

# Nalsar-2021

INFORMATION TECHNOLOGY ACT-PART I AND II

9<sup>th</sup> December 2021 2.00 pm to 3.30 pm and 3.45 pm to 5.15 pm

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# ITA 2008- A Birds Eye View

THE LAW OF DIGITAL DOCUMENTS

# ITA 2008 Chapterization

| Chapter | Title                                                                   | Sections                                                                                                      |     |
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# Essence of ITA 2000/8

- Digital Contracts
  - Legal Recognition of Electronic documents, means of authentication and digital contracts
- Contraventions and Offences
  - Civil Contraventions and Adjudication
  - Criminal liabilities and Powers of Police
- Data Security and Privacy protection obligations
  - Vicarious liabilities of intermediaries and corporate executives
- Miscellaneous
  - Digital Evidence and admissibility
  - Intermediary Guidelines

## Applicability

- Type of Excluded Documents
  - Sec 1 (4):
    - Nothing in this Act shall apply to documents or transactions specified in the First Schedule by way of addition or deletion of entries thereto.



# THE FIRST SCHEDULE

## (See sub-section (4) of section 1)

- **Documents or Transactions To Which the Act Shall Not Apply**
  1. A Negotiable Instrument (Other than a cheque) as defined in Section 13 of the Negotiable Instruments Act 1881 (26 of 1881)
  2. A Power of Attorney as defined in section 1A of the Power of Attorney Act 1882 (7 of 1882)
  3. A trust as defined in section 3 of the Indian Trusts Act, 1882 (2 of 1882)
  4. A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925 (39 of 1925) including any testamentary deposition whatever name called
  5. Any contract for the sale or conveyance of immovable property or any interest in such property

# Legal Recognition

## Section 4: Legal Recognition of Electronic Records

- 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



# Section 5 Legal recognition of Electronic Signature

- Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document should be signed or bear the signature of any person then,
  - notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied,
  - if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.
  - **Explanation** - For the purposes of this section, "Signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "Signature" shall be construed accordingly.

## Section 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.

## Sec 3..contd

- **Explanation** - For the purposes of this sub-section, "Hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "Hash Result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible
  - (a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;
  - (b) that two electronic records can produce the same hash result using the algorithm.

## Sec 3..contd

- (3) Any person by the use of a public key of the subscriber can verify the electronic record.
- (4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.
-

## Section 3A: Electronic Signatures

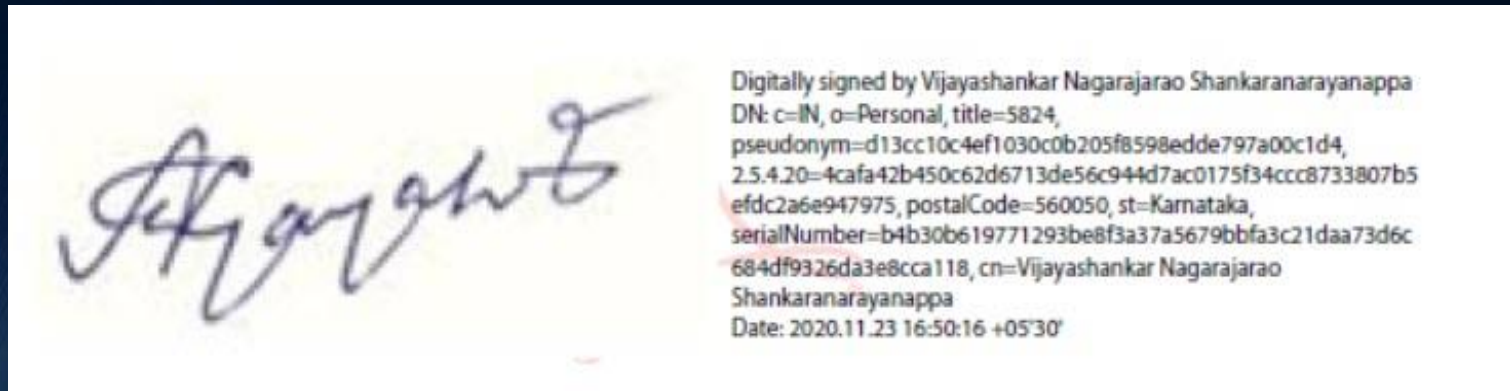
- (1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which-
  - (a) is considered reliable ; and (b) may be specified in the Second Schedule
- (2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if-
  - (a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or , as the case may be, the authenticator and of no other person;
  - (b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;
  - (c) any alteration to the electronic signature made after affixing such signature is detectable
  - (d) any alteration to the information made after its authentication by electronic signature is detectable; and
  - (e) it fulfills such other conditions which may be prescribed.



# How does a Digital Signature look like?

- 01001010 01011010 01000010 01000101 01001110 01011000 01110101 01110000  
01010101 01110101 01010110 00111000 00111000 01101100 01110100 00110010 01001101  
01101100 01110110 01010011 01010101 01000101 01100100 01001100 01001010 01001011  
01100001 01110010 01001010 00101011 00111000 01010000 01101000 01001100  
01100011 01110011 01001000 01100100 01000011 01111010 01010110 01110000 01000111  
01101011 01101111 01010100 00110010 00111001 00110000 01011000 00101111 01010000  
01001011 00110100 00111001 01110011 01100011 01111001 01110101 01010010 01001110  
01111001 01100100 01010100 00001101 00001010 01101110 01110111 01100111 01010111  
01100011 01101010 01001001 00101111 01000100 00101111 01101001 00111001 01110110  
01001111 01100011 01000101 01101100 01101101 01110100 01000011 00110011 01000100  
00101111 00110111 01010010 00110001 01001001 01110000 00110010 01011010 00110111  
01000100 01001010 00101011 01011010 00110101 01011001 01101000 01101011 01110001  
01110110 00101011 01100110 01101000 01011000 01101101 01000001 01010010 01111000  
01101010 00101011 01111000 01110111 01011001 01000101 01010000 00110001 01001101  
01100110 01000111 01111000 01001101 01110110 00110111 00001101 00001010 01001000  
01010110 01001000 01001010 01111010 01010010 01100100 01011010 01000001  
01110101 01010100 01010010 01110001 01100100 01011000 01001101 01110101 01000100  
01100010 01100110 01100111 01010100 01010111 01101110 01110000 00110001 00111000  
01010001 01011000 00110001 01010101 01110000 00110101 01001011 01010101  
01011000 01100110 01011001 01100111 01101001 00110001 01101011 01010001 00111101
- A binary representation

# How does a Digital Signature look like?

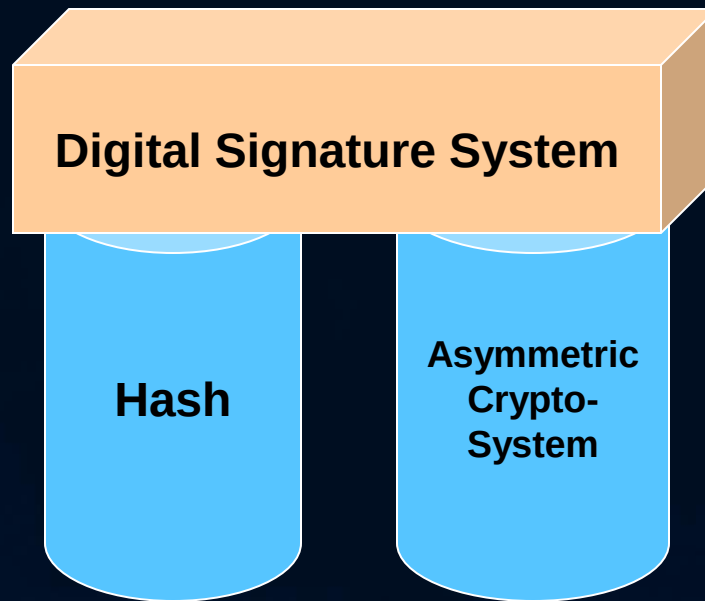


## Digital Signatures-What they are not

- It is not a Scanned form of a Signature
- It is a variable
  - It is document specific

# Technology Behind Digital Signatures

- Digital Signature System is built on the foundation of two technologies, Hashing and Asymmetric Crypto System

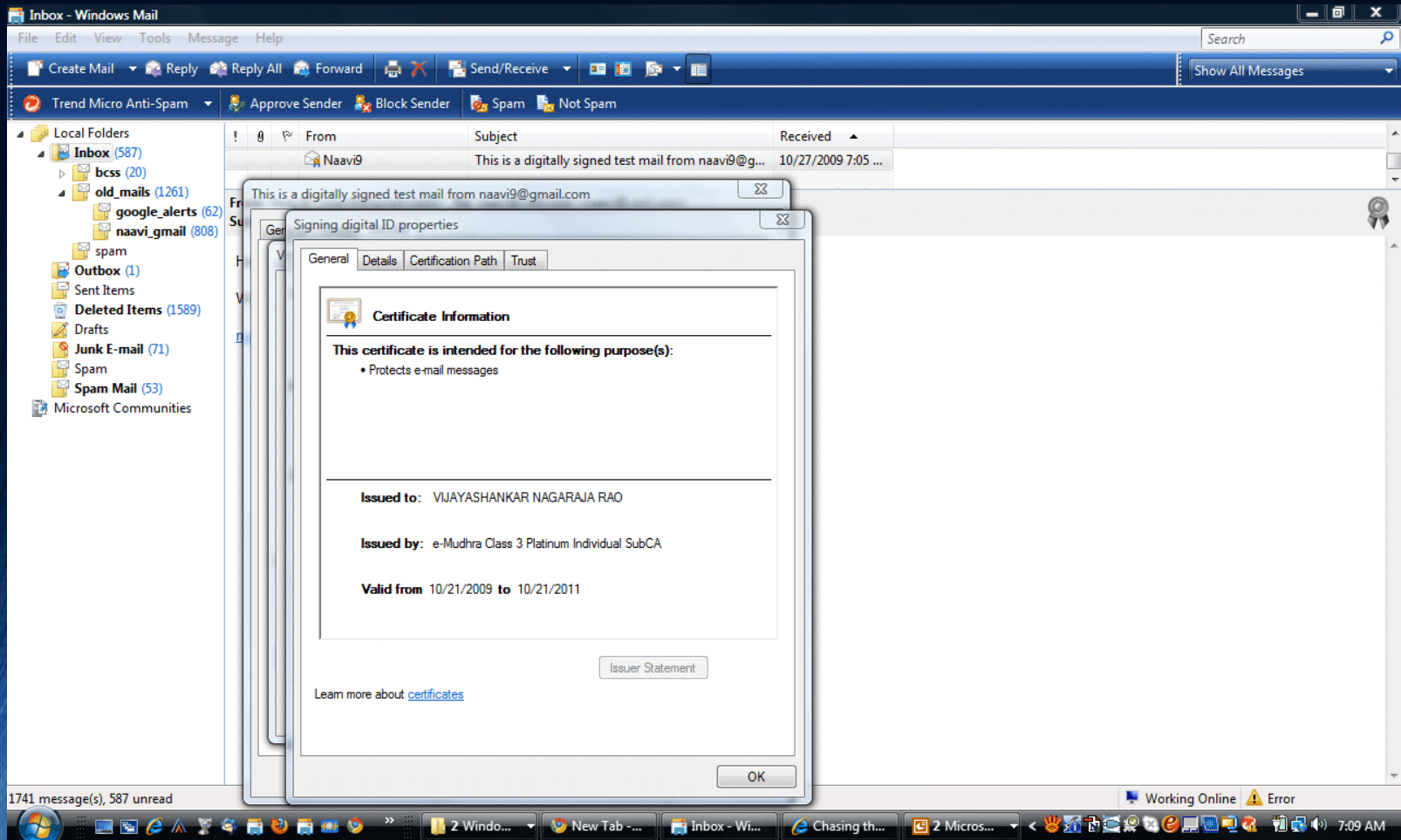


## Digital Signature Definition

- Digital Signature
  - Of a document of a person
    - Is
    - The hash value of the document encrypted with the private key of the person



# Digital Certificate



# Certifying Authorities



# Law of Cyber Contracts

# Section 10A Validity of contracts formed through electronic means

- Where in a contract formation,
  - the communication of proposals,
  - the acceptance of proposals,
  - the revocation of proposals and acceptances,
    - as the case may be,
    - are expressed in electronic form or by means of an electronic record,
    - such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

# 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



# Time and Place of Contract

DETERMINED BY THE COMPLETION OF  
CONTRACTUAL OBLIGATIONS OR AS  
OTHERWISE SPECIFIED



## Time Of Despatch [sec 13(1)]

- Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

## Time Of Receipt [Sec 13(2)]

- Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely –
  - (a) if the addressee has designated a computer resource for the purpose of receiving electronic records
    - (i) receipt occurs at the time when the electronic record enters the designated computer resource; or
    - (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;
  - (b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

## Place of Despatch [Sec 13(3)]

- Save as otherwise agreed between the originator and the addressee, an electronic record is deemed to "be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

## Place of Despatch [Sec 13 (4)]

- The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

## Place of Despatch [Sec 13 (5)]

- For the purposes of this section - (a)if the originator or the addressee has more than one place of business, the principal place of business shall be the place of business;
- (b)if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;
- (c)"Usual Place of Residence", in relation to a body corporate, means the place where it is registered.



# Acknowledgement of Message

- If the sender has prescribed a form in which acknowledgment has to be provided, sent message is valid only on receipt of such acknowledgement...
  - Otherwise, any form
  - If acknowledgement has been mandated, message is deemed to have been sent only when such acknowledgement is given
- if no acknowledgement form has been specified or time has been specified for acknowledgement and Acknowledgement has not been received
- if the sender has to revoke it,
  - He needs to send notice of revocation

# Civil Contravention

CHAPTER IX

### S43: Penalty and Compensation for damage to computer, computer system, etc

- If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network -
  - (a) accesses or secures access to such computer, computer system or computer network or computer resource
  - (b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;
  - (c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;
  - (d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

## Sec 43..contd

- (e) disrupts or causes disruption of any computer, computer system or computer network;
- (f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;
- (g) provides 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 thereunder,
- (h) charges 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,

## Sec 43..contd

- (i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means
- (j)Steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage,
  - he shall be liable to pay damages by way of compensation to the person so affected.



## Section 43A

- Compensation for failure to protect
  - Where a body corporate,
  - possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates,
  - is negligent
  - in implementing and maintaining reasonable security practices and procedures and
  - thereby causes **wrongful loss or wrongful gain** to any person, such **body corporate** shall be liable to pay damages by way of compensation, not exceeding five crore rupees, to the person so affected.

# Explanation: For the purposes of this section

- (i) "body corporate" means any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities
- (ii) "reasonable security practices and procedures" means security practices and procedures designed to protect such information from unauthorised access, damage, use, modification, disclosure or impairment, **as may be specified in an agreement** between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit.
- (iii) "sensitive personal data or information" means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit.

# Adjudication

The background is a deep blue gradient. On the right side, there is a complex, glowing structure composed of many thin, curved lines that form a grid-like pattern. This structure curves and folds, creating a sense of depth and movement. A bright light source from the upper right illuminates the structure, creating a strong glow and highlighting the grid lines. The overall effect is futuristic and technological.

## Sec 46 Power to Adjudicate

- (1) For the purpose of adjudging under this Chapter whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder which renders him liable to pay penalty or compensation,
  - the Central Government shall, subject to the provisions of sub-section(3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.

## Sec 46..contd

- (1A) The adjudicating officer appointed under subsection (1) shall exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore
  - Defines Pecuniary Jurisdiction limitation
- Provided that the jurisdiction in respect of claim for injury or damage exceeding rupees five crore shall vest with the competent court.



## Sec 46..contd

- (2)The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of that section.
- (3) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and Legal or Judicial experience as may be prescribed by the Central Government.
- (4)Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.

## Sec 46..contd

- (5) Every adjudicating officer shall have the powers of a civil court which are conferred on the Cyber Appellate Tribunal under sub-section (2) of section 58, and -
  - (a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;
  - (b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.
  - (c) shall be deemed to be a Civil Court for purposes of order XXI of the Civil Procedure Code, 1908
    - P.S: Execution of decrees etc [\(Reference\)](#)

## Notification of 25<sup>th</sup> March 2003

- Secretary of Information Technology of each of the States or of Union Territories shall provide the infrastructure and maintain the records of the matters handled by AO functioning in the States/Union Territories

## 61 Civil court not to have jurisdiction

- No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter 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 authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.
- Provided that the court may exercise jurisdiction in cases where the claim for injury or damage suffered by any person exceeds the maximum amount which can be awarded under this Chapter.

# Appeals

- Appeal from the Adjudication
  - Cyber Appellate Tribunal
    - Now merged with TDSAT (Telecom Disputes Settlement appellate tribunal)
  - Further appeal to the High Court of jurisdiction relevant to the place of adjudication



# Offences under ITA 2008

# Sec 65 Tampering with Computer Source Documents

- Whoever
  - knowingly or intentionally
    - conceals, destroys or alters or intentionally or
  - knowingly causes another
    - to conceal, destroy or alter
      - any computer source code used for a computer, computer programme, computer system or computer network,
      - **when the computer source code is required to be kept or maintained by law for the time being in force,**
        - shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.
      - **Explanation** - For the purposes of this section, "Computer Source Code" means the listing of programmes, Computer Commands, Design and layout and programme analysis of computer resource in any form.

## 66 Computer Related Offences

- If any person, dishonestly, or fraudulently, does any act referred to in section 43,
  - he shall be punishable with imprisonment for a term which may extend to **three** years or with fine which may extend to five lakh rupees or with both.
- Explanation:
  - For the purpose of this section,-
    - a) the word "dishonestly" shall have the meaning assigned to it in section 24 of the Indian Penal Code;
    - b) the word "fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code.

## 66..contd

- Sec 24/25 of IPC
  - **24. "Dishonestly"**
    - Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".
  - **25. "Fraudulently"**
    - A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

## 66 A Punishment for sending offensive messages through communication service, etc (Now Scrapped)

- Any person who sends, by means of a computer resource or a communication device,-
  - a) any **information** that is grossly offensive or has menacing character; or
  - b) any **information** which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, **persistently** by **making** use of such computer resource or a communication device,
  - c) any **electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages (Inserted vide ITAA 2008)**
- shall be punishable with imprisonment for a term which may extend to **three** years and with fine.



## Sec 66A (Scrapped)..contd

- Explanation: For the purposes of this section, terms "Electronic mail" and "Electronic Mail Message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.

## Section 66B..Stolen Computer

- Whoever
  - dishonestly receives or retains
    - any stolen computer resource or communication device knowing or having reason to believe that the same to be a stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both.

## Section 66 C: Identity Theft

- Whoever,
  - fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person,
  - shall be punished with imprisonment of either description for a term that extends upto three years and shall also be liable to fine which may extend to rupees one lakh

## Sec 66D: Impersonation

- **Whoever**
  - by means of any communication device or computer resource
  - cheats by personation,
    - shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

## Section 66 E:..Video Voyeurism

- Whoever,
  - intentionally or knowingly
    - captures, publishes or transmits
      - the image of a private area of any person
      - without his or her consent,
    - under circumstances violating the privacy of that persons,
    - shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees or with both.



## 66 E..contd

- Explanation:- For the purposes of this section,
  - (a) "transmit" means to electronically send a visual image with the intent that it be viewed by a person or persons:
  - (b) "capture" with respect to an image, means to video tape, photograph, film or record by any means
  - (c) "private area" means the naked or undergarment clad genitals, pubic area, buttocks or female breast
  - (d) publishes" means reproduction in the printed or electronic form and making it available to public
  - (e) "under circumstances violating privacy" means circumstances in which a person can have a reasonable expectation that
    - (i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or
    - (ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

## Section 66F: Cyber Terrorism

- (1) Whoever,-
  - (A) with intent to
    - threaten the unity, integrity, security or sovereignty of India or
    - to strike terror in the people or any section of the people
  - by-
    - (i) denying or cause the denial of access to any person authorised to access computer resource; or
    - (ii) attempting to penetrate or access a computer resource without authorisation or exceeding authorised access; or
    - (iii) introducing or causing to introduce any computer contaminant; and
  - by means of such conduct
    - causes or likely to cause death or injuries to persons or damage to or destruction of property or disrupts or
    - knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical infrastructure specified under Section 70, or

## Sec 66F..contd

- **(B)** knowingly or intentionally penetrates or accesses a computer resource
  - without authorization or exceeding authorised access, and
  - by means of such conduct
    - obtains access to information, data or computer database
      - that is restricted for reasons of the security of the state or foreign relations or
      - any restricted information data or computer data base with reasons to believe that such information, data or computer data base so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence or to the advantage of any foreign nation, group of individuals or otherwise,
- commits the offence of Cyber Terrorism
- (2) Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to imprisonment for life.

## 67 Punishment for publishing or transmitting obscene material in electronic form

- Whoever
  - 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,
  - shall be punished on first conviction with imprisonment of either description for a term which may extend to **three** years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to **five** years and also with fine which may extend to ten lakh rupees.

## 67 A: Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form

- **Whoever**
  - publishes or transmits or causes to be published or transmitted in the electronic form
  - any material which contains sexually explicit act or conduct
    - shall 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 ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to **seven years** and also with fine which may extend to ten lakh rupees.



## Sec 67 A..contd

- Exception: This section and section 67 does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form-
  - (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art, or learning or other objects of general concern; or
  - (ii) which is kept or used bona fide for religious purposes.

## Section 67B:

- Whoever,-
- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or
- (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or
- (d) facilitates abusing children online or
- (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,
- shall be punished on first conviction with imprisonment of either description for a term which may extend to **five** years and with a fine which may extend to **ten lakh rupees** and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to **seven** years and also with fine which may extend to **ten lakh rupees**:

## Sec 67B..contd

- Provided that the provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form-
- (i) The publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or
- (ii) which is kept or used for bonafide heritage or religious purposes
- Explanation: For the purposes of this section, "children" means a person who has not completed the age of 18 years.

## 84 B Punishment for abetment of offences

- Whoever abets
- any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment,
- be punished with the punishment provided for the offence under this Act.
  - Explanation: An Act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

## 84 C Punishment for attempt to commit offences

- Whoever attempts
- to commit an offence punishable by this Act or causes such an offence to be committed, and in such an attempt
- does any act towards the commission of the offence,
  - shall, where no express provision is made for the punishment of such attempt,
  - be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence or with both.



# Cognizability, Bailability, Compoundability

0-3 years

Non Cognizable, (Bailable),  
Compoundable

3 years

Cognizable, Bailable,  
Compoundable (with exceptions)

Above 3 years

Cognizable, Non Bailable,  
Non Compoundable

## Section 80 : Power of Police Officer and Other Officers to Enter, Search, etc

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any police officer, not below the rank of a **Inspector** or any other officer of the Central Government or a State Government authorized by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to commit any offence under this Act
- **Explanation-** For the purposes of this sub-section, the expression "Public Place" includes any public conveyance, any hotel, any shop or any other place intended for use by, or accessible to the public.

## 75 : Act to apply for offence or contraventions committed outside India

- (1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.
- (2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.

# Suggested Amendments..TKV committee (check Naavi.org: Oct 16 2017)

- Amendment to ITA 2000/8
  - Section 78..Power to investigate to be provided to Sub Inspector
- CrPc Amendments
  - State Cyber Crime Coordinator proposed (IG Level)
  - District Level Cyber Crime Cells with participation of experts from private sector proposed..Dsp to head+Sub inspectors+atleast 3 experts
- IPC Amendments
  - 153C: Prohibiting incitement to hatred.
  - 505A:Causing Fear, Alarm or Provocation of violence in certain cases.
    - 2 years imprisonment and fine Rs 5000
    - To replace Sec 66A which was scrapped by SC

# ITA 2008..Road Ahead for IT Companies

NAAVI



# How ITA 2008 impacts an IT Company?

- Types of IT Companies

- Companies for whom Data Protection is Relevant
- Companies (IT and IT user companies such as Banks) for whom Information Security is relevant
- Company executives for whom vicarious liabilities on Cyber Crimes are relevant
- Companies for whom new products and services are relevant



## Data Protection

- Section 43A and Section 72 A provide for civil and criminal liabilities under the Act
- 43A prescribes that a body corporate handling “Sensitive personal Data” should not be negligent in implementing and maintaining “Reasonable Security Practices”
- Non compliance may result in a liability without any upper limit

# New Data Protection Act Expected

- Following the Supreme Court confirmation that Privacy is a fundamental right and the controversies surrounding Aadhaar
  - Government set up a Committee under Ret SC Justice Srikrishna, to draft a new Data Protection Act for India
    - Draft presented to Parliament as PDPB 2018
    - Modified with Public comments and presented as PDPB 2019
    - Modified by JPC 1 and 2 and presented in the Parliament as PDPB 2021
      - Will replace Section 43A of ITA 2000
      - Will introduce a new regulator -DPA

## 72 A Punishment for Disclosure of information in breach of lawful contract

- Save as otherwise provided in this Act or any other law for the time being in force,
  - any person including an intermediary who,
  - while providing services under the terms of lawful contract,
  - has secured access to any material containing personal information about another person,
- with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain
  - discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person
- shall be punished with imprisonment for a term which may extend to three years, or with a fine which may extend to five lakh rupees, or with both.

## Sec 72A

- Applies when there is disclosure of information in breach of lawful contract
  - Three year imprisonment and fine of upto Rs 5 lakhs
  - Applies to intermediaries also
  - Intent to cause or knowing that he is likely to cause wrongful harm required
  - Lack of consent of the person is required

## Sec 72A..liability

- Company need to put in place mechanisms to obtain “Consent” where required in such a manner that it would be acceptable to the Courts
  - Should not be done with misrepresentation
  - Should conform to internationally accepted Privacy principles
  - Contractual terms should be clear
  - Note that liability may arise even when there is no intention but reasonable knowledge
    - Negligence can bring liability



## 67 C Preservation and Retention of information by intermediaries

- (1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe.
- (2) Any intermediary who intentionally or knowingly contravenes the provisions of sub section (1) shall be punished with an imprisonment for a term which may extend to three years and shall also be liable to fine.

## Section 67C

- Central Government is expected to specify
  - the manner and format in which certain data may have to be retained.
  - May also indicate period upto which data has to be retained

# Implications of Section 69

- Central Government and State Government can designate officials who can
  - Intercept, monitor or decrypt, information
  - Transmitted, received or Stored in any computer resource
- In national security interests as well as
- For preventing incitement to the commission of any cognizable offence or for investigation of any offence
- Failure to assist may result in imprisonment of 7 years
  - Companies need to watch out for guidelines in this regard and take every step to comply

# Implications of Section 69A

- Central Government can designate officials who can
  - Block access to any information generated, transmitted, received, stored or hosted in any computer resource
  - Transmitted, received or Stored in any computer resource
- In national security interests as well as
- For preventing incitement to the commission of any cognizable offence or for investigation of any offence
- Failure to assist may result in imprisonment of 7 years
  - Companies need to watch out for guidelines in this regard and take every step to comply

# Implications of Section 69B

- Central Government can designate officials who can
  - Monitor and collect traffic data or information generated, transmitted, received, stored or hosted in any computer resource
  - Transmitted, received or Stored in any computer resource

Failure to assist may result in imprisonment of 3 years

- Companies need to watch out for guidelines in this regard and take every step to comply

## Sec 70-Protected System

- Government reserves the right to notify certain systems as “Protected Systems”
  - Access is regulated, attempt to access unauthorized is an offence
  - Punishment could be upto 10 years
  - May be used for “Critical Infrastructure System”



# Vicarious Liabilities

## Sec 85: Offences by Companies.

- (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made there under is a Company,
- every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:
  - **Provided** that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

## Sec 85..contd

- (2)Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and it is proved that the contravention has taken place
- with the consent or connivance of, or
- is attributable to any neglect
- on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.
  - **Explanation-** For the purposes of this section
    - (i) "Company" means any Body Corporate and includes a Firm or other Association of individuals; and
    - (ii) "Director", in relation to a firm, means a partner in the firm

## Sec 79: Exemption from liability of intermediary in certain cases

- (1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link hosted by him
- (2) The provisions of sub-section (1) shall apply 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
  - (b) the intermediary does not-
    - (i) initiate the transmission,
    - (ii) select the receiver of the transmission, and
    - (iii) select or modify the information contained in the transmission
  - (c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf (Inserted Vide ITAA 2008)

## Sec 79..contd

- (3) The provisions of sub-section (1) shall not apply if-
  - (a) the intermediary has conspired or abetted or aided or induced whether by threats or promise or otherwise in the commission of the unlawful act
  - (b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner
- .Explanation:- For the purpose of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary



## Implications of Sec 85

- Where a person committing a contravention is a company, the vicarious liability may extend to its officials and Directors unless they prove
  - lack of knowledge and
  - due diligence
- When a computer resource or an employee of a company has committed the contravention, it may be possible to interpret that the contravention was committed by the Company.
  - Hence vicarious liability may arise on account of any of the penal sections of the Act including Sections 65, 66, 67 etc



# Implications of Sec 85

- As a measure of abundant caution therefore every company should undertake such steps as are considered necessary for preventing contraventions with the use of any computer resource belonging to the Company
  - This requires Cyber Law compliance audit
  - Implementation of risk mitigation efforts suggested in the audit
  - Certification of CyLawCom audit

# Seven basic compliance requirements

- 1) Designate a Cyber Law Compliance officer
- 2) Initiate training of employees on Cyber Law Compliance
- 3) Introduce sanction procedures in HR policy for non compliance
- 4) use authentication procedures suggested in law
- 5) Maintain data retention as suggested under Section 67C
- 6) Identify and initiate safeguard requirements indicated under Sections 69 and 69A, 69B
- 7) Initiate global standards of data privacy on collection, retention, access, deletion etc

# Some Cases

## The Case of Suhas Katti

- State of TN Vs Suhas Katti, The Court of the Additional Chief Metropolitan Magistrate, Egmore, No: 1680/04
- Mr Suhas Katti (SK) and Ms Roselind (R) have studied in a College in Mumbai several years back, SK has proposed marriage, R has politely declined, continue to be friends
- R gets married and later divorced
- SK re-proposes, R again declines

## The Case of Suhas Katti..2

- R starts receiving telephone calls at her residence from strangers inviting for company.
- Callers refer to her message on Yahoo e-groups stating that she is available
  - F says she has not posted such a message and files a Police complaint.

## The Case of Suhas Katti..3

- The investigation is initiated
  - First a certified record is made about the commission of the offence through Cyber Evidence Archival Center
  - The identity of the Computer used for posting of the message is traced to addresses in Mumbai.
  - After further enquiry, the complainant discloses the presence of Mr SK, as the only acquaintance in Mumbai they know of.
  - Police visit Mumbai, secure Mr SK, get positive identification from two Cyber Café owners and file charge sheet.



## The Case of Suhas Katti..4

- Judgement by Thiru D Arul Raj
  - SK convicted for a total of 5 years of imprisonment and Rs 5000 fine
    - 2 years RI + Rs 4000 under Sec 67 of ITA-2000
    - 2 years RI+ Rs 500 under Section 469 (Forgery for harming reputation)
    - 1 year under + 500 under Section 509 (Insulting the modesty of woman)
      - To run concurrently
  - Commission of offence February 7, 2004
  - Complaint dated February 14 2004
  - Arrest of the Accused on February 18, 2004
  - Date of Judgement November 5, 2004

## Cases for study

- **State of Tamil Nadu Vs Suhas Katti**
  - Application of Section 67/ITA 2000 along with the sections of IPC, Forgery and Outraging the modesty of woman
  - Acceptability of Section 65B certified electronic document on Yahoo server

## Cases for study

- S.Umashankar Vs ICICI Bank (2008)
  - Adjudication against bank for a Phishing fraud
  - Customer had responded to the Phishing Mail in the name of the Bank
  - 6,45,000/- had been transferred out of the account and credited to a current account in ICICI Bank at Mumbai.
  - Rs 4,60,000/- withdrawn by the current account holder
  - Rs 35,000/- adjusted to overdraft
- Adjudication process launched at Chennai
  - Rs 150,000 returned.

## Cases for study

- Customer contended that there was negligence on the part of the Bank
  - Invoked Section 43 along with Section 85
  - Negligence for not using digital signature for operations and not identifying an unusual transaction at the Mumbai branch
  - Appropriating part of the proceeds
  - Erasing evidence of CCTV footage etc
- Bank defended
  - Customer was negligent in answering the Phishing mail
  - Contract on the website provides indemnity

# Cases for study

- Bank's defence countered
  - RBI Guidelines on Internet Banking
  - Digital signature mandatory under ITA 2000
  - Standard form contract unconscionable
  - Involved forgery
- AO gave his award in favour of the customer in 2010...Bank went on appeal
  - TDSAT confirmed the award
    - Held Bank's negligence tantamounts to "Assistance" under Section 43(g)

# Cases for study

- **Baazee.com**

- Intermediary liability under Section 79 for a Section 67 offence
  - A customer of Bazeer.com posted an obscene video for sale in the C2C E Commerce platform
  - The customer was charged under Section 67 Bazeer.com CEO and GM was also charged
  - Acquitted by Supreme Court only because the Police had filed the case against the CEO without arraigning the Company.
  - Check Naai.org for more details



# Digital Evidence

[www.naavi.org](http://www.naavi.org)

## Section 65B of IEA

- Meant for evidence that can be seen but not seized
  - A true copy can be captured in print or on a digital media.
  - Duly certified by the observer

www.ceac.in

## Cyber Evidence Archival Center



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#### What this Cyber Evidence Archival Center is All About

CEAC is a Multifaceted Service Center providing a **“Trusted Third Party Cyber Law Assurance Service”**. The service is a first of the kind global service backed by the provisions of Information Technology Act 2000 (ITA 2000) as amended by Information Technology Act 2008 (ITA 2008).

CEAC was started in 2002 to provide assistance to Cyber Law Practitioners and Law Enforcement Agencies with a service that can convert electronic evidence into admissible paper evidence for the purpose of submission in a Court of Law as per Section 65B of Indian Evidence Act. CEAC is proud to have been associated with the Chennai Police in

#### Social



#### Recent Posts

- [Contemporaneous Certification required under Section 65B](#)
- [Evidence Drop Box and Shapoorji Pallonji E Tender Case](#)
- [Why there cannot be a standard format for Section 65B Certificate](#)
- [Affidavit is not the correct format of Section 65B Certificate](#)
- [Wisdom from Puri...on Section 65B and Section 79A](#)

## Cases for study

- Shaporji Pallonji
  - E Tender process not followed for alleged technical failure
    - Refer [naavi.org](http://naavi.org) for details

## Cases for study

- P V Basheer Vs P V Anvar
- Shafhi Mohammad
  - Court has discretion to accept electronic evidence and waive Section 65B
    - Refer [naavi.org](http://naavi.org) for details
  - **Arjun Panditrao Khotkar V. Kailash Kushanrao Gorantyal**
    - Clarified that Shafi Mohammad ruling was incorrect



# Intermediary Guidelines-February 25, 2021



# Section 79-Protection-When applicable and When Not..

• (2)The provisions of sub-section (1) shall apply 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
- (b) the intermediary does not-
  - (i) initiate the transmission,
  - (ii) select the receiver of the transmission, and
  - (iii) select or modify the information contained in the transmission
- (c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf

• (3)The provisions of sub-section (1) shall not apply if-

- (a) the intermediary **has conspired or abetted or aided or induced** whether by threats or promise or otherwise in the commission of the unlawful act (ITAA 2008)
- (b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation:- For the purpose of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary

# Shreya Singhal

Not otherwise on own judgement

- 79(3)(b) being read down to mean that
  - an intermediary upon receiving **actual knowledge from a court order or on being notified by the appropriate government or its agency** that unlawful acts relating to Article 19(2) are **going to be committed** then fails to expeditiously remove or disable access to such material.
  - Similarly, the Information Technology “Intermediary Guidelines” Rules, 2011 are valid subject to Rule 3 sub-rule

# Visakha Industries Case: SC December 10, 2019

- **Google India Vs Visakha Industries Ltd.**
  - incidents prior to 27th October 2009, protection is available only for offences under ITA2000,
  - protection after 27th October 2009 is for offences under any law
    - For “Defamation” which is an offence under Section 499 of IPC, protection would be available only if the incident is after 27th October 2009.

# Due Diligence –Classification of intermediaries

- Intermediaries will be classified as
  - Intermediaries,
  - Social Media Intermediaries and
  - Significant Social Media Intermediaries
    - ‘social media intermediary’ means an intermediary which **primarily or solely enables** online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services;
    - ‘significant social media intermediary’ means a social media intermediary having number of registered users in India above such threshold as notified by the Central Government;

A company which is not primarily engaged in such transaction is not a social media intermediary solely by use of information dissemination to its employees or customers or business associates

# Due Diligence

- **Prominently publish Privacy Policy, User Agreement and Rules and regulations**
- **Inform not to publish the following 10 types of information**
  - a) Information belong to another person
  - b) Defamatory, Obscene, Pornographic, Paedophilic, Invasive of privacy inclusive of bodily privacy, insulting or harassing on the basis of gender, libellous, racially or ethnically objectionable, relating or encouraging money laundering or gambling or otherwise inconsistent with or contrary to laws in force
  - c) Is harmful to child.
  - d) Infringes any patent, trademark, copyright or other proprietary rights
  - e) violates any law for the time being in force

# Due Diligence

- Inform not to publish the following 10 types of information
  - f) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any information which is patently false or misleading in nature but may reasonably be perceived as a fact;
  - g) impersonates another person;
  - h) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting other nation;i)
  - i) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource;
  - j) is patently false and untrue, and is written or published in any form, with the intent to mislead or harass a person, entity or agency for financial gain or to cause any injury to any person;



# Due Diligence

- **Inform users at least once a year**
  - The rules and regulations, Privacy Policy and user agreement or any changes there in
  - In case of non compliance with rules etc, the account may be terminated or content removed

# Due Diligence-Removal of Content

- Shall not host, store or publish information prohibited by any law in relation to the sovereignty, integrity of nation, etc...
- If hosted, remove content immediately and not later than 36 hours on receipt of an order from a Court or appropriate Government agency
- Where any information has been removed or access to which has been disabled,
  - the intermediary shall, without vitiating the evidence in any manner,
  - preserve such information and associated records **for one hundred and eighty days** for investigation purposes, or for such longer period as may be required by the court or by Government agencies who are lawfully authorised;

# Due Diligence

- **Where**

- an intermediary collects information from a user for registration
- it shall retain his information for a period of **one hundred and eighty days after any cancellation or withdrawal of his registration**, as the case may be;
- shall take all reasonable measures to secure its computer resource and information contained therein following the **reasonable security practices and procedures as prescribed** in the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011;
- Provide information as soon as possible and within 72 hours
  - **provide information** under its control or possession, or **assistance** to the Government agency which is lawfully authorised **for investigative or protective or cyber security activities**, for the purposes of **verification of identity**, or for the **prevention, detection, investigation, or prosecution, of offences under any law** for the time being in force, or for **cyber security incidents**:

# Grievance Redressal...

- Prominently publish
  - the name of the Grievance Officer and his contact details
  - Mechanism by which a victim may make complaint
  - both on the website and mobile app.
- Shall acknowledge within 24 hours
- Dispose off within 15 days

# Grievance Redressal...

- Receive and acknowledge any order or direction received from a competent authority
- **Within twenty-four hours** from the receipt of a complaint,
  - in relation to any content **which is prima facie in the nature** of any material which exposes the **private area of such individual**, shows such individual in full or partial **nudity** or shows or depicts such individual in **any sexual act or conduct**, or is in the nature of **impersonation** in an electronic form, including **artificially morphed images** of such individual, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it:
- The intermediary shall implement a mechanism for the receipt of complaints which may enable the individual or person to provide details, as may be necessary, in relation to such content or communication link.

## Thank You...Questions?

- Contact me at: [www.naavi.org](http://www.naavi.org) or [www.fdppli.in](http://www.fdppli.in)
- Or through the Android App



For more information  
Refer

[www.naavi.org](http://www.naavi.org)

-E Books on Cyber  
Crimes, Electronic  
Signatures, Section  
65B etc

-Print book on  
Personal Data  
Protection Act