
ONLINE CONTRACT AND THE INFORMATION TECHNOLOGY LAW IN INDIA

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Abstract: Contract is an agreement between two consenting parties who are competent according to law to deal with any business, transaction, communications, service etc. Agreement is the meeting of mind of both the parties depending on certain terms and conditions. One of the general principles of contract is that without consideration there is no contract except certain legal exceptions. So, consideration is essential factor for every contract and the object of contract should not be unlawful. In commercial dealings the consideration is either money or valuable objects or documents. In the contemporary globalised and liberalised scenario the worldwide web is used through information technology to compete in global market and to achieve economic goal. E-commerce and e-industry with Mobile-commerce are the emergence of the Information Communication Convergence dominated era. Almost everyone make use of mobile or smart phone with latest software and several applications (Apps) to attain goal in business, occupation, profession and even in daily life, e.g., e-banking, e-marketing, e-payment, e-medicines, e-tickets, e-transports, e-exhibitions, e-shopping and even e-domestic help etc. Commercial world is more motivated to use electronic and information way than traditional ways to deal with the issues of business-to-business, business-to-consumers and consumers-to-consumers and they do utilise the system of video conferencing, online conference, online speech, exhibitions etc. So, society became smarter with smart phone, smart watch and in other words smart computers with Internet, Wi-Fi, Bluetooth, WhatsApp, SHAREit, Xender, OLX, Amazon, zoffer, Groffer, OLA, Uber, 99acares, Car-trade and other networks. Therefore, e-commerce, e-marketing, online shopping etc. became most popular. These popular commercial dealings are fulfilled through online contract by means of which both the parties are compelled to fulfill certain terms and conditions on which they are agreed. Online contract made commercial world smarter, easier, faster and cheaper too. Most of the times within minimum place and minimum time without transport and much travelling companies, associations, institutions as well as organisations are running their big deals through information technology or electronic information processing devices. At the same time abuse and misuse of information technology are also increasing in the form of cyber fraud, ATM fraud cheating, hacking and other dishonest activities. Following the United Nations Model Law on Electronic Commerce, the European Convention on Cyber Crimes, the Computer Misuse Act of the United Kingdom, the Computer Fraud and Misuse Act of the United States of America etc. the Indian Parliament enacted and passed the Information Technology Act, 2000 which was amended in the year 2009 to regulate the cyber world and e-commerce, e-signature, digital signature; to impose civil and criminal liabilities in case of violation of legal provisions and to maintain social security as well as Law and Order situation in India. However, still there is field left for the legal reforms and awareness to prevent and control abuse and unauthorised use of technology. Such abuses reflect in e-commerce and make trade and industrial growth slower which is also the reason of limitation to socio-economic progress. Another reality in Indian commercial field is that traditional small scale industries and business sectors that are not so technologically sound and well equipped of e-commerce they are not getting customers which are causing socio-economic frustrations as traders are losing their little capitals even. So, there is need of free training to those traders about handling of e-commerce and system of B2B, B2C, B2B2C, C2C2B, through the government and large scale industries as fellow feelings and contribution to society.

Points to be discussed are as follows: 1.Introduction, 2.Conceptual analysis of Online Contract and E-commerce, 3.Legal framework of Online Contract, 4.Cyber Contraventions, 5.Online Contract and Cybercrimes, 6.Security for Online Contract and E-commerce, 7.Prospects and Practical Problems of Online Contract. 8. Judicial Decisions in India with 9.Conclusion and Suggestions.

Key words: Information Technology, Online Contract, E-Commerce, Cyber-Contravention, Cyber-Crime, E-signature.

Introduction: Present dependence on e-commerce and online linking opportunities with lack of security and trust creates serious obstacle to economic growth and competition in global market. Issues of cross-boarded transactions, breach of electronic or online contract and dispute resolutions at the national and International level, cyber-hacking, cyber-fraud, online misrepresentations, abuse, misuse,

unauthorised use, theft and piracy etc. are increasing and which need to be curbed through existing Law, legal reforms and its enforcement, effective implementations to achieve the goal with development and progress in cross-border commerce as well as export and import systems. There is also need of co-operation at every level in business sector, government and social awareness. However,

adaptation of particular and suitable Law is extremely complicated task due to multiple complications in dynamic complex society as the primary object of Law is to fulfill the needs and desires of society, maintenance of safety and security, Law and order situations, socio-economic and cultural growth, and balancing of conflicting interests in contemporary social phenomenon. Needs and desires of our society are changing at extreme speed with the ambition of achievements and win the competitions in the business world in globalisation and liberalisation marketplace.

Almost everyone is using smart phone with several applications for selling, purchasing, banking, travelling, entertainment, shopping of vegetables to medicines, clothes, jewelries and other daily needs. So, society depends on information superhighway, search better options and order for delivery on cash-payment or e-payment most popularly mobile payment for business transactions.

The IT Law is known as Cyber Law in wider extent. The radical development of IT with online marketing in India through the process of new payment method and solutions depend mostly on cloud computing which need to be governed by the rule of law.

In this paper legal issue on utility of e-commerce through online-contract, security measures through e-signature, cyber-contraventions and cybercrimes in India is discussed to draw an effective conclusion. In the contemporary era of Information Communication Convergence Technology with attractive progress in the field of e-commerce and e-transactions through online contract, few relevant practical problems, judicial decisions which are significant to business enterprises and consumer in India are discussed.

The study is based on analysis of the IT Act, 2000 with amendment in the year 2008 which was enacted and amended following the United Nations Model Law on E-Commerce, E-signature and Online contracts; the Computer Misuse Act and the Data Protection Law in the UK and the Cyber Fraud and Abuse Act in the USA. It highlighted progress made and gaps to be fulfilled between society and Law in the relevant field. The study aimed to find out the enforcement and implementation of Laws with reference to use of IT, Internet, Network, Mobile Applications and the competent authorities for enforcement and implementation of the legal provisions in reality.

Conceptual analysis of Online Contract and E-commerce: Contract: A contract is an agreement or meeting of mind between parties for certain transaction or exchange of goods, property, information, services etc. legally enforceable. So, essential requirements for formation of contract are (i)an agreement (ii)between two or more competent parties, (iii)with free consent, (iv) terms and

conditions, (iv) lawful objects, (iv)consideration and (v)legal recognition and the like. Meeting of mind freely is core of agreement. They agree to do or abstain from doing something on certain terms and conditions and object should not be illegal, immoral, unethical or wrongful in nature.

Wrong may be moral, civil and criminal. Moral wrong is prohibited by the Code of Ethics; Civil wrong is the act which is forbidden by the Civil Laws for which civil liabilities are prescribed and Criminal wrong is the action which is prohibited by the Criminal Law. However, all morals are not enforceable and prohibited by Law but few morals are prohibited by Law and Morality, for example, online or offline contract for/with immoral or unethical objects are prohibited by Law. It varies from society to society which morals are to be enforced by Law and it is a separate debatable issue too. However, we should depend on prudent man thinking and shared morality as concluded in H.L.A.Hart and Devlin's debate on enforcement of morality. Judiciary is believed as most prudent body to decide the issue and we have faith on the temple of Justice.

In agreement the first step is proposal from one side and acceptance from other which is applicable for online contract also. If the proposal is accepted then it is called acceptance of offer. When the offer and acceptance are completed on certain terms and conditions between competent consenting parties then it is promise. So, when the proposal is accepted then it becomes a promise. A promise is mere accepted proposal which may be oral or written, printed, digital or electronic form. If Law prescribed certain format then it should be followed for legal recognition and abidingness. One of the general principles of contract is that without consideration there is no contract except certain exceptions. So, consideration is core of contract.

A contract is an agreement when consideration is completed and enforceable by Law. Section-2(e) of the Indian Contract (IC) Act provides that every promise and set of promises forming the consideration for each other is agreement. So, all agreements are not contract but mere promise to do something or abstain from doing something but every contract is agreement.

Step 1: Invitation for offer. It is optional, e.g., advertisement, announcement, notification.

Step 2: Proposal or Offer + Acceptance = Promise

Step 3: Completion of promise on terms and conditions = Formation of Agreement

Step 4: Agreement + Considerations = Formation of Contract

Step 5: Legal obligations of parties to fulfill or complete terms and conditions of contract.

Online Contract: The concept of online contract was in progress during 19th century with popular use

of computer and internet. It was developed with establishment of Advanced Research Projects Agency Network in the year 1969 by Defense Department of the USA to design network to share information on research and development in the field of science and technology. They allowed Universities to use it for educational purposes primarily. Then the WWW appeared in the year 1989 by Tim Berners-Lee requiring specific software for web-browsers to access internet. Thereafter, Broadband, Internet Service Providers, network, Data transfer media, wired or wireless mobile broadband, mobile with internet and several Mobile Applications appeared in the commercial marketplace and motivated social change in smart way, e.g. e-messages, SMS, MMS, Voice M, WhatsApp, Facebook, Twitter, YouTube and now smart watch and e-wallets are coming to grip the commercial marketplace .

Online smart contract is the trend of the day which none can try to avoid. Present generation is more depended on Mobile applications and smarter way to access e-commerce to fulfill daily needs and to achieve goal in trade and commerce within shorter time with little expenses. So, society became smarter with smart phones, watch, wallets with several applications useful for online marketing, shopping and delivery of goods and services on cash or smart-payment. It is the emergence in the contemporary scenario to fulfill the needs and desire of society though on certain terms and conditions.

E-commerce and Online Contract: E-commerce includes selling and buying of goods, export and import system in business or trade, providing of any commercial services by online contract through internet connection, network connection, Applications for e-filling, electric bills, registration fee of self and other, movie tickets, taxi, railway tickets, medicines, food, buying goods or accessing of any other services, delivery on cash-payment or through credit card, ATM card, availing e-banking or net-banking facilities or by using smart phone or other smarter ways, e.g., payzapp.com, PayPal etc.

E-commerce and e-industry with Mobile-commerce are the growing rapidly in the Information Communication Convergence Technology dominated era. Use of smart-phone with latest software and applications to attain goal in business, occupation, profession and even in daily life appeared crucial. So, dimensions of e-commerce are e-banking, e-marketing, e-payment, e-medicines, e-tickets, e-transport, e-exhibitions, e-shopping and even e-domestic help etc. Commercial world is motivated to use IT to deal with the issues of Business-to-Business, Business-to-Consumers and Consumers-to-Consumers and Business-to-Consumers-to-Business, Business-to-Business-to-Consumers and like. They utilise the system of video-conferencing, online-

conference, online-speech, exhibitions and society became smarter with Internet, Wi-Fi, Bluetooth, WhatsApp, SHAREit, Xender, OLX, eBay, Snapdeal, Amazon, zoffer, Groffer, OLA, Uber, 99acares, Car-trade, Face-book, twitter, WhatsApp and allied services.

The US pizza maker Domino's planned to open about 800 restaurants in India in next 4-years through IT to gripe their sales. Presently they have about 1000 stores in India with largest market outside the US while in the UK only 800. Patrick Doyle, President & CEO said to the times of India reporter that they are among 5-top e-commerce companies in the World with global digital sale of about 4.5-billion. About 3.5-million App downloaded by 5-million followers only on face-book. In the US they are working with automobile maker Ford to develop a voice-activated technology to help people ordering pizza while driving. In India orders by smart phones is about-30% and is increasing with e-transaction which is increasing revenue significantly than offline as 35% are digital order of 50% on delivery for Domino's and Dunkin Donuts in India.¹

Therefore, e-commerce and online-contract became most popular with commercial dealings. Thus, they are compelled to fulfill terms and conditions of agreements. Online contract made commercial world smarter, easier, faster and cheaper too. Almost within minimum place and time, little transport and travelling companies, associations, institutions, organisations are running their smaller to bigger deals through IT and allied services.

Legal framework of Online Contract:

Indian Contract Act, 1872: The IC Act is the old law of our country. The concept of contract is as old as the business and the concept of online contract is the subsequent and evolved during 19th century. According to section-2(e), every promise and set of promises forming the consideration for each other is agreement. Section-2(h) provides *an agreement enforceable by Law is a contract*. So, there are two essential requirements (i) an agreement and (ii) should be enforceable by Law. In K. Basavarajappa v. Tax Recovery Commr.² the Supreme Court of India held that an agreement to sell does not create any right or interest in the property under sale. Section-10 of the Act provides that all agreements are contract if certain conditions are fulfilled. These conditions are as follows: (i) competent parties, (ii) free consent of parties, (iii) Lawful object, (iv) Lawful consideration and (iv) not expressly declared to be void. According to section-14, when the consent is not caused by coercion, undue influence, fraud, misrepresentation and mistake then it is free consent. If otherwise is proved then voidable and it will be at the option of the aggrieved party according to sections-19 and 19A to take action for legal remedies.

According to section-23 in certain circumstances the consideration and object of agreement will be treated unlawful and void if it is (i) forbidden by Law, (ii) of such a nature that, if permitted, it would defeat the provision of any Law, or (iii) fraudulent, or (iv) involves injury to the person or property of another, or (v) opposed to public policy. So, which are not covered to above conditions be treated as valid and lawful.

The Information Technology Act, 2000:

Legal Recognition and Validity of E-contract: E-record includes data, record or data generated, image or sound stored, received or sent in an e-form or micro-film or computer generated micro-fiche as per section-2(t) and under section-2(o) data means a representation of information, knowledge, facts, concepts or instructions prepared in a formal manner and capable of processing or has been processed in a computer system or network in any form including computer printouts magnetic or optical storage media, punched cards, punched tapes or stored internally in the memory of the computer. Section-2(v) provides that information includes data, message, text, images, sound, voice, codes, computer programmes, software and databases or micro-film or computer generated micro-fiche. Intermediary is anyone who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online-payment sites, online-auction sites, online marketplaces and cyber-cafes as per section-2(w). Originator generates stores or transmits any e-message or causes any e-message to be sent, generated, stored or transmitted to any other person but does not include an intermediary as per section-2(za).

According to sections-4 and 5 e-records and e-signatures respectively are legally recognised in India. Under sections-12 and 13 online contracts were recognised before amendment of the Act though it was not specific. However, by amendment specific provision was inserted in the Act relating to validity of e-contract. Section-10A runs thus: *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'*. This section was adopted from the United Nations Model Law on E-Commerce Part-1, Chapter-III, article-11 deals with formation and validity of contracts. It provides that unless otherwise agreed by

the parties in context of formation of contract, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used for contract it shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.

Attribution of E-contract: Attribution includes appreciation of the contents. An e-document may be sent by (a) originator himself, (b) any person who has the authority on his behalf in this respect, or (c) an information system programmed by or on his behalf to operate automatically.

Acknowledgement of Receipt of Online Records: In any transaction the acknowledgement is the evidence and authentication of communications. It has great significance in online-contract as generally parties are not known to each other physically and competency clause under the IC Act will not be strictly applicable. According to section-12 of the IT Act there are different modes of acknowledgement of receipt, (1) where the originator has not stipulated or predetermined about the acknowledgement of receipt in a particular form then it may be given by (a) any communication to/by the addressee, or (b) any conduct of addressee sufficient to indicate that the e-record has been received; (2) where the originator has stipulated with the intention of acknowledgement of receipt for the abidingness of e-contract then, unless it has been so received, it shall be treated that the e-record has never been sent by the originator. (3) Where the originator has stipulated that acknowledgement of receipt should reach to him within specific time, if it is not so received, the originator may send a reminder specifying time and if it has not been received then it may be treated that no e-record has been sent to the addressee.

Time and Place of Online Contract: Determination of time and place is very important for every e-transaction which also significant for performance, enforcement and application of terms and conditions of online-contract within certain time and jurisdictions. According to section-13, determination of time as well as place of despatch and receipt of e-record in any transaction by the originator and addressee depends upon several circumstances. The document containing terms and conditions of the e-commerce, online-contract or any online-transactions may be called as e-record. Time and place has many facets. These are as follows:

1. **Despatch:** Except otherwise agreed between the parties, when an e-record enters into a computer resource outside the control of the originator then it shall be treated that dispatch takes place.
2. **Time of Receipt:** Except otherwise agreed between the parties, the time of receipt of an e-record shall be determined thus: (a)(i)if the

addressee has selected a computer resource for the purpose of receiving e-record, in such case the receipt occurs at the time when the e-record enters into selected computer resource. (ii) If the e-record is sent to a computer resource of the addressee not so designated then the receipt occurs at the time of the retrieve of the e-record by the addressee. (b) If the addressee has not designated a computer resource and not specified timings then the receipt occurs at the time of entry of the record in the computer resource of the addressee.

3. **Place of Business:** An e-record is deemed to be dispatched and received at the places where the originator and addressee has his place of business respectively except they have agreed otherwise.
4. **Determination of Time in Case of Different Business Locations:** The time of receiving of e-record will be the same as mentioned above even when the location of business is different from the principal place of business according to their online-contract.
5. (5) However, there are three possible place of business according to the IT Act in Indian context. These are thus:
 - **Principal Place of Business:** When either one or both the parties has more than one place of business then the principal place of business shall be treated as the place of business for the contract.
 - **Place of Residence as Place of Business:** Where either one or both the parties to online-contract have no place of business then their place of residence shall be treated as the place of business.
 - **Place of Registration as the Place of Business:** In relation to a body corporate the place of registration shall be treated as the 'usual place of residence' and it will also be treated as the place of business.

Cyber Contraventions:

Act done by any person: The adjudicating officer, tribunal, High Court and Supreme court may deal with disputes, where required. Section-43 empowered the appropriate adjudicatory authority to impose liability to pay damages by way of compensation not exceeding or up-to rupees 1-crore to the affected party for cyber contravention by way of abuse, unauthorised use, modification, destruction or alteration of data, denial of service attacks, contamination of virus, act in the nature of or to cause cyber hacking, cyber theft, fraud, cheating etc. Therefore, in case of disputes relating to online-contract and e-commerce done by *any person* this section will be applicable. Following are the requirements: (i) act done by any person; (ii) without permission of the owner or in-charge of a computer, computer system or network (a) accesses or secures

access to it, (b) downloads, copies or extracts any data, computer data base or information from it or allied devices; (c) introduces or causes to be introduced any computer contaminant or computer virus; (d) damages or causes to be damaged any; (e) disrupts or causes disruption; (f) denies or causes the denial of access to any authorised person by any means; (g) provides any assistance to any person to facilitate access in contravention of the provisions of this Act, rules or regulations under it; (h) charges the services availed of by a person to the account of another person by tampering with or manipulating such devices; (i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means (earlier in section-66); (i) Steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage.

Failure to Protect Data by Corporate-Body: When a body-corporate engaged in commercial or professional activities (i) possessing, dealing or handling (ii) any sensitive personal data or information (iii) in a computer resource which it owns, controls or operates, (iv) is negligent in implementing and maintaining reasonable security practices and procedures (a) to protect such information from unauthorised access, damage, use, modification, disclosure or impairment, (b) as may be specified in an agreement between the parties or (c) as may be specified in any law for the time being in force and (d) as may be prescribed by the Central Government in consultation with such professional bodies or associations; (ii) causes wrongful loss or wrongful gain to any person; then body-corporate shall be liable to pay damages by way of compensation not exceeding Rs.5-crore to the affected person under section-43A.

Residuary Liability under the Act: In absence of specific liabilities prescribed for such contravention the wrongdoer shall be liable to pay a compensation not exceeding Rs.25,000/ to the affected person or a penalty not exceeding Rs.25,000/ as per section-45.

Factors to be considered under section-47: At the time of adjudging *quantum of compensation* the adjudicating officer, appointed under section-46 by the Central Government, shall consider following factors: (a) amount of gain or unfair advantage result of default, if quantifiable; (b) amount of loss caused to affected person and (c) repetitive nature of default.

Recovery: To deal with the disputes and to adjudicate the matters the Act provides for the establishment of Cyber Appellate Tribunal (CST). However, section-64 of the Act empowers the appropriate authority under CAT to recover the penalty or compensation as an arrear of land revenue

and the licence or the E-Signature Certificate where penalty or compensation is not paid and to suspend these till the penalty is paid.

Online Contract and Cybercrimes:

Breach of Confidentiality and Privacy: Subject to any provision of this Act or any other existing Law, if any person who is empowered according to this Act, rules or regulations, has secured access to any e-record, book, register, correspondence, information, document or other material without the consent of the concerned person and thereby discloses such e-record to any other person then he shall be punished with imprisonment which may extend to 2-years or with fine up-to 1Lakh rupees or with both under section-72.

Punishment for Disclosure of Information in

Breach of Contract: Section-72A was inserted by the IT (Amendment) Act, 2008. It provides that subject to any provision of this Act or any other existing Law, if (i) any person including an intermediary, (ii) while providing services under the terms and conditions of lawful contract, (iii) has secured access to any material containing personal information about another person, (iv) with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain, (v) discloses it, (a) without the consent of the person concerned, or (b) in breach of a lawful contract, (vi) such material to any other person; then he shall be punished with imprisonment which may extend to 3-years or with a fine up-to 5Lakh rupees or with both.

Application of Law and Jurisdiction Issue of

Online Contract: (i) *The territorial application* of the IT Act according to section-1(2) that it shall extend to the whole of India and (ii) the *extra-territorial application* also provides in the same section that it applies also to any offence or contravention there under committed outside India by any person. So, in cases of online contract and e-commerce parties residing in India or in different countries, this Law will be applicable for enforcement of agreement, performance of contract and dispute settlement in case of any breach of contract and completion of deals, where it may be required. Any such disputes will be treated as cyber-contravention and the provisions of the Code of Civil Procedure will be followed for dissolution disputes. However, section-75 specifically provides for the application of the provisions of IT Act for offences or contraventions committed outside India. Section 75(1) provides that subject to the provisions of sub-section(2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality. Sub-section(2) provides that for the purposes of sub-section(1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct

constituting the *offence or contravention involves a computer, computer system or computer network located in India*. So, jurisdictional issue may be resolved in Indian Court when the place of contract or business is in India and even outside India but it has the connection system or network situated in India.

Tampering with Computer Source Code:

Tampering with computer source documents or code including listing of programmes, commands, design and layout and programme analysis of computer resource in any form, is a cybercrime under section-65 these acts are also cyber-contraventions under sections-43 and 43A. Requirements and scope: (i) anyone, (ii) knowingly or intentionally, (iii) do or causes to do the act or omission, (iv)resulting cancellation, destruction or alteration, (v)to computer source code used for a computer, programme, system or network, and (vi)it is legally required to be maintained or kept by Law. It may be done for commission of any further crime or contravention causing damage to e-commerce or/and online contract. For this offence the wrongdoer shall be punishable with imprisonment up-to 3-years or with fine which may extend up-to 2Lakh rupees or with both.

Cyber-hacking, Cyber-Fraud, Cyber-Cheating and

Related Offences: Cyber-hacking was specifically defined with prescribed punishments under section-66 before the IT Amendment Act, 2008. However, amendment expanded the scope and punishments, it provides that if any person dishonestly or fraudulently does any act referred to in section-43 he shall be punishable with imprisonment which may extend to 3-years or with fine which may extend to Rs.5Lakh or with both. So, all contraventions under section-43 are crime and may be combined with this section.

Section-66A prescribed punishment with imprisonment which may extend to 3-years and with fine for sending *offensive e-mail* or e-mail message with or without attachment of any kind which is (i) grossly offensive or (b) known to be false or (c) send for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of messages.

Section-66B prohibits *dishonestly receiving of stolen computer resource or communication device*; section-66C prohibits fraudulent or dishonest *identity theft* and causing crime relating to e-signature, password or any other unique identification and section-66D prohibits *cyber-cheating* by using computer resource. However, these sections prescribed almost similar punishments, i.e., up-to 3-years imprisonment or/and up-to 1Lakh rupees fine or may be with both So, *cyber-hacking* or such offences committed with the intention of causing *online cheating, cyber-fraud,*

cyber-theft, e-mail-fraud, misrepresentation etc. if related with online-contract then it will come under above sections and terms dishonestly and fraudulently will be interpreted with sections-24 and 25 of the Indian Penal Code respectively. *Abetment and attempt* of such offences will be same as prescribed for specific offence under this Act, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment or attempt according to sections-84B and 84C respectively. *Compensation, penalties or confiscation of devices* (section-76) will not interfere with other punishment as provided under section-77 of the Act.

Offences by Body-Corporate: Under section-85 of the Act (1)Where a Company is committing a contravention of this Act or such rule, direction or order every person who was in charge and responsible to the company for the conduct of business of the company during the contravention as well as the company shall be guilty of the contravention and liable to be proceeded against and punished accordingly except proved that the act was committed without his knowledge or he exercised all due diligence to prevent such contravention. (2)Notwithstanding anything contained in sub-section(1), for contravention committed by a company and has taken place with the consent or connivance of or attributable to any neglect of any director, manager, secretary or other officer of the company then such person shall also be deemed to be guilty of the contravention and liable to be proceeded against and punished accordingly. However, for the purposes of this section (i) company means body-corporate and includes a firm or association of individuals; and (ii) director includes a partner in the firm.

Security for Online Contract and E-commerce:

Digital and Electronic Signatures for Authentication: The United Nations 85th plenary meeting on Digital Signature, 12th Dec' 2001, article-1 provides that e-signatures are applicable in the commercial activities without affecting rule of law for the protection of consumers. Article-3 deals with equal treatment of e-signatures, except article-5 where variation may be caused by *valid agreement and in fulfillment of the requirements* referred to in article 6, Para-I and other applicable Laws. Article-6 provides for *recognition of e-signature*. Para-1 provides that *where signature is legally compulsory for data message if an e-signature is used that will be reliable, applicable and appropriate communication in every circumstance including relevant agreement*. Para-2 provides that e-signature is legal obligation where Law prescribes consequence in absence of signature.

According to article-2 (a) of the United Nations Model Law, e-signature means the data in electronic form affixed to or logically associated with a data message to identify the signatory in relation to the data message and to indicate his approval of the information contained in message. According to section-2(p) of the IT Act, 2000 digital signature means authentication of any e-record by a subscriber by e-method in accordance with the provisions of section-3. Section-2 clauses (ta) and (tb) were inserted by the Amendment Act to define 'e-signature' and 'e-signature certificate' respectively to authenticate e-record in e-technique not to supplant but to supplement the digital signature and digital signature certificate.

For authentication of online-contract e-signature should be used as provided under sections-3 and section-3A of the IT Act in India as anyone can affix digital signature or e-signature on his e-record, i.e., the procedure of *affixing electronic signature or digital signature* which will be effected by use of *asymmetric crypto system* and *hash function* and completed by using *Key pair* which envelop and transform initial e-record into another e-record which are *reliable* and according to second schedule. These keys are unique to the subscribers and constitute a functioning Key Pair. For the verification of the e-record the subscriber needs to use his public key. The Central Government may prescribe the procedure and publish in the official gazette time to time to add or omit procedure for affixing digital signature from the second schedule depending on its reliability.

Security of E-records and E-signature: When e-signature is under the process of verification of keys till verification completed the data ought to be under exclusive control of signatory during the time of affixing signature and it is stored, controlled and affixed in exclusive manner using private key and it will be treated as secure e-signature under section-15. So, the security system starts from the time of application of security procedure (section-14) to the time of its verification in case of e-records (section-16) to treat it as secure e-record. However, in case of digital signature, the signature creation data means the private key of the subscribers. The user needs to receive a certificate containing public key from certifying authority authorised by the controller and the Central Government. It must be compulsory in confidential data for authentication and reliability to consumers.

Exceptions to the provisions of Confidentiality of Information: The IT Rule-22 deals with the implementation of privacy, confidential and secure procedure to protect subscribers' data from third party. There may be discloser of subscriber's data with consent and according to Law.

Penalty for misrepresentation of material fact: If any person misrepresents or suppresses any material fact from the Controller or Certifying Authority relating to licence or e-electronic signature certificate, he shall be punished with up-to 2-years imprisonment or up-to 1Lakh rupees fine or with both under section-71.

Publishing false Digital Signature Certificate: Section-73 is applicable not only to subscribers but also every person who publishes false particulars of certificate or make it available to any other person knowingly that (i) it has not issued, or (ii) the subscriber has no authority immediately and till then he should have responsibility to maintain confidentiality and privacy as accepted, or (iii) the certificate has been revoked or suspended.

Fraudulent Publication of Electronic Signature Certificate: Fraudulent creation and publication of Electronic Signature Certificate or making it available knowingly for any fraudulent or unlawful purpose is prohibited as offence under section-74 and it is punishable with up-to 2-years imprisonment or up-to 1Lakh rupees fine or with both.

Prospects and Practical Problems of Online Contract: A California based Technology Firm of America Located in Kolkata as its head quarter with the vision of converting every Indian home into smart home with security, lighting and monitoring system automated, safe and more energy efficient which require a large competent team. The company's development centre operated by Bit Canny Technology Pvt. Ltd.(BCTPL). It has developed home automation solution. With its version-2 it will enable new types of devices which will be applicable for the strength of developers. Talented person will use the IT with internet and several domains allied things. The new version of the platform will allow home owners, renters and property managers to fully control, access and manage devices in their houses using their problems. While version-1 released in the end of 2015, version-2 is proposed to be released in mid-2016. Rently's lockbox technology enables prospective renters to inspect properties at their own convenience. If property managers put a digital lockbox on vacant properties the prospective renters can get digital lock-code on their phone to allow access without presence of agent. More than 100,000 properties in America use this Rently keyless. The Company also about to develop more features of app based security, lighting and energy monitoring systems, credit check, thermostat, physical locks, door and window sensors, smoke detectors and increase mobile capability. It proposed to start work within 2-months.³ So, we can hope for more security through smart contract.

Delivery of Duplicate and Old Goods: At the National and International level with outstanding

growth of technology the number of e-consumers and online-buyers are increasing at a high speed. India became popular in e-commerce and online-contract. Older to teenager every generation in India is excited with and tempted to online shopping, net-marketing, e-tender, e-booking of tickets, e-employment, e-books etc. and very often clicking or using smart-Apps for buying and selling of things or services through online-contracts and online-money transfer. Sometimes, they are evidence of receiving proper goods through online contract. However, buyers also receive duplicate, old and even totally different goods, e.g., recently in Kolkata instead of new branded bedcovers and garments buyers received old, crumpled, dirty and even shabby bedcovers and badly cracked garments.

Students and Ph.D.Scholars⁴ shared that most of them have been cheated by one or the other commercial enterprises in online-shopping of books, garments, computer, laptop, tab, mobile, perfumes and other gift items.

E-Businessman in Kolkata named Mr. Natho⁵ contracted for online-transactions through flipkart for buying computer hardware and received a box of stones. He had to wait for 2- months with all agony and stresses for getting money back. Such instance of online fraud was result of online contract.

Smart Way to Sell and Buy Properties:⁶ Through the websites, such as, 99 acres, commonfloor, magicbricks, OLX, techlomeia app, telegraph app , car trade, Amazon, Snapdeal etc. people search for buying and selling of car, furnitures, jewelries, clothes, flat or individual houses. I am of my own experience that most of the advertisers cannot provide goods as shown in the websites. The bitter truth is that people in search of home contact with owners and most of the times the agents advertise with smart photos and video clips of the property as he is the owner. Accordingly the prospective buyers agree to visit the place for which agents charge certain percentage of fee before but while the buyers visit the spot of property, most of the times it is under construction, non similarity with the advertisement, non-existence of original property owners and legal papers, measurements of flat or house and road descriptions are not correct etc. which create anguishes, stresses and unhappiness in the mind of prospective buyers. Consequently, there are lose of money, energy, time and hope for own house which are also cause of social disorder as people are losing trust and it is increasing in numbers in our society.

Misrepresentation of Fact: My e-mail inbox⁷ had received that I am the owner of about \$500 US Currency and RBI had authenticated it but money transfer is required only in my bank account number

and they sent details of lottery and contract which was unknown to me absolutely, not responded.

One mobile beep made a man millionaire overnight:⁸ A bank fulfilled the dream to be a millionaire although for the moment. The bank was sending plenty of SMS about eye popping daily transactions which run into crores. It was about a savings account and initially receiver dismissed it thinking it as a technological malfunction. He ultimately entered his cell phone number though by mistake but believing it true to gain crores. As again and again the same SMS was receiving by him, he thought about the helpline of the Punjab National Bank(PNB) and SMS kept pouring in. He tried to convince that non in his family ever had any PNB account in India. However, the *caller politely promised to rectify it but it was not done*. Again the SMS was coming in his inbox referring a transaction in the PNB A/c No. xxxxxxxx00002162. The original account holder withdrawn few thousands by using non-PNB ATM on 12th and 22nd of January, 2016 at 2pm and balance was showing Rs.44.70 crore and then Rs4.7 crore. So, the journalist believed that his phone number was used to trigger alerts of low-value ATM transactions. So, it was clear that *for the same number two cell phones were linked*. One was linked to the original account holder for the high value over the counter transactions and another is his phone. Then he *lodged a formal complaint with the cybercrime cell at Howrah Police Commissioner where the fact was exposed* that on July 2014 the same SIM card with same number was purchased from different mobile service providers though it was inactive. After this complaint his phone unfortunately stopped receiving such SMS to be a multi-millionaire. The police investigation is going on. It *creates fear within bank account holders that anytime and anywhere cyber fraud or cheating may occur in this way due to careless conduct of service providers*. This case should come under sections 43, 43A, 65, 66, 66A, 85 of the IT Act.

Facebook:⁹ Through face-book by writing 'Fire' one could access several name with contact numbers and addresses of the *online sellers and buyers of the guns*. If one could click on 'buy' the product would reach at the residential address of the buyers. Legal and illegal sellers were running such business online since last few years. In the month of January, 2016 the president of America issued the directions imposing restrictions on online gun selling and purchasing. For the purpose of social security several lawyers and social activists had communicated their agitation to the founder of face-book to stop such online dealings. The face-book founder named Mark Juckerberg tried to prevent and prohibit such online-illegal-dealings urgently due to huge social pressure especially from the USA and now it is under control. Even

advertisement about selling and buying guns online through face-book is prohibited which can prevent illegal access of various guns to society. However, in the year 2014 the same issue was raised against Face-book and this social network was identified as the World largest gun market.

Kolkata Police is using software named 'crimebabu'¹⁰ which contained the detail information about criminals except their photo identification. Therefore, Kolkata police will use new mobile application relating to criminals and their every activity. By capturing a photo of criminal it will show all contacts and activities. This App can contain e-records of about 51 categories of crimes with criminals.

The W.B. Govt. has emphasised on the protection of Online Consumers¹¹ in case of any fraud, cheating or related problems as issues are raising frequently but the sufferers cannot lodged the complaint before the traditional Consumer Forums for remedy due to jurisdictional riddles because such issues can be resolved within the jurisdiction of the Court where the concerned online agency is registered. Therefore, the State Government is perusing the issue to the Central Government to make the necessary changes in the upcoming amendment of the Law so that consumers can get remedies within the jurisdiction of the court where they reside or the place of their choice.

Online bank fraud again, woman duped of Rs 35,000:¹² Police asked anybody getting bank related calls should cross-check with bank officials about authenticity. It was a cybercrime case in early March, 2016 which came to light and the victim was a woman. The victim filed a complaint with police about online transfer of money. Police traced the suspected accused who called-up to get her to disclose information relating account with intention to transfer money fraudulently. It is under investigation.

The victim of another cybercrime of March, 2016 was 33-year-old Sayara Pathan of Pimple Nilakh who registered a complaint with Sangvi Police. Police traced Amankumar Gupta who was having a fictitious name as suspected that name used by the fraudster to avoid detection and evidence. The case was proceeded under section-420 cheating of the Indian Penal Code and sections 65, 66, 66A etc. of the IT Act as *cyber-cheating*. Sayara received phone call from a man on her cell phone last month who claimed himself a bank officer and asked her about details of ATM cards and her accounts with the State Bank of India and the Bank of Maharashtra. She shared the information with him and he allegedly misused it to withdraw Rs.34,890/ from her bank account without her consent through *illegal online transactions* on

March 16-17, 2016. Police suspected that Amankumar Gupta is not the real name of the fraudster.

In another incident a woman named Kalpana Mahajan of 53-years old resident of Akurdi was cheated of Rs.1.10 Lakh by online fraudsters who was not identified. The victim lodged a complaint at Nigdi police station. Police said that a man claiming himself a bank officer made phone call on her cell phone on March 8, 2016. He asked her about personal information and details of her bank account then he allegedly transferred such money from account online without her consent. It was cybercrime through illegal online transaction. So, people need to be aware about fraudulent phone calls and should avoid unwanted calls as well as sharing of personal details with third person offline and online too.

Judicial Decisions in India:

Syed Asifuddin and Ors. v. The State of AP. & Anr.:¹³ Tata Indicom(TI) employees were arrested for manipulation of the electronic 32-bit number (ESN) programmed into cell phones exclusively franchised to Reliance Infocomm(RI). The court held that it was a case of *tampering with computer source code* which is cybercrime under section-65 of the IT Act, 2000. RI launched a scheme under which a cell phone subscriber was given a digital handset worth Rs.10,500/- with services for 3-years with an initial payment of Rs.3350/- , monthly outflow of Rs.600/- with 1-year warranty and 3-years insurance on the handset *on condition* that handset was technologically locked so it would only work with RI services and on leaving its services they had to pay charges including true price of handset. After that few unknown persons contacted RI customers with an *offer to change to a lower priced* TI scheme and agreed that their phone would be technologically unlocked for which exclusive RI handsets could be used for the TI services. RI recognised the deal through some Tata employees and lodged a First Information Report (FIR) under the Indian Penal Code, the IT Act and the Copyright Act on the grounds of *cyber fraud, misdealing, piracy* etc. The Andhra Pradesh police raided some offices of TI and arrested few officials for reprogramming the RI handsets. Then the suspected accused approached the High Court requesting to quash the FIR on grounds that they did not violate provisions of those Law and contended that (i)subscriber can change any service provider, (ii)subscriber who wants to change from TI may take only handset and get service connected by other provider, (iii)handsets brought to TI by RI subscribers might be accommodated by providing separate connections and activated on principal assignment mobile (NAM₁ or NAM₂), (iv)a telephone handset was not a computer or computer system containing a computer programme, (v)*there is no Law in force requiring the maintenance*

of computer source code. The Court had wisely observed that (i)under section-2 of the IT Act any electronic, magnetic or optical device used for storage of information received through satellite, microwave or other communication media and the devices which are programmable and capable of retrieving any information by manipulations of electronic, magnetic or optical impulses is a computer which can be used as computer system in a computer network.(ii)The instructions or programme given to computer in a language known to the computer are not seen by the users of the computer/consumers of computer functions. This is known as source code in computer parlance. (iii)A person using a phone in one cell may be plugged to the central transmitter of the telecom provider which receive the signals and divert it to the relevant phones. (iv)When the person moves from one cell to another cell in the same city the Mobile Telephone Switching Office (MTSO) automatically transfers signals from one tower to another. (v)All cell phone service providers have special codes dedicated to them and these are intended to identify the phone, owner and the service provider. (vi)System Identification Code (SID) is a unique 5-digit number that is assigned to each carrier by the licensor. Cell phone operators are also required to obtain SID from the Government of India. SID is programmed into a phone when purchased a service plan and activated it. (vii)Electronic Serial Number (ESN) is a unique 32-bit number programmed into the phone when it is manufactured and it is a permanent. (viii)Mobile Identification Number (MIN) is a 10-digit number derived from cell phone number given to a subscriber which is programmed into a phone at the time of purchasing a service plan. (ix)By switched on the cell phone listens for a SID on the control channel. It is a special frequency used by the phone and base station to talk about call set-up, channel changing and the like. (x)If the phone cannot find any control channels it displays 'no service' message may be due to out of range. (xi)When it receives SID then it compares with the SID programmed into that phone and if these code numbers match it seems that it is communicating with home system. However, the phone can transmits registration request and MTSO which keeps track the location of phone as well as database. (xii)To match with the system provider every cell phone contains a circuit board known as the brain of the cell phone. It is a combination of several computer chips programmed to convert analog to digital, digital to analog conversion and translation of the outgoing audio as well as incoming signals. (xiii)So, it is a microprocessor similar to compact disk of a desktop computer and without the circuit board, cell phone instrument cannot function. (xiv)When a RI customer opted for its services then

the MIN and SID are programmed into the handset. If someone manipulates and alters ESN then the handsets exclusively used by them become usable by other service providers like TI.

The High Court decided that a cell phone is a computer as envisaged under the IT Act. ESN and SID come within the definition of 'computer source code' under section-65. When it is altered it will be treated as offence under section-65 as every service provider should maintain their own SID code and give a customer specific number to each instrument used to avail the services and it has evidential value. The Court also held that in section-65 the disjunctive word 'or' used in between the two phrases 'when the computer source code is required to be kept' and 'maintained by law for the time being in force' is significant for cell phone too.

Mr. Ashish Ahuja v. Snapdeal.Com Through Mr. Kunal:¹⁴ The issue was raised about online shopping and e-commerce competition for selling of various products like pen drives, hard disks, laptops etc before the Competition Commission of India. Respondents were Snapdeal.com and Indian sales office of SanDisk Corporation of the USA. Snapdeal.com is an online portal or marketplace which facilitates different sellers to sell their wares by showcasing their goods and services on portal charges as commission depending on the product group. It had tie-up with cargo/ logistic companies and they picked up the ordered consignment from the seller's place and delivered the goods or services at the buyer's address for a fee and the amount charged is credited to the sellers account depending on the payment cycle. SanDisk Corporation is engaged in business of manufacturing, distributing and selling of non-volatile memory drives or flash drive and storages devices of different capacities, SD cards, micro SD cards etc. However, Snapdeal had stopped the said facilities to SanDisk since 24.01.2014 through its online portal and after repeated attempts on 29.01.2014 received a call from Mr. Justine Fernandes about a list of M/s SanDisk India authorised online channel partners had been received by them and only these authorised partners could sell SanDisk items through its web portal. Subsequently, there was exchange of several emails between contracting parties stressing on products being sold on web portal obtained from open market and allowed to sell. However, Snapdeal had acknowledged about it on 10.02.2014 with requirement of a no objection certificate (NOC) from SanDisk and then Snapdeal became the compulsory and authorised dealer of SanDisk through an agreement. Thus, SanDisk was trying to stop Snapdeal.com to offer competitive products and even below price. Although Snapdeal.com assured about sell or supply of only SanDisk India products openly available in online-

market for use or reselling or whole-selling nevertheless they required NOC from SanDisk which implied that it would have to become an *authorised dealer* of SanDisk to be able to sell through the web portal. Meanwhile SanDisk had circulated in market a list of 4bonafide National Distributors to import and sell in India the products bearing their trademark and brand. Therefore, all products dealt with them obliged to be originated from those four authorised distributors and even SanDisk were not permitted to sale or provide warranty support, customer services or any other services for products as it would be contrary to the business practice of SanDisk. However, there were parallel importers of SanDisk who were not enabled to hold or support parallel importation. Thus, SanDisk was monopolising the market and was influencing others to sell the products offered only by its authorised dealers. Above 13 sellers, such as, M/s Softek Surya India Pvt. Ltd., M/s Storage M. VOI, M/s Highend Gadgets etc were selling SanDisk products that were not in their list. So, Snapdeal was allowing others to sell those products through its online portal. The Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the opposite parties and was ordered to be closed forthwith.

The Competition Commission of India observed that according to the report of the Commission in Indian the e-commerce place competitors such as FlipKart, Amazon, e-Bay, ShopClues, Yebhi, jungle.com, rediff.com, indiatimes.com etc. are part of the process of commercial market flourishes with several deals and discounts. SanDisk through circular had clarified the range of sales, warranty and services offered etc. which were limited to certain products brought by duly authorised distributors in India. The circular cannot be said as abuse of dominance rather it can be considered as the usual business practice. Snapdeal.com is the owner and manager of a web portal which enables sellers and buyers to communicate each other and it is not engaged in sale and purchase of storage devices. However, it enables online sellers who stock storage devices to sell through this web portal for stipulated commission. Therefore, Snapdeal.com cannot be said as main actor of online dealings and consequences.

eBay India Pvt. Ltd. (eBay) v. Sh. Ajay Kumar:¹⁵ This was an application filed for reviewing the judgment and order passed by this Commission in First Appeal. The opposition filed a complaint before the District Consumer Forum, Haridwar against appellant about purchase of 4GB Sd card from eBay but it was not supplied to him. Thereafter, he sent an e-mail to the company for refunding his amount. The company rejected request of refund of the price paid. The District Forum allowed the consumer complaint and awarded a sum of Rs.23,135/- as compensation to

the complainant. The eBay was aggrieved by the said order and preferred an appeal before the Commission bearing First Appeal No.-213-2013. The Commission reduced the amount of compensation to Rs.5,000/-. Then eBay had filed application for review of the judgment and order dated 06.02.2014 passed by the Commission on the ground that the said *judgment had been obtained by playing fraud by other party*. The applicant contended that cost amount was returned to the complainant earlier. The opposite parties contention was that the applicant could not produce evidence about the time of return of amount of Rs.135/- and any evidence of refund to the complainant. In absence of any evidence it cannot be said by imagination that the impugned judgment and order dated 06.02.2014 was procured by the opposite party by playing fraud upon the Commission. Two cases of the Hon'ble National Commission (NC) were referred in this case.

In *B. Srinivasa Rao v. Tafe Access Ltd. and another*;¹⁶ the NC *specifically observed that even the order passed by the District Forum or the State Commission dismissing complaint or appeal for want of prosecution, cannot be recalled or restored or reviewed....restoration of appeal by the State Commission in that case, was misconceived*. The NC has been provided the power to review the order under sections-22(2) and 22-A of the Consumer Protection Act, 1986, but neither the District Forum, nor the State Commission has been vested with any such power. The Hon'ble NC in *Nitin Mehta and others v. Prashant Kumar Vijay Kumar Jain*;¹⁷ observed that there is no provision under the Act for recall or review of any order passed by the District Forum or the State Commission. In view of the abovementioned judgments, the Commission considered that application for review of the order was passed on merit and devoid of any force and dismissed application without cost.

M/SFlowil International v.M/S Digital Gadgets and ors.¹⁸ The plaintiffs filed this application against Amazon.com, Homeshop 18.com, eBay India Private Limited, Naaptol.com and Wespro Digital Pvt. Ltd. that defendants were the retail websites accessible in India and the SYLVANIA branded products could be purchased by Indian customers by logging on to the websites and such sale by defendants of SYLVANIA branded products through their website was not allowed because India is the exclusive territory wherein the plaintiffs were the owners of the mark SYLVANIA. The defendants had not obtained license or authorisation or consent from the plaintiffs to sell SYLVANIA branded products. The defendants Wespro Digital Pvt. Ltd. had stated that the products purchased by the attorneys of the plaintiffs through www.naaptol.com were being sold in India by the said Wespro Digital Pvt. Ltd. On 17th July, 2012 notice

of this application was issued to the defendants and on 21st September, 2012 order was about to be issued to defendants. On 6th March, 2013, defendant Amazon.com contended that the application against Amazon.com was contrary to the dicta of the Division Bench of this Court in *Kapil Wadhwa v. Samsung Electronics Co. Ltd.*¹⁹ Replies of the defendants Amazon.com, Homeshop and Naaptol.com to the application were filed with eBay India Private Limited, Naaptol.com and Wespro Digital Pvt. Ltd. that defendants respective websites merely provide an online platform to enable the vendors to display for sale their respective goods and allow purchasers of said goods to make transaction of sale through said website/portal. They are only intermediary as per section-2(w) and under section-79 of the IT Act, 2000. They are not liable for any third party information posted read with the IT (Intermediaries Guidelines) Rules 2011. They could take-away or remove objectionable information and restrict future posting of it on their respective website/portals and could take action within 36 hours only on receipt of objection by interested party otherwise it would not be possible for them to prevent any objectionable information being posted on their websites and they cannot control it. On objection of plaintiffs to products bearing mark/name SYLVANIA posted for sale on their respective portals/website immediately asked the vendors who had posted said information to remove and were removed according to clarification dated 18th March, 2013 issued by the Department of Electronics and Information Technology, Government of India, within one month. They had stopped such sale and not dealing in said products on their own. Thus the allegations against Homeshop 18.Com, eBay India Private Ltd., Naaptol.com, Wespro Digital Pvt. Ltd. and other defendants was dismissed by the High Court with direction that defendants shall remain bound by their statements/undertakings as per Law in India. yet, plaintiffs was entitled to institute separate proceedings against defendants on separate cause of action, if any.

Tamil Nadu Organic Pvt.Ltd., Director S.Anandaraj and Ors.v.State Bank of India:²⁰ The issues involved in all the writ petitions were similar in nature so a common order was passed. Petitioners had submitted that the *impugned e-auction sale notices issued by authorised officers of respondent banks concerned are arbitrary, illegal and void as the terms and conditions prescribed in e-auction sale notices in question were not in tune with the Security Interest (Enforcement) Rules, 2002*. The terms of e-auction were including requirement of digital signatures and that respondent banks and the authorities concerned cannot be held liable for discrepancies or irregularities, if any that may occur

during the process of e-auction sales. The digital signature is defined in section-2(p) and section-2(q) of IT Act states that a Digital Signature Certificate means a Certificate issued under section-35(4) of the Act. Section-3 of the Act provides the procedure for the authentication of electronic records. Section-1(4) of the Act states that nothing in the Act shall apply to the documents or transactions specified in the First Schedule provided that the Central Government may by notification in the Official Gazette amend the First Schedule by way of addition or deletion of entries therein. The First Schedule of the Act mentioned the documents or transactions to which the Act shall not apply. In item-5 of the First Schedule specified that the Act shall not apply to any contract for sale or conveyance of an immovable property or any interest in such property. There is no specific provision permitting respondents to bring the mortgaged properties for sale, by way of e-auction. Section 10-A of the IT Act relates to the validity of the contracts formed through electronic means. Thus, it could be seen that contractual liabilities could arise by way of electronic way and enforced by law. There is no specific provision of Law prohibiting secured assets sale by e-auction. Authentications of e-records are usually made by the affixing of digital signatures. The Act permits the use of e-records and e-signatures in the working of the government departments and agencies. The contention of petitioners that section 1(4), read with item-5 of the First Schedule of the Act prohibits contracts for sale and conveyance of immovable properties and interests therein would not apply to e-auction sale process followed by respondents as the conclusion of the contracts were done manually. The issue was raised that Bank as service provider cannot be acknowledged as intermediary under section-2(w) of the Act. The Act cannot be read to restrict e-auction sale as it is a statute enacted to enable use of e-commerce including e-auctions. The intending bidders and purchasers of properties concerned did not come challenging e-auction sale process followed by respondents. However, owners of the properties and guarantors challenged it. In **Ashoka Smokeless Coal India (P) Ltd v. Union of India and others**,²¹ the Apex Court discussed about advantages or disadvantages of E-Auction and held that as e-auction was being held on-line no other bidder was aware of contents of bids submitted by bidders. No eligibility criterion was fixed, any person, including traders could participate in the bid in e-auction. As highest price and quantity were only factors for sale and allocation of coal to a bidder e-auction resulted in traders buying large quantities of coal and manufacturers were in hard coke, smokeless coal and small units had to buy coal at prohibitive rates from traders. Thus, the method of allocation of coal to a

bidder by e- auction was inequitable, irrational and fortuitous. However, the Court said the decision will not be treated as precedent in subsequent cases as it had been stated that said decision cannot be quoted as a precedent.

However, the Supreme Court had taken note of the advantages in conducting e-auctions of said decision. So, it would not be open to petitioners to contend that e-auction procedures followed by respondents were unauthorised and illegal, even though there may not be any specific provision in the Law for conducting e-auctions and to sell secured assets.

Thus, different arguments were raised by petitioners stating e-auction procedures of respondents including authorised officers are arbitrary, illegal and unsustainable in eye of law. The respondents contended that e-auction sale process had been followed with main object of eliminating cartels and syndicates causing heavy financial loss to owners of properties. The banks had followed procedures contemplated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and the Security Interest (Enforcement) Rules, 2002, during e-auction sale process. It is also noted that there is no specific prohibition restraining respondents from using e-auction sale process for secured assets with the bonafide intention of obtaining best possible price. The petitioners have not placed any materials before this court to substantiate their claim that e-auction sale procedures would be a hindrance to intending purchasers in participating freely in auction process. E-auction sale procedures are user friendly as purchasers could utilise services of technically qualified persons or agencies in making their bids. It was not challenged by purchasers so it would go a long way in reducing unhealthy practices being followed by unions and syndicates. Even though specific procedures have not been prescribed making e-auction sale procedures mandatory but it was not arbitrary or invalid. The respondents were utilising services of government authorised providers for secured assets. The personal details of bidders were kept confidential. The final contract and conveyance of the properties were done manually. The secrecy was maintained relating to identity of purchasers. However, scientific knowledge and technology should be used in India like developed countries for improving the quality of life. The digital technology should be put to good use to accelerate economic growth. Change cannot be still or inactive it is live and vibrant for social progress. *Over the years, science and technology has grown in leaps and bounds. Advanced countries have put to use digital technology to enhance their efficiency in their varied endeavours. The need of the hour is to adopt such methods in functioning of various authorities and entities in this*

country including instrumentalities of the state. The contemporary era is the age of Face book, You Tube and Twitter. Therefore, the Madras High Court dismissed the Writ Petitions with the observations and directions without cost on 20.2.2014.

Other cases referred at this juncture are significant for application of IT Act in the disputes relating to online-contract; as in State of Maharashtra v. Dr. Praful B. Desai,²² the Supreme Court had held that *video-conferencing is an advancement in science and technology* which permits one to see, hear and talk with someone far away with facilities as if present though on screen. As the parties were present when evidence was recorded by video-conferencing so evidence is being recorded in presence of the accused and would thus fully meet the requirements of section-273 Cr.P.C. Recording of such evidence would be as per procedure established by Law. In State of Punjab v. Amritsar Beverages Ltd,²³ the Supreme Court had held that IT was unknown during 1948, the Constitution is a living branch which should be interpreted considering different social circumstances to achieve balance between age-old rigid laws and advanced technology. The judiciary always responds to the need of changing scenario for development of technologies. Internet and other information technologies brought the issues unforeseen by law.

Conclusion and suggestions: In commercial dealings the consideration is either money or valuable objects or documents. In the contemporary globalised and liberalised scenario the worldwide web is used through information technology to compete in global market and to achieve economic goal.

So, all agreements are Contracts if they are made by free consent of the parties competent to enter into contract for reasonable consideration and with lawful object and are not thereby expressly declared to be void. In commercial dealings the consideration is either money or valuable objects or documents. In the contemporary globalised and liberalised scenario the worldwide web is used through information technology to compete in global market and to achieve economic goal.

We should not be motivated or addicted by popping up messages relating to e-shopping, e-auction, e-booking, e-lottery, e-games etc. Whoever uses IT for contract, shopping, booking or regular business affairs to provide services or for personal use must use electronic or digital signature in the e-record by using *asymmetric crypto system* and *hash function* or e-signature to protect confidential and valuable information in cyberspace and to prevent misuse or abuse of information or data.

There are several utility of digital as well as electronic signature in online contract which are also rationale for application of the same in the e-commerce for

Business-to-Business and Business-to-Consumers and other systems. These are as follows:

Evidential significance: The most significant utility of signature is that it has great evidential value and when the digital signature or e-signature is affixed on e-documents, it gives addressee the grounds to believe that document was created by identified originator, unaltered or unmodified by third person during transaction. Therefore, it makes the e-documentation authenticate.

Proof of Document: The parties can prove legality of assured document. Thus, it has importance for delivery of goods or providing of services for which parties made online contract. It helps to settle disputes and legal remedies may also be claimed accordingly by the aggrieved party.

Authentication of document: If the performance of e-business and online contract requires approval by using or affixing of digital or e-signature as part of terms it will be legally approved and authenticated on the execution of the digital or e-signature only. So, it plays very significant role.

Efficiency: Digital signature or e-signature makes a document much efficient to originators and recipients to believe conclusiveness of document to perform immediately according terms and conditions. As affixing signature only requires use of several clicks and incase of digital signature hash function, it is time saving too.

Integrity: Both the parties of online contract are sure about integrity of message as any alteration to document after signature will invalidate the signature itself.

Every net users should use whole security system software and use it, such as, firewall system, installing antivirus, e.g., Quick Heal, K7, Clean Master, 360 Security, AVG Free 2011, Avast!, Avira, Kaspersky, McAfee, Norton, Bitdefender, Microsoft Security Essentials(MSE), Comodo Internet Security (CIS), Kingsoft and other antivirus Apps and will come in future for prevention of cybercrimes and contraventions.

With increasing e-business online contract became focus of duplicate and theft goods and services in the borderless or cross-border world as wrongdoer can reach to huge number of buyers at a glance. Therefore, there is need of separate Law on e-commerce and regulations with actual implementations to regulate, prevent and control misrepresentation, delivery of duplicate goods or providing of improper services, online fraud, online cheating in the system of e-business. The Consumer Forum is unable to control the misuse and abuse of e-commerce due to lack specific legal provisions, non-traceable online sellers, non-traceable business places etc. Online medical and other insurances, investments are increasing in India and World-Wide

which require definite Law to prevent and control of damage to the online contracting parties. Most essential is the public awareness and aggrieved

person who have been cheated or victim of online violations must inform appropriate authority, record it and file suit for remedies and punishments.

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