

Report of the Expert Committee

Proposed Amendments to Information Technology Act 2000

SUMMARY

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**Department of Information Technology
Ministry of Communications & Information Technology
Government of India
New Delhi**

Note on Proposed Amendments to Information Technology Act 2000: Report of the Expert Committee: Summary of

1. The Amendments to the Information Technology Act, 2000 have been shown in revision mode with footnotes explaining the amendments.
2. As the technologies and applications in IT sector change very rapidly, some of the provisions related to parameters that may change from time to time have been amended to provide for the new developments to be incorporated by changes in rules/govt. notifications. This would enable the law to be amended and approved much faster and would keep our laws in line with the changing technological environment.
3. Sub-section 4 of Section 1 relates to “Exclusion”. In view of changing needs, operation of this section has been made more flexible through prescription of such exception by rules rather than being part of the main Act.
4. The Act is being made technology neutral with minimum change in the existing IT Act 2000. This has been made by amendment of Section 4 of the Act to provide for electronic signature with digital signature as one of the types of electronic signature and by enabling the details of other forms of electronic signature to be provided in the Rules to be issued by the Central Government from time to time. This is an **enabling provision** for the Central Government to exercise as and when the technology other than digital signature matures. Then there will be no need to amend the Act and the issue of rules will be sufficient. Consequently the term digital is changed to electronic in other sections.
5. In Section 4, the main aspect of electronic signature for legal recognition, namely, its reliability have been provided consistent with the UNCITRAL Model on Electronic Commerce.
6. Section 6(2)(b) has been amended to allow public-private partnership in e-governance delivery of services.
7. A new Section 10 has been added for “Formulation and Validity of Electronic Contracts”.
8. Relationship between CCA, CA and Subscribers (Sections 17 to 42) have been revisited on the basis of the recent operational experiences and certain amendments proposed.
9. In view recent concerns about the operating provisions in IT Act related to “Data Protection and Privacy” in addition to contractual agreements between the parties, the existing Sections (viz. 43, 65, 66 and 72) have been revisited and some

amendments/more stringent provisions have been provided for. Notably amongst these are:

- (i) Proposal at Sec. 43(2) related to handling of sensitive personal data or information with reasonable security practices and procedures thereto
 - (ii) Gradation of severity of computer related offences under Section 66, committed dishonestly or fraudulently and punishment thereof
 - (iii) Proposed additional Section 72 (2) for breach of confidentiality with intent to cause injury to a subscriber.
10. Language of Section 66 related to computer related offences has been revised to be in lines with Section 43 related to penalty for damage to computer resource. These have been graded with the degree of severity of offence when done by any person, dishonestly or fraudulently without the permission of the owner. Sometimes because of lack of knowledge or for curiosity, new learners/Netizens unintentionally or without knowing that it is not correct to do so end up doing certain undesirable act on the Net. For a country like India where we are trying to enhance the positive use of Internet and working towards reducing the digital divide, it need to be ensured that new users do not get scared away because of publicity of computer related offences. Section 43 acts as a reassuring Section to a common Nitizen. IT Act in order to ensure that it promotes the use of e-commerce, e-governance and other online uses has been cautious not to use the word cyber crime in the text.
11. Section 67 related to Obscenity in electronic form has been revised to bring in line with IPC and other laws but fine has been increased because of ease of such operation in electronic form; link-up with Section 79 w.r.t. liability of intermediary in certain cases has been provided.
12. A new section on Section 67 (2) has been added to address child pornography with higher punishment, a globally accepted offense.
13. A new phenomenon of video voyeurism has emerged in recent times where images of private area of an individual are captured without his knowledge and then transmitted widely without his consent thus violating privacy rights. This has been specifically addressed in a new proposed sub-section 72(3).
14. A new Section 68(A) has been proposed for providing modes and methods for encryption for secure use of the electronic medium, as recommended by earlier Inter Ministerial Working Group on Cyber Laws & Cyber Forensics (IMWG).
15. Section 69 related to power to issue directions for interception or monitoring or decryption of any information through any computer resource has been amended to take care of the concern of MHA and also on lines with the recommendations of IMWG.

16. A new section 78 A (Examiners of Electronic Evidence) has been added to notify the examiners of electronic evidence by the Central Government. This will help the Judiciary/Adjudicating officers in handling technical issues.
17. Section 79 has been revised to bring-out explicitly the extent of liability of intermediary in certain cases. EU Directive on E-Commerce 2000/31/EC issued on June 8th 2000 has been used as guiding principles. Power to make rules w.r.t the functioning of the “Intermediary” including “Cyber Cafes” has been provided for under Section 87.
18. In order to use IT as a tool for socio-economic development, as explained in para 10 above, particularly to promote e-commerce, e-governance, its uses in health, learning, creating more opportunities for employment, reducing digital divide amongst others, it is necessary to encourage society to go through the learning experience. In order to enable this to happen, it has been made clear that the normal provisions of CrPC will apply, except that only DSP’s and above will be authorized to investigate the offences.
19. The amendment to the 1st Schedule (Indian Penal Code) and 2nd Schedule (Indian Evidence Act) around the recommendations of earlier IMWG has been incorporated. However, the term digital signature would be replaced by electronic signature at suitable places.