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असाधारण

EXTRAORDINARY

भाग II— खण्ड 1

PART II— Section 1

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 5th February, 2009/Magha 16, 1930 (Saka)

The following Act of Parliament received the assent of the President on the 5th February, 2009, and is hereby published for general information:—

THE INFORMATION TECHNOLOGY (AMENDMENT) ACT, 2008

No. 10 OF 2009

[5th February, 2009.]

An Act further to amend the Information Technology Act, 2000.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. (1) This Act may be called the Information Technology (Amendment) Act, 2008.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

PART II

AMENDMENTS TO THE INFORMATION TECHNOLOGY ACT, 2000

Substitution of words "digital signature" by words "electronic signature".

2. In the Information Technology Act, 2000 (hereinafter in this Part referred to as the principal Act), for the words "digital signature" occurring in the Chapter, section, sub-section and clause referred to in the Table below, the words "electronic signature" shall be substituted.

TABLE

| S.No. | Chapter/section/sub-section/clause |
|-------|---|
| (1) | clauses (d), (g), (h) and (zg) of section 2; |
| (2) | section 5 and its marginal heading; |
| (3) | marginal heading of section 6; |
| (4) | clauses (a), (b), (c) and (e) of section 10 and its marginal heading; |
| (5) | heading of Chapter V; |
| (6) | clauses (f) and (g) of section 18; |
| (7) | sub-section (2) of section 19; |
| (8) | sub-sections (1) and (2) of section 21 and its marginal heading; |
| (9) | sub-section (3) of section 25; |
| (10) | clause (c) of section 30; |
| (11) | clauses (a) and (d) of sub-section (1) and sub-section (2) of section 34; |
| (12) | heading of Chapter VII; |
| (13) | section 35 and its marginal heading; |
| (14) | section 64; |
| (15) | section 71; |
| (16) | sub-section (1) of section 73 and its marginal heading; |
| (17) | section 74; and |
| (18) | clauses (d), (n) and (o) of sub-section (2) of section 87. |

Amendment of section 1.

3. In section 1 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:—

"(4) Nothing in this Act shall apply to documents or transactions specified in the First Schedule:

Provided that the Central Government may, by notification in the Official Gazette, amend the First Schedule by way of addition or deletion of entries thereto.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament."

Amendment of section 2.

4. In section 2 of the principal Act,—

(A) after clause (h), the following clause shall be inserted, namely:—

'(ha) "communication device" means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image;';

(B) for clause (j), the following clause shall be substituted, namely:—

'(j) "computer network" means the inter-connection of one or more computers or computer systems or communication device through—

(i) the use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and

(ii) terminals or a complex consisting of two or more inter-connected computers or communication device whether or not the inter-connection is continuously maintained;';

(C) in clause (n), the word "Regulations" shall be omitted;

(D) after clause (n), the following clauses shall be inserted, namely:—

'(na) "cyber cafe" means any facility from where access to the internet is offered by any person in the ordinary course of business to the members of the public;

(nb) "cyber security" means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosure, disruption, modification or destruction;'

(E) after clause (t), the following clauses shall be inserted, namely:—

'(ta) "electronic signature" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature;

(tb) "Electronic Signature Certificate" means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate;'

(F) after clause (u), the following clause shall be inserted, namely:—

'(ua) "Indian Computer Emergency Response Team" means an agency established under sub-section (1) of section 70B;'

(G) in clause (v), for the words "data, text", the words "data, message, text" shall be substituted;

(H) for clause (w), the following clause shall be substituted, namely:—

'(w) "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes;'

5. In Chapter II of the principal Act, for the heading, the heading "DIGITAL SIGNATURE AND ELECTRONIC SIGNATURE" shall be substituted.

Amendment of heading of Chapter II.

6. After section 3 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 3A.

"3A. (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—

Electronic signature.

(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 to 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 fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.”

Insertion of
new section
6A.

Delivery of
services by
service
provider.

7. After section 6 of the principal Act, the following section shall be inserted, namely:—

“6A. (1) The appropriate Government may, for the purposes of this Chapter and for efficient delivery of services to the public through electronic means authorise, by order, any service provider to set up, maintain and upgrade the computerised facilities and perform such other services as it may specify by notification in the Official Gazette.

Explanation.—For the purposes of this section, service provider so authorised includes any individual, private agency, private company, partnership firm, sole proprietor firm or any such other body or agency which has been granted permission by the appropriate Government to offer services through electronic means in accordance with the policy governing such service sector.

(2) The appropriate Government may also authorise any service provider authorised under sub-section (1) to collect, retain and appropriate such service charges, as may be prescribed by the appropriate Government for the purpose of providing such services, from the person availing such service.

(3) Subject to the provisions of sub-section (2), the appropriate Government may authorise the service providers to collect, retain and appropriate service charges under this section notwithstanding the fact that there is no express provision under the Act, rule, regulation or notification under which the service is provided to collect, retain and appropriate e-service charges by the service providers.

(4) The appropriate Government shall, by notification in the Official Gazette, specify the scale of service charges which may be charged and collected by the service providers under this section:

Provided that the appropriate Government may specify different scale of service charges for different types of services.”

Insertion of
new section
7A.

Audit of
documents,
etc.,
maintained in
electronic
form.

Insertion of
new section
10A.

Validity of
contracts
formed
through
electronic
means.

8. After section 7 of the principal Act, the following section shall be inserted, namely:—

“7A. Where in any law for the time being in force, there is a provision for audit of documents, records or information, that provision shall also be applicable for audit of documents, records or information processed and maintained in the electronic form.”

9. After section 10 of the principal Act, the following section shall be inserted, namely:—

“10A. 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.”

10. In section 12 of the principal Act, in sub-section (1), for the words "agreed with the addressee", the word "stipulated" shall be substituted. Amendment of section 12.
11. For sections 15 and 16 of the principal Act, the following sections shall be substituted, namely:— Substitution of new sections for sections 15 and 16.
- '15. An electronic signature shall be deemed to be a secure electronic signature if— Secure electronic signature.
- (i) the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and
- (ii) the signature creation data was stored and affixed in such exclusive manner as may be prescribed.
- Explanation.*—In case of digital signature, the "signature creation data" means the private key of the subscriber.
16. The Central Government may, for the purposes of sections 14 and 15, prescribe the security procedures and practices: Security procedures and practices.
- Provided that in prescribing such security procedures and practices, the Central Government shall have regard to the commercial circumstances, nature of transactions and such other related factors as it may consider appropriate.
12. In section 17 of the principal Act,— Amendment of section 17.
- (a) in sub-section (1), for the words "and Assistant Controllers", the words "Assistant Controllers, other officers and employees" shall be substituted; and
- (b) in sub-section (4), for the words "and Assistant Controllers", the words "Assistant Controllers, other officers and employees" shall be substituted."
13. Section 20 of the principal Act shall be omitted. Omission of section 20.
14. In section 29 of the principal Act, in sub-section (1), for the words "any contravention of the provisions of this Act, rules or regulations made thereunder", the words "any contravention of the provisions of this Chapter" shall be substituted. Amendment of section 29.
15. In section 30 of the principal Act,— Amendment of section 30.
- (i) in clause (c), after the word "assured", the word "and" shall be omitted;
- (ii) after clause (c), the following clauses shall be inserted, namely:—
- "(ca) be the repository of all Electronic Signature Certificates issued under this Act;
- (cb) publish information regarding its practices, Electronic Signature Certificates and current status of such certificates; and"
16. In section 34 of the principal Act, in sub-section (1), in clause (a), the words "which contains the public key corresponding to the private key used by that Certifying Authority to digitally sign another Digital Signature Certificate" shall be omitted. Amendment of section 34.
17. In section 35 of the principal Act, in sub-section (4), — Amendment of section 35.
- (a) the first proviso shall be omitted;
- (b) in the second proviso, for the words "Provided further", the word "Provided" shall be substituted.
18. In section 36 of the principal Act, after clause (c), the following clauses shall be inserted, namely:— Amendment of section 36.
- "(ca) the subscriber holds a private key which is capable of creating a digital signature;
- (cb) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the subscriber;"

Insertion of
new section
40A.

19. After section 40 of the principal Act, the following section shall be inserted, namely:—

Duties of
subscriber of
Electronic
Signature
Certificate.

“40A. In respect of Electronic Signature Certificate the subscriber shall perform such duties as may be prescribed.”.

Amendment of
heading of
Chapter IX.

20. In Chapter IX of the principal Act, in the heading, for the words “PENALTIES AND ADJUDICATION”, the words “PENALTIES, COMPENSATION AND ADJUDICATION” shall be substituted.

Amendment of
section 43.

21. In section 43 of the principal Act,—

(a) in the marginal heading, for the word “Penalty”, the words “Penalty and Compensation” shall be substituted;

(b) in clause (a), after the words “computer network”, the words “or computer resource” shall be inserted;

(c) after clause (h), the following clauses shall be inserted, namely:—

“(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) steal, 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;”;

(d) for the portion beginning with the words “he shall be liable to pay damages” and ending with the words “persons so affected” the following shall be substituted, namely:—

“he shall be liable to pay damages by way of compensation to the person so affected”;

(e) in the *Explanation*, after clause (iv), the following clause shall be inserted, namely:—

“(v) “computer source code” means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.”.

Insertion of
new section
43A.

22. After section 43 of the principal Act, the following section shall be inserted, namely:—

Compensation
for failure to
protect data.

“43A. 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 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.
23. In section 46 of the principal Act,—
- Amendment of section 46.
- (a) in sub-section (1), for the words "direction or order made thereunder", the words "direction or order made thereunder which renders him liable to pay penalty or compensation," shall be substituted;
- (b) after sub-section (1), the following sub-section shall be inserted, namely:—
- “(1A) The adjudicating officer appointed under sub-section (1) shall exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore:
- Provided that the jurisdiction in respect of the claim for injury or damage exceeding rupees five crore shall vest with the competent court.”;
- (c) in sub-section (5), after clause (b), the following clause shall be inserted, namely:—
- “(c) shall be deemed to be a civil court for purposes of Order XXI of the Civil Procedure Code, 1908.”.
- 5 of 1908.
24. In Chapter X of the principal Act, in the heading, the word "REGULATIONS" shall be omitted.
- Amendment of heading of Chapter X.
25. In section 48 of the principal Act, in sub-section (1), the word "Regulations" shall be omitted.
- Amendment of section 48.
26. For sections 49 to 52 of the principal Act, the following sections shall be substituted, namely:—
- Substitution of new sections for sections 49 to 52.
- “49. (1) The Cyber Appellate Tribunal shall consist of a Chairperson and such number of other Members, as the Central Government may, by notification in the Official Gazette, appoint:
- Composition of Cyber Appellate Tribunal.
- Provided that the person appointed as the Presiding Officer of the Cyber Appellate Tribunal under the provisions of this Act immediately before the commencement of the Information Technology (Amendment) Act, 2008 shall be deemed to have been appointed as the Chairperson of the said Cyber Appellate Tribunal under the provisions of this Act as amended by the Information Technology (Amendment) Act, 2008.
- (2) The selection of Chairperson and Members of the Cyber Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.
- (3) Subject to the provisions of this Act—
- (a) the jurisdiction, powers and authority of the Cyber Appellate Tribunal may be exercised by the Benches thereof;
- (b) a Bench may be constituted by the Chairperson of the Cyber Appellate Tribunal with one or two Members of such Tribunal as the Chairperson may deem fit;
- (c) the Benches of the Cyber Appellate Tribunal shall sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson of the Cyber Appellate Tribunal, by notification in the Official Gazette, specify;

(d) the Central Government shall, by notification in the Official Gazette, specify the areas in relation to which each Bench of the Cyber Appellate Tribunal may exercise its jurisdiction.

(4) Notwithstanding anything contained in sub-section (3), the Chairperson of the Cyber Appellate Tribunal may transfer a Member of such Tribunal from one Bench to another Bench.

(5) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member of the Cyber Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of more Members, the case or matter may be transferred by the Chairperson to such Bench as the Chairperson may deem fit.

Qualifications for appointment as Chairperson and Members of Cyber Appellate Tribunal.

50. (1) A person shall not be qualified for appointment as a Chairperson of the Cyber Appellate Tribunal unless he is, or has been, or is qualified to be, a Judge of a High Court.

(2) The Members of the Cyber Appellate Tribunal, except the Judicial Member to be appointed under sub-section (3), shall be appointed by the Central Government from amongst persons, having special knowledge of, and professional experience in, information technology, telecommunication, industry, management or consumer affairs:

Provided that a person shall not be appointed as a Member, unless he is, or has been, in the service of the Central Government or a State Government, and has held the post of Additional Secretary to the Government of India or any equivalent post in the Central Government or State Government for a period of not less than one year or Joint Secretary to the Government of India or any equivalent post in the Central Government or State Government for a period of not less than seven years.

(3) The Judicial Members of the Cyber Appellate Tribunal shall be appointed by the Central Government from amongst persons who is or has been a member of the Indian Legal Service and has held the post of Additional Secretary for a period of not less than one year or Grade I post of that Service for a period of not less than five years.

Term of office, conditions of service, etc., of Chairperson and Members.

51. (1) The Chairperson or Member of the Cyber Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(2) Before appointing any person as the Chairperson or Member of the Cyber Appellate Tribunal, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member.

(3) An officer of the Central Government or State Government on his selection as the Chairperson or Member of the Cyber Appellate Tribunal, as the case may be, shall have to retire from service before joining as such Chairperson or Member.

Salary, allowances and other terms and conditions of service of Chairperson and Members.

52. The salary and allowances payable to, and the other terms and conditions of service including pension, gratuity and other retirement benefits of, the Chairperson or a Member of the Cyber Appellate Tribunal shall be such as may be prescribed.

Powers of superintendence, direction, etc.

52A. The Chairperson of the Cyber Appellate Tribunal shall have powers of general superintendence and directions in the conduct of the affairs of that Tribunal and he shall, in addition to presiding over the meetings of the Tribunal, exercise and discharge such powers and functions of the Tribunal as may be prescribed.

