

JMC 208- Media Laws and Ethics

Unit III

IT Act 2000 and Section 67, Section 292 of IPC

Introduction - The Information Technology Act, 2000

The Information Technology Act, 2000 provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as 'electronic commerce', which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend The Indian Penal Code, The Indian Evidence Act, 1872, The Banker's Books Evidence Act, 1891 and The Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

The Information Technology Act, 2000 extend to the whole of India and it applies also to any offence or contravention thereunder committed outside India by any person.

Salient Features of The Information Technology Act, 2000

The salient features of The IT Act, 2000 are as follows –

Digital signature has been replaced with electronic signature to make it a more technology neutral act.

It elaborates on offenses, penalties, and breaches.

It outlines the Justice Dispensation Systems for cyber-crimes.

The Information Technology Act defines in a new section that cyber café is any facility from where the access to the internet is offered by any person in the ordinary course of business to the members of the public.

It provides for the constitution of the Cyber Regulations Advisory Committee.

The Information Technology Act is based on The Indian Penal Code, 1860, The Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, The Reserve Bank of India Act, 1934, etc.

It adds a provision to Section 81, which states that the provisions of the Act shall have overriding effect. The provision states that nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957.

Application of The Information Technology Act, 2000

Nothing in The Information Technology Act, 2000 shall apply to documents or transactions specified in the First Schedule: Provided that the Central Government may, by notification in the Official Gazette, amend the First Schedule by way of addition or deletion of entries thereto. Every notification issued shall be laid before each House of Parliament.

Following are the documents or transactions to which the Act shall not apply –

Negotiable Instrument(Other than a cheque) as defined in The Negotiable Instruments Act, 1881;

A power-of-attorney as defined in The Powers of Attorney Act, 1882;

A trust as defined in The Indian Trusts Act, 1882;

A will as defined in The Indian Succession Act, 1925 including any other testamentary disposition;

Any contract for the sale or conveyance of immovable property or any interest in such property;

Any such class of documents or transactions as maybe notified by the Central Government.

Amendments Brought in The Information Technology Act, 2000

The Information Technology Act, 2000 has brought amendment in four statutes vide section 91-94. These changes have been provided in schedule 1-4.

The first schedule contains the amendments in the Penal Code. It has widened the scope of the term “document” to bring within its ambit electronic documents.

The second schedule deals with amendments to the India Evidence Act. It pertains to the inclusion of electronic document in the definition of evidence.

The third schedule amends the Banker’s Books Evidence Act. This amendment brings about change in the definition of “Banker’s-book”. It includes printouts of data stored in a floppy, disc, tape or any other form of electromagnetic data storage device. Similar change has been brought about in the expression “Certified-copy” to include such printouts within its purview.

The fourth schedule amends the Reserve Bank of India Act. It pertains to the regulation of fund transfer through electronic means between the banks or between the banks and other financial institution.

A major amendment was made in 2008. Amendment introduced the Section 66A which penalized sending of “offensive messages”. It also introduced the Section 69, which gave authorities the power of “interception or monitoring or decryption of any information through any computer resource”. It also introduced penalties for child porn, cyber terrorism and voyeurism. Amendment was passed on 22 December 2008 without any debate in Lok Sabha. The next day it was passed by the Rajya Sabha. It was signed by the then President (Pratibha Patil) on 5 February 2009.

Objectives of the Amendments in the Information Technology Act, 2000:

With proliferation of information technology enabled services such as e-governance, e-commerce and e-transactions, protection of personal data and information and implementation of security practices and procedures relating to these applications of electronic communications have assumed greater importance and they require harmonization with the provisions of the Information Technology Act. Further, protection of Critical Information Infrastructure is pivotal to national security, economy, public health and safety, so it has become necessary to declare such infrastructure as a protected system so as to restrict its access.

A rapid increase in the use of computer and internet has given rise to new forms of crimes like publishing sexually explicit materials in electronic form, video voyeurism and breach of confidentiality and leakage of data by intermediary, e-commerce frauds like personation commonly known as Phishing, identity theft and offensive messages through communication services. So, penal provisions are required to be included in the Information Technology Act, the Indian Penal Code, the Indian Evidence Act and the Code of Criminal Procedure to prevent such crimes.

The United Nations Commission on International Trade Law (UNCITRAL) in the year 2001 adopted the Model Law on Electronic Signatures. The General Assembly of the United Nations by its resolution No. 56/80, dated 12th December, 2001, recommended that all States accord favorable consideration to the said Model Law on Electronic Signatures. Since the digital signatures are linked to a specific technology under the existing provisions of the Information Technology Act, it has become necessary to provide for alternate technology of electronic signatures for bringing harmonization with the said Model Law.

The service providers may be authorized by the Central Government or the State Government to set up, maintain and upgrade the computerized facilities and also collect, retain appropriate service charges for providing such services at such scale as may be specified by the Central Government or the State Government.

Offences under the Information Technology Act, 2000

The Information Technology Act, 2000 has specified that Tampering with computer source documents, Hacking computer system, Publishing of information which is obscene in electronic form or failure of a CA or its employees to follow the directions/ Orders of the CCA, failure to comply with Directions of Controller to a subscriber to extend facilities to decrypt information, accessing a protected system without proper authorization, material mis-representation, Penalty for publishing Electronic Signature Certificate false particulars, Publication for fraudulent purpose, sending of grossly offensive information, false information, etc will be offences

Section 67

Offence - Publishing information which is obscene in electronic form.

Description -If a person publishes or transmits or causes to be published 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.

Penalty - Imprisonment up to five years, or/and with fine up to ₹1,000,000

Section 67A

Offence - Publishing images containing sexual acts

Description -If a person publishes or transmits images containing a sexual explicit act or conduct.

Penalty - Imprisonment up to seven years, or/and with fine up to ₹1,000,000

Section 67B

Offence - Publishing child porn or predated children online

Description -If a person captures, publishes or transmits images of a child in a sexually explicit act or conduct. If a person induces a child into a sexual act. A child thus defined as anyone under 18.

Penalty - Imprisonment up to five years, or/and with fine up to ₹1,000,000 on first conviction. Imprisonment up to seven years, or/and with fine up to ₹1,000,000 on second conviction.

Section 67C

Offence - Failure to maintain records

Description -Persons deemed as intermediary (such as an ISP) must maintain required records for stipulated time. Failure is an offence.

Penalty - Imprisonment up to three years, or/and with fine.

In detail

Section 67 – Punishment for publishing or transmitting obscene material in electronic form
Relevant Case: This case is about posting obscene, defamatory and annoying message about a divorcee woman in the Yahoo message group. E-mails were forwarded to the victim for information by the accused through a false e- mail account opened by him in the name of the victim. These postings resulted in annoying phone calls to the lady. Based on the lady's complaint, the police nabbed the accused. Investigation revealed that he was a known family friend of the victim and was interested in marrying her. She was married to another person, but that marriage ended in divorce and the accused started contacting her once again. On her reluctance to marry him he started harassing her through internet.

Verdict: The accused was found guilty of offences under section 469, 509 IPC and 67 of IT Act 2000. He is convicted and sentenced for the offence as follows:

- As per 469 of IPC he has to undergo rigorous imprisonment for 2 years and to pay fine of Rs.500/-
- As per 509 of IPC he is to undergo to undergo 1 year Simple imprisonment and to pay Rs 500/-
- As per Section 67 of IT Act 2000, he has to undergo for 2 years and to pay fine of Rs.4000/-

All sentences were to run concurrently.

The accused paid fine amount and he was lodged at Central Prison, Chennai. This is considered the first case convicted under section 67 of Information Technology Act 2000 in India.

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

Relevant Case: Janhit Manch & Ors. v. The Union of India 10.03.2010 Public Interest Litigation: The petition sought a blanket ban on pornographic websites. The NGO had argued that websites displaying sexually explicit content had an adverse influence, leading youth on a delinquent path.

Reference / Source

<http://kanoon.nearlaw.com/2017/10/28/information-technology-act-2000/>
<https://niiconsulting.com/checkmate/2014/06/it-act-2000-penalties-offences-with-case-studies/>

Description of IPC Section 292

According to section 292 of Indian penal code,

For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, 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.

Whoever: sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, reduces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

offers or attempts to do any act which is an offence under this section, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a 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 five thousand rupees.

Punishment : First conviction 2 Years + Fine, then 5 Years + Fine

Reference / Source

<https://lawrato.com/indian-kanoon/ipc/section-292>