

# **IT Act to Legalize E-commerce**

## **INFORMATION TECHNOLOGY ACT, 2000:**

Law governing electronic commerce can be divided into a number of categories. Some laws enable e-commerce by dealing with actual or perceived obstacles presented by the existing legal form like the requirements for written records and written signatures or any other impediments pertaining to admissibility in evidence of electronic records and signature. Others may regulate the detailed structure of particular electronic records and signature methods whereas certain other laws may seek to extend or adapt existing regulation of commercial activity to cover analogous aspects of e-commerce like security, taxation, privacy etc. It is pertinent to note that many commentators are of the view that a technology neutral approach is to be followed by legal regulation, i.e. one which does not discriminate between forms of technology like paper and digital or electronic record. A new era of trade, communication and transactions is coming to fore with the rapid development of e-commerce affecting our social and economic activities in a large way. This is on account of substantial influence that is rendered by information technology. There are a number of fundamental legal aspects that the Information Technology Act, 2000 touches upon ranging from electronic government transactions to facilitating electronic transactions per se. The policy which is embodied in the IT Act is one of recognizing both paper and electronic commerce on the same footing and maintaining a technology neutral approach.

## **Government Approach**

The Indian government enacted the Information Technology Act 2000 (the IT Act) in June 2000 to address a need for legislation to accord legal recognition to transactions carried out by means of electronic communication. Discovery of insufficiencies in the law based on judicial scrutiny resulted in the government amending the IT Act in 2008 by introducing provisions regarding, inter alia, validity of electronic contracts, security of electronic signatures, punishments for computer-related offences, identity theft, violation of privacy and publishing and transmission of obscene material in electronic form.

With the advent of growth in the IT sector, especially the increased role of internet service providers (ISPs) and payment intermediaries in India, the government crystallized the role and responsibilities of 'intermediaries' under the Information Technology (Intermediaries Guidelines) Rules 2011 (the IT Intermediary Rules) to grant sanctity to the safe-harbor provisions under the IT Act, with a view to protecting service providers with respect to third-party data.

However, there have been other instances for which the government has come under sharp criticism. For instance, there have been discussions around pre-screening of content, particularly

over social media websites. The purview of 'objectionable content' also seems to have been expanded to include criticism of the government.

In our view, while the government's stance on issues in connection with information technology has been positive on the legislative front, the enforcement of these IT laws has been inconsistent and leaves a lot to be desired.

### **Features of the IT Act, 2000**

- a. All electronic contracts made through secure electronic channels are legally valid.
- b. Legal recognition for digital signatures.
- c. Security measures for electronic records and also digital signatures are in place
- d. A procedure for the appointment of adjudicating officers for holding inquiries under the Act is finalized
- e. Provision for establishing a Cyber Regulatory Appellant Tribunal under the Act. Further, this tribunal will handle all appeals made against the order of the Controller or Adjudicating Officer.
- f. An appeal against the order of the Cyber Appellant Tribunal is possible only in the High Court
- g. Digital Signatures will use an asymmetric cryptosystem and also a hash function
- h. Provision for the appointment of the Controller of Certifying Authorities (CCA) to license and regulate the working of Certifying Authorities. The Controller to act as a repository of all digital signatures.
- i. The Act applies to offences or contraventions committed outside India
- j. Senior police officers and other officers can enter any public place and search and arrest without warrant
- k. Provisions for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and Controller.

## **Objectives of the IT Act, 2000**

- Granting legal recognition to all transactions done through electronic data exchange, other means of electronic communication or e-commerce in place of the earlier paper-based communication.
- Providing legal recognition to digital signatures for the authentication of any information or matters requiring authentication.
- Facilitating the electronic filing of documents with different Government departments and also agencies.
- Facilitating the electronic storage of data
- Providing legal sanction and also facilitating the electronic transfer of funds between banks and financial institutions.
- Granting legal recognition to bankers for keeping the books of accounts in an electronic form. Further, this is granted under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934.

## **Establishing a Business**

There are various statutes that may govern the establishment of digital business in India depending upon the nature, purpose and manner of conducting the digital business, such as:

- The IT Act;
- The Payment and Settlement Systems Act 2007 (PSS Act);
- The Intermediary Rules;
- The Foreign Exchange Management Act 1999;
- The Companies Act 2013; and
- The Trademarks Act 1999.

The procedure and manner of establishing the digital business will vary from case to case depending on various factors including the nature of business, residential status of the shareholders, nature of payment system implemented, etc.