

Cyber Law in India

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In India, cyber laws are contained in the Information Technology Act, 2000 (“IT Act”) which came into force on October 17, 2000. The main purpose of the Act is to provide legal recognition to electronic commerce and to facilitate filing of electronic records with the Government.

The following Act, Rules and Regulations are covered under cyber laws:

1. Information Technology Act,2000
2. Information Technology(Certifying Authorities) Rules,2000
3. Information Technology(Security Procedure) Rules.2004
4. Information Technology (Certifying Authority) Regulations.2001

NEED FOR CYBER LAW IN INDIA

Firstly, India has an extremely detailed and well-defined legal system in place. Numerous laws have been enacted and implemented and the foremost amongst them is The Constitution of India, We have inter alia, amongst others, the Indian Penal Code, the Indian Evidence Act 1872, the Banker’s Book Evidence Act, 1891 and the Reserve Bank of India Act, 1934, the Companies Act, and so on. However the arrival of Internet signaled the beginning of the rise of new and complex legal issues. It may be pertinent to mention that all the existing laws in place in India were enacted way back keeping in mind the relevant political, social, economic, and cultural scenario of that relevant time. Nobody then could really visualize about the Internet. Despite the brilliant acumen of our master draftsmen, the requirements of cyberspace could hardly ever be anticipated. As such, the coming of the Internet led to the emergence of numerous ticklish legal issues and problems which necessitated the enactment of Cyber laws.

Secondly, the existing laws of India, even with the most benevolent and liberal interpretation , could not be interpreted in the light of the emerging cyberspace, to include all aspects relating to different activities in cyberspace, to include all aspects relating to different activities in cyberspace. In fact, the practical experience and the wisdom of judgment found that it shall not be without major perils and pitfalls, if the existing laws were to be interpreted in the scenario of emerging cyberspace, without enacting new cyber laws. Hence, the need for enactment of relevant cyber laws.

Thirdly, none of the existing laws gave any legal validity or sanction to the activities in Cyberspace. For example, the Net is used by a large majority of users for email. Yet till today, email is not “legal” in our country. There is no law in the country, which gives legal validity, and sanction to email. Courts and judiciary in our country have been reluctant to grant judicial recognition to the legality of email in the absence of any specific law having been enacted by the Parliament. As such the need has arisen for Cyber law.

Fourthly, Internet requires an enabling and supportive legal infrastructure in tune with the times. This legal infrastructure can only be given by the enactment of the relevant Cyber laws as the traditional laws have failed to grant the same. E-commerce, the biggest future of Internet, can only be possible if necessary legal infrastructure compliments the same to enable its vibrant growth.

All these and other varied considerations created a conducive atmosphere for the need for enacting relevant cyber laws in India.

HISTORY OF CYBER LAW IN INDIA

The information Technology Act is an outcome of the resolution dated 30th January 1997 of the General Assembly of the United Nations, which adopted the Model Law on Electronic Commerce, adopted the Model Law on Electronic Commerce on International Trade Law. This resolution recommended, inter alia, that all states give favourable consideration to the said Model Law while revising enacting new law, so that uniformity may be observed in the laws, of the various cyber-nations, applicable to alternatives to paper based methods of communication and storage of information.

The Department of Electronic (DoE) in July 1998 drafted the bill. However, it could only be introduced in the House on December 16, 1999 (after a gap of almost one and a half years) when the new Commerce Ministry making

suggestions related to e-commerce and matters pertaining to World Trade Organizations (WTO) obligations. The ministry of Law and Company Affairs then vetted this joint draft.

After its introduction in the house, the bill was referred to the 42- member Parliamentary Standing Committee following demands from the Members. The Standing Committee made several suggestions to be incorporated into the bill. However, only those suggestions that were approved by the Ministry of Information Technology were incorporated. One of the suggestions that were highly debated upon was that a cyber café owner must maintain a register to record the names and addresses of all people visiting his café and also a list of the websites that they surfed. This suggestion was made as an attempt to curb cyber crime and to facilitate speedy locating of a cyber criminal. However, at the same time it was ridiculed, as it would invade upon a net surfer's privacy and would not be economically viable. Finally, this suggestion was dropped by the IT Ministry in its final draft.

The Union Cabinet approved the bill on May 13, 2000 and on May 17, 2000; both the houses of the Indian Parliament passed the information Technology Bill. The Bill received the assent of the President on 9th June 2000 and came to be known as the Information Technology Act, 2000. The Act came into force on 17th October 2000.

With the passage of time, as technology developed further and new methods of committing crime using Internet & computers surfaced, the need was felt to amend the IT Act, 2000 to insert new kinds of cyber offences and plug in other loopholes that posed hurdles in the effective enforcement of the IT Act, 2000.

This led to the passage of the Information Technology (Amendment) Act, 2008 which was made effective from 27 October 2009. The IT (Amendment) Act, 2008 has brought marked changes in the IT Act, 2000 on several counts.

INFORMATION TECHNOLOGY ACT, 2000

Information Technology Act, 2000 is India's mother legislation regulating the use of computers computer systems and computer networks as also data and information in the electronic format. This legislation has touched varied aspects pertaining to electronic format. This legislation has touched varied aspects pertaining to electronic authentication, digital (electronic) signatures, cyber-crimes and liability of networks service providers.

The Preamble to the Act states that it aims at providing legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper – based methods of communications and storage of information and aims at facilitating electronic filing of documents with the Government agencies.

This Act was amended by Information Technology Amendment Bill, 2008 which was passed in Lok Sabha on 22nd December, 2008 and Rajya Sabha on 23rd December, 2008. It received the assent of the President on 5th February 2009 and was notified with effect from 27/10/2009.

The IT Act of 2000 was developed to promote the IT industry, regulate e- commerce, facilitate e-governance and prevent cybercrime. The Act also sought to foster security practices within India that would serve the country in a global context. The Amendment was created to address issues that the original bill failed to cover and to accommodate further development of IT and related security concerns since the original law was passed.

The IT Act, 2000 consists of 90 sections spread over 13 chapters (Section 91, 92, 93, and 94 of the principal Act were omitted by the Information Technology (Amendment) Act 2008 and has 2 schedules.[Schedules III and IV were omitted by the Information Technology (Amendment) Act 2008].

Salient features of the Information Technology (Amendment) Act,2008

1. The term, digital signature has been replaced with electronic signature to make the act more technology neutral.
2. A new section has been inserted to define communication device to mean cellphones personal digital assistance or combinations of both or any other device used to communicate, send or transmit any text vedio , audio or image.
3. A new section has been added to define cyber cafe as any facility from where the access to the internet is offered by any person in the ordinary course of business to the members of the public.
4. A new definition has been inserted for intermediary.
5. A new section 10A has been inserted to the effect that contacts concluded electronically shall not be demand to be unenforceable solely on the ground that electronic form or means was used.

6. The damages of Rs. One Crore prescribed under section 43 of the earlier Act of 2000 for damage to computer , computer systems etc. has been deleted and the relevant parts of the section has been substituted by the words, ‘he shall be liable to pay damages by way of compensation to the person so affected’ .

7. A new section 43 A has been inserted to protect sensitive personal data or information possessed dealt or handled by a baby corporate in a computer resource which such body corporate owns controls or operates . If such body corporate is negligent in implementing and maintaining responsible security practices and procedure and thereby cause wrongful lose or wrongful gain to any person it shall be liable to pay damages by way of compensation to the persons so affected.

8. Section 66 A to 66 F has been added to section 66 prescribing punishment for offences such as obscene electronic message transmissions, identity theft, cheating by information computer resource, violation of privacy and cyber terrorism.

9. Section 67 of the IT Act 2000 has been omitted to reduce the term of imprisonment of publishing or transmitting obscene material in electronic from to 3 years to 5 years and incase fine thereof from R.s 100,000 to R.s 500,000. Section 67A to 67 C have also been inserted. While Sections 67A and B deals with penal provisions respect of offences of publishing or transmitting of material containing sexually explicit act and child pornography in electronic form, Section 67C deals with the obligation of an intermediary to preserve and retain such information as may be specified for such duration and in such manner and format as the central government may prescribe.

10. In view of the increasing threat of terrorism in the country, the new amendments includes an amended section 69 giving power to the state to issue directions for interception or monitoring of decryption of any information through any computer resource. Further, sections 69 A and B two new sections, grant power to the state to issue directions for blocking for public access of any information through any computer resource and to authorize to monitor and collect traffic data or information through any computer resource for cyber security.

11. Section 79 of the Act which exempted intermediaries has been modifies to the effect that an intermediary shall not be liable for any third party information data or communication link made available or hosted by him if; (a) The function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporary stored or hosted;(b) The intermediary does not initiate the transmission or select the receiver of the transmission and select or modify the information contained in the transmission and select or modify the information contained in the transmission and select or modify the information contained in the transmission ;(c)The intermediary observes due diligence while discharging his duties. However, section 79 will not apply to an intermediary if the intermediary has conspired or abetted or aided or induced whether by threats or promise or otherwise in the commission of the unlawful act information, data or communication link residing in or connected to a computer resource controlled by it is being used to commit an unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

12. A proviso has been added to Section 81 which states that the provisions of the Act shall have overriding effect. The proviso states that nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957.

Rules notified under the Information Technology Act,2000

- A. The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011
- B. The Information Technology (Electronic Service Delivery) Rules, 2011
- C. The Information Technology (Intermediaries guidelines) Rules 2011
- D. The Information Technology (Guidelines for cyber cafe) Rules 2011
- E. The Cyber Appellate Tribunal (Salary, Allowance and other terms and conditions of service of Chairperson and Members) Rules 2009
- F. The cyber Appellate Tribunal (Procedure for investigation of Misbehavior or Incapacity of Chairperson and members) Rules 2009
- G. G) The Information Technology (Procedure and safeguards for Blocking for Access of Information by Public) 2009
- H. The Information Technology (Procedure and Safeguards for interception, monitoring and decryption of Information) Rules 2009
- I. The Information Technology (Procedure and safeguards for monitoring and collecting Traffic Data or Information) Rule 2009
- J. The Information Technology (Use of Electronic Records and digital signatures) Rules 2004
- K. The Information Technology (Security Procedure) 2004

- L. The Information Technology (Other Standards) Rules, 2003
- M. The Information Technology (Certifying Authority) Regulations, 2001
- N. Information Technology (Certifying Authorities) Rules, 2000

Overview of the other laws amended by the IT Act, 2000

The Indian Penal Code of 1860 and the Indian Evidence Act of 1872 was amended by the IT Act of 2000 to keep in tune with the technological changes that were rising rapidly.

A. Indian Penal Code, 1860

Amendment related to IPC were contained in Sec.91 and the First Schedule of the IT Act, 2000 Pursuant to the enactment of the Information Technology (amendment) Act, 2008 Sec.91 was deleted and the provisions with regard to Indian Penal Code were mentioned in Part III of the amendment Act.

The amendments made to the Indian Penal Code are as follows-

1) Amendments to Sec 4-

In section 4, - i) after clause (2), the following clause shall be inserted namely: - (3) any person in any place without and beyond India committing offence targeting a computer resource located in India ii) for the Explanation, the following Explanation shall be substituted, namely:-(a) the word "offence" includes every act committed outside India which, if committed in India would be punishable under this code. (b) the expression "computer resource" shall have the meaning assigned to it clause (k) of subsection (1) of section 2 of the Information Technology Act, 2000.

2) Amendment of Sec. 40-

In clause (2), after the figure "117", the figure "118, 119 and 120" shall be inserted.

3) Amendment of Sec .118-

In section 118, for the words "voluntarily conceals, by any act or illegal omission, the existence of a design", the words "voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design" shall be substituted.

4) Amendment of Sec .119-

In Section 119, for the words "voluntarily conceals, by any act or illegal omission, the existence of a design", the words "voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design" shall be substituted.

5) Amendment of Sec.464-

In section 464, for the words "digital signature" wherever they occur, the words "electronic signature" shall be substituted.

B. Indian evidence act, 1872

Amendments related to the evidence Act were contained in Sec.92 and the Second Schedule of the Act, 2000. Pursuant to the enactment of the Information Technology (amendments) Act, 2008, Sec.92 was deleted and the provisions with regard to the Indian Evidence Act were mentioned in Part IV of the amendment Act.

1) Amendments of Sec. 3-

In section 3 relating to interpretation clause, in the paragraph appearing at the end, for the words "digital signature" and "Digital Signature Certificate", the words "Electronic Signature" and "Electronic Signature Certificate" shall be respectively substituted.

2) Insertion of new Sec.45A- Opinion of Examiner of Electronic evidence-

45A : When in a proceeding, the Court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner Evidence referred to in section 79 A of the Information Technology Act, 2000, is a relevant fact. Explanation: For the purpose purposes of this section, an Examiner of Electronic Evidence shall be an expert

3) Amendment of Sec .47 A-

In section 47A, - (i) for the words "digital signature", the words "electronic signature" shall be substituted; (ii) for the words "Digital Signature Certificate", the words "Electronic Signature Certificate" shall be substituted.

4) Amendment of Sec.67A-

In section 67 A, - for the words "digital signature", the words "electronic signature" shall be substituted.

5) Amendment of Sec.85A-

In section 85A, for the words “digital signature”, wherever they occur, the words “electronic signature” shall be substituted.

6) Amendment of Sec.85B-

In section 85 B, for the words “Digital Signature”, wherever they occur, and the words “electronic signature” shall be substituted.

7) Amendment of Sec.85C-

In section 85c, for the words “Digital Signature Certificate”, the words “Electronic Signature Certificate” shall be substituted.

8) Amendment of Sec.90-

In section 90A, the words “digital signature”, at both places where they occur, the words “electronic signature” shall be substituted.

National Policy on Information Technology 2012

The Union Cabinet has recently in September 2012, approved the National Policy on Information Technology 2012. The policy aims to leverage Information and Communication Technology (ICT) to address the country’s economic and development challenges.

The vision of the Policy is “To strengthen and enhance India’s position as the Global IT hub and to use IT and cyber space as an engine for rapid, inclusive and substantial growth in the national economy”. The policy envisages among other objectives, to increase revenues of IT and ITES Industry from 100 Billion USD at present to 300 Billion USD by 2020 and expand exports from 69 Billion USD at present to 200 Billion USD by 2020. It also aims to create a pool of 10 million additional skilled manpower in ICT.

The thrust areas of the policy include:

1. To increase revenues of IT and ITES (Information Technology Enabled Services) Industry from 100 Billion USD currently to 300 Billion USD by 2020 and expand exports from 69 Billion USD currently to 200 Billion USD by 2020.
2. To gain significant global market – share in emerging technologies and services.
3. To promote innovative and R&D in cutting edge technologies and development of applications and solutions in areas like localization, location based services, mobile value added services, cloud Computing, social Media and Utility models.
4. To encourage adoption of ICT’s in key economic and strategic sectors to improve their competitiveness and productivity.
5. To provide fiscal benefits to SMEs and Startups for adoption of IT in value creation.
6. To create a pool of 10 million additional skilled manpower in ICT..
7. To make at least one individual in every household e- literate.
8. To provide for mandatory delivery of and affordable access to all public services in electronic mode.
9. To enhance transparency, accountability, efficiency, reliability and decentralization in Government and in particular, in delivery of public services.
10. To leverage ICT for key Social Sector initiatives like Education, Health, Rural Development and Financial Services to promote equity and quality.
11. To make India the global hub for development of language technologies, to encourage and facilitate development of content accessible in all Indian languages and thereby help bridge divide.
12. To enable access of content and ICT applications by differently-abled people to foster inclusive development.
13. To leverage ICT for expanding the workforce and enabling life- long learning.
14. To strengthen the Regulatory and Security Framework for ensuring a secure and legally compliant Cyberspace ecosystem.
15. To adopt Open standards and promote open source and open technologies. The policy has however not yet been notified in the Official Gazette