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.