

“GLIMPSE OF CYBER CRIMES IN THE INDIAN PENAL CODE AND INFORMATION TECHNOLOGY ACT - AN UNEASY CO-EXISTENCE”

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Abstract

This paper would be discussing about what actually are the cybercrimes, its various categories and how it is impacted on the society with the application. The Information technology act is responsible for dealing the aspect of cyber crimes and also under I.P.C. "cyber-crimes" are offences concerning computers, information technology, internet and computer game. Many of the cyber-crimes penalised by the IPC and therefore the IT Act have an equivalent ingredients and even nomenclature.

Introduction

Defining "Cyber Crimes"

The term "cyber-crimes" isn't defined in any statute or rulebook. The word "cyber" is slang for love or money concerning computers, information technology, internet and computer game. Therefore, it stands to reason that "cyber-crimes" are offences concerning computers, information technology, internet and computer game.

One finds laws that penalise cyber-crimes during a number of statutes and even in regulations framed by various regulators. the knowledge Technology Act, 2000 ("IT Act") and therefore the Indian legal code, 1860 ("IPC") penalise variety of cyber-crimes and unsurprisingly, there are many provisions within the IPC and therefore the IT Act that overlap with one another.

Parallel Provisions within the IPC and IT Act

Many of the cyber-crimes penalised by the IPC and therefore the IT Act have an equivalent ingredients and even nomenclature. Here are a couple of examples:

Hacking and Data Theft: Sections 43 and 66 of the IT Act penalise variety of activities starting from hacking into a network, data theft, introducing and spreading viruses through computer networks, damaging computers or computer networks or computer programmes, disrupting any computer or computing system or network, denying an authorised person access to a computer or network, damaging or destroying information residing during a computer etc. the utmost punishment for the above offences is imprisonment of up to three (three) years or a fine or Rs. 5,00,000 (Rupees five lac) or both.

Section 378 of the IPC concerning "theft" of movable property will apply to the theft of any data, online or otherwise, since section 22 of the IPC states that the words "movable property" are intended to incorporate corporeal property of each description, except land and things attached to the world or permanently fastened to anything which is attached to the world. the utmost punishment for theft under section 378 of the IPC is imprisonment of up to three (three) years or a fine or both.

It may be argued that the word "corporeal" which suggests 'physical' or 'material' would exclude digital properties from the ambit of the aforesaid section 378 of the IPC. The counter argument would be that the drafters intended to hide properties of each description, except land and things attached to the world or permanently fastened to anything which is attached to the world.

Section 424 of the IPC states that "whoever dishonestly or fraudulently conceals or removes any property of himself or the other person, or dishonestly or fraudulently assists within the concealment or removal thereof, or

dishonestly releases any demand or claim to which he's entitled, shall be punished with imprisonment of either description for a term which can reach 2 (two) years, or with fine, or with both." This aforementioned section also will apply to data theft. the utmost punishment under section 424 is imprisonment of up to 2 (two) years or a fine or both.

Section 425 of the IPC deals with mischief and states that "whoever with intent to cause, or knowing that he's likely to cause, wrongful loss or damage to the general public or to a person, causes the destruction of any property, or any such change in any property or within the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief". Needless to mention, damaging computing systems and even denying access to a computer system will fall within the aforesaid section 425 of the IPC. the utmost punishment for mischief as per section 426 of the IPC is imprisonment of up to three (three) months or a fine or both.

Receipt of stolen property: Section 66B of the IT Act prescribes punishment for dishonestly receiving any stolen computer resource or communication device. This section requires that the person receiving the transferred property need to have done so dishonestly or should have reason to believe that it had been transferred property. The punishment for this offence under Section 66B of the IT Act is imprisonment of up to three (three) years or a fine of up to Rs. 1,00,000 (Rupees one lac) or both.

Section 411 of the IPC too prescribes punishment for dishonestly receiving transferred property and is worded during a manner that's almost just like section 66B of the IT Act. The punishment under section 411 of the IPC is imprisonment of either description for a term of up to three (three) years, or with fine, or with both. Please note that the sole difference within the prescribed punishments is that under the IPC, there's no maximum cap on the fine.

Identity theft and cheating by personation: Section 66C of the IT Act prescribes punishment for fraud and provides that anyone who fraudulently or dishonestly makes use of the electronic signature, password or the other unique identification feature of the other person shall be punished with imprisonment of either description for a term which can reach 3 (three) years and shall even be susceptible to fine which can reach Rs. 1,00,000 (Rupees one lac).

Section 66D of the IT Act prescribes punishment for 'cheating by personation by using computer resource' and provides that a person who by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which can reach 3 (three) years and shall even be susceptible to fine which can reach Rs. 1,00,000 (Rupees one lac).

Section 419 of the IPC also prescribes punishment for 'cheating by personation' and provides that a person who cheats by personation shall be punished with imprisonment of either description for a term which can reach 3 (three) years or with a fine or with both. an individual is claimed to be guilty of 'cheating by personation' if such person cheats by pretending to be another person, or by knowingly substituting one person for an additional, or representing that he or the other person may be a person aside from he or such other person really is.

The provisions of sections 463, 465 and 468 of the IPC handling forgery and "forgery for the aim of cheating", can also be applicable during a case of fraud. Section 468 of the IPC prescribes punishment for forgery for the aim of cheating and provides a punishment of imprisonment of either description for a term which can reach 7 (seven) years and also a fine. Forgery has been defined in section 463 of the IPC to mean the making of a false document or part thereof with the intent to cause damage or injury, to the general public or to a person, or to support any claim or title, or to cause a person to spare property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud could also be committed.

In this context, reference can also be made to section 420 of the IPC that gives that a person who cheats and thereby dishonestly induces the person deceived to deliver any property to a person, or to form, alter or destroy the entire or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security shall be punished with imprisonment of either description for a term which can reach 7 (seven) years, and shall even be susceptible to fine.

The only difference between the punishments prescribed under sections 66C and 66D of the IT Act and section 419 of the IPC is that there's no maximum cap on the fine prescribed under the IPC. However, the punishment

under section 468 is far higher therein the imprisonment may reach 7 (seven) years. Further, whilst the IT Act contemplates both the imposition of a fine and imprisonment, the IPC uses the word 'or' indicating that the offence might be punished with imprisonment or by imposing a fine. most significantly , the elemental distinction between the IPC and therefore the IT Act in reference to the offence of fraud is that the latter requires the offence to be committed with the assistance of a computer resource.

Obscenity: Sections 67, 67A and 67B of the IT Act prescribe punishment for publishing or transmitting, in electronic form: (i) obscene material; (ii) material containing sexually explicit act, etc.; and (iii) material depicting children in sexually explicit act, etc. respectively. The punishment prescribed for an offence under section 67 of the IT Act is, on the primary conviction, imprisonment of either description for a term which can reach 3 (three) years, to be amid a fine which can reach Rs. 5,00,000 (Rupees five lac), and within the event of a second or subsequent conviction, imprisonment of either description for a term which can reach 5 (five) years, to be amid a fine which can reach Rs. 10,00,000 (Rupees ten lac). The punishment prescribed for offences under sections 67A and 67B of the IT Act is on first conviction, imprisonment of either description for a term which can reach 5 (five) years, to be amid a fine which can reach Rs. 10,00,000 (Rupees ten lac) and within the event of second or subsequent conviction, imprisonment of either description for a term which can reach 7 (seven) years and also with fine which can reach Rs. 10,00,000 (Rupees ten lac).

The provisions of sections 292 and 294 of the IPC would even be applicable for offences of the character described under sections 67, 67A and 67B of the IT Act. Section 292 of the IPC provides that a person who, inter alia, sells, distributes, publicly exhibits or in any manner puts into circulation or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or the other obscene object whatsoever shall be punishable on a primary conviction with imprisonment of either description for a term which can reach 2 (two) years, and with fine which can reach Rs. 2,000 (Rupees two thousand) and, within the event of a second or subsequent conviction, with imprisonment of either description for a term which can reach 5 (five) years, to be amid a fine which can reach Rs. 5,000 (Rupees five thousand).

Section 294 of the IPC provides that a person who, to the annoyance of others, does any obscene act in any public place, or sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which can reach 3 (three) months, or with fine, or with both.

Cyber-crimes not provided for within the IPC

The following cyber-crimes penalised by the IT Act don't have the same within the IPC.

Section 43(h) of the IT Act: Section 43(h) read with section 66 of the IT Act penalises a private who charges the services availed of by an individual to the account of another person by tampering with or manipulating any computer, computing system , or network . an individual who tampers with the pc system of an electricity supplier and causes his neighbour to buy his electricity consumption would fall into the aforesaid section 43(h) of the IT Act that there's no equivalent provision within the IPC.

Section 65 of the IT Act: Section 65 of the IT Act prescribes punishment for tampering with computer source documents and provides that a person who knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to hide , destroy, or alter any computer ASCII text file (i.e. an inventory of programmes, computer commands, design and layout and programme analysis of computer resource in any form) used for a computer, program , computing system or network , when the pc ASCII text file is required to be kept or maintained by law for the nonce effective , shall be punishable with imprisonment for up to three (three) years or with a fine which can reach Rs. 3,00,000 (Rupees lac) or with both.

To a particular extent, section 409 of the IPC overlaps with section 65 of the IT Act. Section 409 of the IPC provides that a person who is in any manner entrusted with property, or with any dominion over property in his capacity as a employee or within the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for all times or with imprisonment of either description for a term which can reach 10 (ten) years, and shall even be susceptible to a fine. However, section 65 of the IT Act doesn't require that the one that tampers with or damages or destroys computer source documents should are entrusted with such ASCII text file . Under section 409 of the IPC, criminal breach of trust should are committed by someone to whom the property was entrusted.

Violation of privacy: Section 66E of the IT Act prescribes punishment for violation of privacy and provides that a person who intentionally or knowingly captures, publishes or transmits the image of a personal area of a person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which can reach 3 (three) years or with fine not exceeding Rs. 2,00,000 (Rupees two lac) or with both.

There is no provision within the IPC that mirrors Section 66E of the IT Act, though sections 292 and 509 of the IPC do cover this offence partially.

Section 292 of the IPC has been discussed above. Section 509 of the IPC provides that if a person meaning to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, such person shall be punished with simple imprisonment for a term which can reach 1 (one) year, or with fine, or with both. Unlike section 66E of the IT Act which applies to victims of both genders, section 509 of the IPC applies as long as the victim may be a woman.

Section 67C of the IT Act: Section 67C of the IT Act requires an 'intermediary' to preserve and retain such information as could also be specified for such duration and in such manner and format because the Central Government may prescribe. The section further provides that any intermediary who intentionally or knowingly contravenes this requirement shall be punished with imprisonment for a term which can reach 3 (three) years and even be susceptible to a fine. An 'intermediary' with reference to any particular electronic record, has been defined within the IT Act to mean a person who on behalf of another person receives, stores or transmits that record or provides any service with reference to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes. there's no corresponding provision within the IPC.

Cyber terrorism: Section 66F of the IT Act prescribes punishment for cyber terrorism. Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror within the people or any section of the people, denies or causes the denial of access to a person authorized to access a computer resource, or attempts to penetrate or access a computer resource without authorisation or exceeding authorised access, or introduces or causes the introduction of any computer contaminant, and by means of such conduct causes or is probably going to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it's likely to cause damage or disruption of supplies or services essential to the lifetime of the community or adversely affect critical information infrastructure, is guilty of 'cyber terrorism'. Whoever knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to information, data or electronic database that's restricted for reasons for the safety of the State or foreign relations, or any restricted information, data or electronic database, with reasons to believe that such information, data or electronic database so obtained could also be wont to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the safety of the State, friendly relations with foreign States, public order, decency or morality, or in reference to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of people or otherwise, is additionally guilty of 'cyber terrorism'.

Whether Compoundable, Cognizable and Bailable

Section 77A of the IT Act provides that, subject to certain exceptions, all offences under the IT Act that the punishment is imprisonment for a term of three (three) years or less, are compoundable. The provisions of sections 265B and 265C of the Code of Criminal Procedure, 1973 ("CrPC") shall apply with reference to such compounding.

Section 77B of the IT Act provides that notwithstanding anything contained within the CrPC, all offences punishable with imprisonment of three (three) years and above under the IT Act shall be cognizable and every one offences punishable with imprisonment of three (three) years or less shall be bailable.

Most of the cyber-crimes covered under the IT Act are punishable with imprisonment of three (three) years or less. The cyber-crimes which are punishable with imprisonment of quite 3 (three) years are: publishing or transmitting obscene material in electronic form under section 67 of the IT Act; publishing or transmitting of fabric containing sexually explicit act, etc., in electronic form under section 67A of the IT Act;

Publishing or transmitting of fabric depicting children in sexually explicit act, etc., in electronic form under section 67B of the IT Act; and

Cyber terrorism under section 66F of the IT Act.

All of the cyber-crimes under the IPC are bailable aside from offences under section 420 (cheating and dishonestly inducing delivery of property), section 468 (forgery for the aim of cheating), section 411 (dishonestly receiving stolen property), section 378 (theft) and section 409 (criminal breach of trust by employee, or by banker, merchant or agent), which are non-bailable.

Offences under sections 463 and 465 (forgery), sections 425 and 426 (mischief), section 468 (forgery for the aim of cheating), section 469 (forgery for the aim of harming reputation) and section 292 (sale, etc., of obscene books, etc.) of the IPC are non-compoundable offences while offences under sections 378 and 379 (theft), 420 (cheating and dishonestly inducing delivery of property), sections 425 and 426 (mischief when the sole loss or damage caused is loss or damage to a personal person), section 509 (word, gesture or act intended to insult the modesty of a woman), section 411 (Dishonestly receiving stolen property) and section 419 (Punishment for cheating by personation) of the IPC are compoundable offences. Of these, offences under sections 420 and 509 are often compounded only with the permission of the court. Most of the cybercrimes under the IPC are cognizable aside from the offences under sections 425 and 426 (mischief) and sections 463 and 465 (forgery) which are non-cognizable.

The overlap between the provisions of the IPC and therefore the IT Act may sometimes cause an anomalous situation wherein certain offences are bailable under the IPC and not under the IT Act and the other way around and certain offences are compoundable under the IPC and not under the IT Act and the other way around. As an example, just in case of hacking and data theft, offences under sections 43 and 66 of the IT Act that are bailable and compoundable while offences under section 378 of the IPC are non-bailable and offences under section 425 of the IPC are non-compoundable. Further, just in case of the offence of receipt of transferred property, the offence under section 66B of the IT Act is bailable while the offence under section 411 of the IPC is non-bailable. Similarly, just in case of the offence of fraud and cheating by personation, the offences under sections 66C and 66D of the IT Act are compoundable and bailable while the offences under sections 463, 465 and 468 of the IPC are non-compoundable and therefore the offences under sections 468 and 420 of the IPC are non-bailable. Finally, just in case of obscenity, the offences under sections 67, 67A and 67B of the IT Act are non-bailable while the offences under section 292 and 294 of the IPC are bailable. This issue has been addressed by the Bombay supreme court within the case of Gagan Harsh Sharma v. The State of Maharashtra² (discussed below) wherein offences under sections 408 and 420 of the IPC that are non-bailable and can't be compounded aside from with the permission of the court were in conflict with offences under sections 43, 65 and 66 of the IT Act that are bailable and compoundable.

Conflict between the IPC and therefore the IT Act: Case Law

In the case of Sharat Babu Digumarti v. Government of NCT of Delhi³, the conflict between provisions of the IPC and therefore the IT Act came to the fore. During this case, on November 27, 2004, an obscene video had been listed purchasable on baazee.com ("Bazee"). The listing was intentionally made under the category 'Books and Magazines' and sub-category 'ebooks' so as to avoid its detection by the filters installed by Baazee. A couple of copies were sold before the listing was deactivated. Later Delhi police's crime branch charge-sheeted Avinash Bajaj, Bazee's director and Sharat Digumarti, Bazee's manager. The corporate Bazee wasn't arraigned as an accused and this helped Avinash Bajaj get off the hook since it had been held that, vicarious liability couldn't be fastened on Avinash Bajaj under either section 292 of the IPC or section 67 of the IT Act when Avinash's employer Bazee itself wasn't an accused. Later changes under section 67 of the IT Act and section 294 of IPC against Sharat Digumarti were also dropped, but the fees under section 292 of the IPC were retained. The Supreme Court then considered if, after the fees under section 67 of the IT Act was dropped, a charge under section 292 of the IPC might be sustained. The Supreme Court quashed the proceedings against Sarat Digumarti and ruled that if an offence involves an electronic record, the IT Act alone would apply since such was the legislative intent. It's a settled principle of interpretation that special laws would prevail over general laws and latter laws would prevail over prior legislation. Further, section 81 of the IT Act states that the provisions of the IT Act shall have effect notwithstanding anything inconsistent therewith contained in the other law for the nonce effective.

In the case of Gagan Harsh Sharma v. The State of Maharashtra⁴, certain individuals were accused of theft of knowledge and software from their employer and charged under sections 408 and 420 of the IPC and also under sections 43, 65 and 66 of the IT Act. All of those sections, aside from section 408 of the IPC, are discussed

above. Section 408 of the IPC deals with criminal breach of trust by clerk or servant and states that "whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which can reach seven years, and shall even be susceptible to fine".

Offences under sections 408 and 420 of the IPC are non-bailable and can't be compounded aside from with the permission of the court. Offences under sections 43, 65 and 66 of the IT Act are bailable and compoundable. Therefore, the petitioners pleaded that the fees against them under the IPC be dropped and therefore the charges against them under the IT Act be investigated and pursued. It had been further argued that if the Supreme Court's ruling in *Sharat Babu Digumarti* were to be followed, the petitioners could only be charged under the IT Act and not under the IPC, for offences arising out of an equivalent action.

The Bombay supreme court upheld the contentions of the petitioners and ruled that the fees against them under the IPC be dropped. **A Suitable Home for Cyber Offences**

We currently have a situation where variety of offences are penalised by both the IPC and therefore the IT Act, albeit the ingredients of both offences are an equivalent. There are subtle differences in punishments under these statutes, especially in aspects like whether the offence is bailable or compoundable or cognizable. An offence like obscenity may happen through differing types of media, both online or offline. However, it could end in unfairness if 2 (two) different statutes apply to an equivalent offence on the idea of the media used.

The sum and substance of the Supreme Court's ruling within the *Sharat Babu Digumarti* case is that no individual even be [is also]"> could also be charged under the IPC for an offence arising out of certain acts or omissions if the IT Act could also be applied to an equivalent acts or omissions. Though we are fully agreement with the Supreme Court's ruling, it's our contention that each one cyber offences need to be housed within the IPC and not within the IT Act. The "cyber" component of an offence isn't sufficient reason for differential treatment of sub-categories of the offence. Albeit the supreme court's ruling within the *Sharat Babu Digumarti* case has ensured that no individual even be [is also]"> could also be charged under the IPC for an offence arising out of certain acts or omissions if the IT Act could also be applied to an equivalent acts or omissions, it's a incontrovertible fact that offences like theft and obscenity are going to be punished differently if they involve a 'cyber' element. Currently, a private who distributes a tough copy book containing obscene materials are going to be punished under the IPC whilst a private who distributes obscene materials through the web are going to be punished under the IT Act, though the underlying offence is that the same. A private who steals a car are going to be punished under the IPC whilst an individual who indulges in theft of online data are going to be punished under the IT Act.

Theft is theft, regardless of whether the transferred property is digital or physical. Obscenity transmitted through the web should be treated at par with obscenity which is transmitted offline.

IPC's treatment of stalking

The legislature's treatment of the offence of "stalking", accomplished through the insertion of latest section 354D within the IPC through the legal code (Amendment) Act, 20135, may be a case in point. Section 354D penalises the offence of "stalking" whether it's a cyber component or not. If a person follows a lady and contacts, or attempts to contact, such woman to foster personal interaction repeatedly despite a transparent indication of disinterest by such woman, it amounts to stalking. If a person monitors the utilization by a lady of the web, email or the other sort of transmission, it'll also end in the offence of stalking. There are a couple of exemptions to the present offence of stalking, and every one the defences apply regardless of whether the stalking is cyber stalking or not. The punishment prescribed for stalking by Section 354D of the IPC doesn't discriminate on the idea of the presence or absence of the "cyber" component.

Bad and ill-thought out drafting

Article 14 of the Constitution of India, 1950 ("Constitution") states that the State shall not deny to a person equality before the law or the equal protection of the laws within the territory of India. It's not our contention that the present state of affairs leads to an intrinsic violation of Article 14 of the Constitution albeit it's created an unhappy state of affairs. The legislature does have the liberty to form specific laws for specific matters or situations. However, the docking of cyber-crimes within the IT Act doesn't appear to possess been well thought through.

Conclusion

We may today see that Even though the IT Act penalised cyber-crimes with a broad brush through sections 43, 66 and 67, it was only in 2008 that the IT Act was amended¹² and provisions were made for specific cyber-crimes such as sending offensive messages through communication servers, dishonestly receiving a stolen computer resource or communication device, identity theft, violation of privacy, cyber terrorism etc. through sections 66A to 66F and sections 67A to 67C. These amendments stick out like an unwieldy appendage.

Therefore, it is submitted that all cyber offences in the IT Act ought to be repealed and the IPC be suitably modified (to cover all of the cyber-crimes, including those currently covered under the IT Act) at the earliest possible convenience of the legislature.

References

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3. Inserted by Act 21 of 2000, section 91 Schedule I, (with effect from October 17, 2000).
4. <https://www.kaspersky.co.in/resource-center/threats/what-is-cybercrime>
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6. Information Technology Act 2000
7. Indian Penal Code 1860.

