

INFORMATION TECHNOLOGY INDUSTRY IN INDIA

A short guide on the information technology sector in India.

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Introduction

The Information Technology ("IT") sector has become one of the most significant growth catalysts for the Indian economy, contributing significantly to the country's Gross Domestic Product ("GDP") and public welfare. The IT industry covers IT services, IT-enabled services (ITES), e-commerce (online business), software and hardware products. IT based services are indispensable for any organization to increase productivity, ease of doing business, and grow efficiently and economically in this competitive world. Information Technology not only contributed to the economic growth of the country but it has also made governance more competent and approachable.

When the world economy was grappled with the challenges posed by the Covid-19 pandemic and every other industry was facing a shrink in their revenue and profit margins, India's technology industry has seen big bang growth in Financial Year ("FY") 2022. This was primarily because technology became the fulcrum that allowed businesses to not just keep the lights on but also to accelerate their journey toward becoming future-ready, agile, and resilient.

According to National Association of Software and Service Companies (Nasscom), the Indian IT industry's revenue touched US\$ 227 billion in FY22, a 15.5% growth. The industry association is also confident that the industry can achieve the ambitious target of \$350 billion by the Fiscal Year 2026, growing at a rate of 11-14 percent.



Sectoral advancements

The swift advancement within the IT industry and liberalization policies such as reducing trade barriers and eliminating import duties on technology products by the Government of India are instrumental in the evolution of this industry.

UNION BUDGET 2022-23

In the Union Budget 2022-23 announced by Finance Minister, \$11.58 billion were allocated to the IT and telecom sector. This is equivalent to ₹ 88,567.57 crores. The Department of Telecom, the Government of India, and the Ministry of Communications have signed a Memorandum of Understanding with the Government of Japan. Under this, there would be increased cooperation in sectors related to the development of 5G technologies, submarine optical fiber cable systems, and telecom security.

5G & HARDWARE MARKET

5G is set to bring advancement to the country's telecom infrastructure. Along with the top private players in the sector, the government is working to make 5G technology accessible in the country as soon as possible. The government, under the *Atma Nirbhar Bharat*, has launched several Production Linked Incentive ("PLI") schemes meant to boost the development of computer hardware parts in the country.

PHASE II OF THE VISVESVARAYA PHD SCHEME

Recently, Phase II of the Visvesvaraya PhD Scheme was launched to boost the research in the 42 sectors related to IT and ITES. The government of India has well-laid-out plans to develop emerging blockchain, cloud computing, and artificial intelligence technology in the country in the next few years. There is also an increased focus on providing internet access to remote areas where people face major connectivity issues.

Governmental initiatives

The Government of India ("GoI") has taken various initiatives to promote Information Technology and Information Technology enabled Services (IT/ ITeS) sector in the country. Some of the initiatives are as detailed below:

SOFTWARE TECHNOLOGY PARKS OF INDIA (STP) SCHEME:

Software Technology Parks of India (STPI), an autonomous society under the Ministry of Electronics and Information Technology, is implementing the Software Technology Parks of India (STP) Scheme, which is a 100% export-oriented scheme for the development and export of computer software, including the export of professional services using communication links or physical media. The exports by STPI-registered IT and ITeS units for the year 2020-21 were Rs. 5.02 lakh crore.

SPECIAL ECONOMIC ZONES (SEZS)

The SEZ Act, 2005, supported by SEZ Rules, came into effect on February 10, 2006, providing for simplification of procedures and for single window clearance on matters relating to central as well as state governments. The main objectives of the SEZ Act are:

- generation of additional economic activity;
- promotion of exports of goods and services;
- promotion of investment from domestic and foreign sources;
- creation of employment opportunities;
- development of infrastructure facilities and
- the exports by IT/ITeS units in SEZs for the year 2020-21 were Rs. 5.1 lakh crore.

NEXT GENERATION INCUBATION SCHEME (NGIS)

It has been approved to support software product ecosystem and to address a significant portion of National Policy on Software Product (NPSP 2019). It is envisaged to create a vibrant software product ecosystem to complement the robust IT Industry for continued growth, new employment and enhance competitiveness.

Legal regulations

THE INFORMATION TECHNOLOGY ACT, 2000

The Information Technology Act, 2000 provides legal recognition to the transaction done via the electronic exchange of data and other electronic means of communication or electronic commerce transactions. This also involves the use of alternatives to a paper-based method of communication and information.

Further, the Act amends the Indian Penal Code, 1860 the Indian Evidence Act 1872, the Bankers Book Evidence Act 1891, and the Reserve Bank of India Act 1934. The main purpose of these amendments is to address the related issues of electronic crimes and evidence and to enable further regulation as regards electronic funds transfers.



OBJECTIVES OF THE ACT

These are the following objectives of the Act laid down below:

- The act was enacted to give legal sanction to electronic commerce and electronic transactions, to enable e-governance, and also to prevent cybercrime.
- The act regulates the Certification Authorities ("CAs"); appointment of a Controller of CAs, grant of licenses to CAs, duties vis-a-vis subscribers of digital signature certificates, recognition of foreign CAs.
- The law prescribes penalties for various cybercrimes and fraud through digital/electronic format.

INFORMATION TECHNOLOGY (INFORMATION SECURITY PRACTICES AND PROCEDURES FOR PROTECTED SYSTEM) RULES, 2018

The Rules prescribe a detailed infrastructure of what is defined therein as a 'Protected System' for implementation of security practices and protective measures required to be taken towards highly sensitive data or data collection centre.

Information Security Steering Committee

The Rules define an 'Information Security Steering Committee' (ISSC) to mean the committee comprising higher management officials of an organization, responsible for continuously improving and strengthening the cyber security posture of the Protected System and also plan, develop, review remedial actions to mitigate and recover from malicious cyber incidents.

Nomination of Chief Information Security Officer (CISO):

A Chief Information Security Officer is a designated employee of Senior management, directly reporting to the Managing Director of the organization and is responsible for cyber security efforts and initiatives, including planning, developing, maintaining, reviewing, and implementing Information Security Policies.

CODE OF ETHICS AND PROCEDURE AND SAFEGUARDS IN RELATION TO DIGITAL MEDIA, 2021

The Rules provide for:

- A three-tier grievance redress mechanism, which includes self-regulation by publishers at the first level, self-regulation by self-regulating bodies of the publishers and an oversight mechanism by the Central government.
- Significant social media firms have to appoint a chief compliance officer and have a nodal contact person who can be in touch with law enforcement agencies 24/7.

Important documentation

These are the following important documents and registration which are required:

- Service tax registration for a consultancy business;
- GST registration when delivering software in CDs or any other medium;
- STPI license is beneficial for new software companies for the zero taxes and no export duty on hardware or software products.;
- Trademark registration to protect the brand name;
- Copyright registration on the source codes;
- Patent registration on technology and;
- Software license agreements.

DIGITAL SIGNATURE CERTIFICATE (DSC)

To guarantee the legitimacy or security of documents filed online, the IT Act demands a valid digital signature on the necessary documents submitted online. The digital signature certificate should be attained only through agencies appointed by the Controller of Certification Agencies ("CCA"). One should not use DSC provided by any other agency that is not approved, and it is unlawful to use other DSC as one's own or the forged one.

Further, a registered user account shall be created on the MCA site for filling up an e-form, for online fee payment, and for various transactions as a business and registered user. Creating an account is completely free.



Tax regime

The Goods and Services Tax (GST) has been launched in India, and it has, as expected, affected almost every major and minor business industry in the country. This also includes the well-reputed Information Technology (IT) sector of India which is the source of the various IT revolutions and developments that take place here. However, as proposed, GST has simplified the tax system in India by replacing the various indirect taxes with a single GST tax system to remove the cascading of taxes.

The following major changes have been reported in the tax rates of the IT products and services.

- As per the GST law, many items used in the IT industry like printer, photo copying, fax machines, and ink cartridges will now attract GST at the rate of 28% as opposed to the previous 18% tax rate.
- The software services will be charged at 18% under GST as compared to 15% service tax of the previous system. The tax rate on software CD's (and other electronic packaged software) will also be 18% under GST.
- The IT companies will have to arrange the hardware and software to make their systems in compliance with GST. This will increase the infrastructure cost and affect business capability, especially for small businesses and startups
- One of the good impacts of GST is in the form of Input Tax Credits ("ITC") which will be available to the IT traders selling goods and services.
- Another major change is for the Enterprise resource planning ("ERP") and accounting service providers who now have to upgrade their existing ERP systems according to GST or create a complete new GST software like Gen GST. This will increase the cost of operation.

Dispute resolution

Technology disputes in India typically fall within the ambit of contractual disputes, unless they relate to the enforcement of statutory or common law rights. With the global shift of business into cyberspace, disputes and jurisprudence in respect of public policy and privacy have changed over the years.

COURTS

At present, there are no specialised courts or tribunals that deal with matters pertaining to technology.

District courts generally have an unlimited pecuniary jurisdiction on the civil side, save and except for certain jurisdictions such as Delhi, Mumbai, Kolkata, Madras and Shimla. These high courts also have first instance jurisdiction.

Choice of court is determined by territorial jurisdiction and pecuniary limits. The court that is vested with both would be competent to deal with the issue at hand.

PROTECTION OF TRADE SECRETS

The filing of confidential information with leave of the court in a sealed cover is often the norm in suits relating to technology. This practice is usually adopted given that case files are public records.

To maintain confidentiality, the courts are also testing the water with so-called confidentiality clubs. An agreement is signed between parties to the proceedings that helps with the restrictive dissemination of confidential information and documents to certain authorized persons. Documents can be seen only by authorized people who are allowed to have access to the documents and information, either by order of the court or through the agreement itself.

This is a fairly new concept to Indian jurisprudence, which has not fully evolved, and the intricacies involved in setting up the clubs are still moot. Not many courts have come up with codified rules and procedures for establishing and regulating these clubs.



ALTERNATIVE DISPUTE RESOLUTION

The technology industry has grown in leaps and bounds over the past decade and has given birth to newer contractual obligations, which have resulted in disputes. Most such agreements are centered on the confidentiality, sharing, exchange, storage and management of information, licensing, and payment and collection of royalties.

While the obligations and the performance thereof would be well crystallized under the covenants of the agreement, a certain element of technicality and specialized knowledge go hand in hand. A recent trend that has emerged in the dispute resolution landscape is an incremental reliance of parties that have entered into a commercial transaction on Alternate Dispute Resolution ("ADR") mechanisms.

As previously mentioned, India does not have a specialized tribunal, court or establishment to tackle such hyper-technical disputes. There is bound to be an intersection with science and technology, and thus there is a need for special adjudicating officers who can comprehend the interdisciplinary nature of the dispute at hand. This is where ADR plays a key role and bridges the gap.

How we can help?



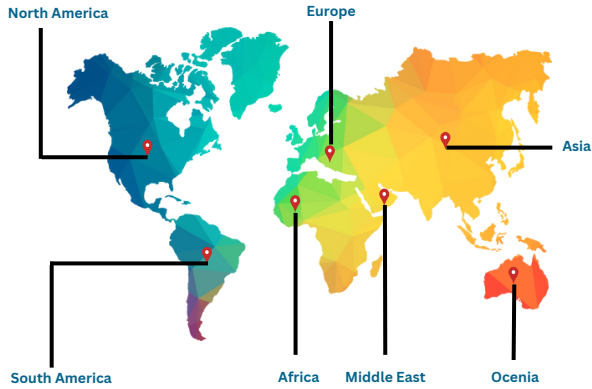
We are well-equipped in assisting clients across the globe with respect to various aspects of information technology such as:

- internet regulatory landscape;
- e-commerce;
- data protection;
- transactions;
- fintech and cryptocurrencies.

We help our clients in the following services which includes:

- drafting agreement on various IT law intricacies;
- obtaining various clearances & licenses;
- providing assistance in tax and other transactional matters and
- assisting in regulatory and privacy compliance.

SERVING CLIENTS WORLDWIDE



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