

# INFORMATION TECHNOLOGY ACT, 2000

## OFFENCES.

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**MEN ARE NOT HANGED  
FOR STEALING HORSES,  
BUT THAT HORSES MAY  
NOT BE STOLEN.**

# Criminal Offences under IT Act

## Sec 65- Tampering with Computer Source Documents

Whoever knowingly or intentionally (this what prosecution needs to prove) - mens rea

conceals, destroys or alters / causes another to – Act

computer source code used for a computer, computer Programme, computer system or computer network – object

computer source code is required to be kept or maintained by law - legal requirement

imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both - punishment

Destroying and altering includes deleting happened due to Hacking – word not specifically used in the Section nor in the definitions.

E.g.: Hacking, Data Theft, credit card fraud, Forgery, web defacement and jacking .

# Criminal Offences under IT Act

## Sec 66 computer related offences (substituted vide ITAA 2008)

The old provision specifically had the word “Hacking”. Removal of the word was done to include the acts even in other provisions like, 66, 66C etc.

Even under old act Hacking was not defined.

Whoever dishonestly, or fraudulently - mens rea

(meaning as in Sec 24 and 25 of IPC)

Does any Act referred in Sec 43 referred in (a) to (i) – Act

Computer, computer system or computer network – object

imprisonment up to three years, or with fine which may extend up to 5 lakh rupees, or with both - punishment

E.g. Using Wi-Fi services of other illegally

# Criminal Offences under IT Act

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E.g. Using Wi-Fi services of other illegally

Differences between 65 and 66:

1. Differences in ingredients of mens rea
2. To invoke 66, 43 ingredients have to be read into
3. While 65 may be limited to Hacking 66 has very wide connotation

Where ingredients of Sec 43 are involved safe to include Sec 65 and 66 also in complaint along with sec 43.

# Criminal Offences under IT Act

## Sec 66 A Punishment for sending offensive messages through communication service, etc.( Introduced vide ITAA 2008)

it is framed in vague and sweeping language, which allows law enforcement authorities to interpret it in a subjective manner.

loosely worded and puts too much powers in the hands of the police.

For politicians, Section 66A is the big stick.

Main focus – loosely worded and possibility of abuse

What is lost : “there was a need for a mechanism to put checks and balances on this medium”

# Criminal Offences under IT Act

## Sec 66 B Punishment for dishonestly receiving stolen computer resource or communication device (Inserted Vide ITA 2008)

Dishonestly receives or retains – Act

any stolen computer resource or communication device – objects

Knows and dishonestly receives or having reason to believe the same to be stolen computer resource or communication device –

Mens rea

three years or with fine which may extend to rupees one lakh or with both – punishment



# Criminal Offences under IT Act

Sec 66 C Punishment for identity theft. (Inserted Vide ITA 2008)

make use of – Act

electronic signature, password or any other unique identification  
feature of any other person – objects

fraudulently or dishonestly – Mens rea

three years or with fine which may extend to rupees one lakh or  
with both – punishment

Case of use of DS, Or using someone else's password

Identity theft and Email frauds, hacking

Responsibility caste on the DS owner Sec 48.

# Criminal Offences under IT Act

Sec 66 D Punishment for cheating by personation by using computer resource (Inserted Vide ITA 2008)

personation– Act

any communication device or computer resource –objects

Cheats – Mens rea

three years or with fine which may extend to rupees one lakh or with both – punishment

Email frauds, Email spoofing , Facebook impersonation

# Criminal Offences under IT Act

Sec 66 E Punishment for violation of privacy. (Inserted Vide ITA 2008)

captures, publishes or transmits the image of a private area of any person without his or her consent, – Act

any communication device or computer resource (though not mentioned the explanation for word transmit, capture and publishing deems) – objects

intentionally or knowingly violating the privacy of that person – word (circumstances violating privacy to infer) Mens rea

three years or with fine which may extend to rupees two lakh or with both – punishment

Explanation to circumstances violating privacy

Eg Cameras in changing rooms, accessing laptop camera to take pics , taking pictures in public or private as mentioned in 66E(e)(ii)

What if consent is given? 67 and 67 B would come into play

# Criminal Offences under IT Act

## Sec 66 F Punishment for cyber terrorism)

Cyber terrorism is a controversial term . Crime affecting National security

The word first appeared in 1998

Broad and Narrow definitions. But agree that “Terrorism online should be considered cyberterrorism”

premeditated use, disruptive activities, against computers and/or networks

the politically motivated use of computers and information technology to cause severe disruption or widespread fear.

Use of information technology and means by terrorist groups and agents.

Mode is cyber attack

# Criminal Offences under IT Act

Sec 66 F Punishment for cyber terrorism)

Specific provision dealing with cyber terrorism

Acts of terrorism cover the following:

- Denial of access
- Unauthorized access
- Introduction of virus or contaminants leading to harming persons, property and critical infrastructure
- Leading to disruption of supplies
- Sensitive data thefts
- Leading to causing injury to sovereignty and integrity of India
- Leading to causing injury to security of state
- Leading to causing friendly relations with foreign state
- Causing injury to decency and morality of a person or a state
- Defamation and incitement of offence.

# Criminal Offences under IT Act

## Sec 66 F Punishment for cyber terrorism)

Threatens, knowingly disrupts –66(1)(A) penetrates or accesses, exceeding authorized access66 (1)(B) Commits or conspires 66(2) - mens rea

Previous slide defines all the acts

Such acts should result in

- Death or injuries to persons
- Damage or destruction to property
- Sensitive national installations
- Disruption to essential supply and services
- Affects critical information, infrastructure – Acts

Imprisonment which may extend to life

# Criminal Offences under IT Act

## Sec 67 Punishment for publishing or transmitting obscene material in electronic form (Amended vide ITAA 2008)

publishes or transmits or causes to be published lascivious and obscene material – Act

“Lascivious feeling or revealing an overt sexual interest or desire”

Obscene: offensive or disgusting by accepted standards of morality and decency. Filth, vulgar, X-rated, lewd etc

electronic form – object

appeals to the prurient interest, or effects to deprave and corrupt persons who read, see or hear the matter contained or embodied in it – resulting

1<sup>st</sup> conviction - three years and with fine five lakh rupees

2<sup>nd</sup> and every subsequent conviction five years and ten lakh rupees.

# Criminal Offences under IT Act

**Sec 67A Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form (Inserted vide ITAA 2008)**

publishes or transmits or causes to be published any material which contains sexually explicit act or conduct – Act or transmitted in the electronic form – object

offline world is concerned, the law only prohibits obscenity.  
online publication and transmission singled out

Sexually explicit: **sexual** content without deliberately obscuring or censoring it. Synonym for pornography

67 and 67A - does not extend in any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form – this exception is subjective



# Criminal Offences under IT Act

## Sec 67B Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form

Its an exhaustive provision : sexually explicit

What are the various acts : publishes or transmits or causes to be published or transmitted ; creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes, cultivates, entices or induces children to online relationship, facilitates abusing children online, records own abuse or that of others pertaining to sexually explicit act with children

in the electronic form – object . Exception prescribed but still subjective

1<sup>st</sup> conviction - 5 years and with fine five lakh rupees

2<sup>nd</sup> and every subsequent conviction 7 years and ten lakh rupees.

# Criminal Offences under IT Act

[Section 75] Act to apply for offence or contraventions committed outside India:

This provision was brought in to cover universal jurisdiction without signing relevant international treaty.

This provision is based more on the Budapest convention recognizing international best practices.

The logic behind such an implementation is that the activity of those computers outside India impacted the computers physically located in India

This provision is in consonance with the provisions of sec 3 and 4 of Indian Penal Code which deal with punishment of offences committed beyond but which by law maybe tried in India. Procedure under Sec 188 CRPC

Supreme Court judgement: A.V Mohan Rao and another Vs Kishan Rao and another (2002) 6 SCC 174

# Criminal Offences under IT Act

## [Section 76] Confiscation :

What can be confiscated?

Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto

Who can confiscate?

Under the old act it was the DSP

Under the new act it is the IP

Or any officer of Central or State Gov authorized by Central Gov

What can be done?

Search and arrest without warrant and seizure of material

# Criminal Offences under IT Act

## [Section 77A] Compounding of offences :

Who can compound?

Court of competent jurisdiction

What can be compounded?

Offences for which punishment for life or imprisonment for term exceeding 3yrs has been provided

What can't be compounded?

Second conviction which is liable for enhanced punishment

Compounding provision

As in 265B and 265C of CRPC

**Thank you**

**QUESTIONS PLEASE**

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