

# Role of Indian Contract Act 1872 in the Digital World

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## ABSTRACT

Everyone now uses the digital elements on a daily basis. Contracts are an integral and inevitable part of business worldwide. The present era is also known as the digital era with an increase in the technology. In the current century, digital approaches change the contract landscape from a business and consumer perspective. The Indian legal framework comprises the different legal approaches related to contract law to ensure the commercial activity smoothly. COVID-19 (coronavirus disease of 2019) pandemic bursts all kinds of business activity globally. Lockdown has restricted the individual and groups to perform or meet the contract promise. Traditional approaches to contracts are now consistently replacing by digital contracts. Digital even using for a long time. In India, one of the old laws named the India Contract Act 1872 is still smoothly applicable in India legal system and meet with legal contract compliance of the current scenario even in the COVID-19 pandemic. The purpose of this article is to analyse the different aspects Indian Contract Act in the current scenario of the COVID-19 pandemic and the impact of digital contract in India legal system. Some business groups and individuals are still hesitant to adopt the digital contract because of the cyber security and data privacy policy which directly affects the contract. As the need of the hour, India needs an updated legal system and laws related to digital contracts and necessary amendments for better contract or agreement management.

## KEYWORDS

Contract Policy, COVID-19, Digital Contract, Indian Contract Act, India Contract Laws

## 1. INTRODUCTION

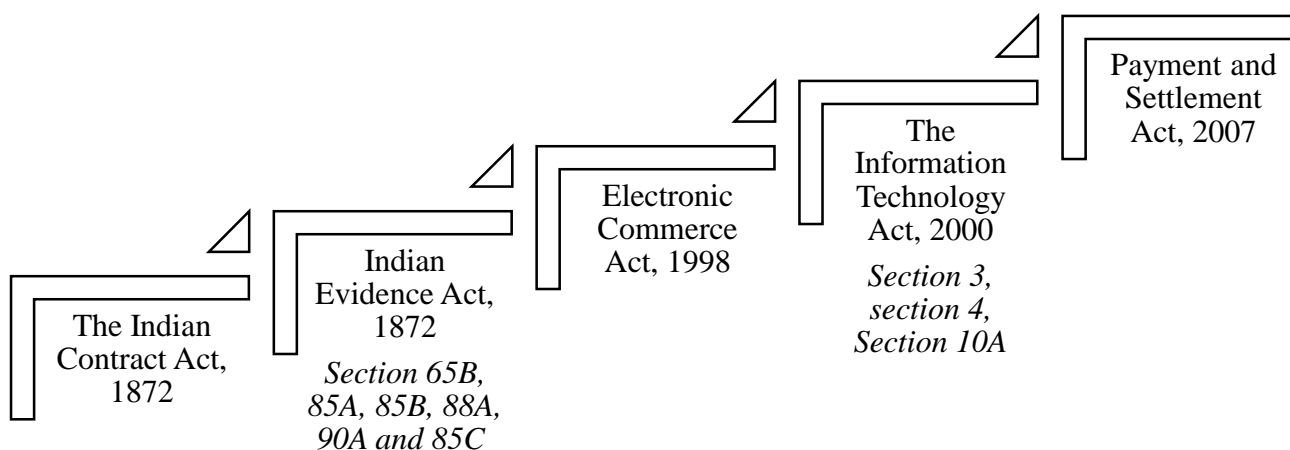
21st Century is associated with an increase in the pace of digital technology. Digital advancements have changed the way people communicate and participate in business. In digital world, Technology is something without which human feels helpless and crippled. Technology advancements ultimately have an impact on the legal system. As the world continually moving toward digital approaches several legal challenges. Constitution of India grants many rights to Indian citizens and specifies various duties that must be performed by every

citizen. Contracts have become so common in day-to-day life. People are motivated to enter into legal contracts for a variety of reasons [1]. The word contract comes from the Latin word Contractum. Contract law is the product of a business civilization. For offering and accepting offers contract are very common and unavoidable aspects for mutual assent between two or more people, group and businesses. Contract is an agreement with legal enforceability. Contract is a promise enforceable by law [2]. Contracts can be classified in three main category which are enlisted in Table 1.

**Table 1: Illustrating the Classification of Contracts[3]**

(1) Based on Enforceability	(2) Based on Formation	(3) Based on Performance
I. Agreement	I. Express contract	I. Executory contract
II. Illegal agreement	II. Tacit contract	a) Bilateral contract
III. Void agreement	III. Quasi/ Implied contract	b) Unilateral contract
IV. Voidable agreement		II. Executed contract
V. Contract		
VI. Voidable contract		

But there are dramatic changes has been observed in digital transformation which altering the nature of work. Digital world has changed the traditional contract (paper based) into smart digital contract. Contracts that are not paper-based but digital in nature have arisen out of the desire for speed, efficiency and convenience. Different country has different laws related to contract. The government of India has continually taken new initiatives for smart India in form of the "Digital India" Program. India laws is capable of accepting smart digital contracts. Indian law addresses all areas and avenues of digital contracting [4]. In India, digital contract are not govern by Indian contract Act although the other act play crucial role related digital based contract which are shown in Figure 1.



**Figure 1: Different Act Related to Contracts and Agreement in with Digital system in India[5]**

In India, on September 1872 one of the most established commercial laws came in effect which is Indian Contract Act. It is the principal law regulating contracts in India. Indian Contract Act gives legal right to every Indian citizen as for ensuring the commitments by law. In this article analyse the different aspects related to Indian contract Act in digital world [6].

With this article analyse and highlight the India current status and legal system for contract law aspects. COVID-19 has pushed every country's economy down so by this article overview the situation arises due to COVID-19 pandemic and its impact on the contract legal system. In India different approaches of digital contract using by people and individuals for commercial and non-commercial purposes. Government of India (GoI) Initiatives push up different approaches of the digital contracts in India which are legally applicable. Digital initiatives, raising legal challenges for the current legal system for contract law in digital India. This review article based on the different theoretical study from different journal and book which are used to review the different aspects of Indian Contract Act 1872 in digital World.

### 1.1. Indian Contract Act 1872

The Indian Contract Act, 1872 governs how contracts are entered into and executed in India, so every contract must comply with the Act's provisions in order to be legally enforceable. The Contract Act necessitates a meeting of minds and the participation of two parties [7]. In digital World, Some important terminology related to Indian Contract Act are enlisted in Table 2.

**Table 2: Important Terminology Related to Indian Contract Act 1872 Applicable in Digital Contract [7]**

Sr. No	Terminology	Define by
1	Agreement	Section 2(e)
2	Offer	Section 2(a)
3	Acceptance	Section 2(b)
4	Promise	Section 2(b)
5	Consideration	Section 2(d)
6	Free Consent	Section 14
7	Contract of Indemnity	Section 124
8	Bailment	Section 148

Interaction is an unspoken assumption. However, keep in mind that meats are the brains of programmed computer systems when it comes to digital contracts. As per the Section 10 that “all agreements are contracts if they hold the free

consent of parties willing to contract, for a lawfully accepted consideration and with an object.” Indian law allowing digital contracts The Indian Contract Act's provisions are broad enough to cover such transactions. In terms of contract formation, data may be conveyed through electronic records or messages unless the parties accept an offer or offer or otherwise agree with any of them. When electronic records are used in the formation of a contract, the contract validity or enforceability shall not be impaired solely because the data messages were used for that purpose. A declaration of will or other statements must be valid, effective, or enforceable between the originator and the recipient of the electronic record, regardless of whether it is in the form of a database [7].

### 1.2. Digital Contract

Digital contracts have seen a rise in popularity. Digital version of paper contract is considered as electronic contract. In the competitive world, digital business agreements and contracts are very common for better opportunities and operating business. It is more transparent and quicker. Basically, digital contract is applicable following way:

- Online marketing agreements.
- Depending on the business requirements and structure, agreements relating to as-a-service with platform, infrastructure and software.
- Online terms and conditions with regard privacy and intellectual property rights policies, digital business requires policies, and any other policies related to platform access.
- Contracts with payment system participants, such as wallet service providers, banks, and payment gateways.
- If the entity does not own the technology, an assignment agreement or technology license is required.
- Technology integration agreements.
- Software development, mobile application development and Web development, agreements to launch a front layer[8].

Sometimes in same person superior and inferior right may coexists. Such kind of cases discharge of the contract governing the inferior rights. There are no concrete judicial precedents in India on the legality of digital agreements. However, courts in other countries have dealt with similar agreements. Digital contracts are about to usher in a new era in the business world and the legal industry [9]. The need for application and process middlemen is greatly reduced. Advantage of digital contract are shown in Figure 2.

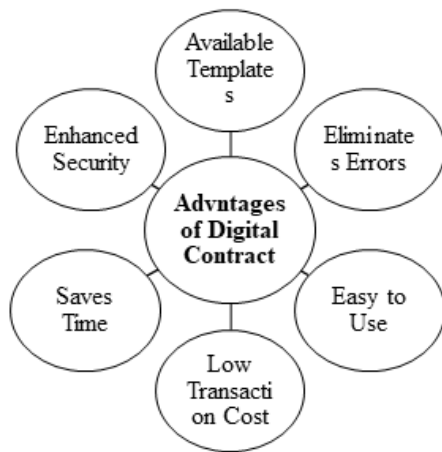


Figure 2: Advantages of Digital Contract In Modern Digital World [9]

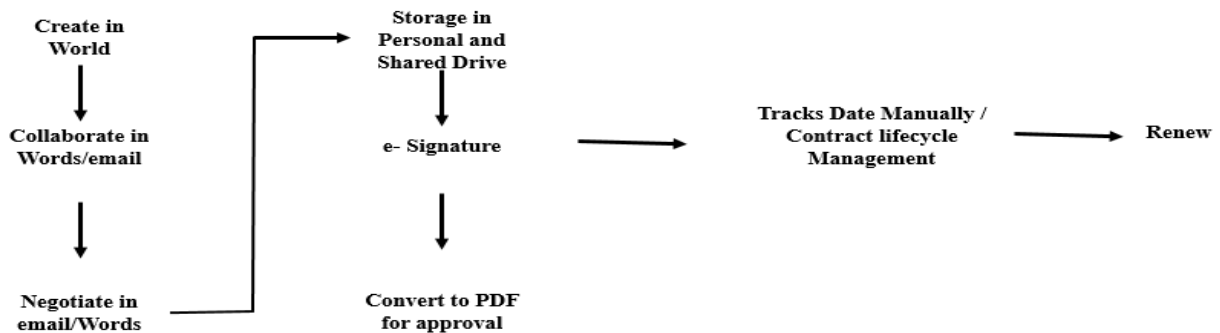


Figure 3: Various Stages of Digital Contract Life Cycle Management[10]

Several digital contract management software uses that available in the market each software has some feature. Examples of digital management software are enlisted in Table 3 [11].

Table 3: Digital Management Software use for Digital Contract Purpose[11]

Software	Use For
PandaDoc	All kind Business
DocuSign	Small Businesses
Concord	Large Businesses
Juro	Free Option
Agiloft	Customization:
Outlaw	Reporting
ContractWorks	Automation

Different forms of digital contract that are not restricted by the Indian Contract Act are shown in Figure 4.

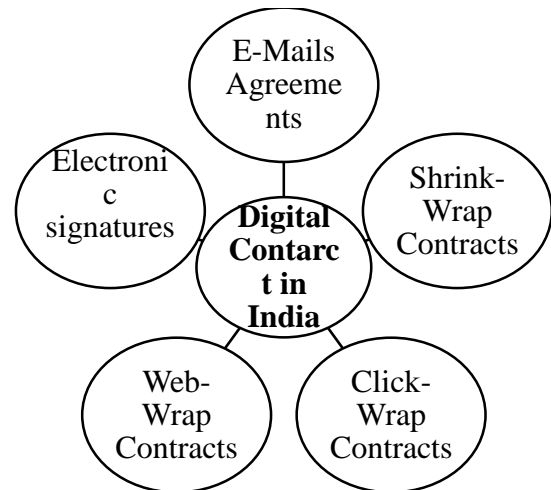


Figure 4: Different form of Digital Contract Applicable in India[12]

Most popular digital contract in digital world that are generally applicable are the following:

- E-Mail Agreements: any email applicable or treated as contract if straight voicing about the intent between individuals and parties.
- Electronic Signature: to sign documents online electronic signature are very common to use.

- Shrink-wrap contracts: any prepared contract (Boilerplate), licence agreements or other terms and conditions that is packaged within a product. It is a take-it-or-leave-it contract.
- Click-wrap contracts: The user must basically agree to the conditions and term for by the specific service and software. Offer and acceptance are two main criteria for valid click-wrap contracts.
- Web-wrap contracts: Agreements that a user or customer simply accepts by accessing or using a website or service. The consumer agrees to a contract without actively ratifying agreement.[12]

In India, Digital world aspects all mentioned form are govern by the Indian Contract Act. Digital contracts in India are governed by several Acts. Indian Contract Act 1872, Indian Evidence Act 1872, Information Technology Act 2000. In India, any digital contract is valid if it fulfils the prescribed conditions of the Indian contract Act and other mentioned Act. Lawful consideration, Capacity, Free consent, offer and acceptance are important condition.[13] If any digital contract compile with these criteria are legally eligible.

### 1.3. Impact Of COVID-19 On Indian Contract Act

COVID-19 has caused massive damage in all areas. COVID-19 has rendered many contracts in effective, to the point where they no longer serve their intended purpose. The current COVID-19 pandemic situation created an environment that eventually forces people to accept digital approaches. COVID-19 has made overall performance either hard or impossible. Noncompliance with the contractual obligations results in a breach of contract, which gives rise to indemnity, specific performance, damages and injunction. Since every sector was required to follow a strict lockdown, the legal profession was no exception. Everyone feels that the matter should be heard on priority basis [14]. It was a major challenge to identify which route was to be conducted on priority basis, as some large business deals required delivery of decisions and speedy justice. Commercial trade execution was challenging, equally domestically and internationally. COVID-19 has convincingly prevented the individual and business from fulfilling the promise made even led to disruption in execution, including postponement, understandings and even existing under several contracts. However, there is no specific law governing the situation. Major disputes based on contract observed during COVID-19 are:

- Rental Contracts
- Litigation on Contractual Disputes
- Power Purchase Agreements
- Construction and Real-estate Contracts
- Hospitality Contracts
- Event Management Contracts
- Insurance Contracts
- Debt Contracts
- Employment contracts

Most contracts explicitly have a term according to which the contract will be suspended or is discharged in the event of certain circumstances as seen during COVID-19 and lockdown. The India Supreme Court and the Government of India has given the relaxation to all businesses and individuals on Force Majeure (unforeseeable circumstances). Indian contract Act does not define the Force Majeure. But Section 32 and Section 56 of the Indian Contract Act will come into action in natural obligation and restricted or impossible the contract respectively. As per the section 56 of Indian Contract Act "Agreement to do impossible act" and Section applicable in COVID-19 situation. Whereas if it seems that there is no

impediment due to COVID-19 while performing the contractual obligation, the court not invoke the superior force clause in such a situation. Acceptance of digital contracts in the digital world is significantly in pandemic and even after this pandemic is over. Smart digital contract demand will remain the same [15].

## 2. DISCUSSION

Digital Contract use in daily lives as digital consumers. Digital contracts are irrevocable. However, it will take some time for digital contracts to become the norm because some areas have yet to adopt them. The Indian Contract Act prohibits, lunatic, minor, person of unsound mind and person incapable of entering into a contract. The difficulty with digital business is that the ability of one party to contract is unknown to the other. Due to the complexities of an e-contract, it is impossible for one party to determine whether the other party is able to contract behind a computer screen. Due to the distance between the contracting parties and the lack of face-to-face interaction, it is nearly impossible to determine the competence of the other. The most common example of such a problem resulting from communication complexity is giving good orders to a minor or posing as an adult [16]. The reliance on online businesses has increased significantly as a outcome of the COVID-19 pandemic. Some other challenges associated with digital contract are:

- Data Policy: Any Information mentioned in any contract necessary for performance and processing of any legal obligation. Any contract or agreement carries confidential information. In digital contract aspects, data protection is very essential for ensuring the privacy and protection of individuals and businesses. Currently, India lacks explicit regulation governing data privacy and protection. However, the applicable data protection laws in India are the India Contract Act 1872 and Information Technology Act 2000.
- In digital world, digital contract in all business aspects raise antitrust issue on broad raise of business activity.
- Online users' ability to counteract or negotiate as a party is negatively affected by digital contracts.
- The administration of digital contracts is spread across a geographic location, which it makes questionable to file a lawsuit.
- At the present scenario, there is no reason that the law of overseas nation cannot be applied to an Indian, or that the party cannot be subject to the external jurisdiction. [17].
- Digital integration enhances the commercial and non-commercial activities which insist the user for acceptance of digital contact in mentioned above way. Directly and indirectly its opens a window related to cybercrime, cyber security and data privacy. The different acts have already been passed by Indian government like the Information Technology Act, 2000 for protection of user rights but contact law resists the user to take any legal action against it.
- On a large scale Indian citizens in villages even in city are not about the digital contact policy. To large extent awareness related to the digital contract, the policy is a great challenge.

## 3. CONCLUSION

The COVID-19 pandemic has significantly increased the demand for digital tools. Digital contracts present challenges not only in India, but around the world. The Indian contract act is capable of resolving digital contract challenges with other acts. According to the Indian Contract Act, a digital contract is just as valid as a written contract. Some section of Indian evidence acts and Information Technology Act also applicable for digital contract. Though the Act is considered to be quite

comprehensive, there are some areas where amendment is needed. Digital contract provision in demand of time in digitization. The digital contract regime is confronted with a bunch of issues and challenges that must be properly addressed. The Indian legal system has already put in place the necessary legislation to recognize, validate, and strengthen such digital contracts in the present. For strengthen the India contract law others Act mentioned above also same applicable for better digital approaches. The government of India continues taking digital initiatives for making citizens familiar with digitalization. But it raises the digital challenges that can be combated by the establishment of a better upgraded legal system. For combating the complaints that arise due to digital contract needs to establish separate legal authorities in court for consumer protection.

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