

## The information technology Act, 2000: No one act syndrome

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### Abstract

The Information Technology Act, 2000 was passed with the intent to include electronic commerce into our legal framework. But, it also included certain allied subject matters such as creation of digital signature, civil wrongs and penalties in the form of contraventions and cybercrimes. The whole gamut of criminal law and compensation made most of the people think that Information Technology Act, 2000 is a technical piece of legislation and it will be applied separately and exclusively. In reality, it is not carrying any "One Act Syndrome".

**Keywords:** One Act Syndrome, Information Technology Act, 2000, Section 77

### 1. Introduction

There is a paradigm shift in the jurisprudence of technology laws all across the globe due to technological advancements and India is not an exception to it. The Information Technology Act, 2000 in India has brought up intangible rights in place of tangible rights in respect of information and communication technology based devices. This leads to social and legal reformation because society is in urgent need of laws governing new technology.

The Information Technology Act, 2000, as a legislation is a progressive step to include electronic commerce imported through UNCITRAL Model Law, which predicted the need for international trade based on digital mechanism and information and communication technology. To keep pace with the social and technological developments, the Act was amended in 2004 and 2008.

The Amendment of 2008 marginally enhanced the scope of Section 43 and the remedies for the victims of contraventions under Section 43 of the Act. But, still it carried certain limitations in it.

*"The questions have been raised whether the Act has sufficient 'byte' to become an effective legislation. Then there are so called concerns over certain grey areas within the Act... lack of confidence building measures, consumer protection,.... draconian powers of police... silent on intellectual property rights, taxation.... the list is endless. In short, critics are questioning legislative competence in framing the Act<sup>[1]</sup>."*

#### 1.1 One Act Syndrome

The Information Technology Act, 2000 certainly has limitations and grey areas. One enactment cannot answer all the questions. As a nation adopting for progressive legislation, there is a need to legislate on ancillary areas such as intellectual property, new formed technology, uncovered technologies, technology which creates threat to privacy, etc. The approach shall be changed even in respect of those ancillary and related legislations involving investigative

powers of police, collection and custody of electronic evidence, procedure for trial against foreigner and jurisdictional challenges to courts, especially, civil courts, the powers of the Cyber Appellate Tribunal and the confusing jurisdiction of primary court and tribunal.

There is also a need to bring the existing legal framework in parity with the new technological developments. The legislature, judiciary and people must accept the fact that one statute cannot deal with all the questions in digital world. On the similar lines, one must also accept that the reading of two or more provisions is also not an alien process in India and that is why, there has to be parity amongst statutes which are ancillary to each other. One needs to take the law beyond the traditional 'One Act Syndrome' for granting effective remedies for the victims.

In this scenario, the only option left for us is to emulate US and UK, which is the most common approach in every field in the recent past. The issue in relation to "One Act Syndrome" comes in question due to certain statistical data, that is, The Information Technology Act, 2000 and the amendments made in it are equivalent to 45 or more US Federal enactments and 598 or more US State enactments and 16 or more UK enactments<sup>[2]</sup>.

#### 1.2 Limitation of Schedule-I

Even after having comparatively such a huge enactment, The Information Technology Act, 2000 has got a major limitation in the form of Schedule I. Schedule I of The Information Technology Act, 2000 provides for certain subject matter to which the Act is not applicable. Schedule I includes negotiable instruments other than cheques, power of attorney, will, trust deed and any instrument of conveyance of immoveable property. All these subject matters are excluded from the applicability of The Information Technology Act, 2000. The reasoning for excluding such subject matters from the applicability of The Information Technology Act, 2000 is not merely technological but also jurisprudential. There are already set principles of legal framework for all the subject matters in the Schedule I in India. There are separate legislations for

every single subject matter in the Schedule I of the Act. These legislations require that the identification of the parties and verification of parties is must under the law. Technically, there are so many challenges to authenticate, identify and verify the identity of the parties in relation to any of the documents mentioned in the Schedule I of The Information Technology Act, 2000. The applicability of the relevant laws is not denied due to any of the provisions of The Information Technology Act, 2000.

Application and implementation of any law is totally rested on courts in India. The Information Technology Act, 2000 is not an exception to this general rule. On the larger scale in India, one school of thought believes that the courts only interpret the law and they don't create the law. The role of the judiciary in India is to ascertain the legislative intent behind the Act and accordingly interpret the provisions of the law. The argument that the judges do not have technological temperament to understand and do justice in a given situation is based on a very shallow premise. The Information Technology law is dynamic piece of legislation and cannot be all the time interpreted traditionally.

Since the inception in the year 2000 and the enforcement of the Amendment in 2008, The Information Technology Act, 2000 there are not many guiding and descriptive judgments from the higher judiciary in India on the information technology law. In such a situation, it is obvious that the courts and the law enforcement agencies heavily rely on interpretation made by the foreign courts. Predominantly, such foreign court in India means courts in US and UK. In such a scenario, the threat is to over regulate or over codification of the laws, which may also generate "One Act" Syndrome in India like US.

There are certain efforts which can be seen in some of the judgments in Supreme Court, to oppose this "One Act" syndrome like US. In *State of Maharashtra v. Dr. Praful B. Desai* <sup>[3]</sup>, Supreme Court held that;

*"Video Conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you, i.e, in your presence... In video conferencing both the parties are in presence of each other... Thus it is clear that so long is the accused and /or his pleader are present when evidence is recorded by video conferencing that the evidence is being recorded in the "presence" of the accused and would thus fully meets the requirements of Section 273 of the Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law".*

This shows, the Supreme Court of India, is not emulating any of the technologically developed country like US and UK, but fully establishing an approach which considers the effect of one legislation over the other. This is a sign of mature understanding and establishing a coherent application of the legal provisions of the different statues which is in anti-thesis to "One Act" syndrome.

### 1.3 Section 77

Another angle to the argument related to "One Act" Syndrome is that, The Information Technology Act, 2000 cannot be "One Act" syndrome, due to its own provisions. For example, Section 77 of The Information Technology Act, 2000 provides that:

*"No Compensation awarded, penalty imposed or confiscation made under this Act shall prevent the award of compensation or imposition of any other penalty or punishment under any other law for the time being in force."*

This provision of the Act makes it clear that the Act cannot be "One Act" syndrome. Section 77 of The Information Technology Act, 2000 states that any adjudicating process resulting in award of compensation, imposition of penalties or confiscation not to interfere with other punishments under any other law for the time being in force. This mandates that, the person if held guilty for any contravention under Section 43 or for any offence under Sections 65 to 74 of The Information Technology Act, 2000 is not immune from the liability under any other law for the time being in force.

The very provision of Section 77 of The Information Technology Act, 2000 is ensuring that The Information Technology Act, 2000 cannot be "One Act" syndrome.

### 2. References

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