

LOOPHOLES OF E-CONTRACTS

Siddhesh Jadhav*

ABSTRACT

People's standard of living has changed irreversibly as a result of massive advances in computer technology, wireless communications techniques, software, and information technology. No longer do location and time have to limit how business can be done. Information is sent and received a lot more and faster than ever before in the last few years. And this is where e-commerce and e-contracts give businesses more freedom in terms of place, time, space, distance, payment method, and method of payment. E-commerce and e-contracts have to do with buying and selling goods and services over the Internet or computer networks. We live in a time when everything can be done with just a few clicks of the mouse. From buying shoes to ordering food to buy stocks to sending goods overseas, the contract has a real effect on our daily lives. So, the Indian Contract Act of 1873 defines a contract as "an agreement that can be enforced by law." But this definition doesn't fully fit the term "e-contract," which has a broader meaning than a traditional contract. An "e-contract" is any binding agreement between parties with a legal object and payment that they make through electronic means such as email, MP3 audio files, multimedia messages, etc. Since the lawmaker hasn't put a definition of an e-contract in any law, the only way to understand it is to look at it in general terms.

Keywords: E-Contracts, Computer Technology, Wireless Communication, Information Technology, Indian Contract Act.

INTRODUCTION

E-commerce has changed the way business is done so that it is no longer limited by geographical boundaries or the need to be in the same place at the same time. People who use the Internet have been doing e-commerce activities every day for the past 10 years. E-contracts are very common now because of e-commerce, and the number of people who use the Internet and sign e-contracts is growing quickly. E-contracts are so commonplace in everyday life that

*BA LLB, FIRST YEAR, MANIKCHAND PAHADE LAW COLLEGE, AURANGABAD.

most of the time we don't even realize we've signed one. Contracts govern a lot of the things we do every day, from getting a taxi to buying plane tickets online.

E-commerce and e-contracts are ways to do business online, most of the time over the Internet. It is the tool that leads to "integration across the enterprise." With the growth of e-commerce, there has been a big change in how e-contracts are used in many areas of daily life. But putting in place electronic contracts, also called "e-contracts," has a lot of pros and cons. And right now, e-contracts are accepted in all developed countries. In this article, the researcher discussed e-commerce, e-contracts, their nature and legality, domestic laws, and a few other e-contract-related topics.

E-CONTRACT

According to Sir William Anson A contract is an agreement between two or more people that is legally binding. It gives one or more people rights in exchange for one or more actions or inactions on the part of the other or others. E-contracts are any kind of contract made through e-commerce. They can be made by two or more people communicating through electronic means, like e-mail, by one person communicating with an electronic agent, like a computer program, or by at least two electronic agents communicating with each other that are programmed to know when a contract exists. Contracts In the past E-contracts are also based on rules and had ways to fix problems. This is also called an e-contract. E-Contract is a tool that makes it easier to write and negotiate contracts for business and consumer e-commerce and related services. It is made to help people come up with and use policies for commercial contracts in e-businesses. It has examples of contracts for selling and delivering digital products and services to both consumers and businesses.

E-contract is a contract that is created, specified, carried out, and used by a computer system. E-contracts are very similar to traditional (paper-based) business contracts in terms of how they work. Vendors or sellers show their goods, prices, and terms to people who might buy them. Buyers think about as many options as they can, try to negotiate prices and terms (if they can), place orders, and pay (which is vendor expectation). Then, the sellers give the people who bought their goods what they had bought.

E-contract could be any kind of contract made through e-commerce by two or more people communicating electronically, like through e-mail, or by a person communicating with an electronic agent, like a computer program or software, or by at least two electronic agents that

are programmed to know when a contract exists. The Information Technology Act of 2000, especially Section 10-A, says that an electronic contract is valid and can be enforced. The only thing that must be true for an electronic contract to be valid is that it meets the requirements set out in the Indian Contract Act of 1872. Under this provision, Indian courts also give electronic contracts the attention they deserve.

The Information Technology Act of 2000 (IT Act) says that an electronic contract (E-Contract) is legal. In particular, section 10-A of the IT Act says:

Section 10-A: Whether or not contracts made online are valid. When a contract is made, if the sending of proposals, the acceptance of proposals, or the rescinding of proposals and acceptances, as the case may be, are done electronically or through an electronic record, this does not mean that the contract is invalid just because it was done electronically or through an electronic record. The Information Technology (Amendment) Act of 2008 added the above provision after it became clear that more and more business deals are being made online. This is true when a contract is made, the proposal is sent, and it is accepted, all through electronic means.

COMPARISON OF THE BASICS OF AN E-CONTRACT WITH THE PROVISIONS OF THE INDIAN CONTRACT ACT

E-contracts can be signed using the Internet, fax, and other electronic means of communication. Compliance with the necessary prerequisites stipulated by the Indian Contract Act, of 1872 is the only essential requirement to validate an E-Contract. Those are:

OFFER - One of the most important parts of an online contract, just like a contract on paper or in person, is that an offer must be made. One party, called the proposer, must make a legal proposal or offer. This is where a contract begins. By looking at the seller's website and picking out the goods and services they want to buy, the customer makes an offer to buy in response to the seller's invitation to offer. A proposal is different from an invitation to offer or treat, and it must be made to make a legal agreement. An offer or proposal is not a promise until it is accepted by the other party. Before it is accepted, it can be changed or taken back at any time.

ACCEPTANCE - When someone accepts a proposal or offer, it becomes a promise. Acceptance of the proposal must be unconditional and final, and the proposer or offeror must be told. If the contract is made online, the offer and acceptance can be made through e-mails

or by filling out the form on the website. For the services to be used, they may also need to click "I Agree" or "I Accept" on an online agreement.

INTENTION TO ESTABLISH A LEGAL RELATIONSHIP - If the parties to a contract don't want to create a legal relationship, there is no contract between them. Parties to a contract must have the intent to make a legal relationship for the contract to be legal. In each case, the Court has to figure out what the parties wanted based on the terms of the agreement and what happened afterward. Social or family agreements do not create legal relationships, so they are not contracts and cannot be enforced by the law. When people make agreements about how to get along with each other, it's a given that they don't want there to be legal consequences. For example, an invitation to get married sent by e-mail, fax, or any other form of communication to a friend or family member is not a contract.

THERE HAS TO BE A LAWFUL PURPOSE - Parties to an agreement must agree on something legal. A contract can only be enforced by the law if it was made for a legal reason. It can't break the law or be a scam. So, a contract made on a website that was made to sell illegal substances online is not valid. If someone agrees to hurt someone else or their property, this is against the law and the agreement should be thrown out. If a court decides that an agreement goes against public policy, the agreement is null and void.

THERE MUST BE A LAWFUL OR LEGAL CONSIDERATION - One of the most important parts of a contract is a consideration. The basic rule is that when a party to a contract says he will do what he said he would do, he must get something in return. In the eyes of the law, something is of some value if it is taken into account. It might be helpful in some way. A right, interest, or profit is given to a party as an incentive to make a promise. An act that serves as consideration must be done at the promisee's request and must be legal, real, and not made up. Promises that are physically impossible to keep don't deserve any real thought. Like, a website where you can buy land on the moon. Size of the parties - The people who sign a contract must be able to do so. He must be at least 18 years old and have a clear head. He must not be unable to sign a contract because of a law that is currently in effect. In our country, a deal between two people under the age of 18 is meaningless. It is thought to be void from the start. Section 12 of the Indian Contract Act of 1872 says that a person is of sound mind and able to sign a contract if he or she can judge and protect his or her interests. When a court says that a person is insolvent, he or she cannot sign a contract about their property. In the case of

Mohori Bibee v Dharmodas Ghose v Old Age Foundation (1903)¹, the Privy Council ruled that a contract made by a minor is invalid.

CONSENT MUST BE FREE AND UNAFFECTED - A contract can't be made without consent, which is defined in Section 13 of the Indian Contract Act of 1872. It means that both sides agree on what should be done. Consenting means that both parties agree on the same thing in the same way. If someone is forced to agree to something, that person can choose to get out of the agreement. Coercion can be done through physical force, threats, or violence. Consent has to be free and honest, and it can't be based on lies or undue influence, which is when one person can force another to do what they want. But with an online contract, there isn't much physical communication between the website and the customer who wants to use the service. Instead, the customer gives consent by clicking the option that makes sure the consent is free and real.

POSSIBILITY OF PERFORMANCE - The agreement's terms and conditions must be clear and not vague, and they must also be able to be carried out. The Indian Contract Act of 1872 says that a contract to do something impossible in and of itself cannot be enforced. As a general rule, the people who make promises in a contract are the ones who have to keep them. However, other people can keep promises in certain situations, such as a promisor's agent or legal representative if the promisor dies. Most of the time, the parties to a contract decide when, where, and how to carry out the terms of the agreement. In sections 46–50 and 55, there are different rules about when and where a contract can be made. When time is the most important part of a contract, the promisor has to keep his promise within the time limit, and if he doesn't, the promisee can choose to get out of the contract.

TYPES OF E-CONTRACT

Click-wrap- or Web-wrap- A party must typically indicate his assent to an agreement by clicking an "I Agree" icon or his disapproval by clicking "I Disagree" after reading the terms and conditions provided on the website or in the program.

The shrink wraps Agreements- These are the contracts that state that receipt of an electronic record as described in Section 13(2) of the IT Act by the addressee constitutes full communication of an offer or acceptance made in the web-click mode.

¹ Mohori Bibee v Dharmodas Ghose v Old Age Foundation, (1903) 30 CAL. 539.

The Electronic Data Interchange- These contracts are used in trade transactions, allowing data to be transferred from one computer to another, effectively eliminating the need for paper in the processing of each transaction in the trading cycle.

E-CONTRACTS UNDER INDIAN LAW.

INDIAN CONTRACTS ACT, 1872: All the contract laws are governed by the ICA. Everything you need to know to create a binding contract is covered by this law. Any regular contract that complies with the ICA requirements and is completed electronically or without paper is referred to as an "e-contract." These agreements are just as legally binding as written agreements. Then, any regulatory concerns about e-contracts will be resolved.

INDIAN EVIDENCE ACT, 1872: It is critical that electronic contracts can be admissible as evidence in court. The case of *Société des produits Nestlé S.A. v Essar industries and others*². Prepared the way for Sections 65A and 65B of the Indian Evidence Act, which say that computer-generated evidence can be used in court. This was done to get rid of problems with e-contracts and other forms of electronic evidence. Also, in the case *State v Mohd. Afzal and others*, "Electronic records can be used in court"³, the judge said.

INFORMATION AND TECHNOLOGY ACT, 2000: The Information Technology Act of 2000 set the rules for e-commerce. India is only the 12th country in the world to have such a wide range of e-commerce laws. This Act also makes big changes to the Indian Penal Code, the Indian Evidence Act of 1872, and the RBI Act of 1934 so that they meet the requirements for digital transactions. Section 10A of the Information Technology Act, 2000 (IT Act) talks about the validity of contracts made through electronic means. It says that if the proposal or acceptance of a contract is made, communicated, or revoked in an electronic form or through electronic records, it won't be invalidated just because it was made in an electronic form or through electronic records. For a contract to be valid, both parties must sign it to show that they agree to the terms and conditions of the contract. An electronic signature is needed for an e-contract.

ISSUES FACED BY E-CONTRACT

² *Société des produits Nestlé S.A. v Essar industries and others*, 2016 SCC Online Del 4279.

³ *State v Mohd. Afzal and Others*, 107 (2003) DLT 385.

The idea of a virtual world has changed the way business is done in many countries, including India. The e-commerce industry in our country is kept alive by how easy it is to use the internet, fax, computer programs, and smartphones. The Information Technology Act of 2000 has given it a legal framework and a way to be governed. But since nothing in this world is perfect, this law also has some flaws when it comes to the problems that are coming up in the country because of these e-contracts. Here are a few problems that electronic contracts in our country face:

PARTIES TO CONTRACT

In an electronic contract, people who don't know each other deal with each other. This is a risk for both sides of the contract. 32 Under Section 11 of the Indian Contract Act of 1872, for a contract to be valid, neither party can be a minor, insane, or disqualified by the law. However, when signing an e-contract, the main question is about the parties' abilities. Clickwrap or browse-wrap contracts on the website make it easy for minors to sign contracts. So, the Indian Contract Act of 1872 says that it is the websites' legal responsibility to make sure that the party contracting can do so. "Online websites have come up with different ways to make sure that the person signing the contract can do so. For example, when a person signs up for a website, they enter personal information like their birth date. This shows the website that the person signing the contract is old enough to do so. It's sometimes accompanied by a dialogue box with pictures, and users have to name what's in the pictures to make sure the party is crazy. Even with these methods, it's not clear whether an e-contract can be enforced because there aren't many laws that deal with this issue in depth.

AUTHENTICATION BY E-SIGNATURE

For a contract to be legally binding, both parties must sign it. In the case of an e-contract, a digital signature is used. In section 2(p) of the Information Technology Act, an electronic signature is defined as the authentication of any electronic record by a subscriber using an electronic technique listed in the second schedule. A digital signature is one type of electronic signature. But wills, trusts, sales of real estate, negotiable instruments, and powers of attorney cannot be signed electronically.

LOSS CAUSED BY TECHNICAL ERRORS

E-contracts are legal agreements between two parties that are made through electronic transmissions and are stored in the virtual world. But, like paper transactions, information stored in the world is not safe. People think that anything that goes into the digital world will always exist and never be lost. However, there are no administrative, legal, or judicial rules for what to do if the technology fails and all or part of the information is lost.

NON-REPUDIATION

Non-repudiation is usually used to describe situations where a written contract, disclosure, or transfer of records is needed. Its goal is to make sure that a person or organization bound by the terms of the contract, or parties to a specific communication or transfer of information, can't dispute the validity of their signatures on the documents of the contract, or that they are the originators of a particular message or transfer.

THE CAPACITY TO SIGN A CONTRACT

One of the most important parts of an e-contract is that the person signing it is legally allowed to do so. Often, an agreement includes a person who doesn't want to be named. The person on the other side of the table has no idea if the person who clicked the "I Agree" button knows how to follow the law and sign an agreement. Under the Indian Contract Act of 1872, one of the most important parts of a contract is whether or not a party can make a contract. The Act's sections 10, 11, and 12 talks about the ability of a party to sign a contract. People can't make these kinds of contracts if they aren't old enough or smart enough to do so. It's possible for a baby who isn't old enough to understand the contract to sign it by clicking on the "I Agree" text or symbol.

IDENTITY THEFT

Identity theft is a big worry for buyers who feel like their privacy is being invaded in this real-world setting. Theft of identity is the illegal act of getting someone else's personal or financial information and using it to commit extortion, like making purchases or sales without permission. Data fraud is reported from many different points of view, and the victims are often left with damage to their finances and reputations. But in the process of pretending to be the customer, the criminal's goods and services are charged to the customer, which starts a never-

ending cycle of financial trouble for the customer. This includes hacking, phishing, spoofing emails, checking, and hoping. Also, there is intellectual property theft, which is when someone steals copy-protected material or proprietary advantages. IP theft often leads to fake goods and theft, which is one of the most well-known effects.

THE FREE CONSENT OF THE PARTY

Free assent is one of the most important parts of a solid agreement. There is no extra time for exchange in online agreements. This is a very big problem for the customer. But the alternative exchange of "live with it or without it" is always to the client. In the case of LIC of India v Consumer Education and Research Centre⁴, the Supreme Court ruled that "in dotted-line contracts, there would be no reason for a weaker party to agree to have the same bargaining power as a stronger party." As far as the dotted line contract goes, he has to either agree to the administration or the goods or leave them. The only thing he could do is either agree to something ridiculous or give up running the government until the time runs out ". So, it seems likely that the client should be careful about what he agrees to avoid trouble.

There have been instances where the negotiating positions of the parties to a contract differed. According to the Indian Contract Act, a contract is void if its purpose or intent is unlawful, immoral, fraudulent, or harmful to another person's person or property. Additionally, the courts have the authority to order the person in charge of the situation to prove that the contracts were not made using excessive power.

In the case of LIC India v Consumer Education & Research Center⁵, the Supreme Court ruled that some parts of the policy were invalid under Article 14 of the Constitution because they limited the policy's benefits to only Government employees. So, online contracts need to have well-thought-out terms and give customers enough time to get to know those terms.

CASES RELATING TO THE PROBLEMS INVOLVED IN E-CONTRACTS

Trimex International FZE Ltd v Vedanta Aluminum Ltd⁶: Trimex International FZE Ltd v Vedanta Aluminum Ltd: The parties entered into an e-contract for the sale of bauxite ore in

⁴ *LIC of India v Consumer Education and Research Centre* AIR 1995 SC 1811

⁵ *Ibid*

⁶ *Trimex International FZE Ltd v Vedanta Aluminum Ltd*, 2010 (2) AWC 1170 (SC).

this 2010 case. The court ruled that the e-contract was unenforceable because it lacked an electronic signature, which Indian law requires for certain types of contracts.

Casio India Co. Ltd v Ashita Tele Systems Pvt Ltd⁷: Casio India Co. Ltd v Ashita Tele Systems Pvt Ltd: The parties entered into an e-contract for the sale of Casio products in this 2012 case. The contract was declared unenforceable by the court because it lacked any terms and conditions, and there was no evidence that the parties had agreed to any specific terms.

Yash Raj Films Pvt Ltd v Sri Sai Ganesh Productions⁸: Yash Raj Films Pvt Ltd v Sri Sai Ganesh Productions: The parties entered into an e-contract for the distribution of a film in this 2013 case. The contract was declared unenforceable by the court because it contained ambiguous and contradictory terms, and there was no evidence that the parties had agreed to the contract's specific terms.

Sgouros v. TransUnion LLC⁹: In *Sgouros v. TransUnion LLC*, the plaintiff sued TransUnion, a consumer credit reporting agency, for allegedly violating the Fair Credit Reporting Act by failing to provide him with a copy of his credit report after submitting an online request in 2021. The court determined that the online request form contained a valid e-signature and that TransUnion was required by law to provide the credit report within the timeframe specified.

Tata Consultancy Services Ltd. v. Epic Systems Corp.¹⁰: *Tata Consultancy Services Ltd. v. Epic Systems Corp.*: The plaintiff in this 2021 case sued Tata Consultancy Services for breach of contract in connection with a software development project. Tata claimed that the contract included a limitation of liability clause that limited its liability to \$50 million. The court ruled that the clause was enforceable and that the plaintiff's damages were limited to \$50 million.

CONCLUSION

E-contracts have come a long way since the days when everything was based on the letter of the law. E-contracts are becoming more popular as a result of increased development and e-commerce, particularly in India. This development process will be supported by the pattern of progress in digital banking and debit cards, as well as the increase in professional users and web developers. Right now, the most important aspect is the law, which covers all aspects of

⁷ *Casio India Co. Ltd v Ashita Tele System Pvt Ltd.*, 2003 (3) RAJ 506.

⁸ *Yash Raj Films Pvt Ltd v Sri Sai Ganesh Productions*, 2013 SCC Online Del 3780.

⁹ *Sgouros v TransUnion LLC*, 2016 WL 4398032.

¹⁰ *Tata Consultancy Service Ltd. V Epic System Corp.*, 2021 WI 34.

e-agreements, from downloading a small app to creating and launching one. The passage of laws like this will govern the development of websites and how they earn money. They will be constantly supervised by law, lowering the crime rate and fraud. Because every trade, contract, and business is now performed digitally through various software and platforms, there is no possibility of direct interaction. The primary link here is client and partner trust, which must be preserved at all costs.

Although it regulates agreements between two parties in India, the Indian Contract Act of 1872 was not formed with e-contracts in mind. The different sections that cover consideration, competence to contract, place of contract, and other topics do not entirely apply to the case of an e-contract because an e-contract can be created by a lunatic or a minor by simply clicking the tab. Because there is little space for negotiation, e-contracts are inconvenient. Data security is the most serious problem that could occur with e-contracts. The various websites that we visit for different topics may at any time steal our data without our knowledge for their financial gain. No law addresses the creation of e-contracts; however, the IT Act of 2000 contained several provisions relating to e-contracts and the penalties for forgery, identity theft, and other crimes.

We must establish a law that can identify everyone who relies heavily on various websites to make money to advance and regulate this industry. Additionally, it will support the creation and growth of different contracts and trades and act as a protection for all web pages involved in the creation of e-contracts. Similarly to this, a specialist is required to attend consumer court hearings and resolve every person's complaint regarding an e-agreement. For this, a specialist in the relevant field, such as payment security, is necessary. All of the transactions in the e-agreement will be addressed and swiftly resolved when people bring their issues to the consumer court. It is the responsibility of the dominant players to ensure that the development of the e-contracting market is not hampered by their demonstrations and strategies. E-contracts, therefore, have the potential to play a significant role in the advancement and development of the nation with the appropriate strategy and legislation.