



TAMIL NADU TO BRING CYBER OFFENDERS UNDER GOONDAS ACT

[Home](#) → [Tamil Nadu to bring cyber offenders under Goondas Act](#)

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The Tamil Nadu government has announced that it will make amendments to its existing Goondas Act to include cyber crimes. Currently, the Goondas Act includes prevention of dangerous activities of bootleggers, drug offenders, forest offenders, goondas, immoral traffic offenders, sand offenders, slum grabbers and video pirates. The Goondas Act can be invoked for habitual offenders. The nature of cyber crimes that will warrant detention under the Act has not been defined yet, but any offence or offences targeting a larger segment of innocent people with intent to commit fraud or endanger their safety would be considered serious enough for detention under the Goondas Act.

PSA view – After the amendment, offenders will face detention and those put behind bars under this provision can't obtain bail for a year. It is proposed that for the first time offenders a warning and parental guidance will be invoked instead of a penal action under the IT Act. Also, to prevent misuse, the Indian government had issued guidelines that state that approval from an officer of DCP level in the rural areas and of IG level in the metros will have to be taken before registering complaints under Section 66 (A) of the IT Act.

One-time fee on Telcos to be challenged

The announcement by the DOT to levy a surcharge on the one-time fee on GSM and CDMA operators in November 2012 was being mulled over by the industry associations and it is likely that this will be challenged in court. Earlier in January 2013, the COAI announced that it is assessing the notices received from the DOT and thereafter will in all likelihood approach the Telecom Disputes Settlement and Appellate Tribunal. The decision of the DOT was cleared by the cabinet in November 2012 in the wake of the scandal involving the grant process wherein a former minister and several high profile persons are facing trial. This decision, if implemented will result in the DOT garnering approximately INR 52 billion. Under the notices demanding the surcharge, separate notices have been sent for GSM and CDMA networks.

PSA view – The rationale for the levy of the surcharge appears to be to avoid any sense or inkling of impropriety by the allotting agency. While in the official statement, the government mentions the reason for this surcharge to create a level playing field between old telecom companies and new entrants into the market. Only time will tell whether the exercise of the authority by the cabinet can successfully be challenged on the basis of a violation of the license agreements signed with the cellular operators. What is clear from the announcements and the cellular operators reactions is that the customers may enjoy cheaper calling rates for a little while longer. Hopefully, the government will realize the impact this has on the customers and the

ultimate adverse consequence it will have on new entrants being unable to match the service and benefits offered by older and established telcos.

Reduction of CDMA spectrum reserve price by 50%

The Government of India has issued an approval to cut the reserve price of CDMA spectrum in 800 Mhz band by 50 percent, the reserve price had earlier been fixed at INR 18,200 crores for 5 Mhz. The existing CDMA operators will have to pay one time spectrum fee on the revised base price and the operators holding spectrum beyond 2.5 Mhz will also be charged at the revised reserve price, effective January 1, 2013, till such time as auction determined price becomes available. The proposed auction of the CDMA spectrum will be held after auction of GSM spectrum bands 1800 Mhz and 900 Mhz commence from March 11, 2013.

PSA view – The industry body representing CDMA operators had earlier opined that 50 percent reduction is not adequate as the prices are still high as per the prevailing market conditions. Therefore, the decision taken to reduce CDMA spectrum reserve price by 50% is a step in the right direction as the demand for 800 Mhz is very limited.

Issuance of new guideline on section 66A of the IT Act

The two women in Maharashtra who voiced their opinion on social networking site with regard to death of a politician were arrested under section 66A of the IT Act. The arrest was highly criticized and viewed as a restraint on a citizen's right to freedom of speech and expression by the country. Thus, forming the basis for the Government of India to issue new guidelines with regard to the specific section. As per section 66A of the IT Act, a person can be arrested for sending information on a communication resource which is grossly offensive or menacing in nature. After the issuance of new guidelines, the officer at the level of Deputy Commissioner of Police will first give his approval for registration of cases under this section and whether compliant is to be registered or not.

PSA view – The new guidelines seek to control the capricious arrest by the police as it did in the case of the two girls. Section 66A is a not a exhaustive section and the words “grossly offensive” and “menacing” not defined. The Government of India has taken this action with the view to control arrests made under section 66A of the IT Act.

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