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Indian Information and Technology Act,, 2000

Subhajit Basu, *Queen's University Belfast*
Richard P Jones

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Indian Information and Technology Act, 2000
Review of the Regulatory Powers under the Act

Subhajit Basu
School of Law
Queen's University
Belfast

Richard Jones
School of Law
Liverpool John Moores University

Queen's University Belfast

Liverpool John Moores University

Introduction

- *Information Technology Act 2000* comprises the following main aspects :
  - Legal recognition of electronic records and communications
  - Regulation of Certification Authorities (CA): appointment of a Controller of CA, grant of licenses to CA
  - Cyber contraventions: civil and criminal violations, penalties, establishment of the Adjudicating Authority and the Cyber Regulatory Appellate Tribunal

Legislating for Technology

E-commerce needs a coherent yet flexible legal network to felicitate the e-entrepreneurs spirit and the confidence of consumers

- 'Do nothing'
- Development and adoption of new legal principles and approaches
- To allow the law to evolve with the technology but where the law is seen to be failing to provide adaptations of the existing law

Regulation in E-Commerce

Information Technology Act, 2000 deals with the domestic legal issues however its implication on Nation States are most of the time unilateral as regards to enforcement

- The Act goes further and it's long arm provisions extend to non nationals abroad by s.(2) and s 75
- These provisions are in contradistinction to the traditional provisions of the *Indian Penal Code*
- Consumer protection point: s14 of the Act conflicts with the s11 *Consumer Protection Act 1986* in terms of deciding the jurisdiction of the court

Legislating for Cyber Crime

Information and Technology Act 2000 and Cyber-Crime

- To failure to furnish a document or return it to the Certifying Authority under the Act s.44
- To fail to maintain any accounts or records when required to do so s.44(c)
- It is also an offence to publish false, unauthorised and invalid signatures or to use any use of a digital signature for unlawful or fraudulent purposes. S. 74

Legislating for Cyber Crime

Information and Technology Act 2000 and Cyber-Crime

- Liability is imposed on any person who causes damage to a computer or computer system by gaining unauthorised access, virus in the system, denying access to an authorised person
- Liability is imposed on any person who intentionally or knowingly tampers with computer source documents
- Act also disallows the publishing and dissemination of obscene information and material

Privacy and Security

- *Constitution of India* does not expressly recognize the right to privacy
- India lacks any coherent system of data protection
- Grey area between legitimate opposition to the political views of the incumbent government and clear anti-national activities

Privacy and Security

Information Technology Act, 2000 gives member of the executive sweeping powers of access and interception

- S28 (1) empowers the controller or any officer authorised by him to investigate any contravention of the provisions
- S29 empowers the controller to access any information or data from any computer system if he has a reasonable cause to suspect that any contravention of the provisions
- S69 empowers the controller of certifying authority to intercept any information transmitted through any computer resource in relation to the interest of the sovereignty or integrity of India

Omissions

- Taxation Issues arising out of e-commerce m-commerce
- Intellectual Property Rights such as Digital Copyright Issues, Trade Marks, Patents
- Domain Name Registration Policy, Domain Name Disputes, Cyber squatting
- Privacy and Data Protection Issues
- Junk Mail and Spamming
- Further guidelines for Content, Technological Standards, Electronic payments.

Conclusion

- Legislation is a product of a nation's political and social philosophies
- India's political aspirations have influenced its legislations
- It is motivated on a 'culturalist' agenda aimed at reaping the benefit of the time and situation in the country
- Absolute trampling of cyber liberties and freedom