

Lecture- 29



Cyber-crimes not provided for in the IPC

The following cyber-crimes penalised by the IT Act do not have an equivalent in the IPC.

Section 43(h) of the IT Act: Section 43(h) read with section 66 of the IT Act penalises an individual who charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network. A person who tampers with the computer system of an electricity supplier and causes his neighbour to pay for his electricity consumption would fall under the aforesaid section 43(h) of the IT Act for which there is no equivalent provision in 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 any person who knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy, or alter any computer source code (i.e. a listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form) used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment for up to 3 (three) years or with a fine which may extend to Rs. 3,00,000 (Rupees lac) or with both.

To a certain extent, section 409 of the IPC overlaps with section 65 of the IT Act. Section 409 of the IPC provides that any person who is in any manner entrusted with property, or with any dominion over property in his capacity as a public servant or in 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 life or with imprisonment of either description for a term which may extend to 10 (ten) years, and shall also be liable to a fine. However, section 65 of the IT Act does not require that the person who tampers with or damages or destroys computer source documents should have been entrusted with such source code. Under section 409 of the IPC, criminal breach of trust should have been 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 any person who intentionally or knowingly captures, publishes or transmits the

image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to 3 (three) years or with fine not exceeding Rs. 2,00,000 (Rupees two lac) or with both.

There is no provision in 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 any person intending 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 may extend to 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 only if the victim is a woman.

Section 67C of the IT Act: Section 67C of the IT Act requires an 'intermediary' to preserve and retain such information as may be specified for such duration and in such manner and format as 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 may extend to 3 (three) years and also be liable to a fine. An 'intermediary' with respect to any particular electronic record, has been defined in the IT Act to mean any person who on behalf of another person receives, stores or transmits that record or provides any service with respect 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 is no corresponding provision in 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 in the people or any section of the people, denies or causes the denial of access to any 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 likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life 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 computer database that is restricted for reasons for the security of the State or foreign relations, or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise, is also guilty of 'cyber terrorism'.

Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to imprisonment for life.

There is no provision in the IPC that mirrors section 66F of the IT Act, though section 121 of the IPC (waging, or attempting to wage war, or abetting waging of war, against the Government of India) does cover this offence partially.