

Lecture- 32



Amendments to the IPC to cover cyber-crimes

The Indian legislature has from time to time, made a number of amendments to the IPC, to specifically cover cyber-crimes. Some of the important amendments are as follows:

- a. a new section 29A was created to define "electronic record" by linking it with the definition given in the IT Act⁶;
- b. a new sub-section (3) was inserted in section 4 of the IPC (relating to the extension of the IPC to extra territorial offences) that states that the provisions of the IPC shall be applicable to any person in any place "*without and beyond India*", committing an offence targeting a computer resource located in India⁷;
- c. in sections 118 and 119 of the IPC (that deal with the concealment of a design to commit an offence punishable with death or imprisonment for life and a public servant concealing a design to commit an offence which it is his duty to prevent, respectively), the words "*voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design*" were inserted before the words "*to commit such offence or makes any representation which he knows to be false respecting such design*"⁸;
- d. in section 464 of the IPC (which penalises the making of a false document), the phrase "digital signature" was replaced with the phrase "electronic signature" in all places. The section was also amended to include the making of false electronic records and affixing electronic signatures under its ambit and the phrase "affixing electronic signature" was given the same meaning as it has under the IT Act⁹;
- e. "electronic record" was included within the ambit of sections 164, 172, 173, 175, 192, 204, 463, 466, 468, 469, 470, 471, 474 and 476 of the IPC that earlier only provided for "documents", "books", "paper", "writing" or "records", as the case may be;
- f. in section 466 of the IPC (which deals with forgery of court records or of public registers), the term "register" was defined to include any list, data or record of any entries maintained in an "electronic form", as defined in section 2(1) (r) of the IT Act¹⁰;
and

- g. a new section 354D was inserted in the IPC that introduces the offence of cyber stalking, which has been discussed above.

Bad and ill-thought out drafting

Article 14 of the Constitution of India, 1950 ("Constitution") states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It is not our contention that the current state of affairs results in a per se violation of Article 14 of the Constitution even though it has created an unhappy state of affairs. The legislature does have the freedom to make specific laws for specific matters or situations. However, the docking of cyber-crimes in the IT Act does not appear to have been well thought through.

When the IT Act was enacted, its focus was on putting in place technology law fundamentals like digital signatures, providing legal recognition for electronic documents and the like. Its preamble stated that its objective was to "*provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as 'electronic commerce', which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.*"¹¹

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.