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**LEGAL FRAMEWORK GOVERNING E-CONTRACTS**

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**1.1. Meaning and Definitions**

Electronic contracts may be said as “legally enforceable promises or set of promises that are concluded using electronic medium.” It is defined as “a kind of contract formed by negotiation of two or more individuals through the use of electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract.”<sup>3</sup>

The International Chamber of Commerce define ‘e-contract’ as “the automated process of entering into contracts via the parties computers, whether networked or through electronic messaging.” To put it precisely, contracts entered into via computers, using the means of Internet, email, or via any other computer related products such as databases and software, are e-contracts. In theory, an e-contract is almost identical to traditional paper-based contracts, only that the agreements are created, signed and communicated in an electronic form. E-contracts are also stated as ‘digital contract’, ‘online contract’ or ‘cyber-contract’.

It can be said that the definitions of e-contract cannot be claimed as exhaustive and most of the definitions that are found are generic definitions. Etymologically, we may find many definitions for e-contract, but there can be no undisputable or exhaustive definition for it. So in its broadest sense, it can be summarized as contracts that are formed using computers, either through e-mail or the Internet, or that incorporate computer related programs like software and databases.<sup>4</sup>

E-contract has many advantages over traditional contracts as it can significantly reduce the time of forming contracts. It helps contracting parties to create a faster contracting process by facilitating automation and digitization of contracts, which also reduced the process costs. It

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<sup>3</sup> US Legal Definitions, (Nov. 15, 2020), <http://definitions.uslegal.com/e/e-contract>.

<sup>4</sup> L. Kidd, Donnie. Jr. & H. Daughtery. Jr, 2000, Adapting Contract Law to Accommodate Electronic Contracts: Overview and Suggestions, 12 RUTGERS COMPUTER AND TECH LJ, 225.

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also assists businesses achieve competitive benefits by providing an upgraded contract management system. Modern businesses in this media age are mostly contract-intensive and rely heavily on effective management of contractual relations to uphold positive trade relations. Effective management of contract involves exploring and examining the past, present, and future contractual relations of a company, which involves their formation, performance and termination, renewals and risk analysis. E-contract assists and automates the whole process and additionally improves the content by digitally examining the consistency of the contractual terms. It also provides efficient contract monitoring prospects by enabling automatic analysis of the terms & conditions & thereby eliminating the requirement of having to physically connect contracting systems with the production management systems. Also, e-contract enables 'responsiveness' in the contracting process as it is powered and supported by their tactical information technology architecture. As e-contract is represented in a digital form, it substantially eliminates the requirement of human-process synchronization which results in speedy contract formation and thereby preventing companies to miss out on good opportunities due to the time and energy they spend on extensive synchronization requirements.

### 1.2. Essential Elements to Form a Valid Electronic Contract

The Information Technology Act, 2000 lays down a provision for the recognition<sup>5</sup> of e-contract under Section 10A. It states that communication of contractual terms in an electronic form or by electronic records are enforceable. For that reason, the basic principles of traditional contracts apply to all contracts whether they are formed orally, electronically or through paper-based communications. Many of the legal issues that appear are related to whether the principles in traditional contract law will be sufficient to govern and regulate the modern form of electronic contracts. However, like every other traditional contract, every e-contract should fulfill the following essential elements in order to form a valid contract:<sup>6</sup>

Offer: An 'offer' is the first essential element in forming a valid contract.

According to the Indian Contract Act 1872, 'offer' is defined in Section 2(a) as "*when one*

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<sup>5</sup> [https://www.researchgate.net/publication/253084626\\_An\\_Analysis\\_of\\_the\\_B2B\\_E-Contracting\\_Domain\\_-\\_Paradigms\\_and\\_Required\\_Technology\\_Beta](https://www.researchgate.net/publication/253084626_An_Analysis_of_the_B2B_E-Contracting_Domain_-_Paradigms_and_Required_Technology_Beta).

<sup>6</sup> Samuil Angelov & Paul Grefen, An Analysis of the B2B E-Contracting Domain - Paradigms and Required Technology, 2011, (Apr. 17, 2019),

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*person will signify to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer.”* To form an e-contract, offers are made using electronic medium and the form of communicating offers are not always similar in all e-contracts. As consumers surf websites where available goods and services are displayed, there can be an invitation to offer, counter offer, revocation of standard offer and an offer to buy or avail the displayed goods and services. In such manner, the presence of an offer is mandatory to form an e-contract, but the mode of communicating the offer differs from contract to contract. Acceptance: The Indian Contract Act 1872 defines acceptance in Section 2 as “*When the person to whom the proposal is made signifies his assent thereto, the offer is said to be accepted. Thus the proposition when accepted becomes a promise.*” An expressed, implied or conditional acceptance may be made. However, in cyberspace, there is a controversial issue due to the offeror the acceptor being distanced in space and time. The promptness and reliability of the way in which an acceptance is communicated are taken into consideration when determining the issue of space and time difference. Considering the characteristics of electronic communications, the English Courts have accepted that the Postal Rule of Communication should not be applied as it would lead to ‘manifest inconvenience or absurdity’. This stand is supported by the Indian Courts and acknowledge that the Acceptance Rule-acceptance becoming effective when it reaches the offeror- should be applied in e-contracts.

iii) Lawful Consideration: According to section 2(d) of the Indian Contract Act

*“when at the desire of the promisor, promisee or any other person has been done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something, such act or abstinence, or promise is called a consideration for the promise.”* In e-contracts, the terms and conditions of the online vendor and the commitment given by them in case of delivery, return/exchange and refund of goods and general customer services form the consideration against the obligation of the buyer on payment of the goods purchased or services availed.

iv) Intention to Create Legal Relations: When two parties enter into a contract with a readiness to accept the legal consequences of entering into the contract, to be legally bound by the contract, there is an intention to create legal relation. Generally, in a contract for



commercial operation, intention is automatically presumed to exist. However, there is an exception when a deceptive website lures a potential customer into making an unfavourable contract. To escape from such deceptive practices which is quite prevalent in the online realm, customers should carefully check the terms and conditions stated in the web pages in order to enter into such contracts with a genuine intention to create legal relationship.

v) Competency of the Parties: According to Section 11 of the Indian Contract Act, *“Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.”* In this respect, even though the Indian law stipulates the necessary conditions to be a competent contracting party, it is very difficult to assess the potential customers’ real competency in an online realm and this could result in complications for online vendors. They could find themselves liable to criminal or civil sanctions if they do not make sure the real competency of their customers with the assistance of reliable security measures.

vi) Free Consent: According to Section 13 of the Indian Contract Act, *“Two or more persons are said to be in consent when they decide upon same thing in the same sense (Consensus-ad-idem).”* According to Section 14, Consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake. In the formation of an e-contract, as generally there is no real-time communication between the contracting parties, the Click Through Procedure stand in place to check any complications that course arise due to deceptive consent and to guarantee free and genuine consent. Authentication of their consent and orders are done using personal identification numbers, password, digital signature, fingerprint, QR code or other reliable form of identification assigned to users.

vii) Lawful Object: Section 23 of the Indian Contract Act enumerates what is a lawful object in contract formation. The word ‘object’ used in this section connotes ‘purpose’ and does not imply the meaning in the same sense as ‘consideration. In that way, although the consideration of a contract may be lawful, that alone will not validate the contract if its object is unlawful. In the formation of an e-contract, even if the terms and conditions provide lawful considerations, if the general object of the e- contract is unlawful when looking at the grand scheme of things, the contract will not be considered as a valid e-contract.

viii) Certainty and Possibility of Performance: The terms and conditions of every contract should be clear and not vague. The contract will not be enforceable by law if the meaning of the terms and conditions cannot be ascertained by any way. Also, it must be possible to be

performed, which would otherwise be considered as a void contract which does not legally bind the contracting parties. Similarly, an agreement which is not certain or ambiguous will also be considered as void.

## **2.1 Modes of Creating Electronic Contracts**

Electronic contracts can be formed using three different modes: Electronic Data Interchange (EDI), E-mail Contracts, and Contracts formed through websites which consist of Browse Wrap Contracts, Click Wrap Contracts, Shrink Wrap Contracts and Online Shopping Contracts.

### **2.1.1 Electronic Data Interchange**

Long ahead of the current mass employment of the Internet for web-based commercial transactions, businesses were gradually leaning on information technology systems for trading. This online trading is executed under mutually agreed form of communication that involves defined message structures which we now call electronic data interchange or EDI. According to the UNCITRAL Model Law, Electronic Data Interchange means “the electronic transfer of information from computer to computer, using an agreed standard to structure the information.”<sup>7</sup> So basically, EDI is an exchange of information and documents from one computer to another in a standard electronic format and contracts are concluded between two computers. It is the formation of a contract without any human involvement and just by exchanging electronic messages without virtually any kinds of paperwork.

Back in the 1960's, business men came to know that most of the paper works they made while executing their business transactions were associated with goods shipment like purchase orders, invoices and landing bills and these papers had the same information in most of their transactions. They spent a good amount of time, energy and money entering the same set of information into their computers and printing these documents for every transaction. So in order to save their time and money, and to evade printing and mailing cost, they made a standardised format to send those data electronically. The parties to these transactions normally exchange their trading agreements containing information about liabilities and other rules that will be referred to in case of disagreements. The data contained in the documents are converted into standard EDI format, which are retranslated into a comprehensible form using software programs as EDI transfers coded information in a structured format. EDI removes the need for human involvement in exchanging information and business documents

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<sup>7</sup> Article 2(b), UNCITRAL Model Law.

and facilitates direct exchange of information and documents between computers which significantly decreases human errors, paper usage, and administrative expenses. EDI is presently used in industries like retailing and it could be considered as the key to certain businesses where products purchasing orders are closely managed with suppliers. It is also commonly used by banks as an automated payment system.

### 2.1.2 Electronic Mail (E-mail) Contracts

With the evolution of e-commerce sector and the flooding online transactions being made over the Internet, forming online contracts through e-mails have become overwhelmingly popular. Electronic mail (e-mail) contract is a contract in which the terms & conditions of an agreement, offer and acceptance, are communicated between the contracting parties and concluded through a number of e-mails.

The script of e-mail messages is the digital counterpart of a traditional paper-based mail. So, an e-mail could perform all the functions of a paper-based mail even though it does not exist physically. However, due to its nature and technicalities, transmission of e-mails can get delayed and there can be e-mail delivery complications as it has a different delivery system from traditional mails. E-mails after being drafted on a computer are transmitted along international network of computers till it is delivered to the recipient's ISP. The receiver will then retrieve the message by logging onto their ISP & download the e-mail content. This transmission may take some time depending on the viability of the recipient's ISP, so an offer or acceptance may not be delivered instantly. For this reason, an e-mail cannot be said to be an instantaneous form of communication as there can be a space in time between its dispatch and estimated delivery time. This point was reiterated in the case of *Chwee Kin Keong v. Digilandmall.com Pre Ltd.* “...unlike a fax or a telephone call, it is not instantaneous. Emails are processed through servers, routers and internet service providers. Different protocols may result in messages arriving in an incomprehensible form. Arrival can also be immaterial unless a recipient accesses the email, but in this respect email doesn't really vary from mail that has not been opened.”

In communication of offer and acceptance through e-mail, the message is deemed to be out of the offeree's location at the time the offeree presses the 'send' button. The offeree may receive a confirmation of the message being successfully sent, otherwise if there is a problem in delivering the sent message, the offeree will get a mail indicating a failed delivery notice. There can be cases of a computer screen freezing upon sending a message. In such a situation, the offeree need to resend the e-mail as the message may not have been



successfully transmitted. The exact moment of dispatch can be verified from the time of sending of the e-mail recorded by the Internet Service Provider in the offeree's account.<sup>8</sup>

The Indian Contract Act doesn't lay down any provision regarding e-mail contracts though it also has not invalidate such contracts per se. The fact that it is similar to other forms of contracts, other than the medium of communication<sup>9</sup>, has been taken into account and is therefore governed by the Indian Contract Act. In such manner, e-mail contracts need to satisfy all the essential elements of a valid contract in order to execute and enforce a valid e-mail contract. The terms of a contract should be agreed by both parties and every offer and acceptance must be communicated with an intention to create a legal relationship. There must be a mutual agreement on the consideration as well.

### 2.1.3 Contracts Formed Through Websites

An alternative method of forming e-contract is through websites. This mode of contract formation offers a quick and convenient method for individuals and organizations to arrive into legally-binding agreements with other parties by enabling acceptance of contractual terms by a simple click of the mouse. Today, they are being used for an extensive range of purposes, from enabling government filing to formation of contracts for consumers and businesses. Traders have made use of this new opportunity by making shopping websites and auction houses that can be accessed from anywhere in the world. Almost everything that a man needs for his living can be found in these websites.

Among these contracts formed through websites, there is a *click-wrap contract* that is made during or before making a purchase from a website. The buyer is necessitated to click "I agree" button at the start of the transaction, then the purchase/installation will progress and be completed or the user will gain access to the website. Another kind of contract formed through websites is a *browse-wrap contract*. In this kind of contract, whenever a user visits a website, the terms & conditions are written somewhere on the website or are made available to read by clicking on a hyperlink. These contractual terms purport to bind anyone who continue to browse the website or its services. The third kind of contract is called *shrink-wrap contract* and it comprises of agreements wherein the purchased product bears the terms & conditions and these terms & conditions are written on the box in which the purchased product is packed. Whenever a user unpacks the box or uses the purchased product or fails to return it to the point of sale, it is considered as the buyer has given his consent and duly

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<sup>8</sup> (2004) 2 SLR 594.

<sup>9</sup> Ibid para 97

accepted the terms therein. The fourth type of contracts concluded in websites are *online shopping contracts*. It is a sale of goods contract made on a website using electronic medium. In this type of contract, sellers display their goods on a website and buyers order these goods after agreeing to certain standardised terms of sale and pay for the products through the website itself. Payments can be made using different modes like credit/debit card, internet banking, UPI, and through other online payment agents.<sup>10</sup>

Acceptance of contractual terms & conditions by conduct and click of the mouse has raised questions that are similar to the contract cases known as the 'ticket cases.' The principles of the ticket cases have been progressively applied in these shrink-wrap, click-wrap and browse-wrap contracts. The ticket case scenario occurs when a person is given a ticket. The ticket declares that the holder is subject to contractual terms and conditions which the holder may have no chance to read or negotiates. In these situations, courts are to determine the moment at which these contracts are entered into. In the case of *Thornton v. Shoe Lane Parking Station*, Lord Denning, referring to an exceedingly

burdensome exclusion of liability clause on the parking ticket stated, "*It is so wide and so destructive of rights that the court should not hold any man bound by it unless it is drawn to his attention in the most explicit way... in order to give sufficient notice, it would need to be printed in red ink with a red hand pointing to it or something equally startling.*" Such an approach is farsighted for these online contracts made through websites.

## 2.2 Authentication and Signature in Electronic Contracts

In the present world of Internet explosion and constant development of electronic commerce across the globe, it is crucial that users are recognized and documented with confidence. The advancement of technology enables linking an information of a person or an entity with the concerned party in an electronic form so as to ensure the authenticity of such information or to prove that they are entitled to access certain services or depository of certain data records. This function is referred to as electronic authentication or verification done using electronic signature. The Technology Administration of the United States Department of Commerce defines 'electronic authentication' as 'the process of establishing confidence in user's identities electronically presented to an information system.' Electronic authentication

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<sup>10</sup> Parker v. The south eastern railway Co. (1877) 2CPD416; Olley v. Marlborough court (1949) 1kb532; Sydeny City Council v. West (1965) 114CLR 481; Thorton v. Shoe lane Parking Station (1971) 2QB.

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framework, developed by Department of Finance and Administration, Government of Australia, defines electronic authentication as “the process of establishing a level of confidence in whether a statement is genuine or valid when conducting a transaction online or by phone. It helps build trust in an online transaction by giving the parties involved some assurance that their dealings are legitimate. These statements might include: identity details, professional qualifications<sup>11</sup> or the delegated authority to conduct transactions.”

The UNCITRAL Model Law on Electronic Commerce is one of the most significant regulatory legislations in regard to electronic commerce and electronic contracts, and its wide application has enabled promotion of international harmony to a significant degree in this area. India being a signatory to the United Nations has enacted the Information Technology - Act, 2000 in accordance with the provisions of the Model Law on Electronic Commerce. The IT Act, 2000 introduced the concept of digital signatures under Sec. 2(1)(p) as a means for authenticating any electronic record by a subscriber, i.e., a person in whose name has the Digital Signature Certificate (DSC) is issued, through electronic mode or procedure prescribed by the provisions of Sec.

3. According to the IT Act, any signature authorized under the Act are considered to be equivalent to that of physical or handwritten signatures. Digital Signature can be created as per Rule 4 and verification should be done as per Rule 5. Due to its strict creation and verification process, digital signature cannot be copied, tempered or altered and will ensure that original contents are intact.

The Information Technology (Amendment) Act, 2008 brought forth the concept of Electronic Signature. Sec. 2(1)(ta) defines Electronic Signature as “*authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule of the Act and includes digital signature.*” Electronic signature is ‘technology neutral’ and could be created by various technologies in the form of secret PIN or code. The term ‘digital signature’ and ‘electronic signature’ cannot be considered as identical terms as there are vast disparities between the two. A digital signature is a ‘secure’ electronic signature, but an electronic signature is not necessarily secured like a digital signature. Due to this, digital signatures often offer more security. Courts in several jurisdictions have expressed that

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<sup>11</sup> Electronic Authentication Guideline: Recommendations of the National Institute of Standards and Technology, NIST SPECIAL PUBLICATION 800-63, VERSION 1.0.2, (DEPARTMENT OF COMMERCE, UNITED STATES OF AMERICA, 2006).

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entering a secret personal identification number (PIN) in an ATM machine, <sup>12</sup>agreements made by e-mail, signing a credit/debit slip with a digital pen pad device at a selling counter, installing software with a shrink-wrap software license agreement on the package, and signing online electronic documents are approved as enforceable electronic signatures.

The IT Act, 2000 introduced e-authentication technique in the year 2015. In pursuance to this, the Government of India also launched the e-Hastakshar-C-DAC's eSign Service in the year 2016. The eSign user leverages Aadhar e-KYC services for authenticating users based on different modes of authentication like OTP, Biometric etc. The signature on the document is carried out on a backend server of the eSign service provider licensed by the Certifying Authority. This service is safe and secure, and instantly delivering legally acceptable signatures.

Under the common law, a document or data is considered authentic if there is evidence to prove that the document or data is what its proponent claims. The relevancy of a document as a piece of evidence is established by connecting it with a person, place or thing, a process which in some common law jurisdictions is known as 'authentication'. Electronic authentication & signature methods are categorized under three classifications:

i) Based on the knowledge of the recipient or the user. ii) Based on the physical features of the use. iii) Based on the possession of an object by the user. In some cases, the term 'electronic authentication' could be used to indicate the identification of the parties or an individual or verification of a person's ownership and authority of the information provided.

In the recent years, common law jurisdictions have seen a transition in the part a signature plays in a contract. Earlier the main emphasis was given on the form of signatures but this emphasis has shifted to the function it plays. Most of the courts in common law jurisdictions now a days have established a broad understanding of the concept of 'signature' and the main emphasis is given to the intention of the parties and no longer on the form of their acts Due to this shift in the focus of signatures, its existence alone does not 'authenticate' a document as the identity of the signing parties are not fully disclosed by the signature, hence not sufficient to assure the authenticity of the signature or the document.

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<sup>12</sup> Section 2(1)(p), The Information Technology Act, 2008, No.21 of 2000, Acts of Parliament (India).

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However, extensive usage of Electronic authentication & signature methods could be an important step towards lessening of trade documentation and its related expense while executing international transactions. As much as the development in quality and security of technological solutions play a very important role, the law offers a substantial impact in enabling the usage of Electronic authentication & signature methods.

## **2.3 Types of Electronic Contracts**

### **2.3.1 Shrink-Wrap Contracts**

Shrink-wrap contracts are usually license agreements in which users have to open and unwrap the box in which the products/software are packed in order to read the terms & conditions of the contract. In this kind of contract, users are considered to agree to the terms by opening the box and using the software they have purchased. It is usually formed when purchasing a licensed software which is packed in a way that a note is enclosed at the top of the packaging, and this note lays down the terms & conditions for the usage of such licensed software. Once the packaging is unwrapped by the user, the user is considered to have read and agreed on the terms and will be legally bound by them.

The term 'shrink-wrap' explains the plastic wrap which is used to shell software boxes but not necessarily limited to only software industry. The license of these software is enclosed inside a plastic shrink wrapped box of the purchased software. The concept behind this is that by opening the plastic wrap, the user agrees to the terms of the license. Thus, a shrink-wrap contract can be explained as an unsigned contract between the purchaser of a computer software and the software company that developed it. This license intent to describe the terms of the transaction and place contractual conditions on the usage of the software. The license is normally enclosed on the box of the software in a way that the purchaser would notice and read it before using it as acceptance of the agreement is established by opening the plastic wrap or by using the software even without reading the terms of the license.

Computer software developers greatly depend on the shrink-wrap license agreement to protect their apparent benefits in the mass market distribution by preserving ownership title to the copy of the software. In this type of contract, the user does not have any negotiating power and has to either accept the given terms and conditions by unwrapping and opening the products or return it to the point to sales. As a result of that, the developers tentatively try to enforce their conditions upon the licensee and the user which is otherwise not admissible



under copyright law.

### **2.3.2 Click-wrap Contracts**

Click-wrap contract is an electronic counterpart of shrink-wrap contracts but click-wrap allows users to go through the contractual terms and conditions prior to their acceptance. Instead of unwrapping the plastic cover of a shrink-wrap license, the enforceability of click-wrap is through a simple act of clicking 'I agree' or 'I accept' button, without any requirement for a signature. Users can also indicate their consent either by typing phrases such as 'I accept' or 'I agree' followed by clicking on a 'submit' or similarly phrased buttons, called the 'type and click' agreements; hence called 'icon clicking' agreements. Click-wrap contracts do not leave any space for negotiating the terms & conditions of the contracts and they are usually displayed as a 'leave it or take it' kind of offer as it comes without any chance to change or amend the terms & conditions. The parties could either accept it or reject it wholly. Click-wrap contracts are generally created either as a part of installation process of different software packages, to form the terms for their download and for the use of these software-both in online and offline mode, to state a website's terms of service like laying down the directions by which users may use the website or services provided by the website such as a chat or messenger service, and to form the terms & conditions for the online sale of goods and services. A click-wrap license is deemed as an online contract that requires the user to acknowledge the terms & conditions of the license by clicking a button that states "yes" or "no" prior to or after reading the complete contractual terms. Clicking on the button stating "yes" enables the user to gain access to the whole website and clicking on the button stating "no" prevents the user access to the website or partially block them from gaining access to some of the information on the website. As physical paper contracts that bear signatures of the contracting parties, indicating the acceptance of terms are not present in a click-wrap contract, it is considered as an alternative way to confirm the sale of goods and services with a mere click of the mouse.

Click-wrap agreements restrict direct negotiation between parties in an online setting. As it is not possible for a website owner or other online service provider to negotiate with every person who visit their website, so website owners put the click-wrap agreement on their website and necessitate users to accept the terms & conditions of the agreement in order to gain access to the website, download software or buy goods and services.

### **2.3.3 Browse Wrap Contracts**

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In browse-wrap contracts, the terms and conditions of the contract are fixed beforehand and users do not have to give an express consent to validate the contract. A hyperlink is provided in the website at the bottom of the page, directing users to a web page containing the terms and conditions. The act of accessing and browsing the website after opening a hyperlink establish their consent to the terms & conditions of the the contract. Browse wrap contracts do not require users to type or click any boxes like 'I accept', 'OK' or other similar boxes to express their consent. Contracts are established by simply browsing a website or downloading a software.

The term 'browse-wrap' refers to a condition in which users arrive into an agreement without having to click on any particular consenting button or express clear consent to the terms and conditions. For instance, a computer software developer may keep a software available in a website for download and users are given an opportunity to browse the terms for download by placing a hyperlink connecting to the complete terms. But the presence of such terms and conditions on the website does not necessarily mean that every user has to read them to gain access to the website. The vendor may simply place a 'terms for download' link on the page where the software can be downloaded, leaving it to be decided by the users to view those terms. So even if it was not read by the users, the browse-wrap contract will be formed if users continue to browse the website as such conduct amounts to an expression of consent to the terms & conditions.

#### **2.3.4 Online Shopping Contracts**

Online shopping contracts have gained tremendous popularity worldwide with the advancement of technology. Vendors sell their goods and services by displaying their products and share information about their goods and services on websites which can be easily viewed by potential buyers who have Internet access from every corner of the world. Buyers can place their order and make a payment through the various modes of payment provided by the sellers. Different terms & conditions regarding performance of orders and customer services are provided by the sellers in order to reach a smooth and fair execution of such online purchases. The mode of fulfilment of such services depend on how the sellers make their offer and how they handle their fulfilment operations.

#### **2.4 Judicial Recognition of Electronic Contracts**

### 2.6.1. Electronic Mail (E-Mail) Contracts

While forming a contract through emails, contractual terms & conditions are exchanged and communicated using email. However, the Information Technology (Amendment) Act, 2008 provides the necessity of 'electronic signature' to validate the authenticity of their messages. In the case of *J.Pareira Fernandes SA v. Mehata*, the defendant who is the Director of a company sent an email which was not signed either by writing his name at the end of his message or by using a secure signature verification tool. The Court ruled that sender's name and address appearing only in the header information was not enough to show his intention to be legally bound by the terms of the document. The Court observed that it would have been sufficient for the sender to type his name at the end of his message or use his digital signature to authenticate the terms mentioned in the document and to make it legally binding. This means to validate any e-contract, it is essential to have an electronic signature of the contracting parties. Section 5 of the Information Technology Act, 2000 also states that "*any document shall be authenticated by affixing handwritten signature or any mark on it is recognised as an electronic signature.*"<sup>13</sup>

However, in the case of *Trimex International FZE Ltd., Dubai v. Vedanta Aluminium Ltd.*, the petitioner, Trimex International, made a commercial offer by email to the respondent, Vedanta Aluminium. Their communication involves an exchange of several emails and the offer being accepted by the respondent was also communicated through email. A dispute occurred in relation to the performance of the contract and the petitioner requested to invoke the arbitration clause. The request was objected by the respondent claiming that there was no written contract. The Supreme Court investigated the emails between the parties and held that they entered into a binding contracts by the exchange of emails although no formal or written contract was signed by the parties.

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<sup>13</sup> Section 2 (ta) & 3A, The Information Technology (Amendment) Act, 2008, No.10 of 2009, Acts of Parliament (India).

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