

various views expressed in the decisions referred to above and for the reason that Section 70 of N.I. Act is not a specific provision overriding Section 20 CPC, and that Section 70 of N.I. Act does not lay down the rule where the suit is to be filed, and that the rule governing jurisdiction prescribed by Section 20 CPC is unaffected by Section 70 of N.I. Act. Negotiable instrument gives a right of negotiation. Hence such assignment forms part of the cause of action and as such the Court situated at the place of the assignment of the negotiable instrument has jurisdiction.

11. Therefore it is to be taken that Section 70 of the Act is an exception to Sections 68 and 69 of the N.I. Act. As such, in cases falling under Section 70 of the Act, the rule-governing jurisdiction prescribed by Section 20 CPC remains unaffected.

12. In another view, I am of the opinion that all the said principles mentioned above apply to cases of transferred or assigned promotes also because the assignee or the transferee becomes the creditor. In such a case the creditor can file the suit at his place, it being the place for payment. Therefore it becomes a place where a part of the cause of action arises as provided under Section 20(c) of CPC.

13. In conclusion I submit that I am of the opinion that apart from Sections 68 and 69 of N.I. Act, in all other cases the assignment or transfer gives a cause of action and as such the place where the said transaction took place can be said to have jurisdiction. In this view of the matter I feel that the principle of law laid down in the decision under discussion does not seem to be correct and that it requires reconsideration.

CONTRACTUAL RELATIONS UNDER INFORMATION TECHNOLOGY ACT 2000 VIS-A-VIS UNCITRAL MODEL LAW - EMERGING TRENDS

By

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In this article, I specifically centered around the emergence of Information Technology infrastructure with its most conspicuous feature of world wide network of interconnected computer networks known as the 'INTERNET' as well as the felt need for a legal framework to recognize and regulate the commercial transactions conducted through the media of such information infrastructure, exclusively focused on the recognized need to regulate commerce and trade conducted through electronic means of contemporary information technology be developing a homogenous legal framework that understood the far-reaching implications of electronic commerce

towards this end of developing an international legal mechanism to cognize Electronic Commerce, the United Nations Commission On International Trade Law or Uncitral evolved a Model Law as a guide for national specific legislator on Electronic Commerce. It is this Model Law that by its guiding provisions inspired the legislation in this area by the Republic of India titled INFORMATION TECHNOLOGY ACT 2000. This article consequently tries to briefly examine the said Act in its outline before addressing the question of status of contracts in the aforesaid Model Law as well as Information Technology Act 2000.

The rise of 'Information Technology' and its pre-eminent component of internet in contemporary times have led to a phenomenal increase, *inter alia* of commercial transactions in electronic form popularly known as the 'ELECTRONIC COMMERCE'. Electronic Commerce consists of commercial activities conducted through an exchange of information generated, stored or communicated by electronic means including Electronic Data Interchanges (EDI) 1, E. Mail, *etc.* It broadly describes commercial activities conducted electronically using electronic channels based on the integrated strands of computer and telecommunications technologies a lot of trade and commercial transactions and their related information interchange can be automated without any constraints on the geographical dispersion of their trading partners.

To facilitate the global expansion of Electronic Commerce on 'Internet' otherwise a predictable and consistent legal framework supporting commercial transactions conducted thereon was needed regardless of the jurisdiction of the parties to such transactions. Such framework are imperative since private enterprise and free markets have typically flourished wherever they are predictable and widely accepted legal principles supporting commercial transactions. Many legal rules assume and rely on the existence of physically tangible paper records and documents authenticated by signatures, and face to face personal meetings. As more and more activities are carried out by electronic means it become more and more important that evidence of these activities be available to demonstrate legal rights and obligations that flow from them.

In furtherance of this and with a desire to promote standardization and homogenization of laws internationally the United Nations Commission on International Trade Law (UNCITRAL) has evolved a Model Law that supports the commercial use of International Contracts in Electronic

Commerce. This is known as the UNCITRAL Model Law on Electronic-Commerce, 1996.

This Model Law establishes rule and norms that validate and recognize contracts formed through electronic means, sets default rules for contract formation and governance of electronic contract performance, defines the characteristics of a valid electronic writing and an original document provides for the acceptability of electronic signatures for legal and commercial purposes and supports the admission of computer evidence in legal proceedings.

This Model Law does not have any force and merely serves as a model to various Nation-States for the evaluation and modernization of certain aspects of their laws and practices in the field of communications involving the use of computerized and other modern technique and for the establishment of relevant legislation where none presently exists.

The Republic of India being a signatory to the UNCITRAL Model Law was under an obligation to revise its law as per the said Model Law. Keeping in view the urgent need to bring suitable amendments in the existing laws to facilitate Electronic Commerce and with a view to facilitate electronic governance, the Information Technology Act 2000 was passed. This Act not only transforms the Model Law into a domestic legislation but the main purpose of the Information Technology Act 2000 is to foster an environment in which laws are simple and transparent whereby the advantage of new Information Technology can be tapped. Towards this end it proposes the facilitation of Electronic Commerce transactions, electronic filing, maintenance transactions. For this Act provides for a legal framework so that the information in electronic form is not denied legal effect, validity or enforceable solely on the ground that it is in electronic form.

This is done by validating and authorizing the use of Electronic Data Interchange (EDI)

electronic records and electronic signatures. The Act adopts a functional equivalent approach whereby paper based requirements such as RECORD, DOCUMENT, SIGNATURE are replaceable with the electronic counterparts'. The Act also deals with subsidiary issues to this secure electronic transactions and information technology offices. It also seeks to set up various authorities to keep in regulation the Information Technology Regime. In short the Act can be summarized so as to be seen addressing the following issues in chief.

- (i) Secure electronic transactions enabling various parties to enter into Electronic Contracts.
- (ii) Attribution of electronic messages whereby once a message leaves the information system of originator of messages, it is attributed him;
- (iii) According legal status of electronic signature² and electronic records. In furtherance of this and to maintain security of information, the Act establishes a 'Digital Signature Infrastructure' making specific use of the 'Assymmetric Crypto System Technology' with a new authorities such as the controller of certifying authority being set up;
- (iv) Contraventions with regard to electronic records such as Hacking, Theft of Electronic records, manipulation of records³, spreading viruses *etc.*, have been defined. Involved in the inquiry and determination of the result of the proceeding is an adjudicating officer, appointed by the Government and processing wide ranging powers.
- (v) Information Technology Offences such as tampering with computer source documents, obscenity will be tried as criminal offences under Criminal Procedure Code but with unique provisions of investigations and search provided in the Act.
- (vi) Privacy and confidentiality of information submitted to Statutory Authority and dissemination of such information to third parties is made a criminal act.
- (vii) Right to Government Bodies to descript information has been reserved by the Act.
- (viii) Facilitate E-Commerce as well as electronic filing and maintenance of records as against the Government.
- (ix) Setting up of new authority/regulatory infrastructure cyber, Regulatory Authorities such as the Controller of Certifying Authority and the Cyber Regulations Appellate Tribunal (CRAT) have been established. The Act also seeks to set up a Cyber Regulations Advisory Committee (CRAC).
- (x) Liabilities of Internet Services provides for content on the internet is limited insofar as provider exercise due diligence. This is relevant in connection with copyright violations, pornography *etc.* residing on various web-pages or passing through the system of the I.S.P⁴.

These are in essence the main features of Information Technology Act, 2000 as a broad and general outline of the Act, they serve the purpose of facilitating a more focused discussion on contracts in general and those that are formed through electronic means in particular.

It is not the purpose of Information Technology Act to replace the general provisions of Indian Contract Act with those of its own with regard to the legal relationships of contracts. The Act does not even envisage to form a new species of contracts *viz.*, contracts formed through electronic means. What the Act intends to achieve by its provisions is to remove the uncertainty and discrimination associated with contracts formed through electronic means. In this regard the Act draws its inspiration from the guiding provisions of UNCITRAL

Model Law as contained in CHAPTER III therein.

Article II of the Model Law, which refers to the formation of validity of contract stipulates that 5.

In the context of contract formation, unless otherwise agreed by the parties on Offer and the Acceptance of an offer may be expressed by means of data messages. 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.

The above article is not intended with the law on formation of contracts but rather to promote International Trade by providing increased legal certainty as to the conclusion of contracts by electronic means. It deals not only with the issue of contract formation but also with the form in which an offer and an Acceptance may be expressed. In other words the above article restates the obvious fact that an offer and an acceptance as any other expression of will can be communicated by any means including data messages. The aforesaid articles cover not merely the cases in which both the Offer and Acceptance are communicated by electronic means but also cases in which only the offer or the acceptance is communicated electronically. As to the time and place of contract formation in cases where either the offer or the acceptance of an offer is expressed by means of a data message no specific rule has been included in the Model Law in order not to interfere with National Laws applicable to contract formation, since the only purpose of Model Law should be limited to provide Electronic Communications with the same degree of legal certainty as paper based communications. Neither does the Article preclude the autonomy of parties to conclude Paper Based agreements if they wish to do so.

In a similar vein Article 12 of the Model Law which pertains Recognition of Parties of Data Message states that:

As between the originator and the addressee of a Data Message, a declaration of will or other statement shall not be denied legal effect validity or enforceability solely on the grounds that it is in the form of the Data Message.

The Article clearly states that expression of human will in data message shall not be discriminated against. The joint operation of both Articles 11 and 12 clearly down that neither the intentions of the parties as manifested in will to contract nor the actual manifestations of such will in terms of offer and acceptance shall not be discriminated if they represented in the form of Data Message.

The UNCITRAL Model Law directs its purpose to bring a certain equivalence between conventional contracts and those concluded by electronic means not by replacing the General Provisions by stating the condition that the electronic contracts shall not be discriminated solely for the reason that they are concluded electronically.

It is this same spirit which pervades the provisions of Information Technology Act, 2000. Even the enactment strives to accord legal sanctity to contracts formed through electronic means rather than positing either a new species of contracts or replacing the provisions of Indian Contract Act., with new ones. The chief thrust of the Act is to analyze the concept of contract by decomposing it into discrete elements and endeavour to legally sanctify and regulate such elements of electronic contract individually, rather than posing a new wholistic notion of electronic contract. In other words the Act tries to understand the various components of contract as they are found in their electronic counterparts and legally regulate each of them.

Given the doubtful attitude and skepticism associated with the process of contract formation through electronic means the Information Technology Act tries to install adequate safety norms and safeguards within formation. To fully understand this, it is essential to minimally examine the notion of

contract and find its equivalent in the Act by analytically reconstructing an electronic contract through its various provisions. For a contract to exist there must be first an offer which is a promise to do or not to do anything or a promise that something will happen or not. This offer is followed by an Acceptance of the offer which involves assenting to the offer made. The set of promises within the contract are supported by consideration.

This minimal notion of contract is dispersed in its 'Electronic elements in the Information Technology Act. An analytical reconstruction of such elements in the following manner yields a coherent notion of electronic contract within the Act.

The whole process of contract formation between the contracting process is contemplated in the Act through the media of Electronic Data Interchange (EDI).

Article 2(b) of UNCITRAL Model Law defines E.D.I. as:

“Electronic transfer from computer to computer of information using on agreed standard to structure the Information”.

Simplistically put E.D.I. refers to the flow of information in a computer network. It is a computer to computer communication of information in electronic form through a computer network. The communication of information between computers in the aforesaid mode is through 'DATA MESSAGES'.

Article 2(a) of the Model Law states that Data Message is:

“Information generated, sent, received, or stored by electronic, optical or similar means including, but not limited to electronic data interchange electronic mail, telegram, telex or telecopy ”.

Thus formation of contract through electronic means presumes the existence of a computer network where computers are

linked to each other transmitting electronic information in the form of 'Data Message'. This whole configuration is labelled as an Electronic Interchange (E.D.I.) Mechanism.

Section 2(i) of the Information Technology Act defines “a computer IT Act 2000 as any electronic, magnetic, optical or other high-speed data processing device or system, which performs logical, arithmetic and memory functions by manipulation of electronic magnetic or optical impulses and include all input, processing, storage. Computer Software or communications facilities which are connected or related to the computer in a Computer System or Computer Network.

In a similar vein Section 2(j) of the Act visualizes a computer network as “the interconnection of one or more computers through:

- (i) The use of satellite microwave, terrestrial line or other communication media.
- (ii) Terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained.

As explained in the preceding chapters and discussion a computer network is an integrated infrastructure involving computers connected through telecommunicational channels facilitating electronic flow of information. The components of contract namely OFFER and ACCEPTANCE of offer are represented through 'DATA MESSAGE'. In other words the promise comprising an offer is represented by the 'SUBJECT' of contract or offerer or promisor in natural language which in order to be inputted into an Electronic Communication Device such as a computer is represented in artificial machine language and emanates therein as an electronic data message. With regard to such data message the person or subject making such offer or promise is termed as 'ORIGINATOR'.

Section 2(i)(za) of the Act which exactly corresponds in content to Article 2(c) of the Model Law deems an 'ORIGINATOR' to be;

A person who seeks, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary.

The above definition of "Originator" covers not only a situation where information is generated and communicated but also a situation where such information is generated and stored without being communicated. However, the definition of 'Originator' is intended to eliminate the possibility that a recipient who merely stores a data message might be regarded as an 'Originator'.

To firmly fix the responsibility for generating a data message to the "Originator" Section 11 of the Act provides for attribution of electronic record shall be attributed to the 'Originator'.

- (a) If it was sent by the Originator himself.
- (b) By a person who had authority to act on behalf of the originator in respect of that electronic record; or
- (c) By an information system programmed by or on behalf of the originator to operator automatically.

Similarly, Article 13 of the Model Law also refers to the attribution of data message and states that:

- (1) A data message is that of the originator if it was sent by the originator himself.
- (2) As between the originator and the addressee, a data message is deemed to be that of the originator if it was sent.
 - (a) By a person who had the authority to act on behalf of the originator in respect of that message, or
 - (b) By an information system programmed by, or on behalf of, the originator to operate automatically.

- (3) As between the originator and the addressee, an addressee is entitled to regard a data message as being that of the originator, and to act on that assumption if,

- (a) In order to ascertain whether the data message was that of the originator, the addressee properly applied a procedure previously agreed to be the originator for that purpose, or
- (b) The data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify data message its own.

- (4) Paragraph (3) does not apply:

- (c) As of the time when the addressee has both received notice from the originator that the data message is not that of the originator, and had reasonable time to act accordingly, or
- (d) In a case within paragraph (3)(b) at any time when the addressee know or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was not that of the originator.

- (5) Where a data message is that of the originator or is deemed to be that of the originator, or the addressee is initiated to act that assumption then as between the originator and the addressee, the addressee is entitled to regard the data message as received as being that the originator intended to send, and to act on that assumption. The addressee is not so entitled when it know or should have known, had it exercised reasonable care or used any agreed procedure, that the transmission

resulted in any error in the data message as received.

- (6) The addressee is entitled to regard each data message received as a separate data message and to act on that assumption, except to the extent that it duplicates another data message and the addressee knew or should have known. Had it exercised reasonable care or used any agreed procedure, that the data message was a duplicate.

Thus the provisions of both the act as well as the Model Law clearly fix the responsibility for sending a data message on the originator of that message who generates it in the first place. In the context of contract the aforesaid attribution firmly establishes the liability and responsibility of making an offer through generation of data message. Further the person to whom such an offer was made can ascertain the identity of the offeror or originator through the verification of his Digital Signature.

Section 2(p) of the Act defines a Digital Signature as 'authentication of any electronic record or by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3.

In other words the offeror or originator affixes his Digital Signature to the data message so as to accord it with certitude that the said offer was made by him.

Section 2(1)(d) defines "affixing Digital Signature" as "adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of Digital Signature.

Authentication of electronic record as implicit in the process of affixing Digital Signature is further contained in Section 3 of the Act which states that:

- (1) Subject to the provisions of this section any subscriber may authenticates an

electronic record by affixing his Digital Signature.

- (2) The authentication of the electronic record shall be effected by the use of "Assymmetric Crypto System" and hash function which envelop and transform the initial electronic into another electronic record.

Due to this serious mis-direction of focus both the Act as well as the UNCITRAL Model Law ignore the possibility of a third subjectivity" in what is otherwise a bilateral process of contract formation. Given the future portents presented by possibilities such as artificial intelligence in Technology 2000 and UNCITRAL model law may prove hopelessly inadequate in terms of allocating rights and liabilities of contracting parties. The next century will be the century of the mind products of mind will dominate the next century the advantages will not flow automatically. A great ask needs to be done to exploit the potential benefit from the information technology revolution fully.

For the more strengthens to the I.T. Act, the Government has set up an expert committee for an in-depth review of the Information Technology Act, 2000.

The recent episode of selling a pornographic MMS clip on an internet portal - which led to the arrest of the chief executive of the portal is among the major reasons behind the move to review the Act. Set up by the Department of Information Technology, the committee will be headed by its Secretary *Brijesh Kumar*, and include *A.K. Chakravarthy*, a Senior Scientist with the Department; *Kiran Karnik*, President of Nasscom; *A.K. Singh* and *Vaku Sharma*, advocates; *Ajay Chowdary*, Chairman of HCI Infosystems; *Ajit Balakrishnan*, CEO Rediff and *R. Ramraj*, CEO Sify Limited. *M. Madhavan Nambiar*, Joint Secretary in the Department of Information Technology, will be Member-Secretary.

The committee, which is to submit its report within six weeks, has been asked to

re-examine the Act to ensure that it remained an enabler for development of information and communication technology. Adequate measures for promoting growth of electronic commerce and governance and for regulating cyber crimes and cyber forensics are to be the other focal points.

I hope this present committee may give good suggestions to make more strengthens

of the I.T. Act. The committee while making recommendations if throws some light on the issues raised in this article for updating the law.

1. Section 2(o), the I.T. Act, 2000
2. Id Section 2(t)
3. Id Section 2 (p)
4. Id Section 43,
5. UNCITRAL Model Law: Information Technology Act (Cyber Laws) (ALT Publications).

COALITION GOVERNMENTS - FATAL TO THE BASIC STRUCTURE OF THE INDIAN CONSTITUTION

By

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The people of India resolved to set up a Democratic Government under the Indian Constitution which has come into force on 26th January, 1950 and to this effect the Indian Constitution make explicit the goals and aspirations that are to be accomplished through the Governmental Machinery so set up in accordance with the provisions of Indian Constitution. The supreme law of the land, [The Indian Constitution - the preamble] The preamble thereof reads as follows. “We the people of India having solemnly resolved to constitute India into a (Sovereign, Socialist, Secular, Democratic Republic) and to secure to all Citizens

Justice Social, Economic and Political

Liberty of thought, expression, belief, faith and worship

Equality of Status and of opportunity and to promote among them

Fraternity Assuring the dignity of the individuals and the Unity and Integrity of Nation.

Manifestly the preamble of the Indian Constitution sounds the avowed object of

the Indian Constitution to build up democratic edifice where justice, Liberty, Equality, Fraternity all together collectively dwell therein “Democracy” Etymologically means people’s Government, a Government set up for the people, by the people and of the people, the word derived from combination of two Greek words namely; Demos and Krotia it is the Government of the people which has been voted by the majority of the population. The mandate of the peoples to Government of their choice is reflected through the electoral process conducted in accordance with the Constitution of the country, or in accordance with the domestic law thereof.

Obviously, we have adopted in India a Parliamentary democratic form of Government following the British pattern. Apparently Governmental accountability to the Legislature is the salient feature the Parliamentary democracy and a commitment of Parliamentary democracy the Government will hold the reins of the Governmental power which commands the support of the Legislature and enjoys the confidence of the Legislature to which it is accountable.