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CYBER CRIMES IN FINANCIAL ACTIVITIES

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Abstract

Cyberlaw as a discipline continues to keep on developing at a very rapid pace. New advances in technology require new legal interpretations which have to be not just in sync with the requirements of the times but which must also mirror the aspirations, hopes and expectations of the users. In the present Article it contains a detail list of various kinds of financial cybercrimes committed through the means of Computer network and Internet by the fraudsters.

There are various types of Cyber Crimes which are directly related to financial or monetary gains by illegal means, to achieve this end, the fraudsters in the cyber world use different techniques and schemes i.e., Modus Operandi to befooled other users on the Internet. Some of the cases of online fraud and cheating that have come to light are credit card crimes, online auction frauds, online investment schemes, phishing, digital forgery, offering job and other financial related cybercrimes which are covered under this Article.

The subject matter of cybercrime is so vast and fathomless and changing with such astonishing speed that it baffles imaginations and is not very easy to comprehend and grasp it. However, a humble attempt is made in this Article to analyze Cybercrimes in financial activities in relation to the Indian legal framework for Cyber Law regime, along with the relevant case laws.

Keywords- Cybercrime, Financial Cybercrime, Cyber Law, IT Act, IPC, Internet Frauds, Online Fraudsters.

Introduction

The Information Technology is increasingly harnessing in a big way to bring in greater efficiency, accuracy and speed in the business. The advances and potentialities have also attracted the unscrupulous.[161] Persons in the cyber world who commit Cyber Crimes related to financial or monetary gains by illegal means could be suitably called as fraudsters. They use different fraudulent schemes envisaged over the Internet for their benefit. Various activities of these fraudsters can be collectively called as "Internet Frauds"

Internet offers certain unique advantages which no other medium has like anonymity and speed. It also offers a global marketplace for consumers and business. These factors together make up a haven for any fraudulent activities online.

I. Various kinds of Financial Cyber Crime-

A. Online Auction Trade

Most reported incidents of Internet Fraud involve the online auction trade. People who use online auction websites often report cases of fraud such as failure to deliver merchandise, misleading description of products and providing false or deceptive business contact information.[162] Successful resolution of online auction Internet Fraud can be challenging. Thus, potential bidders should make an effort to learn

[161] Meijboom, A. P. 'Problems Related to the Use of EFT and Teleshopping Systems by the Consumer', in Poullet, Y. and Vandenberghe, G. P. V. Telebanking, Teleshopping and the Law, Kulwer Law and Taxation Publishers, Deventer, 1998.

[162] Michael Pollick, What is the most common Internet Related Fraud? http://www.wisegeek.com/ what-is-the most- common-internet-related-fraud.htm.

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as much about a seller as possible before entering into any kind of financial transaction.[163]

B. Identity Theft

Some internet users provide an extraordinary amount of personal information online. One's valuable identity data if fallen into wrong hands could be misused, to personally profit at others expense. Identity theft is used to refer to all types of crime in which someone wrongful obtains and uses another person's personal data in some way that involves fraud or deception, typically for economic gain. Unauthorised purchases on victim's credit card are quite common followed closely by access to private banking information and accounts.

In India, the IT Act of 2000; deals with such identity theft and cheating by personation u/s 66C and 66D. *Section 66C* – this section scrutinizes the identity thefts related to imposter digital signatures, hacking passwords, or other distinctive identification features. If proven guilty, imprisonment of three years might also be backed by Rs. 1 lakh fine. Further, *section 66D* – this section was inserted on demand focusing on punishing cheaters doing impersonation using computer resources.

C. Phishing

In computing, phishing is a form of social engineering, characterized by attempts to fraudulently acquire sensitive information, such as passwords and credit card details, by masquerading as a trustworthy person or business in an apparently official electronic communication, such as an email or an instant message.[164] The term *phishing* arises from the use of increasingly sophisticated lures to "fish" for users' financial information and passwords.[165]

D. Violation of Copyrights

It is an infamous sector of this illegal market. Oftentimes offenders make illegal copies of music, movies and software. The rise and fall of the Napster website is the best example of how it works. In the 21st century it is easy to become a trespasser in cyberspace and thus IPR infringement is becoming more widespread and diverse as Internet and network technologies progress. For Instance, someone buys a CD with music and rips it using special software, changing the audio file into .mp3 format, then with help of online program downloaded connect to the peer-to-peer type network. After that everyone can download that file from the member's hard disk. Resulting in denial to gain fruits of his labour and not retrieving his expenses.

E. Cyber Money laundering

Money laundering is the process by which criminals conceal or disguise the proceeds of their crimes or convert those proceeds into goods and services. It allows criminals to infuse their illegal money into thee stream of commerce, thus corrupting financial institutions and the money supply and giving criminals unwarranted economic power. In today's world the Internet provides an occasion to launder money stemming from criminal activities, with the development of electronic means of payment or fund transfers.[166] This is called cyber money laundering.

F. Digital Forgery

Forgery is creation of a document which one knows is not genuine and yet projects the same as if it is genuine. Digital forgery implies making use of digital technology to forge a document. Creating forged documents is an obvious area of crime that has benefited from developments in technology. Most genuine documents are now created using computers, current software-based products for digital manipulation provide a powerful tool for even the most amateur forgers.

Section 91 of the IT Act amended the provisions of IPC in relation to 'forgery' to include 'electronic records' as well. Section 29A of IPC

[163] What is internet fraud? http:// www.usdoj.gov/criminal/fraud/internet/.
[164] Lance James, Phishing Exposed, Elsevier 2005.
[165] Tan, Koon. Phishing and Spamming via IM (SPIM). Internet Storm Centre.
[166] Malander R.C., Mussington D.A., and Wilson P.A., Cyberpayments and Money Laundering, Problems and Promote, RAND, Critical Technology Institute, Washington, 1997

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provides for a definition of 'electronic record'. Suitably other relevant sections[167] have also been amended by Section 91 to include electronic record and digital forgery within their ambit. Therefore, digital forgery and offences related to it are now covered under IPC pursuant to the amendments made by the IT Act.[168]

G. Nigerian Scam

Other forms of Internet Fraud include the Nigerian scam, also known as "419" Scam[169] in which recipients of an unsolicited e-mail are asked to provide a safe bank account for the transfer of frozen or illegal funds. In this, the scammers promise to forward the winnings in exchange for a substantial processing fee.[170] Once this initial money is collected, the scammers either disappear or clean out the victim's bank account.

H. Credit Card fraud

Financial transactions through credit cards involve online processes whereby transaction is not confined to the customer and the issuer bank but there are other parties involved. Credit card fraud as the name suggests, involves misusing someone else's credit cards for one's own benefit. This risk has increased manifold specially after the advent of e-commerce.

In India, there is no separate legislation dealing with credit or debit card frauds. The RBI being the parent bank, keeps releasing guidelines so as to save the interest of both customers and banks. The IPC, 1860 as well as the IT Act, 2000 provides for punitive provision related to credit card fraud in India, which ranges from 3 to 7 years of imprisonment and fine based on the offence committed.[171]

I. Online Investment and Business Opportunity Schemes

Investment fraudsters lie to investors about deals to get money from them. Such scams often include offers for investment opportunities that are low to no risk with a guaranteed return and never before seen strategies or unregistered securities. The modus operandi is well scripted and have different kinds of these schemes like, Pyramid Schemes, Pump and dump, Advance fee, Chain letters, etc. To curb this the Stock Exchanges and SEBI have regularly been sending emails and messages on mobiles to guide investors about the dos and don'ts of investing in the stock market. According to NSE investor awareness circular, investors should stay away from schemes that assure unreasonably high returns. They should never trust any written or oral promises assuring guaranteed returns in equity and derivative markets.[172]

Online business opportunity schemes or job fraud is nothing but an attempt to defraud people who are in need of employment by giving them a false hope/promise of better employment with higher wages.[173]

J. Online Betting and Gambling

One area that raises both jurisdiction and identification issues is Internet gambling. Gambling in many countries is illegal but most virtual casinos are based offshore making them difficult to regulate. That means people offer gambling services on Internet from countries where gambling is permitted and players from countries where gambling is illegal play and bet. Thus, in this situation the Internet helps gamblers to evade law.

Online gambling in India is in grey area. The government has imposed restrictions on online betting and gambling. Under Entry 34, List II, of the Constitution of India, each state has the power to regulate gambling within such state.

[167] Sections- 463, 464, 466, 468, 469, 470, 471 and 476 of the Indian Penal Code.
[168] Verma S K, Mittal Raman (eds.), Legal Dimensions of Cyberspace, Indian Law Institute, New Delhi, 2004.
[169] Named after its Nigerian criminal code, the "419" penal law was revised and expanded with the issuance in April 1995, of Presidential Decree No.13 entitled Advance Fee Fraud and other Fraud Offences Decree 1995.
[170] Online Privacy, Privacy Rights Clearinghouse, Privacy and Internet: Travelling in Cyberspace Safely, www.privacyrighs.org.
[171] Credit Card Fraud in India, July 4, 2022, Vidhikarya, www.vidhikarya.com.
[172] Fraudsters disguise as market experts to dupe investors, by Vijay Gurav, ET Contributors, Mar 11, 2023, The Economic Times, economictimes.indiatimes.com.
[173] Cyber Crime Portal, Ministry of Home Affairs, Government of India, https://cybercrime.gov.in

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This has led to different definitions of betting and gambling by each state. Gambling is regulated in India by the Public Gambling Act 1867. Since this law is passed before the Internet ever existed, it has no mention of online gambling. India also has the IT Act of 2000; however, this too has no mention of anything about online gambling.[174] Thus, the regulation of online gambling in India is still in its early stages.

K. Sale of illegal articles

Internet is being now being used to sell articles which otherwise are not permitted to be sold under the law of a country. It is committed by using computer as a tool through the Internet where not only one gets a better and bigger market but also anonymity. For instance, section 7 of the Arms Act, 1959 specifically prohibits sale of any prohibited arms or ammunition by any person. Section 9B of the Indian Explosive Act, 1884 makes sale of any explosive an offence if done in contravention of the rules. Likewise, section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 prohibits sale or purchase of any narcotic drug or psychotropic substance. Similarly, the sale of banned animal products would be covered under the Wild Life (Protection) Act,1972. Therefore, as far as the issue of legality of sale of any article on the Internet is considered, it would be governed by a specific statute. Merely because it is being sold online would not change the character of sale and would still be within the ambit of the prohibitory provision of the enactment.[175]

II. Position in India

The Financial Cybercrime includes cheating, credit card frauds, money laundering, etc. such crimes are punishable under both IPC and IT Act. Most cases involving computer-related fraud have been prosecuted under the existing criminal legislation and this has been adequate to cope with these offences. However, applying traditional criminal concepts to acts involving intangible information has meant that some amendments have proved necessary to resolve issues of applying existing definitions to the new technology.[176]

There are various legislations in India which deals with the Fraud and related activities, some of them are:

A. Indian Penal Code, 1860

1. Section 25 of IPC[177] does attempt to define the word fraudulently by saying that there can be no fraud unless there is an intention to defraud.
2. A conclusive test as to the fraudulent character of a deception for criminal purpose is whether to it is deceit derived any advantage from it which he would not have had if the truth had been known.
3. Fraud encompasses within its fold the scam of the Internet. Both the essential requisites of fraud i.e., deceit or intention to deceive and actual a possible injury to an individual or a group of individuals are present in such scams.
4. All such scams whatever their *modus operandi,* are intended to gain advantage for some almost always at the risk of loss to others.
5. Sections 415 to 420, IPC,[178] detail the law relating to cheating, in the case of Internet Scams relevant sections relating to the crime of cheating may be applied according to the facts of the case.
6. Other primary relevant section of the IPC covering Cyber Frauds and punishment for committing certain online financial frauds are Forgery (Section 464), Forgery pre-planned for cheating (Section 468), False documentation (Section 471), Reputation damage (Section 469).

[174] The legality of Online Gambling in India: Current Regulations and What's Ahead, Jan 16, 2023, India Legal Live, www.indialegallive.com.
[175] Verma S K, Mittal Raman (eds.), Legal Dimensions of Cyberspace, Indian Law Institute, New Delhi, 2004.
[176] Economic Crime in India: an ever-increasing phenomenon, Global Economic Crime Survey 2005, India, Price Waterhouse Coopers, 2005.
[177] Indian Penal Code (Act No. 45 of Year 1860).
[178] Sec 415 - Cheating, Sec 416 – Cheating by impersonation, Sec 417 – Punishment for cheating, Sec 418 – Cheating with Knowledge that wrongful loss may ensure to person whose interest offender is bound to protect, Sec 419 – Punishment for cheating by impersonation and Sec 420 – Cheating and dishonestly inducing delivery of property.

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B. The Information Technology Act, 2000

1. The IT Act, 2000[179] deals with the crimes relating to Internet Fraud and Online Investment Fraud in Sections 43(d), 65 and 66.
2. Section 43(d) penalizes a person who damages or causes damage to data. 'Damage', under clause (iv) of the Explanation, means to destroy, alter, add, modify or rearrange any computer resource by any means. Therefore, unauthorized alteration of data would come within the ambit of Section 43(d) which is sufficient to cover computer crimes like issuance of false stocks or market manipulation schemes, etc.
3. Section 65 of the Act makes tampering with the computer source code an offence. 'Computer source code' has been defined as listing of programmes, computer commands, design and layout and programme analysis of computer resources in any form.
4. Internet fraud would also come within the scope of Section 66 of the IT Act dealing with wrongful loss or damage to the public or any person due to destruction or alteration of any data residing in a computer resource or due to diminishing its value or utility or affecting it injuriously by any means.

Other related enactments are the Companies (Management and Administration) Rules, 2014 under the Companies Act, 2013; Securities and Exchange Board of India Act, 1992 and the Information Technology Rules of 2011; 2013 and; 2021. However, these statutes/rules do not explicitly or directly deal with the subject matter i.e., cybercrime in financial activities.

III. Landmark Judgments involving Financial Cybercrime.

In a landmark judgement in the case of ***Nasscom v. Ajay Sood & Others***[180] the Delhi High Court declared 'phishing' on the internet to be an illegal act. Elaborating on this concept to set a precedent in India, the court stated that it is a form of internet fraud where person pretends to be a legitimate association, in order to extract personal data from a customer.

In ***Sony Sambandh case,***[181] this case revolved around credit card fraud through Internet. This was one among the landmark cases of Cyber Law because it displayed that the IPC, 1890 can be an effective legislation to rely on when the IT Act, 2000 is not adequate/exhaustive.

Conclusion

Cyber-crime is an evil having its origin in the growing dependence on Computers and Internet in modern life. Life is about a mix of good and evil. So is the Cyberspace. For all the good it does us, it has its dark sides too. Enormous amount of money is being earned by the Cybercriminals, either by causing huge damage to the computer systems or by stealing information which is marketable or by way of some foul play through network.

To prohibit these activities, the IT Act, 2000 is part of India's legal framework for Cyber Law. It attempts to change outdated laws and provides ways to deal with cybercrimes. It is the parent legislation that intends to provide penalties for a variety of Cyber-crimes. The Act offers much needed legal framework so that information is not denied legal effect, validity or enforceability, solely on the ground that it is in the form of electronic records.

It is important to note that one may also take recourse to the provisions of the Indian Penal Code, 1860 when the IT Act is unable to provide for any specific type of offence or if it does not contain exhaustive/adequate provisions with respect to an offence related to Cyberspace. Even still, it is clear that Cyber law regime in India, is not competent enough to deal with all sorts of Cybercrimes existing in the constantly changing technology and the modus operandi of cybercriminals.

[179] The Information Technology Act, 2000 (No.21 of 2000) [9th June, 2000].
[180] National Association of Software and Service Companies vs. Ajay Sood & Others, 2005.
[181] CBI v. Arif Azim, 2013.

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