

Contraventions, Offences and Appellate Tribunal

Subject: Commerce

**Lesson: Contraventions, Offences and Appellate
Tribunal**

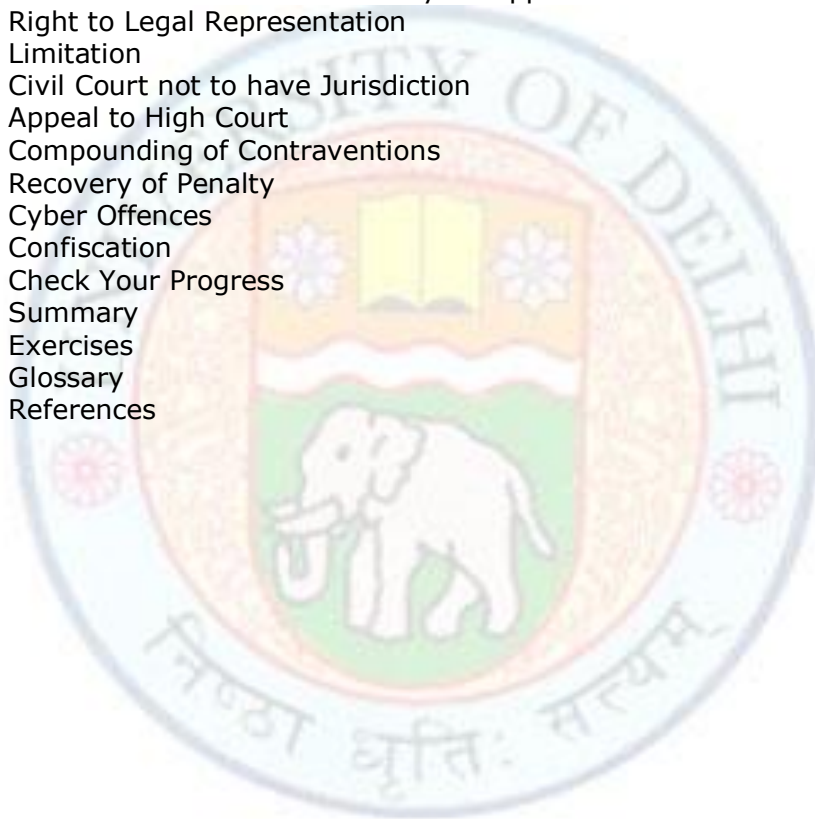
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Contraventions, Offences and Appellate Tribunal

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Introduction

Chapters IX, X, and XI of the IT ACT, 2000, deal with the contraventions, offences and penalties. The Act has broadly categorized contraventions of two types stated as under:

- a) Contraventions are of a criminal nature subject to imprisonment and fine, and
- b) Other Contraventions.



Figure: Legalization of Electronic Transaction

The fundamental requirement of the Act is to validate and legalize all on-line and electronic transactions. Though the Internet has made the world a smaller place to live in, it has also made it unsafe.

In spite of the security measures adopted by the owner of the computer, computer system and computer network, there are theft and intrusion. Computer and Cyber Crimes will hopefully be curbed, and offenders will be strictly penalized. Moreover, it is relatively more difficult and sometimes practically impossible to locate the guilty party.

To make Information valuable, it is required that it must retain its confidentiality, security, and integrity. It is a continuous process, and requires a strict adherence to well laid security measures. According to the Act, two categories of behaviors are there with respect to the use of computer resources by a person, these are contraventions ⁶⁸ and Offences. ⁶⁹

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Cyber Contraventions

Sections 43 to 45 of Chapter IX of the Act, deal with Cyber Contraventions, such as, making unauthorized copies, unauthorized access to records, introduction of 'computer contaminants', denial of access, etc. A violation of such nature would result in monetary penalty and/or compensation to be paid to the affected party.

Cyber Contraventions

A Section 43 Damage to computer, computer system, etc.

B Section 44 Maintaining books of accounts, records, furnishing results

C Section 45 Residuary Penalty



Figure: Computer

These cyber Contraventions are discussed below:

(A) Section 43 of the Information Technology Act, 2000, "identifies the eight different factors and the penalty for causing damage to computer, computer system or computer network". These factors are discussed below:

Section 43 provides that "if any person without permission of the owner or any other person, who is in charge of a computer, computer system or computer network, does any of the following acts, he will be guilty of a contravention of the Act". These are:

(a) "Accessing or securing access to such computer, computer system or computer network".

"Access signifies communicating or gaining a possibility of instructing with the logical, mathematical or memory resources of the computer".

(b) "Downloading, copying or extracting any data, computer data base⁷⁰ or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium."

"This provision is related to the situations of theft or extracting any database information of any format prepared in a formalized manner. This also covers a violation of the rules of the copyrights."

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Illustration

Satish copies the data prepared in the format required for the working of the system from the computer system of Ramesh, and he was not aware of this fact Satish copied the data without his permission. Is this act of Satish allowed under the Act? Copying the data from the databases of the Ramesh's computer system is not allowed under the Act. This is a violation of copyright rules so Satish will be liable to pay damages by way of compensation for such unauthorized access.

(c) "Introducing, or causing to be introduced any computer contaminant⁷¹ or computer virus⁷² into any computer, computer system or computer network."

"It includes all those set of instructions created for the purpose of destroying the data, or modifying the data residing in the computer system or computer network. It also covers the instructions that can badly affect the normal working of the computer system".

The set of instructions can also be created in the manner that affects the performance of the computer system. The system may start working slow, or these instructions may attach itself to some files in the computer, and starts operating when the program is executed.

(g) "Providing any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made there under. "

"This provision creates an obligation upon the owners and users of the computer resources not to help any other person on gaining any access to computer resources in violation of the provisions of the Act".

(h) "Charging the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network. "

The provisions seek to protect the rights of the authorized account holders of internet facilities. A person may use the internet facility by stealing the internet hours from the account of an authorized user. Such an attempt has been declared as a contravention of this provision.

Penalty: "The person guilty of such acts described above will be liable to pay damages by way of compensation, not exceeding one crore rupees to the person so affected. "

(B) Section 44 of the Act deals with contraventions and penalty relating to maintaining books of accounts, records, furnishing or filling any return or information to the controller or the certifying authority.

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Figure: Books of Accounts

These contraventions are enumerated below:

(a) "Failure to furnish any document, return or report to the Controller or the Certifying Authority when required to do so".

Penalty: "The penalty for such an act will be a fine, not exceeding one lakh and fifty thousand rupees for each such failure."

Illustration

Mohan fails to furnish to Controller of Certifying Authority any document, return or report required under the Act. Is he liable for any penalty? "He shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure."

(b) "Failure to file any return or furnish any information, books or other documents within the time specified in the regulations."

Penalty: "The penalty for such an act will be a fine, of an amount not exceeding five thousand rupees for every day during which such failure continues."

(c) "Failure to maintain books of account or records".

Penalty: "In such a case, penalty will be a fine, not exceeding ten thousand rupees for every day, during which the failure continues."

Illustration

Sheena fails to maintain the record required to maintain under the provision of section 44 of the Act. Sheena, in such a case would be liable to a fine of the amount not exceeding Rs.10, 000 for everyday during which the failure continues.

(C) Residuary Penalty

Section 45 of the Act deals with imposing Residuary Penalty.

According to Section 45, "there is a residuary penalty for all those acts, rules and regulations under this Act for which no penalty has been separately provided".

Penalty: "The penalty will be a fine of an amount, not exceeding Rupees twenty thousand to the person affected by such a contract. "

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Section 46 of the Act Deals with the Adjudication on Contraventions

The following parameters highlighting the adjudication on contraventions are discussed hereunder. These are:

- a. Who will adjudicate?
- b. Powers of the officers to adjudicate.
- c. What are the factors to be considered in adjudication?

"These parameters are enumerated by the qualifications of an Adjudicating Officer for the purpose of adjudging, whether any person has committed a contravention of any provisions of the IT Act, 2000 or of any rule, regulation or order made there under". These rules / provisions are as follows:

(a) Who will Adjudicate?

"The Central Government shall appoint any officer not below the rank of the Director to the Government of India.

He will be an adjudicating officer for holding an enquiry in the manner prescribed by the Central Government in those cases, where rules and regulations have not been followed.

He will conduct an enquiry for such contraventions of the provisions, as prescribed by the Central Government.

He has been given the powers of the Civil Court.

The adjudicating officer will adjudicate, on specific cases, in accordance with the provisions of the Act".

(b) Powers of the Officers to Adjudicate

"The following are the powers of the adjudicating officer for dealing with the contraventions under the Act.

The adjudicating officer will give a reasonable opportunity to the accused person for making representation in the matter.

If, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section

Adjudicating Officer must possess an experience in the field of information technology and legal or judicial experience, as may be prescribed by the Central Government.

No person can become an Adjudicating officer, if he has not possessing an experience of information technology.

Where more than one adjudicating officers are appointed, the Central Government will specify by order, the matters and places, with respect to which such officers will exercise their jurisdiction.

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Every adjudicating officer will have the powers of a civil court, which are conferred on the Cyber Appellate Tribunal."

(c) Factors to be Taken into Account by the Adjudicating Officer

According to section 47 of the Act, "while adjudging the quantum of compensation, the adjudicating officer will have due regard to the following factors. These factors are:

1. The amount of gain of unfair advantage, wherever quantifiable, made as a result of the default.
2. The amount of loss caused to any person as a result of the default.
3. The repetitive nature of the default".

Cyber Regulations Appellate Tribunal (CRAT)

A certifying authority or a subscriber may feel aggrieved by the order of the controller or of an adjudicating officer. They may like to appeal against the order. For this purpose, the Act has provided suitable machinery for the fast disposal of such appeals. The machine is in the form of Cyber Regulation Appellate Tribunal (CRAT). Following are the important parameters to be known regarding Cyber Regulation Appellate Tribunal. These are:



Figure: Cyber Regulations

1. "Cyber regulations Appellate Tribunal is established by the Central Government.
2. The Central Government shall specify, the matters and places, in relation to which the tribunal may exercise jurisdiction".

Section 48: According to section 48, "Central government is authorized by notification to establish one or more appellate tribunals to be known as the Cyber Regulations Appellate Tribunal. The Central Government will also specify, all the matters and places, in relation to which the Cyber Appellate Tribunal may exercise its jurisdiction."

Section 49: According to section 49 of the Act, "a Cyber Appellate Tribunal will consist of one person only (known as the Presiding Officer of the Cyber Appellate Tribunal). He will be appointed by the Central Government by notification."

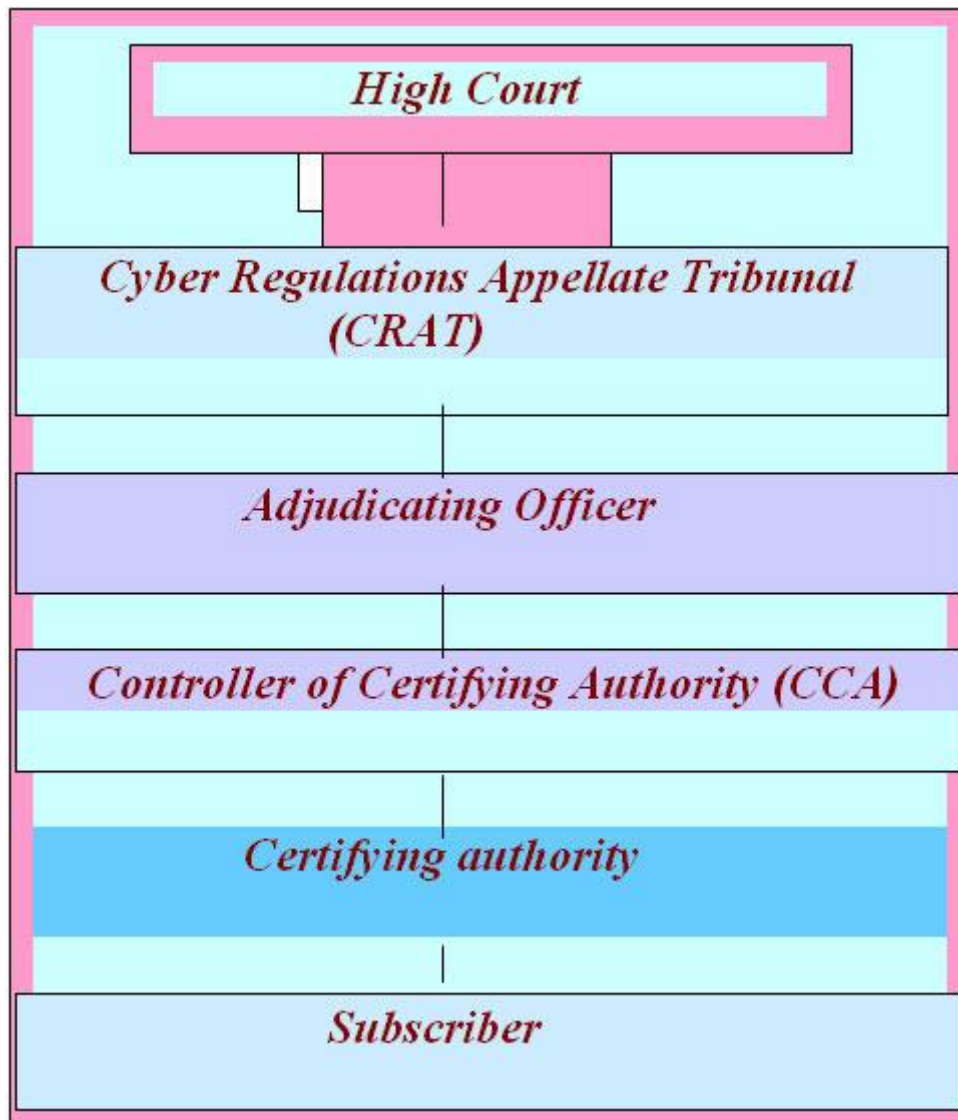
According to the act, "any appeal against any decision/order of the Controller of Certifying Authorities or any other certifying authorities, can be made to Cyber Regulation Certifying Authority".

"Any person, aggrieved by the order of this Tribunal, may prefer an appeal to the High Court".

"An appeal to the High Court can be made within 60 days from the date of communication of the order of the Tribunal".

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This is the pictorial representation of the hierarchy of Authorities, under the Information Technology Act, 2000.



Qualifications for Appointment as Presiding Officer of the Cyber Appellate Tribunal

According to section 50, "a person will not be qualified for appointment as the Presiding Officer of a Cyber Appellate Tribunal, unless he or she fulfill the condition given below:

1. He is, or has been or is qualified to be, a Judge of a High Court; or
2. He is, or has been a member of the Indian Legal Service, and is holding, or has held a post in Grade I of that Service for at least three years".

Term of Office

According to section 51 of the Act, "the Presiding Officer of a Cyber Appellate Tribunal will hold office for a term of five years.

This term will be calculated from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier".

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Salary, Allowances and Other Terms and Conditions of Service of Presiding Officer

Section 52 of the Act “provides and prescribes the rules relating to salary and allowances payable to, the Presiding Officer of a Cyber Appellate Tribunal and the other terms and conditions of service including pension, gratuity and other retirement benefits.

The exceptions to the rule are that any alteration in the terms and conditions of the service of the Presiding Officer including his salary and allowances will not be done after his appointment, which puts him into any kind of loss. In other words, any alteration in this connection, which deprives him of his rights under the terms and conditions is not desirable”.

Appeal to Cyber Appellate Tribunal

According to section 57 of the Act, “under the following circumstances an appeal is allowed to be made to Cyber Regulation Appellate Tribunal. These circumstances are:

Any person, aggrieved by an order made by Controller or an adjudicating officer under this Act, may refer an appeal to a Cyber Appellate Tribunal having jurisdiction in the matter.



Figure: Cyber Appellate Tribunal

No appeal will lie to the Cyber Appellate Tribunal from an order made by an adjudicating officer with the consent of the parties.

Every appeal will be filed within a period of forty-five days from the date on which a copy of the order made by the Controller or the adjudicating officer is received by the aggrieved party.

Every appeal will be in such form and be accompanied by such fee, as may be prescribed.

Cyber Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period.

The Cyber Regulation Appellate Tribunal may pass such orders as it thinks fit. It may confirm, modify or set aside an order appealed against.

Cyber Regulation Appellate Tribunal may pass such an order after giving an opportunity of being heard in this matter.

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The Cyber Appellate Tribunal will send a copy of every order made by it to the parties to the appeal and to the concerned Controller or adjudicating officer.

The Cyber Appellate Tribunal has to expeditiously deal with the order, as soon as possible. Cyber Appellate Tribunal shall make an effort to dispose of the appeal finally within six months from the date of receipt of the appeal”.

Procedure and Powers of the Cyber Appellate Tribunal

According to section 58, “the following procedures have to be followed:

1. The Cyber Appellate Tribunal shall not be bound by the procedure laid down by the Code of civil Procedure, 1908.
2. He will be guided by the principles of natural justice.
3. Subject to the other provisions of this Act and of any rules, the Cyber Appellate Tribunal will also have the powers to regulate its own procedure, including the place at which it shall have its sittings”.

“The Cyber Appellate Tribunal for the purposes of discharging its functions will have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

1. Summoning and enforcing the attendance of any person and examining him on oath.
2. Requiring the discovery and production of documents or other electronic records.
3. Receiving evidence on affidavits.
4. Issuing commissions for the examination of witnesses or documents.
5. Reviewing its decisions.
6. Dismissing an application for default.
7. Any other matter which may be prescribed.

Every proceeding before the Cyber Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Cyber Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Right to Legal Representation

According to **section 59**, “the appellant may either appear in person or authorize one or more legal practitioners or any of its officers to present his or its case before the Cyber Appellate Tribunal”.

Limitation

According to **section 60**, “the provisions of the Limitation Act, 1963, will, as far as may be, apply to an appeal made to the Cyber Appellate Tribunal”.

Civil Court not to have Jurisdiction

According to **section 61**, “No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter for which an adjudicating officer, appointed under this Act or the Cyber Appellate Tribunal constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other

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authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act”.

Appeal to High Court

According to **section 62**, “an appeal can be made to the High Court.

The order passed by the Cyber Regulation Appellate Tribunal may be filed to a High Court by an aggrieved party.

An appeal can be made against the order of Cyber Regulation Appellate Tribunal by the aggrieved party within 60 days from the date of communication of the order of the Cyber Regulation Appellate Tribunal to him on any question of fact or law arising out of such order.

High Court may allow the aggrieved party to file an appeal within a further period, not exceeding 60 days, if it is satisfied that the appellant was prevented by the sufficient cause from filing the appeal”.

Compounding of Contraventions

Section 63 “provides for the possibility of a compromise between the controller or adjudicating officer and the accused person regarding the quantum of penalty. The provision states the following aspects:

1) Any contravention under this act by a person may be compounded by the controller or by adjudicating officer, or such other officer as may be specially authorized by him in this behalf, as the case may be.

This may be either before or after the institution of adjudication proceedings.

2) The amount so compromised, will, not in any case, exceed the maximum amount of the penalty imposed under this Act for the contravention so compounded.

A person cannot avail this facility, if he commits the same or similar contracts within a period of three years from the date on which the first contravention committed by him was compounded.

Where any contravention has been compounded, no proceeding or further proceeding, as the case may be, shall be taken against the person guilty of such contravention in respect of the contravention so compounded”.

Recovery of Penalty

According to section 64, “a penalty imposed under this Act, if it is not paid, will be recovered as an arrear of land revenue. The license or the Digital Signature Certificate, as the case may be, will be suspended till the penalty is paid”.

Cyber Offences

Sections 65 to 76 of **Chapter XI** of the Act describe several offences, such as, tampering with source codes, hacking, publication or transmission of obscene information; misrepresentation of facts for obtaining digital signature certificate,

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publication of a false digital signature certificate, etc. These acts are punishable with imprisonment, as well, as monetary penalty.



Figure: Cyber Offences

A contravention is a mere violation of law or procedure, which does not result in a criminal prosecution. It may result in a civil prosecution. It may be punishable with a liability to pay a penalty or compensation. On the other hand, an offence is an act forbidden by law and made punishable by fine and /or imprisonment.

Section 65 to 76 of the IT Act deals with the criminal penalty either imprisonment for the offence or imposition of fine or both. Under the Act, there are various cyber offences and each one is described below:-

Tampering with Computer Source Documents

According to **section 65**, this offence takes place when a person tampers with the valuable computer programs of another person.

Meaning: According to this section states "that a person will be guilty of an offence, if intentionally or knowingly, he conceals, destroys or alter any computer source code used for a computer, computer program, computer system or computer network, when the computer source code⁷⁴ is required".



Penalty: "Such a person shall be punishable with imprisonment up to three years or with fine which may extend up to two lakh rupees, or with both".

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Illustration

Raja intentionally alters and destroys the computer program of Mohan residing in his computer system. This program was valuable. Mohan was required to maintain this computer program under the provisions of the law.

Raja has committed an offence of tampering. He tried to alter the valuable source document of Raja. Raja shall be liable to pay damages under section 65.

Hacking with Computer System

Meaning: According to section 66, "hacking is a punishable offence. Any person with intention to cause any loss or damage to the public or any person who destroys or deletes or alters any information residing in the computer resource or diminishes its utility by any means, commits hacking".

Penalty: "Whoever commits hacking will be punished with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both".

Illustration

Rohan diminishes the value and utility of the information residing in the computer resource of Sohan by some means. Is he liable for the punishment? The act committed by Rohan is hacking. Hacking with the computer system is an offence and he shall be liable for the same under sec 66.

Publishing of Information Which Is Obscene In Electronic Form

Meaning: According to section 67 of the Act, "this offence takes place when a person publishes or transmits or causes to be published in the electronic form, any material, which is lascivious or appeals to the prurient interest, or if its effect is such as to tend to deprave and corrupt persons, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it".

Penalty: "Any person committing such an act will be punished on first conviction, with imprisonment of either description for a term, which may extend to five years and with fine, which may extend to one lakh rupees, and in the event of a second or subsequent conviction, with imprisonment of either description for a term, which may extend to ten years, and also with fine, which may extend to two lakh rupees."

Power of Controller to Give Directions

Meaning: According to section 68, "the Controller may direct by order, a Certifying Authority or any employee of such Authority, to take such measures or cease to carry on such activities as specified in the order, if they are necessary to ensure compliance with the provisions of this Act, rules or any regulations made there under".

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Figure: Power of Controller

Penalty: "Any person, who fails to comply with an order of the controller, shall be guilty of an offence, and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two lakh rupees or to both".

Protected System

According to **section 70**, "the Government may declare that any computer, computer system or computer network to be a protected system.

It may also authorize specific persons who can access the protected systems to the exclusion of others.

Any person, who secures access or attempts to secure access to a protected system, commits an offence in contravention of these provisions".

Penalty: "A person working against the provisions of this Act and accessing a protected system will be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine".

Illustration

Rajeev accesses the protected system. He was not given the authority to access protected system. He committed this act in contravention of the provisions of Section 70. Is Rajeev liable for any punishment for gaining access to the systems to which he was prohibited under the Act?

Rajeev is liable to pay damages for the same and will be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Penalty for Misrepresentation

According to **section 71**, "if any person makes any misrepresentation or suppresses any material fact from the certifying authority or controller for obtaining the digital signature certificate, then such a person has committed an offence".

Penalty :"He will be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both".

What Constitutes The Penalty For Breach of Confidentiality And Privacy?

Breach of confidentiality and privacy under **section 72** of the Act "means **that** a person having an authority has secured any access to any electronic record, book, register, correspondence, information, document or other material".

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"If such an access to a material or document etc is done without the consent of the person concerned and such record has been disclosed to any other person, then such a person, who has access this material without the permission, has committed an offence".

Penalty: "A person, committing such an offence will be punished with imprisonment for a term, which may extend to two years, or with fine which may extend to one lakh rupees, or with both".

Illustration

Mohan has secured an access to a document that belongs to Parth and discloses it to some other person without the consent of Parth. Mohan has committed an offence by disclosing Parth's document to someone else without his permission. This is a case of breach of confidentiality and privacy. Mohan will be punishable with imprisonment which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Penalty for Publishing Digital Signature Certificate False In Certain Particulars

According to **section 73**, "No person shall publish a Digital Signature Certificate, or otherwise make it available to any other person with the knowledge that-

1. The Certifying Authority listed in the certificate has not issued it; or
2. The subscriber listed in the certificate has not accepted it; or

Section 73, therefore, has the following basic ingredients:

1. It may happen that a digital signature certificate gets issued in spite of the fact that some error had crept in the whole process of issuing it.
2. Issuing of such kind of digital signature certificate may be because of the reason that the certifying authority has not issued the certificate or the subscriber listed in the certificate has not accepted it or the certificate has been revoked.
3. No person will make a public announcement of such an erroneous certificate knowingly the above stated facts.
4. If a person does so intentionally, it will amount to be an offence under section 73 of the Act".

Penalty: "Any person, who contravenes the provisions, will be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both".

Publication for Fraudulent Purpose

According to **section 74**, "this offence takes place when a person knowingly creates, publishes or otherwise makes available a Digital Signature Certificate for any fraudulent or unlawful purpose".

Penalty: "A person will be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both".

Act to Apply For Offence or Contravention Committed Outside India

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Figure: Fraudulent Purpose

According to section 75, "the provisions of this Act will apply to any offence or contravention committed outside India by any person irrespective of his nationality".

Confiscation

According to **section 76** of the Act, "the following factors are to be noted in relation to the confiscation:

1. It includes any computer hardware, including a computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which, any provision of this Act is contravened
2. The result of the contravention of this provision will be that such computer hardware will be liable to be confiscated
3. If to the satisfaction of the court adjudicating the confiscation, it is found that the person is possessing any such computer, computer system, floppies, compact disks, tape drives or any other accessories relating thereto
4. And such a person is not responsible for the contravention of the provisions of this Act, rules, orders or regulations made there under

The court will not make any order for the confiscation of such computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto. Instead, court will make such an order authorized by this Act against the person contravening of the provisions of this Act, rules, orders or regulations made there under as it may think fit".

Illustration

Satish contravenes the provisions of the Act, as he was found with the tape drives relating to which the provisions or rules have been made under the Act. He has committed an offence. In such a case the tape drives will be liable to confiscation.

Penalties or Confiscation Not To Interfere With Other Punishments

According to **section 77**, "no penalty, imposed or confiscation made under this Act, will prevent the imposition of any other punishment to which the person, affected thereby, is liable under any other law for the time being in force".

Power to Investigate Offences

The Act has granted substantial powers to police. These powers are to be exercised only by a high ranking police officer. These powers are given them to investigate any offence

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under this Act and as a consequence thereof, to make search and seizure operations against offenders without warrant.



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Summary

Introduction

- The fundamental approach of the Act is towards validating and legalizing electronic and on-line transactions.
- Chapter IX, Sec 43-45 of the Act deals with Contraventions – A civil wrong.
- Chapter X of the Act deals with Adjudicating officer and Cyber regulations Appellate Tribunal(CRAT).
- Chapter XI, Sec 65-74 deals with the Offences and penalty- Offence, a criminal act prohibited by law.

Cyber Contraventions Sec.43

- Identifies the eight different factors for causing damage to computer, computer system or computer network.
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Section 44

- Deals with maintaining books of accounts, records, furnishing or filling any return or information to the controller or the certifying Authority.
- Penalty- not exceeding one lakh and fifty thousand rupees for each such failure.

Sec45: Residuary penalty

- For a contravention, where no penalty has been separately provided
- Penalty- not exceeding twenty-five thousand rupees to the person affected.

Adjudicating Officer

- Central Government shall appoint any officer not below the rank of the Director to the Government of India to be an adjudicating officer.
- Every such officer shall have the powers of a civil court.

Cyber Regulations Appellate Tribunal(CRAT)

- "Established by the Central Government.
- Comprises of a Presiding officer to be appointed vide a notification by the Central Government.
- An aggrieved party (a Certifying Authority or a subscriber) by the order of the Controller of Certifying Authorities or of an adjudicating officer may like to appeal against the order to the CRAT.
- The Central Government shall, by notification, establish one or more appellate tribunals.
- CRAT has same powers as are vested in a civil court under the Code of Civil Procedure, 1908.
- Civil Court not to have jurisdiction.
- Appeal to High Court, by an aggrieved person within sixty days from the date of communication of the decision or order of the CRAT".

Offences

- Tampering, hacking and publishing of obscene information and documents.

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Penalties

- **Tampering and Hacking**-Imprisonment up to 3 years or fine which may extend up to two lakh rupees, or with both.
- **Misrepresentation** -shall be punished with imprisonment for a term, which may extend to two years, or with fine, which may extend to one lakh rupees, or with both.
- **Breach of confidentiality and privacy** -shall be punished with imprisonment for a term which may extend to two years, or with fine, which may extend to one lakh rupees, or with both.
- Penalty for **publishing Digital Signature Certificate** false in certain particulars
- **Publication for fraudulent purpose** shall be punished with imprisonment for a term, which may extend to two years, or with fine, which may extend to one lakh rupees, or with both



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References

Kuchhal M.C. (2007): *Business Law*, Vikas Publishing House Pvt. Ltd. Delhi, India, Chapter 31

Aggarwal S.K. and Singhal K. (2006): *Business and Corporate Law*, Galgotia Publications, New Delhi, India Chapter 28.

Sharma Vakul (2007): *Information Technology Law and Practice law and emerging technology cyber law and E-commerce* (Universal Publishing Company, Delhi, India (Chapter1-9)

Goyal . B.K.(2005): *Business Law*, R.Chand & Co, New Delhi, India, Chapter 35

Refer to bare ACT for the sections -

<http://india.gov.in/outerwin.php?id=http://www.mit.gov.in/content/view-it-act-2000.>

