

the type written 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) recorded or made available in an electronic form, and b) accessible so as to be usable for a subsequent reference.

As per Section 10-A of the Information Technology Act, validity of contracts formed through electronic means:

Where in a contract formation, the communication of proposals, the revocation of proposals and acceptances, as the 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.

Affidavit under Section 65-B, Indian Evidence Act is not absolute:

The mandate to file an affidavit under Section 65-B is not always absolute. The Hon'ble Supreme Court made observation in the case of *State v. Navajot Sandhu*, (2005) 11 SCC 600; printouts from the computers by mechanical process and certified by a responsible official of the service providing company can be led into evidence through a witness who can identify the signatures of the certifying officer or otherwise speak to the facts based on his personal knowledge.

In *State v. Navajot Singh* (supra) and *P. Padmanabb v. Syndicate Bank Ltd., Bangalore*, AIR 2008 Kant. 42; it was held that the non-compliance of Section 65-B, Indian Evidence Act, 1872 is not always fatal if secondary evidence can be given in any circumstances.

The evidence relating to electronic record, as noted herein before, being no special provision, the general law under Section 63 read with Section 65 of the Indian Evidence Act shall yield to the same *Generalia Specialibus non derogant*, special law will always prevail over the general law. Section 59 and Section 65-A dealing with admissibility of electronic record. Sections 63 and 65 of Indian Evidence Act, 1872 have no application in the case of secondary evidence by way of electronic record, the same is wholly governed by Section 65-A and Section 65-B. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus in the case of CD, VCD, Chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which the secondary evidence relating to that electronic record is inadmissible as observed by the highest Court of the land in *Anwar PV v. PK Basbeer and others*, in Civil Appeal No.4226 of 2012.

APPOINTMENT OF JUDGES—II

By

—DABBIRU SRINIVASA PATNAIK,
M.A., B.L., Senior A.P.P.,
5th Metropolitan Magistrate Court,
Anakapalli

India is earlier ruled by many rulers, there used to be close relation between Law and Religious Heads. Holding the charge for the post of King is a philosophical one rather than thinking about their comforts, honestly,

discipline, adherence to the principles of social, economical and religious dictions are known from Aryan Times till Indus civilization. The true intention of this system is aimed at providing justice to all irrespective

of caste, religion, nationality *etc.*, is a distinguished feature of this Great Country and Historical Land. The aim of law is to provide protection to citizens and punish/reform accused basing on the severity of offence committed by them. Loopholes in law or lack of proper and efficient administration of justice will be resulting in demoralizing and destabilising the democratic values which might lead to unrest in fundamental freedom of citizens of India guaranteed by The Constitution of India and it's founding fathers.

Our country is governed by three wings. They are 1. Judiciary, 2. Legislature, 3. Executive. This classification is made basing on the separation of powers theory propounded by Montesque. The object behind this theory is the individuality of one branch shall never eclipse the other branch of Governing Body. This reflects in the thoughts of Founding Fathers of our Constitution. In a democratic country like India, Judiciary plays an important role in resolving disputes; hence independence is given to it from the controlling hands of Legislature and Executive.

So appointment of Judges is to be made very carefully to maintain the integrity of Judiciary. Two decades ago, a Bill is introduced in Parliament on appointment of Judges tried to absorb the powers of Chief Justice of India. The object of that Bill is to reduce the powers of C.J.I., by way of amending Article 124 of the Constitution of India. What Article 124 says:

Establishment and Constitution of Supreme Court

(1) There shall be a Supreme Court of India constituting a Chief Justice of India, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of The Supreme Court shall be appointed by The President by warrant under his hand and seal after consultation with such of the Supreme Court

Judges and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of 65 years; provided that in the case of appointment of a Judge other than the C.J., *The Chief Justice of India shall always be consulted:* (a) a Judge may, by writing under his hand addressed to The President, resign his office; (b) a Judge may be removed from his office in the manner provided in Clause 4.

In a case *Supreme Court Advocates Association v. Union of India* reported in *All India Reporter*, 1994 SC 268; it was held by Justice *Ranjan Prasad* that like the Pope enjoying the supremacy in ecclesiastical ceremonies, CJI has the right of primacy in appointment of Judges. In this case The S.C discussed about the powers of C.J.I in relation to appointment of Judges. Articles 124(2), 217(1) and 50 of the Constitution of India have been discussed; this land mark judgments has been pronounced with 7-2 Judge's majority.

What is the loss sustained to the country in administration of justice by collegiums selections is not so far explained by any law maker in Parliament. Reasons have to be assigned by lawmakers before introducing new system in selection of Judges to High Courts and Supreme Court. Onslaught on Judiciary is a dangerous trend in a democratic country. It is deplorable in a democratic country.

For instance before elections *Modiji* assured to bring back Indian black money from Swiss Bank in 100 days. But practically he failed to do it. Can voters call him back for unfulfilment of his promise? Will it not attract the principles of doctrine of promissory estoppels? No adequate reply can be given back from his P.M. Office also. A Man who has discarded his legally wedded wife is not expected to do service to this country because where women are given respect, there angels will come and bless is a very old saying in my village. Principles and moral values are being deteriorated in

human beings they have to be taught at school level to bring back this country on correct track of progress. So long as corporate mafia is dictating terms to many politicians the values of democracy will be gone on winds. Time to think youth should come forward in politics also.

The National Judicial Appointments Commission Act is aimed at clip the wings

of Judiciary. It is being struck down by the apex Court with 4-1 majority. So many issues are pending to resolve to lawmakers and it is better to think about good governance instead of intruding on the powers of Judiciary. It is true that many lower Court Judges are not appointed by High Courts, the reason is work pressure due to long pending vacancies in these constitutional Courts.

REAL ESTATE (REGULATION & DEVELOPMENT) ACT, 2016 — AN OVERVIEW

By

—Dr. CHENNUPTI DIVAKAR BABU,
(Principal, Smt. V.D. Siddhartha Law
College, Vijayawada)

The Real Estate (Regulation and Development) Act, 2016¹ (Hereinafter referred to as the 'Act' for the sake of brevity) came into force on 1st May, 2016 with 69 out of the total 90 sections notified by the Ministry of Housing and Urban Poverty Alleviation, Government of India.

The Act is perceived as a significant step towards ensuring better protection of home consumers by clearly delineating the standards of realtor services and business practices in the realtor sector. The Act aims to reform and regulate the Real Estate Sector by clearly defining the rights and obligations of the realtors as well as home consumers for facilitating the healthy growth and development of the Real Estate Sector. Further, the Act seeks to foster and promote transparency, accountability and level playing field in the Real Estate Sector by putting in place a workable and effective regulatory mechanism to address several ills and deficiencies afflicting the sector. The Act seeks

to enable and empower home consumers to get their grievances redressed in an inexpensive, expeditious and time bound manner against the realtors. The Act puts in place a pragmatic legal framework for facilitating informed purchasing choices of home consumers and therefore, it is undoubtedly a game changer in the Real Estate Sector. Hence, the Act is expected to boost the confidence of consumers and further encourage honest realtors by striking a perfect balance in between the rights of the home consumers and the realtors. Though this Act can't be described as the panacea for all the ills afflicting the Real Estate Sector yet it can reasonably be considered as a catalyst in promoting the healthy growth and development of the Real Estate Sector by striking a perfect balance in between the rights of realtors and home consumers. The Act doesn't supplant the remedies available to home consumers under the Consumer Protection Act, 1986 as it apparently provides additional remedies to home consumers.

1. Act No.16 of 2016, published in the Gazette of India on 26.3.2016. Land, rights over land and improvements fall under Entry 18 of The State List of the Schedule VII of the Constitution of India. However, Parliament has legislative competency to enact the present legislation under Entry 7 of the Concurrent List of the Schedule VII, dealing with regulating contracts and transfer of properties.