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**Digital Contract in Emerging Economy  
of 21<sup>st</sup> Century: A Comparative Study**

Introduction

Electronic contract is designed to assist people in formulating and implementing commercial contracts policies within e-businesses. It contains 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 to inter-related programs, which have to be specified carefully to satisfy the contract requirements. Particularly in the internet such contracts have put on flexibility of contract, and the suitability and multiplication of standard type of agreements.<sup>1</sup> With the growth of E-commerce there is rapid advancement in the use of e-contracts. But deployment of e-contracts poses lots of challenges like, conceptual, logistic and implementation. It is more unlikely for the internet users a day has passed without dealing with computers or other devices where they had not manifest their assent to some terms. As, in case of installing any software there is only an icon “I Agree” for their assent. These type of action also formulate e-contracts 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 deliberately to fulfill the agreement necessities. E-contract is any sort of agreement shaped over the web based business by the connection of at least two people utilizing electronic means, for example, email or the cooperation of a person with an electronic specialist. Customary contract standards and cures also applicable to e-contracts. With the changing of time the idea of E-Contracts or Electronic Contracts has concocted the

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<sup>1</sup> ABDULHADI M., Alghamdi: *The Law of E-Commerce: E-Contracts, E-Business*. Author House, United States of America, 2011.

improvement of Electronic Commerce framework over the globe. Electronic trade can be characterized as “Electronic purchasing”<sup>2</sup> and offering on the Internet and incorporates and exercises that a firm performs or offering and purchasing administrations and items utilizing computers and correspondence advancements. The virtual or electronic contracts open door for gatherings to enter into an agreement over web. E-Commerce is the practice of buying and selling goods and services through online consumer services on the internet<sup>3</sup>.

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 come into an important issue. Contracts made under cost of huge sum of money were being entered into without ensuring the validity and authenticity of the parties.<sup>4</sup> In a number of countries existing legislation governing communication and storage of information is inadequate or out dated 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 was also felt in many countries when they faced forms of old paper based communication techniques in this modern era.

#### What is 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 to parties of the contract. A Contract is a promise or set of promises made between two or more parties and breach of such promises allow the courts to make a punishment.<sup>5</sup>

A Contract is an agreement between two or more competent parties, based on mutual promises, to do or to refrain from doing some 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 resulted in legally enforceable contracts because the parties agreed mutually satisfactory.<sup>6</sup>

Basically, a contract is a bundle of rights and obligations binding parties to one another in exchange of promises with a consideration. The Contract Act, 1872 defines contract as “an agreement which is enforceable by law is a contract.”<sup>7</sup> This means that all agreements are not contracts. Only those agreements which can be enforced by law are contracts.

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<sup>2</sup> SUBAASHINI, S. R. – SHAJI, M.: Legal Issues Arising in E-contracts in India: An Analysis. *International Journal of Pure and Applied Mathematics* Vol. 120 No. 5 (2018) 4601–4618.

<sup>3</sup> BLOUNT, Simon: *Electronic Contracts: Principles from the Common Law*. Chatswood, New York, 2009.

<sup>4</sup> SIEMER, Timo: *Formation of Electronic Contracts Under Traditional Common Law Principles: Offer and Acceptance in E-Commerce*. GRIN Verlag, US, 2011.

<sup>5</sup> TREITEL, G. H. – PEEL, Edwin: *Treitel on the Law of Contract*. Sweet & Maxwell, London, 2011.

<sup>6</sup> BROWN, Gordon W. – SUKYS, Paul A.: *Business Law*. Mcraw-Hill, New York, 2001. 95.

<sup>7</sup> Section 2, Contract Act, 1872. Act No. IX of 1872.

A contract is a promise or set of promises for the breach of which law gives a remedy or the performance of which law in some way recognizes as a duty.<sup>8</sup>

A valid contract is legally binding agreement which recognizes and governs the rights and duties of the parties.<sup>9</sup> 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 or conduct agreements 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.<sup>10</sup> In our everyday life we unknowingly form a contract. A contract can be described as a legally binding oral or written agreement which exchanges any combination of goods, services, money and property. If the main elements are not in contract, it would be an invalid contract.<sup>11</sup>

### Essential Elements for Valid Contract

In the Anglo-American common law, formation of a contract generally requires an offer, acceptance, consideration, and a mutual intent to be bound. Each party must have capacity to enter the contract.<sup>12</sup> The characterization of a party's communication as an offer or acceptance can determine when the exact moment of contract made and which party assumes certain risks.<sup>13</sup> Furthermore, it can also determine where the contract is deemed to have been made, where the parties are located in different jurisdictions, and accordingly, 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. An agreement for becoming a valid contract which is enforceable at law must possess the following elements:

#### 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.”<sup>14</sup> The first element in a valid contract would be offer. If there is no offer, then no valid contract can be made.

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<sup>8</sup> BEATSON, Jack – BURROWS, Andrew – CARTWRIGHT, John: *Anson's Law of Contract*. Oxford University Press, 2020.

<sup>9</sup> RYAN, Fergus: *Contract Law: Nutshell*. Round Hall LTD, 2006.

<sup>10</sup> *Contract Law. Lectures – An Introduction*. <https://www.lawteacher.net/lectures/contract-law/?vref=1> (16.03.2022).

<sup>11</sup> *Main Elements constituting A Valid Contract*. <https://www.lawteacher.net/free-law-essays/contract-law/main-elements-constituting-a-valid-contract-contract-law-essay.php> (05.03.2022).

<sup>12</sup> [www.lawhandbook.sa.gov.au](http://www.lawhandbook.sa.gov.au) (12.03.2022).

<sup>13</sup> CAMPBELL, Christian et al: *Law of International Online Business: Global Perspective*. Sweet & Maxwell, London, 1998.

<sup>14</sup> NUTH, Maryke Silalahi: *Electronic Contracting in Europe*. Sweet & Maxwell, London, 2001.

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.<sup>15</sup>

An offer must be clear and made with the intention to make a contract that it 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 “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.<sup>16</sup>

### 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 attempts to introduce a new term will itself become a counter-offer that destroys the original offer and operates as a rejection of the original offer.<sup>17</sup>

### Communication

Acceptance has no effect until it is communicated to the offeror because it could cause hardship to an offeror if he is 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 in the address of the offeror or (iii) when the acceptance comes to the knowledge of the offeror.

### 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.<sup>18</sup> 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 promises and promisor. There should be consideration in a contract so that it would be legally valid.

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<sup>15</sup> BROWN-SUKYS, 2001. 97.

<sup>16</sup> POOLE, Jill: *Text Book on Contract Law*. Blackstone Press, 2001. 32.

<sup>17</sup> ZIMMERMANN, R. – WHITTAKER, S.: *Good Faith in European Contract Law*. Cambridge University Press, 2000.

<sup>18</sup> Act No. IX of 187.

### Legal Intention

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

### Competency of Parties

Capacity to contract usually refers to a natural person's legal competence to enter independently into 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 any valid contracts.<sup>20</sup>

### Free Consent

Mere 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 contract or consent to accepting the offer, any type of consent must be free and voluntary.

### Types of Contracts

The 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 of the other such contract known as voidable contract. Void contract is not void from its initial 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 unlawful object or intention, it is called Illegal Contract. A contract which has not properly fulfilled legal formalities is called unenforceable contract. That means unenforceable contract suffers from some technical defect like insufficient stamp etc. After rectification of that technical defect an unenforceable contract can become enforceable or valid contract.

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 Express Contract. An implied contract is one which is inferred from the acts of the parties or course of dealings between them.

Written contract are those contracts which are materialized in a paper and signed by both parties with all of the formalities. But sometimes there also can be oral contracts

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<sup>19</sup> FLENSSE, A: *European Contract Law: Formation, validity, and content of contracts, Contract and third parties*. Oxford University Press, 1997.

<sup>20</sup> Act No. IX of 1872.

only. There is a big misconception that valid contracts must be written form. But the orally constituted contracts also can have the same legal validity as the written contracts.

### 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, for a wide variety of products, from sellers all over the world. Marketability of products is no longer confined to the boundaries of their nations. With a couple of clicks one can buy and sell from any part of the world and the desired product will be delivered at the door step 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 it countless other advantages. Everyday knowingly or unknowingly we become part of such contract. In this recent times we are surrounded with web of internet and take technological support in every minute. With the idea of e-commerce, the e-contracts become the necessity.<sup>21</sup>

### Essentials of Electronic Contract

An electronic contract is an understanding made in electronic frame as there is no paper or other printed copies are utilized. For instance, you compose an agreement on your computer and send it through internet to a business relate and the business relate messages it back with an electronic mark demonstrating acknowledgment. An e-contract can likewise be as a contract generally utilized with downloaded programming. Though electronic contract is not like general idea of paper based contract but it also must contain some essentials for being a valid contract. Those are as follows:

#### 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 rather to the all community of consumers. The consumers can browse all the available goods and services displayed on company's website. But the invitation to treat is not valid offer for constitute a contract.

#### The Acceptance

It would be convenient to mention that the statutes of various countries consider that any consent through electronic means falls within the expressed declarations of intent.<sup>22</sup>

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<sup>21</sup> GRUNDMANN, Stefan: *European Contract Law in Digital Age*. Intersentia press, 2018.

<sup>22</sup> BARNET, Randy E.: *Contract is not Promise: Contract is Consent*. Georgetown University Law Center, 2011. <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1614&context=facpub> (30.05.2022).

Basically, the same requirements apply to acceptance through an electronic agent in case of e-contracts.

In regard to acceptance that must be made between parties, there must have a timeframe, the means of accepting may be physically present of parties or through electronic means. In case of physical or paper base contract the acceptance can be made immediately but in electronic contract it not considered as immediate one.

### 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.<sup>23</sup> In case of electronic transactions or e-contracts the consideration must be there in face of any benefit or service of the user and also for the company who actually offering the benefit to the user.

### Forms of Electronic Contract

This is not certain that the legislation only accepts the piece of paper and excludes the electronic alternatives. Electronic Commerce is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. 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 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 internet:

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

### Email/Browse Wrap

In our recent digital life almost all of us familiar with electronic mail. Any formal letter or official function even academic contacting source majorly doing through e-mail. Via this e-mail the electronic contracts also can be done. 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. E-mail is capable of performing all the functions of normal mail. E-mail can be used to send advertisements as well as offer and acceptance.

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<sup>23</sup> Britannica, Politics, Law & Government, Consideration: *Contract Law*. Editors of Encyclopedia Britannica, 2011. <https://www.britannica.com/topic/consideration> (15.03.2022).

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

In case of browse wrap, the seller gives opportunity to look at the terms of the sale but does not require the user to click on anything to put assent to these terms before paying for the product. For example, the web site may contain a button saying “click here for legal terms,” which the purchaser may click or ignore.<sup>25</sup>

### Click Wrap

Click wrap contracts are most commonly found in the working of the World Wide Web. These types of contracts mainly used for the placing information about a product on the web. This information could be in the form of an advertisement like 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 labelled ‘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 upheld that the validity of click wrap contracts stating by clicking 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 webpage.<sup>26</sup>

### Shrink wrap agreement

Shrink-wrap ascension 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 and 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 to have sufficient notice that the transaction they made is governed by the terms that is 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 agreement on the ground that they did not read the same when agreeing to the terms.<sup>27</sup>

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

<sup>25</sup> BLOUNT, 2009.

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

<sup>27</sup> *ProCD, Inc. v. Zeidenberg*, 86 F. 1996.



### 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> The comparative study between traditional contract and electronic contract has different perspective like a regulatory perspective that asks what rules the state should set to regulate private contracting.<sup>31</sup>

In internet business, the significance and part of agreement and contract will never be changed, but its type experienced an incredible changes day by day with the development through the digital world. Some differences between traditional contract and electronic contract can be pointed out. Some of them are as following:

Firstly, Conventional contracts occurred in reality, the two sides can bargain face to face, but electronic contract occurred in the virtual space, the two organizations or party would not in any case meet each other when all is done, the whole process happen in the electronic robotized exchanging, or even individuals can't decide if the exchange is moderately. Their character to depend on secret key confirmation distinguishing proof or accreditation body as like the traditional contract use to do.

Secondly, in case of availability of templates depending on different needs and uses of the industry, templates of various kinds of contracts are available online. Parties getting into an agreement need to choose a template, fill details and then attach their e-signatures to it. Whereas in 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

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<sup>28</sup> JOHNSON, David R.: The Rise of Law in Cyberspace. *Law and Borders*, Vol. 1 (1996) <https://doi.org/10.5210/fm.v1i1.468> (20.03.2022).

<sup>29</sup> EASTERBROOK, Frank H.: Cyberspace and the Law of the Horse. *University of Chicago Legal Forum*, (1996), <https://chicagounbound.uchicago.edu/uclf/vol1996/iss1/7> (30.03.2022).

<sup>30</sup> WINN, Jane K. – WRIGHT, Benjamin: *The Law of Electronic Commerce*. Aspen Law & Business, 2001.

<sup>31</sup> KATZ, Avery W.: *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](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1107&context=faculty_scholarship) (16.03.2022).

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, the electronic contracts are easy to use. As readymade templates are available for various kinds of contracts online, parties are only required to fill the basic details such as name, address, terms and conditions and after parties digitally sign it and the contract is completed. But in case 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 so many modification or drafting the final contract is prepared, parties meet again in order to sign the document. The whole process requires time from both parties.

Fourthly, 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. transactional cost of a contract also added in such kind of contract.

Fifthly, traditional contracts are time consuming comparing to the 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 happened through the technological means and done in a blink of eyes.

After having so many benefits of e-contracts comparing to traditional one e-contracts facing so many legal challenges recent days. The parties who come under a contract must have the capacity to do so. If a person does not have legal competence, then the contract stands void. Problem of identify the 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 does not provide any party to negotiate with the existing offer as the parties are not aware of each other and there is no chance to modify the offer or terms 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 not negotiating for ensuring free consent.

### Legal Challenges of E-contracts under Law of Bangladesh

For keeping pace with the digital world and present situation, most of the countries over the globe have actualized laws to adopt electronic contacts, in spite of the underlying worries in regards to the same. In context of Bangladesh contracts are regulated under the customary contract law<sup>32</sup> which is very unequipped to manage the issue of Electronic Contracts. Around the whole world the computer based transaction creating the atmosphere even in everyday life. The financial matters related to computer or internet

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<sup>32</sup> KAPOOR, Rajesh: *Avtar Singh's Law of Contract & Specific Relief*. EDC, 2017.

based transaction which depends mostly on electronic contracts has perplexed market analysts around the world.<sup>33</sup>

As a developing nation Bangladesh is on its way to become 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 lack of specific legal framework.

The term E-commerce erupt from electronic commerce because the whole transaction conducted through the internet. Daraz, Evaly, Foodpanda etc. are the popular E-commerce websites in Bangladesh nowadays. Generally, 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 of 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's Right 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 engage into a contract before purchasing a good. 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's Right Protection Act 2009 prohibits misleading people with false advertisements in order to sell a product or service and made it as an infringement of consumer's right but there is no such provision that specifies how such a claim may be established. The Sale of Goods Act of 1930 acknowledges that inspecting goods before purchasing is one of the consumer's rights, but does not specify how this can be done online. The Penal Code of 1860 provides some remedy in general under section 264 to 267 offences relating to fraudulent use of false instrument making or selling false weight or measure. But there is no provision for fraud customers when they refuse to receive the goods in cash on delivery method. As a result, the sellers have to face loss in business, at the same time it demotivates them from online business. The Special Powers Act of 1974 does not deal with the deception of virtual selling but in order to penalize for adulterated food, drinks, dugs 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 risk their privacy. The shopping website, on the other hand, can be hacked. In this regard Information and Communication Technology Act, 2006 can be applied indirectly. Ironically, none of the law applies to online shopping specifically. In 2018, Bangladesh National Parliament also passed Digital Security Act 2018. This act was passed with the aim to give more protection social media, print media

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<sup>33</sup> ABHILASH, C. M.: E Commerce laws in Developing countries: An Indian Perspective. *Information & Communication Technology Law*, Vol. 11 (2002).

or any other electronic media.<sup>34</sup> But there is no specific provision about the contracting method on the electronic system.

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

#### Status of Electronic Contracts in International Arena

It is important to note that internet with its all technological developments give us opportunity to act as a global community, advertise and operate transaction all over the world like country to country. For making this kind of global community the adoption of e-contracts through the technological equipment is most important. Many more countries cordially adopted the 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 household business enactment to perceive electronic contracts and marks as lawfully legitimate instruments.

#### Electronic Contracts in USA

The accompanying laws of electronic contracts constitute the essential lawful structure in the United States. The Uniform Electronic Transactions Act (UETA)<sup>35</sup> is an imperative enactment material to electronic contracts in USA. Articles 3 and 4 of this Act just applicable to identified with business and government matters to exchanges led by electronic means. The Electronic Signatures in Global and National Commerce Act (E-Sign Act) 2001 perceives the legitimacy of agreements entered electronically and provides a general rule of validity for electronic records and signatures for transactions in interstate or foreign commerce. Uniform Computer Information Transaction Act (UCITA) is an important U.S. set up to the proposed display rules relevant to the development of electronic contracts, particularly to those e-contracts on electronic materials or computer data exchanges.<sup>36</sup> Along these lines managing, permitting or exchange of computer programming inside the United States it is imperative to check whether rules of UCITA have been received by the state administrator.

#### Electronic Contracts in German

Through the use of a rigid regime, the German approach to giving legal effect to electronic contracting. 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

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<sup>34</sup> Article 19, Bangladesh Digital Security Act 2018.

<sup>35</sup> United Nation Commission on International Trade Law (UNCITRAL), Model Law on Electronic Commerce, 1996.

<sup>36</sup> AUINGER, H.: Contracts and Orders. *Power Engineering Journal*, Vol. 15 No. 1 (2001).

of digital signatures in electronic commerce. Further technical regulations followed later that year in the Digital Signature Ordinance.

#### 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.<sup>37</sup>

#### Electronic Contracts in Malaysia

Despite the fact that internet business is developing at a critical rate, various hindrances keep on hampering its improvement. One hindrance identifies with development of e-contract. There remains vulnerability whether the conventional standards of agreement law can be adjusted to the necessities of electronic contracting. The electronic contract is essentially not quite the same as conventional contract which trigger different new lawful issues even at the underlying phase of the agreement.<sup>38</sup> In light of Malaysian legitimate practice and in correlation with United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce and European Union Directives on internet business, this country tries to investigate and distinguish customer issues concerning the development of e-contracts. This incorporates the talk on the production of legitimately enforceable understanding, the suitability of the postal run and its application to email, the need of composed contract and additionally computerized signature and the vulnerability of where and when the e-contract is framed. Malaysian enactment on arrangement of e-contract including the Contracts Act 1950, Sale of Goods Act 195, Electronic Commerce Act 2006 and the Digital Signature Act 1997 and the ampleness of the current law in ensuring e-buyers.

#### Conclusion

Even though our existing contract laws are predicated upon the traditional paper-based contracts, it has 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 electronic communication is therefore not entirely different from other modes of communication and can also be accommodated by the existing contract law.

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<sup>37</sup> Electronic Signature Laws & Regulations in the EU, EU Trust Services Dashboard. <https://webgate.ec.europa.eu/tl-browser/#/tl/FR>. (16.03.2022).

<sup>38</sup> REED, Kathleen et al.: *Contract Law for Paralegals: Traditional and E-Contracts*. Pearson Higher, 2012.

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 ahead 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 development in digital world make them realize the importance of making e-contract more inclusive in state law. This way businesses and electronic consumers can benefit from this fast and highly convenient means of transacting business.