

COMMENTS OF CYBERLAWS CONSULTING CENTRE

ON THE AMENDMENTS PROPOSED TO ITA-2000 VIDE ITAA 2008-

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The Information Technology Amendment Bill 2008 was passed by the Lok Sabha and the Rajya Sabha in the last week of December 2008 and received the President's assent on 5th February 2009. The Bill aims to make sweeping changes in the existing Indian cyber law framework, including inserting new express provisions to bring more cyber offences within the purview of the Information Technology Act, 2000. A brief overview of the significant changes brought out by the IT Amendment bill, 2008 is as given below :-

Section	Change Proposed
1	Section 1(4) list of excluded documents removed. To be notified through Gazette
2	Section 2(d) modified, and the term "Digital Signature" replaced with "Electronic Signature" in the Act.
	Section 2(ha) added to define "Communication Device" which will include mobile phones, ATM, PDAs etc
	Section 2(j) "Computer Systems" and "Communication Devices", "Wire" "Wireless" added.
	Section 2(k) "Communication Device" added
	Section 2 (na) introduced to define the term "Cyber Cafe"
	Section 2(nb) introduced to define the term "Cyber Security"
	Section 2(ta) and 2(tb) introduces the term of "Electronic Signature" and "Electronic Signature Certificate"
	Section 2(ua) defines "Indian Computer Emergency Response Team"
	Section 2(v) "Message" included in the definition of "Information"
	Section 2(w) "Intermediary" defined .It includes telecom service providers, network service providers, internet service providers, webhosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes;
3	Section 3 now refers to legal recognition of electronic

	documents
	New Section 3 A introduced to define Electronic Signature
4,5	No Significant Change
6	New Section 6A introduced to provide for appointment of Service Providers in e-Governance services and enable delivery of services by private service providers.
7	No Change
	New Section 7A introduced to make audit of Electronic documents mandatory wherever the legally physical records were subject to audit.
8,9	No Change
10	No significant Change
	New Section 10 A specifies that contract formation is possible with offer and acceptance being in electronic form.
11,12,13,14	No significant change
15,16	Defines "Secured Electronic Signature" and redefines "Security Procedure"
17,18,19	No significant change
20	Section Omitted.
21	No significant change
22, 23	The amount of specified upper limit on the fees Omitted.
24,25,26,27	No significant change
28,29	The powers of Controller have been restricted to contraventions under chapter VI .
30	Consequential Changes with introduction of Electronic Signatures
31,32,33,34	No significant change
35	Sub section 35 (4) modified
36	Additional points to be added in the certificate indicated
37, 38,39	No change
40	No change in 40.
	New Section 40A specifies the duties of the subscriber of Electronic Signatures certificate.
41,42	No Change
43	Two new contraventions added-contraventions corresponding to earlier Sections 65 and 66 added for civil liability. compensation limit removed.

	New Section 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.
44,45	No significant change
46	The powers of the Adjudicator limited for claims upto Rs 5 crores. Civil Court's authority introduced for claims beyond Rs 5 crores
47	No significant change
48	Changes name of Cyber Regulations Appellate Tribunal to Cyber Appellate Tribunal.
49	Cyber Appellate Tribunal (CAT) is made a multi member entity. Provision for benches introduced, non judicial members can be members of the Tribunal.
50	Specifies qualifications for appointment of Chairperson and Members of the CAT.
51,52	Specifies terms and other conditions of appointment of Chairman and Members of CAT
	New Sections 52 A, B C and D introduced defining powers of the Chairperson of CAT for conduct of business.
53 ,54,55,56	No significant change
57.58,59,60	No Change
61	Amended to accommodate jurisdiction of Civil Courts for disputes involving claims of over RS 5 crores.
62	No Change
63	No Change
64	No significant change
65	No change
66	The clause has been re written with significant changes. Applies to all contraventions listed in Section 43. and shall be punishable with imprisonment for a term which may extend to three(3) years or with fine which may extent up to Rs 5 lakhs and both. The Section applies if act is done "Dishonestly' or 'fraudulently' as defined in CrPC.
	New Sections added under 66A, 66B,66 C,66D, 66E and 66 F to cover new offences.
	66A: Sending offensive Messages <ul style="list-style-type: none"> • Punishment :- Imprisonment for a term which may extend to three years and Fine.
	66B: Receiving a Stolen Computer Resource

	<ul style="list-style-type: none"> • Punishment :- Imprisonment for a term which may extend to three years or with Fine which may extend to rupees one lakh. or with both.
	<p>66C: Identity Theft</p> <ul style="list-style-type: none"> • Punishment :- Imprisonment for a term which may extend to three years also be liable to fine which may extend to rupees one lakh.
	<p>66D: Cheating by personation</p> <ul style="list-style-type: none"> • Punishment :- Imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupee.
	<p>66E: Violation of Privacy</p> <ul style="list-style-type: none"> • Punishment :- Imprisonment for a term which may extend to three years or with fine not exceeding two lakh rupees or with both.
	<p>66F: Cyber Terrorism</p> <ul style="list-style-type: none"> • Punishment: - Imprisonment which may extent to imprisonment for life.
67	<p>Fine increased to Rs 5 lakhs for first instance and Rs 10 lakhs for subsequent instance. Imprisonment reduced to three years for first instance and 5 years for subsequent instance.</p>
	<p>New Section 67A introduced to cover material containing "Sexually Explicit Act"</p> <ul style="list-style-type: none"> • Punishment: - On first conviction with imprisonment for a term which may extend to five years and with fine which may extent to ten lakhs. • In the event of Second and subsequent conviction with imprisonment for a term which may extend to seven years and also with fine which may extent to ten lakhs.
	<p>New Section 67B introduced to cover Child explicit act or conduct,</p> <ul style="list-style-type: none"> • Punishment: - On first conviction with imprisonment for a term which may extend to five years and with fine which may extent to ten lakhs. <p>In the event of Second and subsequent conviction with imprisonment for a term which may extend to seven years and also with fine which may extent to ten lakhs.</p>
	<p>New Section 67C: This provision will require Intermediaries to preserve and retain certain records for a stated period</p> <ul style="list-style-type: none"> • Punishment :- Imprisonment for a term which may extend to three years and also be liable to pay fine

68	Refers to the powers of the Controller to direct Certifying Authorities for compliance. No significant change. Penal powers to be applicable only on intentional violation
69	Scope extended from decryption to interception, monitoring also. Power lies with the authorized Government agency of the Central Government.
	New Section 69A: Introduced to enable blocking of websites.If an Intermediary is not cooperative- <ul style="list-style-type: none"> • Punishment :- Imprisonment for a term which may extent to seven years and also be liable to fine
	New section 69B: that provides powers for monitoring and collecting traffic data etc . If an Intermediary is not cooperative- <ul style="list-style-type: none"> • Punishment: - Imprisonment for a term which may extent to three years and also be liable to fine.
70	Critical Infrastructure System defined and section restricted to only such systems. Security practices to be notified
	New Section 70A: 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
71,72	No Change
	New Section 72A: introduced for punishment for disclosure of information in breach of lawful Contract. (Data Protection purpose)
73,74,75,76	No change
77	No Significant Change
	<ul style="list-style-type: none"> • New Section 77A; introduced to provide for Compounding of offences other than offences for which imprisonment for life or imprisonment for a term exceeding three years has been provided.
	New Section 77B: introduced to consider all offences punishable with imprisonment of three years and above under the Act as Cognisable offence and offence punishable with imprisonment foe 3 years as bailable
78	Power to investigate any cognizable offence vested with Inspectors instead of DSPs
79	Exemption from liability of intermediary in certain cases- some exceptions have been added-no liability if intermediary provides only Internet access, observed due diligence, had no actual knowledge of offence, etc
	New Section 79 A: 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 Copyright and Patent Acts fully applicable
81-A	No Change
82	No Significant Change
83,84	No Change
	84 A: New Section introduced to enable the Government to prescribe encryption methods
	New Section 84 B: introduced to make "abetment" punishable as the offence itself under the IT Act,2000
	New Section 84 C: introduced to make an "attempt to commit an offence" punishable with half of the punishment meant for the offence.
85, 86	No Change
87	Consequential Changes made
88, 89	No Changes
90	No significant change
91-94	Omitted