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# E-CONTRACTS AND PRIVATE INTERNATIONAL LAW: DETERMINING JURISDICTION AND APPLICABLE LAW IN THE DIGITAL ERA

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Inian Balaji K S, Vinayaka Mission's Law School

Chinnadurai R, LL.B. (Hons.), Vinayaka Mission's Law School

## ABSTRACT

The rapid growth of digital technology has significantly transformed the way contracts are created and performed<sup>1</sup>. Today, online transactions and click-wrap agreements have become an unavoidable part of daily commercial life. However, while e-contracts offer convenience and speed, they also create complex legal challenges, especially in cross-border transactions. This research paper examines how Private International Law addresses the issues of jurisdiction and applicable law in the context of online contracts.

The paper focuses particularly on click-wrap agreements, which are commonly used by digital platforms and are often accepted without meaningful negotiation. It analyses how traditional principles of jurisdiction struggle to adapt to the borderless nature of the internet. Questions such as where a contract is formed, which court has authority to hear disputes, and which country's law should govern the agreement have become increasingly complicated in the digital era.

Special attention is given to cross-border consumer protection, as consumers are generally the weaker party in online contracts<sup>2</sup>. The research evaluates whether choice-of-law and jurisdiction clauses in standard form contracts unfairly disadvantage consumers<sup>3</sup>. It also examines the growing role of fairness, targeting doctrine, and public policy in judicial decisions.

The paper argues that while party autonomy remains important, it must be balanced with mandatory consumer protection norms. It concludes by suggesting the need for harmonized international standards, clearer statutory

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<sup>1</sup> Dr. Mansi Singh 'Future of Online Contracts and E-Signatures' (2025) 10(7) International Journal of Novel Research and Development – <https://www.ijnrd.org/papers/IJNRD2507204.pdf>

<sup>2</sup> Ms Krupa Naik, 'Cross-Border Consumer Protection and Digital Enforcement: The Role of Regulatory Frameworks and Technological Integration' (Indian Journal of Law and Legal Research, 18 August 2025) <https://www.ijllr.com/post/cross-border-consumer-protection-and-digital-enforcement-the-role-of-regulatory-frameworks-and-tech>

<sup>3</sup> Asian Business Law Institute, 'Choice of Law and Choice of Forum Clauses for Contracts under Indian Law' (March 2023) (ABLI, CyrilShroff.com) <https://www.cyrilshroff.com/wp-content/uploads/2020/09/ABLJ.pdf>

guidelines, and effective online dispute resolution mechanisms to ensure legal certainty and justice in cyberspace.

**Keywords:** E-Contracts; Private International Law; Digital Jurisdiction; Click-Wrap Agreements; Cross-Border Consumer Protection; Applicable Law; Online Dispute Resolution; Party Autonomy; Jurisdictional Complexity.

## I. Introduction

Over the past two decades, the way contracts are formed has completely changed<sup>4</sup>. Earlier, agreements were usually made through face-to-face meetings, signed documents, and physical exchange of papers. Today, most transactions happen digitally. A person can order food, book flight tickets, subscribe to online platforms, or even enter into high-value international business agreements by simply clicking “I agree.” These electronic contracts, often formed within seconds, have become a normal part of daily life as well as global commerce.

However, this digital transformation has created serious legal complications, especially in cross-border transactions<sup>5</sup>. Traditional contract law was developed at a time when parties were physically present in identifiable locations. Courts could easily determine where a contract was signed, where it was performed, and which country’s law applied. In contrast, in online transactions, parties may never meet each other. They may not even know where the other party is located. A consumer in India may contract with a company based in the United States through a server located in another country.

This situation raises important legal questions: Which court has the authority to hear a dispute? Which country’s law will govern the contract? How can consumers be protected when the business operates from a foreign jurisdiction?<sup>6</sup>

This paper examines how Private International Law addresses these complexities in relation to online contracts, click-wrap agreements, cross-border consumer protection, and the growing

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<sup>4</sup> Joy Cunanan, From Barter to Written Agreements: A Look into the History of Contracts (Lexagle, 14 November 2025) <https://www.lexagle.com/blog-en-sg/from-barter-to-written-agreements-a-look-into-the-history-of-contracts>

<sup>5</sup> Juhi Bhutoria, ‘Digital Trade and Cross-Border E-Commerce: Emerging Challenges in International Law’ (The Legal Quorum, 28 October 2025) <https://thelegalquorum.com/digital-trade-and-cross-border-e-commerce-emerging-challenges-in-international-law/>

<sup>6</sup> Governing Law and Jurisdiction in International Contracts (Internationalcontracts.net, 27 June 2013) <https://internationalcontracts.net/contract/blog/181-governing-law-and-jurisdiction-in-international-contracts>

problem of jurisdictional uncertainty in the digital era.

## II. Concept of E-Contracts

### 1. Meaning and Nature of E-Contracts

An electronic contract, commonly known as an e-contract, is a legally binding agreement that is created and concluded through electronic communication instead of physical paperwork<sup>7</sup>. In simple terms, when parties enter into an agreement through emails, websites, mobile applications, or any digital platform, it becomes an e-contract. Even though the medium has changed from paper to screen, the legal principles governing contracts remain the same.

Under traditional contract law, four essential elements must be satisfied: offer, acceptance, consideration, and intention to create legal relations<sup>8</sup>. These elements are equally applicable to electronic contracts. For example, when an online shopping website displays a product with price details, it may amount to an offer or invitation to offer. When a customer places an order and makes payment, it amounts to acceptance and consideration. The intention to create legal relations is presumed because the transaction involves commercial obligations. Therefore, the substance of the contract does not change merely because it is formed electronically. What changes is only the mode of communication and the speed at which agreements are concluded<sup>9</sup>.

In India, the legal recognition of e-contracts is primarily supported by the Information Technology Act, 2000 and the Indian Contract Act, 1872. The Information Technology Act gives legal validity to electronic records and digital signatures, ensuring that contracts cannot be denied enforceability solely because they are in electronic form<sup>10</sup>. At the same time, the Indian Contract Act provides the foundational principles governing formation, validity, and enforceability.

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<sup>7</sup> E-Contracts: Meaning, Types, Legal Validity, E-Signature & Stamping (The Legal School, online) <https://thelegalschool.in/blog/what-are-e-contracts>

<sup>8</sup> Shreya Sharma, 'Essentials of a Valid Contract Under the Indian Contract Act, 1872' (LawArticle, 7 March 2025) <https://lawarticle.in/essentials-of-a-valid-contract-under-the-indian-contract-act-1872/>

<sup>9</sup> 'What Is the Substance of a Contract?' (LegalClarity, 26 November 2025) <https://legalclarity.org/what-is-the-substance-of-a-contract/>

<sup>10</sup> JurAce Legal LLP, 'Contract Law & E-Signatures: Enforceability of Electronic Contracts in India' (JurAce Legal, 12 February 2025) <https://juracelegal.com/contract-law-e-signatures-enforceability-of-electronic-contracts-in-india/>

## ***2. Types of Online Contracts***

Online contracts are generally classified into click-wrap, browse-wrap, and shrink-wrap agreements<sup>11</sup>. In click-wrap agreements, users actively click “I Agree” to accept the terms and conditions before proceeding. Browse-wrap agreements, on the other hand, assume acceptance through continued use of the website, with terms available through a hyperlink. Shrink-wrap agreements are mostly used in software transactions, where acceptance is inferred once the package is opened.

These contracts are usually standard form contracts, meaning the terms are drafted by one party and offered on a “take it or leave it” basis without negotiation.

### **III. Click-Wrap Agreements and Legal Validity**

#### ***1. Nature of Click-Wrap Contracts***

Click-wrap agreements are one of the most common forms of online contracts in today’s digital economy<sup>12</sup>. Whenever we create an account, download an application, or make an online purchase, we are usually required to click a button stating “I Agree” before proceeding. This form of agreement is widely used by platforms such as Amazon, Google, and Meta.

In legal terms, click-wrap agreements are standard form contracts where the terms and conditions are drafted entirely by one party, usually the service provider<sup>13</sup>. The user has no opportunity to negotiate or modify the terms. Acceptance is obtained through an affirmative action clicking the “I Agree” button. Unlike browse-wrap agreements, where terms are merely available through a hyperlink, click-wrap contracts require a clear act of consent.

However, an important legal question arises: Is this consent truly informed and voluntary? Even though the user clicks to accept, most people do not actually read the lengthy and complex terms<sup>14</sup>. This raises concerns about whether the acceptance satisfies the requirement of “free

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<sup>11</sup> James M, Types of Online Contracts: Clickwrap, Browsewrap, and Beyond (Ecommerce Law Blog, 13 October 2025) <https://ecommercelawblog.com/types-of-online-contracts-clickwrap-browsewrap-and-beyond/>

<sup>12</sup> **R & D Law Chambers**, Enforceability of Shrink Wrap and Click Wrap Agreements in India (R & D Law Chambers, 28 July 2025) <https://rdlawchambers.com/enforceability-of-shrink-wrap-and-click-wrap-agreements-in-india/>

<sup>13</sup> Karan Shelke, ‘Legal Treatment of Clickwrap Contracts in India’ (Lex Credence, 08 March 2024) <https://lexcredence.com/legal-treatment-of-clickwrap-contracts-in-india/>

<sup>14</sup> Anushri Dissanayake, Clicking ‘I Agree’: Are Online Contracts Enforceable When No One Reads the Terms (Record of Law, 22 July 2025) <https://recordoflaw.in/clicking-i-agree-are-online-contracts-enforceable-when-no->

consent” under contract law principles.

## **2. Judicial Recognition**

Courts in many jurisdictions have generally upheld the validity of click-wrap agreements. The primary reasoning is that contract law only requires reasonable notice of terms and a clear manifestation of assent. If the terms are clearly displayed, accessible before acceptance, and the user must actively click to agree, courts treat this as valid consent.

However, complications arise in cross-border transactions. When a click-wrap agreement includes foreign jurisdiction or choice of law clauses, courts must determine whether such clauses are enforceable against consumers who may not have fully understood their implications.

## **3. Issues with Consent**

Despite judicial recognition, practical issues remain. Users rarely read the terms because they are lengthy, technical, and written in complex legal language<sup>15</sup>. There is also a clear inequality of bargaining power between large multinational corporations and individual consumers.

This imbalance raises concerns about fairness and unconscionability. While click-wrap agreements are legally valid, their ethical and practical fairness continues to be debated in the context of consumer protection and private international law.

## **IV. Private International Law: Basic Principles**

Private International Law, also known as Conflict of Laws, plays a very important role when a legal dispute involves more than one country<sup>16</sup>. In simple terms, it helps courts decide three main questions whenever there is an international element in a case.

First, jurisdiction means deciding which court has the authority to hear the dispute. When parties are located in different countries, it becomes difficult to determine the proper forum. Traditionally, jurisdiction depended on factors like the place where the contract was signed or

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<sup>15</sup> Dhruv Acharya, ‘The Rise of Digital Evidence: Admissibility and Challenges in Indian Courts’ (Lawyersarc, 20 March 2025) <https://lawyersarc.in/digital-evidence-admissibility-and-challenges/>

<sup>16</sup> Dr Rajesh Kumar, Private International Law (Maharaja Agrasen University School of Law, undated) <https://mau.ac.in/LMS/MASOL/Rajesh%20Private%20International%20Law.pdf>

where the parties reside. However, in online transactions, parties may never physically meet, and the contract may be concluded through a website<sup>17</sup>. This creates uncertainty about which country's court can legally handle the matter.

Second, applicable law refers to which country's legal rules will govern the contract. Many online agreements include a "choice of law" clause stating that a particular country's law will apply. But this may conflict with mandatory local laws, especially in consumer protection matters. Courts must then balance party autonomy with fairness and public policy.

Third, recognition and enforcement concerns whether a judgment passed in one country will be accepted and enforced in another. Without proper treaties or reciprocal arrangements, enforcing foreign judgments can be complicated and costly.

In cross-border digital transactions, these three principles become more complex because the internet does not follow geographical boundaries, making traditional legal rules harder to apply.

## **V. Determining Jurisdiction in the Digital Era**

### ***1. Traditional Rule***

Traditionally, jurisdiction in contract disputes is determined based on certain connecting factors. Courts usually look at the place where the contract was formed, the place where it was to be performed, and the residence or place of business of the parties. These factors made sense in physical transactions. For example, if two parties signed a contract in Chennai and the work was to be performed in Mumbai, courts could easily determine which forum had jurisdiction.

However, in online contracts, these traditional rules become difficult to apply. When a contract is formed through a website or mobile application, the parties are not physically present in one place. The offer may be displayed on a server located in one country, and the acceptance may happen through a click in another country<sup>18</sup>. This raises important questions: Where exactly is the contract formed? Does acceptance occur where the consumer clicks the button? Or does it

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<sup>17</sup> Soyab Khan, 'E-CONTRACTS IN INDIA: THE LEGAL FRAMEWORK, ISSUES AND CHALLENGES' ILE Lex Speculum, Vol I AND ISSUE I OF 2023, V1I116.pdf

<sup>18</sup> 'Evolving Jurisprudence of E-Contracts in India: Challenges of Consent, Enforceability, and Consumer Protection' (Lawsource, 14 May 2025) <https://lawsource.in/2025/05/14/evolving-jurisprudence-of-e-contracts-in-india-challenges-of-consent-enforceability-and-consumer-protection/>

occur where the company's server receives the acceptance? Similarly, performance in digital contracts, such as downloading software or streaming services, does not happen in a clearly identifiable territory. Because of this, applying traditional jurisdiction rules becomes complicated in the digital environment.

## ***2. The “Place of Clicking” Problem***

One major issue is known as the “place of clicking” problem. Suppose a consumer in India clicks “I Agree” on the website of a company based in the United States<sup>19</sup>. There are multiple possible interpretations. Some may argue that the contract is concluded at the consumer's location in India, since acceptance was communicated there. Others may say it is concluded at the place where the server is located, as that is where the acceptance is received. A third view could be that jurisdiction lies where the company has its principal place of business. These different interpretations create uncertainty and legal confusion<sup>20</sup>.

## ***3. Minimum Contacts and Targeting Doctrine***

To address these complexities, courts have developed modern tests such as the “minimum contacts” test and the “targeting doctrine.” Under the minimum contacts principle, a court can assume jurisdiction if the company has sufficient connection with that forum. The targeting doctrine examines whether the business intentionally directed its activities toward consumers in that jurisdiction<sup>21</sup>. For example, if a company advertises in Indian currency, offers delivery to India, or provides customer support for Indian users, it shows that the company is targeting Indian consumers. In such cases, Indian courts may reasonably assume jurisdiction.

Thus, jurisdiction in the digital era depends not just on geography, but also on intention and connection.

## **VI. Applicable Law in Online Contracts**

In cross-border online contracts, one of the most important questions is: which country's law

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<sup>19</sup> Adv Karan Shelke, ‘Legal Treatment of Clickwrap Contracts in India’ (Lex Credence, 11 March 2024) <https://lexcredence.com/legal-treatment-of-clickwrap-contracts-in-india/>

<sup>20</sup> Legal 60, Jurisdiction Lies Where the Cause of Action Arises, Not Where the Company's Head Office Is (Legal 60, 21 April 2025) <https://legal60.com/jurisdiction-lies-where-the-cause-of-action-arises-not-where-the-companys-head-office-is/>

<sup>21</sup> Prachi Sharma, ‘Concepts and Issues of Jurisdiction in Cyber Space’ (LawBhoomi, 8 January 2021) <https://lawbhoomi.com/jurisdictional-aspects-in-cyber-law-and-information-technology-act/>

will govern the agreement? Since online transactions often take place between parties located in different countries, determining the applicable law becomes a complex issue under Private International Law<sup>22</sup>.

### **1. Party Autonomy**

The principle of *party autonomy* means that the parties to a contract are free to choose the law that will govern their agreement<sup>23</sup>. In most online contracts, especially click-wrap agreements, there is a standard clause stating: “*This agreement shall be governed by the laws of X country.*” Usually, “X country” refers to the country where the company is incorporated, such as the United States or Singapore.

Courts generally respect this choice because freedom of contract is a fundamental principle in contract law<sup>24</sup>. The idea is that when parties voluntarily enter into an agreement, they should also be free to decide the legal framework that regulates their rights and obligations. However, this freedom is not absolute. Courts may refuse to apply the chosen foreign law if it:

- Violates the public policy of the forum country;
- Defeats mandatory statutory protections;
- Causes serious injustice, particularly to consumers.

Thus, while party autonomy is recognized, it is subject to certain limitations to ensure fairness.

### **2. Conflict Between Choice of Law and Consumer Protection**

A major issue arises when a powerful foreign company inserts a clause stating that disputes will be governed by, for example, California law<sup>25</sup>. If an Indian consumer purchases goods or services online from that company, a question arises: should Indian consumer protection laws

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<sup>22</sup> Navigating Jurisdictional Complexities in Online Contracting, TheLaw.Institute (Law Notes, 30 October 2025) <https://thelaw.institute/commerce-and-cyberspace/online-contracting-jurisdictional-complexities/>

<sup>23</sup> Khatamjonova Gulsanam Yasharjon qizi, ‘The Origin and Development of the Principle of Party Autonomy in Matters of Choice of Law Based on the Parties’ Agreement’, Vol 02, Issue 08, 2024, AMERICAN Journal of Public Diplomacy and International Studies.

<sup>24</sup> ‘Freedom of Contract’ (Lawyers & Jurists, online) <https://www.lawyersjurists.com/article/freedom-of-contract-2/>

<sup>25</sup> Aayush Akar, ‘Foreign Jurisdiction Clauses in Indian Contracts: A Legal Perspective’ **TaxGuru** (15 November 2023) <https://taxguru.in/corporate-law/foreign-jurisdiction-clauses-indian-contracts-legal-perspective.html>

still apply?

Consumers are generally considered weaker parties in a contract because they do not negotiate terms and simply click “I Agree.” If foreign law is strictly applied, it may deprive them of the protections guaranteed under the Consumer Protection Act, 2019 in India. Therefore, courts often examine whether applying the foreign law would undermine mandatory local protections.

This creates a tension between freedom of contract and consumer welfare. On one side, businesses seek uniformity and predictability by choosing a single governing law. On the other side, legal systems aim to protect consumers from unfair contractual terms<sup>26</sup>. In the digital era, balancing these two interests remains one of the biggest challenges in determining applicable law.

## **VII. Cross-Border Consumer Protection**

### ***1. Vulnerability of Consumers***

In cross-border online transactions, consumers are usually placed in a weaker position compared to multinational corporations. Most online contracts are standard form agreements drafted entirely by the company<sup>27</sup>. The consumer is given only two options: either click “I Agree” or stop using the service. There is no real opportunity to negotiate terms, modify clauses, or seek clarification.

Further, many online platforms insert jurisdiction clauses stating that disputes must be resolved in a foreign country. For an ordinary consumer, especially in a developing country like India, approaching a foreign court is practically impossible due to high legal costs, travel expenses, and procedural complexities. This creates an imbalance of power between the parties. Although such clauses may appear legally valid under the principle of party autonomy, in reality they may operate unfairly against consumers. Therefore, courts often examine whether such jurisdiction clauses are reasonable or oppressive.

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<sup>26</sup> Legal Certainty and Predictability (LegislationHub, Web Page) <https://legislationhub.com/legal-certainty-and-predictability/>

<sup>27</sup>Saru Nisha. K and Saraswathy. G, ‘Title of the Article’ (2023) International Journal of Advanced Research in Science, Communication and Technology <https://www.ijarsct.co.in/Paper23211.pdf>

## 2. Consumer Protection in India

In India, the Consumer Protection Act, 2019 has strengthened the rights of consumers in the digital marketplace<sup>28</sup>. The Act recognizes the growing importance of e-commerce and provides specific rules to regulate online platforms. Consumers can now file complaints electronically, which makes access to justice easier and more practical.

The Act also addresses unfair contract terms. If a contract term causes significant imbalance in the rights of consumers, it can be challenged before consumer forums. Even when an online agreement mentions foreign jurisdiction, Indian courts and consumer commissions may assume jurisdiction if the cause of action arises within India. This ensures that companies cannot escape liability merely by inserting foreign governing law clauses.

## 3. Global Perspective

From a global perspective, the European Union follows a highly protective approach toward consumers. Under EU regulations, consumers generally have the right to sue in their own country, and businesses cannot easily override mandatory consumer protection laws by choosing a different governing law<sup>29</sup>. This model prioritizes consumer welfare over strict contractual freedom and reflects a balanced approach in the digital era.

## VIII. Jurisdictional Complexity in Digital Transactions

Jurisdictional issues in digital contracts are far more complicated than in traditional contracts because the internet removes geographical boundaries<sup>30</sup>. In a single online transaction, multiple countries may be involved at the same time. For example, the seller may be located in the United States, the buyer in India, the website server may be hosted in Singapore, and the payment gateway may operate from the United Kingdom. In such a situation, it becomes difficult to determine which country's court has the authority to hear the dispute.

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<sup>28</sup> Sakshi Patil, 'Consumer Protection Act, 2019: Recent Judicial Interpretations' (Lawful Legal, 28 August 2025) <https://lawfullegal.in/consumer-protection-act2019-recent-judicial-interpretations/>

<sup>29</sup> Nikolina Šajn, Understanding Enforcement of Consumer Protection Legislation (European Parliamentary Research Service, PE 651.962, June 2020) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651962/EPRS\\_BRI\(2020\)651962\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651962/EPRS_BRI(2020)651962_EN.pdf)

<sup>30</sup> Lisa Charles and Michael Benjamin, 'Jurisdiction in Online Contractual Disputes' (2022) 3(1) Journal of International Commercial Law and Technology 24–27 <https://jiclt.com/article/jurisdiction-in-online-contractual-disputes-34/>

Traditionally, jurisdiction was determined based on factors like the place of contract formation, place of performance, or residence of the parties. However, in online contracts, it is unclear where the contract is actually formed is it where the buyer clicks “I agree,” where the server processes the acceptance, or where the company is registered? This multiplicity of connecting factors creates uncertainty and sometimes leads to overlapping jurisdictional claims by different courts.

Another important issue is the presence of forum selection clauses in online agreements. Most e-contracts contain clauses stating that disputes must be resolved exclusively in a particular country or through arbitration<sup>31</sup>. These clauses are usually drafted by corporations and are part of standard form contracts, leaving consumers with no bargaining power. Although courts generally respect party autonomy and uphold such clauses, they may refuse to enforce them if the clause is unfair, unreasonable, or oppressive to the weaker party. If enforcing the clause would effectively deny the consumer access to justice, courts may assume jurisdiction despite the contractual terms.

Even when a party successfully obtains a judgment, enforcement remains a major challenge. A judgment passed in one country must be recognized by the courts of another country before it can be enforced. This depends on reciprocity agreements, statutory provisions, or international treaties. In the absence of such mechanisms, the successful party may have to initiate fresh proceedings abroad, making the process expensive, time-consuming, and legally complex.

## **IX. Role of Technology in Determining Jurisdiction**

In the digital era, technology plays a major role in deciding jurisdiction in cross-border disputes<sup>32</sup>. Unlike traditional contracts where physical location is clear, online transactions depend heavily on technological infrastructure. Courts now examine technological tools used by businesses to understand whether they intentionally targeted a particular jurisdiction.

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<sup>31</sup> The Significance of Choice of Forum Clauses in Online Contracts (The Law Institute, 28 November 2023) <https://thelaw.institute/commerce-and-cyberspace/significance-choice-forum-clauses-online-contracts/>

<sup>32</sup> Somya Yadav, ‘Jurisprudence in the Digital Age: Adapting Legal Theories to Emerging Technologies’ (2024) 4(2) International Journal of Law, Justice and Jurisprudence 299–305 <https://www.lawjournal.info/article/151/4-2-43-791.pdf>

## **1. Geo-Location and Targeting**

Modern businesses use technological tools such as IP tracking, geo-blocking, and localized websites to identify and control the geographical reach of their services<sup>33</sup>. IP tracking helps companies identify the approximate location of a user through their internet address. Geo-blocking allows businesses to restrict or allow access to users from specific countries. Localized websites display content in a particular language, currency, or region-specific advertisements, clearly showing that the company intends to attract customers from that region.

These tools are legally significant because they demonstrate whether a business has purposefully availed itself of a particular market. If a company actively targets Indian consumers by offering prices in Indian Rupees, providing India-specific delivery options, or running advertisements in India, courts may conclude that the company has established sufficient connection with India<sup>34</sup>. In such cases, Indian courts may assume jurisdiction over disputes arising from those transactions. Therefore, technological targeting becomes an important factor in determining jurisdiction in online contract disputes.

## **2. Blockchain and Smart Contracts**

Emerging technologies like blockchain and smart contracts create further complications. Blockchain operates on a decentralized network where no single authority controls the system<sup>35</sup>. Transactions are recorded across multiple nodes located in different countries. This makes it extremely difficult to determine the territorial connection of a contract.

Smart contracts are self-executing agreements coded into blockchain systems. Once conditions are met, the contract automatically performs without human intervention. In such systems, parties may remain anonymous, and their physical location may not be identifiable. This challenges traditional jurisdiction rules that depend on factors like place of contract formation, place of performance, or residence of parties.

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<sup>33</sup> How Geolocation Works and Why It's Important for Online Security (IPLocation.net, 17 July 2024) <https://www.iplocation.net/how-geolocation-works-and-why-its-important-for-online-security>

<sup>34</sup> Badrinarayan Rath, 'Predatory Pricing And Its Implications: An Analysis Under Indian Competition Act' (Indian Journal of Law and Legal Research, Volume VI Issue VI, 18 January 2025) <https://www.ijllr.com/post/predatory-pricing-and-its-implications-an-analysis-under-indian-competition-act>

<sup>35</sup> Khan SN, Loukil F, Ghedira-Guegan C, Benkhelifa E and Bani-Hani A, 'Blockchain Smart Contracts: Applications, Challenges, and Future Trends' (2021) Peer-to-Peer Networking and Applications 14(5) 2901–2925 <https://pmc.ncbi.nlm.nih.gov/articles/PMC8053233/>

As technology continues to evolve, traditional legal principles of jurisdiction may become inadequate. There is a need to rethink and adapt Private International Law to address these new digital realities.

## **X. Comparative Analysis**

When we compare how different legal systems deal with e-contracts and jurisdictional issues, we can clearly see that each jurisdiction balances party autonomy and consumer protection in a different way.

### **1. Indian Approach**

In India, courts generally follow traditional contract law principles under the Indian Contract Act, 1872. The basic elements of offer, acceptance, and free consent are still applied even in online contracts. However, with the growth of e-commerce, Indian courts are slowly moving towards a more consumer-sensitive approach. While party autonomy and jurisdiction clauses are respected, courts do not blindly enforce them. If a jurisdiction clause is found to be unfair, oppressive, or against public policy, Indian courts may refuse to enforce it.

Indian courts also consider whether enforcing a foreign jurisdiction clause would cause serious inconvenience to the consumer<sup>36</sup>. Under the Consumer Protection Act, 2019, greater emphasis is placed on protecting consumers from unfair contract terms. Therefore, although India follows traditional principles, there is a gradual shift toward fairness and consumer interest in digital transactions.

### **2. United States Approach**

The United States follows a more structured approach based on constitutional principles<sup>37</sup>. Courts mainly rely on the “minimum contacts” test, which was developed to determine whether exercising jurisdiction over a foreign defendant is fair. The key question is whether the company has sufficient connection with the forum state.

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<sup>36</sup> Jayanti Dhingra, *Analysing the Applicability of Foreign Jurisdiction Clauses in India* (The Competition & Commercial Law Review, 7 March 2024) <https://www.tcclr.com/post/analysing-the-applicability-of-foreign-jurisdiction-clauses-in-india>

<sup>37</sup> *Understanding the Constitutional Law and Government Structure of the United States of America* (Generis Online, 10 July 2024) <https://generisonline.com/understanding-the-constitutional-law-and-government-structure-of-the-united-states-of-america/>

Another important factor is “reasonable foreseeability.” If a business could reasonably foresee that its activities would affect consumers in a particular state, then courts may assume jurisdiction. US courts often enforce click-wrap agreements and forum selection clauses, provided they are clearly presented and accepted.

### **3. European Union Approach**

The European Union adopts a more consumer-oriented model. Under EU regulations, consumers are given strong protection in cross-border contracts<sup>38</sup>. Even if a contract includes a foreign jurisdiction clause, consumers usually have the right to sue in their own country. Mandatory local jurisdiction rules cannot easily be overridden by contractual terms.

Compared to the Indian and US approaches, the EU model is more protective of consumers and limits strict contractual autonomy in digital contracts.

## **XI. Challenges in the Current Legal Framework**

One of the major challenges in regulating e-contracts is the lack of uniform global regulation<sup>39</sup>. Every country follows its own private international law rules, which leads to inconsistency and uncertainty in cross-border disputes. What may be valid in one jurisdiction may not be enforceable in another, creating confusion for both businesses and consumers.

Another issue is the over-reliance on standard form contracts, especially click-wrap agreements. These contracts are drafted by corporations and offered on a “take it or leave it” basis<sup>40</sup>. Consumers do not have the opportunity to negotiate terms, including jurisdiction and choice of law clauses. This often results in unfair advantages for stronger parties.

There is also uncertainty in the server location theory. In online contracts, it is unclear whether jurisdiction should depend on the location of the server, the business, or the consumer<sup>41</sup>. The

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<sup>38</sup> BEUC – The European Consumer Organisation, BEUC’s view on the Consumer Agenda 2025–2030 (BEUC-X-2025-075, 29 August 2025) [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2025-075\\_Consumer\\_Agenda\\_2025-2030.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2025-075_Consumer_Agenda_2025-2030.pdf)

<sup>39</sup> E-CONTRACT IN INDIA: ISSUES AND CHALLENGES (Research Publish, March 2019) <https://www.researchpublish.com/upload/book/E-CONTRACT%20IN%20INDIA-7286.pdf>

<sup>40</sup> Dr Omendra Singh, ‘One Click, No Choice: Standard Form Contracts and the Myth of Consent in Indian Law’ (AMOGHVARTA, Volume 5, Issue 1, June–August 2025) [https://www.amoghvarta.com/uploads/current\\_issue/1750763992ne-Click-No-Choice-Standard-Form-Contracts-and-the-Myth-of-Consent-in-Indian-Law.pdf](https://www.amoghvarta.com/uploads/current_issue/1750763992ne-Click-No-Choice-Standard-Form-Contracts-and-the-Myth-of-Consent-in-Indian-Law.pdf)

<sup>41</sup> Namandeep Kaur, ‘“CAUSE OF ACTION” and Its Importance in Determining Jurisdiction’ (Legal Vidhiya, 15 February 2025) <https://legalvidhiya.com/cause-of-action-and-its-importance-in-determining-jurisdiction/>

internet does not respect geographical boundaries, making territorial rules difficult to apply.

Further, litigation in foreign courts is expensive and complicated, especially for consumers. Finally, even after obtaining a judgment, enforcing it internationally is difficult due to differences in legal systems and lack of reciprocity<sup>42</sup>. Overall, digital commerce is expanding much faster than legal reforms can keep up with.

## **XII. Suggestions and Reforms**

With the rapid growth of digital transactions, the existing framework of Private International Law needs serious reform. First, there is a strong need for the development of uniform international standards. Since online contracts frequently involve parties from different countries, inconsistent national laws create confusion and unpredictability. International cooperation through treaties or model laws can help in creating uniform principles regarding jurisdiction and applicable law in e-contracts. This would ensure greater legal certainty for both businesses and consumers.

Secondly, there must be clear statutory guidelines on digital jurisdiction. Traditional jurisdictional principles were designed for physical transactions and are often inadequate in cyberspace. Legislatures should clearly define factors such as targeting of consumers, server location relevance, and digital presence. Clear rules will reduce unnecessary litigation and conflicting judicial interpretations.

Thirdly, cross-border consumer protection mechanisms must be strengthened. Consumers are usually the weaker party in online contracts and often lack bargaining power. When disputes arise across borders, they face financial and procedural difficulties in pursuing remedies. Countries should ensure that mandatory consumer protection laws cannot be easily bypassed by foreign jurisdiction or choice-of-law clauses. Greater cooperation between national consumer authorities can also improve enforcement.

Another important reform is ensuring mandatory transparency in click-wrap agreements. Most users accept terms without reading them because they are lengthy, technical, and complex.

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<sup>42</sup> MC MAHESHWARI & CO. Advocates & Legal Consultants, 'Cross-border Disputes, Foreign-linked Litigation and What the New Rules on Foreign Lawyers Mean for International Cases in India' (Mondaq, 19 February 2026) <https://www.mondaq.com/india/trials-appeals-compensation/1746826/cross-border-disputes-foreign-linked-litigation-and-what-the-new-rules-on-foreign-lawyers-mean-for-international-cases-in-india>

Lawmakers should require simplified language, highlighted important clauses, and clear disclosure of jurisdiction and governing law provisions. Transparency promotes informed consent and reduces unfair contractual practices.

Finally, there is a pressing need for simplified online dispute resolution (ODR) mechanisms. Cross-border litigation is expensive and time-consuming. Efficient online platforms for dispute resolution can provide accessible and affordable remedies, especially for small consumer claims.

Overall, harmonization between technological development and legal certainty is essential. The law must evolve alongside digital innovation.

### **XIII. Conclusion**

The digital era has fundamentally transformed the formation and performance of contracts. E-contracts, particularly click-wrap agreements, have become an integral part of everyday transactions. However, these technological advancements have significantly complicated the traditional principles of Private International Law.

Determining jurisdiction and applicable law in cross-border online contracts remains difficult due to the borderless nature of the internet, the widespread use of standard form contracts, the imbalance between corporations and consumers, and the presence of multiple connecting factors such as server location and place of business.

Although party autonomy continues to play a central role, it cannot override mandatory consumer protection norms. Courts are increasingly adopting a balanced approach by examining fairness, targeting, and public policy considerations.

The future of Private International Law depends on its ability to adapt traditional doctrines to digital realities. Without international coordination and harmonized legal standards, jurisdictional conflicts will continue to rise. Therefore, the law must continuously evolve to ensure that justice and accountability are not lost in cyberspace.