

## INDIAN IT ACT- ISSUES FOR JUDICIARY

Nalsar (GIGA)  
10<sup>th</sup> March 2012

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## The Major Issues

- Jurisdiction
  - Criminal/Civil
  - Consumer Forums/Civil Courts Vs Adjudication
- Capacity Building
  - Adjudication
  - CAT
  - Criminal Justice System
- Evidence
  - Admissibility and Relevance
- Expert Assistance
  - Availability

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## Jurisdiction

- ITA 2008 addresses jurisdiction issues under
  - Section 1
  - Section 75
  - Section 46
  - Section 61

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## Territorial Jurisdiction

- Covers the whole of India including Jammu and Kashmir [Sec 1(2)]
- Extra Territorial Jurisdiction [Sec 75]
- Sec 75 also provides the principle for determining the jurisdiction of Adjudicators within India
  - Location of at least one computer within the jurisdictional area involved in the contravention

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## Subject Matter and Pecuniary Jurisdiction

- If the cause of action is contravention of any provision of ITA 2008
  - If the compensation does not exceed Rs 5 crores
    - Under Section 61, Jurisdiction is exclusively with the Adjudicator
  - If the compensation exceeds Rs 5 crores
    - Appropriate civil court
- Sometimes Consumer Forums assume Jurisdiction for "Deficiency of Service" even when there is also a contravention of ITA 2008
  - Eg: E-Banking frauds
- Between different adjudicators the principle of Section 75 is applicable. (atleast one computer used for the offence should reside within the jurisdiction)

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## Personal Jurisdiction

- Does IT Act provide immunity to Corporates from being held liable under Section 43 and Section 66?
- Does IT Act bar Corporates from invoking Section 43 or Section 66?
  - Adjudicator of Bangalore says so
    - Needs review from CAT
      - Not operational since 1<sup>st</sup> June 2011
        - Should High Courts take over the responsibility to hear the appeal?
        - Can GOI make such a statement for the benefit of Cyber Crime victims?

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## Criminal trial jurisdiction

- ITA 2008 is silent as regards criminal trial jurisdiction
  - Should normally lie at the place Where the offence occurred
    - In virtual crimes it is difficult to attribute a physical place where the offence is said to take place.
  - Offences occur with the sending and receiving of http commands which pass through several computers from the accused or his accessory's computer to the victims computer passing through several intermediary's computers.
  - Jurisdiction can be claimed logically at any of these places under Section 75 (Rules under Section 46)
  - Probably it is logical to take the jurisdiction at a place
    - Where Evidences lie or
    - Where the victim resides
    - Where the accused resides

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## Capacity Building

- Training of the Adjudicators/Judges
  - It is time for judiciary to take over the adjudication system
- GOI needs to strengthen the available set up
  - GOI needs to appoint PO at CAT and train AOs
- Training of Prosecutors/Police
  - Who will train?
  - Who will bear the cost of training?
  - How many can be trained within a finite period?

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## Evidence

- ITA 2008 provides admissibility for electronic documents to be produced as paper document under Section 65B of IEA
  - Used successfully in Suhaskatti case
- E Discovery
  - Most of the evidence which the victim wants to produce in Court remains with the accused
    - Eg: Phishing cases
- Development of Forensic skills

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## Expert Evidence

- Who is an expert?
  - Cyber Forensic/Cyber Security expertise is more self developed.
  - is yet to be developed out of college degrees
  - Courts need to accept this situation and accommodate experts based on their demonstrated skill over a period of time.
- ITA 2008 has provided for digital evidence examiners under Section 79A
  - Yet to be utilized

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## Thank you

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