

Digital Contract in the Emerging Economy of the 21st Century: A Comparative Study

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ABSTRACT In business processes or even our everyday life, the law of contract and proper enforcement of such law play a very significant role. The emerging economy, which is now dependent on the digital world phenomenon, is becoming electronic-based. The era of the internet and social networking is making people decentralized and self-regulated, which attracts online selling and purchasing. So, this is actually the sign of expanding electronic commerce, which makes products more available to the consumers. In this situation, the E-Contract is an aid to drafting and negotiating successful contracts for consumers, businesses, and other related services. It is designed to assist people in formulating and implementing commercial contract policies within e-businesses. As the electronic contract is not a paper-based contract but rather related to cyberspace, there must be specification provisions about such contracts. But in reality, there is a lack of provisions on the formation and regulation of electronic contracts. In developing economies, in countries like Bangladesh, the computerized generation needs more protection, but in many, judgments do not allow computerized documents and even the Information Technology Act, Contract Act, and Evidence Act do not wholly justify electronic contracts. In this paper the legal challenges of electronic contracts will be in focus. The real situation of contract law regarding the electronic contract in the context of Bangladesh compared to other countries will be focused on. The main purpose of this paper is to explore more possible functionalities of e-contracts and ascertain the legal implications.

KEYWORDS E-contracts, digital world, cyberspace, e-business, legal aspect, consumer

1. Introduction

Electronic contracts are designed to assist people in formulating and implementing commercial contract policies within e-businesses. They include model contracts for the sale of products and supply of digital products and services to both consumers and businesses. An e-contract is a contract modeled, executed, and enacted by a software system. Computer programs are used to automate business processes that govern e-contracts. E-contracts can be mapped

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to inter-related programs, which have to be specified carefully to satisfy the contract requirements. Particularly on the internet, such contracts have put on a flexibility of contract, and the suitability and multiplication of standard type of agreements.¹ With the growth of E-commerce, there is rapid advancement in the use of e-contracts. But the deployment of e-contracts poses lots of challenges, namely, conceptual, logistic and implementation challenges. It is more and more unlikely for internet users that a day has passed dealing with computers or other devices where they have not manifested their assent to some terms. As, in case of installing any software there is only an icon “I Agree” for their assent. These types of action also form e-contracts in day-to-day life.

An e-contract is an agreement demonstrated, executed and established by a product framework. E-contracts can be settled between related projects, which must be indicated specifically to fulfill the contract requirements. Electronic trade can be characterized as "Electronic purchasing"² and offering on the Internet and involves a firm performing or offering and purchasing administrations and items utilizing computers and correspondence advancements. Virtual or electronic contracts open the door for all the users to enter into an agreement over the web. E-commerce is the practice of buying and selling goods and services through online consumer services on the internet³.

Electronic transactions are fast emerging as an alternative means of carrying out transactions instead of paper-based transactions. However, with the increase of transactions on the internet the issue of authenticity and legality turns into an important issue. Contracts involving huge sums of money are being entered into without ensuring validity and authenticity of the parties.⁴ In a number of countries existing legislation governing communication and storage of information is inadequate or outdated in that it does not contemplate the use of electronic messages in commerce. Although the use of electronic mail for the conclusion of contracts is widespread, the need for legal certainty is also felt in many countries when they face forms of old paper-based communication techniques in this modern era.

2. What is a Valid Contract?

A contract is a voluntary arrangement between two or more parties that is enforceable at law. It is a legally binding agreement that obligates two or more parties to complete certain tasks. It creates rights and obligations for the parties

¹ Abdulhadi Alghamdi, *The Law of E-Commerce: E-Contracts, E-Business* (United States of America: Author House, 2011).

² S. R. Subaashini, and Shaji. M., “Legal Issues Arising in E-contracts in India: An Analysis,” *International Journal of Pure and Applied Mathematics* 120, no. 5 (2018): 4601–4618.

³ Simon Blount, *Electronic Contracts: Principles from the Common Law* (New York: Chatswood, 2015).

⁴ Timo Siemer, *Formation of Electronic Contracts Under Traditional Common Law Principles: Offer and Acceptance in E-Commerce* (US: GRIN Verlag, 2011).

to the contract. A contract is a promise or set of promises made between two or more parties and a breach of such promises allows the courts to impose a punishment.⁵

A contract is an agreement between two or more competent parties, based on mutual promises, to do or to refrain from doing a particular thing that is neither illegal nor impossible. The agreement results in an obligation or a duty that can be enforced in a court of law. Both of the agreements in this case result in legally enforceable contracts because the parties agree mutually to their satisfaction.⁶

Basically, a contract is a bundle of rights and obligations binding parties to one another by an exchange of promises with a consideration. The Contract Act, 1872 defines “contract” as follows: “an agreement which is enforceable by law is a contract.”⁷ This means that all agreements are not contracts. Only those agreements which can be enforced by law are contracts. A contract is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognizes as a duty.⁸

A valid contract is a legally binding agreement which recognizes and governs the rights and duties of the parties.⁹ A valid contract is legally enforceable against both of the parties because its formation meets the requirements and approval of the law.

It is a common misconception that a contract may only be in written form, as oral agreements or agreements implied by conduct can be just as credible in contract formation. A contract is unique in that unless certain exceptions apply, parties are free to agree to whatever terms they choose.¹⁰ In our everyday life we unknowingly form contracts. A contract can be described as a legally binding oral or written agreement that exchanges any combination of goods, services, money and property. If the main elements are not present in a contract, it would be an invalid contract.¹¹

2. 1 Essential Elements for a Valid Contract

In Anglo-American common law, the formation of a contract generally requires an offer, acceptance, consideration, and a mutual intent to be bound. Each party

⁵ G. H. Treitel, and Edwin Peel, *Treitel on the Law of Contract* (London: Sweet & Maxwell, 2011).

⁶ Gordon W. Brown, and Paul A. Sukys, *Business Law* (New York: Mcraw-Hill, 2001), 95.

⁷ Section 2, Contract Act, 1872. Act No. IX of 1872.

⁸ Sir Jack Beatson FBA, Andrew Burrows FBA, and John Cartwright, *Anson's Law of Contract* (Oxford: Oxford University Press, 2020).

⁹ Fergus Ryan, *Contract Law: Nutshell* (Ireland: Roundhall Ltd, 2006).

¹⁰ *Contract Law. Lectures - An Introduction*, <https://www.lawteacher.net/lectures/contract-law/?vref=1>.

¹¹ *Main Elements constituting A Valid Contract*, <https://www.lawteacher.net/free-lawessays/contract-law/all-the-main-elements-constituting-valid-contract-contract-law-ess>.

must have capacity to enter the contract.¹² The characterization of a party's communication as an offer or acceptance can determine the exact moment when the contract is made and which party assumes certain risks.¹³ Furthermore, it can also determine where the contract is deemed to have been made, and where the parties are located in different jurisdictions, what laws will apply, and which courts will have jurisdiction. As such, it is important to examine whether there has been an event that constitutes a valid offer and acceptance, and whether and when communication of such an event took place. In order for an agreement to become a valid contract which is enforceable at law, it must possess the following elements:

2. 1. 1 Offer

“The offer is an expression of willingness to contract made with the intention (actual or apparent) that it is to become binding on the person making it as soon as it is accepted by the person to whom it is addressed.”¹⁴ The first element in a valid contract would be the offer. If there is no offer, then no valid contract can be made.

The making of the offer is actually the first step in creating the contractual relationship between the two parties. Because of this position of importance, the offer must be seriously intended, clear and definite and freely communicated to the offeree. If these requirements are met, it is then up to the offeree to accept or to reject the offer.¹⁵

An offer must be clear and made with the intention to make a contract that should be binding. It follows that if an individual is not willing to implement the terms of his promise, but is merely seeking to initiate negotiations, then this cannot amount to an offer, rather, such statements can be called an “invitation to treat”. These invitations to treat would be restricted to statements made in the course of negotiations towards a contract indicating one's willingness to receive offers.¹⁶

2. 1. 2 Acceptance

An acceptance is a final and unqualified expression of assent to the terms of an offer. It turns a specific and comprehensive offer into an agreement. The acceptance must be unconditional and unequivocal. This means the offeree's expression of intention and assent must be made in response to, and must exactly match, the terms of the offer. Any attempt to introduce a new term will

¹² Handbook Home (n.d.), <https://www.lawhandbook.sa.gov.au>.

¹³ Christian Campbell, and Dennis Campbell, *Law of International Online Business: Global Perspective* (London: Sweet & Maxwell, 1998).

¹⁴ Maryke Silalahi Nuth, *Electronic Contracting in Europe* (London: Sweet & Maxwell, 2001).

¹⁵ W. Brown, and A. Sukys, *Business Law*, 97

¹⁶ Jill Poole, *Text Book on Contract Law* (Oxford: Blackstone Press, 2001), 32.

itself become a counter-offer that destroys the original offer and operates as a rejection of the original offer.¹⁷

2. 1. 3 Communication

Acceptance has no effect until it is communicated to the offeror because it could cause hardship to an offeror if he was bound without knowing that his offer had been accepted. When the acceptance is sent by post there are three basic rules that can be applied to decide when acceptance is actually communicated: (i) when the acceptance is posted (ii) when the acceptance is received or arrives at the address of the offeror or (iii) when the acceptance comes to the knowledge of the offeror.

2. 1. 4 Consideration

“No consideration, no contract” is a fundamental principle of contract law. Consideration means to get something in exchange or something in return. Consideration is the essential element of a valid contract.¹⁸ Consideration in a contract would mean the other person would be giving back something in return. It would be considered as an exchange which would be made between the promisee and promisor. There should be consideration in a contract for it to be legally valid.

2. 1. 5 Legal Intention

It is a general rule that an agreement made without any intention of creating legal relations is not binding as a contract.¹⁹ For example, when two friends agree to see a musical concert whereby one promises to pay for the concert ticket if the other pays for the drinks after the concert, consideration is present in this relation, but there is no intention to create legal obligations.

2. 1. 6 Competency of the Parties

Capacity to contract usually refers to a natural person’s legal competence to enter independently into a valid transaction. Parties who are entering into a contract must have the mental ability to understand the consequence of such contract. Under the Contract Act 1872, minors, insane people or people with unsound minds also cannot enter into a valid contract.²⁰

¹⁷ Reinhard Zimmermann, and Simon Whittaker, *Good Faith in European Contract Law* (Cambridge: Cambridge University Press, 2000).

¹⁸ Act No. IX of 1872.

¹⁹ Hein Kotz, and Axel Flessner, *European contract law: Formation, validity, and content of contracts: contract and third parties* (Oxford: Oxford University Press, 1997).

²⁰ Act No. IX of 1872.

2. 1. 7 Free Consent

Merely consent is not enough for a contract to be enforceable; the consent given must be free and voluntary. A Consent that is free from Coercion, Undue Influence, Fraud, and Misrepresentation. The consent might be about entering into a contract or it might be consent to accepting the offer, in any case, any type of consent must be free and voluntary.

2. 2 Types of Contracts

Contracts which are enforceable in a court of law are called Valid Contracts. If one party to the contract has the option of enforcing a contract by law, but not at the option for the other party, such contract is known as a voidable contract. A void contract is not void from its initiation, rather, an agreement may be enforceable at the time of initiation, but later on, due to certain reasons like impossibility or illegality of the contract, it may become void and unenforceable. If the contract has an unlawful object or intention, it is called an Illegal Contract. A contract which has not properly fulfilled legal formalities is called an unenforceable contract. That means an unenforceable contract suffers from some technical defect like an insufficient stamp etc. After rectification of that technical defect an unenforceable contract can become an enforceable or valid contract.

In an express contract, where the offer or acceptance of any promise is made in words, the promise is said to be express. For example: A has offered to sell his house and B has given acceptance. It is an Express Contract. An implied contract is one which is inferred from the acts of the parties or course of dealings between them.

Written contracts are those contracts which are materialized on paper and signed by both parties with all of the formalities. But sometimes there can also be merely oral contracts. There is a big misconception that valid contracts must take a written form. But orally formed contracts can also have the same legal validity as written contracts.

3. Electronic Contracts

The invention of electronic technology and the internet has changed the way we communicate, learn, work, and do business. It has brought the world's people closer in time and space; businesses now work more efficiently with suppliers and consumers; consumers now have a greater choice and can shop from the comfort of their homes, offices, or even while travelling, from a wide variety of products, from sellers all over the world. The marketability of products is no longer confined to the boundaries of their countries. With a couple of clicks one can buy and sell from any part of the world and the desired product will be delivered to the doorstep of consumers.

An electronic contract is an agreement that is drafted, negotiated, and executed completely online. Electronic contracts can eliminate many costs associated with traditional pen-and-paper contracts and have countless other advantages. Every day, knowingly or unknowingly, we become parties to such contracts. In recent times we are surrounded with the web of the internet and take technological support in every minute. With the idea of e-commerce, e-contracts become a necessity.²¹

3. 1 Essentials of an Electronic Contract

An electronic contract is an understanding made in electronic form as no paper or other printed copies are utilized. For instance, you compose an agreement on your computer and send it through the internet to a business partner and the business partner sends it back in a message with an electronic mark demonstrating acknowledgment. An e-contract can likewise be as a contract generally utilized with downloaded programming. Although an electronic contract is nothing like the general idea of a paper-based contract, it must also contain some essentials in order to be a valid contract. Those are as follows:

3. 1. 1 The offer

An offer has to be made even in the case of E-Contracts. In many online or electronic transactions, the offer may not be made directly one-to-one but rather to the whole community of consumers. Consumers can browse all the available goods and services displayed on the company's website. But the invitation to treat is not a valid offer to form a contract.

3. 1. 2 The Acceptance

It would be convenient to mention that the statutes of various countries consider that any consent through electronic means falls within the category of expressed declarations of intent.²² Basically, the same requirements apply to acceptance through an electronic agent in the case of e-contracts.

In regard to acceptance that must take place between the parties, there must be a timeframe, and the means of accepting may be through the physical presence of the parties or through electronic means. In case of a physical or paper-based contract acceptance can be made immediately, but in an electronic contract it is not considered as an immediate one.

²¹ Stefan Grundmann, *European Contract Law in the Digital Age. European Contract law and Theory* (Cambridge: Intersentia press, 2018).

²² Randy E. Barnett, "Contract is not Promise: Contract is Consent," Georgetown University Law Center, <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1614&context=facub>.

3. 1. 3 Lawful Consideration

In a contract for the sale of goods, the money paid is the consideration for the vendor, and the item sold is the consideration for the purchaser.²³ In case of electronic transactions or e-contracts the consideration must be there for any benefit or service of the user and also for the company who is actually offering the benefit to the user.

3. 2 Forms of Electronic Contract

A commercial transaction can be divided into three main stages: the advertising and searching stage, the ordering and payment stage, and the delivery stage. Electronic commerce encompasses all kinds of commercial transactions that are concluded over an electronic medium or network, essentially, the Internet.

E-contracts are most commonly entered into when purchases are made via websites, but they can also be formed by the exchange of emails representing the offer and acceptance stages required to form a contract. The supplier will usually attach their terms and conditions to their email and these will form the basis of the contract between the parties. There are three main forms of e-contract over the internet:

- E-mail/ Browse Wrap
- Clickwrap
- Shrink wrap agreement

3. 2. 1 Email/Browse Wrap

Any formal letter or official function, even academic contacting sources, are mainly carried out through e-mail. Via e-mail, electronic contracts can also be formed. The text of an e-mail message is simply the digital equivalent of the letter. One may attach things to it, it needs to be addressed, and it needs to be sent to the desired recipient. An e-mail is capable of performing all the functions of normal mail. An e-mail can be used to send advertisements as well as to make offers and acceptances.

In *Partridge v. Crittenden* [1968] it was held that an e-mail is the digital equivalent of a letter sent through the post. All normal functions of postal mail transpire through an email. This includes not only the ability to send advertisements or invitations to treat but also offers and acceptances.²⁴

In case of browse-wrap, the seller gives the opportunity to look at the terms of the sale but does not require the user to click on anything to assent to these terms before paying for the product. For example, the website may contain a

²³ "Consideration," Britannica, The Editors of Encyclopaedia. <https://www.britannica.com/topic/consideration>.

²⁴ *Partridge v. Crittenden* [1968], 1 WLR 1204, 2 All ER 421.

button saying “click here for legal terms”, which the purchaser may click on or ignore.²⁵

3. 2. 2 Click Wrap

Click wrap contracts are most commonly found in the workings of the World Wide Web. These types of contracts are mainly used for placing information about a product on the web. This information could be in the form of an advertisement like a web advertisement, an invitation to treat or an offer of a product or service for a sum of money. In this process, there is a button labeled ‘I Accept’, ‘Submit’, ‘Purchase’, or some other phrase. When the consumer clicks on this button, the order is sent to the seller who usually reserves the right to proceed or not to proceed with the transaction.

In *Hotmail Corporation v. Van Money Pie Inc.*, the court was asked to rule on the validity of the ‘click wrap’ contract that the users of the Hotmail service were required to execute. The court upheld the validity of click wrap contracts stating that by clicking on the ‘I agree’ button on the page where the details of the contract are listed, the parties bind themselves to a contract under the terms contained in that web page.²⁶

3. 2. 3 Shrink-wrap agreement

Shrink-wrap agreements are those, which are acknowledged by a client when programming is introduced from a CD-ROM as Microsoft Office programming. Shrink wrap agreements have derived their name from the ‘shrink-wrap’ packaging that usually contains the CD-ROM of the Software. The terms and conditions of accessing the particular software are printed on the shrink wrap cover of the CD that must be removed to access the CD-ROM. At times, supplementary terms are also imposed in such licenses which appear on the screen only when the CD is loaded in the computer.

In *ProCD, Inc. v. Zeidenberg*, Judge Easterbrook held that contracts concluded electronically over the internet may still be valid provided that the party has been given sufficient notice that the transaction they are about to make is governed by the terms that are contained in a separate page on the web site and that they are bound by the terms of such contract. They cannot subsequently claim that they are not bound by the terms of the agreement on the grounds that they did not read the same when agreeing to the terms.²⁷

²⁵ Blount, *Electronic Contracts: Principles from the Common Law*.

²⁶ *Hotmail Corporation v. Van Money Pie Inc., et al*, C98-20064, 1998 WL 388389.

²⁷ *ProCD, Inc. v. Zeidenberg*, 86 F. 1996.

4. Comparative Study About E-Contracts and Traditional Contracts

In response to recent and anticipated future growth in long-distance commerce using electronic media such as the Internet, some commentators have suggested that legal and economic institutions will have to change substantially in response to new technologies of trade, in the same way that they did in response to the major technological and organizational innovations of the 18th and 19th centuries.²⁸ Others have taken a more skeptical position, arguing that recent developments are better viewed as changes of degree rather than of kind, and that they can be accommodated by extending and modifying existing arrangements in a more evolutionary fashion.²⁹ The growth of electronic commerce reflects changes in the relative importance of various institutional transaction costs such as the costs of information and of searching for contractual partners. Accordingly, arrangements that were optimal or at least satisfactory under previous configurations of transaction costs may no longer be so under configurations that will develop in the future. Such cost changes may or may not require adjustment of legal doctrine or statutory provisions, which in most cases merely set default rules around which contracting parties negotiate.³⁰ The comparative study of traditional contracts and electronic contracts has a different perspective, namely, a regulatory perspective that asks what rules the state should set to regulate private contracting.³¹

In internet business, the significance and part of agreements and contracts will never be changed, but its type experiences incredible changes day by day with the development in the digital world. Some differences between traditional contracts and electronic contracts can be pointed out. Some of them are as follows:

Firstly, conventional contracts occur in reality, the two sides can bargain face to face, but electronic contracts occur in the virtual space. The two organizations or parties would not in any case meet each other when all is done, the whole process happens as an electronic robotized exchange, or individuals cannot even decide if the exchange is moderated. Their character depends on secret key confirmation distinguishing proof or accreditation body as like the traditional contract use to do.

²⁸ David R. Johnson, and David Post, "Law and Borders. The Rise of Law in Cyberspace," *First Monday* no. 1 (1996).

²⁹ Frank H. Easterbrook, "Cyberspace and the Law of the Horse," *University of Chicago Legal Forum* (1996), <https://chicagounbound.uchicago.edu/uclf/vol1996/iss1/7>.

³⁰ Jane K. Winn, and Benjamin Wright, *The Law of Electronic Commerce* (Aspen: Aspen Law & Business, 2001).

³¹ Avery W. Katz, "The Economics of Form and Substance in Contract Interpretation," *Columbia Law School*, 2004, https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1107&context=faculty_scholarship.

Secondly, in case of availability of templates depending on the different needs and uses of the industry, templates of various kinds of contracts are available online. Parties entering into an agreement need to choose a template, fill in details and then attach their e-signatures to it. Whereas in a traditional contract, the whole content of the contract is written by a person according to what the parties want. The subject along with the terms and conditions of both parties involved is drafted, and for every change, a new draft is created. It could take days and weeks to draft a paper contract.

Thirdly, electronic contracts are easy to use. As readymade templates are available for various kinds of contracts online, parties are only required to fill in the basic details such as name, address, terms and conditions and afterwards the parties digitally sign it and the contract is completed. But in case of a traditional contract, parties need to meet face-to-face to inform each other, discuss about the terms and conditions of the agreement. Then, after the repeated modifications or drafting, the final contract is prepared, and parties meet again in order to sign the document. The whole process requires time from both parties.

Fourthly, a Digital Contract helps the user by giving them a low transaction cost option. Here, the cost of paper, printing, ink, etc. all get excluded as the process only requires an electronic medium at both ends. But in traditional contracts the cost of labor and material such as paper, printing etc. are involved, which increases the cost in the implementation of the agreement. The transactional cost of a contract is also added in such a kind of contract.

Fifthly, traditional contracts are time consuming compared to electronic contracts. In traditional contracts parties need to meet face-to-face to agree with the terms and sign the document. But in case of electronic contracts all the process happens through technological means and is done in the blink of an eye. In spite of e-contracts having so many benefits compared to traditional ones, e-contracts have been facing so many legal challenges in recent days. The parties who enter into a contract must have the capacity to do so. If a person does not have legal competence, then the contract stands void. The problem of identifying capacity to e-contract arises because often there are nameless individuals who enter into contracts and there is a possibility that these individuals who agree to the terms and conditions of an e-contract might be minors.

Another vital point is free consent. E-contracts do not allow any party to negotiate about the existing offer as the parties are not aware of each other and there is no chance to modify the offer or the terms and conditions. The user cannot use any system or software without accepting the terms and conditions. Thus, an e-contract only provides a "take it or leave it" offer and no negotiation for ensuring free consent.

5. Legal Challenges of E-contracts under the Law of Bangladesh

To keep pace with the digital world and the present situation, most countries over the globe have actualized laws to adopt electronic contacts, in spite of the underlying worries in regard to the same. In the context of Bangladesh, contracts are regulated under the customary contract law³² which is very unequipped to manage the issue of Electronic Contracts. Around the whole world, computer-based transactions set the tone even in everyday life. Financial matters related to computers or internet-based transactions, which depend mostly on electronic contracts, have perplexed market analysts around the world.³³

As a developing nation, Bangladesh is on its way to becoming a digital country. In this circumstance, the advantage of internet technology to grow E-commerce has the potential to promote every industry and thereby contribute considerably to the country's macro-economy. However, the country has yet to achieve its E-commerce potential and one of the vital barriers in the way of it is a lack of a specific legal framework.

The term E-commerce stems from electronic commerce, where the whole transaction is conducted through the internet. Daraz, Evaly, Foodpanda etc. are popular E-commerce websites in Bangladesh nowadays. Generally, an internet business in Bangladesh starts with the creation of a website or a public page on a social media network. In the E-commerce sector, Bangladesh lacks a unified legal framework to oversee and monitor the rights of consumers and sellers or service providers.

The Contract Act of 1872, the Sale of Goods Act of 1930, the Consumer Rights Protection Act 2009 and the Competition Act of 2012 provide the regulatory framework for commercial matters, but they all need to be updated to accommodate the various aspects of E-commerce. In the case of online shopping, the buyer and seller enter into a contract before purchasing the goods. The nature of such a contract is virtual. Electronic contracting raises a number of valid questions, such as whether an electronic contract is legally binding and to what extent, or whether it can be used as evidence in the event of a breach. However, under Bangladeshi contract law, there is no specific solution relating to such form of contract. The Consumer Rights Protection Act 2009 prohibits misleading people with false advertisements in order to sell a product or service and makes it an infringement of consumer rights, but there is no provision that specifies how such a claim may be established. The Sale of Goods Act of 1930 acknowledges that inspecting goods before purchasing them is one of the consumer's rights, but does not specify how this can be done online. The Penal

³² Avtar Singh, *Text book on Law of Contract and Specific Relief* (Lalbagh: Eastern Book Company, 2006).

³³ C. M. Abhilash, "E Commerce laws in Developing countries: An Indian Perspective," *Information & Communication Technology Law* 11, no. 3 (2002): 269–281.

Code of 1860 provides for some remedy in general under sections 264 to 267 in the case of offences relating to fraudulent use of a false instrument, the making or using of false weights or measures for selling goods. But there is no provision for fraudulent customers when they refuse to take delivery of the goods in case of the cash on delivery method. As a result, the sellers have to face loss in business, at the same time it demotivates them from pursuing online business. The Special Powers Act of 1974 does not deal with deception during virtual selling but in order to penalize for adulterated food, drinks, drugs or cosmetics this law can be a stringent option. However, cyber threats do exist in online shopping systems. When customers shop online, websites collect their personal data and that poses a risk to their privacy. The shopping website, on the other hand, can be hacked. In this regard, the Information and Communication Technology Act, 2006 can be applied indirectly. Ironically, none of the law applies to online shopping specifically. In 2018, the Bangladesh National Parliament also passed the Digital Security Act 2018. This act was passed with the aim to give more protection regarding social media, print media or any other electronic media.³⁴ But there is no specific provision about the contracting method based on the electronic system.

Despite all the irregularities, the most sanguine step by Bangladesh is the National Digital Commerce Policy, 2018 at the initiative of the e-Commerce Association of Bangladesh (e-CAB), which was approved by the cabinet for development of the e-commerce sector. It has enormous potentiality to progress the sector but the implementation will take a long time.

The main trouble with internet jurisdiction is the presence of multiple parties in various parts of the world who have a virtual nexus with each other. The Civil Procedure Code 1908 allows a party to choose the jurisdiction either based on the cause of action or the place of business of the defendant. However, S.13 of the Information Technology Act provides that an electronic record is deemed to be dispatched at the place where the originator has his place of business and is deemed to be received at the place where the addressee has his place of business.

Indian contract act incapacitates a minor, a lunatic, a person with unsound mind, and a person in a drunken state of mind from entering into a valid contract. The difficulty in an online contract is that the competence of one party is unknown to the other. The complex nature of e-contracts makes it impossible for one party to figure out whether the other party behind the computer screen is competent to contract or not.

It becomes crucial for an online business portal to keep such possibility in consideration and qualify its website or form stating whether the individual with whom it is trading or entering into a contract is a major or not.

³⁴ Article 19, Bangladesh Digital Security Act 2018, Cyber Security Act; Act No 46 of 2018.

5. 1 Status of Electronic Contracts in the International Arena

It is important to note that the internet with all its technological developments gives us an opportunity to act as a global community, advertise and operate transactions all over the world from country to country. For the making of this kind of global community, the adoption of e-contracts through technological equipment is most important. Many more countries cordially adopted e-contracts as media of transaction for expanding their business or advertisement. The development of electronic trade has relatively expanded the utilization of electronic contracts as a quicker and imaginative approach to do business i.e. e-commerce. Most nations adjusted their domestic business legislation to recognize electronic contracts and consider them as lawfully legitimate instruments.

5. 1. 1 Electronic Contracts in the USA

The laws pertaining to electronic contracts constitute the essential legal structure in the United States. The Uniform Electronic Transactions Act (UETA)³⁵ is an imperative enactment material regarding electronic contracts in the USA. Articles 3 and 4 of this Act are only applicable to transactions relating to business and government matters that are made by electronic means. The Electronic Signatures in Global and National Commerce Act (E-Sign Act) 2001 recognizes the legitimacy of agreements entered electronically and provides the general rules of validity for electronic records and signatures for transactions in interstate or foreign commerce. The Uniform Computer Information Transaction Act (UCITA) is an important U.S. setup for the proposed display rules relevant to the development of electronic contracts, particularly to that of e-contracts on electronic materials or computer data exchanges.³⁶ Along these lines, for managing, permitting or the exchange of computer programming inside the United States, it is imperative to check whether the rules of UCITA have been received by the state administrator.

5. 1. 2 Electronic Contracts in Germany

The German approach to giving legal effect to electronic contracting is based on the use of a rigid regime. The German Digital Signature Act (DSA) 2014 entered into force as Article 3 of the Information and Communication Services Act. This act supported the legal validity of digital signatures in electronic commerce. Further technical regulations followed later that year in the Digital Signature Ordinance.

³⁵ United Nations Commission on International Trade Law. UNCITRAL Model Law on Electronic Commerce, with Guide to Enactment, 1996: with Additional Article 5 Bis as Adopted in 1998. New York: United Nations, 1999.

³⁶ H. Auinger, "Contracts and Orders," *Power Engineering Journal* 15, no. 1 (2001).

5. 1. 3 Electronic Contracts in France

As a European Union (EU) Member State, France is governed by Regulation No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market. The use of electronic signatures in electronic contracts is increasing in France, especially in the context of e-commerce. Certificate-based digital signatures, such as qualified electronic signatures (QES), are mainly reserved for specific regulated business activities such as those involving notaries, lawyers, banking institutions, and bailiffs, where the evidential nature of the signature has a significant importance.³⁷

6. Conclusion

Even though our existing contract laws are predicated upon the traditional paper-based contracts, they have been able to accommodate evolutions in communication and the way contracts are formed, for instance, the development of telephones, faxes, and telex. Hence, the emergence of electronic communication is not entirely different from other modes of communication and can also be accommodated by the existing contract law.

Electronic commerce, by its nature, goes beyond borders and so it is important to harmonize the laws that regulate electronic commerce. The United Nations has taken a commendable step in that direction. However, it should have gone further to make provisions addressing the issue of who makes the offer and who accepts the offer in electronic commerce, and when an acceptance becomes effective.

Though some countries like Bangladesh are lagging behind in taking definitive steps to remove the obstacles to the facilitation of electronic commerce. But day to day developments in the digital world make them realize the importance of making e-contracts more included in state law. This way businesses and electronic consumers can benefit from this fast and highly convenient means of transacting business.

³⁷ Electronic Signature Laws & Regulations in the EU (910/2014), EU Trust Services Dashboard, <https://webgate.ec.europa.eu/tl-browser/#/tl/FR>.