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CYBER LAW AND JURISPRUDENCE

Understanding cyber jurisprudence

- *“We are approaching the new era with 21st century technologies with 20th century governing processes and 19th century governance structures”*
- Harold A. Linstone, Professor Emeritus, Portland University, Oregon

Law & Technology

- To legislate or not to legislate
- From acceleration to a paradigm shift
- Time –Space interjection of traditional jurisprudence
- Citizen vs netizen
- Nation States are getting stronger
- Commerce vs Culture
- Harmonization-Globalization-Amelioration

Changing interface of Law - technology

- The story of the real mother-King Solomon- vs Baby India
- Common Sense –my dear Watson vs Lie detectors
- A pound of flesh- Shakespeare wisdom

Law- technology relationship

- The seven steps in Hindu marriage-Law as the wife and technology as the husband
- Has managed technology when it is static and physical
- Cyberspace is a different paradigm which needs different response

Internet aka cyberspace

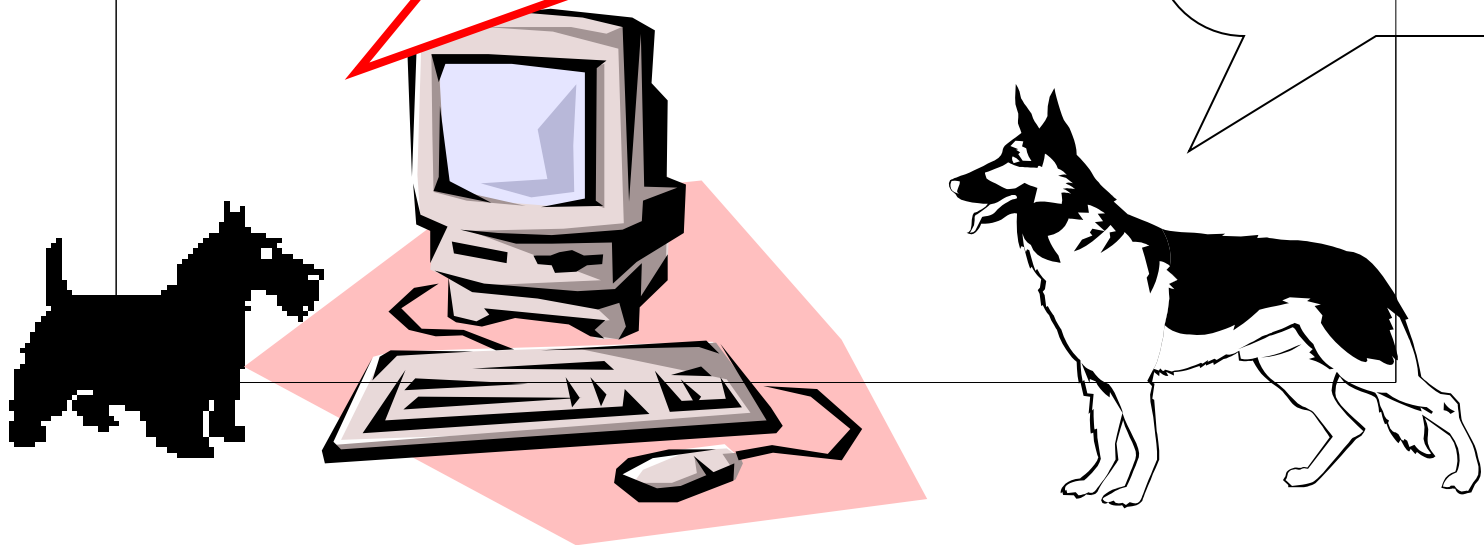
- The Cyber Laws looks into the entire gamut of transactions, its effect-civil & criminal in such processes.
- This means it will touch Jurisdiction issues, contracts, intellectual property, crimes, e-commerce, freedom of speech, human rights and the list is growing.

Generic issues in cyber operations

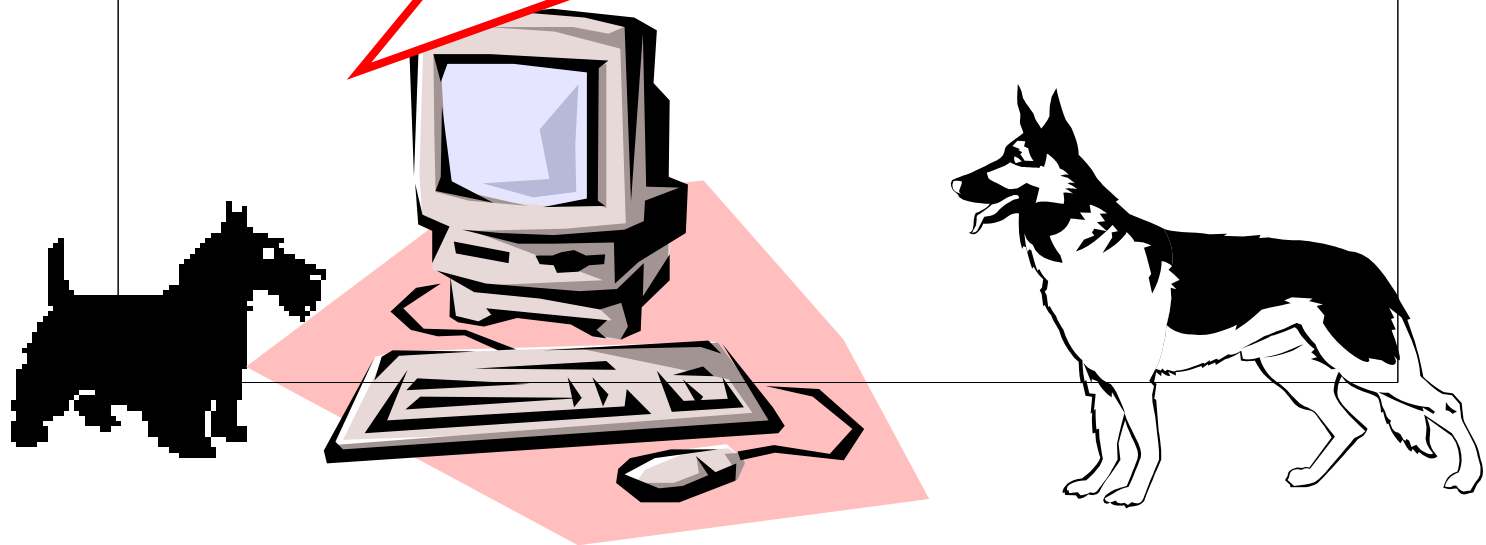
- **1 DOMAIN NAMES**
- **2 WEB DESIGNS**
- **3 WEB CONTRACTS**
- **4. CONSUMER PROTECTION ISSUES**
- **5 E-PAYMENT - Legal Issues**
- **6 TAXATION ISSUES**
- **7 DATA PROTECTION**
- **8. DISPUTE RESOLUTION MECHANISMS**

On the Internet,
no one knows
you're a dog!
(cartoon in NY Times in 1993)

Every dog has its day!



On the Internet,
now every one knows
you're a dog!
(Same cartoon in NY Times in 2003)



Applicability

- Notified on 17th October 2000
- Major Amendments notified on in 2003 & 2008
- Applicable all over India including Jammu and Kashmir
- Also Applicable to persons outside India and those who are not Citizens of India.

Excluded Documents

■ Sec 1 (4)

- (a) "Negotiable Instrument " other than cheque
- (b) "Power-of-Attorney"
- (c) "Trust"
- (d) "Will"
- (e) "Contract for the Sale "or "Conveyance "of Immovable property or any interest in such property;
- (f) any such class of documents or transactions as may be notified by the Central Government in the Official Gazette.

Authentication..2

■ Sec- 3

■ **Authentication of Electronic Records**

- (1) Subject to the provisions of this section any subscriber may authenticate an electronic record by affixing his digital signature.
- (2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Recognition of Cyber Documents

■ Sec-4:

- Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is
 - (a) rendered or made available in an electronic form; and
 - (b) accessible so as to be usable for a subsequent reference

Authentication..1

■ Sec-5

- Where any law provides that information or any other matter shall be in writing/ authenticated by affixing the signature
 - notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is
- rendered available in electronic form
- authenticated by means of digital signature

Biometric Authentication

- Not Considered by ITA-2000
 - Finger print Scanning
 - Iris Scanning
 - Face Scanning
 - Signature Analysis

E-Governance

- Sec 6/7/8
 - Filing of form or application or document
 - Issue of Licence, permit
 - Receipt or Payment of money
 - Retention of documents
 - Publication of Gazette etc
- Sec 9
 - Sec 6,7,8 at the option of the Government

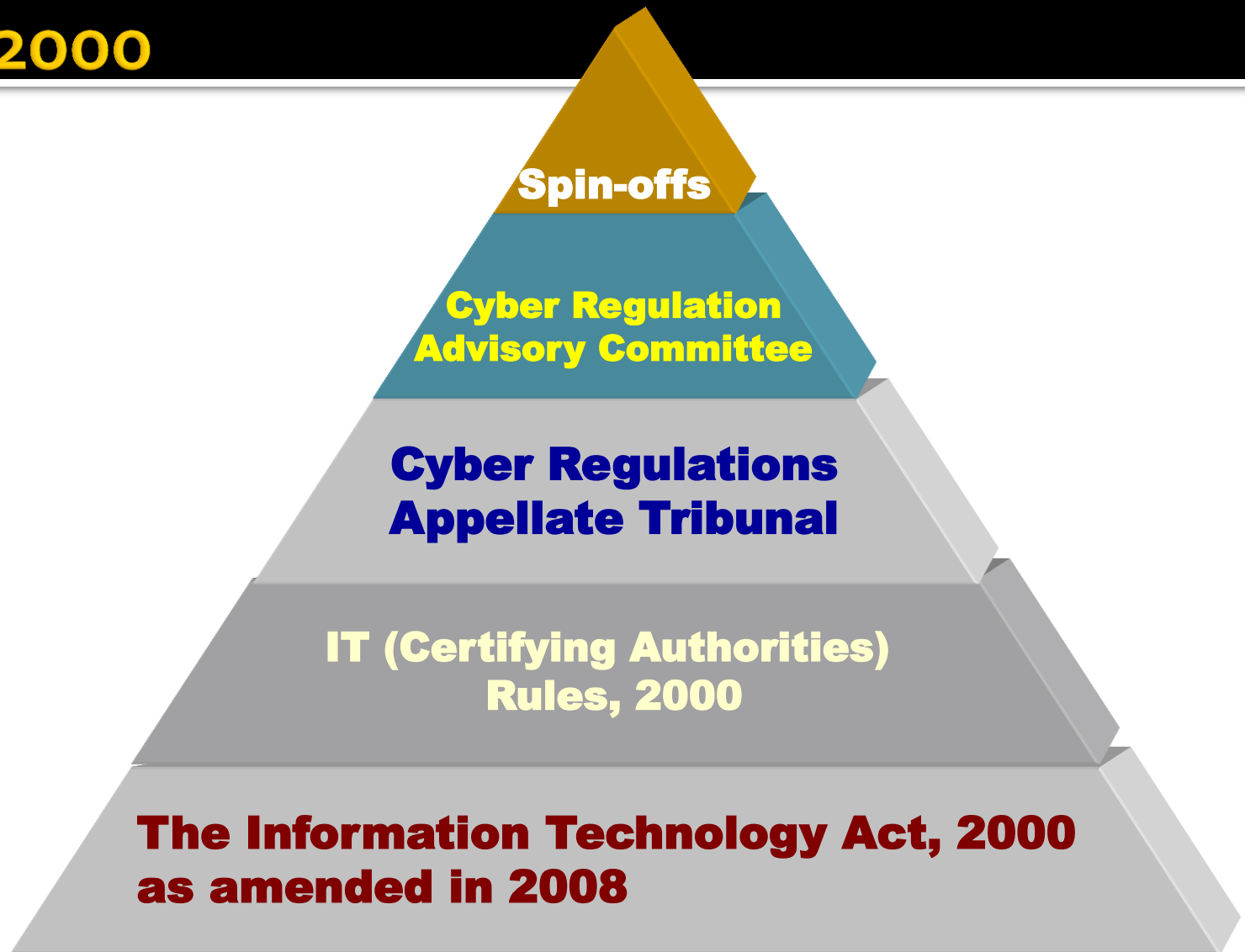
Attribution

■ Sec 11

■ Attribution of Electronic Records

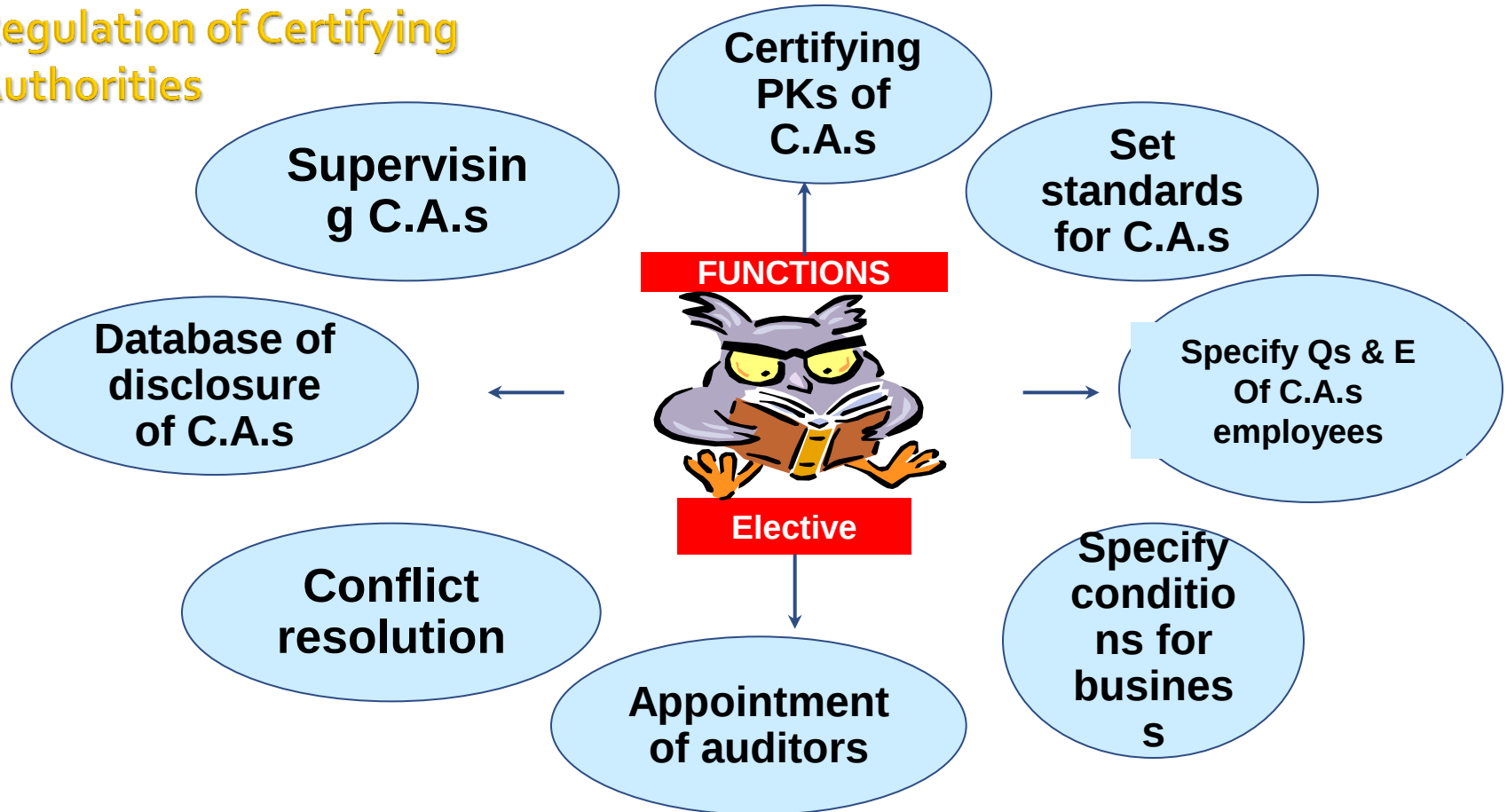
- An electronic record shall be attributed to the originator
 - (a) if it was sent by the originator himself;
 - (b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
 - (c) by an information system programmed by or on behalf of the originator to operate automatically

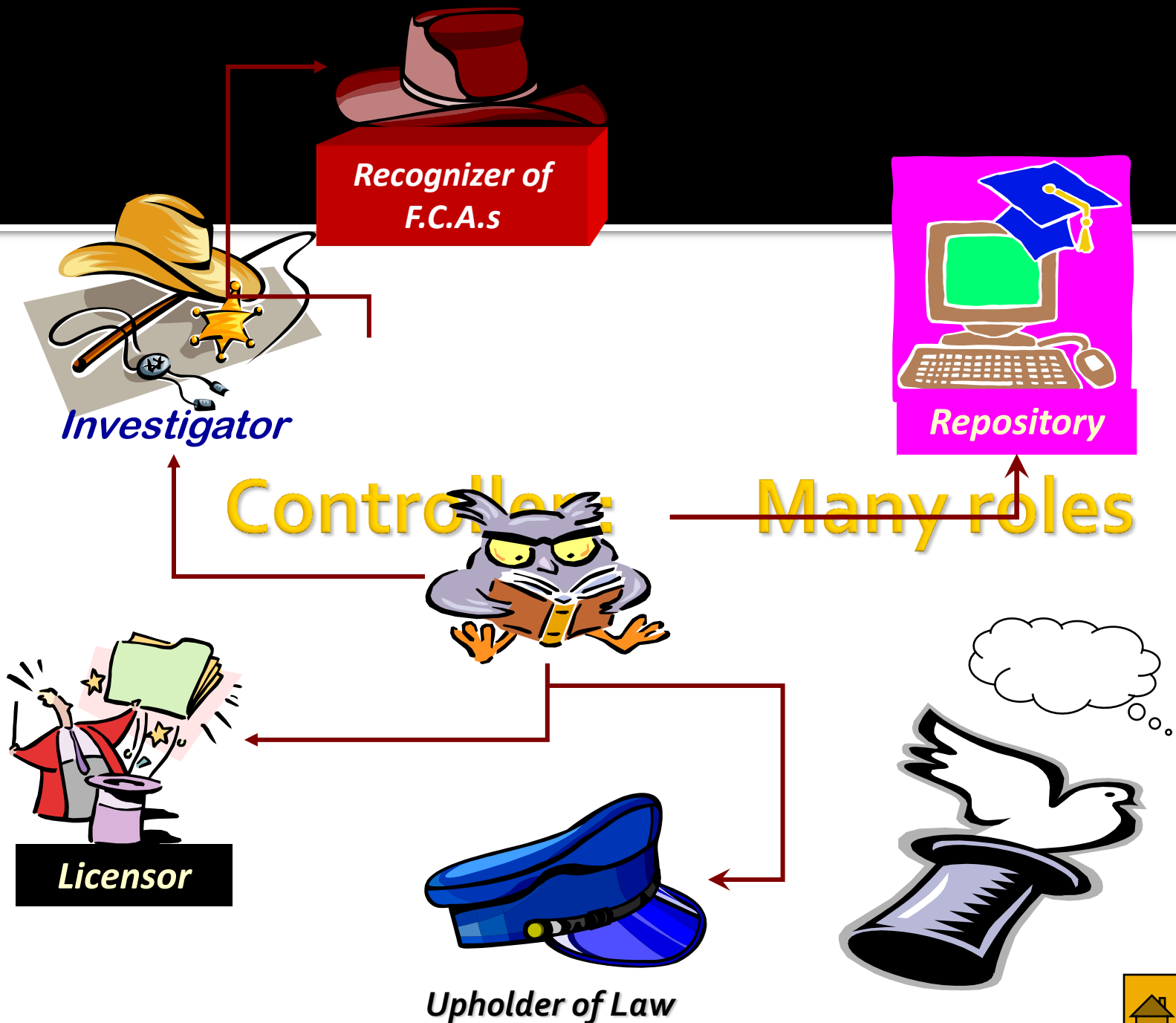
Understanding the IT ACT 2000

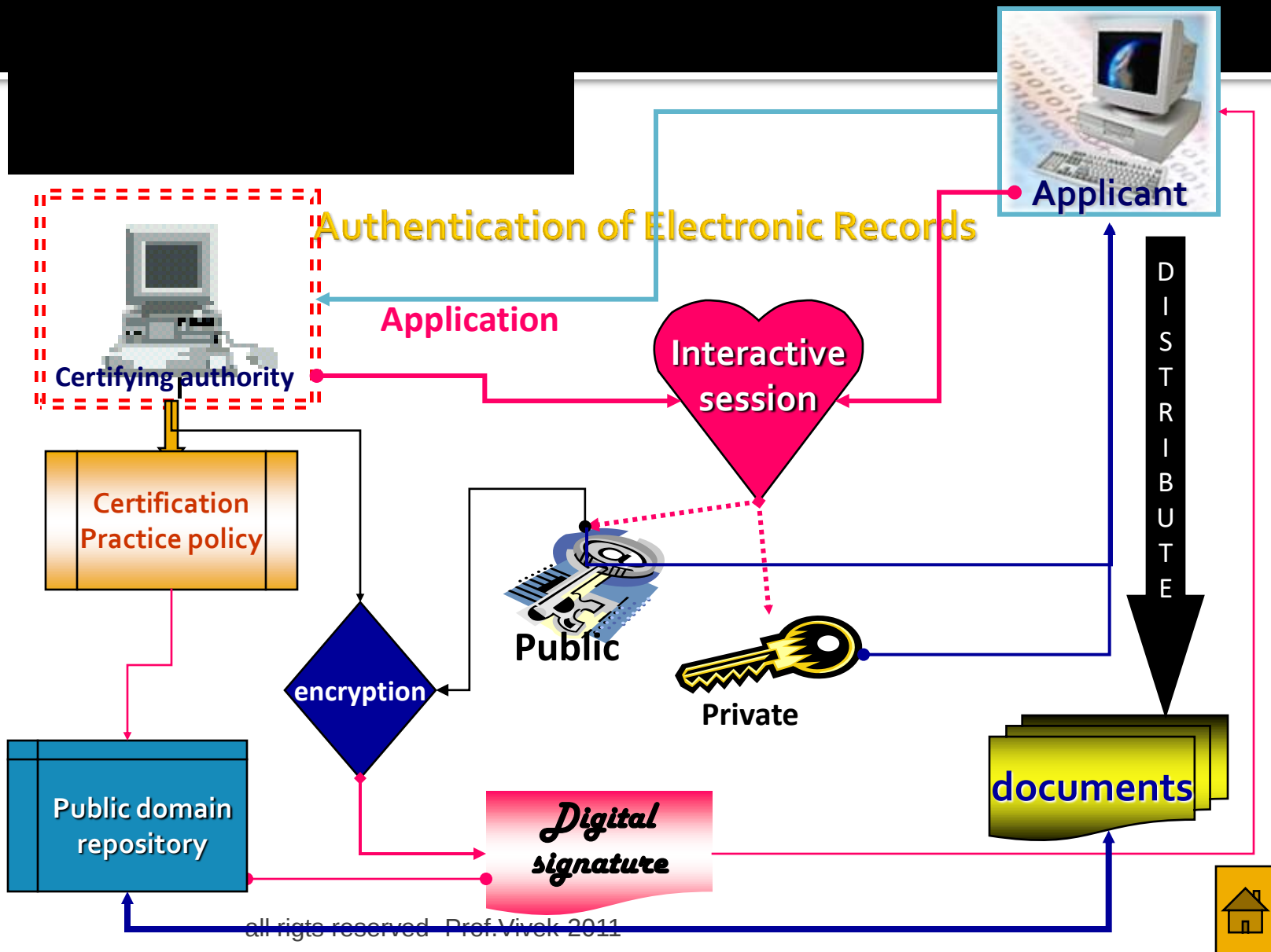


Controller of Certifying Authorities

Regulation of Certifying Authorities







Cyber Regulations Appellate Tribunal

- More than one tribunal possible
- One member tribunal only (Presiding officer)
- Should be qualified to be HC judge or member of Indian Legal service (Gr 1 for 3 years)
- Five years or 65 age

Powers of
Civil court

Appeal to
High court

Penalty
Arrears
Land Rev

Appeal within
45 days

Disposal within
6 months

Against an order
By controller or
Adjudicating
officer

Not bound by
CPC 1908

No
Jurisdiction
For civil
court



Natural justice
Act, Rules &
Regulations



Offences

Tempering with source codes	Intentionally conceals, destroys or alters source code required to be maintained by law	3 yrs 2 lakh
Hacking with computer system	Destroys or deletes or alters any info or diminishes its value or affects it injuriously by any means	3 yrs 2 lakh
Publishing obscene information	Publishes or transmits lascivious e-info that may tend to deprave and corrupt persons	5-10 yrs 1-2 lakh
Failing to facilitate Decryption directives	Fails to assist the controller in intercepting e-info and decrypt in the sovereign interest of India	7 yrs

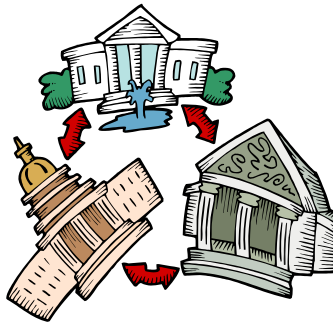


Penalties



**Damage to
computer,
system, network**

Not more than 1 crore



**Failure to
furnish info,
return, etc**

1. Access without permission
1. Fail to furnish document, return to Controller
2. Fail to file any return, info or books or documents within the time frame
3. Fail to maintain books of account or records, etc

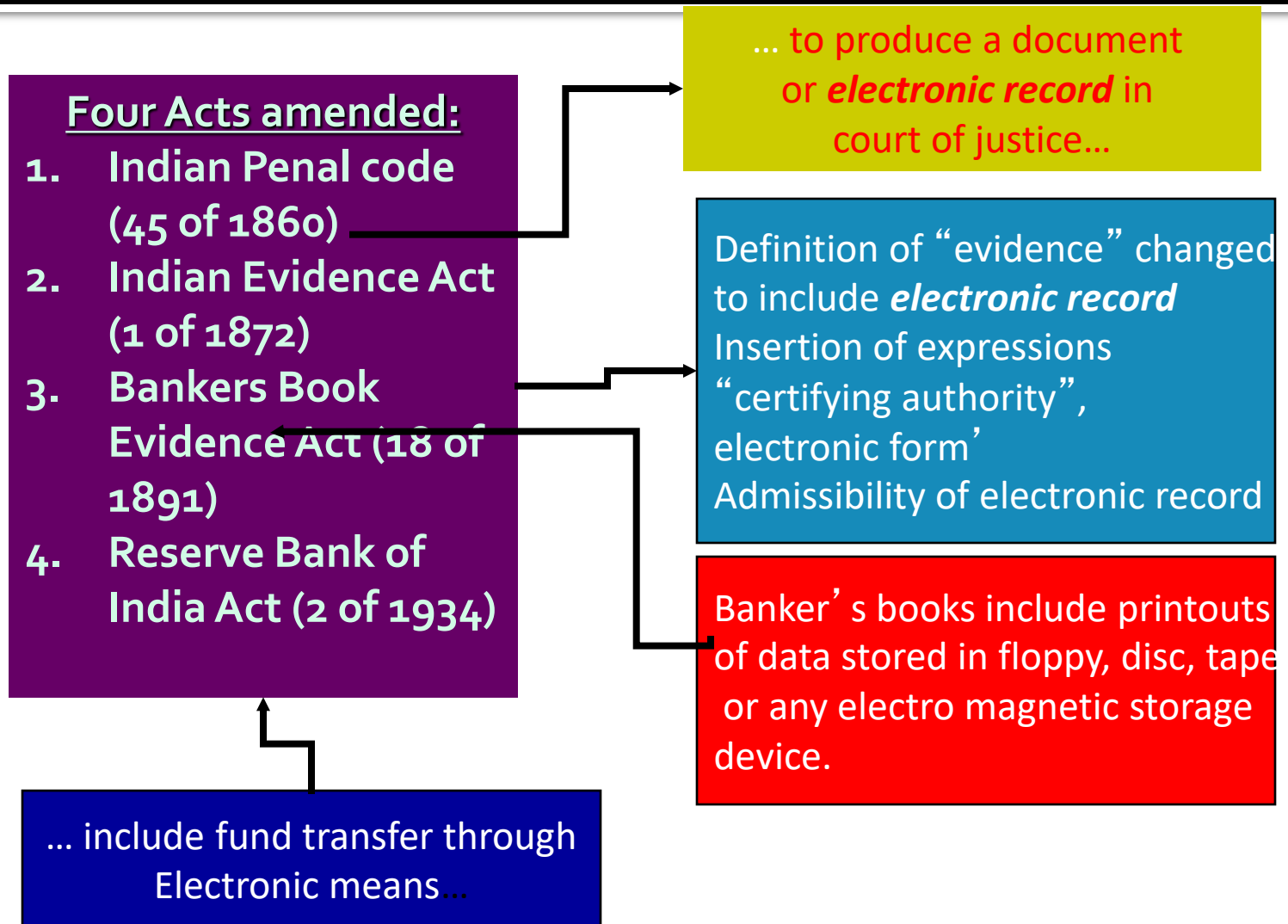


**Residuary:
Contravention
of act, rules,
regulations**

7. Complicity in crime
8. Unauthorized Account swapping to avoid charges
- 25,000 compensation



Amendment of Acts



Police Powers

- ♦ A police officer not below DSP
- ♦ Any authorised officer from central/state govt

..may enter any public place and search and arrest without warrant any person who is reasonably suspected of having committed, or of committing or of being about to commit any offence under the Act.



Sources and Acknowledgment

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- Mr.P.V.S.Giridhar & Sai Advocates

A LAST WORD

- THANK YOU FOR YOUR TIME
- ANY COMMENTS OR QUESTIONS ?
- Ack- slides from nalsarpro presentation – and net resources