

consultation with the High Court under Article 233(2), a person not already in the 'service of the State' is eligible to be appointed as a District Judge only if:

- i. he has been for not less than seven years an advocate or a pleader; and
- ii. is recommended by the High Court for such appointment.

From the tenor of Article 233 it appears that there are two sources of recruitment of District Judges:

- i. service of the Union or the State
- ii. Members of the Bar.

The Judges from the second source are appointed on the recommendation of the High Court, no one can be appointed from the Bar until and unless his name is recommended by the High Court.

In *M.M. Gupta v. State of Jammu & Kashmir*<sup>11</sup>

Appointment of District Judges by the Governor was quashed because these appointments were made without full and effective consultation with the High Court. The Supreme Court held that normally, as a rule, the High Court recommendations for

the appointment of the District Judges should be accepted by the State Government and the Governor should act on the same.

### CONCLUSION

India is one country from Kashmir to Kanyakumari and the Constitution of India has not provided for a double system of Courts as in the United States of America. The appointment, posting and promotions of the Subordinate Judges in India is well settled. Even though, the Indian Judiciary is independent from Executive and Legislature, there is a need of uniform Rules with regard to the appointment, posting and promotion of District Judges throughout India. The criteria of eligibility shall be on the basis of practical experience and well versed in different branches of Laws.

The constitutional provisions have given rise to several important controversies laying down the condition that an advocate who had practised in the Rajasthan High Court for 7 years would be eligible to be appointed in the State higher judicial services.

The High Court of respective State shall organize the orientation programmes to the subordinate judicial officer on newly enacted laws in order to improve their knowledge upto date.

## E-COMMERCE AND THE LAW

By

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Electronic Commerce means buying and selling of goods and services across the internet. An e-commerce site can be as simple as a catalog page with a phone no, or

it can range all the way to a real time credit and processing site where customer can purchase downloadable goods and receive them on the spot.

11. AIR 1982 SC 1579 also see *Chandramouleswar Prasas v. Patna High Court*, AIR 1970 SC 370; (1969) 3 SCC 56.

E-Business is the creation of new, and the redesigning of existing value chains and business processes through the application of information technology. Naturally, e-Business is more than e-commerce. It expands the scope of e-commerce to transform the company and the industry itself

### ***E-commerce and the law***

#### ***Introduction***

E-commerce is all about selling goods and services via the Internet. The trader and customer are not face to face at any point, with business conducted remotely, regardless of location. This can pose a number of challenges to the formation and enforcement of contracts.

A number of legislative initiatives affect business conducted online - they can be complex and change regularly.

As far as e-commerce transactions are concerned, the legislation is primarily intended to ensure that online contracts are legally binding.

The ways in which electronic marketing can be undertaken to promote the services of e-commerce providers are also regulated.

#### ***E-commerce Regulations***

The E-commerce Regulations came into force in August 2002. They implement the European E-Commerce Directive into UK law and one of their main aims is to ensure that electronic contracts are legally binding and enforceable throughout Europe.

The Regulations apply to businesses that:

- \* sell goods or services to businesses or consumers on the Internet, or by email or SMS (text messages)
- \* advertise on the Internet, or by email or SMS

- \* convey or store electronic content for customers, or provide access to a communications network

They do not cover direct marketing by phone or fax.

#### ***Information requirements***

The E-commerce Regulations identify specific information about your business that you must provide to recipients of online services, and set down guidelines regarding advertising and promotions.

#### ***Contracting online***

If you form a contract online by electronic means, your customer should be able to print and store a copy of the terms and conditions.

#### ***Advertising***

If you intend to advertise on the Internet, or by email or SMS, the Regulations stipulate that “commercial communications” must be clearly recognisable as such. They must clearly identify the person on whose behalf the marketing communication is sent, together with any promotional offer.

The Regulations also cover “unsolicited commercial communications,” commonly referred to as spam. They require that these communications are identifiable from the subject line of the email, without the need to read the rest of the message. SMS messages are not covered for these purposes.

#### ***Tips for complying with the E-commerce Regulations***

To comply with the general information requirements of the E-commerce Regulations 2002 you must give recipients of your online services:

- \* your business’ name, geographic address and other contact details including your email address

- \* details of any publicly available register in which you are entered, together with your registration number or equivalent
- \* the particulars of the supervisory body if the service is subject to an authorisation scheme
- \* details of any professional body with which you are registered
- \* your VAT registration number

If your website refers to prices, these must be clear and indicate whether they include tax and delivery costs.

You must also ensure your website complies with part of the Companies Act 2006. From 1 January 2007 all companies in the UK must clearly state the company registration number, place of registration, registered office address and, if the company is being wound up, that fact, on all of their websites. A common place to put this information is in the “About us” or “Legal info” page of the site - it does not have to appear on every page. This rule also applies to any electronic communications sent out by your company, such as emails.

#### How to comply when contracting online

If your business forms contracts online you must provide your customers with information about:

- \* all technical steps required to conclude the contract, *eg.* “click this box”
- \* whether the concluded contract will be filed by you and whether it will be accessible
- \* the languages offered for the conclusion of the contract
- \* any relevant codes of conduct to which you subscribe, and information on how these can be consulted electronically

You must make sure that your website allows customers to go back and correct any mistakes made in their order before the order is placed.

Once a customer has placed an order electronically, you must acknowledge receipt without undue delay.

#### *Regulations applying to telephone and fax marketing*

Businesses frequently promote their services via telephone and fax. There are a number of regulations that apply to this area and it is important that your business is aware of them. This will ensure that you are acting legally if you undertake a marketing campaign using these media.

The Telecommunications (Data Protection and Privacy) Regulations regulated direct marketing by telephone and fax. Both the Telephone Preference Service (TPS) and the Fax Preference Service (FPS) were established as a result of these regulations and are monitored by the Information Commissioner. These regulations were superseded by the Privacy and Electronic Communications Regulations 2003 in December 2003.

#### *TPS and CTPS*

Initially the regulations only gave individuals the right to opt out of direct marketing by registering with the TPS.

However, in June 2004 the Corporate Telephone Preference Service (CTPS) was launched. This is the central opt-out register that enables corporate subscribers to register their wishes not to receive unsolicited sales and marketing telephone calls to any of their organisation’s telephone numbers.

A corporate subscriber includes corporate bodies such as a limited company in the UK, a limited liability partnership in England, Wales and Northern Ireland, or any partnership in Scotland. It also includes

schools, Government departments and agencies, hospitals, PLCs and other public bodies.

#### *FPS*

The FPS includes a requirement to obtain individual consent prior to direct marketing by fax. It also offers an “opt-out” for corporate bodies who register with the FPS.

So, if you are already engaged in, or planning to undertake direct marketing via phone or fax then you must make regular checks with the TPS, CTPS and FPS, or risk committing an offence.

#### ***Privacy and Electronic Communications Regulations***

E-marketing activities are regulated by the Privacy and Electronic Communications Regulations that came into force in December 2003. The Privacy and Electronic Communications Regulations superseded the Telecommunications (Data Protection and Privacy) Regulations. The new regulations include additional rules which legislate against unsolicited emails or SMS, commonly referred to as spam.

They prohibit sending direct marketing communications by email where the identity of the person who sent it is disguised or concealed. They also prohibit marketing emails that do not provide the recipient with a valid address they can use to request such communications cease.

#### *Addressing the problem of spam*

The Privacy and Electronic Communications Regulations require that an individual’s consent is obtained prior to sending them unsolicited advertising by email unless they have already “opted-in” or expressly consented to the receipt of such emails.

Existing customers can be sent unsolicited advertising, on the condition that the direct

marketing relates to products and services similar to those they have already purchased. However, the recipient should also be given the option to “opt-out” of receiving such emails.

Under the Privacy and Electronic Communications Regulations, corporate bodies may also opt-out of receiving such emails, but there is no “opt-in” requirement.

It is important to remember that it is also a requirement of the Regulations that unsolicited advertising emails must contain both the identity and the contact details of the sender.

#### *Cookies*

The Privacy and Electronic Communications Regulations also cover the use of “cookies.” These are files downloaded from a web server to the PC of a visitor to a website. They can provide the owner of the website with personal details about the visitor such as what purchases were made from the site, what files were downloaded and the information viewed.

The aim of the regulations is to allow the visitor to choose whether they want cookies on their PC. In practice this is likely to involve providing them with information about cookies, and how to disable them should they wish to do so.

#### ***Tips for complying with the Privacy and Electronic Communications Regulations***

The Privacy and Electronic Communications Regulations are enforced by the Information Commissioner’s Office (ICO). If the Information Commissioner finds a business to be in breach of the Regulations an Information Notice requesting further information, or an Enforcement Notice will be issued. A fine may be imposed for breach of an Enforcement Notice. Criminal sanctions may also be imposed.

All of these actions can damage the reputation of your business and adversely affect the goodwill of your customers. So, if you use electronic communications as a marketing tool, you should ensure that each communication is clearly identifiable as relating to the advertising or marketing of a product.

This means that any commercial communication sent by email or text message should be clearly identifiable as such through its header - other required information can then be set out in the main body of the communication.

*Electronic communications as a marketing tool should also:*

- \* identify the person on whose behalf it is sent
- \* clearly identify any promotional offer - including any discount, premium or gift - and any conditions that must be met to qualify for it (these must be easily accessible, clear and unambiguous)
- \* provide the recipient with "opt-out" rights

You should obtain prior individual consent from your customer through them "opting in", though there are some limited exceptions for existing customers.

### ***Distance Selling Regulations***

The Distance Selling Regulations 2000 are designed to protect customers who are not physically present with the seller at the time of purchase. They cover purchases made via email and the Internet, together with telephone and mail order.

They only apply to transactions between businesses and consumers (individuals acting outside the course of their business) and do not include business-to-business contracts and auctions.

*Under the Regulations, consumers have the right to:*

- \* details in writing about the supplier and the terms of the transaction
- \* written confirmation of their orders
- \* further information, including a notice of cancellation rights, the complaints procedure, after-sales services and guarantees
- \* delivery within 30 days unless otherwise agreed

Consumers have a cooling-off period of seven working days in which to cancel the contract, starting from when the goods are received, without having to give a reason. If no details of the cooling-off period have been given by the supplier to the consumer, it is extended to three months.

The right to withdraw can be exercised by the consumer even after the goods have been delivered, or the services have been provided. The consumer is entitled to receive a full refund for a cancelled contract within 30 days.

There are some exceptions to these rights of cancellation, including:

- \* contracts for the provision of accommodation, transport, catering or leisure services, where these services are supplied on a specific date or for a specific period
- \* the sale of customised goods or perishable goods
- \* sealed audio or video recordings, or software, which has been opened
- \* sales by auction

### ***E-commerce in India***

The past 2 years have seen a rise in the number of companies' embracing e-commerce technologies and the Internet in



India. Most e-commerce sites have been targeted towards the NRI's with Gift delivery services, books, Audio and video cassettes *etc.* Major Indian portal sites have also shifted towards e-commerce instead of depending on advertising revenue. The web communities built around these portal sites with content have been effectively targeted to sell everything from event and movies tickets the grocery and computers. The major in this services being Rediff on the net (WWW.rediff.com) and India plaza with started a shopping section after their highly successful content site generated WEB visitors. In spite of RBI regulation, low Internet usage e-commerce sites have popped up everywhere hawking things like groceries, bakery items, gifts, books, audio and videocassettes, computer *etc.* None the major players have been deterred by the low PC penetration and credit card usage in India and have tried to close the success worldwide of online commerce. BPB publication went online selling its complete range of computer books about 2 years ago, it might not have the success of either Amazon.com or Barnes and noble. But they definitely have promised the cause of e-commerce in India with at least 1 to 5 websites like Indiabookshop coming online.

This is not to say that the e-commerce scenario has been bad in India as highly successful e-business like baba bazaar and India mart have proved. Indian Banks too have been very successful in adapting EC and EDI Technologies to provide customers with real time account status, transfer of funds between current and checking accounts, stop payment facilities. ICICI Bank, Global TRUST BANK AND UTI-Bank also have put their electronic banking over the internet facilities in place for the upcoming e-commerce market speed post also plain to clone the federal express story with online package status at any moment in time. The future does look very bright for e-commerce in India with even the stock exchanges coming online providing a online stock portfolio

and status with a fifteen minute delay in prices. The day cannot be far when with RBI regulations we will be able to see stock transfer and sale over the Net with specialized services like schwab and e\*trade.

Though with security and encryption being proven Technologies for transfer of funds over the Internet, the Indian Government still has problems with 'Digital signatures' and verification processes over the Internet. This combined with RBI norms and regulations has proved to a major handle for e-commerce even though VSNL India's monopolistic ISP does want to jump on to the electronic transaction bandwagon with the advent of private ISP's and India's new and positive attitude towards IT and the Prime Minister's new IT policy " the future is very positive in India for doing commerce with a-e.

### *The Future of E-Commerce*

What does the future hold for e-commerce? Many would say it is difficult to predict. The forces that determine the web's winners and losers are just taking shape and technological advances could add even more uncertainty. On the downside, some experts predict that it will be increasingly difficult for smaller companies to establish their presence. Public companies and traditional brand name retailers have deep pockets and a name recognition that will make it difficult for smaller sites and mom-and-pop shops to attract customers, thereby forcing them to compete with the big boys. On the Net, it's one big neighbourhood. On the upside, nearly all experts believe that overall e-commerce will increase exponentially in coming years. Business to business transactions will represent the largest revenue. Online retailing will also enjoy a drastic growth. Areas expected to go include financial services, travel, entertainment and groceries. And for those considering opening a virtual storefront, forthcoming technology and standards agreements will make it easier to create a site, to protect it against payment

fraud, and to share information with suppliers and business partners.

***Legislation e-business with respect to in India:***

***e-commerce:*** There is no law specifically governing e-commerce except Foreign Investment Regulations which permit foreign investments in the B2B e-commerce sector. However, the traditional law is applied for most e-commerce transactions including for those relating to jurisdiction, governing law, conclusion of contracts and tax matters. Digital signatures: Digital Signature has been defined in the “Information Technology Act” and is given recognition. Certifying Authorities have been created for granting of Digital Signatures.

***Data protection/privacy:*** No specific law in India except for Information Technology Act which is limited in scope in that it provides for data protection obligations on authorities under the Act to retain information received by them confidential. However general law does provide some protection for release of confidential information only if they are received in trust. It should be noted that transfer of data outside Europe to a country without data protection laws is generally forbidden (for details, see legal Wiki, “data protection”).

***Spam:*** No specific regulation.

***Consumer protection:*** There is a Consumer Protection Act which apart from creating certain substantive rights to consumers also created the Fast Track Consumer Courts. Court fee in these consumer Courts also is an extremely nominal amount unlike other Courts where it is a percentage of damages claimed.

IPR and in particular, copyright: In India there exists the “Copyright Act, 1957”. This Act was amended to include computer programs as ‘literary work’ and hence software now enjoys copyright protection. India is not a party to the WIPO copyright treaty.

***Legal issues in e-business with India***

***Case Studies in India***

The Indian company cases showed that there are a number of companies who are unaware of the complexities/legal issues that emerge in e-business transactions, this needs to be made aware of and sensitised. The LEKTOR platform can be used as an apt tool in order to discuss and disseminate information on the e-business formalities/legalities of various countries. Most companies have been doing business with firms/organizations in the US. The business opportunities with firms in EU has a vast potential which needs to be tapped for fruitful partnerships in that direction

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**INCREASED AWARENESS OF ADR IS THE NEED OF THE HOUR**

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***Alternative dispute resolution (ADR): an overview***

As anybody who has been involved in litigation will tell you, litigation usually involves

huge expense, delay and stress for the parties concerned and can often be commercially counter productive. For business people, such litigation usually consumes considerable amounts management time which could more