

## *Cyber Law Due Diligence In India And E-Commerce Businesses*



*By*  
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The one thing that is common among the [Cyber Law Trends and Developments of India 2013 \(PDF\)](#), [Cyber Security Trends and Developments in India 2013 \(PDF\)](#) and [Cyber Forensics Trends and Developments in India 2013 \(PDF\)](#) provided by Perry4Law and Perry4Law's Techno Legal Base (PTLB) is "Non Compliance" with Indian Laws by various Stakeholders.

This is more so where Information and Communication Technology (ICT) is involved. Take the example of the recent fiasco regarding [Bitcoin](#) in India. The moment Reserve Bank of India (RBI) gave a "[Caution Advisory](#)" against use of Bitcoin in India the Bitcoin wave received a major setback. It is natural to expect that Bitcoin Websites and Entrepreneurs must comply with [Indian Laws](#), especially the Cyber Law Due Diligence requirements. This Legal Position also applies to all other E-Commerce Entrepreneurs of India.

[Cyber Law Due Diligence](#) is a concept that is widely ignored by various Technology Stakeholders of India. Even Indian Government is not very keen in enforcing the Cyber Law Due Diligence concept in India. Cyber Law Due Diligence is closely related to [Internet Intermediary Liability in India](#) that various Internet Intermediaries have to comply with.

The Information Technology Act, 2000 is the Cyber Law of India that mandates observance of Cyber Law Due Diligence and Internet Intermediary Obligations in India. So what exactly is Cyber Law Due Diligence?

Cyber Law Due Diligence means taking "Proper and Reasonable Care and Caution" while dealing with Online/Technological Transactions and Activities. For instance, if a person is a Telecom Service Provider, it has the "Responsibility to Ensure" that its Telecom Infrastructure is not "Misused" for committing Cyber Crimes or other Traditional Crimes in an Online or Technological Environment.

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This does not mean that the Telecom Service Provider has to assume the role of a “Big Brother and Screening Agent” but it has to ensure that Laws of India are “Immediately Complied With” once it has been “Duly Notified” about the Abuse/Misuse/Exploitation of its Network or Platform. The Internet Intermediary Liability in India arises where the person under obligation to comply with Cyber Due Diligence “Fails” to do so.

Similarly, if a person is managing an E-Commerce Website, it is his responsibility to ensure that all the Laws of India and other Jurisdictions, wherever involved and applicable, are “Duly Complied With” while Managing and Running such E-Commerce Website. However, such E-Commerce Website has the “Compliance Obligations” at “Multiple Levels”. For instance, such E-Commerce Website must operate not only as per the applicable Indian Laws of the “Concerned Field” of such E-Commerce Website but it has also to ensure that all “Online Violations” are immediately redressed to escape Civil and Criminal Liabilities under Indian and Foreign Laws.

One “Common Misconception” among the E-Commerce Players of India pertains to “Single Set Rule Theory”. Most of the E-Commerce entrepreneurs of India believe that there is no requirement to follow Indian Laws. This, of course, is a “Dangerous Assumption” to make. Many also feel that simply copying and using the Terms and Conditions of one E-Commerce Website would be sufficient. E-Commerce in India is neither devoid of Legal Compliances nor does a Single Set Rule apply to them.

E-Commerce is a very vast field that covers different areas and fields. For instance, Online Pharmacy Legal Requirements are totally different from Online Gaming and Gambling Requirements. Similarly, selling Adult Merchandise through E-Commerce Website is significantly different from other Online Selling Platforms. Thus, One Set of Rules cannot be applied to all E-Commerce Business Models.

The Internet Intermediaries of India are required to appoint a Grievance Officer that has to “Receive” and Respond to” the Grievances and Complaints of various Victims and Stakeholders. Most of the Internet Intermediaries of India have not appointed such Grievance Officers. Even if some have appointed such Grievance Officers, these Grievance Officers are not following the mandates of [Information Technology \(Intermediaries Guidelines\) Rules, 2011 of India under Information Technology Act 2000 \(PDF\)](#).

If we summarise the entire discussion above, it means that Indian Telecom Companies and E-Commerce Websites operating in India have to comply with Cyber Law Due Diligence. Otherwise, they would be committing various Cyber Crimes and Cyber Contraventions under the Information Technology Act, 2000.

Further, Foreign Telecom Companies and Websites like Google, Microsoft, Yahoo, Facebook, Twitter, LinkedIn, etc can also be held “Accountable to Indian Laws” even if

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they are “Registered outside India”. The proposed [E-Mail Policy of India](#) is an indication of the Indian Government’s attitude in this regard.

[India Must Ensure Techno Legal Measures to Regulate Indian Cyberspace](#) as that is the “Ultimate Solution” to various problems originating in Indian Cyberspace. Indian Companies like Tata Teleservices Limited (TTL) and Airtel and Foreign Companies like Google are “Ridiculing” the IT Act, 2000 and Internet Intermediary Guidelines. We are already pursuing these “Non Compliances” by Tata Teleservices Limited (TTL) and Airtel with Department of Electronic and Information Technology (DEITY)/ Department of Telecommunication (DOT) and Telecom Regulatory Authority of India (TRAI). We hope that both Indian and Foreign Companies comply with Indian Laws in “True Letter and Spirit”.

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