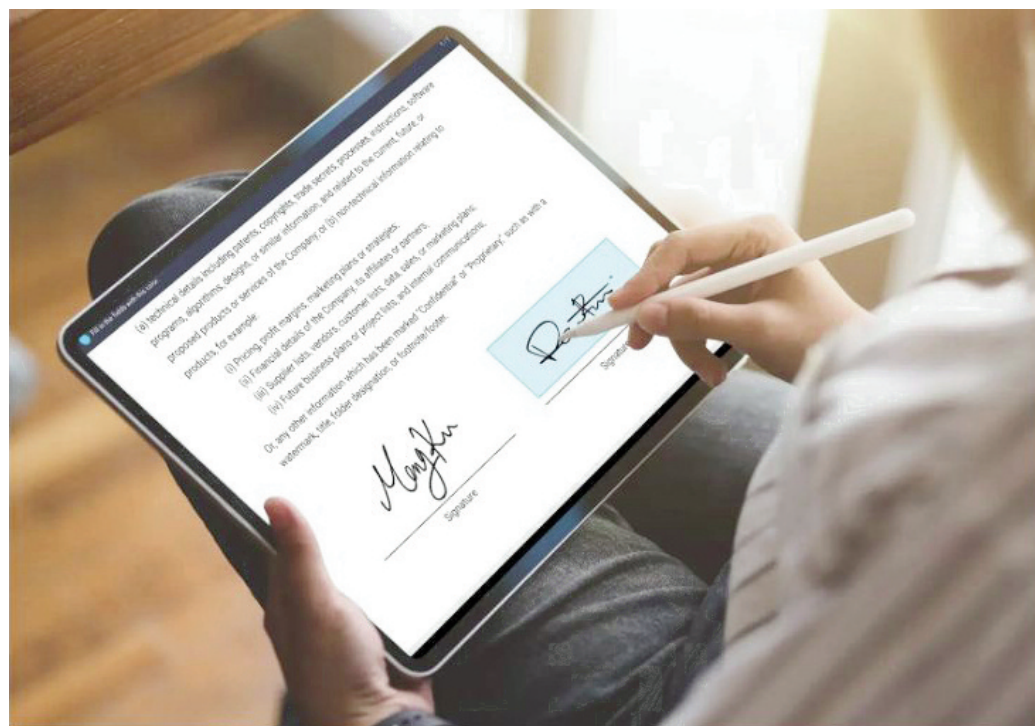


An eSign is the digital equivalent of a traditional handwritten signature and ensures efficiency and legal certainty. The Information Technology Act of 2000 revolutionised the legal framework by establishing the validity of e-signatures, provided they meet specific criteria. The Act, along with laws like the Indian Contract Act, the Electronic Securities Act and the Indian Stamp Act create a comprehensive legal framework governing e-signature usage in India.



LEGALITY OF ELECTRONIC SIGNATURES

In India, eSigns have been granted recognition due to the demands of online legal transactions such as e-contracts, cross-border agreements and online dispute resolution. What is the legal framework involved?

By Garima Mitra

WE live in a hyper-connected, digital world where technology has made its way into every aspect of our life. From a business standpoint, the days of paper-based workflows and physical signatures, though not obsolete,

are rapidly giving way to electronic signatures (eSigns). Embracing electronic transactions and e-signatures ensures efficiency and legal certainty. In India, the legal landscape surrounding eSigns has evolved, granting them recognition due to the demands of online legal transactions such as e-contracts, cross-border agreements, and online

dispute resolution.

Traditionally, handwritten signatures served as unique identifiers, ensuring document authenticity and legality. The Information Technology Act of 2000 revolutionised the legal framework by establishing the validity of e-signatures, provided they meet specific criteria. The Act, along with laws like the Indian Contract Act, the Electronic Securities Act, and the Indian Stamp Act, create a comprehensive legal framework governing e-signature usage in India. Globally, the UNCITRAL Model Law on Electronic Signatures of 2001 laid the foundation for the legal recognition of e-signatures across nations.

An eSign is the digital equivalent of a traditional handwritten signature, eliminating the need for printing, signing and scanning physical paperwork. It utilises electronic methods to verify identity and bind individuals to documents, such as typing a name, drawing a signature, or using dedicated eSign software.

The legal framework for eSigns varies worldwide. In India, the Information Technology Act of 2000 established the legal foundation for eSign, ensuring its validity and widespread adoption. While the core function remains the same, the technicalities of eSigns differ across regions. The EU's eIDAS recognises three types of eSigns—simple, advanced and qualified—with varying levels of security and legal weight. In the US, ESIGN and UETA define an eSign as an electronic sound, symbol, or process attached to a record and executed with intent to sign.

India has taken e-signing a step further with Aadhaar-based eSign, leveraging the Aadhaar identification platform for Aadhaar holders. If you possess an Aadhaar card and linked mobile number, you can digitally sign documents with ease. The eSign service verifies your identity through Aadhaar eKYC, ensuring a secure and reliable experience. The document to be e-signed first needs to be converted into digital formats like PDF, and the signer is then presented with various signing methods based on the security level. Simple signatures might involve typing names or uploading images, while advanced



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e-signatures leverage encrypted digital certificates. Biometrics like fingerprints can add extra verification layers. The eSign solution authenticates signers via passwords, one-time codes or certificate validation processes. Upon verification, the chosen method creates a unique electronic signature with a timestamp embedded in the document, alongside a tamper-proof audit trail recording signatory details. This combination ensures e-signatures' integrity, authenticity and legal reliability as an alternative to handwritten signatures.

Are eSigns legally valid in India? The simple answer is yes. This is primarily thanks to the Information Technology Act of 2000, which established the legal framework for eSigns, granting them the same weight as traditional handwritten signatures, when used correctly. The Information Technology Act, alongside laws like the Indian Contract Act (ICA) and the Information Technology (Electronic Signature Certificate Authorities) Rules (ESECAR), creates a comprehensive legal framework for e-signing in India. You can also use Digital Signature Certificates for enhanced security or leveraging Aadhaar eSign for a simpler signing experience—both recognised under the legal framework. ▶

e-signs offer faster banking and financial services. Loan documents, account opening forms and investment agreements can be signed from anywhere, anytime, eliminating the need to visit branches while ensuring a secure and convenient experience.



To understand this better, it is essential to know the key aspects that ensure the legal validity of eSigns in India. These are:

- **Equivalent to handwritten signatures:** The Information Technology Act states that a contract cannot be denied enforceability solely because it was conducted electronically, provided it fulfils the essential elements of a valid contract under the ICA. eSigns have the same legal weight as traditional handwritten signatures.
- **Digital Signature Certificates (DSCs):** The Information Technology Act recognizes DSCs issued by licensed certifying authorities for enhanced security, acting as a digital identity verification tool for eSigns.
- **Aadhaar eSign:** India has simplified e-Signing with Aadhaar eSign, leveraging the Aadhaar identification platform. Aadhaar holders can digitally sign documents and the eSign service verifies their identity through Aadhaar eKYC for a secure experience.

There are multiple legal provisions when it comes to eSigns in India.

- **Section 2(1)(ta) of the Information Technology Act, 2000,** defines e-signature as the authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and includes a digital signature. This definition recognises two methods of signing digitally: (a) cryptography technique (hash functions,

etc) and (b) marking e-signature using other technologies.

- **Section 3 of the Information Technology Act, 2000,** allows individuals to digitally sign e-contracts. Section 10A makes contracts created by electronic records and communication legally binding.
- **Section 5 of the Information Technology Act** provides legal recognition to digital signatures based on asymmetric cryptosystems.
- **Section 65B of the Indian Evidence Act** implicitly provides admissibility to electronic records. The Act states that electronically signed documents will be allowed as evidence if the signer can demonstrate the integrity and originality of the electronic or digital signature in court.
- **Section 67A of the Indian Evidence Act, 1872,** stipulates that in disputes concerning the native authorship (authenticity) of an e-signature, the individual whose e-sign is in question has to provide proof of originality.

The key question is how secure are eSigns? While eSigns offer unparalleled convenience, security is a top priority for any e-transaction. Fortunately, robust security measures ensure electronic transactions remain secure and tamper-proof. Many eSign platforms employ encryption to scramble data, making it virtually impossible to alter signed documents undetected. They also create detailed audit trails

recording the entire signing process, including timestamps, signer verification details, and document changes, providing transparency. For heightened security, DSCs can verify signers' identities and add an extra tamper-proof layer to eSigns, ensuring their reliability and security for electronic business transactions.

The eSign is making its mark across various sectors, streamlining business processes and enhancing security. In businesses, effortless sales and procurement become possible with e-signed sales agreements, invoices, trade and payment terms, and order acknowledgements. eSign ensures secure and legally binding transactions, eliminating the need for physical copies and manual approvals. Enhanced security for contracts and agreements is achieved through securely managing non-disclosure agreements (NDAs), certificates, and other sensitive documents with eSigns, creating a tamper-

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proof audit trail. Further, eSign enables streamlined HR management by allowing electronic onboarding of new employees, managing contracts, and facilitating approvals. Pre-approved HR templates and easy updates for each employee save valuable time and resources.

Besides businesses, eSigns offer faster banking and financial services. Loan documents, account opening forms and investment agreements can be signed from anywhere, anytime, eliminating the need to visit branches while ensuring a secure and convenient experience. The electronic signing of lease agreements for both residential and commercial properties makes real estate transactions hassle-free. Another advantage of eSigns is efficient government services. eSigns allow individuals to access and electronically sign government documents like permits, applications, and licenses, making interactions with government agencies faster and more user-friendly.

eSigns offer a plethora of benefits, including the following:

- They save time and money by eliminating printing, scanning and mailing physical documents. Aadhaar eSign simplifies the process with Aadhaar KYC-based verification.
- eSigns expedite transactions and improve customer experience while eliminating the need for physical documents, as they work with any device and internet connection.
- **Easy usage:** E-signatures are applied electronically with a typed name, drawn signature, or dedicated software. It is secure with biometric or OTP verification and creates a clear audit trail with obvious electronic signatures and identification of the signatory.
- eSigns are versatile, integrating seamlessly with various applications. They also enhance security as they are tamper-proof and more difficult to forge than traditional

signatures.

Over the past few years, particularly since the pandemic, eSign adoption in India has accelerated, emerging as a critical tool for ensuring business continuity amidst disruptions to traditional document processes. This has paved the way for potential advancements in the legal framework, including updates to the Information Technology Act of 2000 and streamlining the online document registration process.

As India embraces this new era of digital transactions, initiatives to improve user-friendliness, enhance authentication mechanisms, develop fraud-resistant methods and eliminate security vulnerabilities will be essential. By focusing on legal clarity, user experience and robust security measures, India can solidify e-signatures' position as a cornerstone of a secure and efficient digital future, fostering public awareness and building trust in this innovative technology. ■

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