ISSN (Online): 2455-3662
EPRA International Journal of Multidisciplinary Research (IJMR) - Peer Reviewed Journal
Volume: 12| Issue: 6| June 2026|| Journal DOI: 10.36713/epra2013 || SJIF Impact Factor 2026: 8.753 || ISI Value: 1.188

THE DIGITAL HANDSHAKE: NAVIGATING THE ENFORCEABILITY OF E-CONTRACTS IN INDIA

Mr. Sukhdev
Assistant Professor at BRCM Law College, Bahal, Bhiwani, Haryana, India

ABSTRACT
The way we form commercial agreements has completely transformed. Today, modern business runs on the "digital handshake" – clicks, email exchanges, and electronic signatures – rather than physical paper and wet-ink signatures. This research paper examines how electronic contracts are legally enforced within the Indian jurisdiction. It explores how the traditional principles of the Indian Contract Act, 1872, apply to virtual agreements, with the Information Technology Act, 2000, acting as the crucial legal bridge. The study breaks down common formats like clickwrap, browsewrap, and shrinkwrap contracts, analyzing their real-world validity and fairness. Moving beyond legal theory, the paper tackles the practical courtroom challenges of proving digital consent. It specifically analyzes the impact of the newly implemented Bharatiya Sakshya Adhiniyam, 2023 (BSA), on the admissibility of electronic records, hash values, and digital audit trails. By reviewing landmark judicial precedents – from corporate email disputes to casual WhatsApp negotiations – the paper highlights how Indian courts are adapting to rapid tech advancements. Ultimately, it argues for a shift from merely validating e-contracts to actively regulating them, pushing for stronger consumer protection against unfair clauses hidden in digital fine print.

KEYWORDS*: E-Contracts, Digital Handshake, Indian Contract Act 1872, Information Technology Act 2000, Bharatiya Sakshya Adhiniyam 2023, Clickwrap Agreements, Electronic Evidence, Digital Signatures, Consumer Protection.*

1. INTRODUCTION

Long before the internet even existed, the Indian Contract Act of 1872 laid down the basic rules for offer and acceptance.[1] For over a century, closing a deal meant physical meetings, typed documents, and wet-ink signatures. Fast forward to the present day, and the way we do business has completely transformed. Today, a simple tap on a smartphone screen, a quick email exchange, or a click on an "I Agree" button carries the exact same legal weight as a formally stamped paper. In the modern commercial world, this electronic consensus is what we call the "digital handshake."[2]

While the medium of communication has changed drastically, the core legal requirements have not. Whether an agreement is signed on a physical stamp paper or accepted via an app, it still needs a valid offer, acceptance, and lawful consideration to hold up in a court of law. To bridge this gap between 19th-century law and 21st-century technology, the Information Technology Act, 2000 stepped in. Specifically, Section 10A of the IT Act gave statutory recognition to contracts formed through electronic records. [3] However, recognizing an e-contract on paper is one thing; enforcing it during a dispute is a completely different challenge.

The main objective of this paper is to explore the real-world enforceability of electronic contracts in India. It breaks down how traditional contract principles apply to everyday online agreements, such as clickwrap and browsewrap contracts. Beyond just the theory, this paper tackles the practical courtroom challenges of proving a digital handshake. With the recent legal shift from the old Indian Evidence Act to the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the rules for admitting digital signatures and electronic trails have changed. This study aims to provide legal professionals and learners with a clear understanding of how these virtual agreements are validated, challenged, and ultimately enforced under current Indian law.

2. THE LEGAL FRAMEWORK OF E-CONTRACTS IN INDIA

When we talk about the validity of any agreement in India, everything traces back to the Indian Contract Act of 1872. The foundation is laid out in Section 10,[4] which states that all agreements are contracts if they are made by the free consent of competent parties, for a lawful consideration, and with a lawful object. The interesting part about this 19th-century law is that it never strictly demanded contracts to be written on physical paper. As long as you can prove an offer was made and someone clearly accepted it, the medium of communication hardly matters.

This means that if a vendor sends a price quotation via an email and the buyer replies with a simple "Approved," the core requirements of the Contract Act are met. The offer and acceptance happen electronically, and the payment transferred through a digital gateway acts as the lawful consideration. A valid legal tie is formed right then and there.

However, as commercial deals shifted heavily to the internet, businesses and lawyers started worrying about a practical issue. Could someone back out of a multi-million rupee deal by simply arguing that a digital click or an email thread is not a "real" contract? To prevent this exact loophole, the legislature brought in the Information Technology (IT) Act,

[1] *Avtar Singh, Law of Contract and Specific Relief 15-18 (Eastern Book Company, Lucknow, 12th ed., 2017).*
[2] *Essential Meaning: A 'digital handshake' is not a statutory term, but an academic metaphor referring to the mutual assent (consensus ad idem) between parties executed entirely through electronic data interchange or digital clicks.*
[3] *The Information Technology Act, 2000 (Act 21 of 2000), s. 10A.*
[4] *The Indian Contract Act, 1872, (Act 9 of 1872),s. 10.*

2000. The IT Act acts as the legal bridge that makes online agreements enforceable.

The most important provision here is Section 10A of the IT Act. It was specifically inserted to clear up any doubts regarding electronic agreements. Section 10A plainly states that a contract cannot be declared invalid or unenforceable simply because the proposal, acceptance, or revocation happened through electronic records. It gives electronic contracts the exact same statutory blessing as physical paper contracts.

But a contract still needs a signature to prove that a specific person actually agreed to the terms. The IT Act solves this through Section 3 and Section 5, which grant legal recognition to electronic and digital signatures.[5] Whether it is an encrypted Digital Signature Certificate (DSC) used by company directors, an OTP-based Aadhaar e-sign, or even an electronically typed name at the end of a formal email, the law recognizes these as valid ways to authenticate an electronic document.

In short, the Contract Act and the IT Act work hand-in-hand. The Contract Act tests whether the deal itself is legally sound, while the IT Act ensures that the technology used to seal the deal is fully recognized by the courts.

3. FORMS OF DIGITAL HANDSHAKES (TYPES OF E-CONTRACTS)

When you walk into a lawyer's office to draft a traditional contract, both parties sit down, discuss, and negotiate the terms before signing. On the internet, however, there is almost zero room for negotiation. Online agreements are usually standard-form contracts—meaning they are drafted entirely by the company, and the user only has a "take it or leave it" option. Depending on how the user's consent is captured, these digital handshakes generally fall into three distinct categories in the commercial world.

3.1 Clickwrap Agreements

This is the most common type of digital contract you encounter daily. Whenever you create a new email account, install a mobile application, or buy something on an e-commerce platform, you are usually asked to check a small box that says "I Agree to the Terms and Conditions" before you can proceed.

From a legal standpoint, clickwrap agreements are highly enforceable.[6] Why? Because the user is forced to take a positive, affirmative action (clicking the button) to move forward. This click acts as an undisputed electronic signature. It leaves a clear digital trail proving that the user was shown the terms and consciously chose to accept them. Courts in India generally uphold clickwrap contracts as valid, provided the terms are not grossly unfair or contrary to public policy.

3.2 Browsewrap Agreements

Browsewrap contracts are much trickier. In these agreements, you are not asked to click an "I Agree" button. Instead, the website simply places a hyperlink—usually buried at the very bottom of the webpage—labeled "Terms of Use" or "Privacy Policy." The legal assumption here is that simply by browsing the website or continuing to use its services, you are automatically agreeing to those hidden terms.

Courts treat browsewrap agreements with a lot of suspicion. Since there is no active click to prove consent, it is very hard to show that the user actually knew the terms existed. If a company tries to enforce a harsh condition against a user based on a browsewrap agreement, Indian courts might reject it,[7] especially if the hyperlink was not placed prominently enough to catch a reasonable person's attention.

3.3 Shrinkwrap Agreements

Though slightly older, shrinkwrap agreements are still highly relevant, particularly in the software and electronics industry. Imagine buying a physical CD for a computer antivirus or purchasing a new smartphone. The product comes sealed in a plastic shrink-wrap. The manufacturer places a notice on the outside of the box stating that by tearing the plastic and opening the package, you agree to the software license terms enclosed inside.

If the buyer reads the terms after opening the box and disagrees with them, their only legal remedy is to return the product unused for a refund. Once they boot up the software or keep the device, the digital handshake is complete.

The Issue of Fairness: While the IT Act validates these electronic formats, the Indian Contract Act still keeps a watchful eye on fairness. Since clickwrap, browsewrap, and shrinkwrap agreements are heavily one-sided, a company cannot hide illegal clauses or unconscionable liabilities in the fine print. Under Section 23 of the Contract Act, if a specific term in a digital contract is found to be highly exploitative[8] or against public policy, the courts hold the power to strike that specific clause down, even if the user clicked "I Agree."

4. THE EVIDENTIARY CHALLENGE: PROVING THE HANDSHAKE

Having a legally sound e-contract is great in theory, but the real test happens when a dispute actually reaches the courtroom. If a business partner completely denies ever sending that email quotation, or a user claims they never clicked the "I Agree" button, how do you prove the digital handshake actually happened? Physical paper has handwriting and wet-ink signatures that a forensic expert can physically examine. Electronic records, on the other hand, are essentially invisible data. They can be deleted, duplicated, or photoshopped in a matter of minutes.

This is exactly where the rules of evidence come into play. For years, lawyers relied on Section 65B of the old Indian Evidence Act to submit electronic records.[9] However, recognizing how fast technology is moving, the Indian legal landscape recently upgraded to the Bharatiya Sakshya

[5] *Karnika Seth, Computers, Internet and New Technology Laws 112 (LexisNexis, Haryana, 3rd ed., 2022).*

[6] *See, LIC of India v. Consumer Education & Research Centre, (1995) 5 SCC 482.*

[7] *See, Pavan Duggal, "Legal Validity of Online Contracts in India", Cyber Law Times, available at: http://www.cyberlaws.net (last visited on June 8, 2026).*

[8] *The Indian Contract Act, 1872, s. 23*

[9] *Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473.*

Adhiniyam, 2023 (BSA). The new BSA restructures how courts admit and trust digital evidence, making the process much more aligned with modern tech realities.

4.1 Admissibility Under the New BSA

The BSA tackles digital evidence head-on. Section 61 of the new Act makes it crystal clear that electronic or digital records hold the exact same legal weight as traditional paper documents. You do not need to bring a printed stack of emails to make your contract "real" in the eyes of the court.

However, because digital files are so vulnerable to tampering, they cannot just be casually handed over to a judge on a pen drive. Sections 62 and 63 of the BSA set strict conditions for admitting electronic contracts. To present a WhatsApp chat, a digitally signed PDF, or system logs showing a user clicked an agreement, the person presenting it must provide a specific certificate.[10] This certificate acts as a guarantee that the computer or mobile device used to generate the contract was operating properly and that the data was not tampered with during the transfer process.

4.2 The Problem of Alteration and Digital Trails

The biggest fear judges and lawyers have with e-contracts is subsequent alteration. What if someone changes the payment amount in a PDF after the other party has already signed it?

The law and technology solve this together through encrypted digital signatures. When a party signs an e-contract using a legally recognized Digital Signature Certificate (DSC), the software creates a unique mathematical code (a hash value) for that specific document.[11] If a fraudster tries to edit even a single comma in that PDF after it has been signed, the digital signature immediately breaks and the document displays a "Signature Invalid" warning.

By presenting this unbroken digital audit trail, along with the mandatory certification under Section 63 of the BSA, lawyers can confidently prove two things to the court: first, that the specific person executed the digital handshake, and second, that the terms of the agreement have remained 100% untouched since that exact second.

5. JUDICIAL PERSPECTIVE (LANDMARK CASE LAWS)

Law is not just about what is written in the statutes; it is ultimately about how judges interpret those rules when real-world disputes happen. Over the last decade, Indian courts have dealt with several high-stakes cases where parties tried to back out of online agreements. Through these judgments, the judiciary has made it very clear that a person cannot escape liability simply because a contract lacks a physical signature or stamp.

5.1 Trimex International FZE v. Vedanta Aluminium Ltd. (2010)[12]

If there is one landmark case every legal professional needs to know about e-contracts, it is this Supreme Court judgment. In this scenario, two massive companies were negotiating a commercial deal. They never actually sat down to sign a formal, finalized physical contract. Instead, the entire offer, acceptance, and commercial terms were discussed and agreed upon through a long chain of emails. Later, a dispute arose, and one party tried to back out, arguing that since no formal paper contract was ever signed, they were not legally bound.

The Supreme Court completely rejected this argument. The Court ruled that once an unconditional acceptance is sent and received via email, a valid contract is immediately formed. The fact that a formal document was supposed to be drafted later does not make the existing email exchange invalid. This judgment effectively made the "email handshake" legally watertight in India.

5.2 Tamil Nadu Organic Private Ltd v. State Bank of India (2014)[13]

This case brought much-needed clarity to the world of corporate e-auctions. A property was being auctioned online by the bank under the SARFAESI Act. The petitioner challenged the entire e-auction process, arguing that the digital methods and electronic signatures used lacked the legal sanctity of traditional physical procedures.

The Madras High Court stepped in and relied heavily on the provisions of the Information Technology Act. The Court held that the law explicitly recognizes electronic records and digital signatures. Therefore, an e-auction conducted using secure digital signatures is entirely valid and legally binding. This case gave a huge confidence boost to banks and government bodies conducting business exclusively through digital portals.

5.3 Ambalal Sarabhai Enterprises Ltd. V. KS Infraspace LLP (2020)[14]

As technology evolved, business negotiations quickly moved from emails to instant messaging apps. In this recent case, the Supreme Court had to examine whether WhatsApp messages exchanged between parties could prove the existence of a finalized real estate contract.

While the Court acknowledged that WhatsApp chats are perfectly valid pieces of electronic evidence, it added a crucial word of caution. The judges noted that the nature of WhatsApp communication is inherently informal. People often use casual language, incomplete sentences, or emojis. Therefore, for a WhatsApp conversation to be treated as a binding digital handshake, the messages must show a very clear, definitive, and unconditional acceptance of the terms. A casual text during a negotiation phase is not enough to lock someone into a legal

[10] *The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s. 63*
[11] *Technical Definition: A 'hash value' is a fixed-length string of numbers and letters generated by a cryptographic algorithm. Any subsequent alteration in the signed document, even adding a single space, drastically changes its hash value, immediately alerting the court to tampering.*
[12] *Trimex International FZE v. Vedanta Aluminium Ltd., (2010) 3 SCC 1.*
[13] *Tamil Nadu Organic Private Ltd. V. State Bank of India, AIR 2014 Mad 103.*
[14] *L Ambalal Sarabhai Enterprises Ltd. V. KS Infraspace LLP, (2020) 15 SCC 585.*

bind. This judgment perfectly balances the realities of modern messaging with strict traditional contract principles.

6. CONCLUSION & WAY FORWARD

The shift from paper documents to the digital handshake is no longer a future possibility; it is our current reality. As we have seen, the Indian legal system has actually done a remarkable job of adapting to this shift. The grand old Indian Contract Act of 1872 still provides the strong underlying foundation, while the Information Technology Act acts as the modern vehicle to enforce these virtual agreements. Furthermore, with the recent implementation of the Bharatiya Sakshya Adhiniyam (BSA), the courts now have a much clearer, updated roadmap for testing and trusting digital evidence.

However, the legal journey of e-contracts is far from over. The biggest challenge moving forward is not about the technology itself, but about basic fairness. In the era of standard-form clickwrap and browsewrap agreements, the bargaining power is heavily tilted in favor of large tech companies and corporations. An average consumer clicking "I Agree" on a smartphone screen rarely reads the thirty pages of dense legal jargon hidden behind a hyperlink. They simply want to use the app or buy the product.

To address this, the focus of Indian jurisprudence must now shift from merely 'validating' e-contracts to actively 'regulating' them. There is an urgent need for stronger consumer protection guidelines specifically targeting online agreements.[15] Companies should be legally mandated to present the most critical clauses—such as hidden fees, arbitration rules, or data-sharing policies—in bold, prominent text right at the top, rather than burying them in the fine print.

Additionally, as the new BSA rules take full effect, our lower judiciary and investigating agencies need extensive technical training. Understanding hash values, digital signature encryption, and electronic audit trails must become basic knowledge for every legal professional, not just cyber experts.

Ultimately, the digital handshake is the undisputed future of global commerce. The goal for the Indian legal framework now is to ensure that this handshake remains a symbol of mutual trust and fair business, rather than a digital trap for the uninformed.

REFERENCES

Statutes

1. *The Indian Contract Act, 1872 (Act 9 of 1872).*
2. *The Information Technology Act, 2000 (Act 21 of 2000).*
3. *The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023).*
4. *The Indian Evidence Act, 1872 (Act 1 of 1872).*

Case Laws

5. *Trimex International FZE v. Vedanta Aluminium Ltd., (2010) 3 SCC 1.*
6. *Ambalal Sarabhai Enterprises Ltd. v. KS Infraspace LLP, (2020) 15 SCC 585.*
7. *Tamil Nadu Organic Private Ltd. v. State Bank of India, AIR 2014 Mad 103.*
8. *Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473.*
9. *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co., AIR 1966 SC 543*

Books and Commentaries

10. *Avtar Singh, Law of Contract and Specific Relief (Eastern Book Company, Lucknow, 12th ed., 2017).*
11. *Pavan Duggal, Cyber Law – An Exhaustive Section Wise Commentary on the Information Technology Act (Universal Law Publishing, New Delhi, 2nd ed., 2014).*
12. *Pollock & Mulla, The Indian Contract and Specific Relief Acts (LexisNexis, Gurgaon, 15th ed., 2017).*
13. *Karnika Seth, Computers, Internet and New Technology Laws (LexisNexis, Haryana, 3rd ed., 2022).*

[15] *To curb unfair trade practices in online spaces, the Ministry of Consumer Affairs notified the Consumer Protection (E-Commerce) Rules, 2020. However, rigorous judicial enforcement is still required to balance the scales against exploitative digital 'fine print'.*