Indian Institute of Information Technology Kottayam

# Cyber Law

BY

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# Early United Nations take on Cyber Laws

- United Nations Commission on International Trade and Law(**UNCITRAL**) adopted Model Law on E-commerce in 1996.
- Adopted by UN General Assembly in Jan. 1997.
    - India was a signatory on the Model law.
- In 2005, UN Convention on the Use of Electronics Communication in International Contracts was adopted.
    - Facilitates the use of electronics communication in international trade.
    - Bring uniformity in the domestic enactment of UNCITRAL model laws.

# Early United Nations take on Cyber Laws

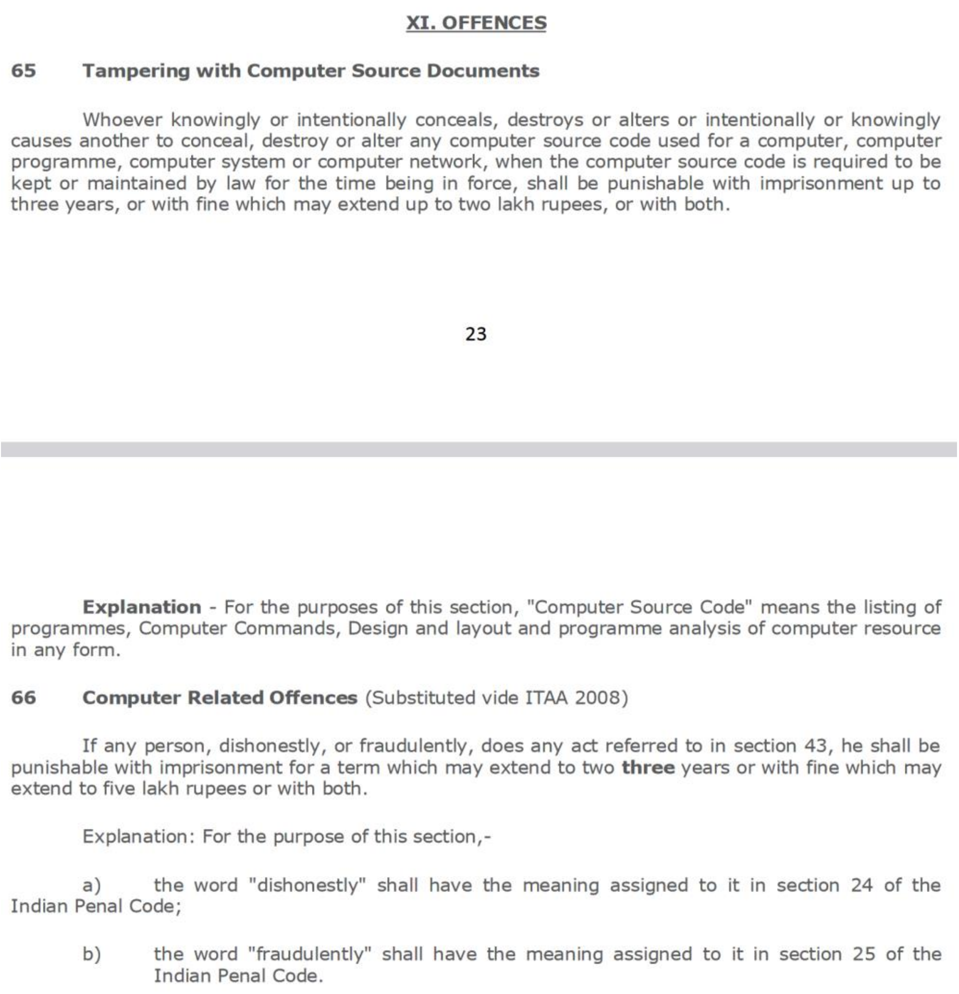
- In 2005, UN Convention on the Use of Electronics Communication in International Contracts was adopted.
  - Update and complement certain provisions in the UNCITRAL model laws.
  - Provide countries those who have not yet adopted provisions on E-commerce with a modern, uniform and carefully drafted legislation.
- Seminar on Cyber Law Development and Harmonization within SADC in April 2005 raised concerns over:
  - Cyber Jurisdiction especially in E-contracts.
  - Laws relating to Privacy in cyberspace.

# Cyber Offence: Requirement

- “Mens rea” or “guilty mind”: i.e. **intention** or **knowledge**
  - Intent
  - Knowledge
  - Recklessness
  - Negligence

- “Actus reus” i.e. the act of commission or omission or willed bodily action or movement.

# Section XI of IT Act



XI. OFFENCES

**65 Tampering with Computer Source Documents**

Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code 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 up to three years, or with fine which may extend up to two lakh rupees, or with both.

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**Explanation** - For the purposes of this section, "Computer Source Code" means the listing of programmes, Computer Commands, Design and layout and programme analysis of computer resource in any form.

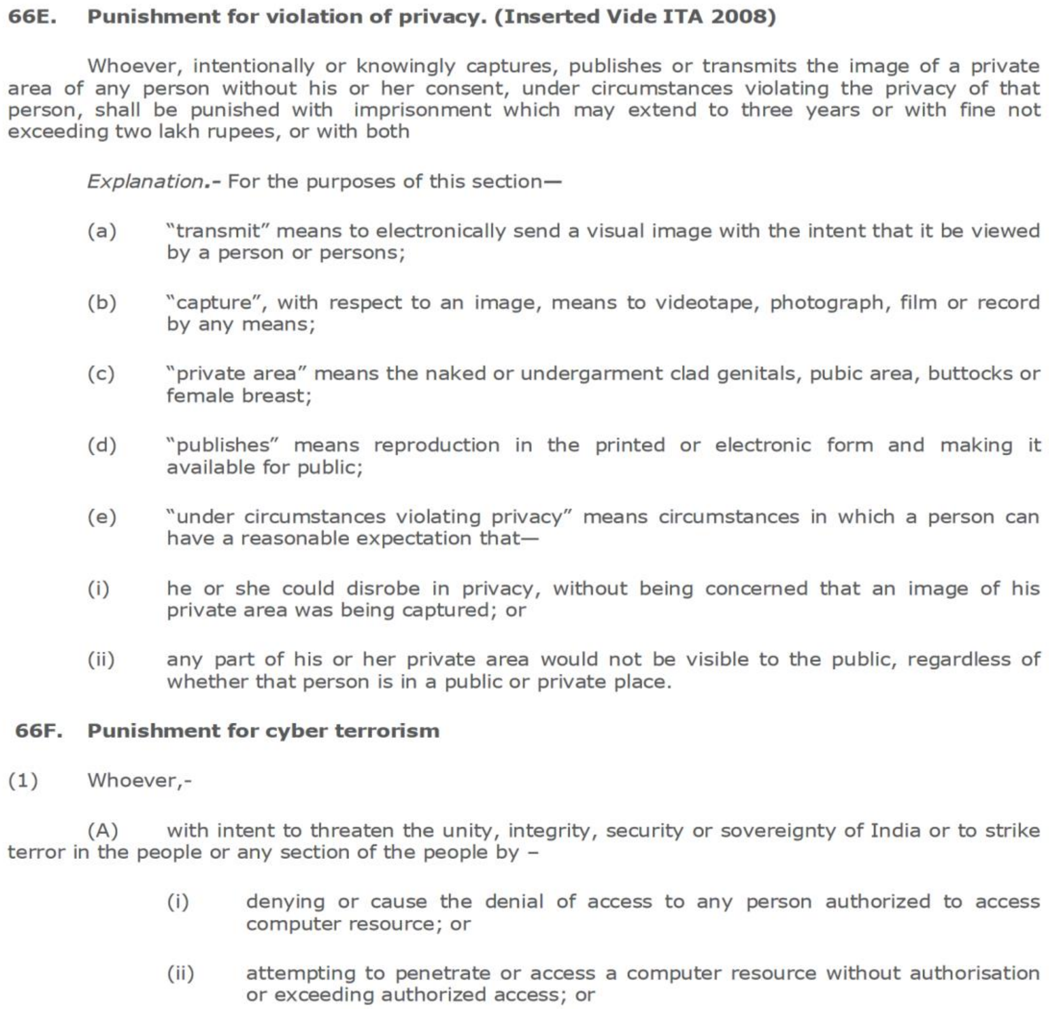
**66 Computer Related Offences** (Substituted vide ITAA 2008)

If any person, dishonestly, or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to two **three** years or with fine which may extend to five lakh rupees or with both.

Explanation: For the purpose of this section,-

a) the word "dishonestly" shall have the meaning assigned to it in section 24 of the Indian Penal Code;

b) the word "fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code.



**66E. Punishment for violation of privacy. (Inserted Vide ITA 2008)**

Whoever, 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 three years or with fine not exceeding two lakh rupees, or with both

*Explanation*.- For the purposes of this section—

(a) "transmit" means to electronically send a visual image with the intent that it be viewed by a person or persons;

(b) "capture", with respect to an image, means to videotape, photograph, film or record by any means;

(c) "private area" means the naked or undergarment clad genitals, pubic area, buttocks or female breast;

(d) "publishes" means reproduction in the printed or electronic form and making it available for public;

(e) "under circumstances violating privacy" means circumstances in which a person can have a reasonable expectation that—

(i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or

(ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

**66F. Punishment for cyber terrorism**

(1) Whoever,-

(A) 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 by –

(i) denying or cause the denial of access to any person authorized to access computer resource; or

(ii) attempting to penetrate or access a computer resource without authorisation or exceeding authorized access; or

# Cyber Offences Under IT Act, 2000

- **Tampering with Computer source documents (Section 65)**
- Any person knowingly or intentionally;
  - conceals, destroys or alters or intentionally or
  - causes another to conceal, destroy, or alter
- any ***computer source code*** used for a computer, computer programme, computer system or computer network; and
- where the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with *imprisonment up to three years*, or with *fine which may extend up to two lakh rupees,* ***or with both***.

# IT Act Section 2

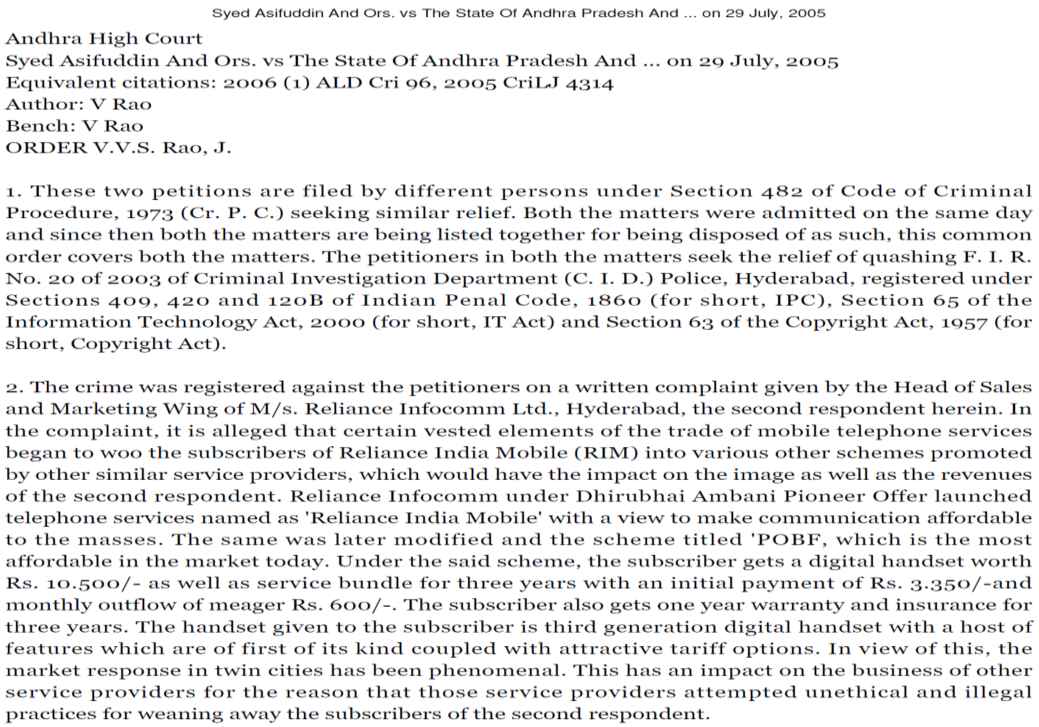
- **Section 65** further defines what a **Computer Source Code is:** means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.
- **Section 2**
- Definitions of few terms:
  - **Computer:** means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network.

# IT Act Section 2

- **Section 2**
- Definitions of few terms:
  - **Communication Device**: means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image.
  - **Computer Network**: means the inter-connection of one or more computers or computer systems or communication device through-
    - I. the use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and
    - II. terminals or a complex consisting of two or more inter-connected computers or communication device whether or not the inter-connection is continuously maintained.

# Cyber Offences Under IT Act, 2000

- **Syed Asifuddin And Ors. vs The State Of Andhra Pradesh And Anr (July, 2005)**

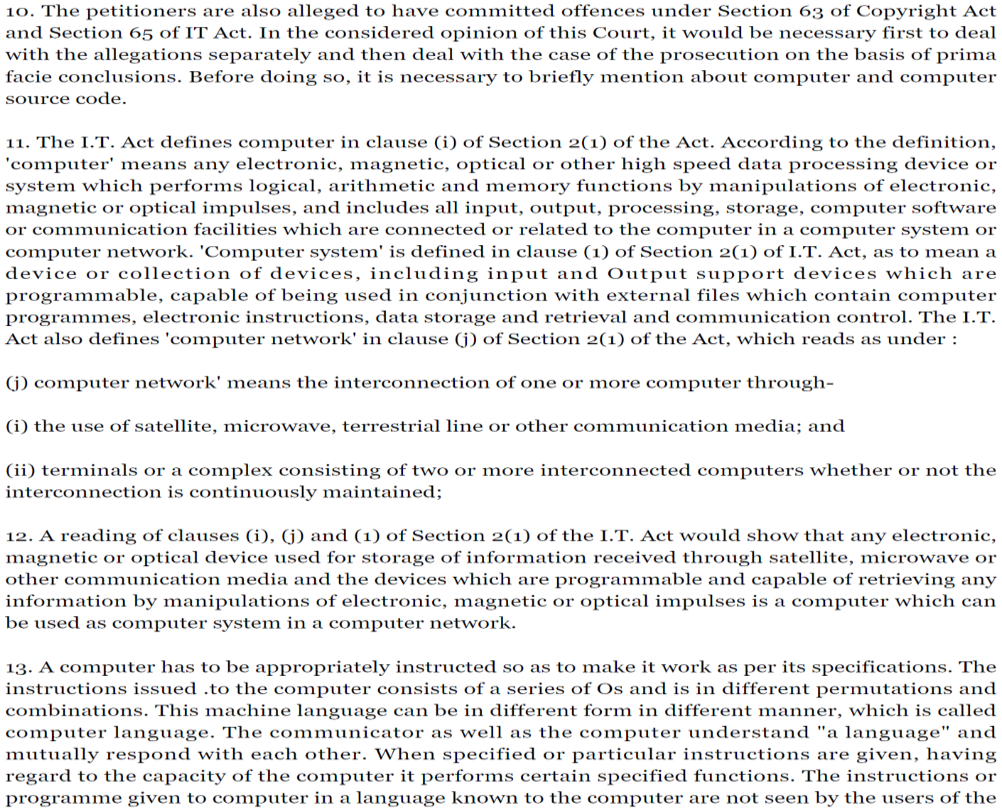


Syed Asifuddin And Ors. vs The State Of Andhra Pradesh And ... on 29 July, 2005

Andhra High Court
Syed Asifuddin And Ors. vs The State Of Andhra Pradesh And ... on 29 July, 2005
Equivalent citations: 2006 (1) ALD Cri 96, 2005 CriLJ 4314
Author: V Rao
Bench: V Rao
ORDER V.V.S. Rao, J.

1. These two petitions are filed by different persons under Section 482 of Code of Criminal Procedure, 1973 (Cr. P. C.) seeking similar relief. Both the matters were admitted on the same day and since then both the matters are being listed together for being disposed of as such, this common order covers both the matters. The petitioners in both the matters seek the relief of quashing F. I. R. No. 20 of 2003 of Criminal Investigation Department (C. I. D.) Police, Hyderabad, registered under Sections 409, 420 and 120B of Indian Penal Code, 1860 (for short, IPC), Section 65 of the Information Technology Act, 2000 (for short, IT Act) and Section 63 of the Copyright Act, 1957 (for short, Copyright Act).

2. The crime was registered against the petitioners on a written complaint given by the Head of Sales and Marketing Wing of M/s. Reliance Infocomm Ltd., Hyderabad, the second respondent herein. In the complaint, it is alleged that certain vested elements of the trade of mobile telephone services began to woo the subscribers of Reliance India Mobile (RIM) into various other schemes promoted by other similar service providers, which would have the impact on the image as well as the revenues of the second respondent. Reliance Infocomm under Dhirubhai Ambani Pioneer Offer launched telephone services named as 'Reliance India Mobile' with a view to make communication affordable to the masses. The same was later modified and the scheme titled 'POBF, which is the most affordable in the market today. Under the said scheme, the subscriber gets a digital handset worth Rs. 10.500/- as well as service bundle for three years with an initial payment of Rs. 3.350/-and monthly outflow of meager Rs. 600/-. The subscriber also gets one year warranty and insurance for three years. The handset given to the subscriber is third generation digital handset with a host of features which are of first of its kind coupled with attractive tariff options. In view of this, the market response in twin cities has been phenomenal. This has an impact on the business of other service providers for the reason that those service providers attempted unethical and illegal practices for weaning away the subscribers of the second respondent.



10. The petitioners are also alleged to have committed offences under Section 63 of Copyright Act and Section 65 of IT Act. In the considered opinion of this Court, it would be necessary first to deal with the allegations separately and then deal with the case of the prosecution on the basis of prima facie conclusions. Before doing so, it is necessary to briefly mention about computer and computer source code.

11. The I.T. Act defines computer in clause (i) of Section 2(1) of the Act. According to the definition, 'computer' means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network. 'Computer system' is defined in clause (1) of Section 2(1) of I.T. Act, as to mean a device or collection of devices, including input and Output support devices which are programmable, capable of being used in conjunction with external files which contain computer programmes, electronic instructions, data storage and retrieval and communication control. The I.T. Act also defines 'computer network' in clause (j) of Section 2(1) of the Act, which reads as under :

(j) computer network' means the interconnection of one or more computer through-

(i) the use of satellite, microwave, terrestrial line or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

12. A reading of clauses (i), (j) and (1) of Section 2(1) of the I.T. Act would show that any electronic, magnetic or optical device used for storage of information received through satellite, microwave or other communication media and the devices which are programmable and capable of retrieving any information by manipulations of electronic, magnetic or optical impulses is a computer which can be used as computer system in a computer network.

13. A computer has to be appropriately instructed so as to make it work as per its specifications. The instructions issued .to the computer consists of a series of Os and is in different permutations and combinations. This machine language can be in different form in different manner, which is called computer language. The communicator as well as the computer understand "a language" and mutually respond with each other. When specified or particular instructions are given, having regard to the capacity of the computer it performs certain specified functions. The instructions or programme given to computer in a language known to the computer are not seen by the users of the

# Cyber Offences Under IT Act, 2000

- **Computer related offences [Section 66]**
- If any person, *dishonestly* or *fraudulently*, does any act referred to in section 43 of the IT Act,
  - **Section 24 of the IPC**: "Dishonestly". —Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".
  - **Section 25 of the IPC:** "Fraudulently". —A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.
- shall be punishable with *imprisonment for a term which may extend to three years* or with *fine which may extend to five lakh rupees* **or with both**.

# Cyber Offences Under IT Act, 2000

- **Computer related offences [Section 43]**
- If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network,-
  - ***accesses*** or secures access to such computer, computer system or computer network or computer resource;
  - downloads, copies or extracts any data, ***computer database*** or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;
  - introduces or causes to be introduced any ***computer contaminant*** or ***computer virus*** into any computer, computer system or computer network;
  - damages or causes to be damaged any computer, computer system or computer network, data, computer database or any other programmes residing in such computer, computer system or computer network;

# IT Act Section 2

- **Section 2**
- Definitions of few terms:
  - **Access**: with its grammatical variations and cognate expressions, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network.

# Cyber Offences Under IT Act, 2000

- **Computer related offences [Section 43]**
  - **computer contaminant** means any set of computer instructions that are designed-
    - to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or
    - by any means to usurp the normal operation of the computer, computer system, or computer network;
  - **computer database** means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;

# Cyber Offences Under IT Act, 2000

- **Computer related offences [Section 43]**
  - **computer virus** means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;
  - **damage** means to destroy, alter, delete, add, modify or rearrange any computer resource by any means;
  - **computer source code** means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.

# Cyber Offences Under IT Act, 2000

- **Computer related offences [Section 43]**
- If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network,-
  - disrupts or causes disruption of any computer, computer system or computer network;
  - denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;
  - provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;

# Cyber Offences Under IT Act, 2000

- **Computer related offences [Section 43]**
- If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network,-
  - 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,
  - destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;
  - steal, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;

# Cyber Offences Under IT Act, 2000

- **Computer related offences [Section 43]**
- If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network,-
- he shall be **liable to pay damages by way of compensation** to the person so affected

# Cyber Offences Under IT Act, 2000

- **Computer related offences [Section 43 of IPC] & [Section 66 of IT Act]**
- Acts mentioned under Section 43 is done:
- Without “Mens Rea” it would be considered as “damage to computer resource” under Section 43; and
- With “Mens Rea” it would be considered as “Computer-related offences” under Section 66;

# Cyber Offences Under IT Act, 2000

- 66A Punis[illegible] ending offensive messages through communication service, et[illegible]

VOID

- 66B Punishment for dishonestly receiving stolen computer resource or communication device.
- 66C Punishment for identity theft.
- 66D Punishment for cheating by personation by using computer resource.
- 66E Punishment for violation of privacy.
- 66F Punishment for cyber terrorism.
- Cyber offences relating to obscenity [67, 67A, 67B].

# E-Commerce

- **Online payment and Security issues**
- Real Time Gross Settlement (RTGS)
- National Electronic Fund Transfer (NEFT)
- Unified Payments Interface (UPI)
- Measures in place for ensuring and validating online transactions.

# E-Commerce

- **Online payment and Security issues**
- Liability to the Customer.
  - Zero Liability of a Customer.
  - Limited Liability of a Customer.

# Questions