



# Lecture- 28



## **Cyber crimes under IPC, 1860**

### **Defining "Cyber Crimes"**

The term "cyber-crimes" is not defined in any statute or rulebook. The word "cyber" is slang for anything relating to computers, information technology, internet and virtual reality. Therefore, it stands to reason that "cyber-crimes" are offences relating to computers, information technology, internet and virtual reality.

One finds laws that penalise cyber-crimes in a number of statutes and even in regulations framed by various regulators. The Information Technology Act, 2000 ("IT Act") and the Indian Penal Code, 1860 ("IPC") penalise a number of cyber-crimes and unsurprisingly, there are many provisions in the IPC and the IT Act that overlap with each other.

### **Parallel Provisions in the IPC and IT Act**

Many of the cyber-crimes penalised by the IPC and the IT Act have the same ingredients and even nomenclature. Here are a few examples:

***Hacking and Data Theft:*** Sections 43 and 66 of the IT Act penalise a number of activities ranging from hacking into a computer network, data theft, introducing and spreading viruses through computer networks, damaging computers or computer networks or computer programmes, disrupting any computer or computer system or computer network, denying an authorised person access to a computer or computer network, damaging or destroying information residing in a computer etc. The maximum punishment for the above offences is imprisonment of up to 3 (three) years or a fine or Rs. 5,00,000 (Rupees five lac) or both.

Section 378 of the IPC relating to "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 include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth. The maximum punishment for theft under section 378 of the IPC is imprisonment of up to 3 (three) years or a fine or both.

It may be argued that the word "corporeal" which means '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 cover properties of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

Section 424 of the IPC states that "*whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description<sup>1</sup> for a term which may extend to 2 (two) years, or with fine, or with both.*" This aforementioned section will also apply to data theft. The maximum 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 is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief*". Needless to say, damaging computer systems and even denying access to a computer system will fall within the aforesaid section 425 of the IPC. The maximum punishment for mischief as per section 426 of the IPC is imprisonment of up to 3 (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 stolen property ought to have done so dishonestly or should have reason to believe that it was stolen property. The punishment for this offence under Section 66B of the IT Act is imprisonment of up to 3 (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 stolen property and is worded in a manner that is almost identical to 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 3 (three) years, or with fine, or with both. Please note that the only difference in the prescribed punishments is that under the IPC, there is no maximum cap on the fine.

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

Section 419 of the IPC also prescribes punishment for 'cheating by personation' and provides that any person who cheats by personation shall be punished with imprisonment of either description for a term which may extend to 3 (three) years or with a fine or with both. A person is said to be guilty of 'cheating by personation' if such person cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

The provisions of sections 463, 465 and 468 of the IPC dealing with forgery and "forgery for the purpose of cheating", may also be applicable in a case of identity theft. Section 468 of the IPC prescribes punishment for forgery for the purpose of cheating and provides a punishment of imprisonment of either description for a term which may extend to 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 public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed.

In this context, reference may also be made to section 420 of the IPC that provides that any person who cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole 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 may extend to 7 (seven) years, and shall also be liable 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 is no maximum cap on the fine prescribed under the IPC. However, the punishment under section 468 is much higher in that the imprisonment may extend to 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 could be punished with imprisonment or by imposing a fine. Most importantly, the fundamental distinction between the IPC and the IT Act in relation to the offence of identity theft is that the latter requires the offence to be committed with the help 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 first conviction, imprisonment of either description for a term which may extend to 3 (three) years, to be accompanied by a fine which may extend to Rs. 5,00,000 (Rupees five lac), and in the event of a second or subsequent conviction, imprisonment of either description for a term which may extend to 5 (five) years, to be accompanied by a fine which may extend to 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 may extend to 5 (five) years, to be accompanied by a fine which may extend to Rs. 10,00,000 (Rupees ten lac) and in the event of second or subsequent conviction, imprisonment of either description for a term which may extend to 7 (seven) years and also with fine which may extend to Rs. 10,00,000 (Rupees ten lac).

The provisions of sections 292 and 294 of the IPC would also be applicable for offences of the nature described under sections 67, 67A and 67B of the IT Act. Section 292 of the IPC provides that any 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 any other obscene object whatsoever shall be punishable on a first

conviction with imprisonment of either description for a term which may extend to 2 (two) years, and with fine which may extend to Rs. 2,000 (Rupees two thousand) and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to 5 (five) years, to be accompanied by a fine which may extend to Rs. 5,000 (Rupees five thousand).

Section 294 of the IPC provides that any 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 may extend to 3 (three) months, or with fine, or with both.