



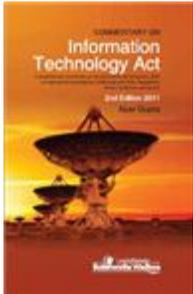
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# Book Review: Commentary on Information Technology Act by Apar Gupta (2nd Edition 2011 – Lexis Nexis)

Nikhil Narendran  
Aug 23, 2011

Like Aditi Kapoor,



Commentary on Information technology Act by Apar Gupta, Second Edition 2011 has been published by LexisNexis Butterworths Wadhwa. The revised edition of the book also analyses the amendments introduced by the 2008 amendment to the Information Technology Act, 2000 (IT Act).

Apar Gupta is a partner at Advani & Co. and is familiar to the technology law enthusiasts through his contributions to [India Law and Technology Blog](#). It is a welcome sight to see practicing lawyers such as Apar coming forward to write commentaries since it will lend a practitioner's perspective over and above the academic perspective provided by most commentaries.

Nikhil Narendran The book has been written in simple, yet elegant language and hence serves both as a primer to students and as a helpful reference material for practitioners. Another commendable effort taken by the author is the one to provide the links to Indian Kanoon website as citation to most of the cases discussed in the book. To put in the words of the author, this has been done with the hope of moving past the exclusive reliance on proprietary legal databases. Author has also relied on various online articles and blog posts, which is also an appreciated move.

The author has taken effort to ensure that concepts such as electronic signature and e-governance are introduced to the reader with the help of diagrams and charts. He explains the technical background of asymmetric crypto system, creation of digital signature and authentication process in simple terms that will be extremely helpful to any one new to these concepts.

The author has dedicated considerable amount of space in his book to analyse section 43 (dealing with hacking and unauthorised access) and 43A (dealing with limited data protection) of the IT Act. This book also covers the rules, which were notified by the Central Government under section 43A to deal with body corporates collecting sensitive personal information. Author concludes this part by questioning the legislative power of the Government in prescribing data collection principles while it was only required to prescribe the reasonable security practices. However, the book does not offer a clause-by-clause analysis of the rules and its impact on business in India.

The book also analyses the new set of offences introduced by the 2008 amendment such as identity theft, spamming and child pornography. The author does considerable amount of discussion on legal intercept and monitoring provisions and provides a historical insight in to it.

Discussion on section 75, which deals with long arm jurisdiction of the IT Act, is noteworthy. While the author discusses many US judgements on the point, it does not however refer to *Banyan Tree Holding (P) Limited vs. A. Murali Krishna Reddy & Anr*, an Indian case which discusses purposeful availment and minimum contacts.

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Section 79 of the IT Act has always been the most controversial and the most debated section in the IT Act, right from the time of its enactment in the year 2000. The commentary on section 79 has been well drafted and discusses history and rationale behind intermediary safe harbour. It contains an interesting discussion on the recent judgement on the case of *TATA vs. Greenpeace* and discusses the impact of the Intermediary Rules on a hypothetical plane. It also discusses the recent rules published by the Government under section 79. However, similar to the commentary on section 43A rules, this book does not offer a clause- by-clause commentary of the rules.

Another section, which caught my eye, is the one dealing with section 81 of the IT Act. It has been a controversial introduction to the IT Act which states that nothing in IT Act shall override the right of any person under Copyrights Act or Patents Act. While Apar analyses the section in detail, it would have been interesting to see how he interprets the inconsistency or rather the lack of it.

Along with the rules and notifications under the IT Act, the annexures also contain the parliamentary committee report and export committee report, which are good tools for figuring out the legislative intent.

As pointed out earlier, one fall side of this book is that it does not in detail analyse the recent rules published by the Government under the IT Act such as the Intermediary Rules and Cyber Cafe rules. It might be due to the fact that author had little time in his hand as the rules were only finalised in April 2011. However, this does not give away anything from the quality of a book and is one of the better commentaries on the subject. It is a must have on any IT lawyers library.

The hardbound edition of the book is priced at 1250, which is reasonable for a hardbound copy.

***Nikhil Narendran is a Senior Associate at Trilegal, Bangalore. He is part of TMT and General Corporate team. He is also the winner of the 2011 ITechLaw Travelling Fellowship Award.***

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1. "The book is outstanding, very helpful and the review here is also very well written. ". **Gaggar, Delhi**
2. "i have the previous edition of the book i found it to a helpful aide in making me understand cyber laws. this area of law is growing very fast and we will need more lawyers who have a good grasp over this subject.". **Rohit Bansal, (Unknown City?)**
3. "The book is well-written and pretty helpful.". **Jairaj Singh Rathore, Delhi**
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