

Module 5

Part 2

Other Offences under IT Act in India

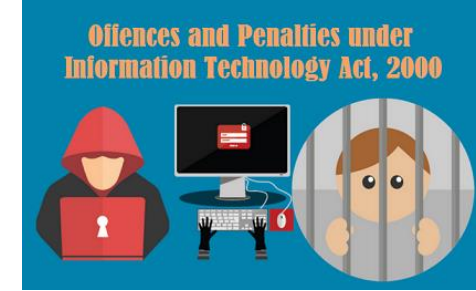
❖ Overview of Cybercrimes

- ▶ These days Information Technology (IT) is becoming increasingly popular and imminent in the day-to-day life of individuals, companies and the society as a whole
- ▶ Such advances in the IT and the potentialities in the business world have attracted many misusers, unscrupulous people and criminals to commit many **cyber crimes relating to financial world**
- ▶ The **cyber crime offenders** befool people through the internet using different techniques and schemes
- ▶ And therefore, we find these days a new class of white collared criminals perpetuating fraud on the internet



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- ▶ With various kinds of **financial crimes on the cyberspace ranging from security frauds** by altering information into a computer system and altering the output
- ▶ Many frauds are being committed on the online auction trade
- ▶ The **Internet fraud commonly known as phishing** where e-mails appear to be from legitimate online banking
- ▶ Such **Internet fraud masters** can create false identities about themselves and sell the information to equally dangerous third parties
- ▶ Even **Internet gambling** is becoming popular



- ▶ **Digital forgery** is done by creating document which the offender knows is not genuine and yet project the document as if it is genuine one, by affixing somebody else's signature on the document
- ▶ The Internet is also being used for **sale of illegal things** or articles which are prohibited in a country-like **selling arms, drugs and other prohibited military armour**
- ▶ There are also **violations of copyrights** on the Internet
- ▶ This raises the need to provide reasonable control through legal means on the activities of the cyber offenders on the Internet
- ▶ **In India we have enacted the IT Act** and have tried to curb, control and punish cyber crimes

India IT Act of 2000
(Information Technology Act)



❖ Offences by Intermediaries

Under Section 67C of IT (Amendment) Act, 2008—

- (1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe.
- (2) Any intermediary who intentionally or knowingly contravenes the provisions of sub-section (1) shall be punished with an imprisonment for a term which may extend to three years and also be liable to fine. The above Section requires the intermediary to preserve and retain information for such duration and format as the Central Government may prescribe. Any violation by the intermediary who intentionally or knowingly contravenes the provisions under this Section shall be punished for an imprisonment up to three years and also shall be liable to fine. The above mentioned offence requires *mens rea* on the part of the intermediary to commit an offence. The offence is also cognizable and bailable under Section 77B of the Act.
 - (a) Exemption from Liability of Intermediary in Certain Cases.



Under Chapter XII of the IT (Amendment) Act, 2008, Section 79 states—

- (1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.
- (2) The provisions of sub-section (1) shall apply if—
 - (a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or
 - (b) intermediary does not—
 - (i) initiate the transmission,
 - (ii) select the receiver of the transmission, and
 - (iii) select or modify the information contained in the transmission;
 - (c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.



- (3) The provisions of sub-section (1) shall not apply if—
 - (a) the intermediary has conspired or abetted or aided or induced, whether by threats or promises or authorises in the commission of the unlawful act;
 - (b) upon receiving actual knowledge, or on being notified by the appropriate government or its agency that any information, data or communication link residing in or connected to a computer resource, controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.



❖ Offences Related to Protected System

Section 70 as amended by the IT (Amendment) Act, 2008 provides—

- (1) The appropriate Government may, by notification in the Official Gazette, declare any computer resource which directly or indirectly affects the facility of Critical Information Infrastructure, to be a protected system.
Explanation: For the purposes of this section, 'Critical Information Infrastructure' means the computer resource, the incapacitation or destruction of which, shall have debilitating impact on national security, economy, public health or safety.
- (2) The appropriate government may, by order in writing, authorize the persons who are authorized to access protected systems notified under sub-section (1).
- (3) Any person who secures access or attempts to secure access to a protected system in contravention of the provisions of this section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.
- (4) The Central Government shall prescribe the information security practices and procedures for such protected system.

The offence is cognizable and also non-bailable under Section 77B of the Act

❖ Punishment for Abetment and Attempt to Commit Offences under the IT Act

- ▶ Under Section 84B of the IT (Amendment) Act, 2008
 - Any person who abets any offence shall,
 - if the act abetted is committed in consequence of the abetment,
 - no express provision is made by this Act for the punishment of such abetment,
 - be punished with the punishment provided for the offence under this Act



❖ Offences of Misrepresentation

- ▶ Under Section 71 as amended by the IT (Amendment) Act, 2008
 - It is provided that any person who makes any misrepresentation to or suppresses any material fact from the Controller or the CA
 - for obtaining any license or Electronic Signature Certificate,
 - as the case may be, shall be punished with imprisonment for a term which may extend to two years,
 - or with fine which may extend to one lakh rupees or with both
- ▶ The offence under this Section is non-cognizable offence and is also bailable offence under Section 77B of the Act



- ▶ The offence of abetment can be committed under the IT Act by
 - instigation
 - or in pursuance of the conspiracy
 - and by aiding the offender in the commission of the offence
- ▶ It is similar to an abetment as defined under Section 107 of the IPC
- ▶ Like in IPC an offender is liable for the punishment provided for under the provisions of the IT Act for the abetment of any offence under the Act



- Under Section 84C of the IT (Amendment) Act, 2008
- Any person who attempts to commit an offence punishable by this Act
 - or causes such an offence to be committed,
 - and in such an attempt does any act towards the commission of the offence,
 - shall, where no express provision is made for the punishment of such attempt,
 - be punished with imprisonment of any description provided for the offence,
 - for a term which may extend to one-half of the longest term of imprisonment provided for that offence,
 - or with such fine as is provided for the offence, or with both

