



The Budapest Convention on Cybercrime: an option for India?

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About Budapest Convention

Opened for signature November 2001 in Budapest

It provides for:

- Consistent and harmonised substantive criminal law
- Procedural law tools for law enforcement (including safeguards)
- Efficient international cooperation (provisional measures + MLA)

Followed by Cybercrime Convention Committee (T-CY) = Committee of the Parties

As at April 2012:

- 33 parties (32 European and USA)
- 14 signatories (10 European, Canada, Japan, South Africa)
- 8 states invited to accede (Argentina, Australia, Chile, Costa Rica, Dominican Republic, Mexico, Philippines, Senegal)
- = 55 states are parties/are committed to become parties

- Many more have used Budapest Convention as a guideline for domestic legislation

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About Budapest Convention

Treaty open for accession (article 37)

Phase 1:

- Letter from Government to CoE expressing interest in accession
- Consultations (CoE/Parties) in view of decision to invite
- Invitation to accede

Phase 2:

- Domestic procedure (e.g. decision by national Parliament)
- Deposit of the instrument of accession

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Provisions of the Budapest Convention: Substantive criminal law

Article	Budapest Convention	Corresponding provision in Indian law
Art. 1	Definitions	Section 2 ITA (as amended 2008)
Art. 2	Illegal access	Section 43 a and b, and 66F ITA
Art. 3	Illegal interception	
Art. 4	Data interference	Section 43 c, d, i, j and 66F (A) ITA
Art. 5	System interference	Section 43 d, e, f and 66F (A) ITA
Art. 6	Misuse of devices	Section 43 g, 84B ITA, Section 3 (2)h Intermediary Guidelines 2011
Art. 7	Computer-related forgery	Sections 66-66D ITA and Penal Code
Art. 8	Computer-related fraud	Sections 66-66D ITA and Penal Code
Art. 9	Child pornography	Section 67B
Art. 10	IPR offences	
Art. 11	Attempt, aiding, abetting	Sections 84B and C ITA
Art. 12	Corporate liability	Section 85 ITA

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Provisions of the Budapest Convention: Procedural law

Article	Budapest Convention	Corresponding provision in Indian law
Art. 15	Conditions and safeguards	General criminal law safeguards [Specific ITA (amended 2008) safeguards?]
Art. 16	Expedited preservation	Section 69 B and 67 C ITA
Art. 17	Exped preserv and partial disclosure of traffic data	Section 69 B and 67 C ITA
Art. 18	Production order	Section 69 B ITA, Evidence Act and Code of Criminal Procedure
Art. 19	Search and seizure	Sections 69 B, 80, 69 A, 76 ITA, Evidence Act and Code of Criminal Procedure
Art. 20	Real-time collection traffic data	Section 69 B ITA
Art. 21	Interception of content data	Section 69 ITA
Art. 22	Jurisdiction	Section 75

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Provisions of the Budapest Convention: International cooperation

Article	Budapest Convention	Corresponding provision in Indian law
Art. 23	General princip. (subsidiarity)	Use of existing treaties and provisions
Art. 24	Extradition	on international cooperation
Art. 25	General rules	
Art. 26	Spontaneous information	
Art. 27	MLA in absence of treaty	
Art. 28	Confidentiality	
Art. 29	Expedited preservation	Section 69 and 67 C ITA
Art. 30	Partial disclosure traffic data	Section 69 and 67 C ITA
Art. 31	MLA accessing data	Section 69 ITA
Art. 32	Transborder access	
Art. 33	MLA collection traffic data	Section 69 ITA
Art. 34	MLA interception content	Section 69 ITA
Art. 35	24/7 point of contact	In India: CBI

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Budapest Convention and legal framework in India

Provisions of the Budapest Convention seem to have corresponding provisions in the domestic law of India

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Budapest Convention: Impact 10 years on

Achievements:

- **Process of legislative reforms worldwide**
- **Increased criminal justice measures**
- **Increased trust and cooperation between parties**
- **Global outreach, global impact: 55 countries ratified, signed, invited to accede. Cooperation with at least another 55 countries**
- **Catalyst for capacity building**
- **Increased legal certainty and trust by private sector**
- **An essential element of norms of behaviour for cyberspace**
- **Contribution to human rights and the rule of law in cyberspace**
- **Protection you and your rights**

Note: T-CY started assessment of implementation by Parties

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Issue: LEA transborder access to data

Search for evidence: where is the data?



Need for LEA access to data:

- Directly transborder
- Via providers/intermediaries

Issues:

- Jurisdiction (to enforce)
 - National sovereignty
 - Rule of law/human rights safeguards
- = Permitted in what situations/
under what conditions?

Solutions:

- Budapest Convention
- Article 32
- Additional solutions to be proposed by T-CY

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Issue: LEA transborder access to data

Article 32 – Trans-border access to stored computer data with consent or where publicly available

A Party may, without the authorisation of another Party:

a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or

b access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.

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Issue: Rule of law/human rights safeguards

Cybercrime prevention and control

- ▶ Criminal justice ▶ Protecting people and their rights

Article 15 Budapest Convention

Protection of privacy and personal data

- Protects rights of people
- Precondition for trusted LEA information exchange
- Economic benefits (off-shoring services)

Opportunity for India:

- Data Protection Convention 108 of Council of Europe – open for accession
- Modernisation underway
- Ad-hoc Committee to negotiate in late 2012
- India to participate in negotiations?

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Issue: Need for new global treaty?

How realistic is it to:

- Reach consensus to start discussing the possibility/launch negotiation of a new treaty?
- Reach consensus on scope/contents/basic concepts of a new treaty?
- Negotiate a meaningful global treaty with added value?
- Have a new global treaty in place and a sufficient level of implementation/trusted cooperation before 2025?

- Roll out existing Budapest Convention on Cybercrime to as many countries as possible?
- Work towards principles of state behaviour (politico-military dimension) in cyberspace?
- Undertake global capacity building effort?

What are the risks?

- Reforms disrupted/wait to 2025
- Digital divide
- Diversion of resources
- Not all states join
- Not all states prepared /trusted to implement and cooperate

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Issue: Council of Europe treaties – For Europeans only?

European Convention on Mutual Legal Assistance in Criminal Matters

(ETS 30 of 1959) - 50 Parties: 47 European States + Chile + Israel + Korea (+ Brazil and South Africa invited to accede)

Convention on the Transfer of Sentenced Persons (ETS 112 of 1983)

– 64 Parties: European States + Australia, Bahamas, Bolivia, Canada, Chile, Costa Rica, Ecuador, Honduras, Israel, Japan, Korea, Mauritius, Mexico, Panama, Tonga, Trinidad and Tobago, United States of America, Venezuela.

Convention on Mutual Administrative Assistance in Tax Matters (ETS 127

+ Protocol 208) – joint treaty of Council of Europe and OECD - 20 Parties: European States + India + Korea + USA (signed by Argentina, Australia, Brazil, Canada, Costa Rica, Indonesia, Mexico, South Africa)

Partial agreement European Commission for Democracy through Law

(1990) – 58 members: European States + Algeria, Argentina, Belarus, Brazil, Canada, Chile, Israel, Japan, Kazakhstan, Korea, Kyrgyz Rep, Mexico, Morocco, Peru, South Africa, Tunisia, USA, Uruguay

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Issue: Council of Europe treaties – For Europeans only?

= States join treaties if it serves their interests

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Cost/benefits of joining Budapest Convention

Benefits

- ✓ Trusted and efficient cooperation with other Parties
- ✓ Participation in the Cybercrime Convention Committee (T-CY)
- ✓ Participation in future standard setting (Protocols and other additions to Budapest Convention)
- ✓ Enhanced trust by private sector
- ✓ Technical assistance and capacity building

“Cost”: Commitment to cooperate

Disadvantages: ?

[Thank you!](#)

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www.coe.int/cybercrime