

Lecture- 30



Whether Compoundable, Cognizable and Bailable

Section 77A of the IT Act provides that, subject to certain exceptions, all offences under the IT Act for which the punishment is imprisonment for a term of 3 (three) years or less, are compoundable. The provisions of sections 265B and 265C of the Code of Criminal Procedure, 1973 ("CrPC") shall apply with respect to such compounding.

Section 77B of the IT Act provides that notwithstanding anything contained in the CrPC, all offences punishable with imprisonment of 3 (three) years and above under the IT Act shall be cognizable and all offences punishable with imprisonment of 3 (three) years or less shall be bailable.

Most of the cyber-crimes covered under the IT Act are punishable with imprisonment of 3 (three) years or less. The cyber-crimes which are punishable with imprisonment of more than 3 (three) years are:

- a. publishing or transmitting obscene material in electronic form under section 67 of the IT Act;
- b. publishing or transmitting of material containing sexually explicit act, etc., in electronic form under section 67A of the IT Act;
- c. publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form under section 67B of the IT Act; and
- d. cyber terrorism under section 66F of the IT Act.

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

Offences under sections 463 and 465 (*forgery*), sections 425 and 426 (*mischiefs*), section 468 (*forgery for the purpose of cheating*), section 469 (*forgery for the purpose 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 only loss or damage caused is loss or damage to a private 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 can be compounded only with the permission of the court. Most of the cyber crimes under the IPC are cognizable other than 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 the IT Act may sometimes lead to an anomalous situation wherein certain offences are bailable under the IPC and not under the IT Act and vice versa and certain offences are compoundable under the IPC and not under the IT Act and vice versa. For instance, 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, in case of the offence of receipt of stolen 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, in case of the offence of identity theft 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 the offences under sections 468 and 420 of the IPC are non-bailable. Finally, 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 dealt with by the Bombay High Court in the case of *Gagan Harsh Sharma v. The State of Maharashtra*² (discussed below) wherein offences under sections 408 and 420 of the IPC that are non-bailable and cannot be compounded other than 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.