



 **CYBER LAW
SUMMARY ON IT ACT 2000 V/S 2008**



Hey! Friends, Like any other ACT, one has to divide it into two parts for understanding it. One is rule & logic for which its made & second part is procedural method of ACT. e.g. Income Tax Act. Starting part is about income tax, what it is, its rules & logic and latter is procedural part of implementation, penal, disputes, tribunal, appointment of officers, audit, powers, rule for submitting information in various forms etc...

So in same wave length, if we see Information Technology Act. 1st part is various type of technology, its definition, process, etc [its like what we learned in earlier chapters] and second part is like any other ACT procedural part – audit, power, rules, appointment of officers, penal, disputes, etc..

So, experienced Golden saying “You know many thing, but you do not know, that you know many thing”

Any amendment in any Act is normally for clarification, adding new logics, removal of loop-holes, bringing more discipline, more crime/mis-conduct under penal net, etc.... if read in this manner – it shall be easy.... with this background lets.. start.

This Act was amended by Information Technology Amendment Bill 2006, passed in Loksabha on Dec 22nd and in Rajyasbha on Dec 23rd of 2008. The then Hon’ble Minister of Communications & IT, Mr. Dayanidhi Maran discussed the statement of Objects and Reasons, which are given as follows :

Objectives :-

- With ↑ in e-gov., e-com–protection of personal data, critical information etc.-required harmonization in Act.
- Rapid ↑ in computer & internet use – ↑ in diff type of crime. - so to include penal provisions for same in ITA, IPC, the Indian Evidence Act and the Code of Criminal Procedure to prevent such crimes.
- The United Nations Commission on International Trade Law (UNCITRAL) in the year 2001 adopted the Model Law on Electronic Signatures.
 - *Since the digital signatures are linked to a specific technology, Hence to provide for alternate technology of electronic signatures for bringing harmonization with the said Model Law.*
- The service providers may be authorized by the CG or the SG to set up, maintain and upgrade the computerized facilities and also collect, retain appropriate service charges for providing such services at such scale as may be specified by the CG or the SG.

In simple words :



- To harmonize Act - with increase in e-governance.
- To bring various penal to various crime & accordingly harmonize other law too.
- Harmonization with Model Law & recognize - alternate technology to DS.
- Rules for Service providers.

Various Differences :-

- U/s.1(4) list of excluded documents removed. - However, indicated that Exception will be indicated in First Schedule, any add / del will be through notification from Gazette office & such shall be placed before each House of Parliament [for procedural simplification].
- Accordingly to objectives – Various new definition added / modified to widen scope
 - [Added]:- 2(ha) "Communication Device", 2 (na) "Cyber Cafe", 2(nb) "Cyber Security", 2(ta) "Electronic Signature", 2(tb) "Electronic Signature Certificate" 2(ua) "Indian Computer Emergency Response Team"
 - [Modified]:- Sec 2(j) “Computer Network”, Sec. 2(k) “computer resource” , 2(v) "Information" ,2(w) "Intermediary"
- Since introduction of Electronic Signatures – Various section have been modified from replacing word “Digital Signatures” to Electronic Signatures & similarly Consequential Changes with introduction of Electronic Signatures.
- Accordingly to objective Various new section added :-
 - Sec.3A - For Electronic Signatures.
 - Sec. 6A - introduced to provide for appointment of Service Providers in e-Governance services “Delivery of Services by Service Provider”
 - Sec. 7A “Audit of Electronic documents”
 - Sec. 10 A specifies that contract formation is possible with offer and acceptance being in electronic form.
 - Sec 40A “Duties of subscriber of Electronic Signature Certificate”
- Chapter IX rename “penalties and adjudication” to “penalties, compensation & adjudication” & compensation limits is been removed.
- Sec.43 A included for "Data Protection" need.-specifies liability for a body corporate handling sensitive data,

- introduces concept of "reasonable security practices" and sensitive personal data. No limit for compensation
- Sec.46 The powers of the Adjudicator limited for claims upto Rs.5 crores. Civil Court's authority introduced for claims beyond Rs 5 crore - Significant Change that brings Civil Courts below the High Court into the Cyber Related disputes for the first time.
- 48 rename of chapter X "Cyber Regulations Appellate Tribunal" to "Cyber Appellate Tribunal".
- Accordingly - complete change in provision 49 to 52 – also new section added 52 A B C & D.
- To penalized various modified / added new section like Sec 66 A,B,C,D,E & F, Sec 67 A,B & C.
 - 66A: Sending offensive Messages
 - 66B: Receiving a Stolen Computer Resource
 - 66C: Identity Theft
 - 66D: Cheating by personation
 - 66E: Violation of Privacy
 - 66F: Cyber Terrorism
 - 67A Sexually Explicit Act"
 - 67B Child Pornography with stringent punishment.
 - 67C: Intermediaries to preserve and retain certain records for a stated period
- 69A: New Section introduced to enable blocking of websites.
- 69B: New section that provides powers for monitoring and collecting traffic data etc
- 70A: New Section added to define National Nodal Agency for Critical Information Infrastructure protection .
- 70B: Indian Computer Emergency Response Team to be the nodal agency for incident response.
- 72A: New Section introduced for Data Protection purpose.
- 77A; New Section introduced to provide for Compounding of offences with punishment upto 3 years.
- 77B: New Section introduced to consider all offences with 3 yrs imprisonment under the Act as "Cognizable" & bailable
- 78 - Power to investigate any cognizable offence vested with Inspectors instead of DSPs
- 79 A: New Section introduced to provide for the Government to designate any government body as an Examiner of Electronic Evidence.
- 80 : The powers earlier available to DSP is now made available to Inspectors
- 81 : Amended to keep the primacy of Copyright and Patent acts above ITA 2000.
- 84 A: New Section introduced to enable the Government to prescribe encryption methods.
- 84 B: New Section introduced to make "abatement" punishable as the offence itself.
- 84 C: New Section introduced to make an "attempt to commit an offence" punishable with half of the punishment meant for the offence.
- 87 - Consequential Changes made. "Power of CG to make rules:"
- 91-94 Omitted
- Schedule 3rd & 4th to Act is also Omitted.

Various other Act ammended were :-

* The Indian Penal Code, The Indian Evidence Act, 1872.

In simple words :-

- Exception to Act – listed in First schedule – for procedural simplification
- New definition added to meet objectives
- For Electronic Signatures from DS – Various section are amended / added.
- For Service providers – new section added.
- For dispute procedural changed.
- New Penal provision for punishing new crimes.
- Consideration to compensation is also been given.
- Powers transferred from DSP to Inspectors in various section.
- Consequential changes in power of various authorities given & for procedural simplification.



*** *in spirit* – Act has widen the scope, more clarification, more punishable rules for crime, and making a safer growth of e-commerce & technology.***

DS = Digital Signatures

ES = Electronic Signatures

DSC = Digital Signatures certificate

ESC = Electronic Signatures Certificate.

NOG = notification in official gazette.

HP = House of parliament

CG = Central Government.

SG = State Government.

The sections are introduced as follows:-**Digital Signature and Electronic Signature [Chapter-II]**

Sec. No.	Description
3	Authentication of Electronic Records – mainly via DS
3A	Electronic Signature - other than DS, Signatures is under proper control, any chg detectable, method indicated in schedule 2 nd . Also any add / Del – N OG + HP – technique should be reliable.

Electronic Governance (Chapter III)

4	Provides for legal recognition of electronic records
5	Provides for legal recognition of Electronic signatures
6	Provides for filing of statutory documents in the electronic form. Use of Electronic Records and Electronic Signature in Government and its agencies
6A	Delivery of Services by Service Provider. CG authorize, by order, any service provider to set up, maintain and upgrade the computerized facilities & perform such other services as – NOG,
7	Provides for conditions of retaining electronic document for a certain period. Such as inaccessibility, original format & the identification of the source, date & time of dispatch & the destination reference.
7A	Audit of Documents etc – in Electronic form
8	Provides for any publications in the Electronic Gazette.
9	Sections 6, 7 and 8 Not to Confer Right to insist document should be accepted in electronic form
10	Power to make rules by CG in respect of Electronic Signature. To prescribe type of ES, its Manner, formate, affixing, control rules & other matters necessary to give legal effect of ES.
10A	Validity of contracts formed through electronic means

Attribution, Receipt & Dispatch of electronic records (Chapter IV)

11	Lays down how to identify the originator of the electronic record.
12	Provides for manners of Acknowledgements of electronic documents – if specified by originator then in that manner. If not specified then any conduct of receiver indicating same.
13	Lays down how to identify the place & time of dispatch & receipt of the originator of the electronic record.

Secure Electronic Records & Secure Digital Signatures (Chapter V)

14	Lays down conditions to qualify the security of the electronic record. [time frame]
15	Lays down conditions to qualify the security of the electronic signatures. - exclusive control of signatory & its created and store in manner prescribed.
16	Lays down the CG powers related to the security. -They do consider nature of tran, tech, cost, volume, etc.

Regulation of the Certifying Authorities (Chapter VII)

17	Lays down procedures of appointments of Controller [they discharge role given by CG]& other officers. - can also appoint Deputy Controllers and Assistant Controllers, other officers and employees [they discharge role given by controller] + qualification. T & C, etc.
18	Lays down the functions of the Controller & other officers.
19	Lays down the powers of the controller to recommend a foreign CA with permission from CG as per regulations.
20	Authorizes the Controller as a repository of the certificates of digital signatures. OMITTED
21	Lays down the procedures for issuing the license to issue the DSCs by the Controller & related other procedures, such as application, & fees. [fees <= 25,000/-
22	Lays down procedures to provide a certification practices statement to be accompanied by the application of the

	license & fees up to Rs. 25000/=
23	Lays down procedures to apply for the renewal of license & fees up to Rs. 5000/= & done 45 days before expiry.
24	Lays down procedures to grant or reject the application for the license. - opportunity to heard.
25	Lays down procedures to revoke the application for the license.- not exceed 10 days until given reasonable opportunity of showing cause against such suspension.
26	Lays down rules to suspension of the license.
27	Authorize the Controller to appoint the Assistant Controller & other officers. Power to Delegate.
28	Authorize the Controller to investigate the contraventions of the act, if any.
29	Authorize the Controller to access the computer & such systems on reasonable suspect to investigate the contraventions of the act, if any.
30-34	<i>Mentions the responsibilities & duties of the certifying authorities.</i>
30	Duties of Certifying Authorities
31	Certifying Authority to ensure compliance of the Act, etc.
32	Display of license – at conspicuous place of premises in which business is carried.
33	Surrender of license – if fail – imprisonment for 6 months and / or fine upto 10,000/-
34	Disclosure

Electronic Signature Certificate [Chapter VII]

35	procedure for issuance of a Digital Signature Certificate [fees <=25,000/-] - no rejection unless heard. As first provisio is been omitted – earlier condition for rejection are removed. Rejection in public interest.
36	Representations upon issuance of Digital Signature Certificate
37	Suspension of Digital Signature Certificate – not exceed 15 days unless heard.
38	Revocation of Digital Signature Certificate
39	Notice of suspension or revocation:

Duty of Subscriber [CHAPTER VIII]

40	Generating Key Pair
40A	Duties of subscriber of Electronic Signature Certificate
41	Acceptance of Digital Signature Certificate
42	Control of Private key

Penalties Compensation and Adjudication [CHAPTER IX]

43	Penalty and Compensation for damage to computer, computer system, etc.
43A	Compensation for failure to protect data
44	Penalty for failure to furnish information, return, etc. if any docs / information not provided penalty - 1.50 lacs for each failure. If any return / information required within regulation time / to maintain book or records – fine <=25000 per day of failure.
45	Residuary Penalty [compensation or penalty <=25k per day]
46	Power to adjudicate contraventions under act to office not below rank of Director of GOI or equivalent officer of SG. - restricted to claim upto 5 crores.
47	While deciding compensation A.O. will see amt. of unfair advantage & loss caused to any person as well as the respective nature of difficult.

Cyber Regulations Appellate Tribunal (Chapter X)

48	Establishment of one or more Cyber Appellate Tribunals (CAT)
49	Composition of CAT
50	Qualifications for appointment as Chairperson and Members of CAT
51	Term of office, conditions of service etc of Chairperson and Members
52	Provides for the salary & other perks of the Presiding officer of the CAT
52A	Powers of superintendence, direction, etc
52B	Distribution of Business among Benches
52C	Powers of the Chairperson to transfer cases
52D	Decision by majority
53	Appoints by CG during the vacancy.
54	Provides for procedures for resignation & removal of the presiding officer.
55-57	<i>Provide for procedures to appeal to CRAT & related other things.</i>
55	Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings
56	Staff of the CAT
57	Appeal to CAT
58-61	Describes the powers & procedures for the appellate tribunal in details
58	Procedure and Powers of the CAT
59	Right to legal representation
60	Limitation
61	Civil court not to have jurisdiction
62	Provide for procedures to appeal to High Court & related other rules.
63	Provide for procedures to compounding of contraventions & related other things.
64	Provide for procedures to recovery of penalty & related other things.

Offences (Chapter XI)

65	Provides for penalty against Tempering with computer source document. [Hacking with computer system]	3 yr imprisonment & / or 2 lakhs fine
66	Provides for penalty against hacking with computer systems	3 yr imprisonment & / or 5 lakhs fine
66A	Punishment for sending offensive messages through communication service, etc	3 yr imprisonment & / or fine
66B	Punishment for dishonestly receiving stolen computer resource or communication device	3 yr imprisonment & / or one lakhs fine
66C	Punishment for identity theft.	3 yr imprisonment & one lakhs fine
66D	Punishment for cheating by personation by using computer resource	--“--
66E	Punishment for violation of privacy	3 yr imprisonment & / or two lakhs fine
66F	Punishment for cyber terrorism	imprisonment extended for life

67	Provides for penalty against publishing of information, which is obscene in electronic form.	1 st - 3 yr imprisonment & / or 5 lakhs fine 2 nd - 5 yr imprisonment & / or 10 lakhs fine
67A	Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form	1 st - 5 yr imprisonment & 10 lakhs fine 2 nd - 7 yr imprisonment & 10 lakhs fine
67B	Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form	--“--
67C	Preservation and Retention of information by intermediaries	3 yr imprisonment & fine
68	Empowers the Controller to Certifying Agency of any action	3 yr imprisonment & / or 2 lakhs fine
69	Empowers the Controller to intercept any information transmitted to through any computer system or computer network.	7 yr imprisonment & fine
69A	Power to issue directions for blocking for public access of any information through any computer resource	--“--
69B	Power to authorize to monitor and collect traffic data or information through any computer resource for Cyber Security	3 yr imprisonment & fine
70	Empowers the Controller to declare any computer system or computer network as a protected system.	10 yr imprisonment & fine
70A	National nodal agency.	
70B	Indian Computer Emergency Response Team to serve as national agency for incident response	
71	Provides for penalty against misrepresentation.	2 yr imprisonment & / or 1 lakhs fine
72	Provides for penalty against breach of confidentiality.	--“--
72A	Punishment for Disclosure of information in breach of lawful contract	3 yr imprisonment & / or 5 lakhs fine
73	Provides for penalty against publishing false ESCs	2 yr imprisonment & / or 1 lakhs fine
74	Provides for penalty against fraudulent publications	--“--
75	Provides for penalty against offence committed outside India.	--“--
76	Provides for penalty against confiscation of any computer system, computer, floppies,CDs.	
77	Non-interference of this confiscation with any other act.	
77A	Compounding of Offences	
77B	Offences with three years imprisonment to be cognizable	
78	Power to investigate offenses to a police officer of rank not below that of a Inspector.	

[Network Service Providers] Intermediaries not to be liable in certain cases (Chapter XII)

79	Exemption from liability of intermediary in certain cases
79A	CG to notify Examiner of Electronic Evidence

Miscellaneous (Chapter XIII)

80	Power of Police Officer and Other Officers to Enter, Search, etc.:
81	Act to have Overriding effect:
81A	Application of the Act to Electronic cheque and Truncated cheque-* (Inserted vide Negotiable Instruments Amendment Act 2002)
82	Chairperson, Members, Officers and Employees to be Public Servants
83	Power to Give Direction
84	Protection of Action taken in Good Faith
84A	Modes or methods for encryption
84B	Punishment for abetment of offences
84C	Punishment for attempt to commit offences
85	Offences by Companies
86	Removal of Difficulties
87.	Authorizes the CG to make rules in certain matters & provides for the procedures for the same
-	Authorizes the SG to make rules in certain matters & provides for the procedures for the same.
-	Cyber Advisory Committee (CAC) formation by the CG &
-	provides for the procedures for the same.
88	Constitution of Advisory Committee
89	Empowers the Controller with the power of making certain regulations.
90	Power of SG to make rules:
	Sections 91, 92, 93, 94 are omitted
Sch.1	Documents or Transactions to which the Act shall not apply [see : sub.sec (4) of Sec.1]
Sch.2	Electronic Signatures or Electronic authentication techniques and procedure [see : sub.sec (1) of Sec.3A]
	Sch.3 & 4 omitted.

Useful links & Resources used :

www.icai.org www.legalserviceindia.com/ www.nicca.nic.in	www.eprocurement.gov.in www.naavi.org BCAS Referencer
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**Lets understand spirit of Law, Lets avoid any wrong deed & spot wrong deed,
 Lets implement the true spirit & not carry away with loop holes
 Lets Make a World a Better place to live in. -World's understanding is World's peace.
 Let's do it!!**

For Feedback / Suggestion kindly mail us at : info@dhullasir.com, dhullavipul@yahoo.co.in

!! ALL THE BEST !!

