UNIT–5 : Constitutional Amendments & Emergency Provisions (PYQ Solution)

AKTU · Constitution of India (BNC501 / BNC601) · Solutions by **Chirag Jain**, Ycotes

SECTION A Answers (≈70 Words Each)

Q1. State one situation in which a National Emergency can be declared. (Jan 2026, Dec 2025)

Under Article 352, the President can declare a National Emergency when the security of India or any part of it is threatened by war, external aggression or armed rebellion. The word "armed rebellion" replaced "internal disturbance" by the 44th Amendment, 1978. The proclamation must be based on the written advice of the Union Cabinet and approved by both Houses of Parliament within one month by a special majority. Emergencies were declared in 1962, 1971 and 1975.

Q2. Define the role of the Advocate General at the state level. (Jan 2025)

The Advocate General is the highest law officer of a State, appointed by the Governor under Article 165. He must be qualified to be a High Court judge. His role is to advise the State government on legal matters, represent the State in the High Court and Supreme Court, and perform other legal duties assigned by the Governor. He may take part in the proceedings of the State Legislature but cannot vote. He holds office during the pleasure of the Governor.

SECTION B Answers (≈250 Words Each)

Q1. What was the role of the Constituent Assembly in framing the Indian Constitution? (Jan 2025)

The **Constituent Assembly** drafted the Constitution of India between **December 1946 and November 1949**. It was formed under the **Cabinet Mission Plan, 1946**, with a final strength of 299 members after Partition, and **Dr. Rajendra Prasad** as its President.

Role

- **Objectives Resolution** (13 December 1946, moved by Nehru) laid down the guiding principles and became the Preamble.
- It set up many **committees**: Union Powers, Provincial Constitution, Fundamental Rights and Minorities (Sardar Patel), and the **Drafting Committee** (29 August 1947) under **Dr. B. R. Ambedkar**, with **B. N. Rau** as adviser.
- The draft was published in February 1948, discussed clause by clause, and revised in **114 days of debate**.
- It adopted the National Flag (22 July 1947), the National Anthem and National Song.
- It **adopted the Constitution on 26 November 1949**; it came into force on **26 January 1950**.
- It worked as the **interim Parliament** until the first general elections of 1951-52.

The Constitution drew on the Government of India Act 1935 and on British, American, Irish, Canadian and other models. Debates were open, balanced and consensual, which gave the Constitution wide acceptance.

Q2. What are the constitutional powers and functions of the President of India? (Jan 2025)

The **President** is the head of State and formal head of the Union executive (Art. 52-53). He is elected indirectly for **five years**, and acts on the **advice of the Council of Ministers** (Art. 74).

Executive powers

- Appoints the **Prime Minister**, ministers, Governors, Chief Justice and judges, Attorney General, CAG, Election Commissioners.
- All executive action of the Union is taken in his name.
- Supreme Commander of the Defence Forces.

Legislative powers

- **Summons, prorogues** Parliament and **dissolves the Lok Sabha**; addresses it at the first session each year.
- **Nominates** 12 members to the Rajya Sabha.
- **Assent to Bills**; may withhold or return an ordinary Bill once.
- Issues **Ordinances** when Parliament is not in session (Art. 123).

Financial powers: Money Bills need his recommendation; sees that the Budget is laid before Parliament; operates the Contingency Fund.

Judicial powers: Pardon, reprieve, respite, remission, suspension or commutation of sentence (Art. 72); can seek the Supreme Court's advisory opinion (Art. 143).

Emergency powers: National Emergency (Art. 352), President's Rule (Art. 356), Financial Emergency (Art. 360).

Diplomatic powers: appoints ambassadors and receives credentials.

His powers are real in a hung Parliament, on the appointment of the Prime Minister and returning Bills.

Q3. Explain the jurisdiction and functions of District Courts in India. (Jan 2025)

District Courts (Articles 233-237) are the main courts of first instance in each district and work under the **High Court's** supervision. The **District Judge** is appointed by the Governor in consultation with the High Court.

Civil side

- **Original jurisdiction** in all civil suits: the District Court, Civil Judge (Senior Division), and Civil Judge (Junior Division) according to value.
- **Appellate jurisdiction** against decrees of subordinate courts.
- Handles matters of marriage, divorce, succession, guardianship and probate.

Criminal side

- The **Sessions Court** (the District Judge as Sessions Judge) tries serious offences and can pass any sentence, with **death sentences** subject to High Court confirmation.
- Appeals from Magistrates lie to the Sessions Court.
- The **Chief Judicial Magistrate** and Metropolitan Magistrates try lesser offences.

Functions

- Supervise subordinate courts and their staff.
- Conduct **Lok Adalats** and mediation, and decide matters of family and motor accident claims.
- Issue **probate and letters of administration** and appoint guardians.

Level	Civil	Criminal
Top	District Judge	Sessions Judge
Middle	Civil Judge (Senior Div.)	Chief Judicial Magistrate
Lowest	Civil Judge (Junior Div.)	Judicial Magistrate

Appeals from the District Court go to the High Court.

Q4. What are the limitations on the power of Parliament to amend the Constitution? (Jan 2025)

Article 368 gives Parliament wide power to amend the Constitution, but this power is limited.

Limitations

- **Basic structure doctrine:** laid down in **Kesavananda Bharati v. State of Kerala (1973)**: Parliament cannot alter the basic structure such as supremacy of the Constitution, democracy, secularism, federalism, separation of powers, judicial review and the rule of law. This was reaffirmed in **Minerva Mills (1980)** and **Waman Rao**.
- **Procedural limits:** an amendment can only be started by a Bill in Parliament (not State legislatures, except for the constituent assembly case) and needs a **special majority**; federal subjects also need ratification by **half of the States**.
- **Fundamental Rights:** earlier decisions (Golaknath, 1967) limited power over rights; the 24th Amendment restored power, but Kesavananda keeps the basic structure.

- **Judicial review:** amendments can be struck down (e.g., parts of the **99th Amendment/NJAC** in 2015).
- **Limits on duration:** an amendment cannot, for example, extend the Lok Sabha term beyond the constitutional limit except under Emergency.
- Parliament cannot **abrogate its own limited power** under Article 368 (Minerva Mills struck out clauses 4 and 5 added by the 42nd Amendment).

Thus Parliament can amend, but not destroy or rewrite the Constitution's identity.

Q5. What are the advantages and disadvantages of a partnership as a form of business organization? (Jan 2025)

A **partnership** is defined under the **Indian Partnership Act, 1932 (Section 4)** as the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Advantages

- **Easy formation** by a simple agreement; low cost and little legal formality.
- **More capital and skills** than a sole trader, as many partners contribute.
- **Shared risk** and shared responsibility.
- **Flexibility** in management and quick decisions.
- **Secrecy**: accounts are not published.
- **Direct incentive:** partners share profits and so are motivated.

Disadvantages

- **Unlimited liability:** each partner is **jointly and severally** liable for firm debts, even from personal property.
- **Limited capital** compared to a company.
- **Lack of continuity:** the firm usually dissolves on the death, insolvency or retirement of a partner.
- **Disputes** and mutual agency: an act of one partner binds the others.
- **Difficulty in transfer** of interest without the consent of other partners.
- Maximum members are limited (50 under the Companies Act, 2013 rules).

Aspect	Advantage	Disadvantage
Capital	Pooled by partners	Still limited
Liability	Risk shared	Unlimited
Management	Flexible	Conflicts possible

Partnership suits small and medium firms; the **Limited Liability Partnership (LLP)** reduces its main drawback.

Q6. Mention about the Right to Information Act 2005. (Feb 2024)

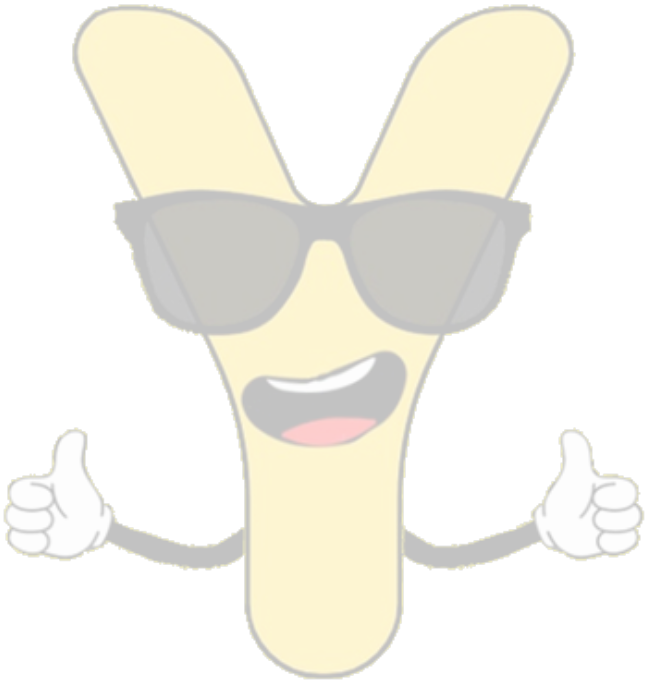
The **Right to Information Act, 2005** gives every citizen the right to obtain information from public authorities, in order to promote **transparency, accountability** and to reduce corruption. It flows from **Article 19(1)(a)** (freedom of speech and expression).

Key provisions

- Any **citizen** may request information from a **Public Authority** by paying a small fee (nil for BPL applicants).
- Each authority appoints a **Public Information Officer (PIO)**. The reply must come within **30 days** (48 hours where life or liberty is involved).
- **Proactive disclosure** (Section 4): authorities must publish details of functions, budget and decisions.
- **Exemptions (Section 8):** national security, sovereignty, cabinet papers, trade secrets, personal information without public interest, and matters in court contempt.
- **Appeals:** first appeal to a senior officer within the department, second appeal to the **Central or State Information Commission**.
- **Information Commissions** can impose a **penalty of Rs 250 per day** up to Rs 25,000 on defaulting officers.
- It applies to the whole of India except **Jammu and Kashmir** (earlier), and not to certain intelligence and security organisations in the Second Schedule.

Significance: RTI empowers citizens, exposed scams such as the Adarsh housing case, and made governance open. The **Digital Personal Data Protection Act, 2023** amended Section 8(1)(j).

It is thus a powerful tool for participatory democracy.



SECTION C Answers (≈500 Words Each)

Q1. Explain in detail the composition, powers and functions of the Election Commission of India for free and fair elections. (Jan 2026, Dec 2025)

The **Election Commission of India (ECI)** is an independent constitutional body under **Article 324** (Part XV), created on 25 January 1950 (celebrated as National Voters' Day). It supervises, directs and controls the preparation of electoral rolls and elections to **Parliament, State Legislatures, and the offices of President and Vice-President**. Panchayat and municipal elections are conducted by State Election Commissions.

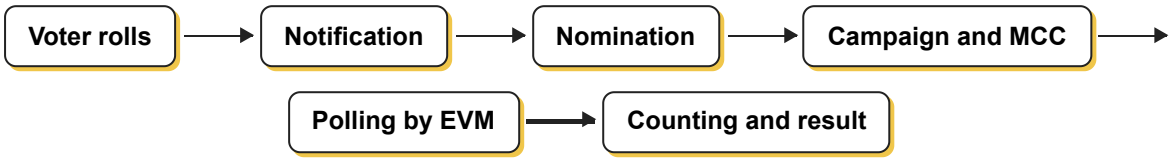
Composition

- **Chief Election Commissioner (CEC)** and such number of Election Commissioners as the President fixes; at present **CEC plus two** Election Commissioners.
- Appointed by the President on the recommendation of a selection committee of the Prime Minister, a Union Minister and the Leader of Opposition, under the **CEC and Other Election Commissioners Act, 2023**.
- Tenure: **six years or 65 years of age**, whichever is earlier.
- CEC can be removed only like a **Supreme Court judge** (impeachment); other Commissioners only on the CEC's recommendation. Service conditions cannot be altered to their disadvantage after appointment.
- Regional Commissioners and a **Chief Electoral Officer** in each State help.

Powers and functions

- **Electoral rolls:** prepare, revise and update, issue **EPIC (voter ID)** cards.
- **Delimitation** support, and **schedule of elections** and notification.
- **Recognition of political parties**, allotment of **election symbols**, and settlement of disputes about them.
- **Model Code of Conduct (MCC)** enforcement on parties, candidates and governments during elections.
- **Supervision of nominations**, scrutiny and withdrawal of candidates.
- **Control of campaign expenditure** and **disclosure** of assets, criminal records.
- **Deploy observers** and security forces, countering **booth capturing and bribery**.

- **Use of EVMs and VVPAT** for transparency.
- Can **countermand or adjourn** the poll, order a **repoll**, and **disqualify candidates** (advisory to the President/Governor).
- Advises the President or Governor on the **disqualification of MPs and MLAs**.
- Voter education through the **SVEEP** programme and monitors **opinion and exit polls**.



Election process managed by the ECI

How it ensures free and fair elections

- Independence from the executive in tenure and removal, and **neutral conduct**.
- Strict enforcement of MCC and spending limits, and **transparency** with technology.

Challenges: money and muscle power, fake news, misuse of religion and caste, and criticism of appointments.

Conclusion: the ECI is the guardian of Indian democracy, and its independence is vital for credible elections.

Q2. Discuss the different types of emergencies provided in the Indian Constitution. Examine the grounds of President's Rule. (Jan 2026, Dec 2025)

Part XVIII (Articles 352-360) provides **three types of emergency** to protect the sovereignty, unity and security of the country. In an emergency the federal system becomes **unitary**.

1. National Emergency (Article 352)

- **Ground:** threat to the security of India by **war, external aggression or armed rebellion**.
- The President declares it only on the **written advice of the Union Cabinet** (44th Amendment).
- **Approval:** by both Houses within **one month**, by special majority; lasts for six months and may be extended by six months at a time with Parliament's approval.

- **Effects:** the Centre can give directions to States on any subject; Parliament can legislate on the State List; Fundamental Rights under **Article 19** are suspended automatically (Art. 21 and 20 cannot be suspended); the President can modify revenue distribution; Lok Sabha's term can be extended by one year at a time.
- **Used:** 1962, 1971 and 1975.

2. State Emergency or President's Rule (Article 356)

- **Ground:** failure of **constitutional machinery in a State**, on the Governor's report or otherwise, or failure to follow Union directions (Art. 365).
- Approval by Parliament within **two months**; lasts for **6 months**, extendable to a maximum of **three years** with conditions.
- **Effects:** the Governor runs the State on behalf of the President; the **Council of Ministers is dismissed**, the Assembly is suspended or dissolved, and Parliament makes laws for the State.
- **Grounds in practice:** no party gaining majority (hung Assembly), loss of majority and no alternative, breakdown of law and order, internal subversion, and breach of constitutional directions.
- **Limits: S. R. Bommai v. Union of India (1994)** held it judicially reviewable, ordered **floor test** and said that it should be the last resort and abuse can lead to restoration of the dismissed government.

3. Financial Emergency (Article 360)

- **Ground:** threat to the **financial stability or credit of India**.
- Approval within two months; no fixed time limit.
- **Effects:** the Centre can direct States on financial matters, reduce salaries of all officers including judges, and require money Bills to be reserved for the President.
- It has **never been used**.

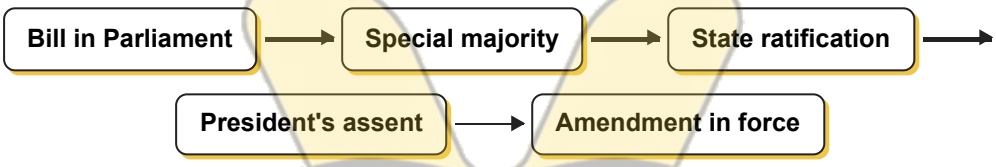
Type	Article	Ground	Approval
National	352	War, aggression, armed rebellion	1 month
President's Rule	356	Breakdown in State	2 months
Financial	360	Financial instability	2 months

Conclusion: emergency provisions protect the nation but must be used with care, with judicial review as a safeguard against misuse.

Q3. What is the role of the President in the process of constitutional amendment? What are the challenges and criticisms associated with the process of amending the Indian Constitution? (Jan 2025)

(a) Role of the President

Under **Article 368**, an amendment begins with a **Bill introduced in either House of Parliament** (not on the President's prior sanction). The Bill must be passed by a **special majority** in each House and, where needed (federal matters), ratified by at least **half of the State legislatures**. The President's role comes at the final stage: he **must give his assent** to the Bill, and he **cannot withhold assent or return it for reconsideration** (the **24th Amendment, 1971**, made the assent compulsory). The amendment becomes law on his assent. So the President acts as a formal signatory, though his seal makes the amendment valid.



Amendment procedure under Article 368

(b) Challenges and criticisms

- **Too frequent:** over 100 amendments in about 75 years, which suggests the Constitution is too flexible, often for political reasons (for example, the 42nd Amendment of the Emergency period, called the "Mini-Constitution").
- **Executive dominance:** a strong majority in Parliament can change it easily, and amendments are often passed with little debate.
- **Limited public participation:** no referendum or direct role for people.
- **Judiciary-Parliament conflict:** the basic structure doctrine (**Kesavananda Bharati**) is said by some to be judicial overreach, while others praise it. It restricts Parliament, and amendments such as the **99th (NJAC)** were struck down.
- **Ambiguity:** the **basic structure** is not defined clearly, causing uncertainty.
- **Federal concerns:** some changes affecting States (such as GST, the 101st) are passed with State involvement, but States have a weaker voice in many others.
- **Rigid and flexible mix:** some provisions are easily amended, others are hard to change.

Conclusion: the amendment procedure gives a balance between flexibility and stability, but needs restraint, debate and respect for the basic structure.

Q4. What is the role of the Memorandum of Association (MoA) in a company's formation? What is e-governance and what challenges does India face in implementing it across states and regions? (Jan 2025)

(a) Memorandum of Association (MoA)

The **MoA** is the **charter or constitution of a company** (Section 2(56) and Section 4, Companies Act, 2013). It defines the company's relationship with the outside world and is a **mandatory document** filed with the Registrar of Companies at incorporation.

Clauses

1. **Name clause:** the name of the company (with "Limited" or "Private Limited").
2. **Registered office clause:** the State in which the office will be situated.
3. **Object clause:** the main objects and other objects; the company cannot go beyond these (**ultra vires** doctrine).
4. **Liability clause:** the liability of members, limited by shares or guarantee.
5. **Capital clause:** the authorised share capital and its division.
6. **Association clause:** subscribers declare their desire to form the company and agree to take shares.

Role in formation: it is **necessary for incorporation**; it fixes the scope of company's powers; it protects **shareholders and creditors**; and any act beyond it is void. It can be changed only by a **special resolution** and legal procedure. The **Articles of Association** work as the internal rules and are subordinate to the MoA.

(b) E-governance and its challenges

E-governance means the use of **information and communication technology (ICT)** to deliver government services, share information and make administration efficient, transparent and citizen-friendly. Examples: **Digital India, Aadhaar, DigiLocker, UMANG, e-Courts, GST Network, MCA21, CoWIN** and the **National e-Governance Plan (NeGP) 2006**.

Challenges in India

- **Digital divide:** between urban and rural areas, rich and poor, and among States.
- **Poor connectivity and infrastructure:** weak internet and power in remote and hilly regions.

- **Low digital literacy** and language barriers.
- **Cyber security and privacy** risks, data leaks.
- **Lack of interoperability** and different standards between States and departments.
- **Resistance to change**, shortage of trained staff and weak project management.
- **High costs** and unequal finances of States.
- **Legal and policy gaps**, and issues with data protection.

Way forward: BharatNet, local language services, training, common standards and strong data-protection law.

Conclusion: the MoA sets the company's framework, and e-governance, if the challenges are resolved, can deliver equitable and efficient services.

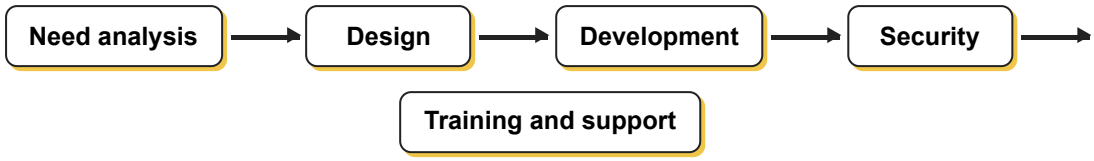
Q5. Identify the roles of engineers in E-governance. (Feb 2024)

E-governance is the use of ICT to deliver public services to citizens, businesses and government. Engineers, particularly computer, electronics, communication and civil engineers, are its builders, operators and guardians.

Roles of engineers

- **Planning and design:** study the needs of departments, design **architecture, databases, portals and mobile apps** such as UMANG, DigiLocker and GSTN.
- **Software development and integration:** build secure web services, **APIs** and ensure **interoperability** among departments through the **India Stack** (Aadhaar, UPI, eSign).
- **Infrastructure:** set up and maintain **data centres, cloud (MeghRaj), networks, BharatNet, Common Service Centres (CSCs)** and last-mile access.
- **Cyber security:** protect data and systems with encryption, firewalls, audits and backups; ensure compliance with the **IT Act, 2000** and data protection rules.
- **Smart governance:** use **GIS, IoT, AI and analytics** for smart cities, e-Courts, traffic, land records, and disaster management.
- **Operation and maintenance:** keep systems running, handle upgrades and fix faults.
- **Training and support:** train officials and citizens, and run helpdesks.
- **Standards and quality:** use open standards, testing and accessibility features, and local language support.

- **Policy advice:** help officers in drafting technical specifications and tenders (e-procurement).



Engineer's role across the e-governance cycle

Area	Engineer's task
Software	Portals, apps, APIs
Network	Connectivity, data centres
Security	Encryption, audits
Support	Training, maintenance

Conclusion: engineers turn government policy into working digital services, so their skill and ethics decide the success of e-governance.

Q6. Discuss the need for and importance of Digital Signature Certificates and Cyber Regulations. (Feb 2024)

With growth of online transactions, **authenticity, integrity and security** of electronic records became essential. The **Information Technology Act, 2000** provides the legal framework for these.

Digital Signature

- A **digital signature** is an electronic method of signing, created with **asymmetric (public-private key) cryptography** and a **hash function**. It identifies the signer and shows the message was not altered.
- A **Digital Signature Certificate (DSC)** is issued by a **Certifying Authority (CA)** licensed by the **Controller of Certifying Authorities (CCA)** under Section 24-35 of the IT Act. It carries the holder's name, public key, serial number and validity. Classes 1, 2 and 3 are issued according to the level of verification.
- Under **Section 3 and 5**, a digital signature is legally equal to a handwritten signature.

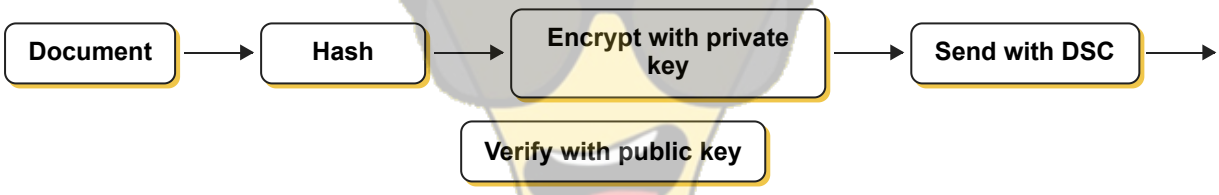
Need and importance of DSC

- **Authentication:** proves the identity of the sender.

- **Integrity:** detects any change in the document.
- **Non-repudiation:** the signer cannot deny having signed.
- **Confidentiality** with encryption, and **paperless**, fast and cheap transactions.
- Used in **e-filing of income tax, GST, MCA21 filings, e-tendering, e-procurement, court e-filing, banking**, and signing contracts.

Need and importance of Cyber Regulations

- Handle **cyber crimes** like hacking (Section 66), identity theft (66C), cheating by personation (66D), cyber terrorism (66F), obscene content (67) and data theft.
- Give **legal recognition to electronic records and e-contracts** (Sections 4, 10A).
- Provide **adjudication** by the Adjudicating Officer and **appeals** to the **Appellate Tribunal**.
- **Protect privacy and data** (Section 43A, Digital Personal Data Protection Act, 2023) and critical infrastructure through **CERT-In** and NCIIPC.
- Support **e-commerce and trust** and bring India in line with the **UNCITRAL Model Law**.



How a digital signature works

Conclusion: digital signature certificates and cyber laws give trust, security and legal validity to digital activity and are the base of digital India.

Q7. Discuss the Information Technology Act, 2000 under Intellectual Property Laws. (Feb 2024)

The **Information Technology Act, 2000** is India's main law on electronic commerce and cyber crime, based on the **UNCITRAL Model Law on E-Commerce (1996)**. It gives legal recognition to electronic records and digital signatures and provides penalties for cyber offences. **Intellectual Property (IP)** means creations of the mind: patents, copyrights, trademarks, designs and trade secrets. The IT Act supports IP protection in cyberspace in the following ways.

Provisions related to IP

- **Section 43 and 66:** unauthorised access, copying or extraction of data, computer database or programs and damage to them are punishable and attract **compensation**. This covers theft of **trade secrets and copyrighted data**.
- **Section 65: tampering with computer source documents** (source code kept or maintained by law) is punishable by up to three years imprisonment or fine up to Rs 2 lakh. It protects **software**.
- **Section 66B and 66C:** dishonest receiving of stolen computer resources and misuse of **passwords or identity**.
- **Section 72 and 72A:** breach of confidentiality and privacy, and disclosure of information in breach of a contract.
- **Section 79: intermediary liability**: platforms are not liable for third-party content if they observe **due diligence** and remove infringing content on notice.
- **Sections 4-10A:** recognition of **electronic records, contracts and digital signatures**, which helps in licensing and IP agreements.

Relation with other IP laws

- **Copyright Act, 1957** (as amended in 1994/2012) protects computer programmes and databases; the IT Act supports it through criminal and civil remedies.
- **Trade Marks Act, 1999** covers brands and cybersquatting; domain-name disputes are solved with the **.IN Domain Name Dispute Resolution Policy** and UDRP.
- **Patents Act, 1970** does not allow patents on "computer programmes per se", although inventions with technical effect can be patented.

IP right	Related provision
Software source code	Section 65
Trade secrets and data	Sections 43, 66
Confidentiality	Section 72, 72A
Online content	Section 79
Domain names	Trade Marks Act, UDRP

Limitations: the Act does not directly define or regulate IP rights; it only supplements the specific IP statutes.

Conclusion: the IT Act gives a protective shield to digital intellectual property through penalties, compensation and recognition of electronic records, and works together with IP laws.

