

Salient features of the Information Technology (Amendment) Act, 2008

The Information Technology (Amendment) Act, 2008 has been signed by the President of India on February 5, 2009. A review of the amendments indicates that there are several provisions relating to data protection and privacy as well as provisions to curb terrorism using the electronic and digital medium that have been introduced into the new Act. Some of the salient features of the Act are as follows:

- The term “digital signature” has been replaced with “electronic signature” to make the Act more technology neutral.
- A new section has been inserted to define “communication device” to mean cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text video, audio or image.
- A new section has been added to define “cyber café” as any facility from where the access to the internet is offered by any person in the ordinary course of business to the members of the public.
- A new definition has been inserted for “intermediary”. “Intermediary” with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes, but does not include a body corporate referred to in Section 43A.
- A new section 10A has been inserted to the effect that contracts concluded electronically shall not be deemed to be unenforceable solely on the ground that electronic form or means was used.
- The damages of Rs. One Crore (approximately USD 200,000) prescribed under section 43 of the earlier Act for damage to computer, computer system etc has been deleted and the relevant parts of the section have been substituted by the words, “he shall be liable to pay damages by way of compensation to the person so affected”.
- A new section 43A has been inserted to protect sensitive personal data or information possessed, dealt or handled by a body corporate in a computer resource which such body corporate owns, controls

or operates. If such body corporate is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, it shall be liable to pay damages by way of compensation to the person so affected.

- A host of new sections have been added to section 66 as sections 66A to 66F prescribing punishment for offenses such as obscene electronic message transmissions, identity theft, cheating by impersonation using computer resource, violation of privacy and cyber terrorism.
- Section 67 of the old Act is amended to reduce the term of imprisonment for publishing or transmitting obscene material in electronic form to three years from five years and increase the fine thereof from Indian Rupees 100,000 (approximately USD 2000) to Indian Rupees 500,000 (approximately USD 10,000). A host of new sections have been inserted as Sections 67 A to 67C. While Sections 67 A and B insert penal provisions in respect of offenses of publishing or transmitting of material containing sexually explicit act and child pornography in electronic form, section 67C deals with the obligation of an intermediary to preserve and retain such information as may be specified for such duration and in such manner and format as the central government may prescribe.
- In view of the increasing threat of terrorism in the country, the new amendments include an amended section 69 giving power to the state to issue directions for interception or monitoring of decryption of any information through any computer resource. Further, sections 69 A and B, two new sections, grant power to the state to issue directions for blocking for public access of any information through any computer resource and to authorize to monitor and collect traffic data or information through any computer resource for cyber security.
- Section 79 of the old Act which exempted intermediaries has been modified to the effect that an intermediary shall not be liable for any third party information data or communication link made available or hosted by him if; (a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; (b) the intermediary does not initiate the transmission or select the receiver of the transmission and select or modify the information contained in the transmission; (c)

the intermediary observes due diligence while discharging his duties.

- However, section 79 will not apply to an intermediary if the intermediary has conspired or abetted or aided or induced whether by threats or promise or otherwise in the commission of the unlawful act or upon receiving actual knowledge or on being notified that any information, data or communication link residing in or connected to a computer resource controlled by it is being used to commit an unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.
- A proviso has been added to Section 81 which states that the provisions of the Act shall have overriding effect. The proviso states that nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957.