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# HARMONIZATION OF E-COMMERCE LAWS AND REGULATORY SYSTEMS IN SOUTH ASIA

**A PRESENTATION  
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# ELECTRONIC COMMERCE

- Need for regulatory mechanisms to strengthen the legal infrastructure
- Crucial to the success of Electronic Commerce
- From the time you register your Domain Name, set up and promote your web site, and until you conduct electronic commerce transactions on the site, at every point of time, there are various Cyberlaw issues involved

# UNCITRAL MODEL LAWS

- 1996 - UNCITRAL Model Law on E-commerce.
- 2001 - UNCITRAL Model Law on Electronic Signatures.

# HARMONIZATION

- Need to harmonize the various cyberlaws across the world.
- Implement the international best practices and principles.
- Harmonize legal regimes so as to promote online commerce

# SAARC

- Only two predominant players in the SAARC region who have enacted e-commerce laws.
  - INDIA - Information Technology Act, 2000
  - PAKISTAN - Electronic Transactions Ordinance, 2002

# INDIA

- Object of the Information Technology Act, 2000
  - :-
    - Legal recognition for transaction carried out by electronic methods of communication
    - To facilitate electronic filing of documents
    - 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
    - For matters connected therewith or incidental thereto

# INDIA (CONTD.)

- Legal sanctity accorded to all electronic records and other activities carried out by electronic means.
- Acceptance of contract may be expressed by electronic means of communication and the same shall have legal validity and enforceability

# INDIA AND E-COMMERCE

- Facilitate electronic intercourse in trade and commerce
- Eliminate barriers and obstacles coming in the way of electronic commerce resulting from the uncertainties relating to writing and signature requirements over the Internet.
- Promoting and developing the legal and business infrastructure necessary to implement electronic commerce.

# IT ACT

- Chapter-II – relates to digital signatures
- Chapter III – Electronic governance : gives legal validity to information provided in electronic form, legal recognition of digital signatures
- Chapter IV - scheme for Regulation of Certifying Authorities
- Chapter VII - scheme of things relating to Digital Signature Certificates
- Chapter IX - about penalties and adjudication for various offences – tampering with source code, hacking, transmission of obscene information.

# IT ACT (CONTD.)

- Appointment of Adjudicating Officers who shall adjudicate whether any person has made a contravention of any of the provisions of the said act or rules framed thereunder.
- The said Adjudicating Officer has been given the powers of a Civil Court.
- Cyber Regulations Appellate Tribunal – for hearing appeals against orders of Adjudicating Officer.

# IT ACT (CONTD.)

- Cyber Regulations Advisory Committee, which shall advise the government as regards any rules, or for any other purpose connected with the said act.
- Schedules which amend the Indian Penal Code, 1860, the Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, The Reserve Bank of India Act, 1934 to make them in tune with the provisions of the IT Act.

# PAKISTAN

- Pakistan promulgated the Electronic Transactions Ordinance in the year 2002 (EO, 2002).
- Law meant to recognize and facilitate documents, records, information, communications and transactions in electronic form, and to provide for the accreditation of certification service providers.

# PAKISTAN (CONTD.)

- The EO, 2002 grants legal recognition to electronic forms, as well as gives legal recognition to electronic signatures.
- Makes provisions regarding acknowledgement, receipt etc of such document.

# PAKISTAN (CONTD.)

- Provisions concerning certification service providers and the establishment of the Certification Council.
- The Ordinance creates certain offences like violation of privacy of information and damage to information system.
- It also limits the liability of network service providers, in absence of facilitation, aid and abetment.

# PAKISTAN (CONTD.)

- The EO, 2002 also amends certain laws in order to make Pakistani laws more amenable to e-commerce.
- The Qanun-E-Shahadat Order, 1984 has been amended to allow electronic documents as evidence.

# SRILANKA

- At the time of writing, Srilanka is yet to come up with any legislative provision relating to e-commerce.

# BANGLADESH

- Bangladesh has come out with a Draft Information Technology (Electronic Transaction) Act, which incorporates provisions from the UNCITRAL Model Law on E-commerce, the Singapore Electronic Transactions Act and the Indian Information Technology Act, 2000.

# NEPAL

- At this time, as per information available in the public domain, a proposed legislation concerning e-commerce is pending before the Government.

# BHUTAN & MALDIVES

- At this time, Bhutan and Maldives are yet to come up with any legislative provision relating to e-commerce.

# ISSUES TO BE ADDRESSED

- Telecommunication Liberalization
- Recognition of Electronic Documents
- Consumer Protection for e-commerce consumers
- Electronic Funds Transfer
- Dispute Resolution

# ISSUES TO BE ADDRESSED

## (contd.)

- Internet Service Providers (ISP) Liability
- Domain Names
- Intellectual Property Protection
- Privacy
- Cybercrime

# LEGISLATION

- Sri Lanka, Bhutan, Bangladesh, Nepal and Maldives need to come across with concrete drafts of e-commerce law in their respective countries
- Adequate training of the relevant departments and Government officials who would draft and implement policies relating to e-commerce
- Easy to enact paper law. However, it is extremely difficult to enforce them in actual practice

# OTHER STEPS

- Create appropriate awareness for their e-commerce laws amongst their citizens
- Train law enforcement officers and agencies
- Sensitize and educate the judiciary in South Asia about the various nuances and peculiarities of e-commerce laws
- Proliferation of Internet growth
- Adequate development of infrastructure in South Asia

# RECOMMENDATIONS

- Improve Internet density: entry of private parties in telecommunication encouraged as a matter of policy
- Greater co-operation between SAARC countries to enable exchange of information and experiences
- Regional cooperation/ treaties between SAARC countries to ensure protection of the legitimate e-commerce interests

# RECOMMENDATIONS

## (contd.)

- Regional mechanism to ensure that in the event of violation of any e-commerce contracts, the jurisdiction of the victim/consumer's country to prevail
- Joint agreement on the issue of ISP liability
- Dissemination of information to the public about already existing E-Commerce laws
- Education of the enforcement agencies, judiciary, police force etc. on e-commerce

# RECOMMENDATIONS

## (contd.)

- **Recommendatory body to help South Asian countries without existing laws to come out with a law on the subject as soon as possible**
- **Modification of existing laws to meet international standards**
- **Propagate already existing model laws e.g. UNCITRAL Model Laws On E-Commerce And Electronic Signatures.**

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