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SERIES ON CYBER LAW: ISSUE 3

CRITICAL ANALYSIS OF THE INFORMATION TECHNOLOGY ACT, 2000 – DETERMINING THE LOOPHOLES IN THE PRESENT IT FRAMEWORK IN INDIA

INTRODUCTION

Cyberspace is entirely a wide world that takes on a variety of fields such as online business, cybercrimes, privacy, digital assets, e-governance, and various other evolving fields touching the technological aspect. To regulate all these different spheres of cyberspace, there is only one legislation in India and i.e. the Information Technology Act, 2000 (*Hereinafter referred to as the IT Act, 2000*). Not all the aspects of the tech world are covered under the IT Act, 2000, it suffers from various shortcomings.

The deficiencies in the IT Act, 2000 are discussed below, which needs to be addressed keeping in view the widespread indulgence of technology in every sector.

- The most explicit defect of the IT Act, 2000 is the limited scope of its preamble itself. The aim of bringing the IT Act, 2000 was restricted to majorly regulating e-commerce transactions and providing recognition to electronic records. Its purpose was not to curb the problem of increased cybercrimes, regulate the conduct of social media platforms, protect online privacy, and other tech world issues that are prevalent in the present time and which need to be controlled.

- The IT Act, 2000 missed recognizing the intellectual properties rights in cyberspace. These days' trademark and copyright infringement on the online platform is a cakewalk. Online-contents such as music, videos, literary writing, images, service marks, domain names, etc. are easily copied and used without any fear. The IT Act, 2000 must provide a separate chapter to deal with this area.

- Cyber world and data protection are two intertwined things; one can't be separated from the other. But data breaches and data privacy are not taken into account by the IT Act, 2000. Data privacy is one of the most crucial aspects that should have been included in any information technology regulating framework which has been neglected by the framers of the Indian IT Act, 2000. A distinct chapter along with data privacy regulations and guidelines to protect the data of the individuals in cyberspace should have been laid down in the act. Though the Indian Personal Data Protection Bill, 2019 is pending in the parliament for approval and in near

future, India will have a separate statute altogether to deal with data protection in the cyber world, hence this issue will be resolved by the enactment of the data protection law.

- There are various cybercrimes that are not mentioned under chapter XI- "Offences" of the IT Act, 2000. Cyber crimes such as spamming, morphing, cyber-squatting, cyberbullying, cyber defamation, cyber-attacks, cyber grooming, data breaches, phishing, and many other newer type of crimes have no mention in the act when in fact these crimes are happening rapidly on a daily basis. Due to this lacuna, no action is taken against the offenders of these crimes and they are repeatedly exploiting cyberspace and affecting the lives of many.

- The IT Act, 2000 provides a weak adjudication mechanism. Under Section 46 of the IT Act, 2000, an adjudication officer is appointed to adjudicate upon the matters where there are any contraventions of the provisions of this Act and appeal from the Adjudication officer lies to the Cyber Appellate Tribunal which is now merged with TDSAT (Telecom Dispute Settlement Appellate Tribunal). The offences under the IT Act, 2000 are investigated by a police officer, not below the rank of Inspector and the case is filed in a regular civil court. No Special court is established for dealing with cyber offences. In India, we have Consumer Court, Green Tribunals, a Company law tribunal, and other special courts to adjudicate on the eminent subject domains that require special attention, similarly, it was necessary that a separate cyber court would have been set up in view of the increasing cybercrime cases. Providing a Cyber Appellate Tribunal just to handle the contraventions and not the offences of the IT Act, 2000 is an absurd decision.

- The penalties imposed for any contravention of the IT Act, 2000 are extremely low. For instance, as per the reports, Facebook earns around 18 crore rupees per day, and the maximum penalty imposed by the IT Act, 2000 is Rs 5 crore which is nearly 1/3rd of what the company like Facebook earns in a day. A higher penalty should be imposed in case of any contravention and non-com-



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pliance of the regulations of the IT Act, 2000 so that it creates a deterrence in the mind of the offenders and makes them sincerely comply with the regulations of the IT Act, 2000.

- Under Section 79 of the IT Act, 2000, the intermediaries are exempted from the liability for any third party information or data made available by him on its platform if he proves that the offences or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention. The rationale behind this safe harbor protection provided to the intermediaries is to secure the intermediaries against any illegal and unlawful actions of third parties of which intermediaries have no actual knowledge. This protection is highly misused by the intermediaries to abdicate their responsibility for any illegal, sexually explicit, or any kind of unwanted material available on their platform. For example, social media platforms are full of pornographic material which are against their own community guidelines but they seek protection under this section despite the fact that such unlawful content

may have drastic consequences. Efforts are made on part of the government to increase the responsibility of the Intermediaries and the new Intermediaries Guidelines, 2021 have been introduced a few months back to control the issues of fake news, child pornography, etc. and make the intermediaries highly vigilant and take constant steps to curb such issues.

- Other areas that do not find any mention in the IT Act, 2000 are the Internet of Things, electronic payments, and digital assets which require immediate attention due to their increasing use in the present time.

With the advent of technology, there are always new uses of Information Technology and also new forms of its misuse are invented. Different cybercrimes are emerging every day and cybercriminals are adopting new ways to mishandle cyberspace which have drastic effects physically, financially, and emotionally. Hence, a legal framework to regulate the technologically driven world must be future-ready. The IT Act, 2000 was last amended in 2008, it has been 13 years since then and during this period, a new digital world has evolved. The government needs to proactively modify and amend the IT Act to keep pace with the rapid speed of technology and meet the needs of the society.