

JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023

IMPLICATIONS ON THE INFORMATION TECHNOLOGY ACT, 2000 AND AADHAAR (TARGETED DELIVERY OF FINANCIAL AND OTHER SUBSIDIES, BENEFITS AND SERVICES) ACT, 2016*

EARLIER PROVISION

CHANGE AND LIKELY IMPACT

Section 45 of the IT Act:

Residuary penalty or compensation for contraventions for which no separate penalty is provided under the IT Act.

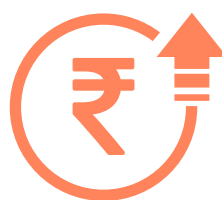


Scope of residuary penalty increased

The residuary penalty (which earlier only applied to contraventions of the IT Act and the rules and regulations made under the IT Act unless a separate penalty is specified) now also applies to such contraventions of directions made under the IT Act.

Likely impact:

The only directions currently issued under the IT Act (CERT-In's 2022 directions) are penalized under Section 70B(7). This change will only be relevant for future directions issued under the IT Act where no separate penalty has been specified.



Residuary penalty substantially increased

The penalty has gone up from INR 25,000 to INR 1,00,000, and compensation (which was earlier an alternative to the penalty) has also been extended to (i) INR 10,00,000 for a contravention by an intermediary, company or body corporate, or (ii) INR 1,00,000 for a contravention by a person.

Likely impact:

Entities may be subject to substantially higher penalties e.g., for contraventions of the current data protection framework under the IT Act.

Section 72A of the IT Act:

A person or an intermediary who obtained material containing personal information of a person while providing services under a lawful contract, disclosing such material intending to cause or knowing that he is likely to cause wrongful loss or wrongful gain, without the consent of the person, or in breach of a lawful contract.



Higher penalty in place of punishment

These offences have been decriminalised. Now, they only attract a higher penalty that can extend to INR 25,00,000.

Likely impact:

This reduces the risk that directors and KMPs of an entity that may otherwise face and encourages compliance through imposition of a higher monetary penalty.

Section 67C of the IT Act:

An intermediary intentionally not preserving and retaining information specified by the Central Government.

Section 70B(7) of the IT Act:

Failing to provide information called for by the Indian Computer Emergency Response Team (CERT-In) or directions given by it.



Fines increased

The maximum fine for these offences has been increased to INR 1,00,00,000, and the maximum period of imprisonment for contravention of Section 69B(4) has been reduced to one year.

Likely impact:

Non-compliance with CERT-In's directions (including the 2022 directions) and not providing them with assistance will now attract a higher fine.

Section 69B(4) of the IT Act:

An intermediary intentionally not providing technical assistance or extending facilities to enable online access to a computer resource generating, transmitting, receiving or storing traffic data or information.



Section 46 of the IT Act:

Jurisdiction of the adjudicating officer under the IT Act.

Jurisdiction widened

The adjudicating officer can now adjudicate over any contravention of the IT Act for which a penalty or compensation is prescribed.

Likely impact:

This vastly increases the adjudicating officer's powers and adds a new dimension to enforcement under the IT Act.

Section 41 of the Aadhaar Act:

Non-compliance with intimation requirements under Section 3(2) and Section 8(3) of the Aadhaar Act by an enrolling agency or a requesting agency.



Higher penalty in place of punishment

The punishment of imprisonment for this offence has been removed and it now attracts a higher penalty of up to INR 1,00,000, or penalty of up to INR 10,00,000 in the case of a company.

*Amendments to the IT Act and Aadhaar Act have been notified, and are in effect as of 30 November 2023.