

CIVIL JURISDICTION IN  
INFORMATION  
TECHNOLOGY ACT, 2000

Kunal Tandon, Advocate



# HISTORY OF REGULATION OF INFORMATION TECHNOLOGY

- In **1984**, the **United Nations Commission on International Trade Law** at its 17<sup>th</sup> Session considered a report of the Secretary-General which talked about the legal aspects of automated data processing. This started the flow of work on the legal implications of automated data processing.
- In **1985**, a report by the Secretariat noted that the legal obstacles to the use of computers in international trade arose out of the requirement that the documents had to be signed in paper form.
- Following the report, the commission adopted a recommendation to review the legal requirements of written forms of documents.
- In **1988**, the commission proposed to examine the need to provide legal principles applicable for the formation of international commercial contracts by electronic means.
- With a view to validate the increasing number of transactions in international trade law, the United Nations Commission on International Trade Law adopted the Model Law in Electronic Commerce in 1996.
- As an aftermath, the United Nations General Assembly by its **Resolution No. 51/62 dated 30.01.1997** recommended all the states to adopt the **Model Law in Electronic Commerce** adopted by the **UNCITRAL**.

# BIRTH OF INFORMATION TECHNOLOGY ACT IN INDIA

- With the advent of technological advancements and growing digital fraud, a need was felt to regulate and prevent offences and contraventions arising out of and linked to technology.
- Accordingly, Information Technology Act, 2000 was enacted on 9<sup>th</sup> June 2000.
- IT Act draws its inspiration from **Model Law in Electronic Commerce** adopted by the **UNCITRAL**, the object of both legislations being legal recognition of electronic records, and strengthening the business.
- The purpose of the Act is to provide legal recognition to electronic records, e-commerce and e-transaction, facilitate e-governance, and prevent computer-based crimes.

# NATURE OF ADJUDICATION UNDER IT ACT, 2000

- IT Act recognises two kinds of infractions i.e., **Cyber Contraventions** and **Cyber Offences**. Contravention is a violation of law or rule, unlike cyber offence which is a specific criminal violation, and dealt appropriately under Indian Penal Code and IT Act as well.
- Chapter IX of the IT Act, 2000 deals with penalties and adjudication, the chapter has been included to tackle cyber contravention
- Section 43 to 45 deal with various contraventions and imposes penalties on the offenders. Section 43 specifies different scenarios in which damage could be caused to the computer system.
- Section 43 and 43A also imposes liability to pay damages as a method to pay compensation to the person suffered due to such violation.

# CIVIL JURISDICTION

**Section 43** of the IT Act, 2000 prescribes scenarios whereby a computer is accessed without the permission of the owner or any other person who is in charge of a computer (or “computer network” or “computer system”).

Scenarios identified under Section 43:

- *If a person downloads or copies any information stored in the system.*
- *Introduces any virus to the computer system.*
- *Disrupts the system.*
- *Denies access to the owner or person authorized to use the computer.*
- *Tampers or manipulates the computer system.*
- *Destroys, deletes or makes any alteration to the information stored in the system.*
- *Steals the information stored therein.*
- *Assists a third person to facilitate access to a computer, computer system or network in contravention of the IT Act.*

- **Section 43** of the IT Act prescribes damages by way of compensation to be paid to the person affected.
- Such claim for compensation can be filed before the Adjudication Officer appointed under **Section 46** of the Act.
- Remedy under Section 43 is in addition to any criminal liability qua the said offending action.
- **Recent Example-** Reliance Jio registered an FIR against a computer course dropout from Rajasthan for data theft under Sections 43(2) and 66 of the IT Act, 2000 and Section 379 of the Indian Penal Code.

### **Section 43A: Compensation in the case of failure to protect data**

If any corporation or company has stored the data of its employees or other citizens or any sensitive data in its computer system but fails to protect it from hackers and other such activities, it shall be liable to pay compensation.

### **Section 44: Failure to furnish the required information**

- Failure to furnish any document, return or report to the Controller, the Certifying Authority would invite penalty ranging from Rupees 1.50 Lacs for each failure;
- Failure to file any return or furnish any information, books or other documents within specified time, would invite the penalty Rupees 5000 for every day during such failure.

### **Section 45: Residuary Penalty**

If any person contravenes any provision of this Act and no penalty or compensation is specified, he shall be liable to pay compensation or a penalty of Rupees 25000.

# ADJUDICATING OFFICER

- **Section 46** prescribes the appointment of an Adjudicating officer by the central government exercising jurisdiction to adjudicate matters of compensation for the injury/damages suffered by cyber contraventions.
- The Pecuniary Jurisdiction of the adjudicating authority does not exceed Rs. 5 Crore.
- Above Rs. 5 Crores, jurisdiction has been vested with competent Court.
- The adjudicating officer shall exercise the power of the civil court as conferred to the Appellate Tribunal under **sub-section (2) of Section 58**.
- The adjudicating Authority shall be a civil court for the purposes of execution of decrees and orders.



# POWERS OF ADJUDICATING AUTHORITY

- **Rule 4** of Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003 prescribes scope and manner of enquiry by the Adjudicating Officer
- The **Adjudicating Officer** shall exercise jurisdiction in respect of the contraventions in relation to Chapter IX of the IT Act.
- Similar to a Civil Court, the Adjudicating officer also has the power to summon parties and witnesses, to sift and weigh the evidence.
- To hear and decide on every application, as far as possible, in **4 months** and the whole matter in **6 months**.
- And if in a case, the adjudicating Officer is convinced that the scope of the case extends to the offences under Chapter XI of the IT Act (the Cyber Appellate Tribunal) instead of contravention, needing appropriate punishment instead of mere financial penalty, should transfer the case to the magistrate having jurisdiction to try the case, through the presiding officer.

## Duplicity Avoided

- Rule 9 provides that any matter of contravention pending before the Adjudicating Officer, same matter may not be pursued before any court or Tribunal or Authority.
- If there is a report filed already, proceedings before any other court or tribunal or Authority shall be deemed to be withdrawn.

## COMPOUNDING OF CONTRAVENTIONS

- **Rule 11** of the Rules prescribe powers of the Adjudicating officer to compound contravention, an application for compounding the contravention may be made by person against whom a report of contravention has been filed.
- An anticipatory application for compounding can also be made before the filing of any report of contravention.
- The person making the Application for compounding must deposit the sum determined by the Adjudicating officer as a compounding fee. The Compounding fee cannot exceed the maximum penalty amount.

# APPEAL FROM THE ADJUDICATING AUTHORITY

- The IT Act established the Cyber Appellate Tribunal having Appellate jurisdiction against the orders of the Adjudicating Authority.
- Part XIV of Chapter IV of the **Finance Act, 2017** vested the appellate jurisdiction under IT Act, in the Telecom Disputes Settlement and Appellate Tribunal [**“TDSAT”**].
- Statistics show that since the jurisdiction has been vested with the Hon’ble TDSAT a total of **167** cyber appeals have been instituted out of which **70** have been duly disposed off, despite the fact that COVID-19 impacted the functioning of the Court.
- **Section 57** of the Act allows the person aggrieved by Order passed by the controller/adjudicating authority to file an appeal before the Appellate Tribunal.
- The limitation to file an appeal against the order passed by the Adjudicating Authority is 45 days from receiving the copy of the order.

## APPEAL FROM APPELLATE TRIBUNAL


- **Section 62** provides that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal before the High Court within 60 days of such decision or Order passed on any question of fact or law arising out of such Order.

# OVERRIDING EFFECT

- **Section 81 contemplates that IT Act** shall have an overriding effect.
- However, remedies under the Copyright and Patents Act are still available in addition to the remedies under the IT Act, 2000.
- The Hon'ble Delhi High Court in the case of *MySpace Inc. v. Super Cassettes Industries Ltd.*, [2016 SCC OnLine Del 6382] while exploring the intention behind the proviso to section 81 in terms of the “safe harbour” provided to the intermediaries under Section 79 noted that “To put it differently, but for the proviso (to Section 81), copyright owners would have been unable to pursue legal recourse against Internet intermediaries. Under the current regime, while private copyright owners can still demand action against intermediaries who may themselves post infringing content, intermediaries can seek safe harbour where the content is uploaded by third party users or is user generated.”
- Therefore, section 79 provides immunity to online intermediaries for any third party information, data or communication link made available hosted by him. This immunity is however qualified for conditions as contemplated in Sections 79(2), 79(3) of IT Act.

# ELECTRONIC/DIGITAL EVIDENCE OR E-EVIDENCE

- One of the significant changes brought forth by the IT Act, 2000 - Amendment of evidence law to overcome one of the major hurdles in establishing probative value of the e-records.
- IT Act, 2000 amended Indian Evidence Act, 1872 and the Banker's Book Evidence Act, 1891.
- **Section 3** of the Indian Evidence Act, 1872 was amended and the phrase "*all documents produced for the inspection of the court*" was substituted by "*all documents including electronic records produced for the inspection of the Court*".
- In **Section 59** the words "*contents of documents*" were replaced with "*contents of documents or electronic record*".
- **Sections 65A** and **65B** were inserted to incorporate the admissibility of electronic evidence.
- **Section 65A** creates special legislation whereby the contents of the Electronic record may be proved in accordance with the provisions of **Section 65B**.
- **Section 65B** of the Evidence Act details this special procedure for adducing electronic records in evidence and lists conditions upon which the duplicate copy of an original electronic record may be used.
- To sum up, while presenting electronic evidence, the procedure under Sections 65A and 65B of the Indian Evidence Act, 1872 should be followed. A certificate by the owner of the device or the lawful operator of the device is essential for the admissibility of electronic evidence



THANK YOU !!!