



E-Contracts in India's Digital Age: Legal Validity, Public Policy, and the Future of Contract Law

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ABSTRACT

The rise of e-commerce and technological advancements has revolutionized contract formation in India, with e-contracts emerging as a pivotal tool for facilitating consumer and commercial transactions in the digital era. The COVID-19 pandemic further accelerated the adoption of e-contracts, such as shrinkwrap, clickwrap, and email-based agreements, as businesses sought efficient and accessible solutions for contract creation and execution. This article examines the legal framework governing e-contracts in India, focusing on the Indian Contract Act of 1872, the Information Technology Act of 2000, and the Bhartiya Sakshya Adhinyam, 2023 (Indian Evidence Act of 1872), which collectively ensure their validity, enforceability, and compliance. It explores the interplay between technology and law, addressing challenges related to cybersecurity, data privacy, and public policy that impact the adoption of e-contracts. Additionally, the article analyzes the role of public policy in regulating contracts to align with societal interests, drawing on key case laws to illustrate its evolving nature. Despite the robustness of existing laws, the paper highlights the need for updated legal provisions to address the complexities of digital agreements and enhance contract management. By evaluating the enforceability of electronically formed agreements, such as those via email, this study underscores the transformative potential of e-contracts while advocating for a modernized legal system to support India's growing e-commerce infrastructure.

KEY WORDS

Public policy, Contract law, Voidable contracts, Illegal contracts, Legal implication, Digital signatures.

INTRODUCTION

In India, the legal framework governing contracts is deeply rooted in the Indian Contract Act of 1872, which provides a robust structure for the formation, performance, and enforcement of contracts while emphasizing the critical role of public policy. Public policy acts as a safeguard, ensuring that contracts align with societal values and interests, rendering those that violate it void ab initio and unenforceable. Such contracts, deemed detrimental to the public good, may lead to civil or criminal consequences. The dynamic and evolving nature of public policy allows Indian courts to interpret it broadly, adapting to societal changes and ensuring contracts reflect contemporary needs. Concurrently, the rapid advancement of digital technology has transformed the contract landscape, with e-contracts, such as shrinkwrap, clickwrap, and email-based agreements, gaining prominence, particularly during the COVID-19 pandemic, which accelerated the shift from traditional paper-based contracts to digital formats. Enabled by the Information Technology Act of 2000 and the Bhartiya Sakshya Adhiniyam, 2023 (Indian Evidence Act of 1872), alongside the Indian Contract Act, e-contracts facilitate efficient and flexible transactions in India's burgeoning e-commerce ecosystem. However, their adoption faces challenges related to cybersecurity, data privacy, and legal validity, necessitating an updated legal framework to address conceptual, logical, and implementation hurdles. This article explores the interplay between public policy and contract law, the legal implications of contracts violating public policy, and the rise of e-contracts under India's legal system. By analyzing relevant provisions of the Indian Contract Act, the Information Technology Act, and key case laws, it evaluates the enforceability and validity of e-contracts, their alignment with public policy, and the need for legal reforms to support India's digital transformation under initiatives like the "Digital India" program.

What are e-Contracts?

Electronic contracts, or e-contracts, are agreements formed and executed through digital or electronic means, distinct from traditional paper-based contracts due to their broader scope and reliance on technology. Unlike conventional contracts, e-contracts are created via the internet or electronic platforms, involving competent parties, lawful consideration, free consent, and the intent to establish a legal relationship. They encompass agreements negotiated through electronic methods such as email, interactions between an individual and an electronic agent (e.g., a computer program), or fully automated interactions between electronic agents programmed to recognize contractual obligations. E-contracts are also referred to as cyber contracts, digital contracts, or online contracts, with common examples including purchases on e-commerce platforms like Amazon or Flipkart. The International Chamber of Commerce defines electronic contracting as an automated process where parties enter contracts through networked computers or electronic messaging. Digital contracts, a subset of e-contracts, are essentially digital versions of traditional contracts, offering transparency, speed, and efficiency in business transactions. They are widely used in online marketing agreements, service-related contracts (e.g., platform, infrastructure, or software-as-a-service), terms and conditions for privacy and intellectual property, agreements with payment system providers (e.g., banks or payment gateways), technology licensing or assignment agreements, and contracts for software, mobile app, or web development. In India, the legal framework for e-contracts is governed by the Indian Contract Act of 1872, which establishes the foundational principles of contract validity, the Information Technology Act of 2000, which provides legal recognition to electronic transactions and records, and the Bhartiya Sakshya Adhiniyam, 2023 (Indian Evidence Act of 1872), which addresses the admissibility of electronic evidence. Despite their growing prevalence, e-contracts face challenges, including cybersecurity concerns, data privacy issues, and the absence of concrete judicial precedents in India to clarify their enforceability. Courts in other jurisdictions have addressed similar

agreements, offering some guidance, but India's legal system requires further clarity and modernization to fully accommodate the complexities of digital contracts. E-contracts represent a transformative shift in the business and legal landscape, reducing reliance on intermediaries and aligning with India's "Digital India" initiative, yet they demand updated legal frameworks to ensure robust enforceability and alignment with public policy.

Essentials of a Valid E-Contract

E-contracts, like traditional contracts, must adhere to the fundamental principles of contract law as outlined under the Indian Contract Act of 1872 to be valid and enforceable. These principles, established through judicial precedents, apply regardless of whether the contract is formed electronically, orally, or on paper. A valid e-contract requires the same essential elements as a traditional contract, offer, acceptance, lawful consideration, intention to create legal relations, competency of parties, free consent, and a lawful object. However, their electronic nature demands additional scrutiny under the Information Technology Act and Bhartiya Sakshya Adhiniyam, 2023 (Indian Evidence Act of 1872) to ensure compliance and enforceability. As e-contracts continue to dominate India's e-commerce landscape, addressing challenges like cybersecurity and evolving judicial interpretations will be crucial to their success, aligning with initiatives like "Digital India" while upholding public policy standards. However, the application of these principles to digital platforms introduces unique challenges due to the nature of electronic communication and automation. Below are the essential elements required for a valid e-contract in India, tailored to the digital context:

Offer

As per Section 2(a) of the Indian Contract Act, 1872, an offer is a proposal made by one party to another, expressing willingness to do or abstain from doing something to obtain the other party's assent. In e-contracts, offers are made electronically through platforms like emails, websites, or automated systems. For instance, a product listing on an e-commerce platform like Amazon constitutes an invitation to offer, while the customer's action of placing an order is the offer. Electronic communication streamlines the process but must clearly convey the proposer's intent to be legally bound.

Acceptance

Acceptance is a critical element, and in e-contracts, determining when it occurs can be complex due to the instantaneous nature of digital communication. According to the Indian Contract Act, acceptance must be communicated to the offeror, except in cases governed by the postal acceptance rule, where acceptance is complete upon dispatch. In e-contracts, acceptance is typically completed when the acceptor sends the acknowledgment (e.g., clicking "I agree" in a clickwrap agreement) or when it reaches the offeror's designated system, as per the Information Technology Act of 2000. The case of *Lalman Shukla v. Gaurie Datta Sharma* (1913) illustrates that acceptance must be informed and intentional, highlighting the need for clear communication in digital agreements.

Lawful Consideration

Consideration, as defined under the Indian Contract Act, refers to something of value exchanged between parties, such as goods, services, or payment. In e-contracts, consideration is often executed (e.g., payment made and goods delivered) but can be executory (a promise to deliver goods or services). Challenges arise when automated systems make promises without human intervention, raising questions about intent and enforceability. The consideration must be lawful and sufficient to create a binding obligation, ensuring the contract aligns with legal standards.

Intention to Create Legal Relations

For an e-contract to be valid, both parties must intend to create a legally enforceable agreement. This intention is assumed in commercial e-contracts, such as online purchases, unless stated otherwise. In digital contexts, this is often evidenced by explicit actions like agreeing to terms and conditions on a website, ensuring the parties are committed to fulfilling their obligations.

Competency of Parties

The parties entering an e-contract must be competent under Section 11 of the Indian Contract Act, meaning they must be of the age of majority, of sound mind, and not disqualified by law. In e-contracts, verifying competency can be challenging, especially in automated systems where age or mental capacity may not be easily confirmed. A contract entered by an incompetent party is void ab initio and unenforceable.

Free Consent

Consent must be given freely, without coercion, fraud, misrepresentation, undue influence, or mistake, as per Section 14 of the Indian Contract Act. In e-contracts, ensuring free consent is critical, as digital platforms may obscure terms or use complex interfaces that could mislead users. For example, hidden clauses in online terms and conditions could undermine free consent, rendering the contract voidable.

Lawful Object

The object of the e-contract must be lawful and not contrary to public policy, as stipulated under Section 23 of the Indian Contract Act. Agreements involving illegal activities, such as committing a crime or a civil wrong, are void. For instance, an e-contract to facilitate illegal activities like hacking or fraud would be unenforceable. Additionally, contracts violating public policy, such as those harming societal interests, are deemed void, ensuring alignment with legal and ethical standards.

Additional Considerations for E-Contracts

Legal Framework: Beyond the Indian Contract Act, the Information Technology Act of 2000 provides legal recognition to electronic records and signatures, while the Bhartiya Sakshya Adhiniyam, 2023 (Indian Evidence Act of 1872) ensures the admissibility of electronic evidence, crucial for enforcing e-contracts.

Challenges: The absence of concrete judicial precedents in India on e-contracts creates uncertainty about their enforceability. Issues like cybersecurity, data privacy, and automated systems' inability to fully reflect human intent further complicate their application.

Public Policy: E-contracts must align with public policy to be enforceable, as courts will not uphold agreements that undermine societal welfare.

Digital Contracts in India

In the digital world, several types of electronic contracts (e-contracts) have become widely adopted due to their efficiency, accessibility, and alignment with the fast-paced nature of e-commerce and digital transactions. These contracts, while executed through electronic means, must adhere to the core principles of contract law as outlined in the Indian Contract Act of 1872, supplemented by the Information Technology Act of 2000 and the Bhartiya Sakshya Adhiniyam, 2023 (Indian Evidence Act of 1872), to be legally valid and enforceable in India.

The most commonly used digital contracts include:

- **E-Mail Agreements:** These are contracts formed through email exchanges where the parties clearly express their intent to enter into a binding agreement. For instance, when two parties negotiate terms via email, such as agreeing to provide services or purchase goods, the email chain can constitute a valid contract if it demonstrates mutual consent and meets the legal criteria of the Indian Contract Act. The Information Technology Act of 2000 recognizes electronic communications as valid, and the Indian Evidence Act of 1872 allows emails to serve as evidence, provided they satisfy requirements like free consent and lawful object.
- **Electronic Signatures:** Electronic signatures have become a cornerstone of digital contracts, enabling parties to sign documents online securely and efficiently. Recognized under the Information Technology Act of 2000, electronic signatures (e.g., digital signatures or scanned handwritten signatures) provide

authenticity and ensure the enforceability of agreements. For example, signing a service agreement via platforms like DocuSign complies with legal standards if the parties are competent and the contract's purpose is lawful.

- **Shrink-Wrap Contracts:** These are pre-drafted, non-negotiable agreements, often termed “boilerplate” contracts, typically included with software or product packaging. They are considered “take-it-or-leave-it” contracts, where acceptance occurs when the user opens or uses the product, such as installing software after agreeing to its license terms. In India, shrink-wrap contracts are valid if they meet the Indian Contract Act's requirements, including clear offer (the terms provided) and acceptance (use of the product), though their enforceability can be challenged if terms are deemed unfair or against public policy.
- **Click-Wrap Contracts:** These agreements require users to actively accept terms and conditions, typically by clicking an “I agree” button, before accessing a service or software. Common in online platforms like apps or e-commerce sites, click-wrap contracts rely on clear offer (the terms displayed) and acceptance (user's click). In India, they are legally binding under the Indian Contract Act if the user's consent is free and the terms are lawful. For instance, agreeing to a website's terms of service during account creation forms a valid click-wrap contract.
- **Web-Wrap Contracts:** These are agreements where users implicitly accept terms by accessing or using a website or service, without actively ratifying the agreement. For example, simply browsing a website with posted terms of use can bind the user to those terms. In India, web-wrap contracts are valid if they comply with the Indian Contract Act's essentials, but their enforceability may be scrutinized if users are unaware of the terms or if consent is not adequately demonstrated.

In India, these digital contracts are governed by a robust legal framework. The Indian Contract Act of 1872 provides the foundational principles, requiring a valid e-contract to have a clear offer, unequivocal acceptance, lawful consideration, competent parties, free consent, and a lawful object not violating public policy. The Information Technology Act of 2000 supports this by granting legal recognition to electronic records, signatures, and transactions, ensuring that e-contracts are treated on par with traditional contracts. The *Bhartiya Sakshya Adhiniyam, 2023* (Indian Evidence Act of 1872) further strengthens their enforceability by allowing electronic communications, like emails or digital signatures, to be admissible as evidence in court. However, for an e-contract to be legally eligible, it must strictly adhere to these conditions, ensuring that it is not tainted by coercion, fraud, or illegality.

Despite their growing popularity, digital contracts face challenges in India. The absence of comprehensive judicial precedents specifically addressing e-contracts creates uncertainty about their enforceability, particularly for complex agreements like web-wrap contracts. Cybersecurity risks and data privacy concerns also deter some businesses and individuals from fully embracing digital contracts. Additionally, ensuring free consent in digital interfaces, where terms may be buried in fine print, remains a concern. As India advances its “Digital India” initiative, the legal system must evolve to address these challenges, potentially through amendments to existing laws or new regulations to enhance clarity and trust in digital agreements.

Parties in an E-Contract

Originator

As defined under Section 2(z) of the Information Technology Act, 2008, the originator is the person who sends, generates, stores, or transmits an electronic message or causes such a message to be sent, generated, stored, or transmitted to another person, excluding intermediaries. In the context of an e-contract, the originator is akin to the offeror in a traditional contract, initiating the agreement by sending an electronic communication, such as an email, a digital offer on an e-commerce platform, or a contract proposal via a website. For example, a seller listing a product on Flipkart is the originator when they send an offer to a

potential buyer. The originator's intent to create a legal relationship is crucial, and their electronic message must comply with the Indian Contract Act's requirements for a valid offer, including lawful consideration and free consent.

Addressee

According to Section 2(b) of the Information Technology Act, 2008, the addressee is the person intended by the originator to receive the electronic record, excluding intermediaries. In an e-contract, the addressee is analogous to the acceptor in a traditional contract, as they are the recipient of the electronic message (e.g., the offer) and must acknowledge or accept it to form a binding agreement. For instance, a customer who receives and accepts a digital offer via email or clicks "I agree" on a website's terms is the addressee. The acceptance must be clear, communicated effectively, and meet the Indian Contract Act's criteria for free consent and competency to ensure the contract's enforceability.

Intermediary

Defined under Section 2(w) of the Information Technology Act, 2008, an intermediary is a person or entity that, on behalf of another, receives, stores, or transmits an electronic record or provides services related to that record. This includes telecom service providers, search engines, online payment platforms, auction sites, online marketplaces, and cyber cafes. In e-contracts, the intermediary acts as a facilitator, enabling the transmission of electronic messages between the originator and addressee. For example, an e-commerce platform like Amazon or a payment gateway like Paytm serves as an intermediary by hosting the transaction or processing the payment. Intermediaries are not parties to the contract itself but play a critical role in ensuring the electronic message reaches the intended recipient. Their involvement is unique to e-contracts, as traditional contracts typically do not require such a facilitator.

Legal Context in India

In India, e-contracts involving these parties are governed by a robust legal framework:

- **Indian Contract Act of 1872:** Ensures that e-contracts meet essential requirements like offer, acceptance, lawful consideration, competent parties, free consent, and lawful object. The originator's offer and the addressee's acceptance must align with these principles to form a valid contract.
- **Information Technology Act of 2000 (amended 2008):** Provides legal recognition to electronic records, signatures, and messages, defining the roles of originator, addressee, and intermediary. It ensures that electronic communications are legally equivalent to traditional written contracts.
- **Bhartiya Sakshya Adhiniyam, 2023 (Indian Evidence Act of 1872):** Supports e-contracts by allowing electronic records, such as emails or digital signatures, to be admissible as evidence in court, provided they meet authenticity standards.

For an e-contract to be valid, the originator and addressee must fulfill the roles of offeror and acceptor, respectively, while ensuring compliance with the Indian Contract Act's principles. The intermediary, while not a contracting party, facilitates the process and is protected under the Information Technology Act, which limits their liability for the content of the messages they transmit, provided they act as neutral conduits.

Parties and Electronic Data Interchange (EDI) in E-Contracts

In the context of electronic contracts (e-contracts), understanding the parties involved and the mechanisms that facilitate their agreements is crucial. As discussed earlier, e-contracts involve three key roles—originator, addressee, and intermediary—as defined under the Information Technology Act of 2000 (amended 2008). These roles adapt traditional contract law principles to the digital realm, ensuring compliance with the Indian Contract Act of 1872, which mandates essentials like offer, acceptance, lawful consideration, competent parties, free consent, and lawful object. Additionally, the Bhartiya Sakshya Adhiniyam, 2023 (Indian Evidence Act of 1872) supports e-contracts by recognizing electronic records as admissible evidence. A significant technology enabling e-contracts, particularly in business-to-business (B2B) transactions, is Electronic Data

Interchange (EDI), which streamlines the exchange of standardized business documents. Below, I'll explain EDI, its role in e-contracts, its benefits, and how it integrates with the parties involved in India's legal framework.

Electronic Data Interchange (EDI) in E-Contracts

Electronic Data Interchange (EDI) refers to the automated, standardized exchange of business documents, such as purchase orders, invoices, and requests for quotes, between organizations' computer systems. Unlike traditional paper-based processes, EDI enables direct data transfer from one organization's application to another's, using a standardized electronic format that specifies the structure and hierarchy of information. This eliminates the delays and errors associated with manual processing, enabling faster and more accurate transactions. For example, a retailer's system can send a purchase order to a supplier's system via EDI, forming an e-contract when the supplier's system acknowledges acceptance, streamlining the process without human intervention.

In the context of e-contracts, EDI serves as a critical tool for facilitating agreements between parties, particularly in B2B networks and supply chains. It supports the roles of the originator (e.g., the business sending a purchase order) and the addressee (e.g., the supplier receiving and accepting it), with intermediaries (e.g., EDI service providers or network platforms) ensuring secure and efficient data transmission. EDI aligns with the Indian Contract Act's requirements by enabling clear offers and acceptances through standardized formats, ensuring lawful consideration (e.g., payment for goods) and competency of parties (typically businesses). The Information Technology Act of 2000 recognizes EDI transactions as legally valid electronic records, while the Bhartiya Sakshya Adhinyam, 2023 (Indian Evidence Act of 1872) ensures their admissibility in court, provided they meet authenticity standards.

Types of Documents Exchanged via EDI

EDI is widely used across industries to exchange various document types that form the basis of e-contracts, including:

- **Purchase Orders:** Formal offers to buy goods or services, initiating an e-contract.
- **Invoices:** Documents confirming payment obligations, reflecting consideration.
- **Requests for Quotes:** Invitations to offer, leading to negotiations.
- **Loan Applications:** Financial agreements formed digitally.
- **Shipping Notices and Bills of Lading:** Supporting logistics-related contracts.

These documents, exchanged between trade partners in B2B networks, enable seamless supply chain operations and contractual agreements.

Benefits of EDI in E-Contracts

EDI offers significant advantages that enhance the efficiency and enforceability of e-contracts:

- **Speed and Efficiency:** EDI accelerates business cycles by up to 61%, completing transactions in minutes rather than days or weeks, as manual processing is eliminated.
- **Cost Savings:** By reducing paperwork, ink, storage, shipping, and document retrieval, EDI cuts transaction costs by over 35%. Early payment discounts and high transaction volumes can save businesses millions.
- **Accuracy:** Automation minimizes human errors, such as missing orders, incorrect data entry, or unreadable faxes, ensuring reliable contract formation.
- **Productivity:** Automating data sharing frees personnel to focus on higher-value tasks, improving operational efficiency.
- **Improved Cash Flow:** Shorter order-to-cash cycles enhance liquidity and strengthen supplier relationships by reducing data disputes.

- **Real-Time Insights:** EDI provides real-time transaction status, enabling data-driven decisions and strategic advantages.
- **Inventory Management:** Faster order processing and delivery reduce inventory holding times, optimizing supply chains.
- **Compliance and Transparency:** EDI ensures timely data delivery and tracking, aligning with legal requirements for transparency in contracts.

Legal Context in India

EDI-based e-contracts are legally valid in India if they comply with the Indian Contract Act of 1872, which requires a clear offer, acceptance, lawful consideration, competent parties, free consent, and a lawful object not violating public policy. The Information Technology Act of 2000 recognizes EDI transactions as valid electronic records, ensuring their legal equivalence to paper-based contracts. The Bhartiya Sakshya Adhinyam, 2023 (Indian Evidence Act of 1872) supports enforceability by allowing EDI-generated documents as admissible evidence, provided authenticity is maintained. However, challenges like cybersecurity risks, data privacy concerns, and the lack of specific judicial precedents on EDI-based contracts in India necessitate ongoing legal clarity and modernization to align with initiatives like “Digital India.”

Challenges and Considerations

While EDI enhances e-contract efficiency, it introduces challenges:

- **Cybersecurity and Data Privacy:** Secure transmission is critical to prevent data breaches, especially for sensitive contract details.
- **Lack of Judicial Precedents:** Limited case law in India on EDI-based e-contracts creates uncertainty about enforceability.
- **Technical Integration:** Businesses must ensure compatible systems and adherence to EDI standards, which can be complex.
- **Public Policy Compliance:** Contracts formed via EDI must align with public policy, as agreements involving illegal activities are void under the Indian Contract Act.

CONCLUSION

Advancements in computer technology, telecommunications, software, and information technology have revolutionized communication and commerce, enabling e-commerce to transcend geographical and time constraints, offering flexibility in location, timing, and payments. E-contracts, critical to this digital shift, facilitate business process re-engineering by leveraging technologies like Electronic Data Interchange (EDI) for instant information exchange, enhancing efficiency in B2B transactions. In India, e-contracts formed by parties like the originator, addressee, and intermediary are governed by the Indian Contract Act of 1872, Information Technology Act of 2000, and Indian Evidence Act of 1872, requiring essentials like offer, acceptance, lawful consideration, competent parties, free consent, and lawful object. They offer benefits like cost savings (over 35% on transaction costs), time efficiency, error reduction, and global market access, but face challenges due to the lack of explicit e-contract legislation, unclear jurisdiction, and difficulties in assessing intent in automated systems like EDI or web-wrap contracts. Cybersecurity risks, data privacy concerns, and limited judicial precedents further complicate enforceability. To protect consumers and merchants and align with the “Digital India” initiative, a comprehensive, updated law is needed to clarify acceptance, jurisdiction, intent, and public policy compliance, ensuring e-contracts support India’s competitive e-commerce landscape.

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