

# Police Ca Offence Act, 2000

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Act, 2000 reinforces

invoke IPC for the p

exploiting them, settling corporates scores, espionage of confidential data etc. but the recent verdict of Apex Court completely bars it.”

Society is facing the challenges of cyber crimes which are assuming alarming proportions with each passing day. The allegations of rigging in Trump’s Election, hacking of Ukraine Power Grid, NASA Research Centre have established that hackers can reach anywhere. The offences of hacking, Denial of Service attack, DDOs attack, theft of personal data/money have become a routine. The technical methodologies used by the cyber criminals like ransomware, spyware coupled with transnational nature of cyber crime have made it explicit that it would not be possible to tackle the cyber crime with the existing framework.



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The biggest obstacle to tackle the cyber crime is the lack of expertise with the investigation agencies and also the aptitude /approach which is required to investigate and collect the evidence in the cases involving information technology. The problem of grabbing the technical concept, methodologies and evidence is not only with the investigation agencies but our judiciary as well as legal fraternity is struggling with the same. The complexity of technical concept, methodologies, electronic evidence is now being exploited by the investigation agencies through creation of jugglery to meet their unlawful objectives and has become a serious concern for the society. The existing legal framework does not provide an efficacious remedy for such manipulation of law enforcement agencies in investigation which is causing serious prejudice to the innocent person who are being arrested for no fault of there but due to lack of understanding of police.

The misuse of the Section 66A of Information Technology Act, 2000 by the police has been well known as widely reported in media and subsequently, Supreme Court of India declared the provision unconstitutional. One of the biggest asset in the technology sector is the human resource and corporate throughout the world are adopting various mechanism to retain the talented human resource. The influential and powerful lobby start misusing the provision of Information Technology Act, 2000 & Indian Panel Code (IPC) to implicate innocent person having vast potential skill of Information Technology Act, 2000. The police has resorted to Section379, 408 IPC in cases of data theft despite the fact, that these sections cannot be applied to the offences squarely falling under the IT Act, 2000.

Similarly, conjuration of technology and law is now being used rampantly by law enforcement agencies for corporate / powerful lobby in settling scores with the ex employees, competitors and to extract confidential data, proprietary information for espionage and non bailable provision of IPC are invoked intentionally to create impact for illegal purposes. The another reason for invoking non bailable provision is for collecting the digital evidence as the



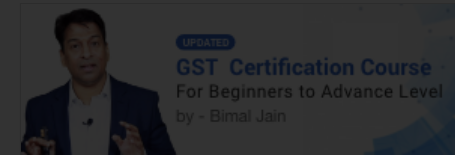
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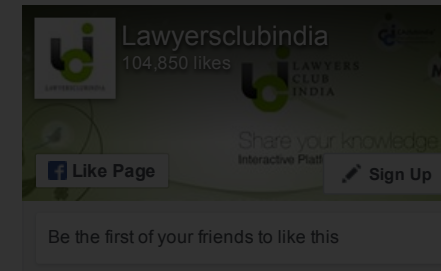
investigation agencies lacks the skills to understand the technology and thus, are not in a position to connect the chain of evidence on their on from digital space. The reliance on the disclosures and seizures during arrest have resulted into acquittal into the cases of information technology as in these cases, the prosecution fails to discharge its own burden and try to shift the burden on the accused without any such presumption in the law.

The provisions of Information Technology Act, 2000 has overriding effect as per well know principle of 'generalia specialibus general non-derogant' and it is to be invoked in case of conflict between a specific provisions and general provision. It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed.

In the famous case of Baze, where an employee of Baze was charge-sheeted u/s 292 IPC and 67 IT Act for hosting obscene contents on the website, the Hon'ble Supreme Court of India in the case titled Sharat Babu Digumarti Vs. Govt. of NCT of Delhi [MANU/SC/1592/2016], held that once the special provision of the IT Act, 2000, having the overriding effect, do cover a criminal act and the offender, the offender gets out of IPC as special law shall prevail over the general and prior laws.

In the another judgment of Division Bench of Bombay High Court where a similar issue of invoking IPC and IT Act was before the court and the prosecution took the plea that such conflict can be looked into by the trial court at the time of taking cognizance only, the Hon'ble High Court in the matter of Gagan Harsh Sharma and Ors. Vs. The State of Maharashtra and Ors.[MANU/MH/3012/2018], held that it is not permissible for the investigating officer to invoke and apply the provision of IPC in view of the overriding effect of the Information Technology Act, 2000 even at the stage of investigation. The court held that it is the duty of the investigating officer to keep in mind the purpose of the enactment and to nab the new venturing of crimes with the system of technology.

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Thus, the settled legal proposition is that the provisions of IPC cannot be invoked even at the stage of investigation if the offence is squarely covered under the IPC. The illegal practice of invoking IPC just to take the police custody remand in the cases squarely covered under IT Act has to be discouraged. Nevertheless, the victim who is so illegally detained has the right to prosecute the police officials for illegally invoking such provisions for illegal detention and also provide the right to victim to claim the damages against the state.

In case of misuse of IPC in such cases, the victim has a remedy to approach the court for dropping such provision even at the stage of investigation. Further, the victim has a right to seek the appropriate remedy at the stage of charge and also at the stage of trial, the application for amending the charge can be filed.



Neeraj  
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