# 7

# Information Technology Regulatory Issues

| Learning Objectives |
|---|
| • To learn the key provisions of IT Act 2000 along with amendments and its objectives; |
| • To understand related definitions and specific provisions; |
| • To understand systems audit requirements by various agencies; and |
| • To get an overview of Cyber Forensic and Cyber Fraud Investigations. |
| **Task Statements** |
| • To understand the key provisions of IT Act and Rules as relevant for assurance and assessing impact of the non-compliance; |
| • To identify risk to an entity in terms of technology being used; |
| • To understand scope of cyber forensics/cyber fraud investigation; and |
| • To outline the requirements of other statutes regarding systems audit. |
| **Knowledge Statements** |
| • To know the specific sections of IT Act & its Rules as relevant for assurance: Electronic Contracting, digital signatures, cyber offences, etc; |
| • To know the need for systems audit as per various regulatory bodies such as: RBI, SEBI, IRDA; and |
| • To know the concepts of Cyber Forensic/Cyber Fraud Investigation. |

## 7.1 The IT Act and its Objectives

The Information Technology Act was enacted on 17th May 2000 primarily to provide legal recognition for electronic transactions and facilitate e-commerce. India became the 12th nation in the world to adopt cyber laws by passing the Act. When the Information Technology Act, 2000 was introduced, it was the first information technology legislation introduced in India. The IT Act is based on Model law on e-commerce adopted by UNCITRAL (United Nations Commission on International Trade) of United Nations organization.

The IT Act was amended by passing of the Information Technology (Amendment) Act 2008 (Effective from October 27, 2009).The amended Act casts responsibility on body corporate to protect sensitive personal information (Sec. 43A). It recognizes and punishes offences by companies and individual (employee) actions (Sec. 43, 66 to 66F, 67..) such as sending offensive messages using electronic medium or using body corporate's IT for unacceptable

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purposes, stealing computer resources, unauthorized access to computer resources, identity theft/cheating by personating using computer, violation of privacy, cyber terrorism, offences using computer and publishing or transmitting obscene material. It also provides for extensive powers for police and statutory authorities. The amended Act is expected to create a paradigm shift in data protection and privacy regime in India as it provides for establishing a self-regulation framework for maintenance of reasonable security practices and procedures for protecting "sensitive personal data or information". It also has provisions for adjudication related to data protection and privacy (civil liabilities) and provides for criminal prosecution vis-à-vis data protection and privacy.

The following rules have been issued for IT Act 2008:

- Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.
- Information Technology (Intermediaries guidelines) Rules, 2011.
- Information Technology (Electronic Service Delivery) Rules, 2011.

The Information Technology Act, 2000 was enacted to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

The provisions of the Information Technology Act 2000 and the amendments of 2008 are simple to understand and most of these are self-explanatory. As an auditor, it is important to understand the key provisions of the IT Act as it impacts other compliances and provides the basis for other compliances. For example, when tax audit is being performed and the client accounts are maintained in a computer, it is important for the auditor to know specific provisions and the impact of the data being maintained in electronic form. Further, if audit is being done as per Companies Act, then specific aspects of internal controls and risk management are to be reviewed by auditor.

In modern enterprises, most of the critical information is input, processed and stored in computers even in case of small and medium enterprises. Hence, the regulatory provisions and impact of this data being available electronically, the risks of it being misused and regulatory provisions of such non-compliance has to be understood and also communicated to the client to mitigate the control weaknesses and ensure compliance. It is advisable for students to understand provisions of the IT Act. In this chapter, the key provisions are reproduced with brief explanations as required.

The Objectives of the Act are given as follows:

- To grant legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication commonly referred to as "electronic commerce" in place of paper based methods of communication;

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- To give legal recognition to Digital signatures for authentication of any information or matter, which requires authentication under any law;
- To facilitate electronic filing of documents with Government departments;
- To facilitate electronic storage of data;
- To facilitate and give legal sanction to electronic fund transfers between banks and financial institutions;
- To give legal recognition for keeping of books of accounts by banker's in electronic form; and
- To amend the Indian Penal Code, the Indian Evidence Act, 1872, the Banker's Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934.

The IT Act extends to whole of India and also applies to any offence or contravention there under committed outside India by any person {section 1 (2)} read with Section 75. The Act applies to offence or contravention committed outside India by any person irrespective of his nationality, if such act involves a computer, computer system or network located in India.

Some of the key Issues of electronic information impacting enterprises and auditors are:

- **Authenticity:** How do we implement a system that ensures that transactions are genuine and authorized?
- **Reliability:** How do we rely on the information, which does not have physical documents?
- **Accessibility:** How do we gain access and authenticate this information, which is digital form?

A good understanding of the provisions of IT Act will provide answer to these issues.

## 7.2 Key Definitions

As enterprises increasingly use digital signature technologies to support e-commerce, legal issues such as non-repudiation, online contracts and protection of intellectual property have become more common. The IT Act provides various definitions of different technological terms; some of the key definitions are given below:

(1) In this Act, unless the context otherwise requires,

(a) "**Access**" with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network;

(b) "**Addressee**" means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

(c) "**Adjudicating Officer**" means adjudicating officer appointed under subsection (1) of section 46;

(d) "**Affixing Electronic Signature**" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the

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purpose of authenticating an electronic record by means of Electronic Signature;

(e) "**Appropriate Government**" means as respects any matter.

(i) enumerated in List II of the Seventh Schedule to the Constitution;

(ii) relating to any State law enacted under List III of the Seventh Schedule to the Constitution, the State Government and in any other case, the Central Government;

(f) "**Asymmetric Crypto System**" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature;

(g) "**Certifying Authority**" means a person who has been granted a license to issue a Electronic Signature Certificate under section 24;

(h) "**Certification Practice Statement**" means a statement issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Electronic Signature Certificates;

(ha) "**Communication Device**" means Cell Phones, Personal Digital Assistance (Sic), or combination of both or any other device used to communicate, send or transmit any text, video, audio, or image.

(i) "**Computer**" means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

(j) "**Computer Network**" means the interconnection 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 interconnected computers or communication device whether or not the interconnection is continuously maintained;

(k) "**Computer Resource**" means computer, communication device, computer system, computer network, data, computer database or software;

(l) "**Computer System**" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data, and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(m) "**Controller**" means the Controller of Certifying Authorities appointed under sub-section (7) of section 17;

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(n) "**Cyber Appellate Tribunal**" means the Cyber Appellate* Tribunal established under sub-section (1) of section 48.

(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 unauthorized access, use, disclosure, disruption, modification or destruction.

(o) "**Data**" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

(p) "**Digital Signature**" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

(q) "**Digital Signature Certificate**" means a Digital Signature Certificate issued under sub-section (4) of section 35;

(r) "**Electronic Form**" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(s) "**Electronic Gazette**" means official Gazette published in the electronic form;

(t) "**Electronic Record**" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(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"

(u) "**Function**", in relation to a computer, includes logic, control, arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer;

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

(v) "**Information**" includes data, message, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche;

(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

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providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes;

(x) "**Key Pair**", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key;

(y) "**Law**" includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be. Regulations made by the President under article 240, Bills enacted as President's Act under sub-clause (a) of clause (1) of article 357 of the Constitution and includes rules, regulations, bye-laws and orders issued or made thereunder;

(z) "**License**" means a license granted to a Certifying Authority under section 24;

(za) "**Originator**" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

(zb) "**Prescribed**" means prescribed by rules made under this Act;

(zc) "**Private Key**" means the key of a key pair used to create a digital signature;

(zd) "**Public Key**" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate;

(ze) "**Secure System**" means computer hardware, software, and procedure that -:

(a) are reasonably secure from unauthorized access and misuse;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures;

(zf) "**Security Procedure**" means the security procedure prescribed under section 16 by the Central Government;

(zg) "**Subscriber**" means a person in whose name the Electronic Signature Certificate is issued;

(zh) "**Verify**" in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions means to determine whether

(a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber;

(b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

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## 7.3 [Chapter-II] Digital Signature and Electronic Signature

This chapter of IT Act gives legal recognition to electronic records and digital signatures. It contains only Section 3. The section provides the conditions subject to which an electronic record may be authenticated by means of affixing digital signature. The digital signature is created in two distinct steps. First the electronic record is converted into a message digest by using a mathematical function known as "hash function" which digitally freezes the electronic record thus ensuring the integrity of the content of the intended communication contained in the electronic record. Any tampering with the contents of the electronic record will immediately invalidate the digital signature. Secondly, the identity of the person affixing the digital signature is authenticated through the use of a private key which attaches itself to the message digest and which can be verified by anybody who has the public key corresponding to such private key. This will enable anybody to verify whether the electronic record is retained intact or has been tampered with since it was so fixed with the digital signature. It will also enable a person who has a public key to identify the originator of the message. The provisions of this section are given as follows:

***[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.

**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.

(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 Signature**

(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

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(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.

(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".

## 7.4 [Chapter III] Electronic Governance

This chapter is one of the most important chapters. It specifies the procedures to be followed for sending and receiving of electronic records and the time and the place of the dispatch and receipt. This chapter contains sections 4 to 10.

***[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 Signatures**

Where any law requires that any information or matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have

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been satisfied if such information or matter is authenticated by means of electronic 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 6] Use of Electronic Records and Electronic Signatures in Government and its agencies***

(1) Where any law provides for -

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any license, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

**Explanation –**

Section 6 lays down the foundation of Electronic Governance. It provides that the filing of any form, application or other documents, creation, retention or preservation of records, issue or grant of any license or permit or receipt or payment in Government offices and its agencies may be done through the means of electronic form. The appropriate Government office has the power to prescribe the manner and format of the electronic records and the method of payment of fee in that connection.

***[Section 6A]* Delivery of services by Service Provider**

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

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**Explanation –**

For the purposes of this section, service provider so authorized 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 authorize any service provider authorized 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 authorize 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.

***[Section 7] Retention of Electronic Records***

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if -

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

PROVIDED that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

***[Section 7A] Audit of Documents, etc. maintained in Electronic form***

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

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or information processed and maintained in electronic form.

***[Section 8] Publication of rules, regulation, etc., in Electronic Gazette***

Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette:

PROVIDED that where any rule, regulation, order, bye-law, notification or any other matters published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form.

***[Section 9] Sections 6, 7 and 8 not to confer right to insist document should be accepted in electronic form***

Nothing contained in sections 6, 7 and 8 shall confer a right upon any person to insist that any Ministry or Department of the Central Government or the State Government or any authority or body established by or under any law or controlled or funded by the Central or State Government should accept, issue, create, retain and preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

***[Section 10] Power to make rules by Central Government in respect of Electronic Signature***

The Central Government may, for the purposes of this Act, by rules, prescribe

(a) the type of Electronic Signature;

(b) the manner and format in which the Electronic Signature shall be affixed;

(c) the manner or procedure which facilitates identification of the person affixing the Electronic Signature;

(d) control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and

(e) any other matter which is necessary to give legal effect to Electronic Signature.

***[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.

## 7.5 [Chapter V] Secure Electronic Records and Secure Electronic Signatures

Chapter V sets out the conditions that would apply to qualify electronic records and digital signatures as being secure. It contains sections 14 to 16.

***[Section 14]* Secure Electronic Record**

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Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

***[Section 15]* Secure Electronic Signature**

An electronic signature shall be deemed to be a secure electronic signature if-

(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.

***[Section 16]* Security Procedures and Practices**

The Central Government may, for the purposes of sections 14 and 15, prescribe the 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.

## 7.6 [Chapter IX] Penalties, Compensation and Adjudication

Chapter IX contains sections 43 to 47. It provides for awarding compensation or damages for certain types of computer frauds. It also provides for the appointment of Adjudication Officer for holding an inquiry in relation to certain computer crimes and for awarding compensation. Sections 43 to 45 deal with different nature of penalties.

***[Section 43] 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;

(e) disrupts or causes disruption of any computer, computer system or computer network;

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(f) denies or causes the denial of access to any person authorized 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 there under;

(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;

(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.

**Explanation –**

For the purposes of this section, -

(i) "**computer contaminant**" means any set of computer instructions that are designed -

(a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or

(b) by any means to usurp the normal operation of the computer, computer system, or computer network;

(ii) "**computer database**" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalized manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;

(iii) "**computer virus**" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;

(iv) "**damage**" means to destroy, alter, delete, add, modify or re-arrange any computer resource by any means.

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

***[Section 43A]* Compensation for failure to protect data**

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

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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 unauthorized 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.

***[Section 44] Penalty for failure to furnish information return, etc.***

If any person who is required under this Act or any rules or regulations made thereunder to -

(a) furnish any document, return or report to the Controller or the Certifying Authority, fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;

(b) file any return or furnish any information, books or other documents within the time specified therefor in the regulations fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues;

(c) maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

***[Section 45]* Residuary Penalty**

Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees.

## 7.7 [Chapter XI] Offences

Apart from giving recognition to electronic contracts, the IT Act identifies certain acts as "Computer Crimes" and provides penalties for these offences. It is necessary for every user to Internet and other proprietary networks to avoid inadvertently committing any action, which can be termed as a "Computer Crime". The Act lists common crimes that can be perpetuated

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in the electronic society and specifies penalty. The Computer crimes that are recognized by the Act could affect:

- Hackers
- Digital Contract parties
- The Digital IC users
- Netizen
- Web Site owners/Content creators
- Software professionals
- Auditors
- Certifying authorities web hosting firms

Chapter XI deals with offences under the IT Act. Auditors need to have good understanding of various provisions of this section so as to review compliance as required.

***[Section 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 programme, computer commands, design and layout and program analysis of computer resource in any form.

***[Section 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 (45 of 1860);

(b) The word "fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code (45 of 1860).

***[Section 66A]* Punishment for sending offensive messages through communication service, etc.**

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***Note: A Division bench of Supreme Court decided on 24th March, 2015 in Shreya Singhal v. Union of India to struck down section 66A of Information Technology Act, 2000 as unconstitutional, as it is violative of Article 19(1)(a) related to freedom of speech and expressions. Now comments on social networking sites will not be offensive unless they come under the provisions of the Indian Penal Code. 1860.***

***[Section 66B]* Punishment for dishonestly receiving stolen computer resource or communication device**

Whoever dishonestly receives or retains any stolen computer resource or communication device knowing or having reason to believe the same to be 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 66C]* Punishment for 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 which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.

***[Section 66D]* Punishment for cheating by personation by using computer resource**

Whoever, by means of any communication device or computer resource cheats by personating, 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 66E]* Punishment for violation of privacy**

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 person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

**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 videotape, 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 for public;

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(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]*** **Punishment for 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 authorized to access computer resource; or

(ii) attempting to penetrate or access a computer resource without authorization or exceeding authorized access; or

(iii) introducing or causing to introduce any computer contaminant,

and by means of such conduct causes or is 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 information infrastructure specified under section 70; or

(B) knowingly or intentionally penetrates or accesses a computer resource without authorization or exceeding authorized 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 database, with reasons to believe that such information, data or computer database 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.

***[Section 67]*** **Punishment for publishing or transmitting obscene material in electronic form**

Whoever publishes or transmits or causes to be published or transmitted 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

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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.

***[Section 67A]* 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.

***[Section 67B]* Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form**

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:

PROVIDED that 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 bona fide heritage or religious purposes.

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**Explanation -**

For the purposes of this section, "children" means a person who has not completed the age of 18 years.

***[Section 67C]* 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 68]* Power of the Controller to give directions**

(1) The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made thereunder.

(2) Any person who intentionally or knowingly fails to comply with any order under sub-section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding one lakh rupees or with both.

***[Section 69]* Powers to issue directions for interception or monitoring or decryption of any information through any computer resource**

(1) Where the Central Government or a State Government or any of its officers specially authorized by the Central Government or the State Government, as the case may be, in this behalf may, if satisfied that it is necessary or expedient so to do, in the interest of the sovereignty or integrity of India, defense of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above or for investigation of any offence, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the appropriate Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information generated, transmitted, received or stored in any computer resource.

(2) The Procedure and safeguards subject to which such interception or monitoring or decryption may be carried out, shall be such as may be prescribed.

(3) The subscriber or intermediary or any person in charge of the computer resource shall, when called upon by any agency which has been directed under sub section (1), extend all facilities and technical assistance to -

(a) provide access to or secure access to the computer resource generating, transmitting, receiving or storing such information; or

(b) intercept, monitor, or decrypt the information, as the case may be; or

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(c) provide information stored in computer resource.

(4) The subscriber or intermediary or any person who fails to assist the agency referred to in sub-section (3) shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

***[Section 69A]* Power to issue directions for blocking for public access of any information through any computer resource**

(1) Where the Central Government or any of its officers specially authorized by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defense of India, security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block access by the public or cause to be blocked for access by public any information generated, transmitted, received, stored or hosted in any computer resource.

(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine.

***[Section 69B]* Power to authorize to monitor and collect traffic data or information through any computer resource for Cyber Security**

(1) The Central Government may, to enhance Cyber Security and for identification, analysis and prevention of any intrusion or spread of computer contaminant in the country, by notification in the official Gazette, authorise any agency of the Government to monitor and collect traffic data or information generated, transmitted, received or stored in any computer resource.

(2) The Intermediary or any person in-charge of the Computer resource shall when called upon by the agency which has been authorised under sub-section (1), provide technical assistance and extend all facilities to such agency to enable online access or to secure and provide online access to the computer resource generating, transmitting, receiving or storing such traffic data or information.

(3) The procedure and safeguards for monitoring and collecting traffic data or information, shall be such as may be prescribed.

(4) Any intermediary who intentionally or knowingly contravenes the provisions of sub-section (2) shall be punished with an imprisonment for a term which may extend to three years and shall also be liable to fine.

**Explanation:**

For the purposes of this section, -

(i) "computer contaminant" shall have the meaning assigned to it in section 43;

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(ii) "traffic data" means any data identifying or purporting to identify any person, computer system or computer network or location to or from which the communication is or may be transmitted and includes communications origin, destination, route, time, date, size, duration or type of underlying service or any other information.

***[Section 70]* Protected system**

(1) The appropriate Government may, by notification in the Official Gazette, declare any computer resource which directly or indirectly affects the facility of Critical Information Infrastructure, to be a protected system.

**Explanation** -

For the purposes of this section, "Critical Information Infrastructure" means the computer resource, the incapacitation or destruction of which, shall have debilitating impact on national security, economy, public health or safety.

(2) The appropriate Government may, by order in writing, authorize the persons who are authorized to access protected systems notified under sub-section (1).

(3) Any person who secures access or attempts to secure access to a protected system in contravention of the provisions of this section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

(4) The Central Government shall prescribe the information security practices and procedures for such protected system.

***[Section 70A]* National nodal agency**

(1) The Central Government may, by notification published in the official Gazette, designate any organization of the Government as the national nodal agency in respect of Critical Information Infrastructure Protection.

(2) The national nodal agency designated under sub-section (1) shall be responsible for all measures including Research and Development relating to protection of Critical Information Infrastructure.

(3) The manner of performing functions and duties of the agency referred to in sub-section (1) shall be such as may be prescribed.

***[Section 70B]* Indian Computer Emergency Response Team to serve as national agency for incident response**

(1) The Central Government shall, by notification in the Official Gazette, appoint an agency of the government to be called the Indian Computer Emergency Response Team.

(2) The Central Government shall provide the agency referred to in sub-section (1) with a Director-General and such other officers and employees as may be prescribed.

(3) The salary and allowances and terms and conditions of the Director-General and other officers and employees shall be such as may be prescribed.

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(4) The Indian Computer Emergency Response Team shall serve as the national agency for performing the following functions in the area of Cyber Security,-

(a) collection, analysis and dissemination of information on cyber incidents;

(b) forecast and alerts of cyber security incidents;

(c) emergency measures for handling cyber security incidents;

(d) coordination of cyber incidents response activities;

(e) issue guidelines, advisories, vulnerability notes and whitepapers relating to information security practices, procedures, prevention, response and reporting of cyber incidents;

(f) such other functions relating to cyber security as may be prescribed.

(5) The manner of performing functions and duties of the agency referred to in sub-section (1) shall be such as may be prescribed.

(6) For carrying out the provisions of sub-section (4), the agency referred to in sub-section (1) may call for information and give direction to the service providers, intermediaries, data centers, body corporate and any other person.

(7) Any service provider, intermediaries, data centers, body corporate or person who fails to provide the information called for or comply with the direction under sub-section (6), shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees or with both.

(8) No Court shall take cognizance of any offence under this section, except on a complaint made by an officer authorized in this behalf by the agency referred to in sub-section (1).

***[Section 71]* Penalty for misrepresentation**

Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any license or Electronic Signature Certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

***[Section 72]* Penalty for breach of confidentiality and privacy**

Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

***[Section 72A]* 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

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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.

***[Section 73]* Penalty for publishing Electronic Signature Certificate false in certain particulars**

(1) No person shall publish an Electronic Signature Certificate or otherwise make it available to any other person with the knowledge that -

(a) the Certifying Authority listed in the certificate has not issued it; or

(b) the subscriber listed in the certificate has not accepted it; or

(c) the certificate has been revoked or suspended,

unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation.

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

***[Section 74]* Publication for fraudulent purpose**

Whoever knowingly creates, publishes or otherwise makes available an Electronic Signature Certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

***[Section 75]* Act to apply for offences 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.

***[Section 76]* Confiscation**

Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of this Act, rules, orders or regulations made there under has been or is being contravened, shall be liable to confiscation:

Provided that where it is established to the satisfaction of the court adjudicating the confiscation that the person in whose possession, power or control of any such computer, computer system, floppies, compact disks, tape drives or any other accessories relating thereto is found is not responsible for the contravention of the provisions of this Act, rules, orders or regulations made there under, the court may, instead of making an order for confiscation of such computer, computer system, floppies, compact disks, tape drives or any

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other accessories related thereto, make such other order authorized by this Act against the person contravening of the provisions of this Act, rules, orders or regulations made thereunder as it may think fit.

Enterprises need to take steps to ensure compliance with cyber laws. Some key steps for ensuring compliance are given below:

- Designate a Cyber Law Compliance Officer as required.
- Conduct regular training of relevant employees on Cyber Law Compliance.
- Implement strict procedures in HR policy for non-compliance.
- Implement authentication procedures as suggested in law.
- Implement policy and procedures for data retention as suggested.
- Identify and initiate safeguard requirements as applicable under various provisions of the Act such as: Sections 43A, 69, 69A, 69B, etc.
- Implement applicable standards of data privacy on collection, retention, access, deletion etc.
- Implement reporting mechanism for compliance with cyber laws.

## 7.8 [Chapter XII] Intermediaries not to be liable in Certain Cases

Chapter XII contains section 79.

***[Section 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 made available or 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 hosted; 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;

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(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 purposes of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary.

## 7.9 [CHAPTER XIIA] Examiner of Electronic Evidence

***[Section 79A]* Central Government to notify Examiner of Electronic Evidence**

The Central Government may, for the purposes of providing expert opinion on electronic form evidence before any court or other authority specify, by notification in the official Gazette, any Department, body or agency of the Central Government or a State Government as an Examiner of Electronic Evidence.

**Explanation -**

For the purposes of this section, "electronic form evidence" means any information of probative value that is either stored or transmitted in electronic form and includes computer evidence, digital audio, digital video, cell phones, digital fax machines.

## 7.10 [Chapter XIII] Miscellaneous

Some miscellaneous sections are as under:

***[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.

(2) Where any person is arrested under sub-section (1) by an officer other than a police officer, such officer shall, without unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer-in-charge of a police station.

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(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974)shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section.

***[Section 81]* Act to have Overriding effect**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

PROVIDED that nothing contained in this Act shall restrict any person from exercising any right conferred under the Copyright Act 1957 or the Patents Act, 1970.

***[Section 81A]* Application of the Act to electronic cheque and truncated cheque**

(1) The provisions of this Act, for the time being in force, shall apply to, or in relation to, electronic cheques and the truncated cheques subject to such modifications and amendments as may be necessary for carrying out the purposes of the Negotiable Instruments Act, 1881 (26 of 1881) by the Central Government, in consultation with the Reserve Bank of India, by notification in the Official Gazette.

(2) Every notification made by the Central Government under subsection (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both houses agree in making any modification in the notification or both houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

**Explanation -**

For the purpose of this Act, the expression "electronic cheque" and "truncated cheque" shall have the same meaning as assigned to them in section 6 of the Negotiable Instruments Act 1881 (26 of 1881).

***[Section 84B]* Punishment for abetment of offence**

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.

***[Section 84C]* 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

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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.

***[Section 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 thereunder 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.

(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.

## 7.11 Requirements of Various Authorities for System Controls & Audit

Under this part, requirements by various statutory bodies' vis-à-vis system and audit requirements have been put including that of IRDA, RBI and SEBI. It is important to note that these are just illustrative and not comprehensive.

### 7.11.1 Requirements of IRDA for System Controls & Audit

The **Insurance Regulatory and Development Authority of India (IRDA)** is the apex body overseeing the insurance business in India. It protects the interests of the policyholders, regulates, promotes and ensures orderly growth of the insurance in India.

Information System Audit has a significant role to play in the emerging Insurance Sector. Information System Audit aims at providing assurance in respect of Confidentiality, Availability and Integrity for Information systems. It also looks at their efficiency, effectiveness and responsiveness. It focuses on compliance with laws and regulations, which are given as follows:

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**(i) System Audit:** These are as follows:

- All insurers shall have their systems and process audited at least once in three years by a CA firm.
- In doing so, the current internal or concurrent or statutory auditor is not eligible for appointment.
- CA firm must be having a minimum of 3-4 years experience of IT systems of banks or mutual funds or insurance companies.

**(ii) Preliminaries**

Before proceeding with the audit, the auditor is expected to obtain the following information at the audit location:

- Location(s) from where Investment activity is conducted.
- IT Applications used to manage the Insurer's Investment Portfolio.
- Obtain the system layout of the IT and network infrastructure including: Server details, database details, type of network connectivity, firewalls other facilities/ utilities (describe).
- Are systems and applications hosted at a central location or hosted at different office?
- Previous Audit reports and open issues / details of unresolved issues from:
  - Internal Audit,
  - Statutory Audit, and
  - IRDA Inspection / Audit.
- Internal circulars and guidelines of the Insurer.
- Standard Operating Procedures (SOP).
- List of new Products/funds introduced during the period under review along with IRDA approvals for the same.
- Scrip wise lists of all investments, fund wise, classified as per IRDA Guidelines, held on date.
- IRDA Correspondence files, circulars and notifications issued by IRDA.
- IT Security Policy.
- Business Continuity Plans.
- Network Security Reports pertaining to IT Assets.

**(iii) System Controls:** These are as follows:

- There should be Electronic transfer of Data without manual intervention. All Systems should be seamlessly integrated. Audit Trail required at every Data entry point. Procedures for reviewing and maintaining audit trail should be implemented.

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- The auditor should comment on the audit trail maintained in the system for various activities. The auditor should review the Front Office Systems (FOS), MOS (Mid Office Systems) and BOS (Back Office Systems) and confirm that the system maintains audit trail for data entry, authorization, cancellation and any subsequent modifications.
- Further, the auditor shall also ascertain that the system has separate logins for each user and maintains trail of every transaction with respect to login ID, date and time for each data entry, authorization and modifications.

### 7.11.2 Requirements of RBI for System Controls & Audit

The **Reserve Bank of India (RBI)** is India's central banking institution, which formulates the monetary policy with regard to the Indian rupee. The Bank was constituted for the need of following:

- To regulate the issue of banknotes,
- To maintain reserves with a view to securing monetary stability, and
- To operate the credit and currency system of the country to its advantage.

IS audits are gaining importance as key processes are automated or enabled by technology.The Reserve Bank of India (RBI) has been at the forefront of recognizing and promoting IS Audit internally and across all the stakeholders including financial institutions. RBI has been proactive in providing guidelines on key areas of IT implementation by using global best practices. They have constituted various expert committees who review existing and future technology and related risks and provide guidelines, which are issued by all stakeholders.

Primarily, RBI suggests that senior management and regulators need an assurance on the effectiveness of internal controls implemented and expect the IS Audit to provide an independent and objective view of the extent to which the IT related risks are managed. Sample areas of review covered by IS Audit assignments are given here.

**(i) System Controls:** These are given as follows:

- Duties of system programmer/designer should not be assigned to persons operating the system and there should be separate persons dedicated to system programming/design. System person would only make modifications/improvements to programs and the operating persons would only use such programs without having the right to make any modifications.
- Contingency plans/procedures in case of failure of system should be introduced/ tested at periodic intervals. EDP auditor should put such contingency plan under test during the audit for evaluating the effectiveness of such plans.
- An appropriate control measure should be devised and documented to protect the computer system from attacks of unscrupulous elements.

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- In order to bring about uniformity of software used by various branches/offices there should be a formal method of incorporating change in standard software and it should be approved by senior management. Inspection and Audit Department should verify such changes from the view-point of control and for its implementation in other branches in order to maintain uniformity.
- Board of Directors and senior management are responsible for ensuring that an institution's system of internal controls operates effectively.
- There should also be annual review of IS Audit Policy or Charter to ensure its continued relevance and effectiveness.
- With a view to provide assurance to bank's management and regulators, banks are required to conduct a quality assurance, at least once every three years, on the banks Internal Audit including IS Audit to validate the approach and practices adopted by them in the discharge of its responsibilities as laid out in the Audit Charter/Audit Policy.

**(ii) System Audit:** Relevant points are given as follows:

- In this regard, banks require a separate IS Audit function within an Internal Audit department led by an IS Audit Head reporting to the Head of Internal Audit or Chief Audit Executive (CAE). The personnel needs to assume overall responsibility and accountability of IS Audit functions. Where the bank leverages external resources for conducting IS Audit on areas where skills are lacking, the responsibility and accountability for such external IS Audits still remain with the IS Audit Head and CAE.
- Because the IS Audit is an integral part of the Internal Auditors, auditors will also be required to be independent, competent and exercise due professional care.
- The IS Audit should be independent of the auditee, both in attitude and appearance. The Audit Charter or Policy, or engagement letter (in case of external professional service provider), should address independence and accountability of the audit function.
- Additionally, to ensure independence for the IS Auditors, Banks should make sure that:
  - Auditors have access to information and applications, and
  - Auditors have the right to conduct independent data inspection and analysis.
- *Competence:* IS Auditors should be professionally competent, having skills, knowledge, training and relevant experience. They should be appropriately qualified, have professional certifications and maintain professional competence through professional education and training. As IT encompasses a wide range of technologies, IS Auditors should possess skills that are commensurate with the technology used by a bank. They should be competent audit professionals with sufficient and relevant experience. Qualifications such as Certified Information

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Systems Auditor (CISA, offered by ISACA), Information Systems Audit (ISA, offered by ICAI), or Certified Information Systems Security Professional (CISSP, offered by ISC2), along with two or more years of IS Audit experience, are desirable. Similar qualification criteria should also be insisted upon, in case of outsourced professional service providers.

- IT Governance, information security governance related aspects, critical IT general controls such as data centre controls and processes and critical business applications/systems having financial/compliance implications, including regulatory reporting, risk management, customer access (delivery channels) and MIS systems, needs to be subjected to IS Audit at least once a year (or more frequently, if warranted by the risk assessment).
- IS Audits should also cover branches, with focus on large and medium branches, in areas such as control of passwords, user ids, operating system security, anti-malware, maker-checker, segregation of duties, physical security, review of exception reports or audit trails, BCP policy and or testing.
- IS Auditors should review the following additional areas that are critical and high risk such as:
    - IT Governance and information security governance structures and practices implemented by the Bank.
    - Testing the controls on new development systems before implementing them in live environment.
        - A pre-implementation review of application controls, including security features and controls over change management process, should be performed to confirm that:
        - Controls in existing application are not diluted, while migrating data to the new application
        - Controls are designed and implemented to meet requirements of a bank's policies and procedures, apart from regulatory and legal requirements
        - Functionality offered by the application is used to meet appropriate control objectives
    - A post implementation review of application controls should be carried out to confirm if the controls as designed are implemented, and are operating, effectively. Periodic review of application controls should be a part of an IS audit scope, in order to detect the impact of application changes on controls. This should be coupled with review of underlying environment–operating system, database, middleware, etc. – as weaknesses in the underlying environment can negate the effectiveness of controls at the application layer. Due care should be taken to ensure that IS Auditors have access only to the test environment for performing the procedures and data used for testing should be, as far as practical, be a replica of live environment.

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- Detailed audit of SDLC process to confirm that security features are incorporated into a new system, or while modifying an existing system, should be carried out.
- A review of processes followed by an implementation team to ensure data integrity after implementation of a new application or system, and a review of data migration from legacy systems to the new system where applicable should be followed.
- IS Auditors may validate IT risks (identified by business teams) before launching a product or service. Review by IS Auditor may enable the business teams to incorporate additional controls, if required, in the system before the launch.
- When IS Auditors believe that the bank has accepted a level of residual risk that is inappropriate for the organization, they should discuss the matter with appropriate level of management. If the IS Auditors are not in agreement with the decision, regarding residual risk, IS Auditors and Senior Management should report the matter to the Board (or Audit Committee) for resolution.

In addition, RBI has an inspection wing, which does inspection of banking and non-banking financial institutions. As part of the audit, one of the critical aspects, which have been reviewed, are scope, coverage, frequency and report of system audit. If system audit has not been done, it is considered as non-compliance and reported to the senior management for compliance. In the case of branch statutory audit, the LFAR has specific questions pertaining to IT areas such as Security/BCP etc., which need to be reviewed by the statutory auditors. Although very limited, these can also be considered as key areas of IS Audit.

### 7.11.3 Requirements of SEBI for System Controls & Audit

The **Securities and Exchange Board of India (SEBI)** is the regulator for the securities market in India. SEBI has to be responsive to the needs of three groups, which constitute the market:

- The issuers of securities,
- The investors, and
- The market intermediaries.

Mandatory audits of systems and processes bring transparency in the complex workings of SEBI, prove integrity of the transactions and build confidence among the stakeholders.

**(i) Systems Audit:** SEBI had mandated that exchanges shall conduct an annual system audit by a reputed independent auditor.

- The Audit shall be conducted according to the Norms, Terms of References (TOR) and Guidelines issued by SEBI.
- Stock Exchange/Depository (Auditee) may negotiate and the board of the Stock Exchange / Depository shall appoint the Auditors based on the prescribed Auditor

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Selection Norms and TOR. The Auditors can perform a maximum of 3 successive audits. The proposal from Auditor must be submitted to SEBI for records.

- Audit schedule shall be submitted to SEBI at-least 2 months in advance, along with scope of current audit & previous audit.
- The scope of the Audit may be extended by SEBI, considering the changes which have taken place during last year or post previous audit report
- Audit has to be conducted and the Audit report be submitted to the Auditee. The report should have specific compliance/non-compliance issues, observations for minor deviations as well as qualitative comments for scope for improvement. The report should also take previous audit reports in consideration and cover any open items therein.
- The Auditee management provides their comment about the Non-Conformities (NCs) and observations. For each NC, specific time-bound (within 3 months) corrective action must be taken and reported to SEBI. The auditor should indicate if a follow-on audit is required to review the status of NCs. The report along with Management Comments shall be submitted to SEBI within 1 month of completion of the audit. Sample areas of review covered by IS Audit assignments are given here.

**(ii) Audit Report Norms:** These are given as follows:

- The Systems Audit Reports and Compliance Status should be placed before the Governing Board of the Stock Exchanges/Depositories and the system audit report along with comments of Stock Exchanges / Depositories should be communicated to SEBI.
- The Audit report should have explicit coverage of each Major Area mentioned in the TOR, indicating any Nonconformity (NCs) or Observations (or lack of it). For each section, auditors should also provide qualitative input about ways to improve the process, based upon the best practices observed.

**(iii) Auditor Selection Norms:** There are various norms for selection of Auditors, which are given as follows:

- Auditor must have minimum 3 years of experience in IT audit of Securities Industry participants e.g. stock exchanges, clearing houses, depositories etc. The audit experience should have covered all the Major Areas mentioned under SEBI's Audit Terms of Reference (TOR).
- The Auditor must have experience in/direct access to experienced resources in the areas covered under TOR. It is recommended that resources employed shall have relevant industry recognized certifications e.g. CISA (Certified Information Systems Auditor) from ISACA, CISM (Certified Information Securities Manager) from ISACA, GSNA (GIAC Systems and Network Auditor), CISSP (Certified Information Systems Security Professional) from International Information Systems Security Certification Consortium, commonly known as $(ISC)^2$.

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- The Auditor should have IT audit/governance frameworks and processes conforming to industry leading practices like CoBIT.
- The Auditor must not have any conflict of interest in conducting fair, objective and independent audit of the Exchange/Depository. It should not have been engaged over the last three years in any consulting engagement with any departments/units of the entity being audited.
- The Auditor may not have any cases pending against its previous auditees, which fall under SEBI's jurisdiction, which point to its incompetence and/or unsuitability to perform the audit task.

**(iv) System Controls:** These are given as follows:

- Further, along with the audit report, Stock Exchanges/Depositories are advised to submit a declaration from the MD/CEO certifying the security and integrity of their IT Systems.
- A proper audit trail for upload/modifications/downloads of KYC data to be maintained

Department of Electronics & IT, Ministry of Communication and IT, Government of India, maintains a panel of systems auditors, which are used by government enterprises for getting system audit done. This provides information on scope of different types of systems audit which is used as reference by auditee firms for getting systems audit done.

## 7.12 Cyber Forensic and Cyber Fraud Investigation

Cyber forensics is one of the latest scientific techniques that have emerged due to the effect of increasing computer frauds. To understand the term better, an understanding of the independent words will be useful. Cyber, means on 'The Net' that is online. Forensics is a scientific method of investigation and analysis techniques to gather, process, interpret, and to use evidence to provide a conclusive description of activities in a way that is suitable for presentation in a court of law. Considering 'Cyber' and 'Investigation' together will lead us to conclude that 'Cyber Investigation' is an investigation method gathering digital evidences to be produced in court of law.

Court rulings and amendments to cyber laws now permit courts to rely upon digital evidences. As electronic evidences can be created through use of technology, cyber forensics emphasizes the use of special methods to gather evidences, so that these electronic evidences stand the rigours/scrutiny when presented in a court of law.

To ensure that the above objectives are achieved, the experts of the fields use standard processes and globally accept methods so that same result shall always be obtained if the same evidences are checked by another expert, that is why cyber forensic experts follow standard methods for investigation.

Increasing frauds across the cyber space, the sheer size, speed and value of the frauds has surprised the law keeper's. Fraudsters are always on the look-out to misuse any loop hole or weaknesses in the computer systems. Cyber Frauds across the world as withdrawal of an

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amount equal to USD45 Million, by using ATM cards of banks, sent shock waves across the IT security agencies. There is an increasing demand for experts in the field of cyber forensics. The IT Act under Section 43A and Section 65 to 67B lists various types of cyber-crimes and specifies penalty for them. For example, section 65 has already been discussed in earlier sections.

Keeping the importance of the same in view, the Institute of Chartered Accountants of India, New Delhi, has also launched a post qualification course on the above subject by the name "Certificate Course on Forensic Accounting and Fraud Detection." This post qualification course can be taken by a qualified CA.

## 7.13 Security Standards

Information security is essential in the day-to-day operations of enterprises. Breaches in information security can lead to a substantial impact within the enterprise through, for example, financial or operational damages. In addition, the enterprise can be exposed to external impacts such as reputational or legal risk, which can jeopardize customer or employee relations or even endanger the survival of the enterprise. COBIT 5 for Information security published by ISACA, USA highlights the needs for enterprises to ensure required level of security is implemented. The ever-increasing need for the enterprise to implement security is highlighted here:

- Maintain information risk at an acceptable level and to protect information against unauthorised disclosure, unauthorised or inadvertent modifications, and possible intrusions;
- Ensure that services and systems are continuously available to internal and external stakeholders, leading to user satisfaction with IT engagement and services;
- Comply with the growing number of relevant laws and regulations as well as contractual requirements and internal policies on information and systems security and protection, and provide transparency on the level of compliance; and
- Achieve all of the above while containing the cost of IT services and technology protection.

Considering the importance of security, Government of India recently published the National Cyber Security Policy 2013 with the vision: **"To build a secure and resilient cyberspace for citizens, business and Government" and the mission "To protect information and information infrastructure in cyberspace, build capabilities to prevent and respond to cyber threats, reduce vulnerabilities and minimize damage from cyber incidents through a combination of institutional structures, people processes, technology and cooperation".**

The policy document highlights the need for security in the cyberspace and outlines that cyberspace is vulnerable to a wide variety of incidents, whether intentional or accidental manmade or natural, and the data exchanged in the cyberspace can be exploited for nefarious purposes by both nation-states and non-states actors. Cyber-attacks that target the infrastructure or underlying economic weal-being of a nation state can effectively reduce available state resources and

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undermine confidence in their supporting structures. A cyber related incident of national significant may take any form; an organized cyber-attack, an uncontrolled exploit such as computer virus or worms of any malicious software code, a national disaster with significant cyber consequences or other related incidents capable of causing extensive damage to the information infrastructure or key assets.

Large-scale cyber incidents may overwhelm the government, public and private's sector resources and services by disrupting functioning of critical information systems. Complications from disruptions of such a magnitude may threaten lives, economy and national security. Rapid identification, information exchange, investigation and coordinated response and remediation can mitigate the damage caused by malicious cyberspace activity. Some of the examples of cyber threats to individuals, businesses and government are identify theft, phishing, social engineering, activism, cyber terrorism, compound threats targeting mobile devices and smart phone, compromised digital certificates, advanced persistent threats, denial of service, supply chain attacks, data leakage etc. The protection of information infrastructure and preservation of the confidentiality, integrity and availability of information in cyberspace is the essence to secure cyber space. Major objectives of this policy are given as follows:

- To create a secure cyber ecosystem in the country, generate adequate trust & confidence in IT systems and transactions in cyberspace and thereby enhance adoption of IT in all sectors of the economy;
- To create an assurance framework for design of security policies and for promotion and enabling actions for compliance to global security standards and best practices by way of conformity assessment (product, process, technology, & people);
- To strengthen the Regulatory framework for ensuring a Secure Cyberspace ecosystem;
- To enhance and create National and Sectorial level 24*7 mechanisms for obtaining strategic information regarding threats of ICT infrastructure creating scenarios for response, resolution and crisis management through effective predicative, protective, response and recovery actions;
- To enhance the protection and resilience of Nation's critical information infrastructure by operating a 24x7 National Critical Information Infrastructure Protection Center(NCIIPC) and mandating security practices related to the design, acquisition, development and operation of information resources;
- To develop suitable indigenous security technologies through frontier technology research, solution oriented research, proof of concept, and pilot development of secure ICT products/processes in general and specifically for addressing National Security requirements;
- To improve visibility of the integrity of Information & Communication Technology products & services and establishing infrastructure for testing & validation of security of such products;
- To create a workforce of 500,000 professional skilled in cyber security in the next 5 years through capacity building, skill development and training;

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- To provide fiscal benefits to businesses for adoption of standard security practices and processes;
- To enable protection of information while in process, handling, storage & transit so as to Safeguard privacy of citizen's data and for reducing economic losses due to cybercrime or data theft;
- To enable effective prevention, investigation and prosecution of cybercrime and enhancements of law enforcement capabilities through appropriate legislative intervention;
- To create a culture of cyber security and privacy enabling responsible user behavior & actions through an effective communication and promotion strategy;
- To develop effective public private partnerships and collaborative engagements through technical and operational and contribution for enhancing the security of cyberspace and
- To enhance global cooperation by promoting shared understanding and leveraging relationships for furthering the cause of security of cyberspace.

Based on the key aspects of National Cyber Security Policy 2013, we can understand that Chartered Accountants in their role as accountants and auditors have another important role to play in ensuring compliance of security and also pro-actively provide assurance on the state of IT security in an enterprise.

There are many standards on IT security issued by various stakeholders such as regulators, professional organizations and technology providers. It is important to remember that each standard has a specific purpose and perspective, which has to be understood before implementation. Some of the most relevant and used standards and frameworks in the security space are given below for information. These are only illustrative and not comprehensive.

### 7.13.1 ISO 27001

Information security is not just about anti-virus software, implementing the latest firewall or locking down the laptops or web servers. The overall approach to information security should be strategic as well as operational, and different security initiatives should be prioritized, integrated and cross-referenced to ensure overall effectiveness.

ISO/IEC 27001 (International Organization for Standardization (ISO) and the International Electro-technical Commission (IEC)) defines how to organize information security in any kind of organization, profit or non-profit, private or state-owned, small or large. It is safe to say that this standard is the foundation of Information Security Management. ISO 27001 is for information security; the same thing that ISO 9001 is for quality – it is a standard written by the world's best experts in the field of information security and aims to provide a methodology for the implementation of information security in an organization. It also enables an organization to get certified, which means that an independent certification body has confirmed that information security has been implemented in the best possible way in the organization.

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ISO/IEC 27001 formally specifies an Information Security Management System (ISMS), a suite of activities concerning the management of information security risks. The ISMS is an overarching management framework through which the organization identifies, analyzes and addresses its information security risks. It is a systematic approach to managing confidential or sensitive information so that it remains secure (which means Available, Confidential and with its Integrity intact). The ISMS ensures that the security arrangements are fine-tuned to keep pace with changes to the security threats, vulnerabilities and business impacts. It encompasses people, processes and IT systems. An Information Security Management System helps us to coordinate all our security efforts – both electronic and physical – coherently, consistently and cost-effectively.

Given the importance of ISO 27001, many legislatures have taken this standard as a basis for drawing up different regulations in the field of personal data protection, protection of confidential information, protection of information systems, management of operational risks in financial institutions, etc.

**How the standard works?**

ISO 27001 requires that management:

- systematically examines the organization's information security risks, taking account of the threats, vulnerabilities, and impacts;
- designs and implements a coherent and comprehensive suite of information security controls and/or other forms of risk treatment (such as risk avoidance or risk transfer) to address those risks that are deemed unacceptable; and
- adopts an overarching management process to ensure that the information security controls continue to meet the organization's information security needs on an ongoing basis.

**History**

ISO/IEC 27001 is derived from The British Standard BS 7799 Part 2, published in 1999. BS 7799 Part 2 was revised by BSI in 2002, explicitly incorporating Deming's PDCA process concept, and was adopted by ISO/IEC as ISO/IEC 27001 in 2005. It was extensively revised in 2013, bringing it into line with the other ISO certified management systems standards and dropping the PDCA concept.

**(a) ISO/IEC 27001:2005**, part of the growing ISO/IEC 27000 family of standards, was an Information Security Management System (ISMS) standard published in October 2005 by ISO/IEC. Its full name is ISO/IEC 27001:2005 – Information technology – Security techniques – Information Security Management Systems – Requirements. It was superseded, in 2013, by ISO/IEC 27001:2013.

**The Plan-Do-Check-Act (PDCA) cycle**

ISO 27001 prescribes 'How to manage information security through a system of information security management'. Such a management system consists of four phases

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that should be continuously implemented in order to minimize risks to the Confidentiality, Integrity and Availability (CIA) of information.

The PDCA cyclic process is shown in the Fig. 7.13.1 and is explained below:

- **The Plan Phase (Establishing the ISMS) –** This phase serves to plan the basic organization of information security, set objectives for information security and choose the appropriate security controls (the standard contains a catalogue of 133 possible controls).
- **The Do Phase (Implementing and Working of ISMS) –** This phase includes carrying out everything that was planned during the previous phase.
- **The Check Phase (Monitoring and Review of the ISM*S*) –** The purpose of this phase is to monitor the functioning of the ISMS through various **"channels", and check whether the results meet the *set*** objectives.

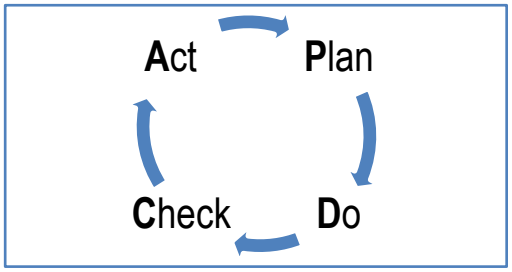


**Fig. 7.13.1: PDCA Cycle**

- **The Act Phase (Update and Improvement of the ISMS) –** The purpose of this phase is to improve everything that was identified as non-compliant in the previous phase.

  The cycle of these four phases never ends, and all the activities must be implemented cyclically in order to keep the ISMS effective. ISO/IEC 27001:2005 applies this to all the processes in ISMS.

**(b)** **ISO/IEC 27001:2013** is the first revision of ISO/IEC 27001 that specifies the requirements for establishing, implementing, maintaining and continually improving an Information Security Management System within the context of the organization. It is an information security standard that was published on 25th September 2013. It also includes requirements for the assessment and treatment of information security risks tailored to the needs of the organization. The requirements set out in ISO/IEC 27001:2013 are generic and are intended to be applicable to all organizations, regardless of type, size or nature. ISO 27001:2013 does not put so much emphasis on this cycle.

**Structure**

In the new structure, the Processing Approach, used in ISO27001:2005, and which houses the PDCA model, was eliminated. The reason for this is that the requirement is for continual improvement and PDCA is just one approach to meeting that requirement. There are other approaches, and organizations are now free to use them if they wish. The introduction also

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draws attention to the order in which requirements are presented, stating that the order does not reflect their importance or imply the order in which they are to be implemented.

27001:2013 has ten short clauses, plus a long Annex, which covers the following:

Clause 1: Scope

Clause 2: Normative references

Clause 3: Terms and Definitions

Clause 4: Context of the organization

Clause 5: Leadership

Clause 6: Planning

Clause 7: Support

Clause 8: Operation

Clause 9: Performance evaluation

Clause 10: Improvement

Annex A: List of controls an their objectives

ISO/IEC 27001:2013 specifies 114 controls in 14 groups (A.5 to A.18), in contrast to 133 controls in 11 groups in the old standard. A brief mention about the groups and their controls are mentioned below:

- A.5: Information security policy (2 controls)
- A.6: Organization of information security (7 controls)
- A.7: Human resource security (6 controls that are applied before, during, or after employment)
- A.8: Asset management (10 controls)
- A.9: Access control (14 controls)
- A.10: Cryptography (2 controls)
- A.11: Physical and environmental security (15 controls)
- A.12: Operations security (14 controls)
- A.13: Communications security (7controls)
- A.14: Information systems acquisition, development and maintenance (13 controls)
- A.15: Relationship with external parties (5 controls)
- A.16: Information security incident management (7 controls)
- A.17: Information security in business continuity management (4 controls)
- A.18: Compliance with legal and contractual requirements (8 controls)

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**Changes from the 2005 standard**

The new standard puts more emphasis on measuring and evaluating how well an organization's ISMS is performing, and there is a new section on outsourcing, which reflects the fact that many organizations rely on third parties to provide some aspects of IT. It does not emphasize the PDCA cycle that 27001:2005 did. Other continuous improvement processes like Six Sigma's DMAIC method can be implemented. More attention is paid to the organizational context of information security, and risk assessment has changed. Overall, 27001:2013 is designed to fit better alongside other management standards such as ISO 9000 and ISO 20000, and it has more in common with them.

A couple of the major changes to the standard are:

- Annex A has been revised and restructured; there are now 114 controls under 14 categories rather than the previous 133 controls under 11 categories.
- The Plan-Do-Check-Act Cycle (PDCA) is no longer mandated.

**Benefits of ISO 27001**

The key benefits of ISO 27001 are given as follows:

- It can act as the extension of the current quality system to include security.
- It provides an opportunity to identify and manage risks to key information and systems assets.
- Provides confidence and assurance to trading partners and clients; acts as a marketing tool.
- Allows an independent review and assurance to you on information security practices.

A company may adopt ISO 27001 for the following reasons:

- It is suitable for protecting critical and sensitive information.
- It provides a holistic, risk-based approach to secure information and compliance.
- Demonstrates credibility, trust, satisfaction and confidence with stakeholders, partners, citizens and customers.
- Demonstrates security status according to internationally accepted criteria.
- Creates a market differentiation due to prestige, image and external goodwill.
- If a company is certified once, it is accepted globally.

### 7.13.2 Standard on Auditing (SA) 402

Audit Considerations Relating to an Entity using Service Organization, Standard on Auditing (SA) 402 is a revised version of the erstwhile Auditing and Assurance Standard (AAS) 24, "Audit Considerations Relating to Entities Using Service Organizations" issued by the ICAI in 2002. The revised Standard deals with the user auditor's responsibility to obtain sufficient appropriate audit evidence when a user entity uses the services of one or more service organizations. SA 402 also deals with the aspects like obtaining an understanding of the services provided by a service organization, including internal control, responding to the

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assessed risks of material misstatement, Type 1 and Type 2 reports, fraud, non-compliance with laws and regulations and uncorrected misstatements in relation to activities at the service organization and reporting by the user auditor.

This SA is effective for audits of financial statements w.e.f. April 1, 2010. Details of this standard are discussed in the Study Material of Advance Auditing paper at Final level of CA Course Curriculum.

### 7.13.3 Information Technology Infrastructure Library (ITIL)

The **IT Infrastructure Library (ITIL)** is a set of practices for IT Service Management (ITSM) that focuses on aligning IT services with the needs of business. In its current form (known as ITILv3 and ITIL 2011 edition), ITIL is published in a series of five core publications, each of which covers an ITSM lifecycle stage. ITIL describes procedures, tasks and checklists that are not organization-specific, used by an organization for establishing a minimum level of competency. It allows the organization to establish a baseline from which it can plan, implement, and measure. It is used to demonstrate compliance and to measure improvement.

Although the UK Government originally created the ITIL, it has rapidly been adopted across the world as the standard for best practice in the provision of information technology services. As IT services become more closely aligned and integrated with the business, ITIL assists in establishing a business management approach and discipline to IT Service Management, stressing the complementary aspects of running IT like a business. Service Management is a set of specialized organizational capabilities for providing value to customers in the form of services. The core of Service Management is transforming resources into valuable services.

ITIL V3 represents an important change in best practice approach, transforming ITIL from providing a good service to being the most innovative and best in class. At the same time, the interface between old and new approaches is seamless, making adoption simple for those experienced in ITIL V2. ITIL V3 makes the link between ITIL's best practice and business benefits both clearer and stronger. Based on a core of five titles, the changes in ITIL V3 reflect the way IT Service Management has matured over the past decades and change the relationship between IT and business. Whereas previously ITIL worked to align Service Management with business strategy, ITIL V3 integrates into a single lifecycle, and well depicted in Fig. 7.13.2.

This release of ITIL V3 brought with it an important change of emphasis, from an operationally focused set of processes to a mature service management set of practice guidance. It also brought a rationalization in the number of volumes included in the set.

- **Service Strategy:** This provides guidance on clarification and prioritization of service-provider investments in services;
- **Service Design:** This provides good-practice guidance on the design of IT services, processes, and other aspects of the service management effort;
- **Service Transition:** This elates to the delivery of services required by a business into live/operational use, and often encompasses the "project" side of IT rather than Business As Usual (BAU);

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- **Service Operation:** This provides best practice for achieving the delivery of agreed levels of services both to end-users and the customers (where "customers" refer to those individuals who pay for the service and negotiate the SLAs), and
- **Continual Service Improvement:** This aims to align and realign IT services to changing business needs by identifying and implementing improvements to the IT services that support the business processes.

**Details of the ITIL Framework:** Details of these aforementioned volumes are given as follows:

**I. Service Strategy:** The center and origin point of the ITIL Service Lifecycle, the ITIL Service Strategy (SS) volume, provides guidance on clarification and prioritization of service-provider investments in services. It provides guidance on leveraging service management capabilities to effectively deliver value to customers and illustrate value for service providers. The Service Strategy volume provides guidance on the design, development, and implementation of service management, not only as an organizational capability, but also as a strategic asset. It provides guidance on the principles underpinning the practice of service management to aid the development of service management policies, guidelines, and processes across the ITIL Service Lifecycle.

- **IT Service Generation:** IT Service Management (ITSM) refers to the implementation and management of quality information technology services and is performed by IT service providers through People, Process and Information Technology.
- **Service Portfolio Management:** IT portfolio management is the application of systematic management to the investments, projects and activities of enterprise Information Technology (IT) departments.
- **Financial Management:** Financial Management for IT Services' aim is to give accurate and cost effective stewardship of IT assets and resources used in providing IT Services.
- **Demand Management**: Demand management is a planning methodology used to manage and forecast the demand of products and services.
- **Business Relationship Management:** Business Relationship Management is a formal approach to understanding, defining, and supporting a broad spectrum of inter-business activities related to providing and consuming knowledge and services via networks.

**II. Service Design:** Service Design translates strategic plans and objectives and creates the designs and specifications for execution through service transition and operations. It provides guidance on combining infrastructure, applications, systems, and processes, along with suppliers and partners, to present feasible service offerings. It includes design principles and methods for converting strategic objectives into portfolios of services and service assets.

The Service Design volume provides guidance on the design and development of services and service management processes. It includes design principles and methods for converting strategic objectives into portfolios of services and service assets. Service Design is not limited to new services and includes the changes and improvements required to maintain or increase

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value to customers over the lifecycle of services, taking into account the continuity of services, conformance to standards and regulations and achievement of service levels. It also provides guidance on the development of design capabilities for service management.

- **Service Catalogue Management:** Service Catalogue management maintains and produces the Service Catalogue and ensures that it contains accurate details, dependencies and interfaces of all services made available to customers. Service Catalogue information includes ordering and requesting processes, prices, deliverables and contract points.
- **Service Level Management:** Service-level management provides for continual identification, monitoring and review of the levels of IT services specified in the Service-Level Agreements (SLAs). Service-Level Management is the primary interface with the customer and is responsible for ensuring that the agreed IT services are delivered when and where they are supposed to be; liaising with availability management, capacity management, incident management and problem management.
- **Availability Management:** Availability management targets allow organizations to sustain the IT service-availability to support the business at a justifiable cost. The high-level activities comprise of realizing availability requirements, compiling availability plan, monitoring availability and maintenance obligations. Availability management addresses many IT component abilities like reliability, maintainability, serviceability, resilience and security to perform at an agreed level over a period of time.
- **Capacity Management:** Capacity management supports the optimum and cost-effective provision of IT services by helping organizations match their IT resources to business demands. The high-level activities include application sizing; workload management; demand management; modelling; capacity planning; resource management and performance management.
- **IT Service Continuity Management:** IT Service Continuity Management (ITSCM) covers the processes by which plans are put in place and managed to ensure that IT services can recover and continue even after a serious incident occurs.
- **Information Security Management:** A basic goal of security management is to ensure adequate information security, which in turn, is to protect information assets against risks, and thus to maintain their value to the organization. This is commonly expressed in terms of ensuring their confidentiality, integrity and availability, along with related properties or goals such as authenticity, accountability, non-repudiation and reliability.
- **Supplier Management:** The purpose of Supplier Management is to obtain value for money from suppliers and contracts. It ensures that underpinning contracts and agreements align with business needs, Service Level Agreements and Service Level Requirements. Supplier Management oversees process of identification of business needs, evaluation of suppliers, establishing contracts, their categorization, management and termination.

**III. Service Transition:** Service Transition provides guidance on the service design and implementation ensuring that the service delivers the intended strategy and that it can be

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operated and maintained effectively. Service Transition planning provides guidance on managing the complexity of changes to services and service management processes to prevent undesired consequences whilst permitting for innovation. It provides guidance on the support mechanism on transferring the control of services between customers and service providers. The Service Transition volume provides guidance on the development and improvement of capabilities for transitioning new and changed services into operations. Guidance is provided on how the requirements of Service Strategy encoded in Service Design are effectively realized in Service Operation, whilst controlling the risks of failure and disruption. It combines the processes in Release, Program and Risk Management and sets them in the practical context of Service Management.

- **Service Transition Planning and Support:** The service transition planning and support process ensures the orderly transition of a new or modified service into production, together with the necessary adaptations to the service management processes. The service transition planning and support process must incorporate the service design and operational requirements within the transition planning.
- **Change management and Evaluation:** This aims to ensure that standardized methods and procedures are used for efficient handling of all changes. A change is an event that results in a new status of one or more configuration items (CIs), and which is approved by management, is cost-effective, enhances business process changes (fixes) – all with a minimum risk to IT infrastructure.
- **Service Asset and Configuration Management:** Service Asset and Configuration Management is primarily focused on maintaining information (i.e., configurations) about Configuration Items (i.e., assets) required to deliver an IT service, including their relationships. Configuration management is the management and traceability of every aspect of a configuration from beginning to end.
- **Release and Deployment Management:** Release and deployment management is used by the software migration team for platform-independent and automated distribution of software and hardware, including license controls across the entire IT infrastructure. Proper software and hardware control ensures the availability of licensed, tested, and version-certified software and hardware, which functions as intended when introduced into existing infrastructure.
- **Service Validation and Testing:** The objective of ITIL Service Validation and Testing is to ensure that deployed Releases and the resulting services meet customer expectations, and to verify that IT operations are able to support the new service.
- **Knowledge Management:** Knowledge Management (KM) is the process of capturing, developing, sharing, and effectively using organisational knowledge. It refers to a multi-disciplined approach to achieving organisational objectives by making the best use of knowledge.

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**IV. Service Operation:** Service Operation provides guidance on the management of a service through its day-to-day production life. It also provides guidance on supporting operations by means of new models and architectures such as shared services, utility computing, web services, and mobile commerce.

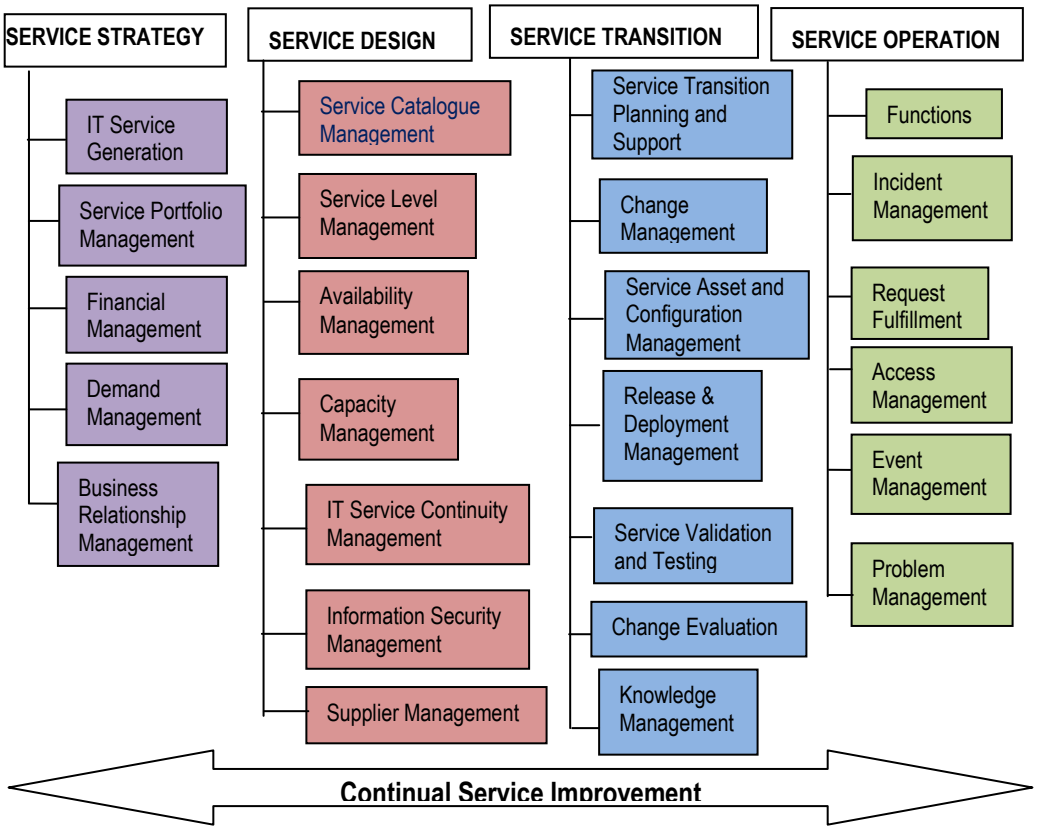


**Fig. 7.13.2: ITIL V3**

- **Functions**: The major functions are as follows:
  - **Service Desk:** The service desk is one of four ITIL functions and is primarily associated with the Service Operation lifecycle stage. Tasks include handling incidents and requests, and providing an interface for other ITSM processes. Features include Single Point of Contact (SPOC); Single Point of Entry and Exit; easier for customers and streamlined communication channel.
  - **Application management:** ITIL application management encompasses a set of best practices proposed to improve the overall quality of IT software development and support through the life-cycle of software development projects, with particular attention to gathering and defining requirements that meet business objectives.
  - **IT Operations:** IT Operations primarily work from documented processes and procedures and should be concerned with a number of specific sub-processes, such

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as: output management, job scheduling, backup and restore, network monitoring/management, system monitoring/management, database monitoring/management storage monitoring/management.

- **IT Technical Support:** IT technical support provides a number of specialist functions: research and evaluation, market intelligence, proof of concept and pilot engineering, specialist technical expertise, and creation of documentation.

- **Incident Management:** Incident management aims to restore normal service operation as quickly as possible and minimize the adverse effect on business operations, thus ensuring that the best possible levels of service quality and availability are maintained.
- **Request fulfillment:** Request fulfillment (or request management) focuses on fulfilling Service Requests, which are often minor changes (e.g., requests to change a password) or requests for information.
- **Access Management:** It is a process that focuses on granting authorized users the right to use a service, while preventing access to non-authorized users.
- **Event Management:** An event may indicate that something is not functioning correctly, leading to an incident being logged. Event management generates and detects notifications, while monitoring checks the status of components even when no events are occurring.
- **Problem Management:** Problem management aims to resolve the root causes of incidents and thus to minimize the adverse impact of incidents caused by errors within the IT infrastructure, and to prevent recurrence of incidents related to these errors.

**V. Continual Service Improvement**: Continual Service Improvement provides guidance on the measurement of service performance through the service life-cycle, suggesting improvements to ensure that a service delivers the maximum benefit. This volume provides guidance on creating and maintaining value for customers through improved design, introduction, and operation of services. It combines principles, practices, and methods from change management, quality management, and capability improvement to achieve incremental and significant improvements in service quality, operational efficiency, and business continuity.

It provides guidance on linking improvement efforts and outcomes with service strategy, design, and transition, focusing on increasing the efficiency, maximizing the effectiveness and optimizing the cost of services and the underlying IT Service Management processes.

## 7.14 Summary

The chapter discusses the legal issues relating to Information technology. Chapter elaborates the important provisions of the Information Technology Act, 2000. The chapter also puts the importance of adoption of such a law for growth of e-commerce. The chapter further goes to highlight the requirements regarding system audit/disclosure by other statutes and governing bodies like RBI, SEBI and IRDA. The latter part of the chapter discussed the key aspects of National Cyber Security Policy 2013 and further elaborates various security and related certification standards used by various bodies across the world.

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