

## DETAIL STUDIES ON E-CONTRACT WITH SPECIAL REFERENCE TO IT ACT, 2000

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### Abstract

One shouldn't wait until complaints and claims begin. Be sure that the electronic contracts are as neat as the agreements. Before 1872, there was English Common Law which was applied to Indian Citizens. The Indian Contract Act, 1872 came into force on 1st Sept, 1872. There are changes in the concept of contracts i.e. from Traditional contract to electronic contract. Now e-contracts or ecommerce contract plays very vital role in contract between two parties. Under the provisions of the Information Technology Act, 2000, particularly Section 10-A, an electronic contract is valid and enforceable. A contract is always express or implied agreement which is enforceable by law. Contracts are probably the most important and the most sensitive business law matter. They are the ones that can make the difference between loss and profit, lawsuit and success. E-Contracts can be through modes of communication such as e-mail, internet and fax etc. It is impossible to identify the contracting parties (Authentication) and their signatures and thus fraud has been increased due to e-contract. The data protection is a very serious issue. E-contract followed by the traditional contract conditions helps in minimizing fraud and legal cases. There shall be valid government ID verification before entering into any contracts. Signature shall always be digital signature and electronic signature. Original Document shall be checked in relation to E-Contracts. The researcher has undertaken the topic to study the meaning of E-Contracts and also to find out the changing concepts of e-contracts and to study in detail about the e-contract with reference under IT Act 2000.

**Keywords** – Authentication, Contract, E-Contract, E-Signature, Contracting Parties, Traditional Contracts, IT Act 2000, Validity.

### I. Introduction –

In the evolution and massive development in the computer system and IT along with the increase in the innovations, E-commerce has evolved since last decades. E-contract is an essential part of E-commerce. E-contract is legally recognized by law and therefore, the trust of the customers has increased with the passage of time and the outbreak of COVID-19 has given it a new path to grow. In India, the E-contract is governed by many laws such as the provisions of the Indian Contract Act, 1872 are applicable to validate E-contracts as they are quite similar to the general contracts. The provisions of The Information Technology Act,

2000 has given them statutory recognition and the provisions of The Indian Evidence Act, 1872 makes them enforceable.

E-contracts are basically the execution of an agreement electronically or digitally. To form and validate an E-contract, it is necessary to fulfil the essential conditions similar to the traditional contracts i.e. paper-based contracts, the only difference is that it is created and executed electronically.

E-Contracts are the kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electrical means such as emails, websites etc., the interaction done by the individual through an electronic

agent, such as a computer program or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract. The Information Technology Act provides rules regarding the formation, governance, and basic remedies and terms of an e-contract.

An E- Contract is an agreement created and 'signed in an electronic form-no paper is used. Electronic contracts (e-commerce) are born out of the need for speed, convenience and effectiveness. One may just envision a contract that an Indian exporter and an English importer wish to enter into. The option is that one party first draws up two copies of the contract, signs them and sends (through postal and courier services) them to the other, who in turn signs both copies and sends one copy back. E-Contract is any kind of contract formed in the course of ecommerce by the interaction of two or more individuals using electronic.

The internet has a magnificent impact on business and its various practices. Also, in this pandemic situation, electronic contracts played a very vital and important role. When the government declared a complete lockdown, it became really difficult for people to enter into physical contact. Many important contracts were to be made in this one year. All thanks to emerging technology and the electronic era that we can still enter into contracts via electronic mails, telephonic conversations, faxes, etc.

Even for buying various items, we don't have to visit a store. All we need to do is download various apps sitting at our homes, order the items, click to I Agree button, and make payment and the goods will be delivered to our homes. When this business change will lead to a new business representation and of course, the delivery of E-commerce. One of such E-businesses includes Internet contract, which is E-contract.<sup>1070</sup>

Ever, since the inception of human civilization the concept of contract has been known to man. As the civilization progressed, thought process of man developed very drastically. Man became conscious of his belongings and started to exercise his authority over his belongings. With this, there was change in mindset and the element of profit and gain occupied its place in everyday activities. The transactions, which were once appeared to be normal and routine, took the shape of profit or gain oriented. As days passed by, man became more and more conscious about his authority over his belongings. Whenever he indulged in trade, he exchanged his goods for considered equivalent value of other goods of his choice from another person. This system is commonly referred to as barter system. This system was followed for trade of commodities, goods and even for services.

Further development in society brought in different classification amongst persons based on their class. With this, there was change in perception of one's rights and such rights varied from person to person based on their class or status. Most of the times, transactions between persons were mainly based on trust, faith and goodwill. The society was very simple and people carried on their transaction orally with absolute belief in another person.

Performance of one's role was considered as highest moral conduct and society always appreciated such high moral conduct. On the other hand, non-performance of one's role was considered as out of low morality. People believed in high moral conduct and any person not showing such high moral conduct was looked down upon by other members.

As there was increase in trade and commerce, man became more adventurous and started to look out for new avenues for carrying on his trade. The further development in society slowly changed the pattern of transactions. Oral transactions were slowly replaced by written documents.

<sup>1070</sup> <https://www.legalserviceindia.com/legal/article-5130-electronic-contract-a-new-normal.html>

Sir Henry Maine in his classic work *Ancient Law* developed a thesis on concept of contract. According to Maine, in early societies, both static and progressive, the legal condition of the individual is determined by status and the march of progressive societies witnesses the disintegration of status and determination of the legal condition of the individual by free negotiation on his part. This was expressed by him in the dictum:

The movement of progressive societies has hitherto been a movement from status to contract. According to Maine, the unit of ancient society was family but 'individual' is unit of the present society. This led to disintegration of the family system, end of the dependency on the pater familia and emergence of contractual relations among individuals. Now the individual became the best judge of his own good. Law accordingly recognized the individual as the sole subject matter of rights and duties in place of pater familia which was previously the sole repository of power.

With the growth of commercial and industrial culture, law of contract acquired significance during 18th and 19th centuries. Hence the theory of free contract came to extensive use in trading and commercial world. The social contract theories founded on the notion of free contract of agreement between people and the rulers. The concept of liberty, equality and fraternity of the French revolution, doctrine of inalienable natural rights of man of the American declaration of independence; philosophy of laissez faire in economic, political and legal theories; relationship between master and servant; employer and workmen, wife and husband, parents and children etc. are the examples to support the dictum 'movement from status to contract'. Gradually society recognized individual rights and the concept of right attained some prominence.

During European renaissance every right arose from a title. The term 'title' is derived from the term *Titulus* of Roman law and *Titre* of French

law<sup>1071</sup>. So also legal protection, of an interest without its legal recognition cannot make it a legal right. It is commonly agreed that right exists upon the base of obligations.

Obligation is synonymous with duty and it includes perfect and imperfect obligation. Where person obligated to God alone then such obligations are called imperfect obligations and such obligations are not accountable to any individuals. On the other hand, perfect obligations which are also called as performance obligations-give right to demand of performance of such obligations.<sup>1072</sup>

Effect of such perfect obligations are 1. Contracts, 2. Quasi contracts (engagements in nature of contracts), 3. Injuries (delits) and 4.

Acts in the nature of injuries (quasi-delits).<sup>1073</sup>

Now coming to contracts, it is treated as 'right in personam'. Generally, a contract is a promise or a set or promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. The correlation between contracts and title has been described by Salmond as 'acts in the law' and whereas Paton described such relation as 'juristic act'. According to Paton, by juristic acts, legal persons create, modify, or destroy rights and duties and thereby affect legal persons<sup>1074</sup>.

There are two categories of contracts viz. unilateral and bilateral. Unilateral acts are those where will or consent of one of the parties is essential whereas in bilateral acts it is will or consent of both parties is essential. These bilateral acts are called as agreements. These bilateral acts between persons play very significant role in day-to-day life.

Swift changes in information and communication technologies (ICT), influenced every walk of life and contract law was not an

<sup>1071</sup> V.D. Mahajan, *Jurisprudence and Legal Theory*, 5th Ed., Eastern Book Company, Lucknow, 2010, p 275

<sup>1072</sup> M. Pothier, *A Treatise on The Law of Obligations and Contracts*, Joseph Butterworth, London, 1806, pp. 1-3

<sup>1073</sup> *Ibid*

<sup>1074</sup> G.W. Paton, *A Textbook of Jurisprudence*, 4th Ed., Oxford University Press, London, 1972, p. 308



exception. These developments in information and communication technologies were used for commercial activities. Thus, law of contract is the base for electronic transactions without there being any specific law to deal with e-contracts. The basic principles of law of contract govern these electronic transactions. The pace of development in information and communication technologies can aptly be described by the following stated by Cosmos the villain in the movie Sneaker.<sup>1075</sup>

## II. What is E-Contract –

After looking at bird's view of e-commerce, now it is time for understanding what is the meaning of e-contract? There is no hard and fast definition of e-contract. The traditional definition of 'contract' cannot be applied to 'e-contract', because realm of e-contract is much bigger than the realm of traditional mode of contract. To put it simply, e-contract is any agreement which is entered on internet by competent parties, with lawful consideration, free consent, without any mala fide intention and to create legal relationship.

E-contract can be defined in following words:<sup>1076</sup>

E-contract is a kind of contract formed by negotiation of two or more individuals through the use electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract.

As it is already stated that there is no exhaustive definition as to e-contract and most of times only generic definitions are available.

E-Contracts are also referred as 'cyber-contract' or 'digital contract' or 'online contracts'.

Etymologically one can give as many as definitions for e-contract, but there is no border

line for it meaning. In broader sense, it can be summed up as contracts made using computers, either via e-mail or the Internet, or that involve computer related products, such as databases and software.<sup>1077</sup>

The International Chamber of Commerce refers to 'electronic contracting' as 'the automated process of entering into contracts via the parties' computers, whether networked or through electronic messaging.<sup>9</sup> This definition is an amalgamation of two separate explanations, one contained in the UN Convention on the Use of Electronic Communications in International Contracts and the other

taken from the US Uniform Electronic Transaction Act and Uniform Computer Information Transactions Act providing for 'automated transactions. Electronic Communication means any communication that parties make by means of data message, whereas automated transaction means any transaction conducted or performed, in whole or in part, by electronic means or electronic records.

## III. Historical Background of E-contract –

E-contract is an essential part of E-commerce, so need to study the history of it before knowing about the E-contract. E-commerce simply related to the selling and purchasing of the goods and hiring of services over the internet. With the advancement in digital technology and networking increased the growth of E-commerce globally. In the 1960s businesses were using Electronic Data Interchange (EDI) to conduct e-transaction. In 1991, E-commerce was widely accepted when the Internet had used for commerce. With the invention of the World Wide Web in 1990, a large number of companies started to provide their services through the website. For example, Amazon and eBay which were among the earlier companies

<sup>1075</sup> Sneaker (Universal Studios, Sept. 11, 1992 US); as cited in Farooq Ahmad, Cyber Law In India, 2nd Ed, New Era Law Publications, Delhi, 2005, p. 4

<sup>1076</sup> US Legal Definitions, available at <http://definitions.uslegal.com/e/e-contract/> last visited on 28 November, 2012

<sup>1077</sup> available at, [http://highereducation.mcgraw-hill.com/sites/0073524948/student\\_view0/glossary.html](http://highereducation.mcgraw-hill.com/sites/0073524948/student_view0/glossary.html) last visited on 28 November, 2012 <sup>9</sup> General Usage for International Digitally Ensued Commerce (GUIDEC) Version II, International Chamber of Commerce, available at, <http://www.iccwbo.org/> last visited on 28 November, 2012

that transformed Ecommerce. In India, the concept of E-commerce was first introduced in the late 1990's through Rediff. An Indian Railway Catering & Tourism Corporation Limited (IRCTC) was the first company To generate E-commerce portal in India. The United Nations Commission of International Trade Law (UNCITRAL) adopted the Model Law on E-commerce in 1996. The General Assembly of UN in January 1997 Recommended that the countries should consider this model while enacting or revising their Laws.

Accordingly, the Indian Parliament enacted the Information Technology Act in 2000, to legalize the E-commerce transactions in India and to keep pace with the globalization of the trade and transactions with the development of computer technology. The Rules and Regulations governing the E-commerce and ultimately the E-contract are provided under following International Conventions and

Conferences. The Brussels Convention on Jurisdiction and Recognition of Enforcement of Judgments in Civil and Commercial Matters,

1968; Convention On the Law Applicable to Contractual Obligations, 19 June 1980 (known as "the Rome Convention"); the Hague Conference on Private International Law (HCPII) 30 June 2005 has issued a Convention on Exclusive Choice of Court Agreements concluded in Civil and Commercial Matters; and United Nations Convention on the Use of Electronic

Communications in International Contracts (New York, 2005)

As E-commerce is an essential part of E-commerce, first we need to understand the history of E-commerce before E-contract. In the 1960s businesses were using Electronic Data Interchange (EDI) to conduct e-transaction.<sup>1078</sup> E-commerce was properly accepted in 1991, when The Internet was used for commerce. A huge number of companies such as Amazon and eBay, started to provide their services

through the internet with the invention of the World Wide Web In 1990. In India, Rediff was the first to introduce the concept of Ecommerce in the late 1990s. Indian Railway Catering & Tourism Corporation Limited (IRCTC) was the first company to start an Ecommerce portal in India. Further, in order to legalese the E-commerce transactions in India and to keep pace with the Globalization of the trade and transaction, the Indian Parliament enacted the Information Technology Act in 2000.

The Rules and Regulations related to the E-commerce and finally the E-contract are provided Under the Brussels Convention on

Jurisdiction and Recognition of Enforcement of Judgements in Civil and Commercial Matters, 1968; Convention on The Law

Applicable To Contractual Obligation, 19 June 1980 (known as the Rome Convention) the Hague Conference on Private International Law (HCPII) 30 June 2005 has issued a Convention and Commercial Matters; and United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005).

#### **IV. Rights and Duties of E-Contract –**

The idea of rights and duties is central to the functioning of any legal system. People recognize the need for law primarily as a means to protect their rights. When we think of one person's rights, the idea of duty follows. simultaneously. Right and duties are coextensive. There is no value for such right which doesn't have coextensive duty.

The English word 'right' literally has two meanings. In one sense, it means what is correct or just to do. That is the meaning when we say 'I am right' or 'he is right'. However, we use the word in a different sense when we say that 'I have a right to speak' or 'you have right to get admission'. The fact that many languages including English, German and French have the same word to denote right, both in the sense of being right and having a right, shows that the human mind considers these two meanings as

<sup>1078</sup> Money.howstuffworks.com/history-e-commerce.htm The History of E-commerce BY DAVE ROOS The History of E-commerce HowStuffWorks.

the same or at least inter-related. We may, therefore, say that a person has a right only when others consider it right to allow such right. The 'rightness' of the right must be accepted by others, by the society, and formally by the state and the legal system.<sup>1079</sup>

A legal right is commonly defined as an interest recognized and protected by law. Individuals will have many interests. It is obvious that law cannot recognize and protect all these interests. It, therefore, becomes necessary to select some interest as worthy of legal protection. On what basis such interests are selected depends on the policies and priorities of each individual legal system.

Salmond defines a legal right as an interest recognized and protected by rule of justice. The word 'interest' implies any interest, respect for which is a duty and disregard of which is a wrong.<sup>12</sup> This definition contains two essential elements, viz. legal recognition and legal protection. Both these elements should simultaneously and concurrently be present in an interest for its transformation as a legal right. A legal recognition of an interest without legal protection does not make it enforceable in a court of law, as e.g. time barred debts.<sup>1080</sup> So also legal protection, of an interest without its legal recognition cannot make it a legal right. When law prescribes punishment for cruelty animals, it protects the interests of animals; it protects the interests of animals.

However, the interest recognized by the law is that of the society at large which desires the welfare of its animals. Salmond maintains that animals have no rights of their own.<sup>1081</sup>

The second part of Salmond's definition that a legal right is any interest, respect of which is a duty and disregard of which is a wrong, needs some elaboration. Whether a person's interest amounts to a right or not depends on whether

there exist with respect of to it a corresponding duty imposed upon any other person. Further, the right is an interest, the violation of which would be wrong. Rights like wrongs and duties are either moral or legal. A moral or natural right is an interest recognized and protected by moral or natural justice, violation of which would be moral or natural wrong and respect for which is a moral duty. A legal right on the other hand is an interest recognized and protected by a rule of legal justice. It is an interest, a violation of which would be a legal wrong and respect for which is a legal duty.<sup>1082</sup>

Gray defines a legal right as that power which a man has to make a person or persons to do or refrain from doing a certain act or acts, so far as the power arises from society imposing a legal duty upon a person or persons.<sup>1083</sup>

According to Holland, a right is a capacity residing in one man of controlling, with the assent and the assistance of the State, the actions of other.<sup>1084</sup> The definition of legal right adopted by Holland involves the following things:

- Right distinguished from Might;
- Imperfect Rights;
- Right enforceable by its Owner;
- and
- Right and Duty correlative.

Salmond states that rights and duties are correlatives. He also states that, there can be no right without a corresponding duty, and duty without a corresponding right any more than there can be a husband without a wife and parents without a child. For every duty must be duty towards some person or persons in whom correlative right is vested and conversely every right must be right against some person or persons upon whom a correlative duty is imposed. Thus, every right or duty involves a vincula juris, a bond of legal obligations by

<sup>1079</sup> N.K. Jaykumar, Lectures in Jurisprudence, Wadhwa and Company, Nagpur, 2004, p. 186 <sup>12</sup> *Supra*

<sup>1080</sup> *Ibid*

<sup>1081</sup> *Ibid*

<sup>1082</sup> *Ibid*

<sup>1083</sup> John Chipman Gray, *The Nature and the Sources of the Law*, 2nd Ed., The Macmillan & Co.,

<sup>1084</sup> *Ibid*



which two or more persons are bound together.<sup>1085</sup>

### V. E- Contract Is a Valid Contract Under Indian Law –

There was no express provision in the original IT Act regarding the validity of E-Contract. Later in the IT (Amendment) Act 2008,

Section 10A is inserted, which says about the validity of contracts entered electronically i.e., Electronic Contracts. Section 10A states

that where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptance, 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 electronic form or means was used for that purpose". Article 2(a) of UNICTRAL MODEL LAW on electronic commerce was framed in 1996 and later was amended in 1998 lays down the meaning of Data Message. According to this Article Data Message means information generated, send, received, or stored by electronic, optical or similar means including, but not limited to electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

Article 11 of UNICTRAL Model Law on E-commerce provides that where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.

### VI. Essentials Of E-Contract –

As in every other contract, an e-contract also requires the following essential elements:

1) **Offer:** An offer is to be made even in the case of E-Contracts. In many transactions, however, the offer is not made directly one on one. The consumer 'browses' the available

goods and services displayed on vendor's website.

2) **Acceptance:** The offer needs to be accepted. The acceptance is mostly made by the customer in response to the invitation made by the offer.

3) **Lawful Consideration:** There has to be a lawful consideration. Any agreement formed electronically or non-electronically must be lawful in nature.

4) **Intention to Create Legal Relations:** The intention to create legal relationships has to be present at the time of formation of the contract. If there is no intention on the part of any party to create a legal relationship then no contract is likely to take effect between them.

5) **Competence of the Parties:** All the parties entering in the contract must be legally competent to enter in a contract. Agreements entered by the people incompetent in the eyes of law will be considered void.

6) **Free Consent:** There must be free and genuine consent. A consent is said to be free when it is not influenced by external factors such as coercion, misinterpretation, undue influence, mistake etc.

7) **Certainty and possibility of Legal Performance:** A contract to be enforceable must not be vague or ambiguous. It should be certain and to the point which interpreting more than one meaning which causes unnecessary confusion and hinders the process of contract.

### VII. Validity of E-Contracts in India –

According to the researcher the validity of E-Contracts is mentioned under the provisions of the Information Technology Act, 2000 particularly Section 10-A, an electronic contract is valid and enforceable.

The only essential requirement to validate an electronic contract is compliance with the necessary pre-requisites provided under the Indian Contract Act, 1872.

<sup>1085</sup> P.S. Atchuthen Pillai, Jurisprudence and Legal Theory, 3rd Ed., Eastern Book Company, Lucknow, 2001, p.121; Cf. Supra Ref. 3 & Supra Ref. 14 p.187

Also, the courts in India give due regard to electronic contracts under the provisions of the Indian Evidence Act, 1872.

The provisions of the Information Technology Act, 2000 (IT Act) give legal recognition to an electronic (E -Contract) particularly section 10-A of the IT Act which states:

**Section 10-A:** Validity of contracts formed through electronic means.

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 electronic form or means was used for that purpose.

The above provision was introduced by the Information Technology (Amendment Act), 2008 after recognizing the growing dependence on electronic means to reach commercial agreements. This applies where contract formation, communication of the proposal and acceptance is carried out electronically.

## VIII. Status of E-Contract In India And International -

With ever-growing development in the technology, a contract has become a part and parcel of our life that we often get into a contract electronically without knowing we are getting into one. Right from ordering food, groceries, clothes, booking online tickets for railways, movie airways etc. In our country till now there are no specific definite legislations or rules protecting the transaction happening over the electronic medium. However, the Indian contract act 1872, consumer protection act 1986, information technology act 2000 and Indian copyright act 1957 is there to solve some of particular concerns that arise in formation and authentication of such contracts. With infinite number of transactions happening

electronically there is a need of definite laws guiding the Indian stakeholders and parties. The Indian laws and guidelines are gravely insufficient on this issue. The need for the present day is a law which covers all the aspects extending from payment mechanism to maintaining minimum standard in the delivery of services. True fruit of freedom in any spear cannot be enjoyed unless the government builds up a mechanism upon which the liberties and its appendages can act as all the business through contract is ended through the Internet without any direct physical contact the fundamental connection is that trust of the people involved in the contract. A law in this field will detect the Criminals who have exploited the internet as a source. This will ensure the proper functioning of electronic contract without any malfunctioning. If it is not done there will be regulatory gaps in the system, encouraging the practice of frauds and other related crimes.

### 1) Germany -

Through the use of a rigid regime, the German approach to giving legal effect to electronic contracting. German Digital Signature Act (DSA) entered into force as Article 3 of the Information and Communication Services Act. This act supported the legal validity of digital signatures in electronic commerce. Further technical regulations followed later that year in the Digital Signature Ordinance.

### 2) France -

On March 13, 2000, the French Government enacted a law amending Chapter VI of the Code civil which deals generally with form and proof of contracts. The main thrust of the amendments is to make electronic records and signatures equivalent to handwritten forms in the law of obligations.

### 3) United Kingdom -

The United Nations Convention on the Use of Electronic Communications in International Contracts (the "Electronic Communications Convention", or ECC) is a treaty that aims at



facilitating the use of electronic communications in international trade. It was prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by the United Nations General Assembly on 23 November 2005. Falling somewhere between the French and German initiatives, the ECA (Electronic communication act) proposes to extend legal recognition to electronic signatures which meet certain general and functional equivalence criteria. However, individual statutory instruments are necessary to change requirements under existing statutes that do not recognize such communications.

Thus, brought us to the conclusion that each country's government has their own laws and rules to regulate the use of electronic means to contract in order to protect their citizens from fraud and misrepresentation.

#### IX. Challenges Of E-Contracts in India -

E-contracts have been a recent development in the legal field. Its implementation faces a lot of issues and challenges.

**1. Capacity to Contract:** It is a very essential element to ensure that the parties who come under a contract have the capacity to do so. If a person does not have legal competence than the contract stands void. Problem of capacity to contract arises because often there are nameless individuals who enter into contracts and there is a possibility that these individuals who agree to the terms and conditions of an e-contract might be minors.

**2. Free Consent:** Free consent is an essential element to form a valid contract. E-contracts do not provide any party to negotiate with the existing offer as the parties are not aware of each other. Further, the user cannot use any system or software without accepting the terms and conditions. Thus, an e-contract only provides a "take it or leave it" offer. In such a scenario, the user will only have two options either to accept the terms and conditions which he is unwilling to or to forego the service which

he requires. On account of LIC of India Vs Consumer Education and Research Center, the Hon'ble SC gave judgment that, "In spotted line contracts there would be no event for a more fragile gathering to deal as to accept to have equivalent bartering power". He has either to acknowledge or leave the administration or merchandise as far as the dotted line contract. The only possible choice he would be having is either to accept the preposterous or till the time ends, renounce the administration". Hence it tends to be inferred that the client should be judicious while giving his agree to stay away from inconveniences.

**3. Non-repudiation of Contracts:** When one accepts the terms and conditions of an online contract, he cannot change the terms of the contract. This puts the person accepting such terms in an unfair condition as he has no means to change or alter any part of the contract as the parties present in such contracts do not know each other. Moreover, these contracts bind them legally for a long period of time and they cannot alter the terms of the contract to benefit themselves.

**4. Court Jurisdiction:** E-contracts have a very wide course of action and takes place in wide geographical areas, which will lead to filing of cases in different and faraway places. Defending suits at such faraway places increases expenditure and time wastage. Service providers limit the exposure to the jurisdiction which is near them. The user has no option in such agreements to select the jurisdiction and is exposed to whatever jurisdiction the service provider limits themselves to. This puts the user in an unfavorable position.

#### X. Legal Framework For E-Contracts in India -

- **Indian Contract Act, 1872:** The Indian Contract Act, 1872 governs the manner in which contracts are made and performed in India, so every contract made should necessarily comply with the provisions of the Act to make it legally enforceable. The

provisions of the Indian Contract Act are wide enough to cover such transactions. In the context of contract formation unless otherwise agreed with by the parties an offer and acceptance of an offer or either of them, may be expressed by means of data messages or electronic record. Where electronic record is used in the formation of contract that contract shall not be denied validity or enforceability on the sole ground that data messages were used for that purpose. As between the originator and the addressee of the electronic record, a declaration of will or other statements should be valid, effective or enforceable even though it is in the form of database.

Information Technology Act, 2000: The electronic contracts would be considered absolutely valid under the Information Technology Act, 2000. As per Section 4 of the Information Technology Act, 2000 legal recognition of electronic records, where any Information is in writing, typewritten or printed form is made available to a user in the electronic form for subsequent reference shall be deemed to have satisfied the requirement of law. In a layman's language, this means that any document which is in the written or printed version would be treated same and will have the equal validity in the electronic form also. As per the newly introduced Section 10A of the Information Technology Amendment Act, 2008" clearly states that the "Validity of contracts through electronic means, 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 electronic form or means was used for that purpose. The Act also lays down the instruments to which the Information Technology Act, 2000 does not apply, it includes negotiable instruments, power of attorney, a trust deed, a will, and contracts for sale or transfer of Immovable Property.

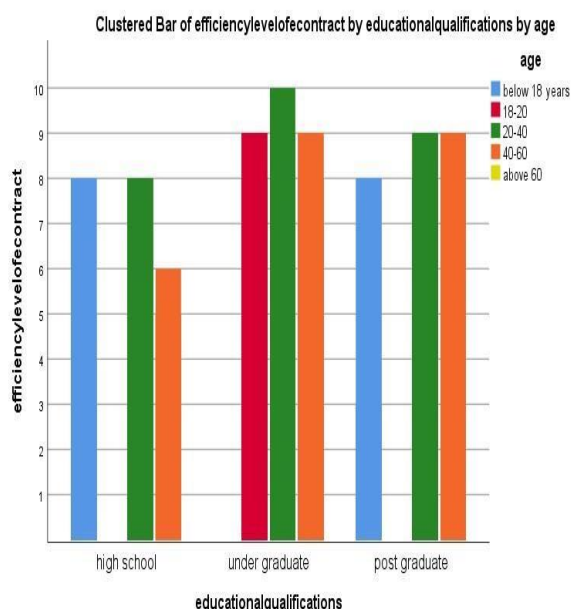
• **Indian Evidence Act, 1872:** It is pertinent to contextualize at this juncture that evidence recorded or stored by availing the electronic gadgets is given the evidentiary status. For instance: the voice recorded with the help of a tape recorder. Now-adays, the digital voice recorder, digital cameras, digital video cameras, video conferencing are adding a new dimension to the evidentiary regime. The emergence of information and communication witnessed a sea change by elevating the status of the evidence recorded, generated or stored electronically from the secondary to primary evidential status. The evidentiary value of e-contracts can be well understood in the light of the various sections of Indian Evidence Act. Sections 85A, 85B, 88A, 90A and 85C deal with the presumptions as to electronic records, whereas, Section 65B relates to the admissibility of the electronic record.

#### XI. Jurisdiction In E-Contracts –

Jurisdiction is an extent of the power of the court to hear a case i.e. to take cognizance of the case and to make legal decisions and judgments. It is the legal authority of the court to resolve the dispute. E-contract involves instant communication of offer and acceptance. Wherein the contract is complete at the end of originator where acceptance is received. The Supreme Court of India in case of **Bhagwandas Goverdhandas Kedia vs. Girdhari**

**Lal Parshottamdas & Co.**<sup>1086</sup> held that “at the place of proposer where the acceptance is received shall have the jurisdiction for enforcement of contracts entered into by means of computer internet.” Jurisdictional Issues in E- Contracts are bound to arise since the positive limits of classic statutes do not fit in the eternity of the internet. The boundlessness of the net and the instantaneous transaction provides a tough opportunity for the courts to ascertain their jurisdiction upon the disputes concerning e-contracts. A contract which is not formed on a piece of paper but is put to effect through clicks. Electronic Contracts are those creations of the modern times which have simplified as well as complicated. the situation. Simplification is through the convenience of entering into an agreement irrespective of space constraints. But, this leads to complication. The nature of the agreement makes it difficult to put it as a subject matter of dispute.

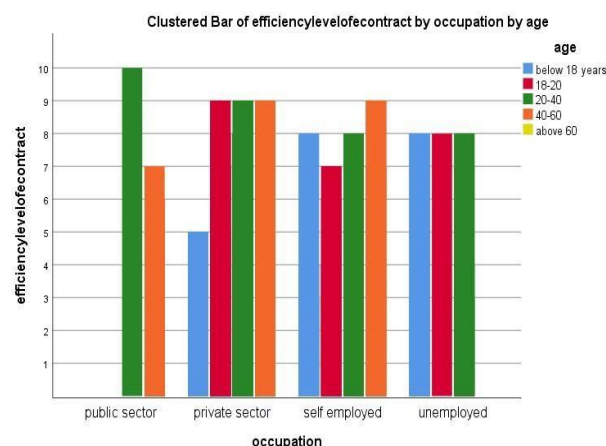
## XII. Analysis of E-Contract –



(FIG.1)

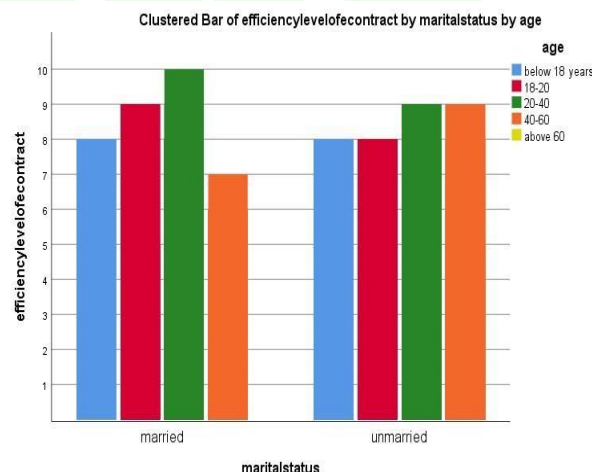
The fig.1 shows that there is a significant difference between the efficiency level of E-contract with that of Traditional contract and

the age and educational qualifications of the respondents.



(FIG.2)

The fig.2 shows that there is a significant difference between the efficiency level of E-contract with that of Traditional contract and the age and Occupation of the respondents.

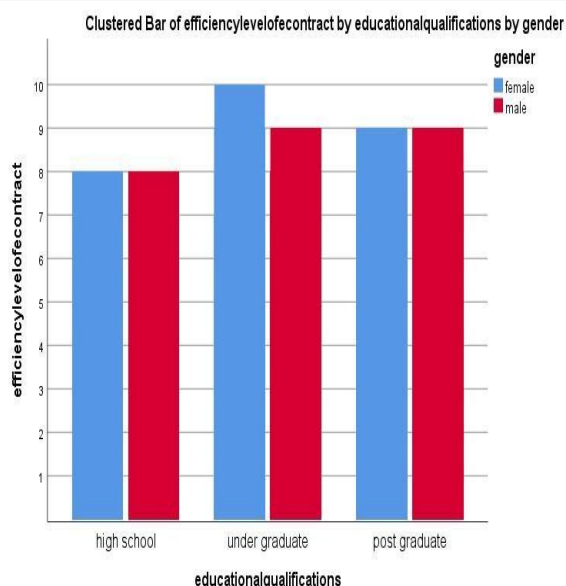


(FIG.3)

The fig.3 shows that there is a significant difference between the efficiency level of E-contract with that of Traditional contract and the age and Marital status of the respondents.

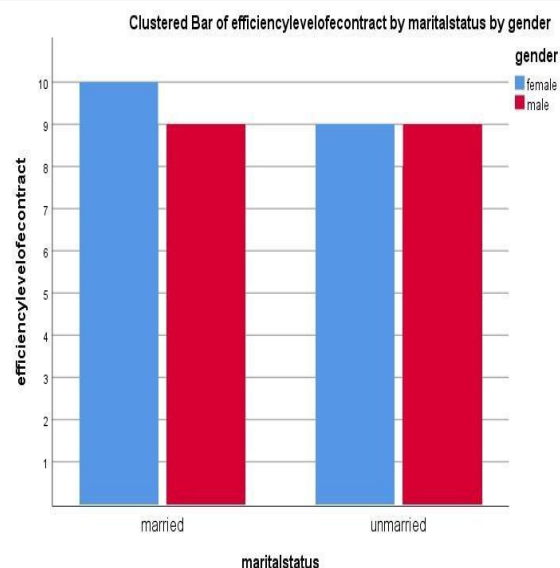
<sup>1086</sup> Bhagwandas Goverdhandas Kedia vs. Girdhari Lal Parshottamdas & Co., AIR 1966 SC 543 : 1966 (1) SCR 666.





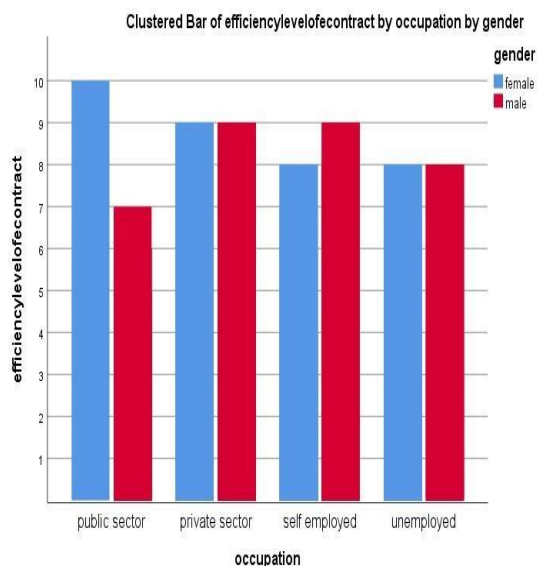
(FIG.4)

The fig.4 shows that there is a significant difference between the efficiency level of E-contract with that of Traditional contract and the gender and educational qualifications of the respondents.



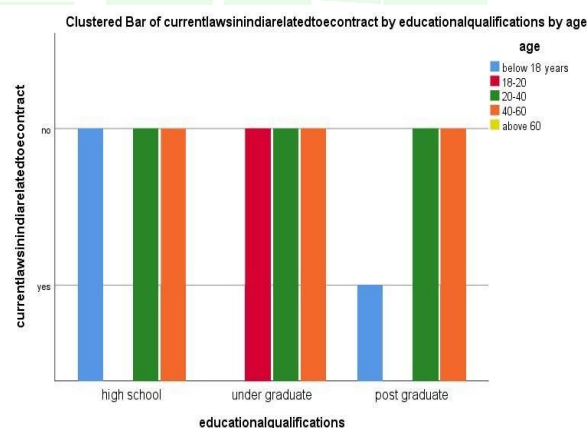
(FIG.6)

The fig.6 shows that there is a significant difference between the efficiency level of E-contract with that of Traditional contract and the gender and marital Status of the respondents.



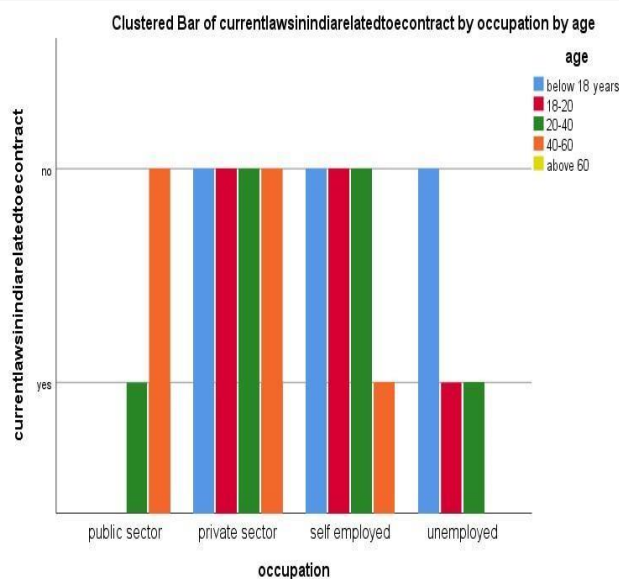
(FIG.5)

The fig.5 shows that there is a significant difference between the efficiency level of E-contract with that of Traditional contract and the gender and occupation of the respondents.



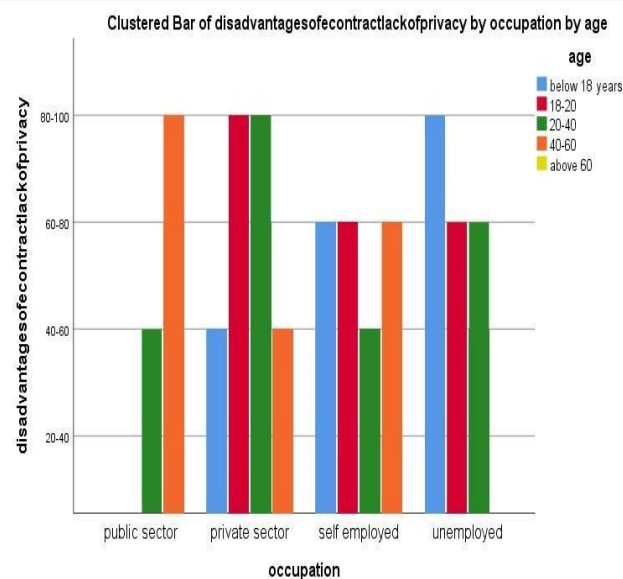
(FIG.7)

The fig.7 shows that there is a significant difference between the current laws related to E-contract in India and the age and educational qualifications of the respondents.



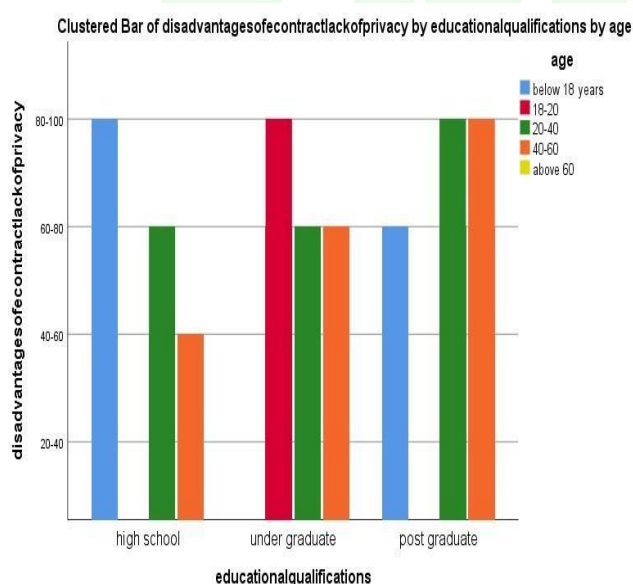
(FIG.8)

The fig.8 shows that there is a significant difference between the current laws related to E-contract in India and the age and occupation of the respondents.



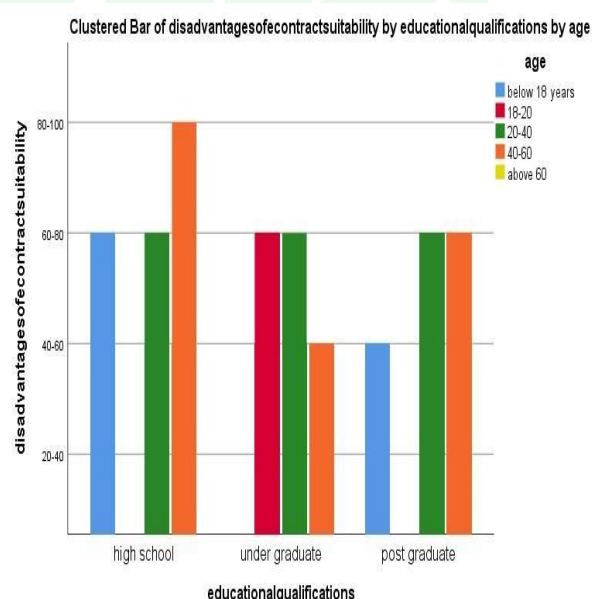
(FIG.10)

The fig.10 shows that there is a significant difference between the disadvantages of E-contract is due to lack of privacy and the age and occupation of the respondents.



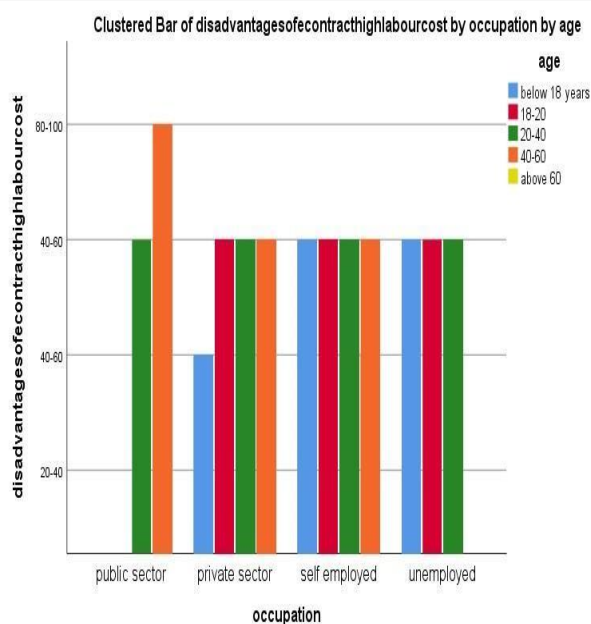
(FIG.9)

The fig.9 shows that there is a significant difference between the disadvantages of E-contract is due to lack of privacy and the age and educational qualifications of the respondents.



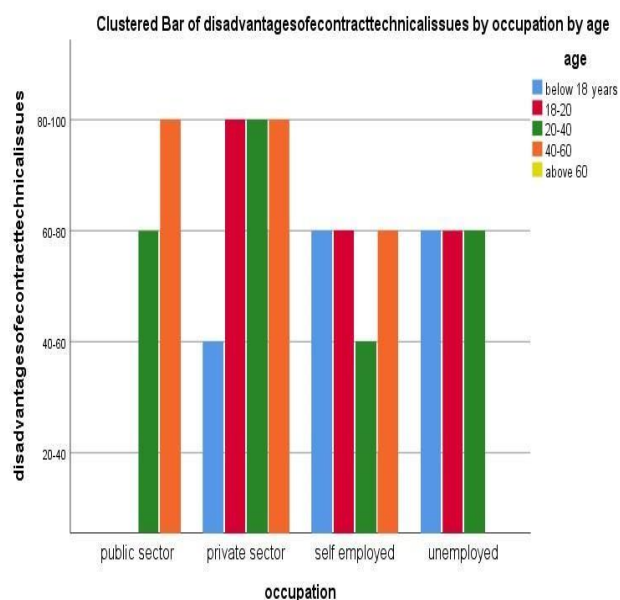
(FIG.11)

The fig.11 shows that there is a significant difference between the disadvantages of E-contract is due to suitability and the age and educational qualifications of the respondents.



(FIG.12)

The fig.12 shows that there is a significant difference between the disadvantages of E-contract is due to high labour cost and the age and occupation of the respondents.



(Fig.13)

The fig.13 shows that there is a significant difference between the disadvantages of E-contract is due to technical issues and the age and occupation of the respondents.

## Result –

- In **fig.1**, all the age group people responded equally when compared to the age group people of below 18 years.
- In **fig.2**, all the age group people were responded and the public sector people were responded less when compared to other sector people are not aware about the efficiency level of E-contract.
- In **fig.3**, Both the married and unmarried people have responded equally and below 18 years have responded less when compared to other age group people where the survey has been taken by the researcher through the online mode.
- In **fig.4**, the graphical representation is about the efficiency of E-contract and it has been answered by both the gender of the people.
- In **fig.5**, the graphical representation is about the efficiency of E-contract and it has been answered by both the gender of the people and the all-sector people who are working in the occupational field.
- In **fig.6**, the graph explains that, both the Male and Female have given equal responses to the efficiency level of E-contract with that of traditional contract in the society.
- In **fig.7**, the graph explains that, the graph depicts that, the current laws in India are related to E-contract and it has been answered by all age groups of people and above 60 age group people is less when compared to other age groups of the people.
- In **fig.8**, in the graphical representation is about the current laws related to E-contract and it has been all age group people.



- In **fig.9**, the graph depicts that all the age group people were responded more when compared to 60 age group people in the survey.
- In **fig.10**, all the age people gave equal responses when compared to above 60 age group has not responded, where the survey has been taken by the researcher through the online mode.
- In **fig.11**, all the age group people responded equally when compared to the age group people of below 18 years in the High school has responded more.
- In **fig.12**, all the age group people were responded and the public sector people were responded less when compared to other sector people are not aware about the disadvantages of the E-contract and due to High Labor cost in the E-contract.
- In **fig.13**, all the age group people were responded and the public sector people were responded less when compared to other sector people are not aware about the disadvantages of the E-contract and due to technical issues in the E-contract.

#### Discussion –

- From the survey, in **fig.1** it is found that the efficiency level of E-contract with that of Traditional contract and it is answered by all the age group of people and the under graduate has answered that it is efficiency.
- It is observed from **fig.2** that, below the age of 20 respondents have responded, saying that efficiency level of E-contract and public sector has responded less when compared to other sector people.
- From the survey, in **fig.3** it is examined that, both the married and unmarried people have said that the

efficiency level of E contract and it is efficient in the society.

- The **fig.4** depicts that, the responses given by the both the gender of the people and they are saying that, it is efficient in the society.
- From the survey, in **fig.5** it is observed that, both the gender of the people in the survey has given equal responses and accepted that E-contract is an efficient one and they are accepting towards it.
- From the survey, in **fig.6** it is found that, the efficiency level of E-contract in the society and it is answered by both the Male and Female respondents in the society.
- In **fig.7**, the graph represents that all age groups have responded but, below 20 has responded more when compared to other age group people and above 60 age group people are not aware of the Efficiency level of E-contract where the survey has been taken by the researcher.
- In **fig.8**, the graph represents that all age groups have responded but, below 20 has responded more when compared to other age group people and above 60 age group people are not aware about the efficiency level of E-contract and the public sector people has responded less when compared to other sector people where the survey has been taken by the researcher.
- From the survey, in **fig.9**, all age group people have responded but above 60 has not responded more when compared to other age group people and they are not aware that lack of privacy is one of the disadvantages of E-contract.
- From the survey, in **fig.10**, all age group people have responded but above 60 has not responded more when

compared to other age group people and they are not aware that lack of privacy is one of the disadvantages of E-contract and public sector has responded less when compared to other sector people.

- From the survey, in **fig.11** it is observed that, all age group people have responded but above 60 has not responded more when compared to other age group people and they are not aware that High labor cost is one of the disadvantages of E-contract and public sector has responded less when compared to other sector people.

- From the survey, in **fig.12** it is observed that, all age group people have responded but above 60 has not responded more when compared to other age group people and they are not aware that High labor cost is one of the disadvantages of E-contract and public sector has responded less when compared to other sector people.

- In **fig.13**, the graph represents that all age groups have responded but, below 20 has responded more when compared to other age group people and above 60 age group people are not aware about those technical issues is one of the disadvantages of E Contract and the public sector people has responded less when compared to other sector people where the survey has been taken by the researcher.

### XIII. Conclusion and Suggestions –

E-contracts are gaining acceptance in large numbers, due to the lack of clarity in some aspects, there may arise in future some disputes. It is advisable that there should be a policy to promote e-contracts by pre-emptively resolving the ambiguous and vague aspects of e contracts. Below are some suggestions which will help with promotion and acceptance of e-

contracts with the general public as well as the business community:

The government should conduct training classes for judicial officers as well as other officers of the government to appreciate the forensic aspects of computers and the internet. Many a times, the judicial officers do not know the intricacies of the new technology, and thus the quality of the judgment may suffer, and there may be delays in judgment.

The Indian Contract Act requires that for an enforceable contract, the parties to the contract must be above 18 years of age. However, the basic problem in the electronic sphere is that there is no fool proof way of knowing the correct age of the customer. Thus, in a recent case filed in the Delhi High Court, the bench asked orally as to how minor persons are registering with online sites such as Facebook and Orkut, when they do not fulfil the requirement of being above the age of 18 years. The government must frame a policy whereby online service providers should try to ascertain the age of the customer before such customers are registered on their sites. Failure to ensure this can lead to information, privacy and money of minor customers being used and abused. Presently, electronic communication is still regulated by the Indian Telegraph Act. This Act was framed at a time when there was no idea of the internet or the modern communications systems we have today. Therefore, to suit today's exigencies, the ancient law is being stretched beyond imagination. There is an urgent requirement to codify the laws relating to electronic communication as well as e-contract and bring them into harmony with each other. We should also take inspiration from the various international treaties and standards regarding contracts and electronic communication so that there is no hurdle to international commerce and business with India. Particularly, the model laws framed by UNCITRAL are very helpful in this regard.

Since the electronic commerce and communications field is a very dynamic and

fast-changing area, many of the definitions and concepts provided for in the laws become very soon outdated. Therefore, to obviate the possibility of injustice, the courts should give high value to the evidence of experts in the computer field, who will be having knowledge of the latest trends.

Ideally, the parties to the contract should have freedom of contract, that is, the terms of the contract should be mutually agreed and acceptable to the parties. Such acceptance can come only from open bargaining and negotiation. Unfortunately, in e-contracts, the seller is in a highly advantageous situation, and he employs it to impose unfair terms on the buyer. There is a need to regulate the imposition of such unfair terms so that the interests of the consumers are not harmed. Therefore, Consumer Protection Act, 1986 and Competition Act, 2002 need a re-look.

The question of jurisdiction is very important as regards to e-contracts. The Supreme Court of India in the Bhagwan Das Kedia case endorsed the ruling in the Entores case, that there will be instantaneous communication when transactions are conducted over telephone. However, later developments like the introduction of the Information Technology Act, 2000 have seriously impacted the instantaneous communication rule since the Information Technology Act, 2000 provides that email communication is deemed to be complete when the email goes out of the computer of the sender. Therefore, there is a serious need to revise and update the laws regarding jurisdiction under e-contracts. The IT Act 2000 cannot stand on its own feet, always it has to take the help of The Indian Contract Act 1872 to judge the validity of an online contract or E-contract. In other word it can be said that IT Act is not sufficient for making an online contract always it has to take the help of Indian Contract Act for working practically because none of its section says about eligibility of parties to perform E-contract. To rectify this lack the Act must be amended and new section must be inserted which will say about the

eligibility of parties for online contract or E-Contract and no more we have consult. The Indian Contract Act while deciding the eligibility of the parties for E-contract.

While the proliferation of electronic commerce raises some interesting questions about the precise mechanics of contract formation by e-mail and through websites, the offer and acceptance model are likely to prove sufficiently flexible to accommodate these new forms of communication without much complexity. By reasoning from first principles, and by analogy with the rules of governing older means of communication, the courts should prove well able to deal with the issues posed by offer and acceptance in the electronic era of information technology. E-contracts are well suited to facilitate the re-engineering of business processes occurring at many firms involving a composite of technologies, processes, and business strategies that aids the instant exchange of information. The e-contracts have their own merits and demerits. On the one hand they reduce costs, saves time, fasten customer response and improve service quality by reducing paper work, thus increasing automation. With this, Ecommerce is expected to improve the productivity and competitiveness of participating businesses by providing unprecedented access to an on-line global market place with millions of customers and thousands of products and services. On the other hand, since in electronic contract, the proposal focuses not on humans who make decisions on specific transactions, but on how risk should be structured in an automated environment.

The E-commerce grow exponentially so the use of E-contract increasing day by day. Online businesses spread across the global markets and reach to the millions of Consumers. Eventually, E-contract becomes essential part to govern under statutory law to Avoid any uncertain disputes in online transactions. The E-contract in India govern under many legislations to validate it. Indian Courts also



upheld the validity and passed the Judgements in the cases related to jurisdiction of E-contract; it becomes helpful to solve the Disputes related to these issues. With the advancements in technologies, the Indian Parliament Enacts law like IT Act to accustom with modern global trade transactions. There is a need to Cover all the aspects of E-contracts in a single, comprehensive and updated legislation to the Protection of consumers and traders in E-commerce and for enforcement of E-contracts

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