



P.G. Diploma Cyber Law

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SUPPLIMENTARY

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Penalties, Compensation and Offences

CHAPTER IX & XI

Penalties, compensation and offences are dealt in different Chapters in the Act. Chapter IX, which lays down for adjudication as discussed above, it also enumerates the various penalties and compensation and the entailing civil consequences. Chapter XI deals exclusively with offences.

12.1 Penalties and compensation

Three kinds of contraventions have been listed out in the Act providing for civil liability. Firstly, penalty and compensation for damage to computer, computer system, and computer network or computer resources under section 43 of the Act. Secondly penalty for failure to furnish information, returns, etc. under section 44. And finally section 45 contains the residuary penalty.

12.2 Compensation for damage to computer, computer system, and computer network or computer resources

The following acts, if carried out by any person without the permission of the owner or any other person who is in charge of a computer, computer system or computer network, would lead to the contravention of the act causing such person shall be liable to pay damages by way of compensation to the person so affected (section 43).

- a) Accesses or secures access to a computer, computer system or computer network or computer resource. This refers to unauthorised entering to the system i.e hacking.
- b) Downloads, copies or extracts any data, computer database or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium. This provides for penalty for data theft, infringement of copyright.
- c) Introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network.
- d) Damages or causes to be damage any computer, computer system or computer network, data, computer database or any other programmes residing in such computer, computer system or computer network.
- e) Disrupts or causes disruption of any computer, computer system or computer network.
- f) Denies or causes the denial of access to any person authorized to access any computer, computer system or computer network by any means;
- 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 there under;

- h) Charges the services availed of by a person to the account of another person by tampering with or manipulation any computer, computer system or computer network. This refers to theft of Internet hours;
- 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;
- 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.

12.3 Compensation for failure to protect data: Section 43A has been introduced to provide Compensation for failure to protect data in case 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.

12.4 Penalty for misrepresentation or suppression of material facts and breach of confidentiality and privacy relating to electronics records: Section 71 provides for penalty for misrepresentation or suppression of material facts from controller or certifying authorities. Section 72 lays down penalty for breach of confidentiality and privacy relating to electronics records. In both cases imprisonment for two years or fine of rupees one lakh or both can be imposed.

12.5 Contravention of the provisions of the Act: Section 76 provides for Confiscation of computer, computer system, floppies, compact disks, tape drives or any other accessories in respect of which any provision of this Act, rules, orders or regulations has been or is being contravened.