

## CHAPTER

# 10

## CIVIL PROCEDURE CODE, 1908 (C.P.C)

### Covering-

- Bare Act
- Scheme of the Code
- Decree, Order & Judgement
- Affidavit
- Place of Suing/ Filing of Suit (Territorial)
- Different Stages of a suit
- Rejoinder/ Replication
- Appearance of Parties
- Stay of Suit / Doctrine of RES SUB-JUDICE
- Doctrine of Res Judicata
- Distinguish between Res Subjudice and Res Judicata
- Set-Off, Counter-Claim and Equitable Set-Off
- Temporary Injunctions and Interlocutory Orders
- Appeals
- Suits by Against Minors
- Suits by Against Corporation
- Summary Procedure
- Self Test Questions

**EXPECTED  
MARKS COVERAGE**  
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# – From Bare Act... –

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99

# **भारत का राजपत्र** **The Gazette of India**

## The Code Of Civil Procedure, 1908 (Act No. 5 of 1908)

An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; it is hereby enacted as follows:-

PART	SECTIONS	TITLE
	1-8	PRELIMINARY
I	9-35	SUITS IN GENERAL
II	36-74	EXECUTION
III	75-78	INCIDENTAL PROCEEDINGS
IV	79-88	SUITS IN PARTICULAR CASES
V	89-93	SPECIAL PROCEEDINGS
VI	94-95	SUPPLEMENTAL PROCEEDINGS
VII	96-112	APPEALS
VIII	113-115	REFERENCE, REVIEW AND REVISION
IX	116-120	SPECIAL PROVISION RELATING TO THE HIGH COURTS NOT BEING THE COURT OF A JUDICIAL COMMISSIONER
X	121-131	RULES
XI	132-158	MISCELLANEOUS
THE FIRST SCHEDULE		

### PRELIMINARY

1. Short title, commencement and extent- (1) This Act may be cited as the Code of Civil Procedure, 1908.

(2) It shall come into force on the first day of January, 1909.

[2](3) It extends to the whole of India except-

(a) the State of Jammu and Kashmir;

(b) the State of Nagaland and the tribal areas :

Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

Explanation-In this clause, "tribal areas" means the territories which, immediately before the 21st day of January, 1972 were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution.

(4) In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union territory of Lakshadweep, the application of this Code shall be without prejudice to the application of any rule or regulation for the time being in force in such Islands, Agencies or such Union territory, as the case may be, relating to the application of this Code.]

2. Definitions- In this Act, unless there is anything repugnant in the subject or context,-

(1) "Code" includes rules;

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [3]\*\*\* section 144, but shall not include-

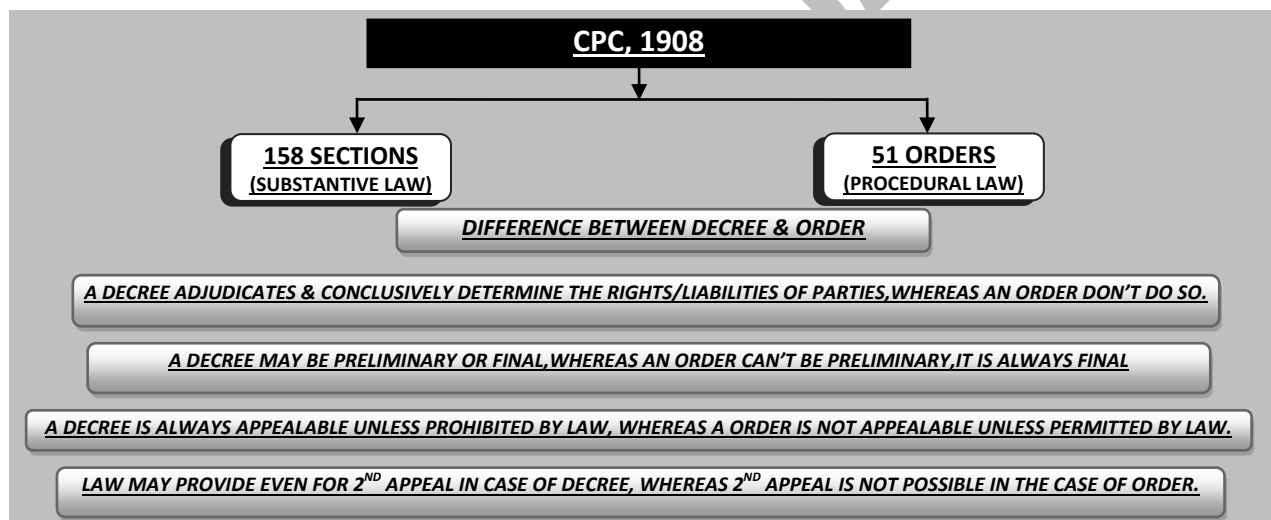
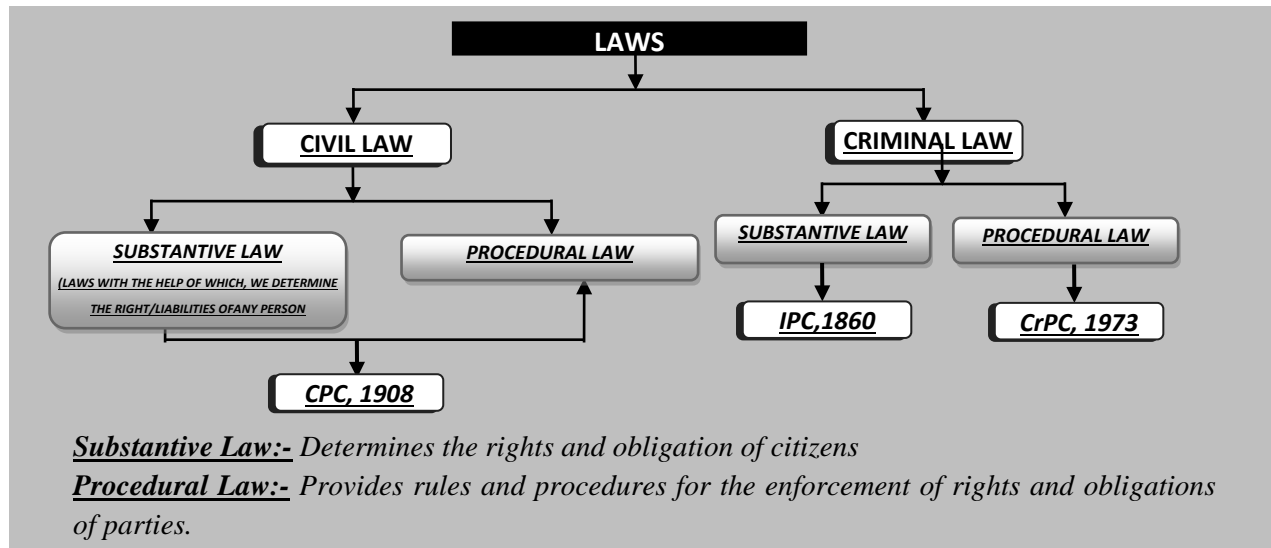
(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

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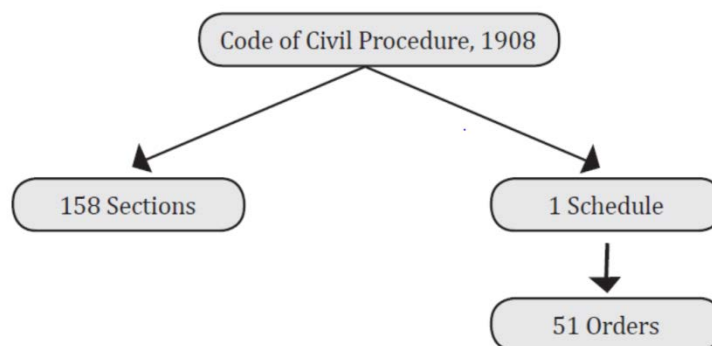
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# CIVIL PROCEDURE CODE, 1908 (C.P.C)

The Civil Procedure Code consolidates and amends the law relating to the procedure of the Courts of Civil jurisdiction or civil suits.

The codes came into force as on 1<sup>st</sup> January, 1909. It extends to the **whole of India**.

## SCHEME OF THE CODE



The Civil Procedure Code consists of two parts:-

(a) **First part** contains **158 Sections**.

(b) **Second part** contains **51 Orders** which in turn contains several rules.

The first part, containing substantive law, **can be amended by the Parliament**

whereas the second part, containing procedural law, can be amended only by the **High Courts**.

## DECREE, ORDER & JUDGEMENT

### 1. DECREE

"Decree" is defined in Section 2(2) of the Code as:-

- (a) the **formal expression of an adjudication** which,
- (b) **conclusively determines the rights** of the parties,
- (c) with regard to all or any of the matters in controversy.

**But decree does not include:-**

- (a) any adjudication from which an appeal lies as an appeal from an Order, or
- (b) any order of dismissal for default.

According to the explanation to the definition, a **decree may be preliminary or final**. A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of.

*Essentials of a decree are:*

There must be formal expression of adjudication

There must be a conclusive determination of the rights of parties

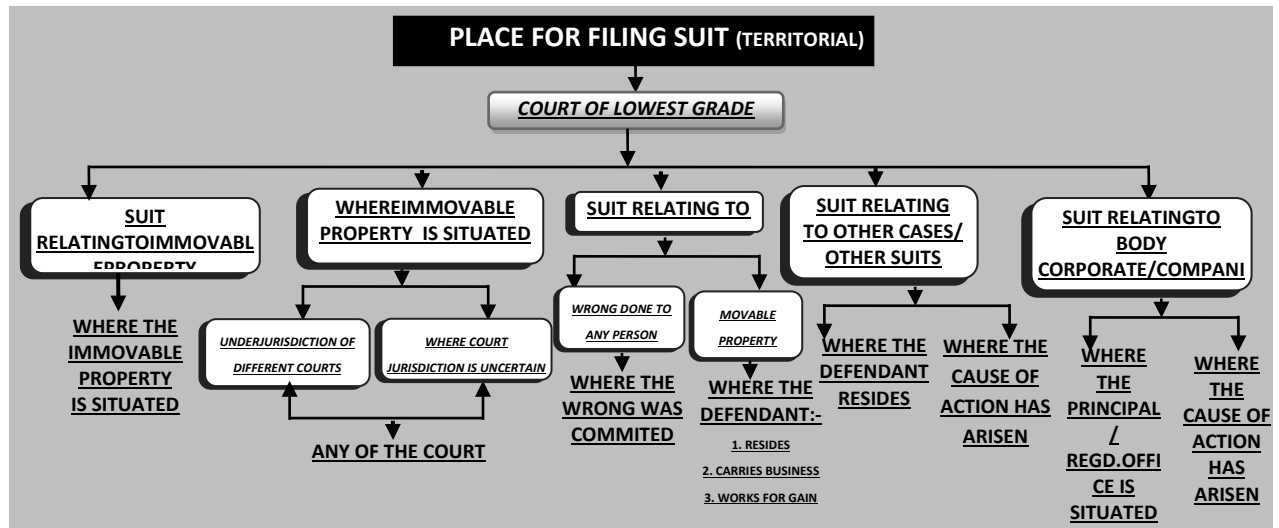
The determination must be with regard to or any of the matters in controversy in the suit

The adjudication should have been given in the suit

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## 2. ORDER

"Order" as defined in **Section 2(14)** of the Code means the formal expression of any decision of a Civil Court which is not a decree.

Generally no appeal lies from an order unless it is provided in law.

## 3. JUDGEMENT

"Judgement" as defined in **Section 2(9)** of the Civil Procedure Code means **the statement given by the Judge on the grounds of a decree or order**. Thus a judgement set out the grounds and reasons for the Judge to have arrived at the decision.

The decree is the **operative part of a judgement**. So the judgement is always followed by the decree.

### NKJ-CLASSROOM PRACTICE



Q. 1. Define following terms:

- (i) Order
- (ii) Judgement
- (iii) Decree.

## AFFIDAVIT

An affidavit is a **declaration on oath** reduced to writing and sworn before that person who has authority to administer such an oath. It must be **correct in a particulars**, and as such *furnishing false affidavit may result into serious consequences*.

The following rules and principles should be kept in mind while drawing up an affidavit:

- |   |
|---|
| (i) The person making the affidavit should be <b>described with all his particulars</b>   |
| (ii) It must be drawn up in the <b>first person</b> .   |
| (iii) Such person who draw affidavit is known as <b>deponent</b> .  |
| (iv) It has to be <b>sworn by the deponent</b> in the presence of Oath Commissioner, Notary Public, Magistrate or any other Authority appointed by the Government for this purpose. |

## JURISDICTION OF CIVIL COURTS

Jurisdiction means the authority by which a Court has to decide matters that are brought before it for adjudication.

*A limitation on jurisdiction of a Civil Court may be of four kinds. These are as follows :-*

### 1. JURISDICTION OVER THE SUBJECT MATTER

The jurisdiction to try certain matters by certain Court is **limited by statute**; e.g. a small cause court can try suits for money due under a promissory note or a suit for price of work done.

### 2. PLACE OF SUING OR TERRITORIAL JURISDICTION

A territorial limit of jurisdiction for each court is **fixed by the Government**. Thus, it can try matters falling within the territorial limits of its jurisdiction.

### 3. JURISDICTION OVER PERSONS

**All persons of whatever nationality** are subject to the jurisdiction of the Civil Courts of the country **except** a foreign State, its ruler or its representative except with the consent of Central Government.

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#### 4. PECUNIARY JURISDICTION DEPENDING ON PECUNIARY VALUE OF THE SUIT

Section 6 of the Code of Civil Procedure, 1908 deals with Pecuniary jurisdiction and lays down that save in so far as is otherwise expressly provided Courts shall only have jurisdiction over suits **the amount or value of which does not exceed the pecuniary limits** of any of its ordinary jurisdiction. There is **no limit on pecuniary jurisdiction of High Courts and District Courts**.

*Jurisdiction may be further classified into following categories depending upon their powers:*

##### 1. ORIGINAL JURISDICTION

A Court tries and decides suits filed before it.

##### 2. APPELLATE JURISDICTION

A Court **hears appeals** against decisions or decrees passed by sub-ordinate Courts.

##### 3. CRIMINAL AND APPELLATE JURISDICTION

The **Supreme Court, the High Courts and the District Courts** have both original and appellate jurisdiction in various matters.

#### **PLACE OF SUING/ FILING OF SUIT (TERRITORIAL)**

- Section 15 lays down that **every suit** shall be instituted in the Court of the lowest grade to try it. **(Section 15)**
- According to Section 16, suits relating to **immovable property** shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. **(Section 16).**
- Where **immovable property** is **situated** within the jurisdiction of **different Courts**, the suit may be instituted in any Court within the local limits of whose jurisdiction the property is situated. **(Section 17).**
- Where jurisdiction of Courts where immovable property is situated are **uncertain**, then any of the said Courts may proceed to entertain the suit. **(Section 18).**
- Suit for compensation for **wrong done** to the person or to **movable property**, may be instituted in any of the Courts within whose jurisdiction the defendant resides, or carries on business, or personally works for gain or where wrong was committed. **(Section 19).**
- **Other suits** (where Sections 15, 16, 18 and 19 doesn't apply) may be instituted in any of the Courts within whose jurisdiction the defendant resides, or cause of action has arisen. **(Section 20).**
- In the case of a **body corporate or company** suit may be instituted in any of the Courts within whose jurisdiction:-
  - (a) its principal office is situated, or
  - (b) Cause of action has arisen, *provided* it has a subordinate office (branch office) at such place. **(Section 20).**

#### **CASE LAW**



<i>Angile Insulations</i> v. <i>Davy Ashmore India</i> <i>Ltd.</i>	Where there <b>might be two or more competent courts</b> which could entertain a suit and <b>if the parties to the contract agreed</b> to vest jurisdiction in <b>one such court to try the dispute</b> . Such an agreement would be valid
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## DIFFERENT STAGES OF A SUIT

<b>Stage - 1</b>	Institution of suit.
<b>Stage - 2</b>	Issue and service of summons
<b>Stage - 3</b>	Written statement
<b>Stage - 4</b>	Discovery and inspection
<b>Stage - 5</b>	Appearance of parties
<b>Stage - 6</b>	Hearing of the suit
<b>Stage - 7</b>	Judgment and decree
<b>Stage - 8</b>	Execution

## REJOINDER / REPLICATION

- Rejoinder or replication** means a **written statement/ reply of the plaintiff/petitioner** by way of defense to pleas 'raised in the counter affidavit /written statement from the defendant /respondent .
- Such statement are **subsequent pleading** as contemplated in Order VIII Rule 9 of the Civil Procedure Code. Under Rule9, **leave of the court is essential** before any party can present a further pleading after the written statement has been filed.
- The only subsequent pleading that may be filed **without the leave of the court** is the written statement filed by way of **defense to a set-off or a counter –claim**.
- While filing a rejoinder/ replication, **a party cannot be allowed to fill up gaps or lacuna in his pleadings. Not again can a party introduce new material** facts or different cause of action **except in** a case where subsequent to filing of the petition /suit, the petitioner/plaintiff discovers in his pleadings.

## APPEARANCE OF PARTIES

### ORDER 9

When a **suit is failed by the plaintiff**, a **summon is issued to the defendant** to appear on a particular date fixed by the court. The defendant is further directed through the summon to file the written statement (reply) to the suit filed by the plaintiff.

**On the date of hearing by the court**, both the **plaintiff as well as the defendant are required to present** themselves before the court.

If **the plaintiff doesn't appear** on the date of the hearing, then the Court may

either **dismiss** the suit for default or  
decide it **ex- part** on the merits of the case.

If the **defendant doesn't appear** on the date of hearing, the court may

either **adjourn** the hearing or  
decide it **ex- part** on the merits of the case.

The **ex-parte order** or the **order relating to the dismissal** of the **suit can be aside** provided the plaintiff or the defendant, as the case may be, gives a **sufficient reason** for his non-appearance on the date of hearing.

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## STAY OF SUIT/ DOCTRINE OF RES SUB-JUDICE

### SECTION 10

**Section 10** provides that **no Court** shall **proceed** with the **trial** of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties where such suit is pending in the same or any other Court (**in India**) having jurisdiction to grant the relief claimed.


**However**, the pendency of a suit in a **foreign court** does not preclude the Courts in India from trying a suit founded on the same cause of action.

<b>Essential conditions for stay of suits:-</b>	(a) There must be <b>two suits</b> instituted at different times;
	(b) The <b>matter</b> in issue in the later suit should be directly and substantially in issue in the earlier suit;
	(c) Such suit should be between the <b>same parties</b> ;
	(d) Such earlier suit is <b>still pending</b> either in the same Court or in any other competent Court.

A suit was instituted by the plaintiff company alleging **infringement by the** defendant company by using trade name of medicine and selling the same in wrapper and carton of **identical design** with same colour combination etc. as that of plaintiff company.

A subsequent suit was instituted in different Court by the defendant company against the plaintiff company with same allegation. The Court held that subsequent suit should be stayed as simultaneous trial of the suits in different Courts might result in conflicting decisions as issue involved in two suits was totally identical (*M/s. Wings Pharmaceuticals (P) Ltd. and another v. M/s. Swan Pharmaceuticals and others,*)

### NKJ-CLASSROOM PRACTICE

	<b>Q. 1.</b> Discuss the doctrine of 'Res Sub Judice' under Section 10 of Civil Procedure Code, 1908. [Dec. 2018, 5 Marks]
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## DOCTRINE OF RES JUDICATA

### SECTION 11

**Section 11** of the Civil Procedure Code deals with the doctrine of Res Judicata which imposes, bar or restraint on repetition of litigation of the same issues. It **prevents two different decrees** on the **same subject**. The doctrine underlines the general principle that one shall **not be twice vexed** for the **same cause**. Section 11 says that once a *res* is *judicata*, it shall not be adjudged again.

This doctrine is based on the following grounds of public policy:-

(a) There should be an <b>end to litigation</b> ;
(b) The parties to a suit <b>should not be harassed</b> to agitate the same issues or matters already decided.
(c) The <b>time of Court</b> should <b>not be wasted</b> .

<b>For the applicability of the principle of res judicata the following conditions are required to be satisfied:-</b>	(a) The <b>matter</b> directly and substantially in issue in former suit shall also be directly and substantially in issue in later suit.
	(b) The former suit has been <b>decided</b> .
	(c) Such former suit and the latter are between the <b>same parties</b> .
	(d) The court which determined the earlier suit must be <b>competent to try the latter suit</b> .

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## DISTINGUISH BETWEEN RES SUBJUDICE AND RES JUDICATA

The doctrine of res Sub Judice bars the trial of a suit in which the matter directly or substantially is pending adjudication in a previous suit.

On the other hand, the, doctrine of res Judicator bars the trial of a suit of an issue in which the manner directly and substantially in issue has already been adjudicated upon in a previous suit between the same parties under the same title.

### NKJ-CLASSROOM PRACTICE



Q. 1. What is res judicata and stay of suits?

## SET-OFF, COUNTER-CLAIM AND EQUITABLE SET-OFF

### 1. SET-OFF

Order 8, deals with set-off which is a **reciprocal acquittal of debts between the plaintiff and defendant**. It has the effect of extinguishing the plaintiff's claim to the extent of the amount claimed by the defendant as a counter claim.

where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, the defendant may, present a written statement containing the particulars of the debt sought to be set-off.

### 2. COUNTER-CLAIM

According to Order 8, Rule 6 A Counter-claim means **something claimed by other party against the set-off made by the first party**. A defendant in a suit may, in addition to his right of pleading a set-off, set up by way of counter-claim against the claim of the plaintiff.

### 3. EQUITABLE SET-OFF

In this case the defendant is permitted to claim set-off in respect of an **unascertained sum of money** where the claim arises out of the same transaction.

## DIFFERENCE BETWEEN 'LEGAL SET-OFF' AND 'EQUITABLE SET-OFF'.

LEGAL SET-OFF	EQUITABLE SET-OFF
Sum must be <b>ascertained</b> .	Sum need <b>not be ascertained</b> .
Claim <b>need not originate from the same transaction</b> .	Claim must <b>origination from the same transaction</b> .
Legal set off can be <b>claimed as a right by the defendant</b> and the <b>court is bound to adjudicate upon the claim</b> .	Equitable set off <b>cannot be claimed as a right</b> but by <b>court's discretion</b> .
<b>Court fee</b> must be paid on set off amount.	<b>No court fee</b> is required.
The amount must <b>not be time barred</b> .	The amount <b>may be time barred</b> . However, <i>if the defendant's claim is time barred, he can claim only as much amount as is given in the plaintiffs claim.</i>

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## TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

### ➤ TEMPORARY INJUNCTION ORDER 39

A temporary injunction is a provisional remedy invoked to **preserve the subject matter in its existing condition.**

Temporary injunctions are such as are

to **continue until a specified time** or

**until the further order of the Court** and

they **may be granted at any stage of a suit.**

### Cases where the Court may grant temporary injunction

The court may grant temporary injunction where it is proved by affidavit or otherwise:-

- |     |   |
|-----|---|
| (a) | that any property in dispute in a suit is <b>in danger of being wasted</b> , damaged or alienated by any party to the suit,   |
| (b) | that the <b>defendant threatens, or intends to remove or dispose of his property</b> with a view to defrauding his creditors, or                                      |
| (c) | that the <b>defendant threatens</b> to dispossess the plaintiff or <b>otherwise cause injury</b> to the plaintiff in relation to any property in dispute in the suit. |

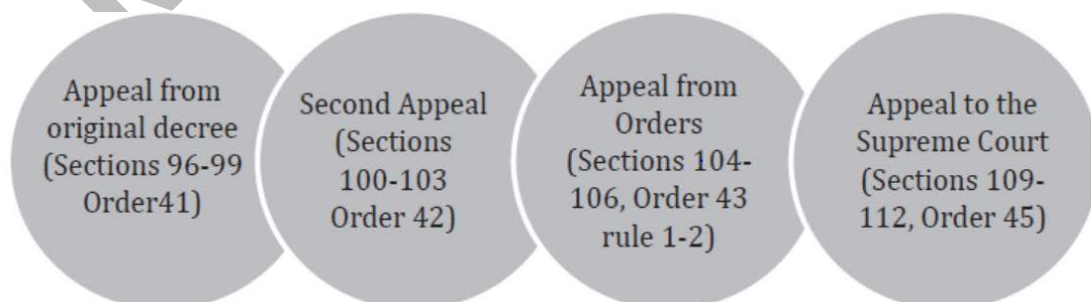
### ➤ INTERLOCUTORY ORDERS

The Court may, on the application of any party to a suit order the **sale**, in such manner and on such terms as it thinks fit, of any **movable property**, being the subject-matter of such suit, or attached before judgement in such suit, **which is subject to speedy and natural decay**, or which for any other just and sufficient cause it may be desirable to be sold at once.

## APPEALS

Right of appeal is not a natural or inherent right attached to litigation. Such a right is given by the statute or by rules having the force of statute.

### KINDS OF APPEALS



### 1. APPEALS FROM ORIGINAL DECREES

Appeals from **original decrees may be preferred in the Court superior** to the Court passing the decree. Where the decree has been passed with the consent of parties, **no appeal lies**. The appeal from original decree lies on a **question of law as well as on question of fact.**

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**PETITIONS / APPLICATIONS FOR**

REFERENCE

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## 2. SECOND APPEAL

As per Section 100 of the Civil Procedure Code, an appeal lies to the **High Court from every decree passed in appeal by any subordinate Court** if the High Court is satisfied that the case involves a substantial **question of law**.

## 3. APPEAL FROM ORDERS

Appeal from orders would lie only on grounds of **defect or irregularity in law**. Otherwise *in general, Appeal against orders are not allowed*.

## 4. APPEALS TO THE SUPREME COURT

Appeals to the Supreme Court would lie from any judgement, **decree or final orders passed by a High Court in exercise of original jurisdiction**.

## REFERENCE, REVIEW AND REVISION

### 1. REFERENCE SECTION 113

Subject to such conditions as may be prescribed, at any time before judgement *a court in which a suit has been instituted* **may state a case and refer the same for opinion of the High Court** and the High Court may make such order thereon as it thinks fit.

### 2. REVIEW SECTION 114

Any person considering himself **aggrieved by a decree or order** may apply for a review of judgement to the court which passed the decree or made the order and the Court may make such order thereon as it thinks fit.

Any person may apply for a review of judgement to the court in the following situation:-

- |   |
|---|
| (a) In case of a decree or order from <b>which an appeal is not allowed</b> .   |
| (b) In case of a decree or order from which an appeal is allowed <b>but from which no appeal has been preferred</b> . |

### 3. REVISION SECTION 115

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which **no appeal lies** thereto, and when a subordinate Court appears—

- |  |
|--|
| (a) to have <u>exercised</u> a <b>jurisdiction not vested in it by law</b> , or                        |
| (b) to have <u>failed to</u> exercise a jurisdiction so vested, or                                     |
| (c) to have acted in the exercise of its jurisdiction <b>illegally or with material irregularity</b> , |

a petition for revision can be made to the High Court and High Court may make such order as it thinks fit.

#### **NKJ-CLASSROOM PRACTICE**



**Q. 1.** Briefly discuss the provisions relating to reference, review and revision.

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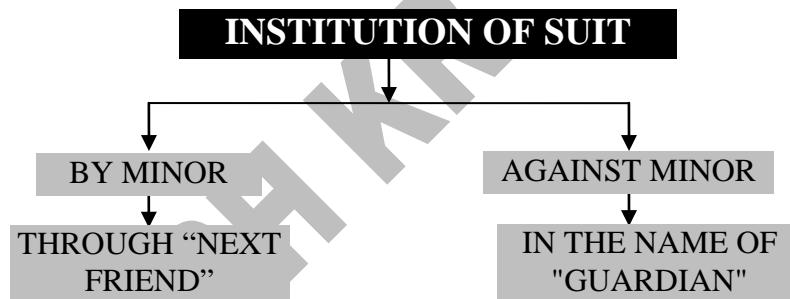
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## DISTINGUISH BETWEEN REVISION AND APPEAL

S.NO.	REVISION	APPEAL
1.	Application for revision can be made <b>only to the high court</b>	Appeal can be preferred <b>to any court superior</b> to one from whose decree or order appeal is sought to be preferred. That <b>superior court need not necessarily</b> be a high court.
2.	Revision cannot be <b>applied for as a right</b> .	Right of appeal is <b>substantive, given by law</b> .
3.	The power of the high court to exercise provisional jurisdiction <b>either of its own motion or on the request of a party is discretionary</b> .	The court to which an appeal has been preferred is <b>bound to consider</b> it according to the procedure prescribed.
4.	Revision can be applied for <b>only on grounds of Jurisdiction</b> and not on the question of law or fact.	In an appeal the appellate <b>court has power to consider both the question of law and fact</b> .

## **SUITS BY OR AGAINST MINORS**

**ORDER 32**



Every **suit by a minor** shall be instituted in his name by a person who in such suit shall be called the **next friend of the minor**. The next friend should be a person who is of sound mind and has attained majority.

Where **the defendant is a minor** the Court, shall appoint a proper person to be **guardian** for the suit for such minor.

### When minor attain majority

When the **minor plaintiff** attains majority, he may elect

to proceed with the suit or application or

elect to abandon it.

If he elects the former course, he shall **apply for an order discharging the next friend** and for leave to proceed in **his own name and the title of the suit will be corrected**.

If he elects to abandon the suit or application, he shall, apply for an **order to dismiss the suit on repayment of the costs incurred by the defendant or opposite party** etc.

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## SUITS BY OR AGAINST A CORPORATION

### Signature or verification of pleading

In suits by or against a corporation, **any pleading may be signed and verified** on behalf of the corporation,

**by the secretary or**

by any director or

other principal officer of the corporation who is able to depose to the facts of the case.

### Service of summons

Subject to any provision regulating of process, where the suit is against a corporation, the summons may be served:-

(i) On the **secretary** or any **director or other principal officer** of the corporation, or

(ii) By leaving it or sending it by post **addressed to the corporation at the registered office** or if there is no registered office then **at the place where the corporation carries on business**.

## SUMMARY PROCEDURE

### ORDER 37

The object of summary procedure ***is to prevent unreasonable obstruction by a defendant***. The **defendant is not entitled to defend** the suit **unless** he enters an appearance within 10 days from the service of summons. Such leave to defend may be granted unconditional or upon such term as the Court or the Judge may think fit.

However, such leave shall not be granted where:-

(a) the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a **substantial defence** or that the **defences are frivolous** and

(b) the part of the **amount** claimed by the plaintiff and admitted by the defendant to be due from him is **not deposited** by him in the Court.

1. A procedure by way of summary suit applies to suits upon **bill of exchange, hundies or promissory notes**, or where the plaintiff desires to proceed under the provisions of Order 37.

2. The debt or liquidated demand in money payable by the defendant should arise on a written contract or on an enactment or on a guarantee.

3. The summary suit must be brought within one year from the date on which the debt becomes due and payable, whereas the period of limitation for suits for ordinary cases under negotiable instrument is three years.

The rules for **summary procedure** are applicable to the following Courts:

(1) High Courts, City Civil Courts and Small Courts;

(2) Other Courts: In such Courts, the **High Courts may restrict the operation of Order 37** by issuing a notification in the Official Gazette.

### NKJ-CLASSROOM PRACTICE



Q. 1. Explain in brief Summary Procedure.

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Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL

## CHAPTER

18

# INFORMATION TECHNOLOGY ACT, 2000

### Covering-

- Bare Act
- Introduction
- Objective
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- Audit of documents maintained in electronic form
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- Attribution and dispatch of electronic records
- Secure Electronic Records
- Certifying Authorities
- Electronic Signature certificates
- Penalties and adjudications
- Compensation for failure to protect data
- Appellate Tribunal
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**EXPECTED  
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# भारत का राजपत्र

## The Gazette of India

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# INFORMATION TECHNOLOGY ACT, 2000

## INTRODUCTION

“Information technology”, in a broad sense, connotes that **technology which is connected with information**.

The use of such technology for the **storage, retrieval and dissemination** of information has given rise to several legal, social and ethical problems.

## OBJECTIVE

Information Technology Act, 2000 is the **primary law in India dealing with electronic commerce and Cyber Crime**. It is based on the United Nations Model Law on Electronic Commerce (UNCITRAL Model) **recommended** by the General Assembly of United Nations by a resolution dated 30<sup>th</sup> January 1997.

Information Technology Act, 2000 provides **legal recognition to any transaction** which is done electronically or use of internet.

The Information Technology Act, 2000, was enacted to make, in the main, **three kinds of provisions, as under:**

- |   |
|---|
| (a) It provides <b>legal recognition for transactions</b> carried out by means of electronic data interchange and other means of electronic communication, usually referred to, as “electronic Commerce”.   |
| (b) It facilitates the <b>electronic filing of documents</b> with the Government agencies, (and also with the publication of rules etc., in the electronic form).   |
| (c) It <b>amends the</b> , Indian Penal Code, the Indian Evidence Act, 1872, the Bankers’ Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934, so as to bring in electronic documentation within the purview of the respective enactments. |

### NKJ-CLASSROOM PRACTICE



**Q. 1.** Summaries the main provisions contained in the Information Technology Act, 2000.

## DOCUMENTS OR TRANSACTIONS TO WHICH THE ACT SHALL NOT APPLY

- |   |
|---|
| 1. A negotiable instrument ( <i>other than a cheque</i> ) as defined in section 13 of the Negotiable Instruments Act, 1881.                               |
| 2. A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882.  |
| 3. A trust as defined in section 3 of the Indian Trust Act, 1882.   |
| 4. A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called. |
| 5. Any contract for the sale or conveyance of immovable property or any interest in such property.  |

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## DEFINITIONS

- **“Information”**  
“Information” includes data, message, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche. [Section 2(1)(v)]
- **“Originator”**  
“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. [Section 2(1)(za)]
- **“Intermediary”**  
“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, webhosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes; [Section 2(1)(w)]
- **“Addressee”**  
“Addressee” means a person **who is intended by the originator to receive** the electronic record, but does not include any intermediary. [Section 2(1)(b)]
- **“Communication device”**  
“Communication device” means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image;.[Section 2(1) (ha)]
- **“Computer”**  
“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. [Section 2(1)(i)]
- **“Computer network”**  
“Computer network” means the interconnection of one or **more computers through –**

(i)	the use of satellite, microwave, terrestrial line or other communication media; and
(ii)	terminals or a complex consisting of two or more interconnected computers, whether or not the interconnection is continuously maintained. [Section 2(1)(j)]
- **“Computer resource”**  
“Computer resource” means computer, computer system, computer network, data, computer database or software. [Section 2(1)(k)]
- **“Electronic form”**  
“Electronic form” with reference to information, means any information generated, sent, received or stored **in media, magnetic, optical, computer** memory, microfilm, computer generated micro fiche or similar device. [Section 2(1)(r)]
- **“Digital signature”**  
“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. [Section 2(1)(p)]

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- **“Electronic signature”**  
“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**. [Section 2(1)(ta)]
- **“Electronic Signature Certificate”**  
“Electronic Signature Certificate” means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate. [Section 2(1)(tb)]
- **“Electronic record”**  
“Electronic record” means data, recorded or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated micro fiche. [Section 2(1)(t)]
- **“Asymmetric crypto system”**  
“Asymmetric crypto system” means a system of a **secure key pair** consisting of  

a <b>private key</b> for creating a digital signature and
a <b>public key</b> to verify the digital signature [Section 2(1)(f)]
- **“Key pair”**  
“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. [Section 2(1)(x)]
- **“Private Key”**  
“Private Key” means the key of a key pair, used **to create a digital signature**. [Section 2(1)(zc)]
- **“Public key”**  
“Public key” means the key of a key pair, **used to verify a digital signature** and listed in the Digital Signature Certificate. [Section 2(1)(zd)]
- **“Secure system”**  
“Secure system” means computer hardware, **software, and procedure that–**  

(a) are reasonably secure from unauthorised 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;
- **“Cyber security”**  
“Cyber security” means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosure, disruption, modification or destruction. [Section 2(1)(nb)]
- **“Appellate Tribunal”**  
“Appellate Tribunal” means the Appellate Tribunal referred to in sub-section (1) of section 48. [Section 2(1) (da)]

#### NKJ-CLASSROOM PRACTICE



**Q. 1.** State very briefly the gist of the concepts of "computer network", "electronic form" and "key pair", under the Information Technology Act, 2000.

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## DIGITAL SIGNATURE AND ELECTRONIC SIGNATURE

**Digital signature** (i.e. authentication of an electronic record by a subscriber, by electronic means) is recognised as a valid method of authentication. The authentication is to be effected by the use of “**asymmetric crypto system and hash function**”, which envelop and transform electronic record into another electronic record. [Sections 3(1), 3(2)]

**Verification** of the electronic record is done by the use of a **public key** of the subscriber. [Section 3(3)] The private key and the public key are unique to the subscriber and constitute a functioning “key pair”.

**Section 3A** deals with **electronic signature**. Section 3A(1) provides that notwithstanding anything contained in section 3(1), 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

(b) may be specified in the **Second Schedule**.

**Section 5 deals with legal recognition of electronic signatures**. It states that *where any law* provides that information or any other 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 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.

## ELECTRONIC GOVERNANCE (LEGAL RECOGNITION OF ELECTRONIC RECORDS)

### SECTION 4

The Act grants legal recognition to electronic records by laying down that where (*by any law*) “information” or **any other matter is to be in:**

(a) writing or

(b) typewritten form or

(c) printed form,

*then, such requirement is satisfied, if such information or matter is:*

(i) rendered or made available in an **electronic form**; and

(ii) **accessible**, so as to be usable for a **subsequent reference**. (Section 4)

Thus, Section 4 of the Information Technology Act, practically equates electronic record with a manual or typed or printed record.

### Public records

**Section 6** grants recognition to electronic records and electronic record signatures, **in cases where any law provides for**

(a) the filing of any form, application or any other document with a Governmental office or agency or

(b) the grant of any licence, permit etc. or

(c) the receipt or payment of money in a particular manner. (Section 6)

### NKJ-CLASSROOM PRACTICE



**Q. 1.** What is the significance of electronic records under the Information Technology Act, 2000?

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## RETENTION OF INFORMATION

**Section 7** seeks to permit the retention of information in electronic form, where *any law* provides that certain documents, records or information shall be retained for any specific period. Certain conditions as to accessibility, format etc. are also laid down.

## AUDIT OF DOCUMENTS 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 or information processed and maintained in the electronic form. **(Section 7A)**

## SUBORDINATE LEGISLATION

Subordinate legislation is also authorised, by the Act, to be published in the Official Gazette or the **electronic Gazette**, and the date of its first publication in either of the two Gazette shall be deemed to be the date of publication. **(Section 8)**

## ATTRIBUTION AND DISPATCH OF ELECTRONIC RECORDS

Since, in an electronic record, the **maker remains behind the curtain**, it was considered desirable to make a provision for “attribution” of the record. An *electronic record is attributed to the “originator”*. [Defined in Section 2(1)(za)]

Broadly, the “**originator**” is the person at whose instance it was sent in the following cases:-

- |   |
|---|
| (a) if it was sent by the <b>originator himself</b> ; or  |
| (b) if it was sent by a <b>person authorised to act on behalf of the originator</b> in respect of that electronic record; or                  |
| (c) if it was sent by an information system <b>programmed by or on behalf of the originator</b> to operate automatically. <b>(Section 11)</b> |

Regarding **acknowledgement of receipt of electronic records**, the Act provides that where **there is no agreement** that the acknowledgment be given in a particular form etc. then the **acknowledgement may be given by:**

- |   |
|---|
| (a) any communication by the addressee (automated or otherwise) or  |
| (b) any conduct of the addressee which is sufficient to indicate to the originator that the electronic record has been received. <b>[Section 12(1)]</b> |

## TIME AND PLACE OF DISPATCH ETC.

*Subject to agreement between the parties*, the dispatch of an electronic record occurs, **when it enters a “computer resource” outside the control of the originator.** **[Section 13 (1)]**

### Time of receipt

Subject to agreement, if <b>the addressee has designated a computer resource</b> for receipt, <b>then receipt occurs when the electronic record enters the designated resource.</b>
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However, if the record is sent to a computer resource of the addressee <b>which is not the designated resource</b> , then receipt occurs at the time when the <b>electronic record is retrieved by the addressee.</b> <b>[Section 13(2)(a)]</b>
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## ELECTRONIC SIGNATURE CERTIFICATES

As per section 35 of the Act, **Certifying authority** to issue electronic signature Certificate. Followings are the procedure of **obtaining electronic signature Certificate**:-

- |   |
|---|
| (1) Any person may make an <b>application in prescribed form to the Certifying Authority</b> for the issue of electronic signature Certificate in such form as may be prescribed by the Central Government.   |
| (2) Every such application shall be accompanied by <b>prescribed fees</b>   |
| (3) Every such application shall be accompanied by a <b>certification practice statement</b> or where there is no such statement, a <b>statement containing such particulars</b> , as may be specified by regulations.  |
| (4) On receipt of an application, the Certifying Authority may, after consideration of the certification practice statement or the other statement and after making such enquiries as it may deem fit, <b>grant the electronic signature Certificate</b> or for reasons to be recorded in writing, <b>reject the application</b> . It may be noted that <i>no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.</i> |

## CERTIFYING AUTHORITIES

The Act contains detailed provisions as to “Certifying Authorities” (Sections 17-34).

A Certifying Authority is expected to **reliably identify persons** applying for “signature key certificates”, **reliably verify their legal capacity** and **confirm the attribution of a public signature key** to an identified physical person by means of a signature key certificate.

To regulate the Certifying Authorities, there is a **Controller of Certifying Authorities**. (Section 17)

## PENALTIES AND ADJUDICATIONS

Section 43 provides that 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) <b>accesses</b> or secures access to such computer, computer system or computer network or computer resource;   |
| (b) <b>downloads</b> , 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) <b>introduces</b> or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;   |
| (d) <b>damages</b> 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) <b>disrupts</b> or causes disruption of any computer, computer system or computer network;  |
| (i) <b>destroys</b> , deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;  |
| (j) <b>steal</b> , conceal, 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. |

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*For the purposes of Section 43:-*

(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 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;

## 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 **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. (Section 43A)

## APPELLATE TRIBUNAL

The **Telecom Disputes Settlement and Appellate Tribunal** established under **section 14 of the Telecom Regulatory Authority of India Act, 1997**, shall, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.

The Central Government shall specify, by notification the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

Any person aggrieved by an order of the Controller of Certifying Authorities or of the adjudicator can appeal to the Appellate Tribunal, **within 45 days**. (Section 57)

Any person aggrieved by “any decision or order” of the Appellate Tribunal **may appeal to the High Court**, within **60 days**.

**Jurisdiction of Civil Courts is barred**, in respect of any matter which an adjudicating officer or the Appellate Tribunal has power to determine.

### NKJ-CLASSROOM PRACTICE



**Q. 1.** State, in brief, about the Appellate Tribunal, under the Information Technology Act, 2000.

## OFFENCES

**Chapter XI** of the Act, (Sections 65-78) deals with offences relating to computers etc. and connected matters.

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### 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**. (Section 65)

### 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**. (Section 66)

The offences listed in the Act are the following:-

(1) Dishonestly receiving stolen computer resource or communication device
(2) Identity theft
(3) Cheating by personation by using computer resource
(4) Violation of privacy
(5) Cyber terrorism
(6) Publishing or transmitting of material containing sexually explicit act, etc., in electronic form
(7) Publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic Form
(8) Misrepresentation
(9) Breach of confidentiality and privacy
(10) Disclosure of information in breach of lawful contract
(11) Publishing electronic signature Certificate false in certain particulars
(12) Publication for fraudulent purpose.

### Extraterritorial operation

Extra-territorial operation of the Act is provided for, by enacting that the provisions of the Act apply to any offence or contravention **committed outside India** by any person, irrespective of his nationality, if the act or conduct in question involves a computer, computer system or computer network located in India. (Section 75)

## **LIABILITY OF NETWORK SERVICE PROVIDERS**

### **SECTION 79**

The Internet system depends, for its working, on **network service providers- i.e. intermediaries**.

In his capacity as an intermediary, a network service provider may have to handle matter which may contravene the Act.

To avoid such a consequence, the Act declares that

**no network service provider shall be liable “under this Act, rule or regulation made thereunder”, for any third party information or data made available by him, if he proves that the**

offence or contravention was committed **without his knowledge** or

that he had exercised **all due diligence to prevent the commission** of such offence or contravention.

### **NKJ-CLASSROOM PRACTICE**



**Q. 1.** What are the offences provided in the Information Technology Act, 2000, for various kinds of misuse of computer?

## SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Summarise the main provisions contained in the Information Technology Act, 2000.
2. What is the significance of electronic records under the Information Technology Act, 2000?
3. State very briefly the gist of the concepts of “computer network”, “electronic form” and “key pair”, under the Information Technology Act, 2000.
4. What are the offences provided in the Information Technology Act, 2000, for various kinds of misuse of computer?
5. State, in brief, about the Appellate Tribunal, under the Information Technology Act, 2000.



Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL