aug 2018, 251-260ISSN (P): 2347-4564; ISSN (E): 2321-8878

contracts become a cost-effective way to get into an agreement” because they are paperless and save money on paper purchases. Additionally, it saves time because parties to contracts may not always be face-to-face. E-contracts eliminate all of these issues, allowing for quicker commercial operations.<sup>31</sup>

E contracts are specifically making their way into a prominent place in our lives as a result of the increasingly technically advanced and globalised nature of the economy. E Contracts have shown themselves to be a practical method of doing business. E contracts can be accessed with a single click, and they do not include the laborious process that is typically required for physical documentation contracts. The amount of paperwork involved in E Contracts has been greatly reduced.

Electronic contracts eliminate all the expenses at the touch of a button. If the clients or business partners don't have to or can't meet with face-to-face, it save both time and money by using video conferencing services. Documents may be created, sent, signed, and collaborated on more quickly and with fewer processes. E-documents are more secure than paper ones. Any stage during the development, submission and signing of a paper document might be altered. Companies go to considerable lengths to preserve the original agreement, such as storing multiple copies or signing documents in front of a notary. If a signee cannot alter a finalized agreement during the sale of products, then contract management software with electronic signing capabilities is a viable option. While the software allows both parties to communicate and make changes to a document as it is being created, it still provides capabilities like:

1. Access to signatures, initials, or required information is restricted.
2. Keeping track of and documenting a document's history
3. Encrypting a document and verifying the identity of the sender/recipient
4. Alerts for one or both parties that a document has been tampered with
5. Contract compliance solutions to ensure legality and bindingness.
6. Customer service is improved by electronic contracts.

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<sup>31</sup>P. Radha Krishna & Kamalakar Karlapalema R. Dani ‘ From Contracts to E-Contracts: Modeling and Enactment’ International Institute of Information Technology Gachibowli, Hyderabad 50019, India Information Technology and Management 6, 363–387, 2005

Consumers documents can be deliver more quickly when use electronic contracts. When customers need to sign documents, they can do so from any location and on any device. The auto fill feature in the electronic programme allows the clients to sign a document once and have their signatures appear on the remainder of it automatically. With this option, clients can sign an electronic contract via a phone, computer, tablet or other electronic device. A consumer who wants to sign an e-signature contract but doesn't have the time to wait for it to arrive by mail will find it useful .To complete a transaction, a client may only need to press the "I agree" button or provide an E-Signature.

### **3.3 ESSENTIALS OF E-CONTRACT**

The same essentials of an contract act for paper agreement must be fulfilled in case of an online contract.

#### **1.Electronic Offer**

The essential aspects of an online contract, just like a paper-based or conventional contract, is the need for an “offer to be made”. A valid proposal or offer must be made by one party that is the proposer and it serves as the foundation for a contract. The customer submits a purchase proposal in response to the seller's invitation to offer by reading and selecting the items and services offered on the seller's website.<sup>32</sup>“A proposal must be made with the intention to establish a legal relationship and must be separated from an invitation to offer or treat”. There must be an offer, which is sometimes referred to as an electronic offer, for e-contracts as well. Websites, emails, EDI, or electronic agents can all be used to make an electronic offer. The customer looks through the items and services that are offered and are presented on the website before deciding what to buy.

An electronic form is used to make an offer in electronic contracts.Any data produced, transferred, received, or stored on a magnetic, optical, computer memory, “microfilm’, computer-generated microfiche”, or other similar medium is referred to as being in electronic form.Any terms that are necessary for the transaction must be included in an electronic offer in order for it to be enforceable.

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<sup>32</sup>Rishi A, ‘Legality of smart contracts in india’ 2011; <<https://indiacorplaw.in/2017/12/legality-smart-contracts-india.html>> accessed 9 june 2022



According to the Information Technology Act of 2000, there are three parties involved in electronic transmission:

1. “Originator”
2. “Intermediary”
3. “Addressee”

originator is “a person who sends, generates, stores or transmits any electronic message; or causes any electronic message to be sent, generated stored or transmitted to any other person but does not include any intermediary.”<sup>33</sup>

**Originator** of data message means “the person by whom or on whose behalf, the data message purports to be sent or generated prior to storage, if any, but it does not include a person acting as an intermediary with respect to data message.” Simply said, the ‘originator of a data message’ is the person who makes, saves, or sends the data message

**Intermediary** under the act is the “person who on behalf of any other person receives stores or transmits that message or provides any service with respect to that message”.<sup>34</sup>

**Addressee** means “a person who is intended by the originator to receive the electronic record but does not include any intermediary”<sup>35</sup>. He is just the recipient of the data message, meaning that he is the one to whom the message was delivered by the sender and who got it.

### **Invitation to Offer**

A distinction between an offer and an invitation to offer should be made. Usually, when someone lists items for sale on a website, they are inviting potential purchasers to submit offers rather than making an actual offer. The customer who ‘browses’ the goods and services displayed on website and then chooses to purchase is making an offer for the product and the website is just making invitation to offer which the customer is responding through making offer.<sup>36</sup>

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<sup>33</sup>Information Technology Act, 2000, s2(za)

<sup>34</sup> Information Technology Act, 2000, s 2(w)

<sup>35</sup> Information Technology Act, 2000, s 2(b)

<sup>36</sup> Rishi A, ‘Legality of smart contracts in india’ 2011; <<https://indiacorplaw.in/2017/12/legality-smart-contracts-india.html>> accessed 9 june 2022

A browse wrap agreement is more like an invitation to offer or treat. Online shopping portals like flipkart.com and ebay.com are two examples. These websites facilitate online goods sales. The adverts on these websites are nothing more than a request to be treated, neither flipkart.com nor ebay.com are making an offer, only extending an invitation. Displaying products or placing them in a self-service store might be considered an offer to treat in traditional business. Here, the seller must determine whether or not to accept the offer made by the buyer. However, in the event of an online agreement or e-commerce sale, the seller has the right to refuse or cancel the purchase because he is still considered a person who is receiving orders.

## 2. Acceptance

The acceptance of an electronic offer is also necessary for e-contracts. An electronic offer must be accepted in order for it to become a legally enforceable agreement. If the addressee accepts the proposition the originator delivers via electronic means, the addressee may send the acceptance back to the originator via internet. An electronic offer may be accepted by email or other electronic messages, as well as through actions like clicking a "I Accept" or "I Agree" button or downloading files. By opening the package, a shrink wrap license can be accepted.

Through a digital document an offer may be accepted in accordance with the "Uniform Electronic Commerce Act of 1999" and also a gesture in electronic form, such as touching or clicking on a suitable designed icon or location on the computer screen, or another electronic communication that expresses agreement.<sup>37</sup>

<sup>38</sup>Click wrap is used to accept the majority of online contracts. When a contract is presented online and the customer is invited to click a "I Accept" or "Offer" button, this is known as a "click wrap." An agreement known as a "browse wrap" is made when a website visitor takes specific actions on the site. Assuming a visitor wants to download a music from a website, doing so will be interpreted as acceptance of the website's terms and conditions, thereby creating a contract.

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<sup>37</sup>The United Nations Convention on Contracts for the International Sale of Good provides provision on the rules of acceptance Article 18(2): A

<sup>38</sup> Faye Fangfei Wang ( 1<sup>st</sup> edn, Law of Electronic Commercial Transaction, London, 2010)

If an offer is made electronically, it can be assumed that the maker agrees to the offer being accepted electronically. If electronic communication of acceptance is not required, acceptance may be given in any other manner that is suitable. “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. The following methods of electronic offers and acceptances are available:

**Email:** Offers and acceptances can be sent exclusively through email or in combination with paper documents, faxes, phone calls, and other methods.

**Website forms:** Through his website, the vendor may sell items or services (such as software, airline tickets, etc.). The customer puts an order by filling out and submitting the online order form.

**Online Agreements:** In order to use the services, users may have to approve an online agreement such as selecting "I Accept" when installing software or "I Agree" when opening an email account.

### **Revocation of offer and acceptance:**

“The Information Technology Act does not change the provisions for revocation of offers set forth in Section 5 of the Indian Contract Act, 1872, which apply pursuant to offers made electronically”<sup>39</sup>.

### **3. There must be a legal or lawful consideration**

Consideration is a very important aspect in the development of a contract. In most online contracts, the website's policies and the promise made by the website to deliver the selected goods serve as the consideration for the buyer's promise to pay for the specified items.

A promise becomes a legally binding contract when consideration is included. It is frequently described as the transfer of something valuable. A lawful, actual, and non-imaginary act must be performed at the promisor's request in order to qualify as

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<sup>39</sup>Information Technology Act, 2000 s 5

consideration. Promises that are practically impractical to keep cannot be taken seriously. For instance, a website that sells moon land. Consideration won't be an issue for most online business transactions, but it could become complicated if a website requests a customer's consent to particular terms and conditions before delivering a digital service, as is the case with "web wrap" or "click wrap agreements". The terms of payment and delivery typically specify the type of consideration that the parties wish to enter into to assure fulfillment from each side.

There would be no enforceability of contract without consideration. For instance, if software is provided for free, the programme provider cannot obligate the user to the terms and conditions because nothing was exchanged for the software. Additionally, the payment must be legal. Unless it is prohibited by law, fraudulent, or of a kind that may corrupt the rules of the law, or if it harms others, is immoral, or runs counter to public policy, consideration of an agreement is legal.

#### **4. Capacity of parties**

Indian Contract Act says "every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is sound mind and is not disqualified from contracting by any law to which he is subject".<sup>40</sup> In *Mohori Bibi v. Dharmodas Ghosh*, the Privy Council ruled that a minor's contract is null and void from the beginning. It is regarded as void from the beginning. In case of online contract also a minor cannot enter into a contract but the incapacity of minor is a challenge in online contract as the person entering the contract is not known whether he is a minor.<sup>41</sup>

#### **5. There must be free and unaffected consent**

A contract must have consent specified in sec 13 Indian Contract Act of 1872. In essence it is "meeting of minds". They are said to consent when they both reach an agreement on the same matter in the same way. If coercion results in consent, that

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<sup>40</sup> AIR 1903 ILR 30 Cal 539

<sup>41</sup> Raghavendra S. Srivatsa & Sukruta R. 'Online Contracts' Legal Dimensions of Cyberspace, Indian Law Institute" New Delhi, 67 (2004)

consent may be revoked at the discretion of the individual whose consent was coerced. Threats, violence, and physical coercion are all forms of coercion. Consent must be freely given, true, and not the result of deception or undue influence, such as “when one person is in a position to control another's will.”

However, in the case of an online contract, there is no opportunity for direct physical contact between the website and the customer, who uses the services by giving the consent through selecting the checkbox.

## **6. Lawful object:**

“A contract made on a website created specifically for the online sale of illegal substances is null and void”<sup>42</sup>. Any agreement that is established with the intent to harm another person or his property is illegal and should be regarded as null and invalid. Any agreement is void if a competent court finds it to be against public policy.

The word "object" refers to a goal or plan. Any agreement whose purpose is against the law is void. When a deal is detrimental to the general welfare, it is considered to be against public policy.

## **7. Intension to create Legal relationship:**

There is no contract between the parties if neither has any desire to establish a binding legal relationship. “The intention of the parties to the contract to establish legal connections is a necessary component of a valid contract”. Domestic or social agreements do not establish a legal connection, as a result, they are not contracts and cannot be enforced by the law. It follows naturally that parties do not intend for agreements governing social connections to have legal repercussions. An offer to marriage sent via email, fax, or other form of telecommunication to friends or relatives, for instance, is not considered to be a contract.<sup>43</sup>

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<sup>42</sup>Indian contract act s 23

<sup>43</sup> M. Pragadeeswaran & Aswathy Rajan, 'critical studies on different types of e-contract with special remedies available to e-contract' International Journal of Pure and Applied Mathematics"Vol119 No. 17 2018, 1729-1740ISSN: 1314-3395<: <http://www.acadpubl.eu/hub>> accessed 22 june 2022

### 3.4 Formation of Online Contract

According to the Indian Contract Act of 1872, contracts are created by the following three steps:

1. One person makes an offer to another.
2. The person to whom the offer is made accepting it.
3. The expression and presentation of such acceptance.

A contract can be established verbally, in writing, or even by the actions of the parties. Nowadays, contracts can be created electronically because of the development of online interactions. An electronic contract can be created through an email exchange or by completing a form on a website and sending it electronically to the other party. It can be finished in a “chat room, during a video conference”, or over the phone via internet telephony.

The fundamental components of electronic contract formulation do not differ from conventional contracts (traditional). There are some features specific to online commerce. For instance, the contractual parties need not meet in person to form an agreement.

The establishment of a contract is based on the offer and acceptance concept. Whether a contract is to be implemented on the traditional platform or the electronic platform, offer and acceptance have the biggest effects on how it is formed. The other two key components of a conventional contract are a legitimate object and a valid consideration. The same is true for E contract situations.<sup>44</sup>

There aren't many methods available for exchanging offers and acceptances in an electronic contract, like email. By abiding the terms or filling the form such as airline tickets offered by the seller available on the internet an online contract can be created. By filling out the relevant form and sending it, the person who wants to use the goods or services offered on the website can make an order there. The provided goods may be delivered immediately, for instance, using electronic means.

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<sup>44</sup>Maneckmulla, ‘validity of electronic contracts in india,’ Mondaq  
<<http://www.mondaq.com/india/x/699022/Contract+Law/Validity+Of+Electronic+Contracts+In+India>  
> accessed 13 june 2022

Another method for creating an online contract is through online agreements, which can be done by selecting the "I Accept" button when logging into software and the "I Agree" option when creating an email account.

Online contracts are created using modern channels such e-mail, the internet, fax machines, and telephones. The need for a fundamental component like “an offer and acceptance” is just as important for the establishment of an online contract as it is for a typical paper-based contract. The way contracts are formed today on websites is very different from how they were done in the past. Online contract creation primarily presents questions about the rule of offer and acceptance's applicability. The website serves in the role of the retailer and reacts to customer actions. The usual conditions of the website must be accepted by selecting the specific option button if a customer wants to download music, videos, or movies from the retailer's website without paying for them. When a customer accepts the terms and expresses their acceptance, it is the website's duty to provide the requested service. Finally, once the proper payment has been made, the contract between the customer and the website is finalised for that specific transaction.

### **3.4.1 Formation of Online Contract and Offline Contract with respect to the IT Act 2000 and the Indian Contract Act 1872**

The IT Act of 2000 is not an exhaustive set of rules for online transactions. The fundamental statute controlling the formation of all contracts, including those entered into electronically, is still the Contract Act of 1872. However, the IT Act and these two Acts are complementary to one another. Not only fills in the gaps to offer remedies for the problems brought on by the introduction of communications technologies that are not covered by Contract Act, but in some circumstances, the essential rules outlined in the Contract Act have been altered. The information component required to ascertain the time of an offer communicated via postal mail has no relevance in internet communications. It might be argued that the offer's communication is finished at the moment it reaches computer resources as defined by section 13 of the IT Act and not after the acknowledgment has been sent.<sup>45</sup>

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<sup>45</sup>Information Technology Act 2000 s 13

In the electronic media various means of communicating acceptance or offer could be used by the parties including electronic mails, messenger services etc. “The IT Act 2000 provides in Section 12 that acceptance will be binding on the receipt of an acknowledgment of an electronic record on the offeree, when the acceptance moves out of the control of the offeree and shall be binding on the offeror on receiving the acceptance”. Sec 12 and 12(2) of IT Act provides about the acknowledgment of receipt, where it is stated that communication of any form shall suffice to signify that the electronic record has been duly received. Further if any particular method is stipulated then the same has to be followed else the electronic record shall not be binding till the receipt is so acknowledged.<sup>46</sup>

According to the IT Act of 2000, the offeror is bound by the acceptance as soon as he gets it. A retraction of acceptance may only be made up until the acceptance becomes legally binding for the offeree, and it may not be made after this time period, according to the Indian Contract Act. According to the IT Act 2000, “which differs from the Contract Act, an acceptance becomes legally binding on the offeree the moment it enters an information system outside of their control”.

The communication's timing and location are by far the most crucial factors in determining the stage at which a contract is being established. According to the Indian Contract Act of 1872, there are currently opposing viewpoints on postal rule.

According to one theory, a contract is finalised when the offeree declares that he has accepted the offer. Another hypothesis promotes the idea that when a letter is sent that includes an offer's acceptance, a contract is created. Another idea contends that the offeror must receive communication of acceptance in order for the offer to be accepted.

According to postal law, a contract is created in the location from which an acceptance letter is posted when an offer and acceptance are made by letter. The Offeror case judgment on the receipt rule was followed by Indian courts, and the Bagwan Dass case confirmed this. The IT Act of 2000 states that the receipt of an electronic record is determined by the time that the record enters the computer resource that the addressee has chosen. If no designation is made, reception takes

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<sup>46</sup>Information Technology Act s 12



place when the electronic record accesses the addressee's computer system. Unless the parties specifically state otherwise, it is obvious that dispatch of the electronic record takes place when such records enter the information systems outside of the originator's control.

### **3.5 Performance of E-Contracts**

The general rule is that each party to a contract is required to carry out his or her specific obligations. The same holds true for e-contracts; the party who agreed to do something must follow through. “Section 37 of the Indian Contract Act, which states that the parties to a contract must either perform or offer to perform their respective obligations, unless such performance is dispensed with or excused under the provisions of this Act or of any other law, is applicable for e-contract execution”<sup>47</sup>. E-contracts are always challenging to carry through because the parties are separated by great distances.<sup>48</sup> Additionally, these contracts are unilateral in nature that one party will have a stronger negotiating position. “Online contracts are subject” to the same general rules that apply to traditional contracts. The performance of e-contracts is not addressed under the Information Technology Act as in performing e-contract like making to download a software without physical delivery the difficulty arises. In this situation, it becomes important to forecast and identify the precise location of digital performance by taking into account the timing of e-communications' transmission and reception as well as the location of computer servers.

### **3.6 Remedies on Breach of E- contract**

There is no specific procedure that must be followed in online contract for any kind of breach ,however the provision of The Indian Contract Act for remedies for breach of contract may be followed. When violated, co-relative rights and responsibilities resulting from a legal contract are actionable in court for breach of contract. The Contract Act primarily discusses damages and quantum merit as two remedies for contract breaches. However, a few more “remedies are also available under the

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<sup>47</sup>Indian contract Act, 1872 s 37

<sup>48</sup> S. Sethuram, Deepa C. Kumar, ‘E-Contracts in India: The Framework, Issues and Challenges’, International Journal of Emerging Innovation in science and Technology “ vol 9 issue no 2

Specific Relief Act, including the specific performance of a contract and an injunction prohibiting the other party from breaching the agreement”. Rules for determining damages are provided in Sections 73 to 75, which are based on the well-known <sup>49</sup>*Hadley v. Baxendale case* which states “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”. When two parties enter into a contract that is breached by one of them, the other party should be compensated for that breach with damages that can be fairly and reasonably assumed to either naturally result from the breach itself, that is, to follow the course of events, or to have been anticipated by both parties at the time the contract was formed as the likely outcome of that breach circumstances. The aforementioned guidelines also apply in India. In <sup>50</sup>*Jamal A.K.A.S. v. Moola Dawood Sons & Co.* the Privy Council noted that “Section 73 of the act is indicative of the common law with regard to damages”. In a same vein, Patanjali Sastri J. (later Chief Justice of India) of the Supreme Court noted in <sup>51</sup>*Pannalal Jankidas v. Mohanlal & others* that the party in breach must pay damages for the actual losses resulting immediately from the breach and not for any indirect or remote losses or damages.

### 3.6.1 Claim Damages

Damages are the primary remedy in practice. “When a contract is broken, the party who has been harmed by the breach has the right to receive compensation from the party who has broken the contract for any loss or damage” that has been caused to him because of the breach or that the parties knew would be caused by the breach when they made the contract. Any loss or harm resulting from the breach, no matter how remote or indirect, will not be covered by this type of compensation. If a contract is breached, the party rescinding the contract is entitled to compensation for whatever losses they have suffered as a result of the breach.

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<sup>49</sup>1854 EWHC J70

<sup>50</sup> AIR 1915 pc 3

<sup>51</sup> AIR 1950 SC 144

### **3.6.2 File a lawsuit based on specific performance**

This indicates that the party in breach of the contract will actually be required to carry out his duties as outlined in the agreement. The courts have the authority to order a party to comply with an agreement under specific circumstances

The party whose rights were violated by the contract breach may file a lawsuit to recover damages or compensation for the party's losses, expressed in monetary terms. When taking any injury action, the distance of the damage and the extent of the damage should be taken into account.

### **3.7 Discharge of E-Contracts**

In the Indian context, the e-contract can be terminated in the same ways as traditional contracts that is by performance, inability of performance, agreement, and breach. Additional than the methods listed above, there are no other ways to terminate an electronic contract. Most e-contracts' termination is caused by a recession. "A contract can be discharged in following modes"

By "Performance"

By "Impossibility of Performance"

By "Agreement"

By "Breach"

#### **By Performance of Contract**

Section 37 of the Act says, "the parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provision of this Act, or of any other law". Furthermore, it specifies that, unless a contrary intention is clear from the contract, promises bind the promisor's representative in the event that they pass away before to performance. The contracting parties have an obligation to perform or make an offer to perform.

#### **By Impossibility of Performance**

If a party fails to perform its obligations under a contract within a certain period of time, the contract is deemed null and void as a result of the lapse of time. A contract

that was legitimate when it was formed can be discharged if it later becomes impossible or unlawful to perform. In any of the following cases, a contract is voided by impossibility:

1. Destroying the material
2. A modification to the law
3. A lack of congruence in the facts
4. Demise or incompetence to perform personal responsibilities.
5. The contract's ultimate goal was not met.

### **By Performance by Agreement**

Section 62 of the Act says that the original contract does not have to be carried out if the parties agree to replace it with a new one, rescind it, or change it. If a new agreement is formed replacing the old one then the agreement is completed by performance.

### **By Breach of Contract**

As long as one party refuses or fails to fulfil its obligations, the contract is terminated by breach. Actual Breach or Anticipatory Breach are both valid grounds for terminating a contract. When the time for performance has passed or perhaps earlier, the failure to perform or renunciation may occur. A party to a contract is in breach if they abandon their responsibility under it, make it impossible for them to fulfil their responsibilities under it, or completely or partially fail to do so.

## CHAPTER 4

### E-COMMERCE IN INDIA

#### 4.1 Concept of E-Commerce

E-commerce is the cutting edge of business today. Electronic commerce is known as e-commerce. It refers to conducting business on the internet and through electronic media.

“It refers to a vendor's website that accepts payments using credit card, debit card, or electronic funds transfer (EFT) and also offers products or services to customers directly from the portal. The practise of conducting business using the internet and information technology, such as “Electronic Data Interchange”, is known as e-commerce or E-business “(EDI).<sup>52</sup>

E-commerce, to put it another way, is the expansion of business online. E-commerce has quickly taken over as the main form of online activity. E-commerce is defined as any commercial activity that is carried out, connected to, or assisted by electronic communication. There is no singular definition for it. E-commerce's effects that are already being felt in every aspect of company, from new product development to customer service. It enables new information-based business operations including online order taking, online order placement, and online customer support that are built on reaching and interacting with customers.<sup>53</sup>

Additionally, it can save expenses in areas that frequently add substantial overheads to the “price of goods and services”, such as to manage orders and communicating with a broad range of suppliers. E-commerce presents a lot of opportunities for emerging nations like India. Even the most conservative estimates for India indicate a growth even though the industry is still in its inception. In recent years, an increasing number of businesses have started using e-commerce. Major Indian portal websites

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<sup>52</sup>Ankit Majmudar , Law Relating to Computers, Internet and e-Commerce: A Guide to Cyber Laws and the Information Technology Act, 2000 ( 6<sup>th</sup> edn, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2007) 20

<sup>53</sup>Sneha J. Joshi, ‘A Study of Challenges and Benefits of Electronic Commerce,’ International Journal of Research in Humanities, Arts and Literature 2018 (impact: ijrhal) Vol 6, Issue 8, , accessed 18 june 2022

have also switched from relying on advertising revenue to e-commerce. Nowadays, a wide variety of goods and services are offered on numerous websites, including groceries, electronics, computers, greeting cards, flowers, and movie tickets digital age. It has altered and continues to revolutionize how business is done globally. “Electronic commerce has evolved into one of the most effective channels for inter-organizational business” activities as a result of the commercialization of the Internet. As a result of people turning to the internet more and more to buy things and demand the best, the growth of the Internet has brought about a number of new developments, including the decreasing margins for businesses as more and more people shop online for products and seek the lowest pricing.

The internet has undoubtedly been a useful tool in transforming traditional business practices. The massive flow of competition typically results in price reductions in any market with no” entry barriers”—the Internet is the largest of these. Long-term, all businesses could only make typical earnings in such a scenario. All business carried out over computer networks falls under the umbrella of electronic commerce (or e-commerce). Computer networks are becoming a crucial component of the economic infrastructure because to developments in telecommunications and computer technology in recent years. Companies are facilitating transactions online in greater and greater numbers.

#### **4.1.1 Categories of E-Commerce**

Broadly speaking an electronic contract can be characterized as below

- I. “Business-to-Business”
- II. “Business-to-Consumer”
- III. “Consumer-to-Business”
- IV. “Consumer-to-Consumer”

##### **I. Business to Business (B2B)**

“B2B” transactions typically take place between businesses, partners, and industrial manufacturers. Business-to- Business includes the whole range of online transactions that might take place between two entities. The management of suppliers, inventories,

distribution channels, “sales activities, payment administration, and service and support are some of the activities” involved in B2B e-commerce. Due to the rapid rise in internet usage, B2B transactions have experienced tremendous growth and are now the fastest-growing part of the e-commerce market. “This type of business arrangement is common among FMCG (fast moving consumer goods) businesses who communicate with their franchisees online”<sup>54</sup>. Through this form, a wide range of transactions, such as stock reports, sales figures, purchase orders, and other shipping information, can be carried out.

## **II. Business-to-Consumer (B2C)**

Typical B2C E-commerce involves companies selling directly to customers. The most prevalent instances of this B2C e-commerce cycle include websites like myntra.com, flipkart.com, and ebay.com. In addition to these, traditional companies have opened virtual stores to meet the always expanding demand.

The availability of physical space, the availability of returns, and the availability of customer assistance in regards to physical issues are the main benefits of such e-commerce websites and businesses. The company communicates with its clients directly. Customers gain in some ways when prices for items decrease as middlemen are removed. C2B e-commerce is the term for when a consumer sells their goods or services to other businesses. Examples of this are graphic designers and photographers.

## **III. Consumer-to-Business (C2B)**

This typically entails individuals selling to the relevant businesses, and it could take the form of selling a specific service or good that the customer intends to resell. This could take the shape of catalogues, sales, etc. Websites that help people book travel are excellent examples of this type of business. B2C e-commerce is arguably the most popular sort of e-commerce among the many others. Many customers value this kind of e-commerce since it enables them to compare prices and read customer reviews

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<sup>54</sup> .V. JogaRao, Computer Contracts & Information Technology Law ( edn 2<sup>nd</sup>, Wadhwa and Company, Nagpur, 2005 )1226

prior to making a purchase. By utilizing this kind of e-commerce, one may also create a relationship with customers that is more individualized.

#### **IV. Consumer-to-Consumer (C2C)**

Using the Internet and online technology, business transactions between individuals fall under the category of C2C e-commerce. In this case, two people engage in business activity. One of the most well-known examples is the bids placed on websites like bazee.com and olx.com for the sale of goods or personal property of people looking to sell online. In this level of e-commerce, all electronic transactions between consumers are included. These transactions are typically made possible using online platforms (like PayPal), but they can also be done through social media networks and websites (like the Facebook marketplace) .In this level of e-commerce, all electronic transactions between consumers are included.

#### **4.1.2 Scope of E-Commerce**

E-commerce is not just about buying things online. It comprises everything a business may give to its clients over the Internet, before making any purchase it provides information to the customer and at the same time provides after sales service too apart from email and other contact channels. E-commerce is mostly used for two purposes the one is to use the technology for cost cutting of the transaction which also save time by providing effective service, the other one is to increase sales and to develop new business such as "digital commerce," call centres, software and maintenance services, etc as a marketing tool .Thus, it serves as a tool for both current businesses and an opportunity for new ones, as well as for both established enterprises and new competitors. Even though the future of ecommerce may still be uncertain, it is important to keep in mind that all businesses will likely need to learn how to use it within a short period of time.<sup>55</sup>

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<sup>55</sup>Abhilash, 'E Commerce laws in Developing countries: An Indian Perspective'  
International Journal of Pure and Applied Mathematics vol 6 Issue 2



E-commerce, however, encompasses more than just the combination of electronics and trade. It represents a whole new method of conducting business through a medium that modifies the industry's core rules. As a result, strategy and business management are significantly more important than technology. The transactional aspects of e-commerce, or those that represent the business between the various players, as well as the framework aspects, or those fundamental conditions that are needed in developing countries for it to develop, are crucial to understanding e-commerce and its implications for those nations.

For e-commerce, there is a lot of room for growth. Flipkart and Amazon are two websites that allow customers to buy things online. All kinds of products, from gym equipment to laptops, may now be purchased online. There are a wide variety of uses for e-commerce. For example, it comprises E-Franchising, E-Mailing and so on. E-commerce can result in range of benefits to both business organization and purchasers. At the equal time it is also bringing out many modifications in our traditional commerce system. Two essential troubles are referring to law and taxation, which has to receive due importance. When these problems are settled, digital trade will flourish Ecommerce like Flip kart has raised an eye fixed popping billion dollars of fresh budget.<sup>56</sup>

The digitised information exchange can be used to “communicate between parties, coordinate the flow of goods and services, or transmit electronic orders”.When it comes to E-Commerce, the key word is "technology-enabled." These technology-enabled customer interfaces are best known through web browsers. However, “ATMs” and other e-commerce interfaces are also included in this general category. In the past, businesses had to rely solely on human connection to conduct transactions with customers and markets. However, in e-commerce, these transitions may be handled utilizing technology. Fast order fulfillment and excellent customer relationship management are two of the most important ways that E-Commerce helps businesses retain clients (CRM). No wonder it’s gradually becoming one of the top digital marketing trend.

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<sup>56</sup>S.K.Verma and Raman Mittal,' Legal Dimensions of Cyber Space, Indian law Institute', New delhi International Journal of Pure and Applied Mathematics ,vol 4 (2009)

## **4. 2 Reason for the growth of E-Commerce**

In the past ten years, there has been a significant shift away from traditional businesses towards entire transition to online shopping. It does not show any signs of slowing down. One of the initial promises of ecommerce was that it allow businesses to reach a greater number of customers, not only in their immediate vicinity but anywhere in the world. In today's technology-driven society, there are primary causes that have contributed to the expansion of ecommerce and one must be aware of these causes and implement them into the strategy for growing our business.

Some of the causes for the growth of e-commerce are:

- I. Mobile Adaptivity
- II. Convenience
- III. A Wider Selection of Products and Services

### **I. Mobile Adaptivity**

Smartphones and tablets are responsible for an increasing share of all web traffic, which in turn drives growth in e-commerce sales. All of the top brands guarantee that their websites are mobile-friendly, which improves the overall experience for their customers. Additionally, the majority of these brands also provide native mobile applications, which make shopping even more convenient. In addition to this, technology improvements like as voice-activated purchasing and improved connectivity have created a boom in mobile shopping revenue. Customers are provided with real-time updates about newly launched products, special discounts and promotional schemes, and the opportunity of making a purchase with just one touch has contributed significantly to the explosive expansion of e-commerce. Smartphones also make it possible to provide location-specific services, which helps businesses cultivate closer relationships with their clients and also draws in a larger number of customers. To make the move into this new phase of online commerce as painlessly as possible, some thought to employing a technical support professional or an ecommerce support virtual assistant should be given.

## **II. Convenience**

The convenience of being close to a store is no longer a factor in the decision-making process. E-commerce guarantees accessibility with no downtime for holidays, store hours, inclement weather, or other factors. Customers are free to shop whenever and wherever they like, including from the comfort of their own beds if they so choose. With online shopping, purchases may be made more quickly and without the burden of dealing with crowds, traffic, or uncomfortable social interactions.

Customers are able to compare different offerings online and read reviews written by other customers to get an idea of how well a product or service performed in the opinion of people who are similar to themselves. This allows customers to determine which offer provides the best value without having to travel from one store to another. The ability to search for the desired good or service, place an order for it, and receive it at a time and in a form that is convenient for the customer all with the touch of a button or the click of a mouse has changed the way people shop. This has encouraged instant gratification and increased the amount of money spent on e-commerce.

### **III.A Wider Selection of Products and Services**

E-commerce has the potential to supply a product or service from any location to a global consumer base, which drastically reduces the expenses of operations. Other benefits of e-commerce include insignificant utility expenditures, skeletal employees, and exceptionally cheap overhead costs. Because of this, companies are now in a position to pass on some of the savings to price-sensitive customers in the form of cheaper products that come with automatic replenishment. This is made possible by the fact that warehouses are no longer tied to specific geographic areas.

#### **4.3 Concept of E-Commerce and Personal Data Protection**

In today's time concern for the privacy have increased. It is very hard to maintain the privacy of an individual in real world and now in this time when everything has gone online, we are still struggling to keep the information and the data secure. There are

various cases where users are told to disclose their information even, they are still not interested to do so but still they are forced to do so.

<sup>57</sup>This is not the ending of this thing then that information is being circulated among the organizations who basically deal in those things in which a person is interested. E-commerce is how we can keep our personal, financial, browsing information safe from the unknown sources<sup>58</sup>. Here are various applications on the play store which do not offer reliability but as people are not very much aware about this fact that first we need to check the reliability of that particular application we are lacking somehow in strengthening our E-commerce and to provide protection to the personal data which we usually post on online platforms. Even the links without any reliability get clicked by the individuals which are the source of the viruses which enter into the systems and create a problem for the individuals.

Normally it is seen that the spamming attacks are increasing with the time and the large number of users are falling under the trap of this as they are not aware of the technologies which have come into use as with the changing time. If the privacy was not interpreted by the judiciary as to be included under Art. 21 of the constitution of India, then too it would be very much difficult for a human being to survive without having the right to privacy with them because it is very much essential to keep certain private and personal information away from the general society as a whole. There are various information which cannot be shared with the society as a large. If an individual wants to live their life in the dignified manner the right to privacy on an online platform is very much essential. As, under this pandemic everything is done using the online media platform even the small transactions are also done on the online platforms which however increases the risk of threat among the people of getting their information misused but the actual situation should be somehow different as the people have started doing everything on an online platform.

Basically, the motive of Art. 21 of the constitution is to help the individual to live a dignified life and the right to privacy is very much important for an individual to lead a dignified life. Everything is done on an online platform but if we will not have the

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<sup>57</sup>Renata Mekovec, 'Online Privacy : Overview and Preliminary research 34 JIOS 195 (2010)

<sup>58</sup> Olga Sushko 'What online privacy is and why it is important' <<https://clario.co/blog/what-is-online-privacy>> Accessed 17 June 2022

E-commerce with us it will however demotivate the user to further trust the online platform and the social media sites. If I talk about the today's situation where the essential items are also preferred to be purchased online and then we have to do payment through online mode only where various users comes in fear that whether we should proceed or not because we do not have the proper and the well-established framework or the system which however strengthen our E-commerce and helps us in the protection of the personal data which we our posting on the social media platforms. If an individual do not know how to use the social media or how to use the online platform can create a problem for himself or herself only as there are privacy policy settings but which various people are not aware off<sup>59</sup>.

There are various aspects where privacy have played a key role. For instance various health report are being shared online with this belief that the report which is being shared would remain between the doctor and the patient but this can only be possible when we will have strict E-commerce laws and the personal data protection laws and that's the main reason that we should have strict privacy laws for our online protection but these laws would be helpful in the condition when we will be able to create the awareness among the individuals related to their E-commerce.

As, we lack in providing the proper framework or the mechanism for the E-commerce that we are seeing more No. of cases during the pandemic as the information gets transmitted easily. Sometimes the user opens up various pages on the search engine that it hardly matters for him to go through the privacy settings of that and some might think that it is the wastage of time. Various applications which are installed by the user first asks the consent of the user but sometimes majority of them with their casual behaviour without even reading gives the consent for it and whereas the consequence the sensitive information of the user also gets shared<sup>60</sup>. The user should understand that while giving permission to any application the user should read the conditions attentively or otherwise it might be proved as threat to the privacy of the individual online<sup>61</sup>. At the present time, the E-commerce is very much important because nowadays everything is done on an online platform and we often share our personal

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<sup>59</sup>Internet privacy <[https://en.wikipedia.org/wiki/Internet\\_privacy](https://en.wikipedia.org/wiki/Internet_privacy)> Accessed 17 june 2022

<sup>60</sup>Macerlo Halpern and Ajay K. Mehrotra, 'The Tangled Web of E-Commerce: Identifying the Legal Risks of Online Marketing, The Computer Lawyer 'Vol. 17, issue No. 2, 9 2012

<sup>61</sup> Abdullah Al Hasib ,” Threats of online social networks” , 9 . IJCSNS 288(2009)

and the sensitive information which might be proved to be very much dangerous for us. The online platform is such a platform where everything is opened under it and it is not a big task to find out some information on the online platform so, the only way to protect the privacy on the online platform is to be very much aware of the technologies which we can use. It has been seen that people are not very much aware of the privacy settings and hence as a result, they try to lose their access or the control on the information which they have shared on the online platform and this is the point where people with the malicious attention try to earn gain out of it.

#### **4.4 Indian Position as To E-Commerce and The Personal Data Protection**

In India day by day cases are increasing as to protecting the privacy of a person online. There are various data which are available on online platforms and which can be accessed easily without any hindrance but some data is related to personal life of an individual and which cannot be disclosed to any other person. There are specifically no such laws which are absolutely devoted to protection of the E-commerce but various provisions of the I.T Act, 2000 deals with such cases of the E-commerce.

In India, no doubt that we have various such laws which helps in data protection online but they are not up to mark because of the fact that legislative framework is not appropriate<sup>62</sup>. There are various provisions which are made for the safety and the protection of the users but unfortunately, they do not understand the value of their E-commerce and they casually post anything on the online platform. The only thing is that there is lack of awareness among the people and the cases for such E-commerce and the personal data protection might be reduced and the Govt. is also working on the E-commerce and trying to establish a proper mechanism and framework for their E-commerce and the personal data collection. The I.T Act has no doubt various provisions which deals with various cybercrimes which are increasing day by day.

The Right to Privacy should be maintained whether it is in the real world or in the online digital world. Being a human being, a person need privacy in their life as to what they are searching online or what they are doing. If we keep the constitution

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<sup>62</sup> Data protection <<http://www.legalserviceindia.com/article/l406-Does-India-have-a-Data-Protection-law.html>> accessed 15 june 2022

aside then it would be really tuff for the individual to survive in such a case where there is no such guarantee to their privacy and nor they are aware of their privacy rights. Hence, it can be created an issue for them. Various people who are not aware of the importance of the E-commerce have their very casual behavior towards handling their E-commerce and the personal data protection. They are not much attentive for their E-commerce and they usually share anything and everything on the internet which also includes their personal information in it and which result in the serious consequences for that particular user but also it has been given exception that whenever it comes to the security and the integrity of the state or such time appears like the at the present situation of the corona is going on than the Govt. has the power to invade the privacy of the individuals .

It can be very much dangerous for the people whenever the things come to the invasion of their privacy because privacy must be the priority of any individual and it should never be compromised. Various bills are kept pending which are not given the consideration and are not looked upon but it they are observed then the bills are very much necessary to be introduced in the country so that we can get more strict laws in order to protect our privacy and the personal data protection *In Govind vs. State of M. P*<sup>63</sup>under this case, the SC basically emphasized on the Objective behind the Right to Privacy which the constitution have guaranteed us and it was laid down that the personal space should be respected of an individual. The famous case law Justice<sup>64</sup>*K.S. Puttaswamy (retd.) &Anr vs. Union of India and Ors* under this case, the concept of the privacy has been discussed and it was clearly stated that the privacy right has been impliedly included Art. 21 of the constitution of India. We also have the Personal Data Protection Bill, 2019 and the main focus of this bill is to help an individual to keep its information or data safe and private. The biggest advantage of it Is that we being the consumers sometimes get in trap as we are forced to give the information related to us for a particular task but Acc. to this Bill, if that particular task gets over it automatically will give the power to the consumer to delete that particular information which he have given for but also simultaneously the bill gives the Right to the central Govt. to exempt any of the Govt. agency but the sole reason behind this is that when it

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<sup>63</sup>AIR 1975 2 SCC 148

<sup>64</sup> AIR 2017 SC 4161

comes to the sovereignty and the security of the state<sup>65</sup>. When the judiciary realized that there is urgent need to include the right to privacy under the various Art. Of our constitution then finally, they made some interpretations. There are various concepts which have been given by the various jurists related to their understanding and it is not the same by all the jurists as everyone have their own and separate understanding.

If we talk about the IT Act, 2000 then the Sec 43 A of the particular Act specifies that if there is any body corporate which usually deal with the sensitive data and the personal information and that particular body corporate is having negligent attitude towards maintaining the security practices then they can be made liable to pay the compensation to the person who have been affected by it and then we have the Sec 72A if any individual is providing any personal information and that person is having an intention to earn a wrongful gain from disclosing that particular information to the any other party then can be extended to three months .

Recently, the Govt. made compulsory for all the citizens to share their personal details with the Govt. and they didn't had any other option left with them other than to give their all the details. If we witness the present scenario of our society which have been created because of the UN sudden pandemic of corona where everything has been going through on a social platform digitally so the cases of such using of the personal information have been increased suddenly. Sec 66 C The famous case law which is related to the privacy is the<sup>66</sup>*Kharak Singh vs. State of U.P.* It was basically stated by the court that the Right to Privacy though not clearly given in the constitution of India but it has been included in the ART 21 of the Constitution. This has been proved as a landmark case in our history as related to our concern of Privacy. In 2011 also, the Govt. gave the information Technology Rules. These rules basically deal with sensitive or the information of the person and it includes such set of information or data which particularly talk about the passwords, physical and mental health conditions, biometric Information and certain other information. The Aadhar Card case where people were even not asked whether they want to give their personal information or not so in that case that comes under the exception because as if the Govt. wants to obtain the information of the general public as to the keeping in mind the safety of the people. In India so they have to show their Aadhar Card in order to

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<sup>65</sup>Personal Data Protection Bill, 2019 s 35

<sup>66</sup>AIR 1963 SC 1295



establish their identity and if they want to avail the benefits of the Govt. schemes, they must have such identity cards with them and in order to have this with them they have to give their personal details because the Govt. has been excluded for this purpose accordingly. If I talk about the present scenario of the country then the I.T Act, 2000 is prevailing all around the world. Also, the above stated Act specified various punishments for the computer related offences as in today's time the computer related offences are increasing day by day and they are specified under Sec 66 and also the amendments which keeps on taking place as and when in need and demand by seeing the situation thereof.

The provisions which are stated in the IT Act, 2000 talks about the sensitive information about the users and not the normal information or the data of the user. There are various bills which have introduced in between to protect the privacy of the person online as and when the cases have increased in the unfortunate time of corona pandemic where people do not have any such source of income and they are dependent on doing such frauds in the market and increasing the terror in the minds of the people. Whenever such situations come and the cases increases then various laws come into picture from the I.T Act to the Data Protection Act, 2004. Everything is done online at the present moment by seeing the situation and the cases of cybercrimes have also increased much.

#### **4.5 Legal Remedies and Rights Available to Victim of E-Commerce**

Basically, when any case comes when the E-commerce of an individual gets violated then it is basically seen as a cyber- offence because it comes under that category only. If any individual data has been stolen can go under IT Act and can make that person liable and then ask him to pay the penalty. This basically talked about the civil liability but if a person wants to go for criminal liability, then also there are different sections. Sec. 65 to 74 deals with various kinds of offences which deal with the cases related to the offences. It also deals with the violation of the privacy and the confidentiality issues. The crime which is taking place currently in most of the areas are the identity concealment of an individual. The basic objective behind it is to earn some financial gain from it and mostly the digital signature of an individual is copied from the

website. Also, simultaneously the I.T. Act also specifies the procedure of cheating by the way of using someone's computer resources.<sup>67</sup>

The I.T Act, 2000 not only have various provisions which are related to the privacy and the confidentiality of an individual but it also talks about the personal data protection which is also very much important criteria for our E-commerce and the personal data protection. Also, the major thing is that it talks about the compensation that if there is failure to protect the privacy of an individual then it contains a provision which are stated exclusively under the Act. The compensation which has been given in the above section is the compensation which is usually given to the aggrieved person as we know that sensitive data is very much essential for the individual so this provision is also very much crucial for the individual. The I.T Act, 2000 expressly provides for the provision of the consent in the cases of the E-commerce and the personal data protection<sup>68</sup>. I.T Act is the one under which there are chapters which deal with the privacy and the confidentiality of an individual. We also have various rules which have been given under the Indian Telegraph rules, 1951 related to our E-commerce and the personal data protection. It even stated that the rules for the service providers that how they should be responsible enough to keep the privacy of an individual secret and all the personal data should be protected because service providers are the one who have the information about the various people and they should be responsible enough to keep the information of the people private and secure. Even there are various Govt. organizations which demand the personal information of an individual and should provide guarantee to protect whatever information they have taken because that will make easy for the individual to trust and to give their personal information.. We also have Information Technology Rules which are given in 2011 which basically talks about the sensitive data or the personal data of an individual i.e. which includes our password or the details of our bank and it even includes our biometric information. Then we have personal data protection Bill, 2019 which also gave importance to our personal and the sensitive data on an online platform. The main complication which is faced on the online platform as we compare with the privacy in the real world is that the online platform is widely opened to everyone

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<sup>67</sup>Information Technology Act,2000, s 66 D

<sup>68</sup> Information Technology Act ,2000, s 72-A

because half of the people do not understand our privacy policies and have of the people are not aware about the policies and have of them do not use it.

The famous case law *R. Rajagopal vs State of T. N*<sup>69</sup> this has been proved as one of the landmark cases. IF anyone's right to privacy has been violated can also come to the court for that particular right and can claim it. There are various case laws from which we can assume that how important Right to privacy has become now. Although it has expressly not been given in the constitution but its interpretations have been done by various judges. Art. 21 have not been clearly given as to what all rights shall be included in it but it has been simplified by our various judges for the people as to what right they can demand but the thing is that what about the Online Privacy. As, to what are the conditions in which an individual can claim the online privacy. As, in the starting the Right To Privacy was not given enough recognition as it was never given in our constitution but when the judiciary came up with various interpretations then the Right To Privacy have gained the equal importance as compared to some other right and thus have become actionable .The Right to privacy has been included as a right under the Art. 21 of the constitution of India and if somebody has to claim it can go as it is actionable. As, the use of the social platform has been increased so the cases of the E-commerce are also been increasing and we are in need of the strict laws and a well - established mechanism for our privacy which is related to the online platform.As, most of the people using the social media platform are not very much aware about the online platform and the policies of it and how it can be used. The first thing which we need to do is to create awareness among the people and to educate them how to use their social media platform and how to keep their identity protected as the number of cases are been increasing for the concealment of the identity of the individuals.

The I.T Act, 2000 talks expressly about the hacking, data theft and even it has a separate provision for the concealment of an identity. This Act contains all the provisions which are related to the E-commerce of an individual but yet it lacks out where provisions which are very much needed. There are times when people criticize the particular Act and then they are left with no option because we don't have enough laws which are made in order to protect the privacy of an individual and the Govt. is still working on this thing that to establish a proper mechanism for the E-commerce and the personal data protection.

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<sup>69</sup>AIR 1995 SCC264

## CHAPTER 5

### LEGAL REGULATION OF E-CONTRACT IN INDIA

#### 5.1 Legal Position of E-Contract in India:-

Cyberspace-related laws have already been developed in numerous nations and India have also recognized many laws relating to online services. Undoubtedly, the use of electronic contracts is growing in India. “Indian Railway Catering and Tourism Corporation Limited” (IRCTC) is undoubtedly India's top e-commerce site and the country's response to initiatives backed by private equity. However, there are absolutely no rules governing the payment methods that every e-commerce website must accept or the transaction fees that they may charge. It has been observed that several travel websites add extra fees to the payments made by the users. According to the websites, that is a standard procedure in the sector. As a result of concerns about anti-competitive practices, the situation becomes even more complicated.<sup>70</sup>The Indian Contract of 1872 acknowledged conventional contracts, including oral agreements formed with the “free consent” of the “contracting parties” and for legitimate “consideration” with a “lawful intent” that are not specifically “declared void”. Therefore, there is no clause in this Act that forbids the enforcement of electronic agreements under the condition that they contain all of the requirements for a legitimate contract.

The primary elements of a legally binding contract are thought to be the parties' free consent. E-contracts typically do not allow for negotiation. The user always has the choice of a "take it or leave it" transaction. The Indian courts have addressed the legality of e-contracts in a number of cases, including those involving contract term negotiations. “Consumer Education and Research Center v. LIC India”, SC Court ruled that "there would be no occasion for a weaker party to bargain as a stronger party in dotted line contracts." According to the conditions of the dotted line contract, he must either accept the service or leave the items. He would have the choice of

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<sup>70</sup>S.R.Subaashini' Legal issues arising in E-contracts in India: An analysis International Journal of Pure and Applied Mathematics' Vol 120 No. 5 2018, 4601-4618 ISSN: 1314-3395 (on-line version <: <http://www.acadpubl.eu/hub/>> accessed 9 june 2022

continuing to use the service continuously or accepting the unfair or unreasonable terms.<sup>71</sup>

The country has seen a surge of industrialization, raising the stakes in business dealings. Therefore, it is necessary to protect these agreements. Fortunately, one of the oldest pieces of legislation, the law of contracts, does the job. A contract is "an agreement enforceable by law." Today, a contract is created for every small business transaction since it legally links two or more parties to a relationship. Furthermore, "when a party fails any obligation, the other party may seek damages in a court of law". The basis of contract law is the notion that when two parties come to an agreement, they thereby establish a binding legal obligation that other parties may enforce.

The Indian Contract Act, 1872 regulates how contracts are created and carried out in that country. It controls how the provisions of an agreement are carried out and categorizes the effects of a breach of those provisions. It provides a set of guidelines and regulations that supervise the creation and implementation of agreements. The rights, obligations, and terms of the agreement are decided by parties. If there should be a situation when there is no execution, the courtroom demonstrations will be used to implement understanding. Electronic contracts, or agreements made in an electronic format rather than on paper, were developed to meet the needs of speed, comfort, and productivity.

All of the problems that arise with electronic contracts cannot be resolved by the traditional legislation governing contracts. "The Indian Contract Act.1872", which is the country's standard law governing contracts, was ill-prepared to handle the problem of electronic transactions. The Indian Parliament passed the "Information Technology Act, 2000" to address some unavoidable problems that arose during the creation and approval of electronic contracts.

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<sup>71</sup>Rupak Ghosh , 'The Contractual Validity of E-contracts: An overview' , <[www.legalserviceindia.com](http://www.legalserviceindia.com)> accessed 19 june 2022

## **5.2 The Legal Framework of Electronic Contracts in India**

An electronic contract is the interaction of an individual with electronic means such as email, which result later in the formation of an electronic contract. An electronic contract is one that is created in this manner. “A contract is a legally binding agreement according to Section 2(h) of the Contract Act”. Although the Electronic Contracts Act (also known as the Contract Act) does not expressly mention electronic contracts (also known as e-contracts), it also does not set any limitations on e-contracts. The electronic contract is one of the most significant features of doing business online. It involves the buying and selling of various products and services.<sup>72</sup>

The electronic contract is one of the most important elements that makes up this whole. It entails exchanging a specified quantity of money for the purchase of products and services in exchange for the money. E-commerce, which refers to business conducted via the internet, is an extremely important component of this transaction. The electronic mode of communication makes it possible for retailers to communicate with final customers without having to go through any intermediaries.

The various Acts dealing with E-contract are:

### **5.2.1 E-contract and Consumer Protection Act 1986**

The terms of multiple consumer laws passed in the nation give consumers a variety of rights. “Consumer Protection Act, 1986 “ is the fundamental law that establishes and protects consumer rights. This Act lists the three tiers of dispute resolution a system for resolving consumer disputes is in place in India, specifically at the district, state, and national levels.

However, the law was unclear until recently as to whether such Online transactions would be covered by the provisions. In a written reply submitted to the Lok Sabha on July 8, 2014, the “Minister of State for Consumer Affairs, Food, and Public Distribution” announced that the Consumer Protection Act would now cover online transactions as well.

Fundamentally, this meant that consumers could take their complaints to a variety of consumer forums, including the “District Consumer Forum”, the “State Commission”, and the ‘National Commission’. Even while such a declaration may not ultimately

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<sup>72</sup>Legal regulation of e contract in india

<<https://shodhganga.inflibnet.ac.in/handle/10603/38507>>accessed 19 june 2022

result in legislation, it was an important step in establishing a system for protecting rights. However, even this does not imply that new laws have been passed to specifically address e-commerce or that there is a separate procedure for resolving disputes resulting from online purchases. Effectively, online purchases are subject to the restrictions of the Consumer Protection Act of 1986.<sup>73</sup>

Prior this most recent stated pronouncement, the definitions outlined in the Consumer Protection Act of 1986 were implicitly applied to online transactions. According to the “Consumer Protection Act of 1986”, a person is considered a consumer if they purchase a good or use a service for any reason other than for commercial purposes. 2 According to the Sale of Goods Act of 1930, a buyer is someone who purchases or agrees to purchase goods. 3 In light of these two definitions, regardless of whether a sale occurs online, anyone “who pays or agrees to pay a price for a specific commodity can be viewed as a consumer”.“Furthermore, the Sale of Goods Act, 1930's definition of a contract of sale” indicates that it may also apply to conventional and online transactions. Therefore, even though the Consumer Protection Act of 1986 had never explicitly mentioned e-commerce, its provisions impliedly granted consumers the ability to file a complaint thereunder.

### **5.2.1.1 Loopholes in the consumer protection Act 1986**

This law does not completely address all elements of e-commerce in terms of consumer rights. It primarily deals with business or commercial transactions made by companies with the government or vice versa. It offers information on how to store, view, and file documents related to a business and protects and authenticates those documents using “digital signatures”, “asymmetric cryptography”, and other tools. An average Indian rarely engage in such transactions in his daily life; instead, use electronic commerce for online shopping, online banking, and money transfer operations, among other things. Despite the need for the enactment of such requirements, no particular provisions for the same have been set down in the Act. The “IT Act” does not establish a framework for the protection of consumer rights.

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<sup>73</sup>Consumer protection Act, 1986

### 5.2.2 E-Contract and Information Technology Act 2000

IT Act regulates the rules relating to all forms of electronic transactions and offers a number of procedural and administrative regulations. “The attribution, acknowledgement, and dispatch of electronic records and secured electronic procedures are covered by the IT Act's provisions. The IT Act acknowledges the fundamental elements of a contract, including the communication of proposals, acceptance of proposals, and revocation of proposals and acceptances”. These elements may be communicated electronically or through the use of an electronic record.

Indian law recognises electronic contracts and electronic signatures (E-Signature), which are governed by (IT Act)<sup>74</sup>. The Act would be applied to the electronic contracts, making them legally binding. A user who receives information in writing, typewritten, or printed form and makes it available to them in electronic form for future reference is regarded to have complied with the law, as per “Section 4 of the Information Technology Act, 2000. It indicates that every document, whether it is written or printed, will be treated equally and will be valid in both written and electronic form.”<sup>75</sup>

In accordance with Section 4 of the IT Act, any information or matter that is required by law to be in writing, typewritten, or printed form is assumed to have been satisfied if it is available in an electronic format and is usable for future reference.

Section 4 of the IT Act recognised legal contract

"Section 4 – Legal recognition of electronic records – Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

- (a) rendered or made available in an electronic form; and
- (b) accessible so as to be usable for a subsequent reference."

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<sup>74</sup> Buddhkulkarni Validity of electronic contracts and signatures and its enforceability "All About E-Signatures - iPleaders Blog." <, <https://blog.iplayers.in/all-about-e-signatures/>> Accessed 2 Jun. 2022

<sup>75</sup> Information Technology Act, 2000 s 4



An electronic contract is recognised legally by IT Act of 2000's provisions, in particular "section 10-A of the IT Act", which states the following:

"Section 10A - Validity of contracts formed through electronic means –

Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances as the case may be, are expressed in electronic form or by means of an electronic records, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."<sup>76</sup>

The courts in India have frequently affirmed the legality of contracts made in an electronic form in light of the aforementioned IT Act provisions.

SC had observed that "once a contract is concluded orally or in writing, the simple fact that a formal contract needs to be prepared and initialled by the parties would not affect either the acceptance or implementation of such contract". This was the case of <sup>77</sup>*Trimex International FZE Ltd. Dubai vs. Vedanta Aluminium Ltd* where the offer and acceptance had been conveyed by the parties through email in the absence of signed documents". The High Court of Madras applied the provisions of the IT Act to an e-auction in the case of "*Tamil Nadu Organic Private Ltd. and Ors. vs. State Bank of India*"<sup>78</sup> and concluded that contractual liabilities might arise through electronic methods and that such contracts could be enforced by law". As per as requirement of Indian contract act is fulfilled Contracts made using electronic means are lawful under "Section 10A of the IT Act, and the IT Act". The court reviewed an appeal against a decision referring disputes to arbitration in London under the English Arbitration Act 1996 in *Shaktibhog Foods Ltd. v. Kola Shipping Co.* In accordance with section 7 of the Act, "an arbitration agreement's existence can be ascertained from a document that has been signed by the parties, letters, telex, or other methods of agreement, according to the court's interpretation of the emails sent and received between the parties". The Madras High Court ruled in *Tamil Nadu Organic Private Ltd v. State Bank of India*

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<sup>76</sup> Information Technology Act, 2000 s 10

<sup>77</sup> 2010 (1) SCALE 574

<sup>78</sup> AIR 2014 Mad 103

that electronic contracts may give rise to contractual obligations and that such agreements may be enforced by law. According to the High Court, Section 10A of the IT Act permits the conclusion of agreements and contracts using electronic records and procedures.

Article 11 of “UNICITRAL Model Law” on E-commerce provides that “where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose”.<sup>79</sup>

### 5.2.2.1 Loopholes in the Information Technology Act

Although the IT Act of 2000 recognized electronic contracts, many people believe that entering into any type of online contract is less secure because there are no clear-cut legal precedents in India regarding the legality and enforceability of online contracts. Assent is given by the consumer or the purchaser with the tearing of the wrapper and use of the product in the case of “shrink wrap contracts” or the purchase of software. In the case of browse wrap contracts, we typically accept the terms and conditions of the contract by clicking the button that says I “Agree.” Many people have a habit to quickly agree to terms and conditions without carefully reading them. However, these decisions should only be made knowingly and cautiously after carefully understanding the contract's contents, as doing otherwise results in a legitimate agreement that can be strictly enforced against the parties.<sup>80</sup>

However, courts in other nations, like the US, have addressed the enforcement and legality of contracts like shrink wrap and click wrap agreements. In the well-known case of <sup>81</sup>“*ProCD, Inc. versus Zeidenburg*”, it was decided that “the very act of the purchaser opening the cover after reading the terms of the licence featured outside the wrap licence and accepting the entire terms of the licence that appear on the screen by

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<sup>79</sup>UNICITRAL Model Law, Article 11

<sup>80</sup> Legal validity of e-contracts: a study - Shodhganga." <[http://shodhganga.inflibnet.ac.in/bitstream/10603/107814/12/12\\_chapter%20v.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/107814/12/12_chapter%20v.pdf). > Accessed 2 Jun. 2022

<sup>81</sup>F.3d Supp. 640 (W.D. Wis. 1996)

a key stroke constitutes an acceptance of the terms by conduct." Thus, it is established that shrink wrap agreements are legitimate contracts that can be used to hold the software buyer accountable as long as standard contract laws are followed.

The Court for the "Northern District of California upheld" in the well-known case of Hotmail Corporation that "the defendant is bound by the terms of the licence as he clicked on the box containing I agree thereby indicating his assent to be bound" which led to the first consideration of the legality of click wrap agreements.<sup>82</sup> In *Money Pie Inc. v. Hotmail Corporation* the Appellate Division of the Superior Court also found that the plaintiff had engaged into a legitimate and binding contract by selecting the "I Agree" option in the dialogue box and could be held liable for the terms and conditions stated in the contract. Therefore, click-wrap agreements are legitimate and enforceable in the US provided the offer and acceptance It takes into account the offer and acceptance principle.<sup>83</sup>

### **5.2.3 E-Contract and Indian Evidence Act 1987**

It is important to put into context immediately now the fact that evidence that is recorded or saved using technological devices is accorded the status of evidence. For instance, the voice that was captured using a "tape recorder the digital voice recorder, digital camera, digital video camera, and video conferencing" are today's innovations that are giving the evidential system a new dimension. As information and communication became more widespread, the position of the evidence that was recorded, generated, or stored electronically underwent a radical transition, moving from being secondary to being main.

Indian Evidence Act, which defines "document as any information contained in an electronic record that is printed on paper, stored, recorded, or reproduced on optical or magnetic media created by a computer, e-contracts are recognized"<sup>84</sup>. Such information is in accordance with the requirements of Section 65B of the Act and is admissible in any proceedings without the need for further justification or the

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<sup>82</sup> 1998 WL 388389

<sup>83</sup> "Devesh Pathak. L.S. Rajpoot, 'Legal Impact of Technology on E-Contracts Communication in India' Vol. 3 Issue ISSN 2455-5967

<sup>84</sup> Indian Evidence Act. s 1872

production of the original document before the relevant authority. It is also regarded as evidence of the contents of the original or of any fact stated therein for which direct evidence is admissible. Thus the courts in India recognize electronic documents under “Indian Evidence Act, 1872”.

“Indian Evidence Act, 1872 section 65-B states any information contained in an electronic record produced by a computer in printed, stored or copied form shall be deemed to be a document and it can be admissible as evidence in any proceeding without further proof of the original”. An e-contract is therefore admissible as evidence, and this beneficial development ensures that contracts formed by consumers online for the provision of a certain commodity or service can be brought to light in the event that they are violated. Not only does the established law recognise electronic records as evidence, but the courts also concur that it is urgently necessary.

However, a number of requirements outlined in section 65-B of the aforementioned legislation must be met in order for the same to be admissible. It is necessary that the document or email being produced from a computer was being used regularly by someone with legal control over the system at the time it was being produced, that it was being stored or received in the normal course of business, that information was being regularly fed into the system, and that the output computer was in good working order and had not impacted the accuracy of the data entered.

The courts held that “electronic records are admissible as evidence” in the case of *State of<sup>85</sup> Delhi v. Mohd. Afzal & Others* and further noted that if someone challenges the accuracy of computer evidence or an electronic record on the grounds of system misuse, operating failure, or interpolation, they must establish this claim beyond a reasonable doubt.

Thus, the Courts have adopted a pro-e-commerce and pro-e-governance posture. This can be inferred from the precedents set by the Courts in *Societe Des Products Nestle S.A. Anr. v. Essar Industries And Ors.* In that case, the Courts recognised the recent growth of e-commerce and stated that the increased reliance the world as a whole had on electronic records called for the establishment of a law relating to the admissibility and proof of electronic records.

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<sup>85</sup>AIR 2003 SCC 234

Referring to recent changes brought about by the internet and other information technologies, it was argued in <sup>86</sup>*State of Punjab v. M/S. Amritsar Beverages Ltd. &Ors.* that “Section 63 of the Evidence Act now permits the admission of computer outputs in various media, such as paper, optical, or magnetic forms. Additionally, Section 65-B of the Evidence Act specifies the process for providing electronic documents as evidence”

In order to make the Indian Evidence Act, 1872 compatible with the electronic techniques of document execution made possible by the IT Act, it was also appropriately amended. Electronic records, agreements, and contracts are admissible in evidence under the Evidence Act.

The Courts have concentrated on amending other Acts to integrate the scope of the expanding usage of the internet and electronic records in their ambit while also taking into account the broad scope brought about by electronic records.

“Section 73A prescribes procedures for verification of digital signatures. Sections 85A and 85B of the evidence Act raise a presumption as regards electronic contracts, electronic records, digital signature certificates and electronic messages.”<sup>87</sup> Sections 85A and 85B of the Evidence Act “raise a presumption as regards validity of digital signatures in electronic contracts, secure status of electronic records and digital signature certificates and digital signature certificates, unless contrary is proved observed” Indian penal code also deals with the provision of the digital signatures. Various sections have been amended so as to include the provision of digital signatures.

### **5.2.3.1 Loopholes in the Indian Evidence Act 1872**

It is well understanding that the Indian Evidence Act, 1872 requires that a document be stamped in order for it to be considered admissible in court. In actuality, only real objects are stamped, though. There have been intense discussions on whether e-contracts should also be subject to stamp duty given their recently established legality and validity.<sup>88</sup> But it appears that there is a contrast between the Central and State laws in this area. “By way of an amendment made to the Bombay Stamp Act, 1958 in

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<sup>86</sup>.AIR 2006 SCC 607

<sup>87</sup> Indian Evidence Act s 85 A 85 B

<sup>88</sup>Academike ‘Legal Issues Involved In E-Contracts -Lawctopus.’

<<https://www.lawctopus.com/academike/legal-issues-involved-e-contracts>> accessed 2 Jun. 2022

2005, Article 51A was added, which imposes stamp duty on the record of transactions relating to the purchase or sale of treasury bonds, shares, debentures, and other securities. On the other hand, the Indian Stamp Act of 1899” specifies in Section 8A that there should be no stamp duty on securities in addition to making no mention of stamp duty on e-contracts. Therefore, it is obvious that the Central Stamp Duty Law and the Bombay Stamp Act's revised provisions are at conflict with one another. Because of this ambiguity, the country's laws are themselves unclear and ambiguous, which in turn casts doubt on consumer rights.

#### **5.2.4 E-Contract and Indian Contract Act 1872**

With the “E-commerce increase” and the developing trend of industrial transactions being concluded by manner of net, “execution of contracts” by way of electronic approach has grown to be pretty common. Like a normal paper agreement, an electronic agreement is likewise broadly speaking ruled by the codified provisions of ("ICA"), as applicable to contracts in widespread. Therefore, a digital contract additionally cannot be validly done except it satisfies all of the essentials of a legitimate contract, along with (a) "Offer" and "Acceptance"; (b) "Lawful consideration" (c) "Lawful object" (d) "Free consent" (e) Parties to be able to agreement; (f) Intention of events to create criminal relationship; (g) Certainty and opportunity of overall performance; (h) “Not be expressly declared to be void” and (j) Compliance with formalities under specific legal guidelines governing the settlement<sup>89</sup>. All different statutes relevant to a digital settlement are to be studied in conjunction, and no longer in substitution, with the ICA. Therefore, in this context, if an electronic agreement has been shaped over a chain of digital communications wherein the important factors of the contract (which includes offer, recognition, consideration and so forth.) are captured separately, then the right upkeep of all such electronic information and emails turns into crucial to show the report of the contractual association among the parties.

Every contract made in India must abide by the terms of the ICA 1872 “in order to be legally enforceable”. This Act regulates how contracts are negotiated and performed in India. Such transactions are covered by the Indian Contract Act's broad

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<sup>89</sup> Indian Contract Act s 10

provisions..The simple justification that data messages were utilized for that purpose cannot invalidate or render unenforceable a contract that was formed using an electronic record. A statement of will or other statement should be legitimate, effective, or enforceable as between the electronic record's originator and recipient regardless of its database format. 14

An electronic contract, which is effectively given legal status by “the provisions of the Information Technology Act, 2000” is subject to the fundamental and necessary conditions for the creation of a contract as per “Section 10 of the Indian Contract Act, 1872”. As a result, the concepts of e-contracts and Consumer Protection are both recognised legally through the IT Act.

Generally speaking, a contract is legitimate if it is made by competent parties with their voluntary consent for a lawful object and consideration, according to the ICA 1872. There is no one right manner to convey an offer or acceptance; it can be done through actions as well as orally or in writing. As a result, oral contracts are just as legally binding as written ones, provided they meet all other requirements for a valid contract. In the case <sup>90</sup>*Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas*, it was decided that "typically, a contract is the product of the acceptance of an offer and the intimidation of that acceptance. This suggestion must take the form of an “external manifestation” that the law deems sufficient. so, even in even in the lack of any particular legislation establishing their validity. A simple contact between two parties regarding the transfer of goods or services constitutes an online contract. Additionally, any electronic communication, including emails and other forms of text messaging, is admissible in court under the Indian Evidence Act. The contract that is created after the contact by taking into account the points leads to the conclusion that it is also valid, and Indian law thus acknowledges the legality of online contracts.

#### **5.2.4.1 Loopholes in the Indian Contract Act 1872**

Thus, the Amendment has established the validity of e-contracts as well and spells out precisely how to put the key contract formation principles, such as acceptance, revocation, etc., into practise. Therefore, e-contracts' validity and legal recognition is

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<sup>90</sup>AIR 1966 SC 543

a step toward guaranteeing that the rights of consumers who engage in online commerce are protected.

Having said all of that, it is crucial to remember that while the idea behind a valid contract is sound, it can be challenging to follow all of its requirements in real life. When conducting business online, it can be challenging to determine if a person is competent to enter into a contract or not. Due to this, contracts are frequently entered into by minors, insane persons, and other incompetent people. Contracts with minors are invalid, as stated in the classic case *Mohoribibi v. Dharmodas Ghose*. Due to the lack of protections offered online, contracts with such minors made online would also be null and void.

The two types of contracts, “Click Wrap contracts and Shrink Wrap contracts”, make it challenging to protect customers when conducting e-commerce. When entering into a click-wrap contract, the parties must often declare their agreement to the terms and conditions by clicking a "I Agree" or "I Disagree" symbol after reading them in the website or software. 11 The term "shrink-wrap agreements" comes from the "shrink-wrap" packaging that typically holds the “CD Rom of software”. The terms and conditions for using a certain piece of software are printed on the CD's shrink-wrapped cover, which the buyer must tear in order to access the CD Rom .

These licenses, which only show up on the screen when the CD is loaded into the computer, often also include additional terms. The user always has the choice to return the software for a full refund if the new terms are not to his taste.

These contracts can be found all over the Internet, and it is difficult to be using the services it provides without having signed one of these contracts at some point. However, this has the shortcoming that because of their impersonal nature, the customers in this case are unable to negotiate the terms and conditions. Therefore, if the consumer wishes to proceed with the transaction, their only choice is to accept the contract's terms.

Many feel that these contracts may even result in undue influence as defined by Section 16(3) of the Indian Contract Act, 1872, as the service provider is in a position to control the consumer's will. However, numerous judgments have found such contracts to be genuine and enforceable 13, disproving the earlier contention.



Since they have been upheld as valid, any consumer rights breached as a result of a breach of these agreements may be challenged in court; however, the drawback still exists that customers in this situation must adhere to the strict restrictions that have been set down.

### **5.3 VALIDITY OF E-CONTRACT AND E-SIGNATURE**

E-contract and E- signature have the same effects as that of an paper agreement and as per various provision they are enforceable.

#### **5.3.1 Validity of E-contract**

E-contract and E- signature have the same effects as that of an paper agreement and as per various provision they are enforceable.

E-Contract governed by the fundamental components of contracts, such as offer and acceptance, free consent, capacity, and lawful consideration, and receives its legal status from Section 10 of the ICA. Electronic contract execution is becoming more commonplace as a result of the proliferation of online shopping and the increasing desire for conducting business online. The Data Innovation Act of 2000 (also known as the "IT Act") is another piece of legislation that provides legal recognition for the use of electronic contracts and records.

The original IT Act did not specifically mention the legality of E-Contracts. Section 10A of the IT (Amendment) Act of 2008, referred to as a "Electronic Contract," is later added and deals with the legality of contracts entered into electronically. Section 10A declares “where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances , as the case may be , are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose”.<sup>91</sup>. The definition of "Data Message" is defined in “Article 2(a) of the UNICTRAL MODEL LAW on electronic commerce, which was first drafted in 1996 and then updated in 1998”. “Information generated, sent, received, or stored by electronic, optical, or similar means, such as,

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<sup>91</sup> Information Technology Act, 2000 s 10 A

but not limited to, electronic data interchange (EDI), electronic mail, telegraph, telex, or teletype, is referred to as a Data Message”. According to Article 11 of the UNICITRAL Model Law on E-commerce, when a data message is used to create a contract, that contract's legality or enforceability cannot be questioned just because a data message was employed for that purpose<sup>92</sup>.

Similar to this, with click wrap agreements, the terms and conditions are presented as an offer, and once the user confirms their agreement by clicking "I Agree," the terms and conditions are accepted. Furthermore, any legal requirement for physical records that calls for material to be in typewritten or printed form is presumed to be satisfied if it is in electronic form and accessible for future reference under Section 4 of the (IT Act), Additionally Section 10(A) of the IT Act provides legitimacy by acknowledging the creation, acceptance, and cancellation of contracts in electronic form. An electronic record of an e-contract is kept with the appropriate parties in electronic form after it has been completed. The fact that it is in electronic form shall not render it ineffective. In the case of *Tamil Nadu Organic v. State Bank of India*, the Chennai High Court used and upheld these terms (2019) The Court stated that obligations may arise through such electronic contracts and means as long as general contract principles are observed and are legally enforceable as stipulated in the Contract Act, and the outcome of the electronic auction was upheld.

There have been instances in which Indian courts have acknowledged the legality of the performance of contracts using electronic techniques, such as email correspondence (or the execution of electronic agreements). For example, the Hon'ble High Court of India came to the conclusion in *Trimix Worldwide FZE Restricted, Dubai v. Vendata Aluminum Ltd.* that the contract was clearly recognised by messages and that it was a substantial agreement that met the standards set by the ICA.

### **5.3.2 Validity of Electronic Signature**

To validate an Electronic Contract , Here, the parties authenticate paper contracts by signing them with their handwritten signatures, which is how they do the same for electronic contracts. Similar to this, under “sections 3 and 3A of the IT Act”, the

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<sup>92</sup> UNICITRAL Model Law, Article 11

parties may affix their electronic signatures to an Electronic Contract to confirm its validity.<sup>93</sup> The Electronic Signatures, as outlined in Section 3A of the IT Act, have been approved by the Central Government and are listed in Schedule II of the IT Act. By affixing the signature to the report the authenticity and identity of the individual that signs the files or settlement is made positive and in the end the endorser can not repudiate the equal.

In accordance with “Section 5 of the IT Act if any law requires that any information or other matter be validated by affixing the signature of any person, or that any document be signed or bear the signature of any person, such requirement shall be deemed to have been satisfied if such information or matter is authenticated by means of Electronic Signature attached in”. In this case, a person could authenticate a digital document using a Digital Signature Certificate obtained from a Certifying Authority recognised by the Central Government. An electronic signature attached to an electronic contract has the same legal standing as a handwritten signature attached to a paper contract.

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<sup>93</sup>Information Technology Act,2000 s 3A

## CHAPTER 6

### LEGAL ISSUES AND CHALLENGES IN THE FORMATION OF E-CONTRACT

#### 6.1 Need for Legal Regulation

Because the Internet is a communication tool in the modern, interconnected world, we come across the relationship between e-contracting in cyberspace. The true strength of the Internet is that it has no geographical boundaries and is accessible to anybody with a computer and a phone. There was no need for cyberspace law not that long ago, when internet access was far more restricted. The idea has evolved recently as a result of the internet's development, the transmission of information and the conduct of commerce across international boundaries, and the emergence of several legal challenges relating to cyberspace.

As a professional in the field of information security, it is of the utmost importance to have a solid understanding of the function that rules and regulations serve, in addition to the ways in which compliance may affect us, both on a personal and a professional level. When it comes to safeguarding our individual organizations, assisting with the design of new systems and applications, choosing data retention periods, advising on the encryption or tokenization of sensitive data, and a plethora of other tasks that are essential to the job of a security professional, the requirements within which we are required to operate will, in many instances, be driven by the need to comply with one or more of a number of rules, some of which have the weight of law. In other words, the requirements within which we are required to operate will.

These restrictions might also govern our procedures or our ability to gather information, pursue investigations, monitor networks, or any of a variety of other activities that we would wish to carry out as part of the duties that we have been appointed to. Companies that conduct business on a global scale may be particularly sensitive to the complexities of these issues. This is due to the fact that the laws governing data, employee information, the use of encryption, and other activities that are considered to be standard may actually vary from one part of the enterprise to the next depending on where they are located or the national laws that are applicable to

the origin of the data that we are storing. So, a proper legislation is needed to be known.

The rapid expansion of the internet and its use has been extremely challenging for the entire world to keep up with. It has been extremely difficult for the entire globe to keep up with the internet's explosive expansion and all of its effects, both good and bad. As a result, many nations have already established cyber laws to control this widespread communication method, and India is delighted to be one of them. The Information Technology Act 2000 in India contains all cyber legislation. The Act was created to give India's e-commerce industry a solid legal foundation. The act's promotion of the use of digital signatures for the expansion of e-commerce and e-government is one of its distinctive aspects.<sup>94</sup>

Business-to-business agreements have been an essential component of commercial partnerships for many years. Companies began utilizing information technologies to support their business relationships as soon as information technology was developed. In order to secure the rights and clarify the obligations of the trade partners in relationships enabled by current information technology, traditional paper contracts become an inefficient and ineffective instrument, and electronic contracts become a need.

## **6.2 E-contract Legal Challenges**

The jurisdiction of a court is to hear a matter and make a decision. When it comes to the maintainability of any lawsuit that has been brought, the subject of jurisdiction is widely contested and controversial in cyber law. The fact that the internet has no geographical boundaries makes it more difficult. From the perspective of both the court that can legitimately assert jurisdiction and the point of view of the law that should be implemented while deciding the issue, the concept of jurisdiction is anchored in territoriality. Within their physical, geographical, and political borders, a court will always have the authority to enforce each party's laws in domestic

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<sup>94</sup>. S. Sethuram, Deepa C. Kumar, 'E-Contracts in India: The Framework, Issues and Challenges', International Journal of Emerging Innovation in science and Technology vol 9 no 2

transactions. Due to the rapid advancement of technology in borderless cyberspace, however, the enforcement concerns present a number of difficulties when it comes to international transactions.

The United States and British courts have developed a variety of norms and principles that the Indian Court adheres to in order to define its jurisdiction. The act has not yet addressed some important legal concerns, such as jurisdiction, domain name protection, infringement of copyright laws, etc. Numerous legal challenges to the Indian legal system resulted from this.

Therefore, it was necessary to take practical measures to reduce the challenges and settle any online disagreements that may arise. Social media and Indian cyber law have been the subject of much debate in India over the past several months, with “Section 66A of the Indian Cyber Law being the revised IT Act, 2000 on many times”

Professor Amices Mahapatra was detained in the Professor Amices *Mahapatra case* because she had forwarded caricatures and cartoons on Facebook. Furthermore, the Professor Amices Mahapatra case, in which Mahapatra was detained for posting caricatures and cartoons to Facebook, was demonstrated by the Ravi Srinivasan Twitter case. Additionally, the Ravi Srinivasan Twitter case demonstrated how, in response to a complaint, Section 66A of the updated Indian Information Technology Act, 2000 might be applied to a person's tweets.

In the *K.V. Rao* case, two guys from Mumbai named K.V. Rao and Mayank were detained for allegedly making insulting comments against certain politicians on their Facebook page. Due to the development of the internet, cross-border information and economic exchange, numerous legal challenges relating to cyberspace have emerged. E-commerce, electronic evidence, cybercrime, intellectual property, cyberforensics, and privacy jurisdiction determination and contracts are a few of the important problems. The absence of a comprehensive body of legislation everywhere in the globe is one of the biggest gaps for resolving these problems.

The I.T. Act and Amendments made to the Indian Penal Code, Indian Evidence Act, etc. have made a start in the regulation of cybercrime. E-contracts offer advantages

and disadvantages of their own. On the one hand, they increase automation while decreasing expenses, saving time, speeding up customer service, and eliminating paperwork. This means that by giving participating firms unprecedented access to a worldwide online market place with millions of clients and thousands of products, e-commerce is projected to increase their productivity and competitiveness. However, the idea for electronic contracts instead focuses on how risk should be organised in an automated setting rather than how individuals decide on specific transactions<sup>95</sup>. Therefore, the goal is to establish default guidelines for assigning messages to parties in order to prevent fraud and discrepancy.

### **6.3 E-contract Jurisdiction challenges**

When it comes to the maintainability of any lawsuit that has been brought, the subject of jurisdiction is widely contested and controversial in cyber law. The fact that the internet has no geographical boundaries makes it more difficult. From the perspective of both the court that can legitimately assert jurisdiction and the point of view of the law that should be implemented while deciding the issue, the concept of jurisdiction is based in territoriality. When it comes to domestic transactions, a court will always have the authority to enforce the relevant laws within its physical, geographic, and political borders. However, due to the constant advancement of technology in borderless cyberspace, the enforcement of laws presents several difficulties when it comes to international transactions. The Indian Court follows a number of guidelines and standards that the courts in the United States and the United Kingdom have established to clarify the scope of jurisdiction. It is not a simple task to ascertain whether the place of sending the offer, the place of accepting the offer, or the place where the data is in transit shall have jurisdiction. The location where the contract was originally drawn up is going to be the deciding factor in where the lawsuit will be tried. It is highly likely that a contract can be signed in a location that is distinct from that of the country of origin when the transaction is conducted electronically.

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<sup>95</sup>Manoj Kumar Sadual ‘Electronic contracts: Legal issues and challenges ‘  
Utkal University, Bhubaneswar, Odisha vol 8 issue e ISSN 2348 –1269, Print ISSN 2349-5138  
<<http://ijrar.com>> accessed 2 july 2022

Once the location of contract formation is known, determining the appropriate jurisdiction becomes easier. A specific location may be where the cause of action, in whole or in part, arises, and it may also be where the contract should be signed. The Civil Procedure Code, 1908 gives a party the option of choosing a location depending on the purpose of the dispute or the litigant's place of business. "In any instance, an electronic record is considered dispatched at the location where the originator has his place of business and is considered received at the place where the recipient has his place of business, as per Section 13 of the IT Act". Thus, regardless of the location from which an electronic document is sent or received, the place of agreement (should an e-contract occur) is always treated as the place of business of the offeror or the acceptor. The major jurisdictional avenue overlooked for such a gathering may be the other party's place of business in the event that the jurisdictional choice available to party based on purpose for activity identifies with the location of dispatch or receipt of the electronic record. Accordingly, the validity of Section 13 of the IT Act may significantly reduce the rights granted to an abused gathering under the CPC. "Section 13 of the Information Technology Act, 2000 states that if the originator (the offeror) or the addressee (the offeror) has more than one place of business, the location where the electronic record has been dispatched or obtained, depending on the circumstances, shall be considered to be the principal place of business." . In response to this, "Section 20 of the Civil Procedure Code 1908 states that every suit shall be initiated in a court within the local borders of whose jurisdiction defendant or defendants' carries on business or where cause of action totally or partially arises."<sup>96</sup>This suggests that a lawsuit can be launched in the event that a contract is breached either in the location where the breach occurred or at the location where the defendant resides.

"In the case of<sup>97</sup>*PR Transport Agency v. Union of India*, where the Allahabad High Court had to consider the issue of jurisdiction because the respondent had sent the letter of acceptance by email to the petitioner's email address and again the respondent issued a second email cancelling the e-auction in favour of the petitioner due to certain unforeseen technical issues".

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<sup>96</sup> Civil Procedure Code ,1908 s 20

<sup>97</sup> AIR 2005 SCC 880



The respondent objected to the court's territorial jurisdiction when the petitioner challenged this communication in the Allahabad High Court on the grounds that no part of the cause of action had originated in Uttar Pradesh (UP), and as a result, the Allahabad High Court (UP) lacked jurisdiction to hear the case. In this case, the petitioner's primary place of business was in the UP district of Chandauli, and the petitioner also had an office in Varansi, which is also a part of UP.

Because Varanasi and Chandauli have been the only locations where the petitioner has a place of business, the Court determined that the acceptance of the tender by email would be presumed to have been received there on the basis of "section 13(3) of the IT Act". The Allahabad High Court accepted jurisdiction to hear the case because both of these locations fell under its purview.

In light of the aforementioned, the place of contract in an e-contract for purposes of determining jurisdiction (i.e., the location where the cause of action originated) would be regarded to be where both the addressee and the originator have their places of business.

#### **6.4 Electronic Signature challenges**

Even if the Indian legal system is guaranteed by the IT Act to recognise enhanced signature as a valid legal tool for e-contract verification.

However, such a validation under the IT Act has also been subjected to modified encryption and hashing, thus restricting the scope of the aforementioned verification device. Additionally, different nations have adopted various electronic mark standards, which could provide a challenge for cross-border contract requirements. If a web-based firm should take off, it is impossible to rule out the possibility of information or record loss due to technical errors. The Uniform Computer Information Transactions Act, however, is not at all similar.

## **6.5 Identification and competency issue of party in E-contract**

In the classic form of contract, the capacity of the parties can be determined, at least to some extent. On the other hand, due to the evolvable character of the individual engaging into an online contract has no way of knowing whether or not the other party to the contract is capable of carrying out their end of the bargain. The primary prerequisites for being able to enter into a contract include reaching a certain age, having a mental status that is not impaired, and being legally competent to do so.

One of the other key issues with the E Contracts is that they do not clearly identify the parties involved. It is possible that the parties who are contracting at the online platform will not be able to identify the true identity of the other party contracting. On the internet, one of the most common problems observed is that identities are frequently misrepresented. This anonymity offered by the internet is a factor that brings down the quality of the E contracts. However, in the case of online buying, neither the delivery of an e-mail address (offer) nor the typical familiarity of the recipient with the identity of the sender is required for the revelation of the sender's name. It is generally accepted that if it is not possible to disclose the identities of the parties to a contract over the internet, then all of the fundamental laws of the Common Law pertaining to the formation of contracts will either be rendered completely null and void or they will no longer be applicable.

## CHAPTER 7

### COMPARATIVE STUDY OF E-CONTRACT IN THE INTERNATIONAL SCENARIO

New threats to consumer protection necessitate new safeguarding laws and regulations. There is a distinction between the fact that improved online consumer protection positively affect the expansion of electronic commerce and, in turn, retailers. In general, consumers must be given at least the same guarantees as they would in the more traditional sector if internet commerce is to grow. The need for a worldwide coordinated strategy to address the problem of dispute firmness in electronic business has been highlighted by OECD Member States. In order to protect consumers who participate in Internet commerce without creating trade obstacles, procedures for consumer protection in dispute firmness and amendments were created.

#### 7.1 Position of E-contract in International Scenario

Electronic contracts are at a very advanced position globally. The UNCITRAL model law's position on electronic contracts is clearly laid out and structured to facilitate business transactions online<sup>98</sup>. The key elements and major points of UNCITRAL and a few other nations' legislative intentions with regard to e-contracts are discussed below. In order to cover the gaps present in the current situation, the system of E governance is established in the light of electronic transactions.

##### 7.1.1 UNCITRAL Model Law and E-contract

The Electronic contracts are recognised under the UNCITRAL Model Law. It lays up a few explicit clauses on the legality of electronic contracts. It offers and does in large part rely on data messages as the primary factor for invitations to contract. Article 11 of United Nation General Assembly states that “in the context of the contract formation unless otherwise agreed by the parties, on offer and the acceptance of an

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<sup>98</sup>Sylvia Mercado Kierkegaard, ‘E-Contract Formation: U.S. And EU Perspectives’2009 Vol 3, issue 12

offer may be expressed by means of data message. If data message is used in the formation of a contract that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose". Simultaneously, Article 12 states that as "between the originator and the addressee of a data message, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in form of a data message". According to "UNCITRAL Model Law, Article 11 is not intended to interfere with the law on formation of contracts but rather to promote international trade by providing augmented legal certainty as to the conclusion of contracts by electronic means"

Thus, according to Article 11, a contract entered into electronically is not to be deemed inapplicable solely on the grounds that data communications were used to convey the request and identify the bid as a request. The UNCITRAL Model Law on Electronic Commerce doesn't specify when or how an approval or bid becomes successful. The Commission's justification for this is that having clear agreements regarding the date, time, and location of the electronic contract conflicts with the national law that governs the creation of contracts. The mail and reception norm is made clearer by the UNCITRAL Model Law as well. According to <sup>99</sup>UNCITRAL Model Law Article 12, electronic correspondence is conveyed when it reaches a computer system that is not under the sender's control and is "processed when it reaches the recipient's designated information system or when it is obtained". The UNCITRAL model legislation offers the precise solutions that are crucial in the era of electronic contracts.

### **7.1.2 U.S Regime on E-contract**

In order to provide legal clarity for electronic transactions, the "National Conference of Commissioners on Uniform State Laws (NCCUSL)" in the United States has produced two uniform State acts. The "Uniform Computer Information Transaction Act (UCITA)" is made up of the "Uniform Electronic Transaction Act (UETA)" and two other uniform legislation. "UCITA handles contracts or transactions involving computer information,". The two acts operate, function, and have diverse effects in

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<sup>99</sup>UNCITRAL Model Law. Article 12 (25)

various ways. When compared to the latter, the former specifically deals with electronic contracting while the latter deals with information technology. The state's desire determines whether the act will be adopted. UETA has been enacted in about 48 states. While only two states have ratified UCITA. The law is adopted in accordance with the needs and demands of the business.

However, "Maryland and Virginia"—two states with a concentration of technology and Internet-related companies—have adopted "UCITA." UCITA-regulated software licensing agreements provide an option for businesses with locations in all those regions. This might have a significant impact on software licenses and electronic procurement as well. Since passing the "Electronic Signatures in the Global and National Trade Act ("E-Sign)" in 2000, Congress has become engaged in a debate over electronic contracts. Most of the UETA's provisions are included in the E signs Act. The treatment and protection of the consumer in the electronic environment differ between the two acts. Consumer consent is required by E sign before any transaction can be completed; however, UETA moves forward without this consent. Because of the way the laws are written, any documents that must be electronically signed must be done so in accordance with the rules outlined in the Act. A document's legal implications regarding its validity cannot be disputed solely because it has a digital signature. In light of these two acts, digital signatures are recognized as legal forms of signatures. These acts enable recognition of electronic transactions, signatures, and transmissions. Through the American law, the rule of law acknowledges electronic contracts.<sup>100</sup>

### **7.1.3 EU Regime on E-contract**

An organized legislative framework for electronic commerce has been created by the European Union. The following guidelines included in this structure: "Electronic Commerce Directive (hereinafter E-Commerce Directive), the Distance Contracts Directives, the Community Framework for Electronic Signatures (hereinafter E-Signature Directive), and the Unfair Terms in Consumer Contracts Directive." A

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<sup>100</sup>Sylvia Mercado Kierkegaard, 'E-Contract Formation: U.S. And EU Perspectives', ShidlerJ L Com &Tech " Vol 3, 12

number of directives also been adopted, such as "Privacy and Intellectual Property Rights in Cyberspace". When a service provider creates a contract digitally, prior knowledge is required. Individual contracts do not have to provide this kind of advance knowledge.

The E-Commerce Rules stipulate that the terms and conditions of the sale must be made explicit enough for the consumer to be able to copy them in addition to storing (retaining) them .

The EU's Unreasonable Contract Terms Regulation offers a comprehensive set of rules as well as an appendix that contains a list of 17 examples of possible unreasonable contract terms. "The question of what constitutes a bid and an invitation to contract is not addressed by EU legislation (referred to as a care invitation)". The individual member nations are left to make a decision on this issue. The order and delivery acknowledgment deemed to have been issued if the parties to whom they are offered are able to reach them, according to the E-Commerce Guideline. The E-Commerce Guideline addresses the issue of error and error by mandating the deployment of error-correction methods by service providers. According to Article 11(2) of the Directive, "Member States shall ensure that the service supplier provides sufficient, reliable, and useable technological methods to allow the service purchaser to discover and fix input errors before placing the order, unless otherwise accepted by non-consumer groups."

The E.U. strategy is significantly different from the U.S. approach in that it is more focused on market practices and consumer oriented. The E.U. strategy is significantly different from the U.S. approach in that it is more focused on market practices and consumer oriented.

The EU's regulatory framework serves to coordinate the relationships and actions of the market and the consumer.

The American method, on the other hand, is more self-regulatory and driven by economic principles. The American political system is designed to provide substantial economic growth with minimal government interference.

## CHAPTER 8

### CONCLUSION AND RECOMMENDATIONS

Today, e-Contracts are the most widely used technology. Every consumer benefits from electronic contracts. Paper-based contracts are gradually being replaced by contemporary digital electronic contracts since it saves time. With its advantages for time and money savings, e-contract makes it easier for businesses to transform into fast-paced industries. People from all around the world can reach agreements simultaneously with the use of e-contacts. E-commerce is anticipated to have a revolutionary change in the business, legal, and technical know-how due to the lack of paperwork and rising productivity.

E-contracts are a necessity for people living in the way they do now. Even libraries, schools, and colleges are buying books online, proving that electronic and online shopping is not just for private consumers. Finally, based on the current situation, it is absolutely accurate to say that the proliferation of COVID-19 is significantly affecting every aspect of our day-to-day existence. Along with simplifying consumer lives, technology has also made it possible for merchants to easily market their goods over the world. The only issue is that in the case of e-commerce, the Indian legal system does not address the topic of consumer rights. Therefore, the urgent necessity of the hour is to establish express declarations of rules that would enable e-commerce hassle-free, which in turn would encourage more people to turn to online commerce.

Although the idea of "Digital India" is being supported by Indian residents, there are no clear laws governing transactions made over computerized communication networks. The "formulation and validity of online contracts" are impacted by a number of laws, including the Indian Contract Act, 1872, the Information Technology Act, 2000, the Indian Copyright Act, 1957, and the Consumer Protection Act, 1986.

Regarding the identification, acknowledgment, transmission, and receipt of electronic records, the Information Technology Act provides provisions. The IT Act has made an effort to adequately address the needs of e-contracts. However, several legal issues have not yet been resolved, and the legislation has not yet addressed or closed some

significant holes related to e-contracts. “The website that offers products or services should include an electronic contract” , which must be carefully designed to protect the website owner from liability and address the important terms and conditions for the delivery of goods or services while also giving the client access to qualifying terms.

We have IT Act but this particular Act is not sufficient as it does not fulfill all the securities which are needed on an online platform. It however needs major amendments under various provisions. To conclude we can say that E-commerce has become very much crucial in today’s time where everything is done on an online platform.

Despite having all of its advantages, e-contracts cannot be properly implemented due to a lack of appropriate laws. The laws that are in place at the moment respond mostly to the needs of the creators or the service providers. The needs of the consumers or the addressee are totally ignored. Therefore, appropriate, practical legislation must be passed to safeguard both the addressee and the author. E-contracts are the ideal illustration of how law is dynamic and adjusts to the needs of society .Despite all the difficulties and problems, the legal field that serves the needs of the greatest number of people is that of electronic contracts. E-contract evolution will benefit India if appropriate legal changes and judicial precedents are made.

## **RECOMMENDATION**

- a. There is a need for consciousness and a want for enactment of vital legislation now not only most effective for India but also for other international locations for the proper functioning of digital commerce. The first suggestion of the studies recommends is components of new laws, modification of the present legal guidelines that are in operation in the geographical boundaries of the countries.. The main contractual issues with respect to legal flexibility to comprehend the brand new ways of entering into contracts like “Click Wrap, Browse Wrap” and so on which need to be taken into account at the same time as legislating or amending in this area of regulation. The legal technicalities involved in entering into such contracts also are main issues of law which need to be judiciously validated.



- b.** The perception is that Indian legislative intent lags behind global e-contracts regimes by a significant margin. To boost the position of digital contracts, basic implications and a well-organized system of laws and regulations in the area of E contracts can be taken from international jurisprudence. Similar to the laws in the United States and the European Union, India also needs a particular law governing electronic contracts. In the meanwhile, further measures regarding E contracts should be included in the existing laws, including the Competition Act, Contract Act, Evidence Act, Information Technology Act, and Consumer Protection Act.
- c.** The main factor that necessitates extensive discussion is the question of jurisdiction and governing law. Although efforts had been made to address these problems, there are still gaps and inadequacies.
- d.** Consumer protection in relation to e-commerce has been a topic of national discussion but the Indian economic environment has not yet adopted any tangible solutions to the issue. The necessity for the adoption of a new legislation is felt in order to safeguard the rights of affected parties as the current laws are insufficient to protect the rights of consumers. Furthermore, it should be noted that consumers in the current economic climate are unaware of their rights, making the road to exploitation easy. Therefore, the new law should be presented in a way that protects consumer rights .Therefore, the new law should be developed in a way that safeguards consumer rights while also taking into account all relevant features of potential market conflicts involving electronic transactions.
- e.** The government should enact stricter regulations and policies to ensure that no one can get away with a breach of contract committed by digital means. More stringent regulations will increase system accountability and openness.
- f.** Judicial officers require sufficient education regarding the E contracts. Judiciary officials' ignorance frequently causes them to read e-contract clauses incorrectly. Transborder contracts and all that they entail should be thoroughly explained to them. They should be informed about the technical and forensic aspects of computers and the internet.

- g.** More weight should be given to the experts' evidence. Technical expert evidence should always be taken into consideration. This is due to the ongoing modernization of technological developments. No one benefit from outdated knowledge. Expert advice is of the utmost value.
- h.** Regarding the applicable legislation and jurisdiction, the parties should be more clear in the terms and conditions. The parties ought to agree on the same. If there is an agreement, the parties will have less time to spend deciding who has jurisdiction and what law will apply in the event of a disagreement.
- i.** India, a developing nation, is particularly challenged and accountable for establishing a supportive policy environment that, on the one hand, supports the growth of e-commerce and, on the other side upholds the social goal of ensuring access and advantages for those who cannot afford it. Initiatives like electronic governance, free public Internet access, low-cost access in rural areas, awareness campaigns, and others need to be taken into account and supported. It is essential to make sure that the regulatory approaches are transparent, standardised, and independent of specific technologies in order to attract the investment needed for telecom and e-commerce promotion.
- j.** IT Act, and the amendments made to numerous other existing laws under IT Act enforce and regulate some cyber-related issues in India. But when it comes to dealing with information technology itself, it has demonstrated how inadequate the legislation is. The IT Act falls short of international norms in numerous respects. Therefore, in the age of information technology, it is impossible to disregard such legal framework flaws, which can have negative effects on both the individual and the nation. A solution to all of these problems may lie in the new requirements included by the Information Technology (Amendment) Act, 2008, although the act still need a number of revisions to guarantee functional equality and technological neutrality.
- k.** It is important to update India's cyber laws to conform to international standards. There are only a handful significant sectors of cyberspace where legal issues have arisen frequently. These include inherent difficulties, legal

difficulties, technological difficulties, political and social difficulties, practical difficulties, etc.

- l.** The right to privacy has many other aspects covered under it. It cannot be confined to one thing. As we can see from the various instances that we are losing the E-commerce and soon we will be left with the situation that we will not be having any privacy on the online platform. We have to be stricter with the laws which are formulated to protect the E-commerce or the day is not so far that we shall not be able to control our privacy on the online platform and it shall be really easy for the people to take out the information of anyone on an online platform. Earlier the privacy was not even important for us but the technology has been improved so much that it is not a hard task to take out the personal information of any person. It depends upon the authority of the nation to tackle such cases and for this they need prior planning. We were never having the express provisions for the privacy in our constitution but it is the judiciary who interpreted the Art. In order to help us to give us the rights attached to the online privacy. India is the place which seriously requires the strict laws for the E-commerce and the personal data collection otherwise we will be in such a trap that we may be in fear to share anything on the online platform.
- m.** We must have a proper set of frameworks or the mechanism which have been formulated to maintain the E-commerce and the personal data protection because when we have proper framework the persons shall be having faith on the online platforms.
- n.** As, we can see that everything is done on an online platform we require more security and protection so that we can be safe in this environment. Mostly, people are not being aware how to protect their E-commerce and the personal data protection and we need a lot of changes in our condition as to ensure our protection on the online privacy.
- o.** The right to privacy which is in India should be handled with care and due precautions because it is the right which is very much essential for the country.

The online platform has been proved to be very much beneficial in certain cases but there must be suitable laws for it which makes it safe to use the online platforms. We have IT Act but this particular Act is not sufficient as it does not fulfill all the securities which are needed on an online platform. It however needs major amendments under various provisions. To conclude we can say that E-commerce has become very much crucial in today's time where everything is done on an online platform.

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