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E-CONTRACT – AN EVALUATIVE ANALYSIS

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INTRODUCTION

In today's world, contracts are a part of our life. From hiring a taxi, or ordering food, we enter into contracts of which some of them are known to us while some unknowingly becomes part of our daily lives. In this modern era, where we are all linked by the internet, everything from ordering grocery online to entering into international treaties over the net is an E-contract.When one party makes an offer and the other party accepts the offer an agreement is formed, thus a contract is in creation. Not all the contracts that are formed are done with the intention to create a legal relation.

The most recent way of making instant contracts is to enter into contracts through internet. Through the internet, which has become the absolute mode of the communication system, it has become possible to send messages across the world from any part of the world to another part of the world. The electronic contract is different from traditional contracts. E-contract is a contract executed and enacted with the help of various software systems.

According to Indian Contract Act,1872; S-2(h) defines contract, "An agreement enforceable by law." It simply means that a contract is anything that is an agreement and enforceable by law.

According to S-2(e) of the Indian Contract Act, 1872, "Agreement means every promise or set of promises forming the consideration for each other."

An E-contract is a contract enacted by a software system. Computer applications are used to run business processes the govern E-Contracts. The basic essentials of an E-Contract are similar to that of the ordinary contract. E-Contract can be surveyed to inter-related programs, which will have to specify the contract requirements. These applications do not have the capacity to handle

compound relationships between the parties to the contract. A digital Contract is an agreement drafted in an electronic form. This agreement can be drafted in the similar manner in which a normal copy agreement is drafted. Then the vendor delivers the product to the intended buyer. Since, it is different from the normal traditional contract; E-Contract raises some difficulties and new legal challenges.A viewer from any part of the world may enter into a contract to purchase different types of products and services as advertised. In this transaction, the major issue is raised by the consumers for their protection.The Information Technology Act, 2000 became the most required legislations and one of the basic necessities in this era. The Indian Contract Act, 1872 does not provide for E-Contract. S-10A of the Information Technology Act 2000, gives the legal validity to E-Contract.

Let's take an example. - An agreement is drafted in your computer and was sent to your associate business partner via e-mail. The business partner, in return, e-mails back to you with electronic signature on it, indicating its acceptance. Another way is that, Electronic Contract can also be in a form of 'Click to Agree' contract, used with downloaded software- The user clicks 'Agree' button on the page containing the terms of the software before the transaction can be completed. Since, a traditional signature is not required in e-contracts, the parties to the contract uses different ways such as an electronic signature to indicate their acceptance or clicking at 'I agree' button or many more.

ESSENTIALS OF E-CONTRACT

1. **Offer:**

An agreement between the parties is valid if it satisfies the requirements of the law, i.e., the parties should intend to create a lawful contract. This intension is revealed by their compliance with the 3 classic or basic essentials of the contract, i.e. Offer, Acceptance and Consideration. One of the major steps in the formation of the contract lies in arriving at an agreement between the parties by offer and acceptance. When the consumer responds to an -email or by filing an online form, they make an offer.[1] Thus, we can say that offer is the proposal which is made on certain products or services, based on certain terms by the offeror to the offeree. The offer can be made to a particular individual or to a group of persons or the public at large.

[1]http://www.legalserviceindia.com/articles/ecta.htm

An offer is different from invitation to treat. In invitation to treat, the person holds himself is free to receive offers, which he may either accept or reject it. This is not an offer, but merely a preliminary communication in the line of negotiating. The price tag on the goods displayed advertisement for buying something, auction, are some of the examples of invitation to treat.

In **Carlil V. Carbolic Smoke Ball Co**.[2], the company advertised in many newspapers stating that 'it would pay £100 to whomsoever who caught flu after using the smoke ball for 14 days.' In order to assure the public at large, it stated that it had deposited £1,000with the bank in order to meet claims. Mrs. Carlil, upon reading it bought one of the smoke balls of the co., used it and caught flu. She claimed the reward but the company refused to pay her. So, she sued the company in contract. The company placed forward many arguments. One of it was that the offer was made to the whole world, which is clearly impossible. The court in this case held that:"the company had made offer to the whole world, and had to pay anyone who came forward and performed the required conditions."

An offer can be terminated or put to an end in many ways. -

1. Once the offer is accepted by the parties to the contract.
2. When the parties reject the contract. The contract is said to be rejected if: -
   a) By directly informing the offeror that he is not accepting it.
   b) When the offeree wants to accept the contract but on certain conditions.
   c) The offeree makes counter -offer on the contract.
3. When the offer is not accepted within reasonable time.

In **Byne V. Tienhoven**[3], the defendant, on 1st October, posted the offer letter to the plaintiff and he received the same on 11th October and accepted the telegram. But the defendant again posted a renovation letter dated 8th October to the plaintiff, who in return received it on 20th October. The court in this case held that:"a binding contract is formed between the parties because the revocation letter was not effective until it was received by the plaintiff. The offeror can revoke an offer using e-mail, but whether it can be actually revoked by just sending an e-mail is doubtful

[2] (1893) 1 QB 525.
[3] (1880) 5 CPD 344.

because the revocation notice needs to be actually received by the offeree and by just displaying on the site will not suffice."

2. Acceptance

Once a valid offer is made by the offeror, the next step in making a valid contract is acceptance of that offer. The acceptance to the offer must be made when the offer is open and within a reasonable time. A proposal, when accepted becomes a promise. The acceptance must be absolute, i.e. the offeree should agree with all the terms and conditions that are involved in the contract and should not add any additional conditions. If the offeree tries to add any additional condition in the prevailing offer, he makes counter-offer and this in turns make him the offeror and the seller the offeree. Under The Indian Contract Act, 1872; acceptance of the valid offer is essential for making a valid Contract. Such acceptance may be in writing, or can be oral. Under S-4 of the Indian Contract Act 1872, communication of acceptance is sought to be complete as against the offeree, when it reaches to the knowledge of the offeror.

Under E-commerce environment, there are three ways of accepting the offer. They are-

1. By sending an e-mail stating acceptance.
2. Making online payment relating to the product/services.
3. Any other act indicating acceptance to the offer.

The Information Technology Act, 2000 provides that the acceptance is binding on the offeree when the acceptance is out of his control and by the offeror when he receives the acceptance from the offeree. S-12 of the Information Technology Act, 2000 states about the default acknowledgement process, if the originator(offeror) or the addressee(offeree) have not agreed upon any particular mode. It is stated that the addressee can acknowledge by any communication mode or by any conduct which would be sufficient to indicate to the originator that the electronic record has been received. "Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgement of such electronic record by him, then, unless acknowledgement has been so received, the electronic record shall be deemed to have never been sent by the originator."[4]

[4] Sec- 12(2) of Information Technology Act 2000.

In the case of **Rich and Enza Hill V. Gateway 2000, Inc,**[5]**t**he plaintiff purchased the gateway over a telephonic conversation. When they received their computers, the plaintiff received an additional terms clause along with arbitration clause. They were given an option to select the terms within 30 days. When the computer stopped working, they filed a suit in the court and stated that they should not be bound by the arbitration clauses. The court held that:"the term of arbitration was enforceable and the plaintiff'sare bound to acknowledge because they were given a period of 30 days to accept the terms or return the product. By not returning the item within the specified 30 days, it was assumed that they had accepted the terms of the contract. Thus, this case should be referred to the arbitration."

3. Consideration

A valid contract results only when one promise is made in exchange of something in return. This is the most essential part of a contract. If there is no promise in exchange of something then that does not amount to a contract even if there was an offer and an acceptance. This something in return in termed as 'consideration'. S-25 of the Indian Contract Act, 1872 provides that a contract without a consideration is void. "An agreement made without consideration is void unless it is a promise to compensate a person who has already voluntarily done something for the promisor."[6] There are 3 types of consideration i.e. executory, executed and past consideration. In executory consideration, the parties agree to perform a promise in the future. The promise to pay for the car on the delivery of the car is a valid consideration. Executed consideration is also known as present consideration. It is one in which one party has performed his part of the promise which constitute for a promise by the other side. For instance, A lost his dog and he make an offer to reward anyone with Rs. 200 if he found and brings him back to A. B found the dog and gave it to A. Here A is bound to pay B. This is Present consideration or executed consideration. Past consideration is not applicable under the English Law. In past consideration, the promisor has received consideration before the actual date of promise.[7]

[5] 323 N.J. Super. 118, 732 A.2d 528 (1999)
[6] S-25(b) of The Indian Contract Act 1872.
[7] https://www/06/what-is-consideration-and-what-are.html.srdlawnotes.com/2017, last visited on 24th May,2020

In the case of **Wong Hon Leong David V. Noorazman Bin Adnan,**[8] The respondent had promised the appellant to help him in subdivision and conversion of land. And the appellant had promised him to pay for it. Here, it is considered to be a valid consideration.

4. **Intention to Create A legal Relation**

An agreement itself does not show that the parties had an intention to create a legal relation between them. They must show that they had an intention to be legally bound by the agreement. For instance, if I invite Mr. X for the dinner by sending him a proper invitation mail and he accepted and acknowledged the same. He said that he will turn up on such date. But on the very day he didn't turn up and neither he informed me that he wouldn't turn up Here, though there was an offer and acceptance and an agreement was formed but I didn't have an intention to create a legal relation. Even the courts would not hear upon such a matter. The basic principle is that all the business-related contracts are made with an intention to legally bind the parties, unless otherwise stated.

KINDS OF E-CONTRACTS

1. **E-mail Contract :**

As per the general rule of contract, an acceptance must be communicated to the offeree as and when it is received by the offeror. The contract comes into existence from that time and place onwards when it is received by the offeror. When telegram service is used to communicate the offer, the acceptance is effective from the time it is posted regardless whether the letter is delayed or lost, provided it was duly signed and stamped and properly addressed with proper pin codes.

Any person who is willing to communicate his offer by sending an e-mail to the offeror, that person must have a proper e-mail address for which he has to register with some renowned internet service provider who runs a constantly accessible mail server. After the registration, the person willing to communicate his offer may type in the content box with the e-mail address of the person to whom he has to send the offer. The message is electronically transferred to the offeror's system by pressing the send button.

[8] (1995) 3 MLJ 283.

With the advent of the information technology, the issue of communication of acceptance has to be revisited. An e-mail is first sent to an ISP (Internet Service Providers), who then sends the message to the actual recipient, when the recipient sends a request for downloading to his ISP. Once the download is complete, the message will actually reach the recipient.

An offer which is sent through an e-mail may contain the digital signature of the sender and on acceptance of the recipient. But in order to prove the legality of the mail contract, it is not necessary that a signature is required to enforce it. It is basically required that both parties should have consented to the agreement made and the consent should be free and not forced.[9]

2. Shrink-Wrap Agreement:

It is a kind of a License agreement between the parties, required upon the buyer when he buys any kinds of software.[10] The terms and conditions for the access of such software will be enforced by the person buying it, with the commencement of the packaging of the software product. This kind is usually seen in case of CD's. The terms and conditions of accessing the software are written on the shrink cover of the CD and the person who purchases it tears the cover in order to have access to the CD. The packaging contains a notice that upon the tearing up of the wrap cover on the CD, the user puts an assent to the terms and conditions of the software.[11]

In **Mortenson Co. V. Timberline Software Corporation**,[12] the court stated that:"the terms of the license agreement that was sent along with the software to the purchaser, was a part of the contract between them." There was an argument that the terms of the license agreement were clearly visible to the parties to the contract, as the full text of the license agreement appeared on the outside of the sealed cover as well as on the inside cover and on the introductory screen of the program, every time the program was executed by the parties. The license also stated that the use, by the purchaser of the program, amounted to an agreement on the part of the purchaser to be bound by the terms of the license agreement. If the user did not wish to be bound by those

[9] https://www.legalmatch.com/law-library/article/email-contracts.html, last visited on 25th May,2020
[10] https://taxguru.in/corporate-law/all-about-e-contracts-meaning-types-and-law.html, last visited on 25th MAY,2020
[11] https://www.legalbites.in/e-commerce-e-contract/,last visited on 25th MAY,2020

[12] 140 Wash. 2d 568, 998 P.2d 305 (2000).

terms, such user was permitted to return the program to Timberline and get full refund of the purchase price.

The court came to this conclusion that:"even though the purchaser agreed to buy the software after a negotiation in the price of the software, the terms of the license were not mentioned, and even though the purchaser confirmed its agreement to purchase the software under a purchase order that was sent to a dealer of the seller, prior to the receipt by the purchaser of the terms of the license". The court in this decision adopted the decision as given in **ProCD v. Zeidenberg.**[13] In this case, Pro CD had compiled data from 3000 telephone directories into a database at a considerable expense. This data was sold on CD-ROM disks and the usage was restricted by a License attached therein. The User's Manual contained the license and the license appeared each time the program was run by the purchaser. Ziedenburg purchased this CD-ROM and uploaded the database on the internet, in contravention of the enclosed license in the CD-ROM.

The Court held that:"the fact that purchaser, even after reading the terms of the license featured outside the wrap license opens the cover coupled with the fact that he accepts the whole terms of the license that appears on the screen by a key stroke, constitutes acceptance of the terms of the contract by his conduct."

3. Click-Wrap Agreement or Web Wrap Agreement:

The Click-wrap agreements are those types of agreement where a party after going through the terms and conditions provided in the website has to typically indicate his assent by way of clicking on an 'I Agree' icon or decline for not giving his assent by clicking "I Disagree." These types of contracts are extensively used on the internet. This is the most common form of agreement seen over the internet now-a-days.The consumer has to just give his express assent by clicking upon the "I Agree" button or "I Disagree" button to deny assent to terms and conditions presented for the usage of a particular website, for downloads or selling of products.[14] The user's agreement or the terms of service must be clearly mentioned to the party. By simply inserting a link to the terms on the website shall not be considered as the intimation to user. Thus, if a user continues to use the website after the intimation of the terms shall be considered as the acceptance of the contract. There cannot be any change in the terms of the agreement once the

[13] 86 F 3d 1447.

[14] https://www.legalbites.in/e-commerce-e-contract/, last accessed on 25th MAY, 2020.

user has given his assent or declined it. If any changes are made in the terms of the agreement, then it must be intimated to the user which providers a user to give a fresh consent for the changes brought in the terms. In case of the user declines to agree with the changed terms, then he can leave the website on any point of time.[15]A click-wrap agreement is mostly found as part of the installation process. It is also called a '*web wrap agreement.'*

In a landmark case of **Hotmail Corporation V. Van Money Pie Inc**,[16] the court upheld the validity of click wrap agreement using a similar reasoning of that of ProCD case in shrink -wrap license. The Court of Northern District of California indirectly upheld the validity of such licenses as it said that:"the defendants are bound by the terms of the license as he clicked on the box containing "I Agree" thereby indicating his assent to be bound." The agreements allow a buyer to specify his assent to the terms of a contract by clicking on an acceptance button that appears while the buyer obtains or installs the product. The buyer of the product cannot start using the software until he or she has clicked on the button accepting the terms and conditions of the agreement. Click-wrap agreements require buyer action in order to begin usage but do not guarantee cognizance of the agreement terms. Buyers can assent to the contract without even reading it in order to use the product. Most courts find these agreements enforceable.

EVIDENTIARY VALUE OF E-CONTRACTS

Before going to electronic evidence, it is necessary for us to know that what exactly 'evidence' means. "*Evidence means and includes all documents including electronic records produced for the inspection of the court and such documents are called documentary evidence*".[17] In a normal and broad sense, evidence means and includes all those facts and material that can be used to ascertain the truth behind a crime scene. The Law of Evidence generally involve paper records, oral evidences as well as any kind of physical objects that could have been involved in the crime. Hearsay evidence is generally not taken as proper evidence but exceptions are there.

The evidentiary value of the electronic record depends wholly upon the Indian Evidence Act,1872. S-79A OF Information Technology Act 2000 defines electronic form evidence. The section talks about appointment of examiner of electronic evidence by the central government.

[15]https://www.indialawoffices.com/legal-articles/e-contracts-and-validity-india, last accessed on 25th MAY, 2020.
[16] C98-20064 (ND Ca, 20 April 1998).
[17] S-3 of Indian Evidence Act,1872.

"*Electronic Form evidence means any information of probative value that is either stored or* transmitted in electronic form and includes computer evidence, digital audio, cell phones, and digital fax machines."[18] Thus, this section clears that documentary evidence can be in the form of electronic record and would stand at par with other conventional form of documents. The Indian Evidence Act, 1872 does not define 'computer'. Reference to computer and media are made as per given in the Companies Act, 1956. It has become necessary to harmonize the principles of the Evidence Act as well as the Companies Act after the enactment of The IT Act, 2000 and the changes in the legal system.

In the age of digitisation and increasing dependenceon computerised records in judicial proceedings, the Supreme Court of India has held that:"the requirement of a certificate to make an electronic evidence admissible is not mandatory "wherever interest of justice so justifies".[19]" Interpreting section 65B(4) of the Evidence Act, a bench of Justices A K Goel and U ULalit said:"the provision should be applied only when such electronic evidence is presented by a person who can produce such certificate."

In a famous case of **State of Delhi v. Mohd Afzal & Others**,[20] it was held that:"electronic records are admissible as evidence. If someone challenges the legitimacy of computer evidence on the grounds of misuse of system, then the person challenging it must prove the same beyond reasonable doubt, as proving beyond reasonable doubt is the basic principle that a criminal court follows."

In another case **K.K. Velusamy v. N. Palanisamy**,[21] the Supreme Court observed that:"the amended definition of "evidence" in Section 3 of the Evidence Act, 1872 read with the definition of "electronic record" in Section 2(t) of the Information Technology Act 2000, includes a compact disc containing an electronic record of a conversation. S-2t of Information Technology Act 2000, states that "electronic record" means data, record or data generated,

[18] https://indiankanoon.org/doc/36658403/, accessed on 03rd June,2020

[19] https://economictimes.indiatimes.com/news/politics-and-nation/courts-can-rely-on-electronic-records-without-certificate-supreme-court/articleshow/62777759.cms?from=mdr, accessed on 03rd June,2020

[20] 2003(3) 11 JCC 1669.
[21] MANU/SC/0267/2011.

image or sound stored, received or sent in an electronic form or micro film or computer-generated micro fiche.[22]"

The evidentiary value of all the electronic records or computerised records can be understood with reference to S- 85,85A,85B,85C,88A,90A of The Indian Evidence Act 1872.

S-85 of the Indian Evidence Act 1872 is related to presumption to electronic agreements. "Every electronic record of the nature of an agreement is concluded as soon as the electronic signature is affixed to the record."[23] With the increase in the use of electronic records and e-contracts, **S-85A** was added to ensure the validity of the same but there are some restrictions applied to it. The presumption is only valid to the records that are 5 years old and electronic messages that fall under the provisions of S-85B,88A AND 90A of the given Act.

S- 85B of the Indian Evidence Act states that, "The court shall presume the fact that the record in question has not been put to any kind of alteration, in case contrary has not been proved."[24]The digital signature should be presumed to have been affixed with an intention of signing electronic record. The section should not be misread so as to create any presumption relating to the authenticity of the electronic record or digital signature which is put in question.

S-85C of the Indian Evidence Act 1872, states that "As far as electronic signature certificate is concerned, the court shall presume that the information listed in the certificate is true and correct."[25] The word shall presume excludes the discretionary power of the court. The court has to follow as stated in the Act.

S- 88A of the Indian Evidence Act, 1872 provides that "The court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission. But the court shall not make any presumption as to the person by whom such message was sent." When the words of the Act use MAY instead of SHALL, then

[22] https://indiankanoon.org/doc/938830/, accessed on 03rd June,2020

[23] https://indiankanoon.org/doc/200772/, accessed on 03rd June,2020

[24] https://indiankanoon.org/doc/109486724/, accessed on 03rd June,2020

[25] https://indiankanoon.org/doc/33307839/, accessed on 04th June,2020

the court can use its discretionary power in connection with the presumptions. S-85A and 85B uses the word SHALL.

S-90A of the Indian Evidence Act 1872 provides that, "Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the [electronic signature] which purports to be the [electronic signature] of any particular person was so affixed by him or any person authorised by him in this behalf."[26]For this section, the court can use its discretionary power as the word MAY is used and that it is presumed that the electronic record is in proper custody, if they are with the person with whom they naturally would be.

ADMISSIBILITY OF ELECTRONIC EVIDENCE UNDER INDIAN EVIDENCE ACT,1872 AND INFORMATION TECHNOLOGY ACT,2000

The Information Technology Act, 2000 lays down the basis of the evidentiary value of the electronic record. It states that:"the records cannot be denied legal effect as long as they are accessible for future references". S- 4 Of the Information Technology Act, 2000 provides for such legal recognition of electronic record. The section states that "where any law provides that the information or any matter shall be in writing or in typewritten or printed form, then notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is – a) made available in an electronic form; and b) Accessible for subsequent reference."

S-65A and S-65B of Indian Evidence Act 1872 was added by an amendment Act after the Information Technology Act 2000.S-65A of Indian Evidence Act 1872, states that the contents of the electronic record or computer record may be proved in accordance with the provisions as laid down in S-65B of the Act. S-65B talks about admissibility of electronic record. S-65B provides that "any information that is contained in electronic record which is printed on a paper, recorded or copied in any optical or magnetic media produced by a computer shall be deemed to be a document if the conditions mentioned under this section are satisfied in relation to the

[26]https://indiankanoon.org/doc/82352090/, accessed on 04th June,2020

information and computer in question shall be admissible in any proceedings without any further proof of the original."

The conditions of S-65B are-

1. Information produced during the regular course of activities is by the person having a lawful control over the computer.
2. Information is said to have been fed into the computer regularly, in the course of the business activities.
3. It is presumed that the computer was working properly and there was no improper operation done to invoke the accuracy of the records.[27]

The purpose of the section is sanctifying proof by secondary evidence. Computer output, being deemed as a document can be taken in as a secondary evidence. S-65B also lays down for the purpose of evidence, a certificate identifying the electronic record and describing the manner in which it was produced by a computer and it should satisfy the given conditions, shall be a proper evidence of any matter which is stated in the certificate.[28]

In the case of **Abdul RahamanKunji V. State of West Bengal**[29], While deciding on the admissibility of an e-mail, the High Court of Calcutta held that:"an e-mail downloaded and printed for the mail account itself, can be proved by virtue of S-65B read with S-88A of the Indian Evidence Act,1872. The testimony of downloading the mail and printing the same is enough to prove the validity of the electronic communication."

In **State V. Navjot Sandhu,**[30]the Supreme Court held that "the certificate containing the details in S-65B (4) is not filed, but that would not conclude to the fact that the secondary evidence cannot be given. The court held that the law permits such evidences on the basis of the circumstances as mentioned in S-63 AND 65 of the Act. S-63 of the Act defines secondary

[27]https://www.latestlaws.com/articles/electronic-evidence-under-indian-evidence-act-1872-by-roopali-lamba/, accessed on 04th June,2020

[28]https://economictimes.indiatimes.com/news/politics-and-nation/courts-can-rely-on-electronic-records-without-certificate-supreme-court/articleshow/62777759.cms?from=mdr, accessed on 04th June,2020

[29]WB/0828/2014
[30]*AIR 2005 SC 3820*

evidence and it includes copies made from the original by mechanical process which in themselves ensure the accuracy of the copies."

In **Anwar P.V.V. P.K. Basheer and another**,[31] the court held that "the electronic evidence by a way of primary evidence is covered under S-62 of the Indian Evidence ACT 1872 to which procedure of S-65B of the Indian Evidence Act is not admissible. However, for the purpose of secondary evidence, procedure as led down in S-65B has to be followed. However, the effect that the electronic record can be proved only as per S-65B is not correct as per the prevailing legal principles."

In another famous case of **Jagjit Singh v. State of Haryana,**[32] The speaker of the legislative assembly of Haryana was disqualified as a member because of charges of defection. The Supreme Court, while hearing upon this case, took evidences in the form of interview transcripts from various news channels like Zee News, AajTak and the local Haryana News Channel. The court held that "the electronic evidence placed was admissible and upheld the reliance placed by the speaker in the interview when reaching the conclusion that the voices recorded on the CD were those of the person claiming the action."

FORMATION OF ELECTRONIC CONTRACT AND INFORMATION TECHNOLOGY ACT,2000.

The time and place of a communication are the relevant factor in deciding whether a contract has been concluded or not. The time indicates the time from which the parties are likely to act according to the provisions of the contract. The place of the contract plays an important role in initiating any cause of breach of contract. Further, the time and place may also be an important factor in deciding whether the obligations due have been performed or not. As per the traditional postal contracts, a variety of theory has been derived.

a) The contract is complete as long as the offeree has accepted the offer.

[31](2014) 10 SCC 473
[32]*(2006) 11 SCC 1)*

b) The contract is formed when a letter or a telegram has been dispatched accepting the offer

c) The communication is complete when the acceptance has been confirmed by the offeror.

In **Entores Ltd. V. Miles Far Eastern Corporation**,[33] It was held in this case that "oral communication or communication over telephone, acceptance is communicated to the offeror when it is received by the offeror and thus the contract is deemed to be placed where it is received." In another case **B.G. Kedia V. G Parshottamdas and Co**.,[34] The Supreme Court in this case said that "the contract which is placed over the telephone, would not be subject to the mailbox rule. Acceptance is formed when the offeror receives and the other party bears of the communication being disrupted or broken."

Now, when we have understood that how an e-contract is formed and how does it work, the questions that arises is that of its legality. S-10A of the Information Technology Act, 2000 provides for the legal validity of the electronic contract or e-contract in India. While the Indian Contract Act, 1872 does not exclude the validity of e-contract, the Information Technology Act 2000, provides specifically for its legality. Sec 10A provides for a greater acceptance to the electronic contract, establishing without question its validity in the eyes of the law. As more and more businesses and organizations are realizing the effectiveness and efficiency gained by e-commerce, electronic contracts, and e-signatures, we see an increase in legislation supporting it.[35]

S-10A was inserted in the Information Technology Act 2000 through an amendment act passed in the year 2008. This amendment act is the reflection of S-11 of the UNCTRAL MODEL LAW ON ELECTRONIC COMMERCE 1996.

S-10A of the Information Technology Act 2000 provides that, "Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such

[33] (1955)2 QB 326

[34] 1966 AIR SC 543

[35] https://www.concordnow.com/blog/electronic-contracts-indias-technology-act-2000/, accessed on 31st May,2020

electronic form or means was used for that purpose."[36] This language is similar to that of S-11 of the UNCTRAL Model Law on Electronic Commerce 1996, upon which this section is based.

The Model Law provides that where the law requires information to be retained in original form, the requirement is met if:

a) There exists an assurance as to the integrity of the information from the time when it was 1st generated till its final form;

b)The information should be capable of being displayed before whom it is presented. The yardstick for assessing this includes the use of digital signature.

Further, the information in the way of data message shall be given the same evidentiary value as any other evidence, after considering the manner in which the message was generated or communicated, and other related factor.[37]

One of the basic objectives of the Information Technology Act, 2000 is to legalise E-contract. This objective was again stated while bringing in the amendment Act of 2008 by inserting S-10A into the ACT. Previously before the amendment, there was no provision relating to the validity of E-contract. This lacuna in the Act was there even though there was a provision of the validity of E-contract in Model Law.

CONCLUSION& SUGGESTIONS

The provisions of the Indian Contract Act,1872 do not provide for any provision relating to E-contracts. It is the Information Technology Act,2000 which has provided legal acceptance to E-contracts. E-contracts have increased the use of internet and at the same time increased the crime rates across the country. It has now become necessary that E-Contracts should be made admissible and can be produced as evidence in the court of law. Prior to the commencement of the Information Technology Act,2000, There was no legal validity of E-Contracts though the provisions pf electronic document as to be taken as evidence or not was mentioned in the Indian Evidence Act,1872. Those provisions were of no use. After the amendment brought in the

[36] https://www.concordnow.com/blog/electronic-contracts-indias-technology-act-2000/, accessed on 31st May,2020

[37] Sairam Bhat (eds.), Law of Business Contracts in India 199 (SAGE Publications India Pvt Ltd, 1st edn.,2009), accessed on 31st May,2020

Information Technology Act in the year 2008, addition of S-10A gave the legal validity of E-contracts.

E-Contracts have their own pros and cons. On one hand, they help to reduce costs and save time and reduce paper work. On the other hand, E-Contracts also increase the risk of being forged. E-Contracts have helped to improve the competitiveness across the world. E-Contracts are very similar to the ordinary contracts. They have the same essentials and the basic need of a contract is same. The provisions of Indian Contract Act,1872 does not talk about E-Contracts. The courts under S-65A and S-67 of the Indian Evidence Act,1872 has recognised the evidentiary value of electronic records. Thus, now one can be penalised on the basis of electronic documents. The Information Technology Act,2000 stands behind the Indian Evidence Act,1872 as it is only the amendment of 2008 which gave the legal validity of E-Contracts. Thus, Information Technology Act became the backbone of the E-Contracts.

Irrespective of this, it is found that the law came in too late and the Act is Vague giving way too many loopholes.We can conclude by saying that in this era of modern technology, it has become necessary to cope with the changes timely and to harmonize the principles of the Evidence Act as well as the Companies Act after the enactment of The IT Act, 2000 and the changes in the legal system.

In order to enhance the concept of Digital India, the people should be educated about the same as there are still many people who do not want to indulge in this kind of contracts as they feel insecure. The biggest lacuna in the Information Technology Act,2000 is that though it has legalised E-Contracts, there is no particular section or provision relating to the same. Indian Evidence Act,1872 talks about the evidentiary value but still, the whole concept is not very clear and is very complicated. For better efficiency, it is presumed that there is an urgent need for a separate legislation relating to E-Contracts and all the legal aspects relating to it.