

# An Critical Analysis of E-Contracts in India and Enforceability with Respect to Sec-65 of Indian Evidence Act

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## Abstract

Electronic contracts are the contracts which take area via e-trade, without meeting of the events to the contract. Those contracts are normally very much like the paper primarily based industrial contracts wherein the industrial transactions are carried out electronically. With the development of era and the globalization, it has multiplied the presence of e-trade groups for the duration of the sector. Further, the popularity of a settlement is accorded under the Indian Evidence Act, via which the time period "record" consists of any records contained in an digital record which is outlined on a paper, saved, recorded or copied in optical or magnetic media produced by a computer. Such facts are in conformity with the situations of section 65B of the Act which will be admissible in any proceedings, with none similarly proof or production of the authentic document earlier than the worried authority and shall be appeared as an proof of any content of the authentic or any reality stated therein of which direct evidence would be admissible.

**Key Words:**E-Contracts, electronic evidence, uncitral, IT Act, 2000, evidence act.

## 1. Objectives

1. To know about E-contracts in India
2. To analysis the electronic evidence
3. To understand about section 65 of Indian Evidence Act 1872
4. To know about the admissibility of electronic evidence
5. To study about the related case law

## 2. Hypothesis

- Even though E-contracts are legalized there many loophole like hacking to modify the E-contracts illegally
- E-contracts are valid as they are legalized by IT Act 2000

## 3. Introduction

When parties enter into contracts with every other and they're interacting face to face, it's far less complicated to keep away from mistakes than while they're at a distance and contracting with each other through the net as medium. when parties input into digital contracts the entire agreement can actually be concluded inside seconds at the press of a button. The conventional paper primarily based contract regulation has rules that apply to subjects inclusive of jurisdiction, validity, formation of contract, changes to contracts. In the world of online buying and selling those are all issues that stand up in online contracts and is a mission to the traditional standards of agreement regulation. The recognition and regulation to E-Contracts is provided by various laws such as Information Technology Act, 2000 and the Indian Evidence Act, 1872. The provisions in the I.T. Act mention about the attribution, acknowledgement and dispatch of electronic records and secured electronic procedures.

## 4. Aim of Study

To study and analyze

1. Legal issue involved in E- contracts
2. Section 65B of Indian Evidence Act 1872
3. Legality of electronic signature
4. Evidentiary value of E-contracts
5. Hacking of E-contracts illegally

## 5. References

1. E- Books
2. E-sources

### Chapter 1: Kinds of E-Contracts

#### 1. Browse Wrap Agreement

This agreement is considered as a browse wrap agreement that's supposed to be binding upon the contracting party with the aid of the usage of the website.

those encompass the consumer policies and phrases of service of websites along with Flipkart or E-bay and are in the shape of a “terms of use”, a “person settlement” or “terms of service”, which can be used because the hyperlinks at the corner or backside of website.

## **2. Shrink Wrap Contracts**

These contracts are the license agreement via which the terms and conditions of the agreement are enforced upon the contracting events and are commonly present on the plastic or in manuals accompanying with the software program merchandise which the customers buy.

## **3. Click Wrap Agreements**

Those agreements require the person to provide his consent to the terms and situations which are known as end person settlement and governs the licensed usage of the software program by using clicking “ok” or “I agree” button. There are positive sorts of take a look at which guarantees that the phrases of the settlement are binding upon the contracting parties.

### **Chapter 2: Execution of E-Contracts**

The popularity and law to E-Contracts is provided by way of numerous laws inclusive of Indian technology Act, 2000 and the Indian Evidence Act, 1872. The provisions in the I.T. Act point out about the attribution, acknowledgement and dispatch of digital statistics and secured electronic strategies. The IT Act recognizes the fundamental capabilities of the agreement which include the communicate of the proposals, attractiveness of proposals, revocation of proposals and acceptances, because the case may be which will be expressed either in digital form or by means of an digital record. Further, the popularity of a settlement is accorded under the Indian Evidence Act, via which the time period “record” consists of any records contained in an digital record which is outlined on a paper, saved, recorded or copied in optical or magnetic media produced by a computer. Such facts are in conformity with the situations of section 65B of the Act which will be admissible in any proceedings, with none similarly proof or production of the authentic document earlier than the worried authority and shall be appeared as an proof of any content of the authentic or any reality stated therein of which direct evidence would be admissible.

### **Electronic Signature**

The information technology (amendment) Act, 2008 has substituted the term ‘digital signature’ with the time period ‘electronic signature’. A virtual signature is the generation specific and is irreversibly specific to each the report and the signer. but, an electronic signature is generation independent and well known in nature. but, there's no widespread for electronic signature. it may be both a typed name or digitized photograph of hand written signature. The substitution of the time period ‘digital signature’ with ‘digital signature’ is meant to make bigger the scope of E-contracts in an e-commerce international.

## Validity of E-contracts in India

The Indian contract act 1872 has recognized the traditional agreements which consist of the oral contracts made by the loose consent of the contracting events who are able to contract for the lawful consideration with a lawful object and are not expressly declared to be void. subsequently, there may be no provision on this Act which prohibits the enforceability of electronic agreements provided that the crucial elements of the valid settlement have to be found in such agreements. The free consent is considered as the main characteristics of the legitimate contract. commonly, there may be no scope for negotiation on E-contracts

### Chapter 3: Admissibility of E-Contracts as a Evidence in India Courts

As we recognise the evidence Act was drafted to codify standards of evidence and fundamental rule of proof . As seen in sections 59 and 60 of the evidence Act , oral evidence can be adduced to prove all facts, except files, provided , the oral proof is direct .The definition of 'evidence' has been amended to include electronic data. The definition of 'documentary proof' has been amended to include all files, consisting of electronic information produced for inspection through the court. Section 3 of the evidence Act, 1872 defines proof as underneath: "proof" - proof method and includes:- 1) all statements which the courtroom permits or calls for to be made before it through witnesses, with regards to subjects of truth underneath inquiry; such statements are referred to as oral proof; 2) all documents together with electronic data produced for the inspection of the court docket. Such files are known as documentary evidence. section 62 of the evidence Act says number one evidence of the contents of a report is the record itself. On analyzing section 63 ,Secondary evidence of the contents of a document consists of, among different things, certified copies of that record, copies made by means of mechanical tactics that insure accuracy, and oral money owed of the contents by using someone who has visible that document.

There are situations where the unique report cannot be produced as stated in section 65 of the evidence Act and the secondary proof indexed in section 63 may be used to show its content material.

As we all know “Generalia specialibus non derogant” is the Maxim. The overall act is not to be construed to repeal a previous act, unless there's a few explicit connection with the previous act at the challenge, or a necessary inconsistency within the two collectively. The legislature with attention to a special issue , does no longer intend afterwards to derogate from its own act if there is no unique mention of this kind of purpose. While there are provisions in a unique Act and in a general Act on the equal concern which are inconsistent, if the special Act offers a complete rule at the subject, the expression of the rule of thumb acts as an exception to the situation-count of the rule of thumb from the overall Act. Underneath section 59 of the evidence Act , Oral proof can not

prove the contents of files for the reason that file is absent, the truth or accuracy of the oral proof can't be compared to the file and to show the contents of a report, either primary or secondary evidence is necessary.

### **Case Law Regarding Admissibility of e-evidence**

in the case anver basheer v .p.k basheer AIR 2014 SCW 5695 dated on 18 September 2014 the SC mentioned that "there may be a revolution within the way that proof is produced earlier than the courtroom". while electronically saved information become dealt with as a document in India before 2000 , secondary evidence of these digital 'documents' turned into adduced thru revealed reproductions or transcripts, and the authenticity became licensed. The signatory could pick out signature in courtroom and be open to cross examination with the aid of meeting the conditions of each sections 63 and 65 of the evidence Act. whilst the creation and storage of digital records grew more complicated, the law had to alternate more notably.

### **Legality of E-Contracts under Indian Technology Act 2000**

Section 10 A of the act gives the legal representation to legality and enforcement of E-contracts under IT act 2000. It gives that "were in contract formation, communication of proposal, the revocation of the proposal and acceptance as the case are expressed in electronic form or by electronic record . Section 10 A was inserted in IT Act 2000 by the Information Technology (amendment) Act 2008. Section 4 says Law recognition of electronic records.- where any law presents that statistics or another count number will be in writing or within the typewritten or published shape, then, however anything contained in such regulation, such requirement shall be deemed to were glad if such records or remember is

- (a) rendered or made available in an digital form; and
- (b) reachable on the way to be usable for a next reference.

Section 11 says Attribution of digital statistics.-An electronic report shall be attributed to the originator,

- (a) if it changed into sent by means of the originator himself;
- (b) via a person who had the authority to act on behalf of the originator in respect of that digital record; or
- (c) through an information machine programmed via or on behalf of the originator to function robotically.

Section 12 Acknowledgement of receipt.

1. wherein the originator has no longer 22 [stipulated] that the acknowledgement of receipt of electronic document receive in a specific form or by a particular technique, an acknowledgement can be given via
  - (a) any communique via the addressee, automatic or otherwise; or
  - (b) any behavior of the addressee, enough to suggest to the originator that the digital file has been received.

#### **Chapter 4 : Comparison with Constitution of U.K**

European Union is a marketplace with a diverse club, each with its very own domestic rules. To make certain uniformity in a few topics the EC adopts Directives that the member states are required to put in force into their domestic law. If a member state does not do so, the EC can act in opposition to the member country and award damages to an person that has suffered as a result of the recalcitrant member.

The Directive guarantees that humans who enter into online contracts within the ecu could have certainty as to the criminal consequences of the agreement and will further create an surroundings of agree with among residents of various contributors. this could again in a roundabout way ensure the boom of online trade and make a contribution to the wealth of the member states. If the understanding did no longer exist, customers could be uncovered to dangers which can also a bad effect at the economic system. There may be regulation that consists of client protection and additionally that documents be in writing and the Directive that such contracts are valid if they are made via the internet. Examples of those are the customer credit Act 1974 that offers for customer safety and The requirements of writing (Scotland) Act 1995. Inside the Uk, France and Germany the rule is that the commercial is an invitation to deal with and the patron makes the provide which may be widespread or declined with the aid of the offeree. Kodak scenario above the online orders were commonplace routinely as this changed into the manner that the internet site turned into installation to address on-line orders .The EC did now not move some distance sufficient to harmonise the moment of contract and articles 9 to eleven of the Directive that deals with online contracts, handiest offer for the method of contracting online. The variations among the civil laws structures and the not unusual regulation systems still exist and the citizens of different member states will nevertheless not be sure whilst the agreement has come into existence. Snijders argues that Article eleven of the Directive supports the civil law receipt idea and the offeree chooses the medium and is excellent placed to insure in opposition to risks.

#### **Chapter 5 : Illegal Activities Like Hacking in E-Contracts Area**

The information technology Act 2000 (ITA 2000) presents the legislation around e-trade, electronic contracts and e-signatures for India. It also defines positive acts of cybercrime and descriptions penalties. It was notified on October 17, 2000 by way of Indian parliament. It carries 94 sections, divided into 19 chapters, and additionally consists of four schedules. Further to setting up the validity of electronic contracts, the ITA 2000 additionally outlines consequences for cyber crime. under is a list of primary offenses and associated punishments beneath ITA 2000.

- Section 65—Tampering with pc documents that are required to be kept by regulation is punishable by using up to three years in prison with related fines.

- Section 66 —Hacking right into a laptop device. A hack is constituted by an individual with harmful rationale deleting or changing records pc information. Punishable by up to 3 years and associated fines.
- Sec 66B—Receiving a stolen laptop or verbal exchange device is punishable b up to a few years in prison with associated fines.
- Sec 66C—the use of some other individual’s password or digital signature. Punishable up to 3 years with associated fines.
- Sec 66D—cheating thru an electronic communication or pc resource. Punishable by way of up to three years in prison and associated fines

### **Study of Case Laws**

1. Harpal singh chota vs state of Punjab 2014 - In this case the supreme Court have reiterated the case that any electronic record in form of secondary Evidence cannot be admitted as Evidence unless a certificate of evidence under the section 65B of Indian Evidence Act
2. Hyderabad E-tender plan hacking case 2016 - In this case hackers have hacked the entire E- tender plans and allegedly charged RS.15000 per tender information to the government of telangana.
3. Anwar Basheer vs p.k.Basheer September 2014 AIR 2014 SCW 5695- In this case supreme Court revised the law on electronic evidence . The Judgement will have an impact on the manner in which wiretapes are brought before the court
4. Casio India Co.Ltd vs ashita teleservices Pvt LTD AIR 2006 SC 730- In this case the Delhi high court held that once the website is accessed in Delhi it is enough to involve the territorial jurisdiction .
5. In the case Mehta vj pereira fernandes [2006] EWHC 813 (Ch),there was an appeal against a district court judgement which awarded the plaintiff company with the sum of 25000 euro . The amount was awarded allegedly from the amount arose from the email send by the Mehta jpf's solicitor

## **6. Suggestions**

It may be stated that electronic contracts are almost identical as different hard copy contracts as a ways as its evidentiary cost is involved and in case of any discrepancy there are sure stipulations that fill the lacunae. All digital contracts are legitimate contracts as they are legalized by means of the statistics era Act and one could be made accountable if there is any infringement with the terms and situations. finally many amendments have been made so that you can reap conceptual readability.

## **7. Conclusion**

For the security of e contracting in cyberspace such matters must be recollect that in spite of recent improvement in assessment technique, many uncertainties nevertheless remain which effect on filtering junk mail strategies and test the validity of unsolicited mail filter evaluation techniques. here we're going to suggest numerous typical filtering techniques and suggest our paintings to well

known them. So the subsequent time you uninteresting click on an "I agree" button without even worrying to see the terms or hurriedly tear the wrap of software CD being least interested approximately the phrases typed on it "suppose twice"! they're all are legitimate contracts and you can be made answerable for the terms and conditions laid down there.

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