

Chapter-7

Information Technology Act Notes

by [Hari Krishna Gatti](#)

Chapter-7. IT Regulatory Issues

Information Technology Act

- ★ Casts Responsibility on body Corporates to protect Sensitive information (Sec 43A)
- ★ Recognises & punishes offences by Companies & Individuals.
- ★ IT act provides legal recognition to e-commerce.

Objectives of IT Act ***

1. To grant legal Recognition for transactions by electronic mode
2. To give legal Recognition to DSC for authentication of legal docs which requires to be authenticated under any law
3. To facilitate electronic filing of docs with Gov Dept
4. To Facilitate electronic storage of Data
5. To facilitate & give legal Sanction to Electronic Fund Transfer
6. To give legal recognition for keeping of books of A/c.

Key Definitions:-

Asymmetric Crypto System: means a system of key pair, consists of a private key for creating a digital Signature and a public key to verify the DS

Key Pair: is an asymmetric Crpto System, means a private key and its mathematically related public key, which are so related that public key can verify a DS created by private key.

Section 3: Digital Signature: [Chapter II]

This Section provides conditions for authenticating by DS.
DS is create in 2 steps

1. Electronic record is converted in message Digest by using a mathematical function known as Hash Function which digitally freezes the electronic record & ensure its integrity of the content in electronic record.
2. Identity of the person affixing DS is authenticated through using a private key which attaches itself to the message digest AND can be verified by any body who has the corresponding public key.

The private key and public key are unique to a subscriber and constitute a Functional key pair.

Section 3A: A Subscriber may authentic any electronic record by electronic Signature which is —

(a) Consider Reliable

(b) may be specified in Second Schedule.

Any Electronic Signature techniques is consider Reliable if —
a. Signature creation data (or) authentication Data linked to the signatory only

- b. Signature creation Data, at time signing is under the control of signature
- c. Any alteration to the electronic signature after affixing is Detectable
- d. Any alteration to the info made after signature is Detectable
- e. It fulfills other conditions as may specify by CG.

Chapter III Electronic Governance

[Sec 4] Legal Recognition to Electronic Records.

when any law provides that any info to be in writing, or typewritten or printed, Notwithstanding anything contain in that Law, such requirement is deemed to be comply if such info or matter is —

- (a) Rendered or made available in Electronic form and
- (b) accessible for subsequent reference.

[Sec 5] Legal Recognition of Electronic Signature

when any law requires any info or matter to shall be signed, then notwithstanding anything in such law, that require is deemed to be comply, if such info, matter is authenticated by a Electronic Signature in a manner prescribed by CG.

[Sec 6] Use of Electronic records & Electronic Signatures in Govt & its agencies.

- 1. Where any Law provides for
 - a. Filing of any document, form with any office, authority.
 - b. Issue or grant license, permit, sanction, approval.
 - c. Receipt or Payment of money in a particular manner.

Notwithstanding such law, such requirement is deemed to be comply, is affected by means of such Electronic form as prescribed by appropriate Govt.

- 2. App Govt may prescribe

- a. Manner & format for filing, creating issuing.
- b. Manner & Method of receipt, Payment, issue record etc.

Section 7] Retention of Electronic Records * * * .

where any law provides that documents, records or information shall be retained for any specified period, then such requirement shall be deemed to be comply, if such documents, records or info is retained in Electronic form, if

- a. The information containing therein remain accessible in which it was originally generated, sent, received, or in a format which can demonstrated to represent accurately the info originally generated, sent or received.
- b. The information contained therein is remains accessible so as to be useful for subsequent reference.

c. The Details which will facilitates, the Identification of Origin, destination, date & time of Dispatch or receipt, of such Electric record are available in the E-record. Provided nothing in this clause ~~does~~ apply to any info which is automatically generated solely for the purpose of enabling electronic record.

[Section 7A] Audit of Documents etc maintained in E-form where law provides Audit of Documents, it is deemed when done in E-documents.

[Section 8] Electronic Gazette.
When any provides for any rule shall be published in Official Gazette, such req is deemed to be satisfied if such rule is publish in Electronic Gazette.

[Section 10] Power to make rules by CG in respect of Electronic Signature.

CG may for the purpose of this act, by rules prescribe

1. the Type of Electronic Signature
2. Manner & format in which E-Signature may affix
3. Manner & Procedure facilitating Identification of the person affixing the E-Signature
4. Control processes & procedures to Ensure the Security, adequate Integrity, and Confidentiality of electronic
5. Other matter necessary to give legal effect to E-Sign.

[Section 10A] Validity of Contracts formed through electronic means:

When a Contract formed in electronic form, such contract shall not be deemed to be Unenforceable solely on the ground that such electronic form was used.

Chapter IX Penalties, Compensation.

[Section 43] Penalty & Compensation for Damage to Computer, Computer System etc.

If any person without permission of Owner - Destroy, Access, introduce virus, disrupts, denial of access to authorised person, Damage content or Data base, steal, conceal or alter source code etc shall be liable to pay damages by way of Compensation to the person so affected.

[Section 43A] Compensation for failure to protect Data when a body corporate possessing, dealing, handling with Sensitive personal information or data in a Computer resource and is negligent in implement & protected/maintaining reasonable Security Practice & thereby causes any Loss or

Sec 66D Punishment for cheating by Personation by using Computer Resource.

Whoever so by means of Computer cheats by personating shall be punishable with Jail 3 years - Fine upto 1,00,000.

Sec 66E Punishment for violation of Privacy.

Whoever so intentionally Captures, Publishes, or Transmit the image of a Private area of any person without his/her Consent, shall be punishable with

Jail - 3 years [OR] Fine upto 2,00,000 [OR] Both.

Sec 66F Punishment for Cyber Terrorism.

Punishable with jail up to life time.

Section 67:

Section	offence	Penalty	if again
67	Publishing or Transmitting Obscene material in electronic mode	Jail - 3 years Fine - 5 Lacs	5 yrs 10 Lacs
67A	Pub or Transmitting sexual explicit content in electronic mode	Jail - 5 yrs Fine - 10 Lacs	7 years 10 Lacs
67B	Pub/Tras of material depicting children in Sexually explicit	Jail - 5 yrs Fine - 10 Lacs	7 yrs 10 Lacs
67C	Preservation & Retention of Info by Intermediaries.	Jail - 3 yrs Fine - also.	

[Section 68] Powers of Controller to give directions.

- i. The Controll may order, direct a Certifying Authority (sity) or any of its Employee to take take such measure or cease carry on such activities as specified in order, if those are necessary to ensure compliance with Act.
- ii Any person intentionally, fails to comply with order shall be guilty and punishable with Fine upto 1,00,000 & Jail up to 2 years.

[Section 69] Power to issue directions for interception, or monitoring, or decryption of any info through any Computer Resource.

Section 70 Protected System:

Any person who secures or attempted to Secure access to Protected System which is notified by app govt as protected System shall be punishable with Jail 10 years & Fine.

Section 71: Penalty for Misrepresentation, to Controller or Certifying Authority to get license or DSC respective

shall be liable to Jail - 2 years [OR] Fine - 1,00,000 (or)

Sec 72 Penalty for breach of Confidentiality.
Jail - 2 years or Fine 1,00,000 OR Both.

Section 73 :- Penalty for publishing Electronic signature Certificate false in certain particulars.

No person shall publish a DSC knowingly that

1. Certifying Authority is such Certificate has not issued it
2. The Subscriber has not accepted it
3. The Certificate has been revoked or suspended.

For contravention - Jail → 2 years, Fine 1,00,000 or Both.

Sec 74: Publication of ESC for fraudulent purposes
Jail - 2 years, Fine 1,00,000 or both.

Sec 75: Act to apply for offence or contraventions committed Outside India.

The provisions of this apply to any offence committed Outside India by any person irrespective nation if the offence or contravention involves a Computer or computer network located in India.

Sec 76 Confiscation:

Any Computer, Disk, Floppy, or another accessories which are related to any contravention or fraud committed, ~~such~~ are liable to Confiscation.

Provided that if Court Satisfy that Computers, or accessories is not responsible for contravention, the Court may order for not to confiscate and order only against person as deem fit.

Enterprises need to take step to ensure compliance with Cyber Laws. some key steps for ensuring compliance

1. Appointing a Cyber law Compliance Officer.
2. Conduct regular training to Employees on Cyber laws
3. Implement Strict procedures in HR Policy
4. Implement authentication procedures as suggested.
5. Implement policy & procedures for Data retention.
6. Implement standards for privacy of collection, retention, storage, deletion etc.
7. Implement reporting Mechanism.

Chapter XII

Intermediaries not to be liable in Certain Cases:-

[Section 79]

1. Notwithstanding any law, Intermediary is not liable for any third party information, data or communication link made available or hosted by him. subject to (a) & (3)

(2) Intermediary is not liable if —

- (a) The functions of inter is only providing System to 3rd party
- (b) The inter doesnot -
 - (a) initiate the transmission
 - (b) Select the receiver
 - (c) Select or Modify the info contained in transmission
- (c) Intermediary observes due diligence while discharging his duties

(3) Intermediary is liable if —

- (a) ~~He~~ He has conspired, abetted, or induced whether by threat or promise in commission of unlawful Act.
- b. Upon receiving actual knowledge, failed to remove or disable access to that material or Resource to the offender.

Chapter XIII Miscellaneous

[Sec 80] Power of Police to search, Enter, arrest

Any police not below rank of Inspector, or any officer, authorised by Government May Enter, any public place and search and arrest without warrant any person who is reasonably suspected to be committed or committing of to be commit any offence under this Act.

(Sec 81) Act has over riding effect. except ~~Re~~ Copyright act & Patents act

[Sec 84] Punishment for Attempt to Commit offence

Punishable with Jail with term Half of the Jail term as per relevant Section and Fine as per relevant section.

[Sec 85] Offences by Companies:

1. When the person committing offence is a Company then every person, who was incharge of and was responsible to the company for conduct of business shall be guilty of such offence and liable to be proceeded & punished.
2. Notwithstanding above provision, if offence is committed by company & it is proved that convention is take place with the Consent or attributable to the neglect of any Director, Secretary, officer, then he shall be guilty & Punished accordingly.

Here Company includes any Body Corporate, Firm & other association of Persons.