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Research Article

A Study of Conceptual Framework of Information Technology and Their Laws and Regulation

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Abstract: The last decennary of 20th century had witnessed information technology rise as the most popular technology to have a revolutionary affect on the lives of people across the world. During this tense, Indian engineers and savant have earned a high degree of reverence around the world for their highly professional and innovatory role to the technological advancements in this zone. Large numbers of developed countries like United States. Recognizing the deposition of Indian software professionals in United States, countries like Germany and Japan have recently shown liking in hiring Indian software processonals to their countries.

Key words: Information Technology, Software, Delegacy, Communication, Corporate.

INTRODUCTION

Since the drown of culture, people have required acquaintance to aid them, in their personal warfare of survival as well as in their attempts to manage their set-up. Though for the century's man live without keeping inscription, letter it become necessary to do so with the growth of the social organizations. Historians have traced some type of record keeping and data processing back to about 3500 B.C .Today all of us still keep records and process data, but the technology by which data are processed has made a quantum leap forward in the last twenty to thirty years. India long used to harping on its civilization and tradition, perhaps due to its cursed medievalism and missed modernism, can now legitimately pride itself thanks to information technology sector at the threshold of the new millennium. A decade half ago, a PC

generated at best curiosity and at worst mystique even amongst the educated Indians. But the rapid strides of information technology, both in sophistications and expansion, especially during the Rajeev Gandhi regime and later has been truly revolutionary. Be it home or office, school or university, the ubiquity of a small sized box processing evaluating and churning out information at the press of a button is not an uncommon sight today

REVIEW OF LITRATURE

- Millar, W. Thomas¹ explain the economy –wide and industry level impact of information technology and defined all of feature of industry and information technology in world level.
- C. Shapiro² focuses the light on the impact of workplace practices and information technology on productivity. Dean Parham et al (2001) reveal the information technology and Australia's productivity surge.
- D. Amor³ Explain about information technology and financial services Competition and define the wide net work in whole world of information technology and their advantage.
- R. Merquez *et al.*⁴ reports on the experience of Canada, Germany, Ireland, Japan and United Kingdom implementing and adapting information technology diffusion programme in the 1990. The study examines the determinants of effective information technology diffusion and analyzes national information technology policy portfolios to draw lessons and trends

DEFINATION OF INFROMATION TECHONOLGY

Information technology software means any delegacy of instruction, data, sound image including stream code, object code recoded in a equipment, readable form and capable of being manipulated or providing interactively to use by means of automatically data processing machine falling under head information processing. Information technology service is defined as any services which outcomes from the use of any information technique software over system of information technology growth for realizing value addition. Information technology would include computer digital data communication and digital data broad casting products as notified by the ministry of finance, government of India or central board of excise and customs

IT LAWS AND REGULATION OF INDIA

The government of India has announced IT as a thrust area. Accordingly, it is providing for more magnanimous tactic framework for the sector. Important laws and regulations that affect the IT industry are listed in this section. One of the general factors of classic and consistent development of Indian software industry can be attributed continuous liberalization of the government of India. NASSCOM and the governments have worked together in close co-operation over a long time for forming and implementing these policies.

During 1991, NASSCOM lobbied with the government and for the first time, secured income tax exemption from gain of software exports. Later, government, systematically and gradually, reduced coming-in duty on computer software form a high 114 percent to nil. Copyright laws were also amended. We are enlisting here; some of the fiscal and non fiscal incentives provides by the government of India to information technology software and services industry.

INTELLECTUAL PROPERTY RIGHT LAW IN INDIA

In India, the intellectual property right of computer software is covered under the copyright law⁵. Accordingly the copyright of computer software is protected under the regulations of Indian copyright act 1957. Main changes to Indian copyright rule were introduced in 1993 and came in to effect from May 1994. These changes or amendments made the Indian copyright law, one of the toughest in the world.

The alteration of the copyright act proposed in June 1994 was in itself, a landmark in the Indian's copyright arena. For the time in India, the copyright law clearly explained:

1. The rights of a copyright holder.
2. Stand on rentals of software.
3. The rights of the proprietor to make backup copies.
4. The most importantly the amendments imposed heavy punishment and fines for infringement of copyright of software.

Because most software is easy to duplicate and the copy is usually as good as original, the copyright act was greatly in demand. According to this act, the infringer can be tried under both civil and criminal law.

According to section 14 of this act, it is illegal to make or distribute copies of copyrighted software without fully exclusive authorization. The only exception is provided by section 52 of the act, which allows a backup copy purely as a temporary protection against loss, distribution or damage to the original copy. The 1994 amendment of the copyright act also prohibits the sale or hiring or any offer for sale or hire of any copy of the computer program without specific authorization of the copyright holder.

A civil and criminal action may be instituted for injunction, actual damages or statutory damages per infringement etc. with these revisions, even the criminal penalties have substantially increased. Section 63 states the fine ranging from Rs 50,000-2,00,000. Government agencies have been very actively collaborating in protecting the rights of the copyright holder. Both the ministry of information technology and ministry of human resource growth have been active in incorporating amendments to the Indian copyright act. These agencies are now helping the law enforcing agencies e.g. the police in enforcing the law. Today, NASSCOM commissions laws and eradicates the menace of software piracy.

The anti – piracy raids facilitated by NASSCOM and business software connection over the last few years in metros as well as smaller cities have already had a salutary effect. The law enforcing authorities too supported these raids actively⁶.

SETTING UP IT COMPANY IN INDIA

Setting up IT software and services operations in India has certain rules and regulations and below we have listed compendious guidelines for individuals and companies⁷⁻⁹.

General Indian public and company

A personage Indian citizen can set up IT software and services operations in India through the following:

1. As an individual / proprietor
2. As a partnership / firm / trust
3. As a company registered under the companies act, 1956

No prior permission of government of India. Moreover, to encourage units in this sector, government of India has announced many schemes:

- Domestic traffic area: when the primary focus is to sell in the domestic market in India. This unit can be set anywhere in India. All normal laws apply; no concession is available on import duties. Exports are permitted. A special export promotion capital goods scheme of ministry of commerce can be availed. This scheme allows zero duty import of capital goods against export obligations.
- Special economic zones are a new scheme announced by the government of India. SEZs are areas where export production can take place free from plethora of rules and regulation governing imports and exports. Units operating in these zones have full flexibility of operations and can import duty free and raw material. The movement of goods to and fro between ports and SEZ are unrestricted. The units in SEZ have to export the entire production. The first two SEZs are being set up at positron in Gujarat and Nangunery in Tamilnadu. At the same time, Santacruz electronics export promotion zone, kindle export promotion zone vizag export promotion zone and Cochin export promotion have been proposed to be converted in SEZs.
- Software technology park STP: This is a very special scheme under the ministry information technology; STPs are located at NOIDA, Navi Mumbai, Pune, Gandhinagar, Jaipur and Mohali. This scheme offers zero import duty on import of all capital goods, special 10 days years' income tax rebate, and availability of infrastructure facilities like high speed data communication links.

Overseas Company: A foreign company of individual planning to set up business operations in India can do so as under:

- As a foreign company through a liaison office / representative office, project office or a branch office.
- As an Indian company through a joint venture or a wholly owned subsidiary.
- Foreign company is one that has been incorporated outside India and conducts business in India. These companies are required to comply with the provisions of companies act, 1956.

Liaison Office/Representative Office: A liaison office is not allowed to undertake any business activity in India and earn any income here. The role of such offices is limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers.

The foreign exchange regulation act (FERA) regulates the opening and operation of such offices. Also, approval of reserve bank of India is required for opening of such offices. These offices have to ensure the following:

- Expenses of such officers are met entirely through inward remittances of foreign exchange from head office abroad.
- These offices do not undertake any trading or commercial activities commercial activities should be limited to collecting and transmitting information between overseas head office and potential Indian customers.
- Permission for such offices is initially granted for a period of three years and may be extended from time to time.

Project Office: Foreign companies planning execute specific projects in India can set up temporary project / site offices in India with the approval of reserve bank of India. Such approval is generally accorded in respect of government approved projects.

Branch Office: Foreign companies engaged in manufacturing and trading activities abroad may set up branch offices in India, with the permission of reserve bank of India for the following purpose:

- To represent the parent company/other foreign companies in various matters in India acting as a buying selling agents in India.
- To conduct research work in the area in which parent company is engaged provided the results of the research work are made available to Indian companies.
- To undertake export and import trading activities.

As an Indian company: A foreign company can commence operations in India through incorporation of a company under the provisions of Indian companies' act 1956. Foreign equity in such Indian companies can be up to 100 percent depending upon the business plan of the foreign investor, prevailing investment policies of the government and on receipt of requisite approvals.

Joint venture with an Indian partner

Foreign companies can set up their operations in India by forming strategic alliances with Indian partners. Setting up of operations through joint venture may entail the following advantages to a foreign investor.

- Already established distribution marketing set of the Indian partner.
- Available financial resources of the Indian partner.
- Already established contacts of the Indian partner that help smoothen process of setting up operations.

Foreign investments are approved through two routes as under:

1. Automatic route: approval for foreign equity up to 50 percent and 74 percent are given on an automatic basis subject to fulfilment of prescribed parameters in certain industries as specified by the government reserve bank of India accords automatic approval to all such cases.
2. Government approval : approval in all other cases where the proposed foreign equity exceeds 50 percents, 51 percents or 74 percents in the specified industries or if the industry is not in the specified list, it requires prior specific approval from foreign investment promotion board.

Wholly Owned Subsidiary: The foreign investor has the option of setting up a wholly owned subsidiary, wherein the foreign company owns 100 percents share of the Indian company. All such cases are subject to prior approval from the FIPB. Some of the criteria for setting up wholly owned subsidiary include.

- Only holding manipulate is involved and all consequential downstream penetration to be carried out need prior approval of the government.
- Where property technology is sought to be protected or sophisticated technology is proposed to be brought in.
- At least 50 percent of the production is to be exported.

CYBER LAW IN INDIA

In May 2000, both the houses of the Indian parliament passed the information technology bill the bill received the assent of the president in august 2000 and came to be known as the information technology act, 2000, cyber laws are contained in the IT act 2000.

This act aims to provide the legal infrastructure for e-commerce in Indian and the cyber laws have a major impact for e-business and the new economics in India. So it is important to understand what the various perspectives of the IT act 2000 are and what it offers.

The information technology act, 2000 also aims to provide for the legal framework so that legal sanctity is accorded to all electronic records and other activities carried out by electronic means. The act states that unless otherwise agreed, an acceptance of contract may be expressed by electronic means of communication and the same shall have legal validity and enforceability.

ADVANTAGE OF CYBER LAW

The IT act 2000 attempts to change outside laws and provides way to deal with cyber crime. We need such laws so that people can perform purchase transactions over the net through credit cards without fear of misuse. The act offers the much needed legal framework so that information is not denied legal effect, validity or enforceability, solely on the ground that it is in the form of electronic records.

In view of the growth in transactions and communication carried out through electronic records, the act seeks to empower government departments to accept filing, creating and retention of official documents in the digital format. The act has also proposed a legal framework for the authentication and origin of electronic records and communication through digital signature.

- From the perspective of e-commerce in India, the IT act 2000 and its provisions contain many positive aspects. Firstly, the implications of these provisions for the e-business would be that email would now be a valid and legal form of communication in our country that can be duly produced and approved in a court of law.
- Companies shall now be able to carry out electronic commerce using the legal infrastructure provided by the act.
- Digital signatures have been given validity and sanction in the act.
- The act throws open the doors for the entry of corporate companies in the business of being certifying authorities for issuing digital signatures certificates.
- The act now allows government to issue notification on the web thus heralding governance.
- The act enables the companies to file any form, application or any other document with any office, authority body or agency owned or controlled by the appropriate government in electronic form by means of such electronic form as may be prescribed by the appropriate government.
- The IT act also addresses the important issues of security, which are so critical to the success of electronic transactions. The act has given a legal definition to the concept of secure digital that would be required to have been passed through a system of a security procedure, as stipulated by the government at a later date.
- Under the IT act 2000, it shall now be possible for corporate to have a statutory remedy in case if anyone break in to their computer system or network and cause damages or copies data. The remedy provided by the act is in the form of monetary damages, not exceeding 1 crore.

IT law and regulation will go a long way in facilitating and regulating IT industry and IT related services. New communication system digital technology has made dramatic changes in the way people transact business. Businessmen are increasingly using computer to create, transmit and store information in the electronic form instead of traditional paper documents. It is cheaper, easier to store and retrieve and speedier to communicate. Although people are aware of these advantages they are reluctant to conduct business in the electronic form due to lack of appropriate legal electronic commerce, electronic governance and other IT enabled services, are the requirements as to writing and signature for legal recognition. At present many legal provisions assume the existence of traditional based record upon

paper based records and oral testimony. Electronic commerce eliminates the need for paper based transactions. Hence, to facilities IT enable services, proper legal framework has become an urgent necessity¹.

LIMITATION OF THE STUDY

The basic difficulty of analysis the information technology industry arises from the complexity of its definition. The industry is by mean, easily defined. In addition, it is rapidly changing. As a result, there is always scope for disagreement regarding which groups of firm should be included in the industry or how to describe the structure of the industry either at the present time or in the future.

SCOPE AND IMPROTANCE OF STUDY

The internet computer and electronic industry has been seen by numerous observers as a set of technologies that might enable developing countries to leapfrog over the development path taken by industrial countries, enabling poorer countries to increase their rates of growth and catch up sooner.

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