Cyber Crime Law in India

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It's not important how good you are.
It's important how good you want to be.

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ONE

1. Sec 43(a) - Unauthorised access

Unauthorised access is covered by section 43(a) of the Information Technology Act. This section states as under:

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(a) accesses or secures access to such computer, computer system or computer network or computer resource;

......he shall be liable to pay damages by way of compensation to the person so affected.

The two concepts covered in this provision are “accesses” and “secures access”.

According to section 2(1)(a) of the *Information Technology Act,* "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;

Essentials of the term "access" are:

(A) Gaining entry into a computer, computer system or computer network

(B) Instructing the logical, arithmetical, or memory function resources of a computer, computer system or computer network

(C) Communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network.

Grammatical variations of access include terms such as accesses, accessed, accessing etc. Cognate expressions are related words and phrases. Depending upon the situation, these could include "log on", "retrieve" etc. Gaining entry into applies to physical access. The terms computer, computer system and computer network have been defined very widely under the *Information Technology Act*. These terms may include the physical box (cabinet) in which a computer is housed. They may also include the physical room in which a computer network or super computer is housed.

Illustration: A massive super computer is housed in particular premises. Sameer breaks open the door and enters the premises. He has gained entry into the computer.

Illustration: A Government computer contains critical information in its hard disk. Sameer unscrews the cabinet of the computer in order to steal the hard disk. He has gained entry into the computer.

Instructing means “to give orders” or “to direct”. Instructing is essentially a one way process which does not require two-way communication between the instructor and the instructed.

Illustration: A Government computer contains critical information. Sameer enters the room where the computer is located and keys in some commands into the keyboard. He does not realize that the keyboard is disconnected from the computer. Here, Sameer has not instructed the logical, arithmetic or memory functions of the computer.

Communicating with is essentially a two-way process that involves exchange of information.

Illustration: Sameer is a hacker attempting to steal some information from Sanya’s computer. He first remotely scans Sanya’s computer using specialized software. The software sends out queries to Sanya’s computer which replies to the queries. As a result of this, Sameer obtains details of the operating system installed on Sanya’s computer. Sameer has communicated with Sanya’s computer.

Secures access is a term that needs to be examined next. The term “secure” means “to make certain”. The term “secures access” would mean “to make certain that access can be achieved as and when desired by the person seeking to access”.

Illustration: Sanya is the network administrator of a Government department. She stores the passwords of the Government department main server in her personal laptop.

Sameer is Sanya's friend. Without Sanya's permission, he switches on her laptop and notes down the passwords of the Government department main server. He has accessed Sanya's laptop without her permission.

He has "secured access" to the Government server. Although he has not accessed the Government server, he has "secured" access to it. By obtaining the passwords, he has made certain that he can access the server as and when he desires.

This section covers incidents where the "permission" of the owner or other person in charge of the computer is not obtained. Permission is the "authorization granted to do something" e.g. Sanya permits Sameer to switch on her computer. Permission can be express or implied. Permission can also be complete or partial.

Illustration: Sanya is the network administrator of Noodle Ltd. The employment contract that she has signed with Noodle Ltd states that she is responsible for the "complete maintenance and security of the Noodle Ltd computer systems and networks". Noodle Ltd has given her the express permission to access their systems. This is also complete permission. As the network administrator Sanya would need complete access to all parts of the systems.

Illustration: Tanya is an employee of the marketing department of Noodle Ltd. All the marketing department employees have been allotted usernames and passwords which allows them to log into the Noodle Ltd main server. Noodle Ltd has given Tanya the implied permission to access their systems. This is also a partial permission. As an employee of the marketing department, Tanya would need access only to that part of the system that contains information relevant to the marketing department.

This section also covers acts that **exceed permission**.

Illustration: Sameer is an employee of the finance department of Noodle Ltd. His username and password entitles him to access only limited information on the official Noodle server. Tanya is the senior manager of the finance department. One day, while Tanya is abroad on official business, she calls up Sameer and gives him her username and password. She requests Sameer to retrieve some official documents from the Noodle server and email those documents to her. Sameer complies with her request.

Several days later, Sameer again uses Tanya's password to access the Noodle server. Now he has exceeded the scope of his permission. Tanya had given Sameer an implied permission to use her password only on one occasion. The subsequent use of the password by Sameer is unauthorised and amounts to exceeding the scope of his permission.

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim.

Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) **Compensatory damages** are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) **Consequential damages** are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) **Exemplary or punitive damages** are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja's business rival. He destroys Pooja's data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) **General damages** are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja's reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

TWO

2. Sec 43(b) - Unauthorised downloading, copying or extraction

Unauthorised downloading, copying or extraction is covered by section 43(b) of the Information Technology Act. This section states as under:

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

......he shall be liable to pay damages by way of compensation to the person so affected.

This section penalises the following unauthorised acts:

(1) downloading from a computer, computer system or computer network,

(2) copying from a computer, computer system or computer network,

(3) extracting data, database or information from a computer, computer system or computer network. Let us examine some of these terms in detail.

The term **download** is generally used for transferring information, software etc –

(1) from a remote or distant to a nearby computer

(2) from a larger to a smaller computer

(3) from a computer to a peripheral device (e.g. floppy or pen-drive).

Illustration: Sameer is browsing the Internet and comes across a useful software program stored on a website. He downloads it from the Internet onto his computer. He then installs it on his computer.

Illustration: Pooja uses her personal laptop to connect to her office server. She then downloads the Office Manual from the server onto her laptop.

Illustration: Pooja makes an online purchase of some songs. After the payment is processed, she downloads the song from the music company's website onto her cell phone which is connected to her laptop.

Copies means “to duplicate or reproduce or imitate something”. The original information is not affected by the copying. It remains unchanged. The copied information may be in a different format as compared to the format of the original information. This can be understood from the following examples.

Illustration: Pooja stores all her important data on her laptop in the “D” drive. In order to prevent accidental deletion of her data, she copies it onto the “E” drive of her laptop.

Illustration: Pooja reads a very funny joke on a website. The website has stored the joke in an image file so that people cannot simply copy the joke and email it to their friends. The website wants users to refer their friends to its webpage in order to read the joke. Pooja reads the joke on the website and then types it in word by word into a text file in her computer. She has copied the joke.

Illustration: Pooja has created an MS Word document on her laptop. She then uses specialised software to convert the document into a PDF (Portable Document Format) file. She has copied the original file and reproduced it in a new format.

Illustration: Pooja has purchased a CD containing dozens of songs in mp3 format. Using her computer, she copies the songs from the CD onto her cell phone.

Extracts means to derive or obtain something. Extracting usually requires some special effort or skill.

Illustration: Pooja has purchased a CD containing songs in “cda” format. Using her computer, she converts the songs into ‘mp3’ format. She has extracted the mp3 format songs from the audio CD that she had purchased.

Illustration: Pooja obtains the source code files for open source software. She then uses “compiler” software to convert the source code files into the executable file. This executable file can be used to install the software onto a computer. She has extracted the executable file from the source code files.

Illustration: Pooja obtains a software executable file. She then uses “decompiler” software to obtain the source code files that were used to create the executable file. She has extracted the source code file from the executable file.

Data is a formalised representation of information, knowledge, facts, concepts or instructions. Data undergoes processing by a computer. Data can be in electronic form (e.g. stored in a CD) or physical form (e.g. computer printouts). Examples of data include computerised attendance records of a school, information in the RAM of a computer, printouts of a computerised accounting system etc.

Computer database is a formalised representation of information. The term includes information produced by a computer and intended for use in a computer. This is best understood through the following illustration.

Illustration: Noodle School has an automated system for student administration. This system is powered by a database that contains detailed student information. One table of this database is titled “basic_info” and contains the following categories of information.

Roll no.	Name	Address	Phone	Email

Another table is titled “student_marks” and contains the following categories of information:

Roll no.	Test 1	Test 2	Test 3	Final

When a student’s report card is to be prepared, the system automatically takes the marks from the “student_marks” table and the name and contact information from the “basic_details” table. It then collates the information and prepares the final report card.

Information includes data, text, images, sound, voice, codes, computer programmes, software and databases or microfilm or computer generated micro fiche. Microfilms are processed sheets of plastic (similar to the commonly used photograph rolls) that carry images of documents. These images are usually about 25 times reduced from the original document size.

The images cannot be read by the naked eye and special readers are used to project the images on a screen. They are most commonly used in libraries for transmission, storage, reading and printing of books. Microfiche is a type of microfilm which carries several micro images.

Illustration: The following are information: (1) a photo stored on a DVD (2) a song stored on a CD (3) the eBook version of this book (4) a recording of a phone conversation.

Removable storage medium is a storage medium that retains the stored information even after it has been removed from a computer e.g. hard disks, floppies, USB disks, zip drives, CD, VCD, DVD. The RAM of a computer would not be removable storage medium as it loses all stored data as soon as it is removed from the host computer.

It is relevant to note section 81 of the *Information Technology Act*, which states-

81. Act to have overriding effect. –

The provisions of this Act shall have effect notwithstanding anything consistent therewith contained in any other law for the time being in force.

Provided that nothing contained in this Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957 or the Patents Act, 1970.

Sub-sections (aa), (ab), (ac) and (ad) of section 52 of the *Copyright Act* are relevant. They state-

(aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme from such copy- (i) in order to utilise the computer programme for the purpose for which it was supplied; or (ii) to make back-up copies purely as a temporary protection against toss, destruction or damage

in order only to utilise the computer programme for the purpose for which it was supplied;

(ab) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

(ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;

(ad) the making of copies or adaption of the computer programme from a personally legally obtained copy for non-commercial personal use;

Section 47 of the *Patent Act* is relevant. It states-

Section 47 - Grant of patents to be subject to certain conditions

The grant of patent under this Act shall be subject to the condition that—

(1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;

(2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;

(3) any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and

(4) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim.

Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) Compensatory damages are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja’s laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) Consequential damages are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja’s laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) Exemplary or punitive damages are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja’s business rival. He destroys Pooja’s data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) General damages are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja’s reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

THREE

3. Sec 43(c) - Computer virus, worm, contaminant

Unauthorised introduction of a virus etc into a computer is covered by section 43(c) of the Information Technology Act. This section states as under:

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

......he shall be liable to pay damages by way of compensation to the person so affected.

This section penalises two acts namely:

(1) introducing a virus or contaminant into a computer,

(2) causing the introduction of a virus or contaminant into a computer.

These acts may be directed towards a computer, a computer system or computer network. Let us discuss the important terms:

Computer virus means any computer instruction, information, data or programme that

(1) destroys, damages, degrades or adversely affects the performance of a computer resource or

(2) 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.

Illustration: The Love Bug virus comes as an attachment to an email with the subject "I Love You". When a victim clicks on the attachment, the virus overwrites all files on the victim's computer with junk data thereby destroying and damaging all the data.

Illustration: Macro viruses usually come embedded in Microsoft Word and Excel files. When a user runs the infected file, the macro virus gets activated and damages his data.

Illustration: The Chernobyl virus can lie dormant for the entire year in a victim's computer. Most versions of the virus get activated only on April 26th. The virus, which was originally called CIH, is referred to as the Chernobyl Virus because it attacks on April 26th which is the date when the Chernobyl nuclear accident took place in Ukraine in 1986.

Computer contaminant means any set of computer instructions that are designed to

(1) modify, destroy, record, transmit data or programme residing within a computer, or

(2) usurp the normal operation of the computer.

Illustration: Sameer sends an online greeting card to Pooja. The greeting card is an image file that is infected with a "Computer Trojan". When Pooja clicks on the greeting card to view it, the Trojan gets installed on her computer. The Trojan usurps the functioning of Pooja's computer. It gives complete control of the computer to Sameer. He can now remotely alter files on Pooja's computer. This is an example of a computer contaminant.

Illustration: Sameer installs a key logger on a cyber café computer. The key logger automatically records all text entered on the infected computer by users. Every evening at 5 pm the key logger transmits this recorded data to Sameer's email account. This is an example of a computer contaminant.

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim.

Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) **Compensatory damages** are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) **Consequential damages** are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) **Exemplary or punitive damages** are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja's business rival. He destroys Pooja's data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) **General damages** are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja's reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

4. Sec 43(d) - Damaging a computer

Unauthorised damage is covered by section 43(d) of the Information Technology Act. This section states as under:

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

......he shall be liable to pay damages by way of compensation to the person so affected.

This section penalises two acts namely (1) damaging and (2) causing to be damaged. These acts may be directed towards a computer, a computer system, computer network, data, computer database or other programs.

Let us discuss the important terms:

Data is a formalised representation of information, knowledge, facts, concepts or instructions. Data undergoes processing by a computer. Data can be in electronic form (e.g. stored in a CD) or physical form (e.g. computer printouts). Examples of data include computerised attendance records of a school, information in the RAM of a computer, printouts of a computerised accounting system etc.

Computer database is a formalised representation of information. The term includes information produced by a computer and intended for use in a computer. This is best understood through the following illustration.

Illustration: Noodle School has an automated system for student administration. This system is powered by a database that contains detailed student information. One table of this database is titled "basic_info" and contains the following categories of information.

Roll no.	Name	Address	Phone	Email

Another table is titled "student_marks" and contains the following categories of information:

Roll no.	Test 1	Test 2	Test 3	Final

When a student’s report card is to be prepared, the system automatically takes the marks from the “student_marks” table and the name and contact information from the “basic_details” table. It then collates the information and prepares the final report card.

Damage for the purposes of this section implies to destroy, alter, delete, add, modify or rearrange any computer resource by any means.

Illustration: Sameer deletes the “address column” of the “basic_info” table of the Noodle School database from the illustration above. Now, although the final report card can be prepared, the address labels to courier the report cards cannot be prepared. Sameer has damaged the database.

Illustration: Sameer picks up Pooja’s laptop with the intention of stealing it. He then accidentally drops it on the floor, thereby destroying it. Sameer has damaged Pooja’s laptop.

To cause means to make something happen. Cause can be direct or indirect.

Illustration: Sameer pressed the “delete” button on the keyboard causing the data to be deleted. Sameer’s act of pressing the delete button is the direct cause of the data being deleted.

Illustration: Sameer switched off the power connection to the house, thereby causing the computer to switch off. Due to the sudden switch off, Pooja could not save her data and it was lost. Sameer’s act of switching off the power to the house was the indirect cause of the data loss. The unexpected switching off of the computer was the direct cause of the data loss.

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim.

Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) Compensatory damages are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) Consequential damages are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) Exemplary or punitive damages are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja's business rival. He destroys Pooja's data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) General damages are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja's reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

FIVE

5. Sec 43(e) - Disruption of a computer

Unauthorised disruption of a computer is covered by section 43(e) of the Information Technology Act. This section states as under:

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(e) disrupts or causes disruption of any computer, computer system or computer network;

......he shall be liable to pay damages by way of compensation to the person so affected.

This section penalises two acts namely (1) disrupting and (2) causing to be disrupted. These acts may be directed towards a computer, a computer system or computer network. Let us discuss the important terms:

Disrupting means “to prevent the normal continuance of”, “to throw into confusion or disorder”, “to interrupt or impede the progress of”. Disruption can be total or partial.

Illustration: Noodle Ltd has a large computer network that spans 3 continents. Noodle employees around the globe use the network to transfer important data. Sameer creates a computer worm that affects the Noodle network. The worm multiplies and replicates and clogs up all the resources thereby slowing the Noodle network. Sameer has partially disrupted the Noodle network.

Illustration: Sameer is an employee of the Pune office of Noodle Ltd. The office has a dozen computers connected to each other through a wireless access point. This access point creates a wireless network within the office. Sameer deliberately switches off the access point. The computers are no longer in a network. Sameer has totally disrupted the Noodle network.

Illustration: Sameer is an employee of the Mumbai office of Noodle Ltd. The office has a medium speed Internet connection. Sameer starts downloading several movies from the Internet simultaneously. This slows down the Internet speed available to the other Noodle employees. Sameer has partially disrupted the Noodle network.

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim.

Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) Compensatory damages are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) Consequential damages are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) Exemplary or punitive damages are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja's business rival. He destroys Pooja's data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) General damages are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja's reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

SIX

6. Sec 43(f) - Denial of Service

Denial of Service is covered by section 43(f) of the Information Technology Act. This section states as under:

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

......he shall be liable to pay damages by way of compensation to the person so affected.

This section penalises two acts namely:

(1) denying an authorised person access to a computer

(2) causing the denial of access to an authorised person.

These acts may be directed towards a computer, a computer system or computer network. Let us discuss the important terms:

To deny access means “to restrict access” or “to disallow access”. This denial can be total or partial.

Illustration: Sameer is the network administrator of the Mumbai office of Noodle Ltd. He is disgruntled that his salary has not been raised. He disables the passwords of the other employees so they are unable to access the Noodle servers. Sameer has totally denied access to the authorised employees.

Illustration: Sameer has created a computer virus that opens up multiple program windows on a victim computer. This virus affects Pooja’s computer and opens up hundreds of program windows on her computer. This results in her computer becoming unusable. Sameer has caused total denial of access.

Illustration: A series of more than 125 separate but coordinated denial of service attacks hit the cyber infrastructure of Estonia in early 2007. It is suspected that the attacks were carried out by Russian hackers using sophisticated automated denial of service software. The software made millions of requests to Estonia Government servers. The servers could not handle so many requests and they crashed. This resulted in legitimate users being unable to access the servers. This is a total denial of access.

Illustration: Sameer is the network administrator of the Mumbai office of Noodle Ltd. He is disgruntled that his salary has not been raised. He shuts down one of the Noodle servers.

Legitimate users are unable to access that server but can access the other servers. Sameer has caused a partial denial of access.

This section does not penalize instances where an unauthorised person is denied access to a computer.

Illustration: The senior management of Noodle Ltd is suspicious that Sameer is involved in corporate espionage and is selling confidential information to rival companies. They ask the Noodle network administrator to immediately block Sameer’s access to the main servers.

Although Sameer has not been officially suspended or removed from his job, he cannot claim damages from Noodle Ltd for this denial of access. The computer systems belong to Noodle Ltd and the management can withdraw access permissions at any time and without giving prior notice.

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim. Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) Compensatory damages are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja’s laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) Consequential damages are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) Exemplary or punitive damages are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja's business rival. He destroys Pooja's data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) General damages are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja's reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

SEVEN

7. Sec 43(g) - Facilitating unauthorised access

Providing assistance to facilitate illegal access is covered by section 43(g) of the Information Technology Act. This section states as under:

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(g) 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;

......he shall be liable to pay damages by way of compensation to the person so affected.

The essential element of this section is that assistance is provided for obtaining access to a computer in contravention of the IT Act and its allied laws. A person who obtains access to a computer in contravention of the IT Act would be liable under the relevant sections (e.g. 43(a) or 66 or 70 etc). What this section specifically covers is providing assistance to such a person. Such assistance must facilitate the unlawful access.

Assistance is the act of helping or aiding.

Facilitate means “to make easier” or “to make less difficult” or to “assist in the progress of”.

Let us consider some illustrations to understand this concept.

Illustration: Sameer is planning to gain unauthorised access into the computer systems of Noodle Bank Ltd. Aditi, the manager of Noodle, hands over a list of passwords to Sameer. Using these passwords, Sameer gains the unlawful access. Aditi has provided assistance to Sameer to facilitate his unlawful access.

Illustration: Sameer is planning to gain unauthorised access into the computer systems of Noodle Bank Ltd. Priyanka, the network security administrator of Noodle, is his good friend. She is monitoring the Intrusion Detection System (IDS) of Noodle at the time when Sameer is launching his attack. The IDS detects the attack and gives a warning. Priyanka deliberately ignores the warning and does not use any measures to stop the attack. Priyanka has provided assistance to Sameer to facilitate his unlawful access.

Illustration: Sameer is planning to gain unauthorised access into the computer systems of Noodle Bank Ltd. Priyanka, the network security administrator of Noodle, is his good friend. She disables the Noodle firewall at the time when Sameer is launching his attack. Priyanka has provided assistance to Sameer to facilitate his unlawful access.

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim.

Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) Compensatory damages are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) Consequential damages are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) Exemplary or punitive damages are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja's business rival. He destroys Pooja's data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) General damages are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja's reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

EIGHT

8. Sec 43(h) - Tampering or manipulating computer

Tampering or manipulating computer is covered by section 43(h) of the Information Technology Act. This section states as under:

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(h) 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,

......he shall be liable to pay damages by way of compensation to the person so affected.

An illustration to clarify the essential elements of this section is:

(1) Sameer avails of some service e.g. purchases a software

(2) Pooja's account with Noodle Bank is charged for this purchase

(3) This has been done by Sameer's manipulation of the Noodle Bank computers

Let us discuss the key terms in this section.

Tampering implies "meddling so as to misuse".

Illustration: Pooja has put a "BIOS" password on her computer. This means that as soon as her computer is switched on, it asks for a password. It does not boot up the operating system till this password is entered. Sameer removes the CMOS battery of Pooja's computer for a few minutes. He then puts the battery back and starts her computer. The "BIOS" password gets deleted and he is able to obtain unauthorised access to her computer. He has tampered with her computer.

Illustration: Noodle Ltd. has secured its computer network by configuring a firewall. Sameer places a powerful magnet near the computer on which the firewall is configured. Over a few days this magnet corrupts the hard disk and the firewall becomes ineffective. Sameer then remotely secures unauthorised access to the Noodle network. He has tampered with the Noodle computer.

Manipulating implies "influencing something skilfully in an unfair manner".

Illustration: Pooja is checking her email account with gmail.com. As she is logged in to gmail, the gmail authentication cookie is present on her machine.

She receives an email from Sameer containing a really funny joke. The email contains a link to a site which promises her lots more funny stuff. She clicks on the link and is very happy with the site that opens up.

What she does not realize is that this joke site has forged a request to the gmail “Create Filter” wizard. This creates a filter that forwards a copy of all emails coming into Pooja’s account to Sameer!

Gmail accepts the request to create the filter because the genuine gmail account holder (Pooja) is authenticated and logged in at the moment and her session cookie is passed along with the forged request. Sameer has manipulated Pooja’s gmail account.

Note: This is a cross-site request forgery (CSRF) attack that transmits unauthorized commands to a website from a trusted user.

Now that we have understood the key terms, let us examine some scenarios where this section would be violated.

Illustration: Pooja regularly uses her computer to log into her online banking account with Noodle Bank. Sameer sends Pooja a spoofed email that appears to come from Noodle Bank. The email contains a link to what appears to be a Noodle Bank webpage. Pooja enters her login details on this webpage (which is actually a forged / phished webpage). Now Sameer has obtained her login information. He then purchases some software online and uses Pooja's online bank account to pay for it. He will be liable under this section.

Illustration: Sameer is a hotel waiter. He secretly notes down credit card information of the hotel customers. He then purchases a software program from a website. In order to pay for the purchase he provides the credit card information of one of the hotel customers. This information is then passed on by the website to the payment gateway (e.g. Master, Visa etc.). The automated software at the gateway authenticates the transaction as the credit card information is correct. In reality, the gateway has been manipulated to allow a fraudulent transaction to go through.

Illustration: Noodle Ltd is a book selling company. Customers can place the orders via phone. They are also required to provide their credit card information on the phone. A Noodle employee enters the order details and the credit card information directly into the Noodle computer systems.

The order is then processed in due course. Sameer has designed the Noodle systems in such a way that every 17th payment is credited to "Nooodle" instead of "Noodle". Suppose in a day there are 600 orders. Then the payment for the 17th, 34th, 51st, 68th ... order will be made to a company called "Nooodle" which is owned by Sameer.

In case of these orders the payment is not received by Noodle Ltd but the deliveries are made by them, so the customers never understand the fraud and do not lodge any complaint. Sameer has manipulated the Noodle systems.

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim.

Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) Compensatory damages are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) Consequential damages are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) Exemplary or punitive damages are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja's business rival. He destroys Pooja's data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) General damages are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja's reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

NINE

9. Sec 43(i) - Destruction, deletion or alteration

Unauthorised destruction, deletion or alteration of information is covered by section 43(i) of the Information Technology Act. This section states as under:

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;

......he shall be liable to pay damages by way of compensation to the person so affected.

The elements of this section are (1) destruction / deletion /alteration of information in a computer, or (2) diminishing value or utility of a computer resource, or (3) injuriously affecting a computer resource

Let us discuss the relevant terms and issues in detail.

Information includes data, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche. Data is a formalised representation of information, knowledge, facts, concepts or instructions. Data undergoes processing by a computer. Data can be in electronic form (e.g. stored in a CD) or physical form (e.g. computer printouts). Examples of data include computerised attendance records of a school, information in the RAM of a computer, printouts of a computerised accounting system etc.

Microfilms are processed sheets of plastic (similar to the commonly used photograph rolls) that carry images of documents. These images are usually about 25 times reduced from the original. The images cannot be viewed by the naked eye and special readers are used to project the images on a screen. They are most commonly used in libraries for transmission, storage, reading and printing of books.

Microfiche is a type of microfilm containing several micro images.

Illustration: The following are information: (1) photos stored on a DVD (2) songs stored on a CD (3) the eBook version of this book (4) the recording of a phone conversation.

Computer resource includes computer, computer system, computer network, data, computer data base or software.

Information residing in a computer resource must be construed in a wide manner. It includes information that exists or is present in a computer resource temporarily or permanently. This is best discussed through the following illustrations.

Illustration: A personal computer has a BIOS chip that contains basic instructions needed to boot up a computer. These instructions are in the form of “information permanently residing” on the BIOS (which is a computer resource).

Illustration: Pooja is browsing a website. While she is viewing the website on her monitor, the information is cached in her computer in a folder specially reserved for temporary files. Some of that information is also stored in the RAM of her computer. When the computer is shutdown, the information in the RAM is lost. These are examples of information that is “temporarily residing” in a computer resource.

Illustration: Other illustrations of information residing in a computer resource are: (1) music files stored in an iPod (2) software installed on a computer (3) ebook stored on a CD (4) software installed in a cell phone (5) software embedded in a microwave oven.

Destroy means “to make useless”, “cause to cease to exist”, “nullify”, “to demolish”, or “reduce to nothing”.

Destroying information also includes acts that render the information useless for the purpose for which it had been created.

Illustration: Noodle Ltd has created a vast database of customer details and buying habits. The Noodle managers can query this database using a sophisticated “query management system”.

Sameer has developed this unique and path breaking “query management system” entirely on his own. One day, Sameer quits his job and takes the entire code of the “query management system” with him.

Now the information in the database is still intact but it is no longer usable for the purpose of predicting customer orders. Sameer has, in effect, destroyed the information contained in the database.

Deletes in relation to electronic information means “to remove”, “to erase”, “to make invisible” etc. Such deletion can be temporary or permanent.

Illustration: Pooja has created a text file containing her resume. Sameer deletes the file from her computer. On deletion, the file gets automatically transferred to the “recycle bin” of Pooja’s computer, from where it can be easily retrieved. Here Sameer has temporarily deleted the file. Sameer empties the “recycle bin” of Pooja’s computer. The file is still only temporarily deleted as it can be recovered using cyber forensics.

Sameer then uses specialised wiping software so that the file cannot be recovered using forensics. Now he has permanently deleted the file.

Illustration: Pooja is a novice computer user. She has created a text file containing her resume. Sameer changes the properties of the file and makes it a “hidden” file. Although the file still exists on Pooja’s computer, she can no longer see it. Sameer has deleted the file.

Alters, in relation to electronic information, means “modifies”, “changes”, “makes different” etc. This modification or change could be in respect to size, properties, format, value, utility etc. Alteration can be permanent or temporary. It can also be reversible or irreversible.

Illustration: Pooja has created a webpage for her client. A webpage is essentially an HTML (Hyper Text Markup Language) file. Sameer changes the file from HTML to text format. He has altered the file. This is a reversible alteration.

Illustration: Pooja has created a text file. Sameer changes the properties of the file and makes it a “hidden” file. The file retains its original content but it has been altered as its attributes have changed (it is now a hidden file). This is a reversible alteration.

Illustration: Pooja has created a text file named “pooja.txt”. Sameer changes the name of this file to “pooja1.txt”. Although the file retains its original content, it has been altered. This is a reversible alteration.

Illustration: Pooja is investigating Sameer’s computer for suspected cyber pornography. She seizes a word file that contains incriminating evidence against Sameer. As per procedure, she computes the hash value of the file and notes it in her report.

Sameer later manages to access the seized file and adds a “#” symbol to the contents of the file. The hash value of this altered file will be different from the hash value computed earlier by Pooja.

This is a permanent irreversible alteration. Even after the “#” symbol is removed, the hash value of the file will never be the same as the original computed by Pooja.

Illustration: Pooja is a graphics designer. She creates very high resolution images for her clients. A high resolution image can be magnified several times and still look clear.

Sameer is one of her employees. He changes some of the high resolution images into low resolution images. Although the low resolution images look the same as the high resolution ones, they cannot be magnified. The value and utility of the images has been reduced. This is an example of permanent and irreversible alteration.

Value implies monetary worth.

Illustration: Pooja is a graphics designer. She buys a sophisticated computer for Rs 2 lakh. The value of the computer is Rs 2 lakh. She purchases one license of specialised graphics software for Rs 50,000 and installs the software on her computer. The value of the computer is now Rs 2.5 lakh. She then hires a specialist to configure her computer for optimal performance. The specialist charges her Rs 10,000 for his services. The value of the computer is now Rs 2.6 lakh.

Utility means “usefulness”.

Illustration: The utility of a high resolution image lies in its ability to be magnified several times. This enables the image to be used for various purposes such as on a website, in a printed catalogue, on a large hoarding etc.

Illustration: The utility of anti-virus software lies in its ability to detect computer viruses and other malicious code.

Illustration: The utility of a sophisticated computer is its ability to render high resolution graphics files in a very short time.

Diminish means “reduce” or “lessen”,

Illustration: A computer worm replicates itself and thereby hogs up system resources such as hard disk space, bandwidth etc. This can diminish the performance and speed of the computer network.

Diminishes value means “reduces the monetary worth”.

Illustration: Pooja is a graphics designer. She creates very high resolution images for her clients. A high resolution image can be magnified several times and still look clear. She can sell each image for around Rs 5000.

Sameer is one of her employees. He changes some of the high resolution images into low resolution images. Although the low resolution images look the same as the high resolution ones, they cannot be magnified. Now she cannot sell an image for more than Rs 400. Sameer has thus diminished the value of the images.

Diminishes utility means “reduces the usefulness”.

Illustration: Pooja has purchased a very sophisticated computer that has 2 GB RAM. This enables the computer to render a large image file in 3 seconds. Sameer steals 1 GB RAM from the computer. Now the computer takes more than 5 seconds to render the image file. Sameer's act of stealing the RAM has diminished the utility of Pooja's computer.

Affects means "influences" or "produces a change in".

Illustration: A computer virus changes the data stored in a computer. The virus affects the data.

Injurious means "harmful", "hurtful", or "detrimental".

Illustration: A computer virus is injurious to the data stored in a computer.

Affects injuriously means produces a "harmful or detrimental change".

Illustration: Placing a powerful magnet close to a floppy disk causes permanent and irreversible damage to the disk. We can say that the magnet affects the disk injuriously.

Illustration: Dropping a laptop on the floor can affect it injuriously.

Illustration: Dropping water on a laptop can affect it injuriously.

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim.

Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) Compensatory damages are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) Consequential damages are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) Exemplary or punitive damages are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja's business rival. He destroys Pooja's data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) General damages are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja's reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

TEN

10. Sec 43(j) - Source code theft

Stealing, concealing, destroying or altering source code is covered by section 43(j) of the Information Technology Act. This section states as under:

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(j) 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;

......he shall be liable to pay damages by way of compensation to the person so affected.

Computer source code is the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form. Computer source code need not only be in the electronic form. It can be printed on paper (e.g. printouts of flowcharts for designing a software application).

Let us understand this using some illustrations.

Illustration: Pooja has created a simple computer program. When a user double-clicks on the *hello.exe* file created by Pooja, the following small screen opens up:

```
Hello World
```

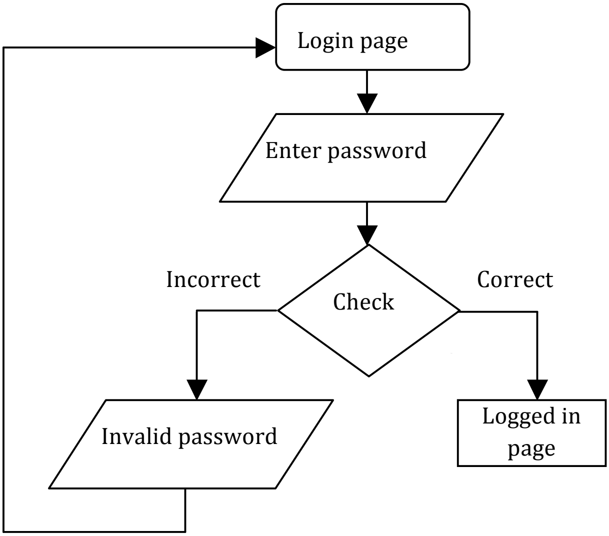
The *hello.exe* file created by Pooja is the executable file that she can give to others. The small screen that opens up is the output of the software program written by Pooja. Pooja has created the executable file using the programming language called "C". Using this programming language, she created the following lines of code:

```
main(){
        printf("Hello,        ");
        printf("World");
        printf("\n");
```

These lines of code are referred to as the source code.

Illustration: Noodle Ltd has created software for viewing and creating image files. The programmers who developed this program used the computer-programming language called Visual C++. Using the syntax of these languages, they wrote thousands of lines of code. This code is then compiled into an executable file and given to end-users. All that the end user has to do is double-click on a file (called setup.exe) and the program gets installed on his computer. The lines of code are known as computer source code.

Illustration: Pooja is creating a simple website. A registered user of the website would have to enter the correct password to access the content of the website. She creates the following flowchart outlining the functioning of the authentication process of the website.



She takes a printout of the flowchart to discuss it with her client. The printout is source code.

The following acts are prohibited in respect of the source code (1) stealing, concealing, destroying or altering (2) causing another to steal, conceal, destroy or alter.

Let us discuss the relevant terms and issues in detail.

The term steal and “commit theft” are usually used interchangeably. Section 378 of the Indian Penal Code defines theft as “Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.”

Illustration: Pooja has created a software program. The source code files of the program are contained in a pen-drive. Sameer takes that pen-drive out of Pooja’s cupboard without informing her. He has “stolen” the source code.

Conceal simply means “to hide”.

Illustration: Pooja has created a software program. The source code files of the program are contained in a folder on Pooja’s laptop. Sameer changes the properties of the folder and makes it a “hidden” folder.

Although the source code folder still exists on Pooja’s computer, she can no longer see it. Sameer has concealed the source code.

Destroy means “to make useless”, “cause to cease to exist”, “nullify”, “to demolish”, or “reduce to nothing”.

Destroying source code also includes acts that render the source code useless for the purpose for which it had been created.

Illustration: Pooja has created a software program. The source code files of the program are contained in a folder on Pooja’s laptop. Sameer deletes the folder. He has destroyed the source code.

Illustration: Pooja has created a software program. The source code files of the program are contained in a folder on Pooja's laptop. Sameer deletes one of the source code files. Now the source code cannot be compiled into the final product. He has destroyed the source code.

Illustration: Pooja is designing a software program. She draws out the flowchart depicting the outline of the functioning of the program. Sameer tears up the paper on which she had drawn the flowchart. Sameer has destroyed the source code.

Alters, in relation to source code, means "modifies", "changes", "makes different" etc. This modification or change could be in respect to size, properties, format, value, utility etc.

Illustration: Pooja has created a webpage for her client. The source code of the webpage is in HTML (Hyper Text Markup Language) format. Sameer changes the file from HTML to text format. He has altered the source code.

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim.

Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) Compensatory damages are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) Consequential damages are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) Exemplary or punitive damages are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja's business rival. He destroys Pooja's data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) General damages are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja's reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

ELEVEN

11. Sec 43A - Failure to protect data

Compensation for failure to protect data is covered by section 43A of the Information Technology Act. This section states as under:

43 A. Compensation for failure to protect data

Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected.

Explanation – For the purposes of this section,-

(i) "body corporate" means any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities;

(ii) “reasonable security practices and procedures” means security practices and procedures designed to protect such information from unauthorised access, damage, use, modification, disclosure or impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit;

(iii) “sensitive personal data or information” means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit.

The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 have been made under this section. They came into force on 11th April 2011.

According to these rules, sensitive personal data or information of a person means such personal information which consists of information relating to;—

(i) password;

(ii) financial information such as Bank account or credit card or debit card or other payment instrument details ;

(iii) physical, physiological and mental health condition;

(iv) sexual orientation;

(v) medical records and history;

(vi) Biometric information;

(vii) any detail relating to the above clauses as provided to body corporate for providing service; and

(viii) any of the information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise:

The following information is not regarded as sensitive personal data or information:

(1) any information that is freely available or accessible in public domain

(2) any information that is furnished under the Right to Information Act, 2005 or any other law for the time being in force

The data privacy rules lay down several provisions for:

(1) A privacy policy including:

> (A) clear and easily accessible statements of its practices and policies;
>
> (B) type of personal or sensitive personal data or information collected under rule;
>
> (C)purpose of collection and usage of such information;
>
> (D) disclosure of information including sensitive personal data or information under rule 6;

(E) reasonable security practices and procedures as provided under rule 8

(2) Collection of information

(3) Disclosure of information

(4) Transfer of information

(5) Reasonable Security Practices and Procedures

Compensation is usually the money that the Court orders the offender to pay to the victim. The Court orders this compensation to be paid when the acts of the offender have caused loss or injury to the victim.

Simply put, damages are the compensation for legal injury. Damages can be of various types:

(1) Compensatory damages are allowed as a recompense for injury actually suffered.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. The Court orders Sameer to pay compensation equal to the cost of the laptop as paid by Pooja.

(2) Consequential damages are consequential upon the act complained of.

Illustration: Sameer physically damages Pooja's laptop by dropping it on the floor. Pooja has to purchase a new laptop. The Court orders Sameer to pay compensation equal to the price of a new laptop.

(3) Exemplary or punitive damages are awarded as a punishment and serve as a warning to others.

Illustration: Sameer is Pooja's business rival. He destroys Pooja's data by physically damaging her laptop. The Court orders Sameer to pay compensation equal to 10 times the price of a new laptop.

(4) General damages are awarded for things such as mental agony, loss of reputation etc. Such things cannot be accurately stated in terms of money.

Illustration: Sameer posts a defamatory post about Pooja on a social networking website. This harms Pooja's reputation and causes her mental agony. The Court orders Sameer to pay her Rs 10 lakh as compensation.

Non-compliance with any of the provisions of the data privacy rules is also penalized with a compensation /penalty of upto Rs. 25,000 under section 45 of the Information Technology Act. This section is as under:

45. Residuary penalty.

Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees.

TWELVE

12. Sec 65 - Tampering with computer source documents

Tampering with computer source documents is covered by section 65 of the Information Technology Act. This section states as under:

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.

***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.**

Computer source code is the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form. Computer source code need not only be in the electronic form. It can be printed on paper (e.g. printouts of flowcharts for designing a software application). Let us understand this using some illustrations.

Illustration: Pooja has created a simple computer program. When a user double-clicks on the hello.exe file created by Pooja, the following small screen opens up:

```
Hello World
```

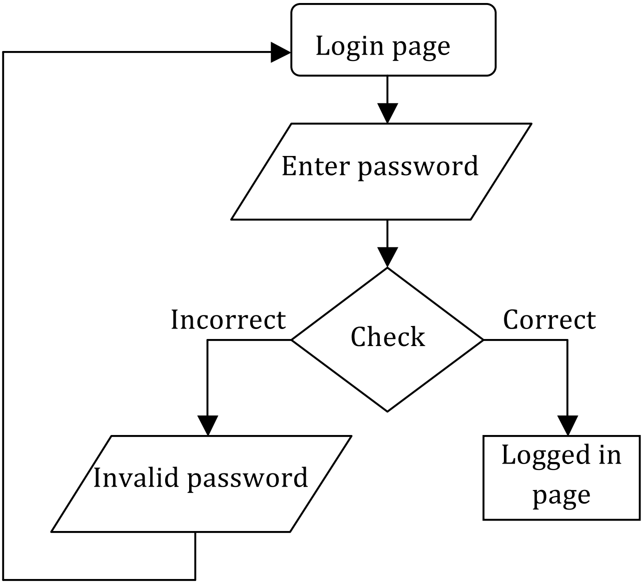
The hello.exe file created by Pooja is the executable file that she can give to others. The small screen that opens up is the output of the software program written by Pooja. Pooja has created the executable file using the programming language called "C". Using this programming language, she created the following lines of code:

```
main()
{
        printf("Hello,              ");
        printf("World");
```

These lines of code are referred to as the source code.

Illustration: Noodle Ltd has created software for viewing and creating image files. The programmers who developed this program used the computer-programming language called Visual C++. Using the syntax of these languages, they wrote thousands of lines of code. This code is then compiled into an executable file and given to end-users. All that the end user has to do is double-click on a file (called setup.exe) and the program gets installed on his computer. The lines of code are known as computer source code.

Illustration: Pooja is creating a simple website. A registered user of the website would have to enter the correct password to access the content of the website. She creates the following flowchart outlining the functioning of the authentication process of the website.



She takes a printout of the flowchart to discuss it with her client. The printout is source code.

This section relates to computer source code that is either:

(1) required to be kept (e.g. in a cell phone, hard disk, server etc), or

(2) required to be maintained by law.

The following acts are prohibited in respect of the source code

(1) knowingly concealing or destroying or altering

(2) intentionally concealing or destroying or altering

(3) knowingly causing another to conceal or destroy or alter

(4) intentionally causing another to conceal or destroy or alter. Let us discuss the relevant terms and issues in detail.

Conceal simply means “to hide”.

Illustration: Pooja has created a software program. The source code files of the program are contained in a folder on Pooja’s laptop. Sameer changes the properties of the folder and makes it a “hidden” folder. Although the source code folder still exists on Pooja’s computer, she can no longer see it. Sameer has concealed the source code.

Destroy means “to make useless”, “cause to cease to exist”, “nullify”, “to demolish”, or “reduce to nothing”.

Destroying source code also includes acts that render the source code useless for the purpose for which it had been created.

Illustration: Pooja has created a software program. The source code files of the program are contained in a folder on Pooja’s laptop. Sameer deletes the folder. He has destroyed the source code.

Illustration: Pooja has created a software program. The source code files of the program are contained in a folder on Pooja's laptop. Sameer deletes one of the source code files. Now the source code cannot be compiled into the final product. He has destroyed the source code.

Illustration: Pooja is designing a software program. She draws out the flowchart depicting the outline of the functioning of the program. Sameer tears up the paper on which she had drawn the flowchart. Sameer has destroyed the source code.

Alters, in relation to source code, means "modifies", "changes", "makes different" etc. This modification or change could be in respect to size, properties, format, value, utility etc.

Illustration: Pooja has created a webpage for her client. The source code of the webpage is in HTML (Hyper Text Markup Language) format. Sameer changes the file from HTML to text format. He has altered the source code.

CASE LAW: Syed Asifuddin and Ors. Vs. The State of Andhra Pradesh & Anr. [2005CriLJ4314]
Summary of the case:

Tata Indicom employees were arrested for manipulation of the electronic 32-bit number (ESN) programmed into cell phones that were exclusively franchised to Reliance Infocomm. The court held that such manipulation amounted to tampering with computer source code as envisaged by section 65 of the Information Technology Act, 2000.

Background of the case:

Reliance Infocomm launched a scheme under which a cell phone subscriber was given a digital handset worth Rs. 10,500 as well as service bundle for 3 years with an initial payment of Rs. 3350 and monthly outflow of Rs. 600. The subscriber was also provided a 1 year warranty and 3 year insurance on the handset.

The condition was that the handset was technologically locked so that it would only work with the Reliance Infocomm services. If the customer wanted to leave Reliance services, he would have to pay some charges including the true price of the handset. Since the handset was of a high quality, the market response to the scheme was phenomenal.

Unidentified persons contacted Reliance customers with an offer to change to a lower priced Tata Indicom scheme. As part of the deal, their phone would be technologically “unlocked” so that the exclusive Reliance handsets could be used for the Tata Indicom service.

Reliance officials came to know about this “unlocking” by Tata employees and lodged a First Information Report (FIR) under various provisions of the Indian Penal Code, Information Technology Act and the Copyright Act.

The police then raided some offices of Tata Indicom in Andhra Pradesh and arrested a few Tata Teleservices Limited officials for re-programming the Reliance handsets.

These arrested persons approached the High Court requesting the court to quash the FIR on the grounds that their acts did not violate the said legal provisions.

Issues raised by the Defence:

(1) Subscribers always had an option to change from one service provider to another.

(2) The subscriber who wants to change from Tata Indicom always takes his handset, to other service providers to get service connected and to give up Tata services.

(3) The handsets brought to Tata by Reliance subscribers are capable of accommodating two separate lines and can be activated on principal assignment mobile (NAM 1 or NAM 2). The mere activation of NAM 1 or NAM 2 by Tata in relation to a handset brought to it by a Reliance subscriber does not amount to any crime.

(4) A telephone handset is neither a computer nor a computer system containing a computer programme.

(5) There is no law in force which requires the maintenance of "computer source code". Hence section 65 of the Information Technology Act does not apply.

Findings of the court

(1) As per section 2 of the Information Technology Act, 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.

(2) The instructions or programme given to computer in a language known to the computer are not seen by the users of the computer/consumers of computer functions. This is known as source code in computer parlance.

(3) A city can be divided into several cells. A person using a phone in one cell will be plugged to the central transmitter of the telecom provider. This central transmitter will receive the signals and then divert them to the relevant phones.

(4) When the person moves from one cell to another cell in the same city, the system i.e., Mobile Telephone Switching Office (MTSO) automatically transfers signals from tower to tower.

(5) All cell phone service providers have special codes dedicated to them and these are intended to identify the phone, the phone's owner and the service provider.

(6) System Identification Code (SID) is a unique 5-digit number that is assigned to each carrier by the licensor. Every cell phone operator is required to obtain SID from the Government of India. SID is programmed into a phone when one purchases a service plan and has the phone activated.

(7) Electronic Serial Number (ESN) is a unique 32-bit number programmed into the phone when it is manufactured by the instrument manufacturer. ESN is a permanent part of the phone.

(8) Mobile Identification Number (MIN) is a 10-digit number derived from cell phone number given to a subscriber. MIN is programmed into a phone when one purchases a service plan.

(9) When the cell phone is switched on, it listens for a SID on the control channel, which is a special frequency used by the phone and base station to talk to one another about things like call set-up and channel changing.

(10) If the phone cannot find any control channels to listen to, the cell phone displays "no service" message as it is out of range.

(11) When cell phone receives SID, it compares it to the SID programmed into the phone and if these code numbers match, cell knows that it is communicating with its home system. Along with the SID, the phone also transmits registration request and MTSO which keeps track of the phone's location in a database, knows which cell phone you are using and gives a ring.

(12) So as to match with the system of the cell phone provider, every cell phone contains a circuit board, which is the brain of the phone. It is a combination of several computer chips programmed to convert analog to digital and digital to analog conversion and translation of the outgoing audio signals and incoming signals.

(13) This is a micro processor similar to the one generally used in the compact disk of a desktop computer. Without the circuit board, cell phone instrument cannot function.

(14) When a Reliance customer opts for its services, the MIN and SID are programmed into the handset. If someone manipulates and alters ESN, handsets which are exclusively used by them become usable by other service providers like TATA Indicom.

Conclusions of the court

(1) A cell phone is a computer as envisaged under the Information Technology Act.

(2) ESN and SID come within the definition of "computer source code" under section 65 of the Information Technology Act.

(3) When ESN is altered, the offence under Section 65 of Information Technology Act is attracted because every service provider has to maintain its own SID code and also give a customer specific number to each instrument used to avail the services provided.

(4) Whether a cell phone operator is maintaining computer source code, is a matter of evidence.

(5) In Section 65 of Information Technology Act the disjunctive word "or" is used in between the two phrases – (a) "when the computer source code is required to be kept" (b) "maintained by law for the time being in force".

SUMMARY

Acts penalized	(1) knowingly or intentionally concealing, destroying or altering computer source code (2) knowingly or intentionally causing another to conceal, destroy or alter computer source code
Punishment	Imprisonment upto 3 years and / or fine upto Rs 2 lakh
Punishment for attempt	Imprisonment upto 18 months and / or fine upto Rs 2 lakh
Punishment for abetment	Imprisonment upto 3 years and / or fine upto Rs 2 lakh
Whether cognizable?	Yes
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) Accused has concealed or destroyed or

	altered computer source code or caused another to do so (2) Accused did such act(s) with knowledge and / or intention (3) Accused does not have the legal rights with respect to the source code to do such act(s)
Points for defence	(1) Acts committed by the accused did not result in the source code being concealed, destroyed or altered (2) The acts of the accused were not done with knowledge or intention (3) Accused had the legal rights with respect to the source code to do such act(s)

THIRTEEN

13. Sec 66 - Computer related offenses

Computer related offences are covered by section 66 of the Information Technology Act. This section states as under:

66. Computer related offences.

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 three years or with fine which may extend to five lakh rupees or with both.

Explanation – For the purposes 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.

The acts referred to in section 43 of the *Information Technology Act* are:

(a) accessing or securing access to a computer, computer system, computer network or computer resource without the permission of the owner or person in-charge;

(b) downloading, copying or extracting any data, computer data base or information from a computer, computer system or computer network or removable storage medium without the permission of the owner or person in-charge;

(c) introducing or caused to be introduced any computer contaminant or computer virus into any computer, computer system or computer network without the permission of the owner or person in-charge;

(d) damaging or causing to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network without the permission of the owner or person in-charge;

(e) disrupting or causing disruption of any computer, computer system or computer network;

(f) denying or causing the denial of access to any person authorised to access any computer, computer system or computer network by any means without the permission of the owner or person in-charge;

(g) providing 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 without the permission of the owner or person in-charge;

(h) charging 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 without the permission of the owner or person in-charge;

(i) destroying, deleting or altering any information residing in a computer resource or diminishing its value or utility or affecting it injuriously by any means without the permission of the owner or person in-charge;

(j) stealing, concealing, destroying or altering or causing any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage without the permission of the owner or person in-charge;

Section 24 of *Indian Penal Code* states-

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 *Indian Penal Code* states-

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

Another relevant provision is Section 23 of *Indian Penal Code* which defines some of the words discussed above, as under:

"Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss".--"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully.--A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

SUMMARY:

Acts penalized	(1) dishonestly or fraudulently accessing or securing access to a computer, computer system, computer network or computer resource without the permission of the owner or person in-charge; (2) dishonestly or fraudulently downloading, copying or extracting any data, computer data base or information from a computer, computer system or computer network or removable storage medium without the permission of the owner or person in-charge; (3) dishonestly or fraudulently introducing or caused to be introduced any computer contaminant or computer virus into any computer, computer system or computer network without the permission of the owner or person in-charge; (4) dishonestly or fraudulently damaging or causing to be damaged any computer, computer system or computer network,

data, computer data base or any other programmes residing in such computer, computer system or computer network without the permission of the owner or person in-charge;

(5) dishonestly or fraudulently disrupting or causing disruption of any computer, computer system or computer network;

(6) dishonestly or fraudulently denying or causing the denial of access to any person authorised to access any computer, computer system or computer network by any means without the permission of the owner or person in-charge;

(7) dishonestly or fraudulently providing 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 without the permission of the owner or person in-charge;

(8) dishonestly or fraudulently charging 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 without the permission of the owner or person in-charge;

(9) dishonestly or fraudulently destroying, deleting or altering any information residing in a computer resource or diminishing its value or utility or affecting it injuriously by any means without the permission of the owner or person in-charge;

(10) dishonestly or fraudulently stealing, concealing, destroying or altering or causing any person to steal, conceal,

	destroy or alter any computer source code used for a computer resource with an intention to cause damage without the permission of the owner or person in-charge;
Punishment	Imprisonment upto 3 years and / or fine upto Rs 5 lakh
Punishment for attempt	Imprisonment upto 18 months and / or fine upto Rs 5 lakh
Punishment for abetment	Imprisonment upto 3 years and / or fine upto Rs 5 lakh
Whether cognizable?	Yes
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused committed one or more act prohibited by this section (2) The accused committed these acts dishonestly and / or fraudulently or has the relevant (3) The accused committed these acts without the permission of the owner or person in-charge
Points for defence	(1) The accused acted with the permission

	of the owner or person in-charge (2) The accused was the owner or person in-charge (3) The accused did not have the relevant intention or knowledge (4) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise

FOURTEEN

14. Sec 66A - Sending offensive messages

The Supreme Court of India in Shreya Singhal vs U.O.I on 24 March, 2015 declared "Section 66A of the Information Technology Act, 2000 is struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2)".

Section 66A of the Information Technology Act (IT Act) was much debated (and hated) primarily because it was seen as being against “freedom of speech” and also because it used “vague” words like grossly offensive, menacing character etc.

This section was not part of the original IT Act that came into force in 2000. It was added in 2009.

In the last few years, this section was used in many controversial cases including the April 2012 arrest of a Chemistry professor at Jadavpur University for forwarding a cartoon featuring the West Bengal CM Mamata Banerjee.

A month later, two Air India cabin crew members were arrested and jailed for 12 days for posting “derogatory” remarks against the Prime Minister’s Office, the national flag and the Supreme Court, while commenting on a strike by Air India pilots.

Later that year, two girls were arrested over a Facebook post questioning the shutdown in Mumbai for Shiv Sena patriarch Bal Thackeray's funeral. This arrest led a nation-wide protest and prompted a law student to file a public interest litigation challenging the constitutional validity of section 66A.

On 9th January, 2013, the Central Government issued an advisory to the effect that an arrest under section 66A must be first approved by an officer of the rank of the Inspector General, Deputy Commissioner or Superintendent of Police.

On 24th March, 2015, the Supreme Court, in a 122 page judgement, struck down section 66A in its entirety for violating the fundamental right of speech and expression.

FIFTEEN

15. Sec 66B - Dishonestly receiving stolen computer

Punishment for dishonestly receiving stolen computer resource or communication device is covered by section 66b of the Information Technology Act. This section states as under:

66B. Punishment for dishonestly receiving stolen computer resource or communication device

Whoever dishonestly receives or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both.

This section addresses the issue of dishonestly receiving stolen computer resource or communication device. This section applies to a person who dishonestly receives or retains

(1) any stolen computer resource (computer, computer system, computer network, data, computer data base or software), or

(2) any stolen communication device (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).

Section 24 of *Indian Penal Code* states- **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".** This section applies only if the person knows or has reason to believe that the computer resource or communication device is stolen.

Illustration: Sameer has been arrested several times in the past for offences relating to theft. One day, he approaches Parag with 15 cell phones and offers to sell them for half their market value. Parag buys the cell phones from Sameer and then sells them in his shop for the full market value. Parag would be liable under this section.

SUMMARY:

Acts penalized	(1) dishonestly receiving any stolen computer resource or communication device knowing or having reason to believe the same to be stolen (2) dishonestly retaining any stolen computer resource or communication device knowing or having reason to believe the same to be stolen
Punishment	Imprisonment upto 3 years and / or fine upto Rs 1 lakh
Punishment for attempt	Imprisonment upto 18 months and / or fine upto Rs 1 lakh
Punishment for	Imprisonment upto 3 years and / or fine

abetment	upto Rs 1 lakh
Whether cognizable?	Yes
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused dishonestly received / retained stolen computer resource or communication device (2) The accused knew or having reason to believe the same to be stolen
Points for defence	(1) The accused did not have reason to believe that the computer resource or communication device was stolen (2) The accused received / retained the computer resource or communication device for the purpose of handing it over to the police or the rightful owner (3) The accused received / retained the computer resource or communication device for the purpose of tracing the rightful owner (4) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise to ascertain that the said were stolen

SIXTEEN

16. Sec 66C - Identity Theft

Identity theft is covered by section 66C of the Information Technology Act. This section states as under:

66C. Punishment for identity theft.

Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.

This section penalises identity theft. This section applies to cases where someone who dishonestly or fraudulently does the following: (1) makes use of the electronic signature of any other person, or (2) makes use of the password of any other person, or (3) makes use of any other unique identification feature of any other person.

Illustration: Sameer is a junior employee in a bank. He oversees his senior Pooja typing her password into her official computer. One day, Sameer logs into the banks system using

Pooja's password and transfers some money into his account. He will be liable under this section.

Section 24 of *Indian Penal Code* states- **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 *Indian Penal Code* states- **A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.**

SUMMARY:

Acts penalized	(1) fraudulently making use of the electronic signature, password or any other unique identification feature of any other person (2) dishonestly making use of the electronic signature, password or any other unique identification feature of any other person
Punishment	Imprisonment upto 3 years and fine upto Rs 1 lakh
Punishment for attempt	Imprisonment upto 18 months and fine upto Rs 1 lakh
Punishment for abetment	Imprisonment upto 3 years and fine upto Rs 1 lakh
Whether cognizable?	Yes
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of

	18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused made use of the electronic signature, password etc of any other person (2) The accused did this act fraudulently and / or dishonestly (3) The accused did not have any permission or legal right to use the said electronic signature, password etc
Points for defence	(1) The accused did not have reason to believe that the electronic signature, password etc belonged to some other person (2) The accused had permission, express or implied, to use the said electronic signature, password etc (3) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise

SEVENTEEN

17. Sec 66D - Cheating by personation

Cheating by personation is covered by section 66D of the Information Technology Act. This section states as under:

66D. Punishment for cheating by personation by using computer resource

Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

The term "cheating" is defined in section 415 of the *Indian Penal Code*, which states:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to

that person in body, mind, reputation or property, is said to "cheat".

Explanation,--A dishonest concealment of facts is a deception within the meaning of this section.

The term “cheating by personation” is defined in section 416 of the *Indian Penal Code*, which states:

A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.--The offence is committed whether the individual personated is a real or imaginary person.

Illustration: Pooja receives an email that appears to have been sent from her bank. The email urges her to click on the link in the email. When she does so, she is taken to “a secure page on the bank’s website”.

She believes the web page to be authentic and enters her username, password and other information. In reality, the website is a fake and Pooja’s information is stolen and misused. The fake email and fake website had been created by Sameer. He would be liable under this section.

SUMMARY:

Acts penalized	(1) Cheating by personation using a computer resource (2) Cheating by personation using a cell

	phone or other communication device
Punishment	Imprisonment upto 3 years and fine upto Rs 1 lakh
Punishment for attempt	Imprisonment upto 18 months and fine upto Rs 1 lakh
Punishment for abetment	Imprisonment upto 3 years and fine upto Rs 1 lakh
Whether cognizable?	Yes
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused cheated someone (2) The said cheating was done by personation using a computer / communication device
Points for defence	(1) The accused did not have the relevant intention or knowledge (2) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise

EIGHTEEN

18. Sec 66E - Violation of privacy

Violation of privacy is covered by section 66E of the Information Technology Act. This section states as under:

66E. Punishment for violation of privacy.

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, public 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.

This section penalizes intentionally or knowingly doing the following in respect of the image of a private area of any person without consent: (1) capturing, or (2) publishing, or (3) transmitting. The above is penalized if it is done under circumstances violating the privacy of that person.

Illustration: Pooja is trying out a new dress in the changing room of a clothing store. Sameer, an employee of the store has hidden a camera that records Pooja while she is changing her clothes. Sameer will be liable under this section.

Illustration: Pooja is a model for a company selling ladies undergarments. As part of her modelling assignment, she poses in underwear. Siddharth is the photographer for that assignment. He takes several photographs of Pooja while she is wearing the underwear. Siddharth will not be liable under this section.

SUMMARY:

Acts penalized	(1) Intentionally capturing, publishing or transmitting the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person (2) Intentionally capturing, publishing or transmitting the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person
Punishment	Imprisonment upto 3 years and / or fine upto Rs 2- lakh
Punishment for attempt	Imprisonment upto 18 months and / or fine upto Rs 2 lakh
Punishment for abetment	Imprisonment upto 3 years and / or fine upto Rs 2 lakh
Whether cognizable?	Yes
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused intentionally or knowingly captured, published or transmitted the image of a private area of

	any person (2) The accused did so without the consent of the victim (3) The accused did so under circumstances violating the privacy of the victim
Points for defence	(1) The accused had obtained the consent of the victim, either expressly or impliedly (2) The circumstances were such that they did not violate the privacy of the victim (3) The accused did not have the relevant intention or knowledge (4) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise

NINETEEN

19. Sec 66F - Cyber Terrorism

Cyber Terrorism is covered by section 66F of the Information Technology Act. This section states as under:

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 authorised to access computer resource; or

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

(iii) introducing or causing to introduce 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 the critical information infrastructure specified under section 70; or

(B) 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 of 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, commits the offence of cyber terrorism.

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

SUMMARY:

Acts penalized	**(1)** Doing the following 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: (i) causing denial of access to computer resource;

	(ii) attempting to unauthorizedly penetrate or access a computer resource; or (iii) introducing any computer contaminant, **(2)** Acts in (1) above are penalized if by means of such conduct, the accused causes or is likely to cause the following: (i) death or injuries to persons, or (ii) damage to property, or (iii) destruction of property, or (iv) disruption of supplies or services essential to the life of the community, or (v) adverse affect to the critical information infrastructure specified under section 70. **(3)** Unauthorizedly and knowingly / intentionally penetrating or accessing a computer resource and obtaining access to: (i) information that is restricted for reasons of the security of the State or foreign relations; (ii) restricted information, with reasons to believe that such information may be used to cause or likely to cause injury to: (a) the interests of the sovereignty and integrity of India (b) the security of the State (c) friendly relations with foreign States (d) public order, decency or morality, (iii) restricted information, with reasons to believe that such information may be used: (a) in relation to contempt of court (b) defamation (c) incitement to an offence (d) to the advantage of any foreign nation, group of individuals or otherwise.

Punishment	Imprisonment upto life imprisonment
Punishment for attempt	Imprisonment upto 10 years
Punishment for abetment	Imprisonment upto life imprisonment
Whether cognizable?	Yes
Whether bailable?	No
Whether compoundable?	No.
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Court of Session
First appeal lies to	High Court
Points for prosecution	(1) The accused either had no authorization, or exceeded the authorization granted to him (2) The accused committed one or more of the acts penalized by this section
Points for defence	(1) The accused had authorization, whether express or implied (2) The accused did not have the relevant intention or knowledge (3) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise

TWENTY

20. Sec 67 - Transmitting obscene electronic material

Transmitting obscene electronic material is covered by section 67 of the Information Technology Act. This section states as under:

67. Punishment for publishing or transmitting obscene material in electronic form.

Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

There is no settled definition of pornography or obscenity. What is considered simply sexually explicit but not obscene in USA may well be considered obscene in India. There have been many attempts to limit the availability of pornographic content on the Internet by governments and law enforcement bodies all around the world but with little effect.

Pornography on the Internet is available in different formats. These range from pictures and short animated movies, to sound files and stories. The Internet also makes it possible to discuss sex, see live sex acts, and arrange sexual activities from computer screens. Although the Indian Constitution guarantees the fundamental right of freedom of speech and expression, it has been held that a law against obscenity is constitutional. The Supreme Court has defined obscene as "offensive to modesty or decency; lewd, filthy, repulsive.

Other than the Information Technology Act, other Indian laws that deal with pornography include the Indecent Representation of Women (Prohibition) Act and the Indian Penal Code.

This section explains what is considered to be obscene and also lists the acts in relation to such obscenity that are illegal. To understand what constitutes obscenity in the electronic form, let us analyse the relevant terms.

Any material in the context of this section would include video files, audio files, text files, images, animations etc. These may be stored on CDs, websites, computers, cell phones etc.

Lascivious is something that tends to excite lust.

Appeals to, in this context, means “arouses interest”.

Prurient interest is characterized by lustful thoughts.

Effect means to produce or cause some change or event.

Tend to deprave and corrupt in the context of this section means “to lead someone to become morally bad”.

Persons here refers to natural persons (men, women, children) and not artificial persons (such as companies, societies etc).

Having understood these terms, let us analyse what constitutes obscenity. To be considered obscene for the purpose of this section, the matter must satisfy at least one of the following conditions: (1) it must tend to excite lust, or (2) it must arouse interest in lustful thoughts, or (3) it must cause a person to become morally bad.

The above conditions must be satisfied in respect of a person who is the likely target of the material. This can be understood from the following illustration:

Illustration: Sameer launches a website that contains information on sex education. The website is targeted at higher secondary school students. Pooja is one such student who is browsing the said website. Her illiterate young maid servant happens to see some explicit photographs on the website and is filled with lustful thoughts.

This website would not be considered obscene. This is because it is most likely to be seen by educated youngsters who appreciate the knowledge sought to be imparted through the photographs. It is under very rare circumstances that an illiterate person would see these explicit images.

To understand the acts that are punishable in respect of obscenity in the electronic form, let us analyse the relevant terms.

Publishes means “to make known to others”. It is essential that at least one natural person (man, woman or child) becomes aware or understands the information that is published. Simply putting up a website that is never visited by any person does not amount to publishing.

Illustration: Sameer has just hosted a website containing his articles written in English. Sameer has not published the articles. An automated software released by an Internet search engine indexes Sameer’s website. Sameer has still not published the articles. A Chinese man, who does not understand a word of English, accidentally visits Sameer’s website. Sameer has still not published the articles. Pooja, who understands English, visits Sameer’s website and reads some of his articles. Now, Sameer has published his articles.

Transmits means to pass along, convey or spread. It is not necessary that the “transmitter” actually understands the information being transmitted.

Illustration: Sameer has just hosted a website containing his articles. Pooja uses an Internet connection provided by Noodle Ltd to visit Sameer’s website. Noodle Ltd has transmitted Sameer’s articles to Pooja. However, Noodle employees are not actually aware of the information being transmitted by their computers.

Causes to be published means "to bring about the publishing of something". It is essential that the actual publishing must take place.

Illustration: Sameer has just hosted a website containing his articles. An automated software released by Noodle Internet search engine indexes Sameer's website. But no human being has still used that index to read these articles. Noodle has not caused Sameer's articles to be published. Based upon the index created by Noodle, Pooja reaches Sameer's website and reads some of his articles. Now, Noodle has caused Sameer's articles to be published.

Information in the electronic form includes websites, songs on a CD, movies on a DVD, jokes on a cell phone, photo sent as an email attachment etc.

CASE LAW: Avnish Bajaj vs. State (N.C.T.) of Delhi [(2005)3CompLJ364(Del), 116(2005)DLT427, 2005(79)DRJ576]

Summary of the case

Avnish Bajaj, CEO of Baazee.com, an online auction website, was arrested for distributing cyber pornography. The charges stemmed from the fact that someone had sold copies of a pornographic CD through the Baazee.com website. The court granted him bail in the case.

The major factors considered by the court were:

(1) There was no prima facie evidence that Mr. Bajaj directly or indirectly published pornography,

(2) The actual obscene recording/clip could not be viewed on Baazee.com,

(3) Mr. Bajaj was of Indian origin and had family ties in India.

Background

Avnish Bajaj is the CEO of Baazee.com, a customer-to-customer website, which facilitates the online sale of property. Baazee.com receives commission from such sales and also generates revenue from advertisements carried on its web pages.

An obscene MMS clipping was listed for sale on Baazee.com on 27th November, 2004 in the name of “DPS Girl having fun". Some copies of the clipping were sold through Baazee.com and the seller received the money for the sale. Avnish Bajaj was arrested under section 67 of the Information Technology Act, 2000 and his bail application was rejected by the trial court. He then approached the Delhi High Court for bail.

Issues raised by the Prosecution

(1) The accused did not stop payment through banking channels after learning of the illegal nature of the transaction.

(2) The item description "DPS Girl having fun" should have raised an alarm.

Issues raised by the Defence

(1) Section 67 of the Information Technology Act relates to publication of obscene material. It does not relate to transmission of such material.

(2) On coming to learn of the illegal character of the sale, remedial steps were taken within 38 hours, since the intervening period was a weekend.

Findings of the court

(1) It has not been established that publication took place by the accused, directly or indirectly.

(2) The actual obscene recording/clip could not be viewed on the portal of Baazee.com.

(3) The sale consideration was not routed through the accused.

(4) Prima facie Baazee.com had endeavored to plug the loophole.

(5) The accused had actively participated in the investigations.

(6) The nature of the alleged offence is such that the evidence has already crystallized and may even be tamper proof.

(7) Even though the accused is a foreign citizen, he is of Indian origin with family roots in India.

(8) The evidence that has been collected indicates only that the obscene material may have been unwittingly offered for sale on the website.

(9) The evidence that has been collected indicates that the heinous nature of the alleged crime may be attributable to some other person.

Decision of the court

(1) The court granted bail to Mr. Bajaj subject to furnishing two sureties of Rs. 1 lakh each.

(2) The court ordered Mr. Bajaj to surrender his passport and not to leave India without the permission of the Court.

(3) The court also ordered Mr. Bajaj to participate and assist in the investigation.

SUMMARY:

Acts penalized	(1) Publishing or transmitting obscene electronic material (2) Causing to be published or transmitted obscene electronic material
Punishment	On first conviction: Imprisonment of either description upto 3 years and fine upto Rs 5 lakh On subsequent conviction: Imprisonment of either description upto 5 years and fine upto Rs 10 lakh
Punishment for attempt	Imprisonment upto 18 months and / or fine upto Rs 5 lakh
Punishment for abetment	Imprisonment upto 3 years and / or fine upto Rs 5 lakh
Whether cognizable?	Yes
Whether bailable?	Yes
Whether compoundable?	On first conviction: Yes However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman

	On subsequent conviction: No
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused published or transmitted obscene electronic material (2) The accused caused obscene electronic material to be published or transmitted
Points for defence	(1) The electronic material was of such nature that it would not be considered obscene by the intended recipient (2) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise (3) The electronic material was for the public good (e.g. in the interest of science, literature, art, learning etc) (4) The electronic material was kept or used for bona fide heritage or religious purposes.

TWENTY ONE

21. Sec 67A - Electronic material containing sexually explicit act

Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form is covered by section 67A of the Information Technology Act. This section states as under:

67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

This section penalises publishing or transmitting of material containing sexually explicit act in the electronic form.

Illustration: Sameer and Pooja are engaged in the act of sexual intercourse in their hotel room. Siddharth, an employee of the hotel uses a hidden video camera to record this act. He then copies this video recording onto a CD and gives a copy to his friend. Siddharth is liable under this section.

This section does not apply to material justified as being for the public good (e.g. in the interest of science, literature, art, learning etc) or which is kept or used for bona fide heritage or religious purposes.

SUMMARY:

Acts penalized	(1) Publishing or transmitting electronic material containing sexually explicit act or conduct (2) Causing to be published or transmitted electronic material containing sexually explicit act or conduct
Punishment	On first conviction: Imprisonment of either description upto 5 years and fine upto Rs 10 lakh On subsequent conviction: Imprisonment of either description upto 7 years and fine upto Rs 10 lakh
Punishment for attempt	Imprisonment upto 30 months and / or fine upto Rs 10 lakh
Punishment for abetment	Imprisonment upto 5 years and / or fine upto Rs 10 lakh
Whether cognizable?	Yes
Whether bailable?	No
Whether	No

compoundable?	
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused published or transmitted electronic material containing sexually explicit act or conduct (2) The accused caused such material to be published or transmitted
Points for defence	(1) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise (2) The electronic material was for the public good (e.g. in the interest of science, literature, art, learning etc) (3) The electronic material was kept or used for bona fide heritage or religious purposes.

TWENTY TWO

22. Sec 67B - Child Pornography

Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form is covered by section 67B of the Information Technology Act. This section states as under:

67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.

Whoever, -

(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or

(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or

(d) facilitates abusing children online; or

(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,

shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form –

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for bona fide heritage or religious purposes.

Explanation – For the purposes of this section, “children” means a person who has not completed the age of 18 years.

This section penalises acts relating to obscene electronic material involving persons below the age of 18 years. The following acts are punishable under this section:

(1) Publishing or transmitting electronic material which depicts children engaged in sexually explicit act or conduct;

(2) Causing to be published or transmitted electronic material which depicts children engaged in sexually explicit act or conduct;

(3) Creating text or digital images depicting children in obscene or indecent or sexually explicit manner;

(4) Collecting, seeking, browsing, downloading, advertising, promoting, exchanging or distributing electronic material depicting children in obscene or indecent or sexually explicit manner;

(5) Enticing or inducing children for online relationships for sexually explicit acts;

(6) Facilitating the online abuse of children;

(7) Recording in any electronic form sexually explicit acts with children.

This section does not apply to material justified as being for the public good (e.g. in the interest of science, literature, art, learning etc) or which is kept or used for bona fide heritage or religious purposes.

SUMMARY:

Acts penalized	(1) Publishing or transmitting electronic material which depicts children engaged in sexually explicit act or conduct (2) Causing to be published or transmitted electronic material which depicts children engaged in sexually explicit act or conduct (3) Creating text or digital images depicting children in obscene or indecent or sexually explicit manner (4) Collecting, seeking, browsing, downloading, advertising, promoting, exchanging or distributing electronic material depicting children in obscene or indecent or sexually explicit manner (5) Cultivating, enticing or inducing children to online relationship with one or more children for sexually explicit act (6) Cultivating, enticing or inducing children to online relationship with one or more children in a manner that may offend a reasonable adult (7) Facilitating abusing children online (8) Recording in any electronic form abuse pertaining to sexually explicit act with children
Punishment	On first conviction: Imprisonment of either description upto 5 years and fine upto Rs 10 lakh On subsequent conviction: Imprisonment of either description upto 7 years and fine

	upto Rs 10 lakh
Punishment for attempt	Imprisonment upto 30 months and / or fine upto Rs 10 lakh
Punishment for abetment	Imprisonment upto 5 years and / or fine upto Rs 10 lakh
Whether cognizable?	Yes
Whether bailable?	No
Whether compoundable?	No
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	The accused committed one or more of the acts penalized by this section
Points for defence	(1) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise (2) The electronic material was for the public good (e.g. in the interest of science, literature, art, learning etc) (3) The electronic material was kept or used for bona fide heritage or religious purposes (4) The person(s) depicted in the electronic material were above 18 years of age

TWENTY THREE

23. Sec 67C - Preservation and retention of information by intermediaries

Preservation and retention of information by intermediaries is covered by section 67C of the Information Technology Act. This section states as under:

67C. Preservation and retention of information by intermediaries

(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 shall also be liable to fine.

SUMMARY:

Acts penalized	(1) Intentionally or knowingly failing to preserve and retain information specified by the Central Government (2) Intentionally or knowingly failing to preserve and retain such information for such duration and in such manner and format as prescribed.
Punishment	Imprisonment upto 3 years and fine
Punishment for attempt	Imprisonment upto 18 months and fine
Punishment for abetment	Imprisonment upto 3 years and fine
Whether cognizable?	Yes
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The intermediary intentionally or knowingly failed to preserve and retain information specified by the Central Government (2) The intermediary intentionally or knowingly failed to preserve and retain such information for such duration and in

	such manner and format as prescribed.
Points for defence	(1) The said information was destroyed for reasons beyond the control of the intermediary e.g. a virus attack, hard-disk failure etc (2) Prescribed information was never available to the intermediary. (3) The failure to retain / preserve the information was on account of mistake or reasons beyond the control of the intermediary (4) There was no knowledge or intention behind the failure to retain / preserve the information

TWENTY FOUR

24. Sec 68 - Power of the Controller to give directions

Power of the Controller to give directions are covered by section 68 of the Information Technology Act. This section states as under:

68. Power of the Controller to give directions.

(1) The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made thereunder.

(2) Any person who intentionally or knowingly fails to comply with any order under sub-section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one lakh rupees or with both.

This is a simple section that empowers the Controller to order a Certifying Authority and its employees to comply with the

Information Technology Act and allied laws. If they do not comply with the order to take suitable measures or cease certain activities, then they are liable for punishment under this section.

Illustration: The Controller orders Siddharth, a director of Noodle Certifying Authority to provide information about Sameer. Noodle had issued a digital signature certificate to Sameer. This information is needed in the adjudication of a case involving Sameer. If Noodle does not provide this information, it will be liable under this section.

Illustration: Noodle Certifying Authority is making statements in the media against other Certifying Authorities. Such statements are affecting the public confidence in the use of digital signatures and e-governance. The Controller orders Siddharth, a director of Noodle Certifying Authority to stop making such statements. If Siddharth does not stop such activities, he will be liable under this section.

SUMMARY:

Acts penalized	Intentionally or knowingly failing to comply with the order of the Controller
Punishment	Imprisonment upto 2 years and / or fine upto Rs 1 lakh
Punishment for attempt	Imprisonment upto 1 year and / or fine upto Rs 1 lakh
Punishment for abetment	Imprisonment upto 2 years and / or fine upto Rs 1 lakh

Whether cognizable?	No
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The Controller directed a Certifying Authority or its employee to take specified measures or cease carrying on specified measures. (2) The order was issued to ensure compliance with the provisions of the Information Technology Act and allied rules or regulations. (3) The Certifying Authority or its employee knowingly and intentionally failed to comply with the order of the Controller
Points for defence	(1) The non-compliance was for reasons

	beyond the control of the certifying authority or its employee (2) The non-compliance was on account of mistake or reasons beyond the control of the certifying authority or its employee (3) There was no knowledge or intention behind the non-compliance (4) The order of the Controller was not issued to ensure compliance with the provisions of the Information Technology Act and allied rules or regulations (5) Complying with the order would have resulted in violation of the law for the time being in force

TWENTY FIVE

25. Sec 69 - Interception or monitoring or decryption of any information

Power to issue directions for interception or monitoring or decryption of any information through any computer resource are covered by section 69 of the Information Technology Act. This section states as under:

69. Power to issue directions for interception or monitoring or decryption of any information through any computer resource.

(1) Where the Central Government or a State Government or any of its officers specially authorised by the Central Government or the State Government, as the case may be, in this behalf may, if satisfied that it is necessary or expedient so to do, in the interest of the sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above or for investigation of any offence, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the appropriate

Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information generated, transmitted, received or stored in any computer resource.

(2) The procedure and safeguards subject to which such interception or monitoring or decryption may be carried out, shall be such as may be prescribed.

(3) The subscriber or intermediary or any person in-charge of the computer resource shall, when called upon by any agency referred to in sub-section (1), extend all facilities and technical assistance to –

(a) provide access to or secure access to the computer resource generating, transmitting, receiving or storing such information; or

(b) intercept, monitor, or decrypt the information, as the case may be; or

(c) provide information stored in computer resource.

(4) The subscriber or intermediary or any person who fails to assist the agency referred to in sub-section (3) shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Section 69 is a very important section that gives wide powers to the Government to intercept, monitor and decrypt information under special circumstances. The outline of this section is:

(1) The Government can direct any agency (e.g. police, CBI etc) to intercept, monitor or decrypt information generated, transmitted, received or stored in any computer resource.

(2) The reasons for this order are to be recorded in writing.

(3) The Government must be satisfied that this order is necessary: (a) in the interest of the sovereignty or integrity or defence of India, or (b) in the interest of the security of the State, or (c) in the interest of friendly relations with foreign States, or (d) in the interest of public order, or (d) for preventing incitement to the commission of any cognizable offence relating to the above, or (e) for investigation of any offence.

(4) The Government agency can call upon any person for assistance to monitor, provide access to, intercept or decrypt information.

(5) If such a person does not provide such assistance then he is liable for imprisonment up to 7 years and fine.

Illustration: It is suspected that some terrorists are using the Noodle Ltd email services to plan a terrorist attack in India. The Government directs the police to intercept these emails.

The police request Sameer, the Director of Noodle Ltd for assistance in obtaining these emails. Sameer refuses to cooperate. He would be liable under this section.

Illustration: The Controller suspects that Parag and Siddharth are planning a major hacking attempt on Indian Government websites. The Government directs the police to intercept information being transmitted by them on the Internet.

The suspects are using the Internet services provided by Noodle Ltd. The police request Sameer, the Director of Noodle Ltd for assistance in obtaining this information. Sameer refuses to cooperate. He would be liable under this section.

Under the *Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009*, the competent authority is Secretary in the Department of Home Affairs (in case of the Central Government) and Secretary in charge of the Home Department (in case of State Government or Union Territory).

Some of the important terms defined under Rule 2 of the Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 are:

(c) "Decryption" means the process of conversion of information in non-intelligible form to intelligible information via a mathematical formula, code, password or algorithm or a combination thereof;

(d) "Decryption assistance" means to – (i) allow access, to the extent possible, to encrypted information; or (ii) facilitate conversion of encrypted information into an intelligible form;

(e) "Decryption direction" means a direction issued under Rule (3) in terms of which a decryption key holder is directed to – (i) disclose a decryption key; or (ii) provide decryption assistance in respect of encrypted information

(f) "Decryption key" means any key, mathematical formula, code, password, algorithm or any other data which is used to -

(i) allow access to encrypted information: or (ii) facilitate the conversion of encrypted information into an intelligible form;

(g) “Decryption key holder” means any person who deploys the decryption mechanism and who is in possession of a decryption key for purposes of subsequent decryption of encrypted information relating to direct or indirect communications;

(i) “Intercept” with its grammatical variations and cognate expressions, means the aural or other acquisition of the contents of any information through the use of any means, including an interception device, so as to make some or all of the contents of a information available to a person other than the sender or recipient or intended recipient of that communication, and includes the - (a) monitoring of any such communication by means of a monitoring device; (b) viewing, examination or inspection of the contents of any direct or indirect information; and (c) diversion of any direct or indirect information from its intended destination to any other destination;

(j) “Interception device“ means any electronic, mechanical, electro-mechanical, electro-magnetic, optical or other instrument, device, equipment or apparatus which is used or can be used whether by itself or in combination with any other instrument, device, equipment or apparatus, to intercept any information;

and a reference to an “interception device” includes, where applicable, a reference to a “monitoring device”;

(l) “Monitor” with its grammatical variations and cognate expressions, includes, to view or to inspect or listen to or record information by means of a monitoring device;

(m) “Monitoring device” means any electronic, mechanical, electro-mechanical, electro-magnetic, optical or other instrument, device, equipment or apparatus which is used or can be used, whether by itself in combination with any other instrument, device, equipment or apparatus, to view or to inspect or to listen to or record any information;

The procedure and safeguards have been detailed under the Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009.

SUMMARY:

Acts penalized	(1) Not providing access to the relevant computer resource (2) Not providing assistance to intercept, monitor, or decrypt the relevant information (3) Not providing assistance to provide relevant information
Punishment	Imprisonment upto 7 years and fine
Punishment for attempt	Imprisonment upto 3.5 years and fine
Punishment for abetment	Imprisonment upto 7 years and fine
Whether cognizable?	Yes
Whether bailable?	No
Whether compoundable?	No

Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused did not extend all facilities and technical assistance to provide access to the relevant computer resource (2) The accused did not extend all facilities and technical assistance to intercept, monitor, or decrypt the information (3) The accused did not extend all facilities and technical assistance to provide information stored in the relevant computer resource
Points for defence	(1) The order was not issued by the authorized agency or official (2) The reasons for the order were not recorded (3) The prescribed procedures and safeguards were not carried out by the authorized agency or official (4) The accused did not have the technical capabilities to comply with the order (5) The accused was unable to comply with the order due to reasons outside its control

TWENTY SIX

26. Sec 69A - Blocking of information for public access

Power to issue directions for blocking for public access of any information through any computer resource is covered by section 69A of the Information Technology Act. This section states as under:

69A. Power to issue directions for blocking for public access of any information through any computer resource.

(1) Where the Central Government or any of its officers specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access

by the public any information generated, transmitted, received, stored or hosted in any computer resource.

(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine.

The *Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009* contain detailed provisions relating to the procedure and safeguards for blocking for access of information by public.

Section 69A gives powers to the Government to block access to information under special circumstances. The outline of this section is:

(1) The Government can direct any Government agency or intermediary to block for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.

(2) The reasons for this order are to be recorded in writing.

(3) The Government must be satisfied that this order is necessary: (a) in the interest of the sovereignty or integrity or defence of India, or (b) in the interest of the security of the State, or (c) in the interest of friendly relations with foreign States, or (d) in the interest of public order, or (e) for

preventing incitement to the commission of any cognizable offence relating to the above.

(4) If the intermediary does not comply, it will be liable for imprisonment up to 7 years and fine.

SUMMARY:

Acts penalized	Not blocking for access, by the public, specified information
Punishment	Imprisonment upto 7 years and fine
Punishment for attempt	Imprisonment upto 3.5 years and fine
Punishment for abetment	Imprisonment upto 7 years and fine
Whether cognizable?	Yes
Whether bailable?	No
Whether compoundable?	No
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused did not block for access by the public any information generated, transmitted, received, stored or hosted in any computer resource (2) The accused did not cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource

Points for defence	(1) The order was not issued by the authorized agency or official (2) The reasons for the order were not recorded (3) The prescribed procedures and safeguards were not carried out by the authorized agency or official (4) The accused did not have the technical capabilities to comply with the order (5) The accused was unable to comply with the order due to reasons outside its control

27. Sec 69B - Monitoring and collecting traffic data

Power to authorise to monitor and collect traffic data or information through any computer resource for cyber security is covered by section 67A of the Information Technology Act. This section states as under:

69B. Power to authorise to monitor and collect traffic data or information through any computer resource for cyber security.

(1) The Central Government may, to enhance cyber security and for identification, analysis and prevention of intrusion or spread of computer contaminant in the country, by notification in the Official Gazette, authorise any agency of the Government to monitor and collect traffic data or information generated, transmitted, received or stored in any computer resource.

(2) The intermediary or any person in-charge or the computer resource shall, when called upon by the agency which has been authorised under sub-section (1), provide technical assistance and extend all facilities to such agency to enable online access or to secure and

provide online access to the computer resource generating, transmitting, receiving or storing such traffic data or information.

(3) The procedure and safeguards for monitoring and collecting traffic data or information, shall be such as may be prescribed.

(4) Any intermediary who intentionally or knowingly contravenes the provisions of sub-section (2) shall be punished with an imprisonment for a term which any extend to three years and shall also be liable to fine.

Explanation. – For the purposes of this section, -

(i) "computer contaminant" shall have the meaning assigned to it in section 43;

(ii) "traffic data" means any data identifying or purporting to identify any person, computer system or computer network or location to or from which the communication is or may be transmitted and includes communications origin, destination, route, time, date, size, duration or type of underlying service and any other information.

The *Information Technology (Procedure and Safeguard for Monitoring and Collecting Traffic Data or Information) Rules, 2009* contain detailed provisions for the procedure and safeguard for monitoring and collecting traffic data or information. Some of the important terms defined in rule 2 include:

(f) “Cyber security incident” means any real or suspected adverse event in relation to cyber security that violates an explicitly or implicitly applicable security policy resulting in unauthorized access, denial of service/ disruption, unauthorized use of a computer resource for processing or storage of information or changes to data, information without authorization;

(g) “Cyber security breaches” means unauthorized acquisition or unauthorized use by a person of data or information that compromises the confidentiality, integrity or availability of information maintained in a computer resource;

(i) “Information security practices” means implementation of security policies and standards in order to minimize the cyber security incidents and breaches;

(k) “Monitor” with its grammatical variations and cognate expressions, includes to view or inspect or record or collect traffic data or information by means of a monitoring device;

(l) “Monitoring device” means any electronic, mechanical, electro-mechanical, electro-magnetic, optical or other instrument, device, equipment or apparatus which is used or can be used, whether by itself in combination with any other instrument, device, equipment or apparatus, to view or inspect or record or collect traffic data or information;

(m) “Port” or “Application Port” means a set of software rules which identifies and permits communication between application to application, network to network, computer to computer, computer system to computer system;

(o) security policy means documented business rules and processes for protecting information and the computer resource;

Section 69B gives powers to the Government to monitor and collect traffic data or information for cyber security. The outline of this section is:

(1) The Central Government can authorise any Government agency to monitor and collect traffic data or other electronic information.

(2) Such an authorization can be made under the following circumstances: (a) to enhance cyber security in the country (b) for identification, analysis and prevention of intrusion in the country, or (c) for identification, analysis and prevention of spread of computer contaminant in the country.

(3) Such an authorization must be made by a notification in the Official Gazette.

SUMMARY:

Acts penalized	(1) Not providing technical assistance to the authorized agency (2) Not extending all relevant facilities to the authorized agency
Punishment	Imprisonment upto 3 years and fine
Punishment for attempt	Imprisonment upto 18 months and fine
Punishment for abetment	Imprisonment upto 3 years and fine
Whether cognizable?	Yes
Whether bailable?	Yes

Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused did not provide technical assistance to the authorized agency (2) The accused did not extend all relevant facilities to the authorized agency
Points for defence	(1) The order was not issued by the authorized agency or official (2) The prescribed procedures and safeguards were not carried out by the authorized agency or official (3) The accused did not have the technical capabilities to comply with the order (4) The accused was unable to comply with the order due to reasons outside its control

TWENTY EIGHT

28. Sec 70 - Protected System

Protected Systems are covered by section 70 of the Information Technology Act. This section states as under:

70. Protected system.

(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[1].

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;

[1] Also refer to Executive Order dated 12th September, 2002 which states inter alia that “For the purpose of sub-section 1 of Section 70 of the Act, details of every protected computer, computer system or computer network so notified by appropriate government may be informed to the Controller of Certifying Authorities, Department of Information Technology, 6 CGO Complex, New Delhi for the purpose of records and exercising powers under the said Act”.

(2) The appropriate Government may, by order in writing, authorise the persons who are authorised 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.

There are three elements to this section-

(1) Gazette notification by the appropriate Government for declaring a computer resource as a protected system[2].

(2) Government order authorizing persons to access protected systems.

(3) Punishment for securing access or attempting to secure access to protected systems by unauthorised persons.

Let us discuss the relevant terms and issues in detail.

Appropriate government is determined as per Schedule VII of the Constitution of India. Schedule VII of the Constitution of

[2] To be declared as a Protected System, a computer resource must be such that it directly or indirectly affects the facility of Critical Information Infrastructure. "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.

India contains three lists – Union, State and Concurrent. Parliament has the exclusive right to make laws on items covered in the Union List e.g. defence, Reserve Bank of India etc. State Governments have the exclusive right to make laws on items covered in the State List e.g. police, prisons etc. Parliament as well as the State Governments can make laws on matters in the Concurrent List e.g. forests, electricity etc.

Illustration: If the computer network of the Indian Army is to be declared as a protected system, the Central Government would be the appropriate Government.

Illustration: If the computer network of the Mumbai police is to be declared as a protected system, the Government of Maharashtra would be the appropriate Government.

Illustration: If the computer network of the Forest Department in Maharashtra is to be declared as a protected system, the Central Government as well as the Government of Maharashtra would be the appropriate Government.

All the acts, rules, regulations etc passed by the Central and State Government are notified in the Official Gazette. The Official Gazette in the electronic form is called the Electronic Gazette. A notification becomes effective on the date of its publication in the Gazette.

The Government order may specify the authorised persons by name or by designation (e.g. all officers of rank of Inspector and above deputed in a particular department).

The term “securing access” in this section is a grammatical variation of the term “secures access” as discussed earlier.

Attempt to secure access is a very wide term and can best be understood through the following illustrations.

Illustration: Sameer runs a password cracking software to crack the password of a protected system. Irrespective of whether he succeeds in cracking the password, he is guilty of attempting to secure access.

Illustration: Sameer runs automated denial of service software to bring down the firewall securing a protected system. Irrespective of whether he succeeds in bringing down the firewall, he is guilty of attempting to secure access.

Illustration: Sameer sends a Trojan by email to Pooja, who is the network administrator of a protected system. He plans to Trojanize Pooja's computer and thereby gain unauthorised access to the protected system. Irrespective of whether he succeeds in finally accessing the protected system, he is guilty of attempting to secure access.

As per Executive Order dated 12th September, 2002, issued by Ministry of Communications & Information Technology, details of every protected system should be provided to the Controller of Certifying Authorities.

SUMMARY:

Acts penalized	(1) Securing access to a protected system (2) Attempting to secure access to a protected system
Punishment	Imprisonment upto 10 years and fine
Punishment for attempt	Imprisonment upto 10 years and fine

Punishment for abetment	Imprisonment upto 10 years and fine
Whether cognizable?	Yes
Whether bailable?	No
Whether compoundable?	No
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Court of Session
First appeal lies to	High Court
Points for prosecution	(1) The accused secured access to a protected system (2) The accused attempted to secure access to a protected system
Points for defence	(1) The accused was authorised to access the protected system (2) The accused did not have the relevant intention or knowledge (3) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise

TWENTY NINE

29. Sec 70B - Indian Computer Emergency Response Team

Section 70B of the Information Technology Act provides for the Indian Computer Emergency Response Team to serve as national agency for incident response. This section states as under:

70B. Indian Computer Emergency Response Team to serve as national agency for incident response

(1) The Central Government shall, by notification in the Official Gazette, appoint an agency of the Government to be called the Indian Computer Emergency Response Team.

(2) The Central Government shall provide the agency referred to in sub-section (1) with a Director-General and such other officers and employees as may be prescribed.

(3) The salary and allowances and terms and conditions of the Director-General and other officers and employees shall be such as may be prescribed.

(4) The Indian Computer Emergency Response Team shall serve as the national agency for performing the following functions in the area of cyber security,-

(a) collection, analysis and dissemination of information on cyber incidents;

(b) forecast and alerts of cyber security incidents;

(c) emergency measures for handling cyber security incidents;

(d) coordination of cyber incidents response activities;

(e) issue guidelines, advisories, vulnerability notes and whitepapers relating to information security practices, procedures, preventation, response and reporting of cyber incidents;

(f) such other functions relating to cyber security as may be prescribed.

(5) The manner of performing functions and duties of the agency referred to in sub-section (1) shall be such as may be prescribed.

(6) For carrying out the provisions of sub-section (4), the agency referred to in sub-section (1) may call for information and give direction to the service providers, intermediaries, data centers, body corporate and any other person.

(7) Any service provider, intermediaries, data centers, body corporate or person who fails to provide the information called for or comply with the direction under

sub-section (6), shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees or with both.

(8) No court shall take cognizance of any offence under this section, except on a complaint made by an officer authorised in this behalf by the agency referred to in sub-section (1).

SUMMARY:

Acts penalized	(1) The accused did not provide the information called for by the Indian Computer Emergency Response Team (2) The accused did not comply with a direction of Indian Computer Emergency Response Team
Punishment	Imprisonment upto 1 year and / or fine upto Rs 1 lakh
Punishment for attempt	Imprisonment upto 6 months and / or fine upto Rs 1 lakh
Punishment for abetment	Imprisonment upto 1 year and / or fine upto Rs 1 lakh
Whether cognizable?	No
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under

	section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused did not provide the information called for by the Indian Computer Emergency Response Team (2) The accused did not comply with a direction of Indian Computer Emergency Response Team
Points for defence	(1) The accused did not have the technical capabilities to provide the information (2) The accused did not have the technical capabilities to comply with the direction (3) The accused was unable to comply with the direction due to reasons outside its control (4) The accused was unable to comply with the direction due to reasons outside its control

THIRTY

30. Sec 71 - Penalty for misrepresentation

Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form is covered by section 71 of the Information Technology Act. This section states as under:

71. Penalty for misrepresentation.

Whoever makes any misrepresentation, to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any licence or Electronic Signature Certificate, as the case may be, shall be punished with imprisonment for a terms which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

This section applies to:

(1) a person, who, for obtaining an electronic signature certificate (a) makes a misrepresentation to the Certifying Authority or (b) suppresses any material fact from the Certifying Authority.

(2) a person obtaining a license to operate as a Certifying Authority (a) makes a misrepresentation to the Controller or (b) suppresses any material fact from the Controller.

Let us examine the essential terms of this section.

Misrepresentation implies “presenting information incorrectly, improperly or falsely”. There must be a deliberate intention to deceive.

> **Illustration:** Sameer is applying for a digital signature certificate. He fills in his name as “Siddharth” and also submits photocopies of Siddharth’s passport as proof of identity. Sameer is liable for misrepresenting information to the Certifying Authority.

Suppress implies “to withhold from disclosure”.

> **Illustration:** Noodle Ltd is applying for a licence to become a Certifying Authority. One of the questions in the application form is “In case any of the company directors been convicted for a criminal offence, then please mention relevant details.”
>
> One of the Noodle directors has been convicted in the past. But, Noodle officials submit the filled in form with the answer to this question being left blank. The officials will be liable for suppressing information from the Controller.

Material fact implies something that is “relevant, pertinent or essential”.

SUMMARY:

Acts penalized	(1) Misrepresentation to the Controller for obtaining any licence (2) Suppression of any material fact from the Controller for obtaining any licence (3) Misrepresentation to the Certifying Authority for obtaining any Electronic Signature Certificate (4) Suppression of any material fact from the Certifying Authority for obtaining any Electronic Signature Certificate
Punishment	Imprisonment upto 2 years and / or fine upto Rs 1 lakh
Punishment for attempt	Imprisonment upto 1 year and / or fine upto Rs 1 lakh
Punishment for abetment	Imprisonment upto 2 years and / or fine upto Rs 1 lakh
Whether cognizable?	No
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused made a misrepresentation to the Controller for obtaining any licence

	(2) The accused suppressed a material fact from the Controller for obtaining any licence (3) The accused made a misrepresentation to the Certifying Authority for obtaining any Electronic Signature Certificate (4) The accused suppressed a material fact from the Certifying Authority for obtaining any Electronic Signature Certificate
Points for defence	(1) The act was a result of a mistake or negligence and was not done with knowledge or intention (2) The alleged misrepresentation or suppression was due to incorrect information provided to the accused by others (3) The acts were committed accidentally or by mistake as the accused did not have the relevant technical expertise

THIRTY ONE

31. Sec 72 - Breach of confidentiality and privacy

Penalty for breach of confidentiality and privacy is covered by section 72 of the Information Technology Act. This section states as under:

72. Penalty for breach of confidentiality and privacy.

Save as otherwise provided in this Act or any other law for the time being in force, if any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person 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 essential elements of this section are:

(1) It applies to persons who have secured access to some information in pursuance of a power granted under the IT Act or its allied laws (e.g. police, adjudicating officers, Controller etc.).

(2) Such persons must disclose this information to a third person without authorisation.

(3) There must be no law which permits such disclosure of information.

> **Illustration:** Pooja is a Deputy Superintendent of Police and is investigating an alleged violation of the IT Act. She raids the premises of one of the suspects, Sameer.
>
> During the raid, she seizes several documents and CDs containing incriminating evidence. She later discloses this information to the Magistrate trying the case. Even though Sameer's permission is not taken, Pooja would not be liable under this section. This is because the Code of Criminal Procedure permits such information and evidence to be disclosed to the Court. However, if Pooja discloses such information to the press without Sameer's permission, then she will be liable under this section.

SUMMARY:

Acts penalized	(1) Disclosure of records without consent (2) Person who discloses records must have obtained the same in pursuance of powers conferred under the Information Technology Act or allied rules, regulations etc
Punishment	Imprisonment upto 2 years and / or fine upto Rs 1 lakh
Punishment for attempt	Imprisonment upto 1 year and / or fine upto Rs 1 lakh
Punishment for abetment	Imprisonment upto 2 years and / or fine upto Rs 1 lakh
Whether cognizable?	No
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused disclosed records without consent (2) The accused had obtained the records in pursuance of powers conferred under the Information Technology Act or allied rules, regulations etc
Points for defence	(1) The accused had not obtained the

	records in pursuance of powers conferred under the Information Technology Act or allied rules, regulations etc (2) The disclosure was a result of a mistake or negligence and was not done with knowledge or intention (3) The disclosure was committed accidentally or by mistake as the accused did not have the relevant technical expertise (4) The accused had obtained consent for the disclosure (5) The accused was acting in the discharge of his duties under the law

THIRTY TWO

32. Sec 72A - Disclosure of information in breach of lawful contract

Punishment for disclosure of information in breach of lawful contract. is covered by section 72A of the Information Technology Act. This section states as under:

72A. Punishment for disclosure of information in breach of lawful contract.

Save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person, shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.

This section applies to: any person (including an intermediary) who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person. This person will be penalised if he discloses such material:

(1) without the consent of the person concerned, or in breach of a lawful contract, and

(2) with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain.

This section does not apply if the person reveals this information in compliance with any law.

> **Illustration:** Sameer works in a call-centre for a large bank. He has access to the financial records of all the customers of the bank. He comes to know that Pooja has fixed deposits worth Rs 2 crore. He passes on this information to his friend Siddharth, who starts threatening Pooja in order to extort money from her. Sameer would be liable under this section.

> **Illustration:** Sameer works in a call-centre for a large bank. He has access to the financial records of all the customers of the bank. One day, he is approached by the police who are seeking information about a suspected terrorist who happens to be a customer of the bank. Sameer hands over the banking records of this suspect to the police. He would not be liable under this section as he is acting in conformance with the law which requires everyone to assist the police.

SUMMARY:

Acts penalized	(1) Disclosure of personal information about some other person (2) The disclosure must either be without consent or in breach of contract (3) There must be intention to cause wrongful loss or wrongful gain or knowledge that wrongful loss or wrongful gain may be caused
Punishment	Imprisonment upto 3 years and / or fine upto Rs 5 lakh
Punishment for attempt	Imprisonment upto 18 months and / or fine upto Rs 5 lakh
Punishment for abetment	Imprisonment upto 3 years and / or fine upto Rs 5 lakh
Whether cognizable?	Yes
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused disclosed personal information about some other person (2) The accused made the disclosure either without consent or in breach of

	contract (3) The accused had the intention to cause wrongful loss or wrongful gain or knowledge that wrongful loss or wrongful gain may be caused
Points for defence	(1) The act was a result of a mistake or negligence and was not done with knowledge or intention (2) The disclosure was committed accidentally or by mistake as the accused did not have the relevant technical expertise (3) The accused had obtained consent for the disclosure (4) The accused was acting in the discharge of his duties under the law (5) The accused did not breach the terms of any contract

THIRTY THREE

33. Sec 73 - Publishing false Electronic Signature Certificate

Penalty for publishing Electronic Signature Certificate false in certain particulars is covered by section 73 of the Information Technology Act. This section states as under:

73. Penalty for publishing Electronic Signature Certificate false in certain particulars.

(1) No person shall publish a Electronic Signature Certificate or otherwise make it available to any other person with the knowledge that-

(a) the Certifying Authority listed in the certificate has not issued it; or

(b) the subscriber listed in the certificate has not accepted it; or

(c) the certificate has been revoked or suspended,

unless such publication is for the purposes of verifying a digital signature created prior to such suspension or revocation.

(2) Any person who contravenes the provisions of sub-section (1) 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.

Let us examine this section through some illustrations.

> **Illustration:** Sameer has created a fake digital signature certificate purporting to have been issued by Noodle Certifying Authority. Sameer plans to use this certificate to carry out some financial frauds. He posts this certificate on his website. He is liable under this section.

> **Illustration:** Pooja has applied to Noodle Certifying Authority for a digital signature certificate. Noodle in due course issues the certificate to Pooja. She, however, does not accept it as some of the details are incorrect in the certificate. In the meanwhile, Noodle Ltd publishes her certificate in their online repository. In this case, Noodle Ltd will be liable under this section.

> **Illustration:** Pooja is employed with Noodle Ltd. She has obtained a digital signature certificate for official purposes on 1st January. She quits her job on 1st July and her certificate is revoked on that day. Noodle Ltd continues to keep Pooja's revoked certificate in its online repository even after 1st July. Noodle Ltd will be liable under this section. They will not be liable if the purpose behind keeping Pooja's certificate in their repository is to verify documents signed by Pooja between 1st January and 1st July.

SUMMARY:

Acts penalized	(1) Publishing an Electronic Signature Certificate with the knowledge that the Certifying Authority listed in it has not issued it (2) Publishing an Electronic Signature Certificate with the knowledge that the subscriber listed in it has not accepted it (3) Publishing an Electronic Signature Certificate with the knowledge that the certificate has been revoked or suspended
Punishment	Imprisonment upto 2 years and / or fine upto Rs 1 lakh
Punishment for attempt	Imprisonment upto 1 year and / or fine upto Rs 1 lakh
Punishment for abetment	Imprisonment upto 2 years and / or fine upto Rs 1 lakh
Whether cognizable?	No
Whether bailable?	Yes
Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused published an Electronic Signature Certificate with the knowledge

	that the Certifying Authority listed in it has not issued it (2) The accused published an Electronic Signature Certificate with the knowledge that the subscriber listed in it has not accepted it (3) The accused published an Electronic Signature Certificate with the knowledge that the certificate has been revoked or suspended
Points for defence	(1) The act was a result of a mistake or negligence and was not done with knowledge or intention (2) The disclosure was committed accidentally or by mistake as the accused did not have the relevant technical expertise (3) The publication was for the purposes of verifying a digital signature created prior to such suspension or revocation. (4) The accused was acting in the discharge of his duties under the law

THIRTY FOUR

34. Sec 74 - Publication for fraudulent purpose

74. Publication for fraudulent purpose.

Whoever knowingly creates, publishes or otherwise makes available a Electronic Signature Certificate for any fraudulent or unlawful purpose 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.

SUMMARY:

Acts penalized	Knowingly creating, publishing or making available an Electronic Signature Certificate for any fraudulent or unlawful purpose
Punishment	Imprisonment upto 2 years and / or fine upto Rs 1 lakh
Punishment for attempt	Imprisonment upto 1 year and / or fine upto Rs 1 lakh
Punishment for abetment	Imprisonment upto 2 years and / or fine upto Rs 1 lakh
Whether cognizable?	No
Whether bailable?	Yes

Whether compoundable?	Yes. However, it shall not be compounded if the crime affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or against a woman
Investigation authorities	(1) Police officer not below the rank of Inspector (2) Controller (3) Officer authorised by Controller under section 28 of Information Technology Act
Relevant court	Magistrate of the first class
First appeal lies to	Court of Session
Points for prosecution	(1) The accused knowingly created, published or made available an Electronic Signature Certificate for any fraudulent purpose (2) The accused knowingly created, published or made available an Electronic Signature Certificate for any unlawful purpose
Points for defence	(1) The act was a result of a mistake or negligence and was not done with knowledge or intention (2) The disclosure was committed accidentally or by mistake as the accused did not have the relevant technical expertise (3) The act was not for any fraudulent purpose (4) The act was not for any unlawful purpose