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EVIDENTARY VALUE OF E-CONTRACTS**Introduction**

With the introduction of internet, the way of doing business has also evolved. It gave rise to a new type of trade known as e-commerce. Through e-commerce people can easily purchase goods from different countries with just few clicks without having to leave their place. E-commerce brought a new type of contracting known as e-contract or on-line contracts. Most common type of e-contract is the “End User License Agreement” which is done during the installation of any software and requires to agree with it in order to use that software. The effectiveness of E-Commerce depends upon the e-contracts.

What are e-contracts

In basic terms, an electronic contract is simply a digital version of a regular contract. A contract is a legally binding agreement between two or more parties that defines the rights and duties of the parties to the agreement. Whereas an e-contract is a legal agreement drafted, executed, and signed electronically by a software system. An e-agreement can be drafted in the same way as the hard copy agreement. For example, suppose you created an agreement on your computer and e-mailed it to a business colleague. In response, the business colleague e-mails it to you with an electronic signature confirming approval. A Click to “Agree” contract is another form of e-contract which is common in case of downloaded software. The user then requires clicking upon the “I Agree” button on a page containing terms and conditions of the license of the software in order to complete the transaction. People use variety of ways to signify their

electronic signatures on e-contracts like, typing the name of the signer into the signature area, or clicking an I Accept button etc.

Kinds of E-Contracts-

1. **Browse Wrap Agreement**- Browse-wrap agreements are contracts that you agree to by continuing to use the service or browsing the website, which is where the name comes from. They refer to content on websites that reads this “By continuing your use of these services, you agree to the terms and conditions” or “By signing up I agree to the terms of use.”
2. **Shrink Wrap Contracts**- Shrink-wrap contracts are usually software licence agreements. The term comes from the shrink wrap packaging of CD-ROMs, which were once used to deliver software. When software is bundled with a licence contract, the contract begins when the user tears open the shrink wrap to utilise the product. shrink wrap contracts have a distinct benefit over other forms of electronic contracts in that their acceptance may be revoked simply by returning the product.
3. **Click Wrap Agreements**- In Click wrap agreement, by pressing the "ok" or "I agree" button, the person agrees to the terms and conditions known as end person settlement, which regulates the licenced use of the software programme. Clickwrap contracts are "less negotiable" than shrinkwrap contracts, in that they must be accepted before the user may go on to the next web page or use an application, for example. Clickwrap agreements, in essence, compel the user to choose between taking it or not taking it.

Several regulations, including the Indian Technology Act of 2000 and the Indian Evidence Act of 1872, have contributed to the popularity and legality of E-Contracts. The Indian Contract Act of 1872 specifies the requirements that must be met for a contract to be considered legitimate. Electronic contracts that fulfil these requirements are legal and can be enforced in court.

E-contract as Evidence Under Indian Evidence Act

Evidence that is recorded or saved using electronic devices is granted evidential status. The definition of 'evidence' has been amended to include electronic data. The term "documentary proof" has been expanded to cover all files containing electronic data that are provided for

judicial examination. The following provisions of the Indian Evidence Act provide a good understanding of the evidential value of e-contracts. Sections 85A, 85B, 88A, 90A, and 85C deal with electronic record presumptions, whereas Section 65B deals with electronic record admissibility.

The above-mentioned sections can be explained as follows:

- **Section 85A:** This section includes the presumption of electronic agreements. Section 85A was inserted to safeguard the legality of e-contracts. However, there are certain limitations in terms of the presumed value. The presumption applies exclusively to electronic records, electronic records that are five years old, and electronic messages that fall under the purview of Sections 85B, 88A, and 90A of the Indian Evidence Act.
- **Section 85B:** Section 85B provides 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. The record's secure status may be requested until a certain time. The digital signature should likewise be assumed to have been attached with the aim of signing and approving the electronic record. Furthermore, it has been stated that the section should not be misinterpreted in such a way that any inference regarding the integrity or validity of the electronic record or digital signature in question is created.
- **Section 88B:** The court may assume 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 to the message as fed into his computer for transmission, but no presumption shall be made by the court as to who sent the message. This section is self-explanatory because it professes to adhere to the fundamental rules of a legal hard-copy agreement. The words may suppose authorise the court to exercise its presumption discretion. Sections 85A and 85B featured the phrase "shall presume," which explicitly prohibited the court's discretionary jurisdiction.
- **Section 90A:** If a 5-year-old electronic document is proven to be in good care, the court may infer that the digital signature was affixed to confirm the legality of that agreement. Any individual allowed to do so can also add a digital signature. Electronic records are considered to be in appropriate possession for the purposes of this section if they are in the custody of the person with whom they normally reside. An exception can be made if the facts of a specific instance make its origin likely.

- **Section 85C:** In the case of a digital signature certificate, the court must infer that the information included in the certificate is accurate and correct. The use of the words shall suppose refers to the express exclusion of the court's discretionary jurisdiction.
- **Section 65B:** The admissibility of electronic records is addressed in Section 65B. It states that any information included in an electronic record printed on paper or stored/recorded/copied on optical/magnetic media created by a computer is considered a document and is admissible as evidence in any proceeding without additional verification of the original.

Case Law Regarding Admissibility of e-evidence

- In the case **anver basheer v .p.k basheer**¹ the Supreme Court mentioned that “there may be a revolution within the way that proof is produced earlier than the courtroom” The Supreme Court overturned the court's decision in *State (NCT of Delhi) v Navjot Sandhu alias Afsal Guru* (2005) 11 SCC 600 on the admission of secondary evidence related to electronic records. Before 2000, when electronically preserved information was treated as a document in India, secondary proof of these digital "papers" was adduced in the form of disclosed copies or transcripts, and the authenticity became licenced. The signatory might choose their signature in court and be exposed to cross examination if they met the requirements of sections 63 and 65 of the evidence Act. As the creation and preservation of digital documents became more difficult, the law had to shift more dramatically.
- In the case of **State of Delhi vs Mohd Afzal & Others**², Electronic records were found to be acceptable as evidence. If someone disputes the correctness of a computer evidence or electronic record on the basis of system misuse, operating failure, or interpolation, that person must establish the same beyond a reasonable doubt. The court stated that simple theoretical and general concerns cannot render clear evidence faulty and inadmissible. This case exemplifies the admissibility of electronic evidence in various formats in Indian courts.

The evidential significance of electronic documents is frequently debated under Evidence Act sections 65A and 65B 1872. The sections state that if the four requirements stated are met, any information contained in an electronic record printed on paper, saved, recorded, or duplicated

¹ anver basheer v .p.k basheer AIR 2014 SCW 5695

² State of Delhi vs Mohd Afzal & Others, 2003(3) 11 JCC 1669

in an optical or magnetic medium created by a computer is considered a document and becomes admissible in proceedings without further proof or production of the original, as evidence of any contents of the original or any facts stated therein, which direct evidence would be admissible.

The Required Conditions

1. The computer output containing such information should have been produced by the computer during the period when the computer was used regularly to store or process information for the purpose of any activities carried out on a regular basis during that period by the person with lawful control over the use of the computer.
2. During that time, information of the type included in the electronic record was routinely input into the computer as part of the normal course of such activities.
3. The computer must have been operational for the most of this time period. If the computer was not properly working during this time, it must be demonstrated that this had no impact on the electronic record or the accuracy of the contents.
4. The information in the electronic record should be such that it reproduces or is derived from information input into the computer in the normal course of such operations.

It is further provided that where in any proceedings, evidence of an electronic record is to be given, a certificate containing the particulars prescribed by 65B of the Indian Evidence Act and signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities would be sufficient evidence of the matters stated in the certificate.

While examining the terms of newly added section 65B, the Supreme Court decided in **State v Navjot Sandhu (2005) 11 SCC 600** that in a particular case, the certificate containing the facts in sub-section 4 of section 65B may not be filed, but that does not imply that secondary evidence cannot be presented. The court ruled that such evidence is permissible under the law in the conditions specified in the relevant statutes, namely sections 63 and 65 of the Indian Evidence Act 1872. The relevant paragraph 150 of the ruling is as follows: 150. Secondary evidence, according to Section 63, comprises, among other things, copies created from the original by mechanical procedures that ensure the correctness of the copy, as well as copies compared with such copies.

Section 65 allows for the introduction of secondary evidence of the contents of a document if the original is of such a character that it cannot be easily moved. As a result, printouts obtained from computers/servers by mechanical process and certified by a responsible official of the service-providing firm can be lead in evidence by a witness who can recognise the certifying officer's signatures or otherwise speak of the facts based on his own knowledge. Regardless of whether or not the criteria of section 65-B, which deals with the admission of electronic records, are met, there is no impediment to introducing secondary evidence under the other provisions of the Indian Evidence Act 1872, namely sections 63 and 65.

Conclusion

The evidential value of an electronic record is entirely determined by its quality. The Indian Evidence Act of 1872 addressed the evidential value of electronic recordings extensively. In terms of evidential value, electronic contracts are virtually identical to hard copy contracts, and in the event of a difference, there are specific criteria that complete the gaps. All electronic contracts are genuine contracts since they are legalised by the Information Technology (Amendment) Act, 2008, and anybody who violates the terms and conditions may be held responsible.

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