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Contracts, E-Contracts, Validity of E- Contract and its Types and Differences Between Contracts and E-Contracts

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Abstract: ***The article primarily focuses on contract and what conditions are to be satisfied for a contract to be enforceable. It demonstrates that the ingredients of a e-contract are alike of contract between the parties and focuses on its validity.***
Keywords: Contract, e-contract, validity.

I. INTRODUCTION

Contracts are entered most commonly in our daily lives. From buying provisions to booking tickets for availing the services of Railways, Airways and even Buses, contract is being entered into. When we buy online tickets, the mode of entering into a contract is online which forms an E-Contract. This consists of all the same ingredients of a Contract which are Offer, Acceptance of Offer, Communication of Offer, Acceptance of Communication of Offer, Consideration and it must be enforceable by law and not against public policy.

A. What is Contract?

Section 2(h) states that what sort of agreements are contract.
The agreements which fulfills the conditions illustrated in Sec. 10 are contracts.
Sec. 10: All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, are not hereby expressly declared to be void.

B. What is e-contract?

E-Contracts are also known as online contracts or digital contracts. It is being considered in Indian Contract Act,1872 and Information Technology Act, 2000. It is accepted under Indian Contract Act, 1872 because it is a contract but, in its electronic form and its also entailed in Information Technology Act, 2000 as it involves the use of internet for instance a browser. All the ingredients of a contract are common in e-contract.
The parties to an e-contract are:

1) Originator- a person who sends, stores or transmits any electronic message.
2) Addressee- a person who is intended by the originator to receive the electronic record.

II. ESSENTIALS OF E-CONTRACTS

The ingredients of an e-contract are same as the contract which is acknowledged under Indian Contract Act,1872 which is paper based. The essentials of an e-contract are written below:

1) There must be an offer from the side of the offeror i.e. the party presenting the offer also called proposal {Sec. 2, sub clause (a) of ICA,1872}.
2) There must be an acceptance of offer by the offeree {sec. 2, sub clause (b), ICA,1872}. An offer if accepted is a promise.
3) The consideration must be lawful .i.e. not against rule of law {sec. 2, sub clause (d), ICA,1872}. The consideration formed by every promise and every set of promises forms an agreement {sec. 2, sub clause (e), ICA,1872}.
4) The parties must be competent to contract. The parties must be major according to Sec.3 of The Indian Majority Act,1875. Also, they must not be of unsound mind, intoxicated, insane, and not disqualified by law from contracting (sec. 11, ICA,1872).
5) The parties must have a legal intention to enter into a contract.

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6) The contract must be enforceable by law. It must not be declared to void in order to be valid {sec. 2, sub clause (g) and (j), ICA,1872}.
7) The consent (sec. 13, ICA,1872) obtained for the purpose of forming a contract must be free consent (sec. 14, ICA,1872) and not obtained through coercion (sec. 15, ICA,1872); misrepresentation (sec. 18, ICA,1872); undue influence (sec.16, ICA,1872) and fraud (sec. 17, ICA,1872).

III. TYPES OF E-CONTRACTS

There are various types of e-contracts in the world of business which is formed and implemented with relatedness to technology. The distinct kinds of e-contracts are listed below:

A. *Through Web Sites*

1) *Shrink wrap e-contract:* It is mostly related to software in computers and applications in the smartphones. These are licensing agreements of software. When we purchase any application or software from any website with the utilization of internet, this forms an e-contract. This software or application when comes into the stage of employment by the procedure of installing in respective devices, is called a shrink wrap contract as the name suggests its being procured and is being shrink for use. The product can also be returned by reversing the acceptance.
2) *Click wrap e-contract:* Agreeing for fulfillment of the terms and conditions after registration by clicking on the button or check a box is known as Click wrap e-contract. If there is any act which is done against the provision of the terms and condition consented, it leads to breach of contract by the party against which action can be taken. It allows the party to only proceed further in the website when beforehand its consented. With a click a contract is formed here.
3) *Browser wrap e-contract:* It is almost similar to Click wrap e-contract. The only difference between the two is that in order to agree to the terms and conditions of e-contract we need to navigate to another page of the site and consent granted on such page of that particular website forms Browser wrap e-contract. It can be viewed through a hyperlink.

B. *Electronic Data Interchange (EDI)*

It is mostly used in B2B.i.e. business-to- business. It exchanges business information between the organization or the parties to contract. Goods and services are being offered and accepted by these organization from purchase order to invoices. The information regarding the contract is being exchanged from the originator's computer to addressee's computer.

C. *Through e-mail*

Contracts formed via e-mails are given validity under Indian Evidence Act, 1872 and Information Technology Act, 2000. In case of Trimex International FZE Limited, Dubai vs. Vendata Aluminium Limited[1], The Supreme Court upheld the validity of the contract that was entered via e-mail in an electronic mode.

IV. VALIDITY OF E-CONTRACTS

E-contracts through websites are granted validity in United States of America but not in India. In India, only contracts entered through e-mails in case of e-contracts are legal and given validity. E-contracts are not descripted in The Indian Contract Act, 1872. However, it is being validated under The Indian Evidence Act, 1872 and Information Technology Act, 2000.

A. *Indian Evidence Act,1872*

E-contracts are admissible evidence in The Indian Court of Law in the same manner as normal contracts are admissible. With the enactment of The Information Technology Act, 2000 amendments were introduced in Indian Evidence Act, 1872 which is specified in the Second Schedule of this Act.

Sec 65A:[2] Under sec. 65A, e-contracts are having evidentiary value in the eyes of law. It sates that the contents of electronic records may be proved in accordance with the provisions of sec 65B.

[1] Trimex International FZE Limited, Dubai vs. Vendata Aluminium Limited, AIR 2010 1 SCR 820
[2] Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

Sec. 65B: It states that notwithstanding anything mentioned in this Act, any information which is in an electronic record and either it is printed on a paper, or stored, or recorded or copied in an optical or magnetic media that is produced by a computer shall deemed to be a document according to the various circumstances of the case.
Sec. 85A[3]: It states that it shall be presumed by the court that any agreement having the electronic signatures of the parties was concluded by affixing the electronic signature of the parties. It applies to only electronic records which are older than five years.
Sec. 85B: The court shall make a presumption that the record is manipulated or altered unless anything contrary appears to this.
Sec. 85C: It states that the information accumulated in digital signature certificate is correct and true. The court's discretionary jurisdiction is expressly excluded in this regard.
Sec. 88A[4]: It is a presumption as to electronic messages. The court may presume that an electronic message forwarded was fed in his system for the purpose of transmission. But, the court shall not make any presumption as to who sent the message.
Sec. 88B: It is assumed that any electronic information which is being transferred to the receiver that is the addressee is said to have been stored in the computer for the purpose of transmission.
Sec. 90A[5]: The court assumes that the digital signature of an e-contract is 5 years old and is in an appropriate care. Subject to exceptions, a digital signature can be made by anyone who is authorized to do so.
In case of State of Delhi vs. Mohd Afzal and others[6], it was held that electronic records are permissible and admissible in the court of law. The burden of proof is on the person who contests that the electronic records are invalid.
In case of Ambalal Sarabhai Enterprise Limited vs. KS Infraspace LLP Limited[7], the Supreme Court held the agreements can be executed electronically provided it should fulfill the minimum requirements. This too includes contracts formulated through e-mails and even whatsapp.

B. The Information Technology Act, 2000

It has recognized e-mail contracts as valid and binding on the parties. It simply claims that any contract which is formed on online platform cannot be solely regarded or deemed to be invalid as it is merely formed through electronic media. Sec. 10 states the validity of e-contract.
Sec. 10A:
In contract formation, the communication of proposals and its acceptances, revocation of proposals and its acceptances which are expressed in an electronic record are solely should not to be declared to be invalid and unenforceable as it has been operated through electronic medium.
This Act has given acknowledgement to electronic records which is not only restricted to ensuring its validity but also grants statutory recognition. Digital signatures are also called electronic signatures which is regarded same as handwritten signatures in legal terms.

V. THE DIFFERENCES BETWEEN A CONTRACT AND AN E-CONTRACT:

CONTRACT	E-CONTRACT
Traditional Signature	Digital Signature
Drafted on a paper	Drafted digitally
Parties are physically in contact	No need to come in contact
Heavy transaction cost	Low transaction cost
Time consuming contract	Time saving contract
Less secure	Heavily secured

[3] Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).
[4]Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).
[5] Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).
[6] 2003 VIIAD Delhi 1.
[7] Ambalal Sarabhai Enterprise Limited vs. KS Infraspace LLP Ltd., AIR 2020 Supreme Court 307

VI. CONCLUSION AND SUGGESTIONS

At the end, it is concluded that e-contracts are same as contracts described under The Indian Contract Act, 1872 merely it is formulated electronically. E-contracts are having more advantages over Traditional contracts and are valid as well enforceable under Indian Evidence Act,1872 and The Indian Technology Act, 2000. These two Acts has given recognition to e-contracts in The Court of Law making it admissible and permissible. The contracts be it Traditional Contract or E-contract are only valid if it fulfills all the essentials required for formation of contract. There must be meeting of minds.

REFERENCES

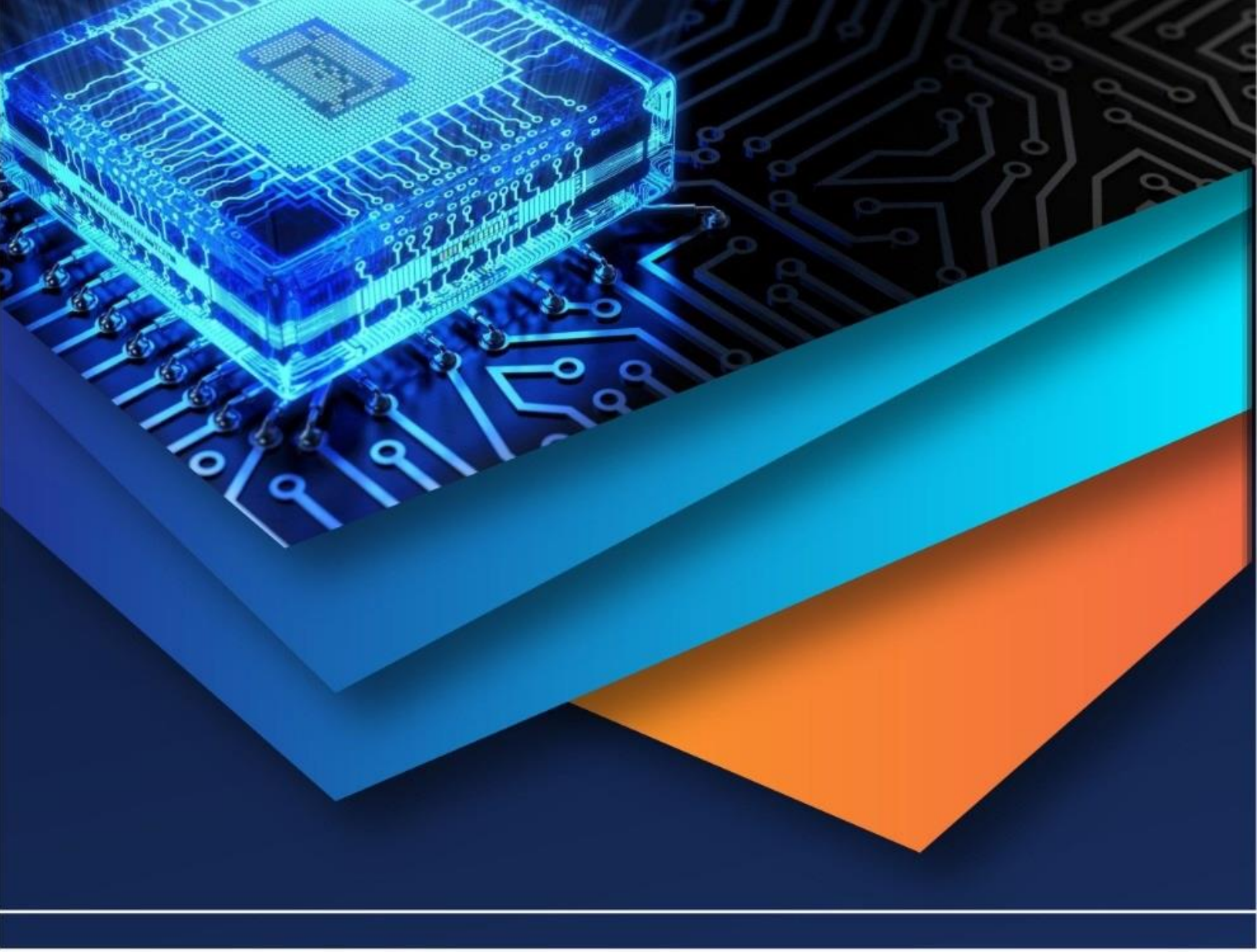
Web Sites

[1] https://legislative.gov.in/sites/default/files/A1872-09.pdf
[2] https://legislative.gov.in/actsofparliamentfromtheyear/indian-evidence-act-1872
[3] https://www.meity.gov.in/writereaddata/files/itbill2000.pdf
[4] https://legislative.gov.in/sites/default/files/A1875-9.pdf

List of Cases Referred

[1] Trimex International FZE Limited, Dubai vs. Vendata Aluminium Limited.
[2] State of Delhi vs. Mohd Afzal and others.
[3] Ambalal Sarabhai Enterprise Limited vs. KS Infraspace LLP Ltd.

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