

FUTURE OF E-CONTRACTS IN INDIA

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ABSTRACT

The India Contract Act, 1872 is the act that gives the laws regarding contracts in India. It is the main act regulating the contract law. An agreement enforceable by law is called as a contract. For consumer and business e-commerce related services E-Contract is an aid to drafting and negotiating successful contracts. E-contracts can be mapped to inter-related programs, which have to be stated carefully to meet the contract conditions. It is intended to assist people in formulating and implementing commercial contracts within e-businesses. It comprises model contracts for the sale of products and supply of digital products and services to both consumers and businesses. The Information Technology Act, 2000 deals with laws related to E-commerce and cybercrime in India. It refers to commercial transactions conducted and concluded online. Section 10 A of the IT Act deals with the validity of E-Contracts, through this paper, the researcher aims to study the history of E-contracts, the advantages of E-Contracts and the future of E-Contracts in India. The methodology used for research is the Doctrinal method.

INTRODUCTION

The technological advances in the world have led to drastic changes in the trade and commerce. Business has no territorial boundaries. Moreover, there is no need of physical presence for entering into a contract. E-Contracts are similar to normal contracts, but the only difference is the medium through which they are made. The contract which takes place through e-commerce, usually without the parties meeting each other. They are not paper based but are electronic. These contracts are made for the convenience of the parties and the digital signature comes into play. It refers to commercial transactions conducted and concluded online.¹ It is the most convenient way of entering into a contract especially during these times, without being physically exhausted. The Information Technology Act, 2000 is an act which deals with e-commerce and cybercrime in India. The act provides legal recognition to the transactions which are carried out by the means of electronic data interchange². Section

¹E- Contracts in India, Agama Law Associates (April 1, 2021, 8:00 PM) <https://agamalaw.in/2015/06/03/e-contracts-in-india/>

²Georgina Pereira, *Information Technology Act, 2000: Important Definitions*, Legalbites (April 7th, 2021, 7:00 PM) <https://www.legalbites.in/information-technology-act-important-definitions/>

10A of the IT Act deals with the validity of E contracts. Section 10 A of the IT Act defines the validity of E-Contracts as: “In a contract formation, when 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 merely on the grounds that such electronic form or medium was used for the purpose.”³ There are three kinds of E contracts:

1) Browse Wrap Agreements

The agreement which is binding upon the parties by the use website. This includes the privacy policies and terms of service of websites.

2) Shrink Wrap Agreements

The license agreement through which the terms and conditions of the contract are imposed upon the party⁴ present on the manuals accompanying the product, these agreements can be only be accepted after the consumer has opened the product.

3) Click Wrap Agreements

These agreements are usually requiring the party to give their consent to the terms and conditions by either clicking “accept” or “Decline”. These contracts are found in the software installation process. Choosing to reject or choosing to make online payments can be considered to be an example of this type of agreements.

LITERATURE REVIEW

The researcher has referred to various books, articles and journals to make this research effective:

1) E- Contracts⁵ an internet source article by Nikhil Nair the author had described E Contracts in great detail. He has explained the Section 10 a of the IT Act and the recognition

³Nikhil Nair, *E-Contracts*, Indian National Bar Association, (12th April, 2021, 6:00 PM), <https://www.indianbarassociation.org/e-contracts/>

⁴*Supra* Note, 1

⁵*Supra*, Note 3

of E Contracts. Moreover, the author has discussed the importance of digital signature. By reading this article one can get a complete idea of what exactly is an E Contract and its admissibility in the court. The use of case laws makes the article more effective. However, the author does not write about the future of E-Contracts in India. The author had limited his study to the recognition of e contracts in India, the parties to it and the admissibility of the same in the court. The researcher has referred to this article to get a brief idea of the recognition of e contracts in Indian Law.

2) E Contracts and its Validity in India⁶an internet source article in depth explains the types of electronic contract, execution, the importance of electronic signature and the validity of E-Contracts in India. The use of case laws and the in-depth explanation of the essentials of a valid contract makes the article more effective and easier to understand. The author has not elaborated on the future of E Contracts and the challenges which might be faced to make the E Contracts a new norm. The researcher has referred to this article to know more about the types of E Contracts.

3) Electronic Contracts – The Likely ‘New Normal’⁷an internet source article by Moonmoon Nanda and Palash Taing, is an article which discusses the scope of E- Contracts in future and also the probability of them becoming the new normal. The article discusses validity of the e contracts, the statutes which are applicable to it and how the e signatures can serve as an evidence. By reading this article one can clearly understand the extent to which the E contracts are applicable and are likely to become the new normal in the prevailing times. The article mentions the scope of E Contracts; however it does not mention the challenges which might be faced. The researcher has referred to this article to get an idea about the scope of E Contracts in the future.

4) ‘E’ sign of the times⁸an article by Puneet Gupta and Amit Wadhwa has described the importance and the need of E-Contracts. Emphasizing on how the Covid 19 pandemic has led to an increase in making of contracts through electronic means, the authors have also described the need of e stamps in great detail. Besides making the article effective by using case laws the writers have also explained the advantages of making an E Contract. The article

⁶*E Contracts and its Validity in India*, India Law Offices LLP(12th April, 2021, 7:00 PM), <https://www.indialawoffices.com/legal-articles/e-contracts-and-validity-india>

⁷Moonmoon Nanda and Palash Taing, *Electronic Contracts – The Likely ‘NewNormal’*, Mondaq (13th April, 2021, 5:00 PM), <https://www.mondaq.com/india/contracts-and-commercial-law/971932/electronic-contracts-the-likely-new-normal39>

⁸Puneet Gupta and Amit Wadhwa, *‘E’ Sign Of the Times*, Law. Asia (13th April, 2021, 6:00 PM), <https://law.asia/e-contracts-sign-times/>

does not mention about the scope of E Contracts with specific reference to India. The researcher has referred to this Article to know about the Section 10 A of the Indian Evidence Act.

RESEARCH QUESTIONS

- 1) When was the concept of E- Contract first recognised in India?
- 2) When did the concept of E- Contract get recognition under the IT Act, 2000?
- 3) What are the advantages of making a contract through electronic means in the current times?
- 4) What is the scope of E- Contracts in India? What are the challenges which might be faced in making them a norm?

RESEARCH OBJECTIVES

- 1) To estimate the period since when the concept of E- Contract has existed in India.
- 2) To understand when the concept of E- Contract got recognition and a separate article regarding the same was introduced under IT Act 2000.
- 3) To know the advantages of making a contract through electronic means especially during the prevailing time.
- 4) To get an idea of the future of E- Contracts in India and the challenges that it might face.

RESEARCH METHODOLOGY

There are two types of research methodologies Doctrine method and Non- Doctrinal Method. Non Doctrinal method is also known as socio legal research, the method in which data is collected or employs research methods from other disciplines. Doctrinal method is also known as typical legal research. Doctrine research focuses on traditional legal resources. For e.g.: Case laws.

The research methodology that will be adopted in this synopsis shall be the Doctrinal method of research.

This method is also called the traditional method of research. It involves analysis of case law, arranging, ordering and systematizing legal propositions and study of legal institutions.⁹

There are certain features and advantages considering which this research method has been adopted. Following are the features and advantages:

- 1) Within a limited time period, researchers are provided with the tools to reach decisions on a variety of problems.
- 2) This method is flexible in nature and thus makes it easier to stretch it to any extent to make it workable.
- 3) This type of research is considered to provide appropriate guidance and hence it is of informational value.

Considering the advantages of the research method the researcher has chosen the doctrine method of research.



E-CONTRACTS

HISTORY OF E-CONTRACTS

The concept of E Contract was given recognition by the Information Technology Act 2000. The provisions in the Indian Evidence Act, 1872 makes E Contracts enforceable.¹⁰ E-Contracts are likely to become the new normal. But, before knowing the scope of E Contracts in future, it is important to know a brief history of how these contracts got legal recognition.

Earlier, E Commerce was limited to buying and selling goods and services over the internet. With digital advancements the network increased the growth of E Commerce. In 1960's businesses used Electronic Data interchange to carry out transactions.¹¹ Most of the businesses started offering services through websites after the introduction of World Wide Web in the 1990's. For example, companies such as E Bay and Amazon. In India the concept of E Commerce was introduced in late 1990's. It was introduced through Rediff. The first company to generate an E Commerce portal was Indian Railway Catering & Tourism Corporation Limited.

⁹Dr. T. Padma and K P C Rao, *Legal Research Methodology*, 31(1st ed. Asia Law House, Hyderabad 2011)

¹⁰Supra Note, 6

¹¹Jaimala Chahande, *An Analytical Study on E-contract: Its Legal Validity and Jurisdiction*, *IJLMH*, 1-12 (2020)

The Indian then enacted the Information Technology Act, 2000. This was done in order to legalize the E Commerce transactions and also to keep in pace with the developments in the technology.

PARTIES TO THE E-CONTRACT

There are two parties to an E-Contract:

- 1) **Originator:** According to the IT Act, 2008 an originator is a person who generates, sends, stores or transmits any electronic message to be sent, generated, stored or transmitted to any other person. It usually does not include any intermediary.
- 2) **Addressee:** According to the IT Act, 2008 an Addressee is person who is intended by the originator or a person to whom the contract is sent.

In an E Contract the parties do not necessarily meet. This is the main advantage, especially during these times these contracts are the most suitable.

THE ADVANTAGES OF MAKING AN E-CONTRACT

The following are the advantages:

- 1) **Easy to access:** The process of assessing documents online is fast. It saves a large amount of time both for the employees as well as the customers. Not much of training is required in such cases.
- 2) **E- Contracts Ensure Fast Business:** E Contract is a fast method as compared to sending documents by courier and waiting for the other party to receive and sign them. Moreover, in the case of traditional documents there is a possibility that both the parties may introduce errors. This may lead to legal disputes. Electronic contracts avoid the same.
- 3) **Electronic Contracts are More Secure than Paper Contracts:** Paper documents can be manipulated at anytime during the whole process. Where as in case E- Contracts eliminates a signees ability to tamper with the documents.
- 4) There are several other advantages such as E- Contracts improve customer service, they eliminate typographic errors, they comply with the Contract law and regulations, it is easy to monitor and track,

And they reduce operational costs.

For such type of contracts, it is not necessary that the parties meet. Hence considering the current times and the advantages of E- Contracts, they are on their way to become the new normal in India.

FUTURE OF E-CONTRACTS AND CHALLENGES

CASE LAWS RELATING TO E-CONTRACTS

1) In the case of Trimex International FZE Limited, Dubai vs. Vendata Aluminium Ltd¹² Trimex International had offered supply of Bauxite. The offer was accepted by Vedanta Aluminium after several exchanges of email. The Supreme Court of held that the contract was satisfying all the conditions of the Indian Contract Act, 1872. Moreover, the acceptance was made unconditionally.

2) Rudder vs Microsoft Corporation¹³, is a case based on click-wrap agreements. The user was supposed to click on 'I Agree' after reading the instructions. But the users started a legitimate demand that the Microsoft Company had broken payment conditions in relation to the MSN Member Agreement. The honourable Court held that the agreement was enforceable.

BRILLOPEDIA

FUTURE OF E-CONTRACT IN INDIA AND THE ISSUES IT MIGHT FACE

In the current times E Contracts are gaining greater acceptance in India. They have become necessary for a business to continue and are considered as the most convenient way to make a contract, due to its advantages. It has made keeping a track of data much easier than before. Under section 10A¹⁴ the Government has declared e-contracts as legal. Although E Contracts are gaining acceptance some challenges will be faced for e contracts to become a norm. The following challenges might be faced: The user cannot negotiate on the terms and conditions. In case of agreements given in the online websites a user has to agree to all the terms and conditions, which makes the deal one sided. The administration of E contract may fall under different geographical locations. If the user faces any issue he will have to file a lawsuit at the place where the transaction took place. The process might be time consuming and expensive.

¹²Trimex International FZE Limited, Dubai vs. Vendata Aluminium Ltd, India, 2010 (1) SCALE 574

¹³Rudder vs Microsoft Corporation, [1999] OJ No 3778 (Sup Ct J).

¹⁴Indian Evidence Act, 1872

Hence, there will be a challenge of court jurisdiction. The main advantage being that the parties need not meet physically to make a contract suits the current situations. India must be ready to accept the new challenges which come with the technological advancements.

CONCLUSION

The researcher has come to the conclusion that E Contracts are becoming a new normal in India. But there are some challenges which they might face as a result of technological advancements. India should be ready to face new challenges and accept E Contract as the new norm. In the current times due to the pandemic E Contracts seem to be the most suitable way of entering into a contract. Considering the advantages and the fact that the physical presence of the parties is not essential E Contract is essential for every business to continue and also it makes the tracking of data easier without any manipulation. The researcher would like to suggest that there should be better and stricter regulation of E Contracts to prevent frauds from taking place. Clear laws should be made regarding to the jurisdiction of the court. E-Contract will soon become a common medium and all the businesses and common people will start making contracts through electronic medium provided the draw backs are addressed.

BRILLOPEDIA

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