

## E- contract, its validity and legal provisions in India

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### Abstract

Contract has become an inevitable part of everyone's life. In our daily life we enter into number of contracts knowingly or unknowingly. Generally we use the terms agreement and contract as synonyms. But there is big and important difference between these two words. For example, when we go to any shop and buy a packet of biscuit and pay for it, is a contract; because here intention of the parties to be bound by the consequences arising out of contract is present. When we promise to our friend to go to watch a movie is an agreement, because this is a social agreement and is not enforceable by the courts of law, because the intention of the parties to be bound by the consequences arising out of contract is missing in such type of agreements. "Contract is an agreement enforceable by the court of law" defined in section 2(h) of Indian Contract Act 1872. Though not all agreements are contracts, only those agreements are contracts which are enforceable by law. There are different types of contracts like oral contract, written contract, express contract, implied contract, valid contract, void contract, voidable contract etc. Among all these, there is one more type of contract i.e. E- contract, which now days has gained more importance in business world. E-contract is one which is entered into through online mode. In India Indian Contract act 1872 deals with the entire contract, their validity and contractual relationships between the parties to the contract. Researcher here wants to study meaning of e- contract, laws relating to its validity, and admissibility in Indian courts. For this, researcher has used secondary method of data collection.

### Keywords

Agreement, contract, e-contract, e-mail, valid, void

### Introduction

A man needs many things, to lead happy life; which he needs to buy for money or for some other consideration. Long before when the money was not introduced, a system of exchange of goods was in practice for many centuries. Such system of exchange of goods is known as barter system, wherein people used to exchange some goods for other goods. After the introduction of money, people have started buying things by paying money as consideration. So this barter system has been replaced by the contracts. These contracts have also become an important instrument in business deals in modern economic world. Electronic contracts have gained tremendous importance in today's digital world. During the Britisher's rule, the Imperial legislative council has enacted Indian Contract Act 1872 on 25<sup>th</sup> April 1872 which came into force on 1<sup>st</sup> September 1872. This act deals with the contractual relationships of the parties to the contract. It determines the situation in which promises made by the parties to a contract shall be legally binding. Under Section 2(h), the Indian Contract Act 1872 defines a contract as an agreement which is enforceable by law. As per section 10 of the Indian Contract Act 1872 all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby

expressly declared to be void<sup>1</sup>. So not only written but oral contract is also valid if it satisfies all the essentials elements.

With the advancement of technology in our country, most of the businesses have also become techno friendly. With the help of technology now it has become possible for small scale businesses to compete with large business organizations on equal footing. Technology has brought revolution in the field of business world. One such revolution has also taken place in relation to correspondence in business world. Earlier for entering into a contract the organisations need to meet face to face with each other or by sending a letter of offer and acceptance through post. But with the passage of time, an invention named e-mail came into existence and total scenario has been changed. E-mail, in full electronic mail, messages transmitted and received by digital computers through a network. An e-mail system allows computer users on a network to send text, graphics, sounds, and animated images to other users.<sup>2</sup> Nowadays e-mail has become an indispensable part of business communication. Now the business organisations can communicate with each other through e-mail by use of internet. There are certain advantages of using an e-mail as a means of communication like email offers instantaneous outreach, one can use email at any place, it serves as a record, easy to track, and it saves time and is very economic. Because of these advantages, most of the business organisations are adopting e-mails as a means of formal communication.

### **Legal Provisions regarding validity and enforceability of e-contract in India**

Now the question arises as to the validity of contracts entered into by electronic means. Whether e-contracts are valid and enforceable by law in India? In the Indian Contract Act, 1872 no specific provision is made for validity and enforceability of e-contract. The only essential requirement to validate an electronic contract is fulfilment of the necessary pre-requisites provided under the Indian Contract Act, 1872 like any other contract.

As per the provisions of the Information Technology Act, 2000 under Section 10-A, an electronic contract is valid and enforceable. Also, the courts in India have recognized electronic contracts under the provisions of the Indian Evidence Act, 1872.

The provisions of the Information Technology Act, 2000 (IT Act) give legal recognition to an electronic contract.

Section 10-A of the IT Act which states:

"Section 10-A: Validity of contracts formed through electronic means. -where the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptance in a contract formation, is, 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>3</sup>

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<sup>1</sup>Law of Contract, Bare Act with short comments 2014, professional book publishers

<sup>2</sup><https://www.britannica.com/technology/e-mail>

<sup>3</sup><https://www.mondaq.com/india/contracts-and-commercial-law/699022/validity-of-electronic-contracts-in-india>

After recognizing the increasing dependence on electronic means to accomplish commercial agreements the above provision was introduced by the Information Technology (Amendment Act), 2008. This applies where contract formation, communication of the proposal and acceptance is carried out electronically. The 2008 amendment to the IT Act 2000 introduced Sec 10A provides for a wider acceptance to the electronic contract, without raising any question to its validity in the eyes of the law.

E-Contracts can be entered into through different modes of communication such as e-mail, internet and fax. The only essential requirement to validate an E-Contract is to comply with the necessary prerequisites provided under the Indian Contract Act, 1872.

### **Essentials for Valid e-contract**

**Offer and Unconditional Acceptance of offer** - Which may be made online or by e-mail communication.

**Lawful Purpose and Consideration** - A contract is enforceable by law only when it is made for a lawful purpose and lawful object and for some consideration which has some value in the eyes of law. Any contract whose object is to defeat any provision of law and is fraudulent in nature, is void agreement.

**Capacity of Parties and Free Consent** - As per Section 11 and 12 of the Indian Contract Act, 1872 (capacity to contract), parties must be competent to enter into a contract. According to section 11 a person who is major, of sound mind and not disqualified from contracting by law is competent to contract. Also consent of the parties to the contract must be freely obtained as per Section 13 and 14 of the Indian Contract Act, 1872.

An e-contract being simple to execute but confuses many people about its validity, particularly when compared to a conventional written contract. In fact that the Indian Contract Act, 1872 has not specifically laid out any specific mode of communicating an offer and what constitute its acceptance. The same can be expressed verbally, in writing or even through conduct i.e. implied. This makes clear that even in its simplicity, an E-Contract is as valid as a traditional written contract; the only stipulation/ condition being that an E-Contract should possess all the essentials of a valid contract as mentioned above.

If it is shown that the parties have it in mind to be bound only when a formal agreement has been executed, the legality of an agreement would be affected by its lack of formality. On the other hand validity of an agreement would not be affected by its lack of formality where parties do not have such intention to be bound by a formal agreement. Hence the formal execution is not that important if the parties are at consensus-ad-idem. Therefore, once an offer is accepted through modes of communication such as e-mail, internet and fax then a valid contract enforceable by law is formed unless otherwise provided specifically by law in force in India; such as the Registration Act, 1908, the various Stamp Acts etc. There are certain contracts which cannot be made through electronic modes like sale and purchase of immovable property, because they need to be in writing, stamped and registered as per the Indian Stamp Act 1899 and the Indian Registration Act, 1908.

### **Evidentiary Value of Electronic Records**

The electronic documents have been recognized under Section 65-A of Indian Evidence Act, 1872. The procedure for furnishing electronic documents as evidence is provided under Section 65-B of the Indian Evidence Act, 1872.

Section 65B- Admissibility of electronic records.— Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.<sup>4</sup>

According to above provision if any information is contained in an electronic record which is produced by a computer in printed, stored or copied form shall be deemed to be a document and it can be produced as evidence in any proceeding without further proof of the original. But, admissibility of such document is subject to various conditions prescribed under section 65-B of the said act. It is required that the document or e-mail which is produced from a computer, is expected to be in regular use by a person having lawful control over the system at the time of producing it in the court as evidence; the document or the e-mail was stored or received during the ordinary course of activities; the information was fed into the system on a regular basis; the output computer was in a proper working condition and has not affected the correctness of the information entered.

### **Conclusion:**

As the technology has advanced, revolution occurred in business world with respect to means of communication and mode of contracts. Now days, most of the contracts are made in online mode. It may be concluded that contract made by electronic means is as much valid as any other traditional written contract. Only the condition is that the parties are at consensus-id-idem means the parties must agree on the same thing in the same sense and such an agreement fulfils all the essentials of a valid contract like offer and its acceptance, lawful consideration, lawful object and competency of the parties etc. provided under the Indian Contract Act, 1872 mentioned above, then, such e-contract is valid and legally enforceable as well as admissible as an evidence in the court of law.

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<sup>4</sup><https://indiankanon.org/doc/35556724/>