

lower house. But circumstances may arise when it may be doubtful as to who is the proper person *i.e.*, leader of the majority without having such majority. In such circumstances, the Governor may have to exercise his discretion in selecting the Chief Minister. Unfortunately, in exercise of their discretion Governors have not followed any uniform practice in some States, the Governor had invited the leader of the single largest party to form a ministry and ignored the claim of the leader of a United Front (Rajasthan 1967 and Madras in 1951 and recently in Harayana, 1982) Whether it was formed prior to election or after the election on the other hand, in some States the Governors had given preference to the leader

of United Front over the leader of the single largest party (in Center in 1979, Punjab in 1967, Bihar in 1968, West Bengal in 1970, Maharashtra in 1978) and also happened in the year of 2005 Jharkhand Sibusoran Government under U.P.A. of Central Government.

11. So the above such instances clearly establishes that the powers of the Governors some of them mis-utilizes the powers.

12. The main reason to happen this kind of thins, more are the Governors coming from political parties. So such political party candidates may not encourage, and better to give an opportunity to retired I.P.S., I.A.S., High Court Judges, *etc.*

CYBER-LAWS

By

—GUDAPATI HANUMANTH RAO,

B.Com., L.L.B. & LL.M (Constitution)

Advocate

THE INFORMATION TECHNOLOGY ACT, 2000

Digital Technology and New Communication Systems have made dramatic changes in our lives. Business transactions are being made with the help of computers. Business community as well as individuals are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form of is cheaper. It is easier to store, retrieve and speedier to communicate people are aware of these advantages but they are reluctant to conduct business or conclude transactions in the electronic form due to lack of legal frame work. At present many legal provisions recognize paper based records and documents which should bear signatures. Since electronic commerce eliminates the need paper based transactions, therefore to facilitate electronic commerce, there is a need for legal changes.

2005-Journal—F-8

The United Nations Commission on International Trade Law adopted the Model Law in Electronic Commerce in 1996. India being signatory to it has to revise its laws as per the said Model Law. Keeping in view the urgent need to bring suitable amendments is the existing laws to facilitate electronic commerce and with a view to facilitate Electronic Governance, the Information and Technology Bill, 1999, was introduced in the Parliament.

New communication systems and digital technology have made dramatic changes in the way we live. A revolution is occurring in the way people transact business. Businesses and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form has many advantages. It is cheaper, easier to store, retrieve and speedier to communicate. Although people

are aware of these advantages, they are reluctant to conduct business or conclude any transactions in the electronic form due to lack of appropriate legal framework. The two principal hurdles which stand in the way of facilitating electronic commerce and electronic governance are the requirements as to writing and signature for legal recognition. At present many legal provisions assume the existence of paper based records and documents and records and oral testimony. Since electronic commerce eliminates the need for paper based transactions, hence to facilitate e-commerce, the need for legal changes have become an urgent necessity.

The United Nations Commission on International Trade Law (UNCITRAL) adopted the model law on electronic commerce in 1996. The General Assembly of United Nations by its Resolution No.51/162, dated 30th January, 1997, recommended that all States should give favourable considerations to the said model law when they enact or revise their laws. The model law provides for equal legal treatment of users of electronic communication and paper based communication pursuant to a recent declaration by member countries, the World Trade Organization is likely to form a work programme to handle its work in this area including the possible creation of multilateral trade deals through the medium of electronic commerce.

There is a need for bringing in suitable amendments in the existing laws in our country to facilitate electronic commerce. It is therefore proposed to provide for legal recognition of electronic records and digital signatures. This will enable the conclusion of contracts and the creation of rights and obligations through the electronic medium it is also proposed to provide for a regulatory regime to supervise the certifying authorities issuing digital signature certificates. To prevent the possible misuse arising out of transactions and other dealings concluded over the electronic medium, it is also proposed to create civil and criminal

liabilities for contravention of the provisions of the proposed Legislation.

This will make the citizens interaction with the Governmental offices hassle free. It is also proposed to make consequential amendments in the Indian Penal Code and the Indian Evidence Act, 1872 to provide for necessary changes in the various provisions which deal with offences relating to documents and paper based transactions. It is also proposed to amend the Reserve Bank of India Act, 1934 to facilitate electronic fund transfers between the financial institutions and banks and the banker's books Evidence Act, 1891 to give legal sanctity for books of accounts maintained in the electronic form by the banks.

The proposed legislation was also circulated to the State Governments they have supported the proposed legislation and have also expressed urgency for such legislations. The bill seeks to achieve the above objectives. Act 21 of 2000 the Information Technology Bill was passed by both the Houses of Parliament, and it received the assent of the President on the 9th June, 2000 and became "THE INFORMATION TECHNOLOGY ACT, 2000 (21 of 2000)" Amending Act the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (55 of 2002).

If any person without permission of the owner or any other person who is in charge of a computer, Computer system or computer network - (i) accesses such computer, Computer system or computer network (ii) down loads, copies or extracts any data, computer data base information, (iii) Introduces or causes to be introduced any computer contaminant or computer virus (iv) damages or causes to be damaged any computer, computer system or computer network data, computer data base or any other programmes. (v) disputes or causes description; (vi) denies and causes the denial of access to any person authorized to access; (vii) provides any assistance to any person to facilitate access in contravention of the

provisions of this Act; (viii) charges the service availed of by a person to the account of another person by tampering with or manipulating any computer, computer system or computer network, he shall be liable to pay damages up to "Ten Lakhs" rupees to the person to so effected.

If any person has secured access to any electronic record, book register, correspondence, information, document or other material without consent of the person concerned and discloses the same to any other person then he shall be punished with imprisonment up to two years, or with fine up to one lakh rupees, or with both.

The Cyber Regulations Appellate Tribunal (procedure for investigation of misbehaviour or incapacity of Presiding Officer) Rules, 2003.

In exercises of the powers conferred by clause (s) of sub-section (2) of Section 87, read with sub-section (3) of Section 54 of the Information Technology Rules 2000 (21 of 2000), in Central Government hereby makes the following rules, 1. Short title and

commencement 2. Definitional, 3. Committee for investigation of complaints. 4. Judge to conduct inquiry. 5. Application of the department enquiries (Enforcement of witness and production of documents) Act, 1972 to enquiries under these rules. 6. Powers of Judge; 7. Suspension of Presiding Officer.; 8. Subsistence allowance and 9. Inquiry report.

The Information Technology (other powers of Civil Court vested in Cyber Appellate Tribunal, Rules, 2003. In exercise of the powers conferred by clause (g) of sub-section (2) of Section 58 or Section 87 of the Information Technology Act, 2000 (2) of 2000). The Central Government hereby makes the following Rules 2003.

The Information Technology (other standards) Rules, 2003 in exercise of the powers by clause (g) of sub-section (2) of Section 87, read with sub-section (2) of Section 20 of the Information Technology Act, 2000 (2) of 2000). The Central Government hereby makes same following rules is and commencement, definitions and standards to be observed by the controller.

WHAT ARE THE PLACES NOW COVERED BY SECTION 58(f) OF THE TRANSFER OF PROPERTY ACT, 1882, FOR CREATING MORTGAGES BY DEPOSIT OF TITLE DEEDS

By

—A.S. RAMACHANDRA MURTHY,
Advocate, Ramaraopeta, Kakinada

[1] Originally when the Transfer of Property Act 1882 was enacted, the benefit under the above provision was extended to the three places Calcutta, Madras and Bombay. The section says that it would apply to other places which the State Governments may notify in the Official Gazettes.

[2] In course of time when trade and commerce have become very important and

began rapidly growing, this provision is extended to various places in India. By now, it is extended to almost all Municipal areas. One can get a comprehensive list of all these places in India from the latest Edition of Transfer of Property Act 6th (2001) Edition published by The All India Reporter Ltd., Nagpur at Pages 400 to 410 of the 2nd volume and also from the list contained in the Book Banking Laws and Practice in India by Tannan.