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Indian Information and Technology Act,, 2000

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

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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
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 members 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