

The Information Technology ACT, 2008

Section 66E - Punishment for violation of privacy

1973. (c) shall be deemed to be a Civil Court for purposes of order XXI of the Civil Procedure Code, 1908 (Inserted vide ITAA 2008) 1847 Factors to be taken into account by the adjudicating officer While adjudging the quantum of compensation under this Chapter the adjudicating officer shall have due regard to the following factors, namely - (a) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the default; (b) the amount of loss caused to any person as a result of the default; (c) the repetitive nature of the default X. THE CYBER APPELLATE TRIBUNAL (Amended vide ITA-2008)48 Establishment of Cyber Appellate Tribunal(1) The Central Government shall, by notification, establish one or more appellate tribunals to be known as the Cyber Appellate Tribunal.(2) The Central Government shall also specify, in the notification referred to in sub-section (1), the matters and places in relation to which the Cyber Appellate Tribunal may exercise jurisdiction.49 Composition of Cyber Appellate Tribunal (Substituted vide ITAA 2008)(1) The Cyber Appellate Tribunal shall consist of a Chairperson and such number of other Members, as the Central Government may, by notification in the Official Gazette, appoint (Inserted vide ITAA-2008) Provided that the person appointed as the Presiding Officer of the Cyber Appellate Tribunal under the provisions of this Act immediately before the commencement of the Information Technology (Amendment) Act 2008 shall be deemed to have been appointed as the Chairperson of the said Cyber Appellate Tribunal under the provisions of this Act as amended by the Information Technology (Amendment) Act, 2008 (Inserted vide ITAA 2008) (2) The selection of Chairperson and Members of the Cyber Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India. (Inserted vide ITAA-2008)(3) Subject to the provisions of this Act- (a) the jurisdiction, powers and authority of the Cyber Appellate Tribunal may be exercised by the Benches thereof (b) a Bench may be constituted by the Chairperson of the Cyber Appellate Tribunal with one or two members of such Tribunal as the Chairperson may deem fit. Provided that every Bench shall be presided over by the Chairperson or the Judicial Member appointed under sub-section (3) of section 50 (ITAA 2008) (c) the Benches of the Cyber Appellate Tribunal shall sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson of the Cyber Appellate Tribunal, by notification in the Official Gazette, specify. (d) the Central Government shall, by notification in the Official Gazette, specify the areas in relation to which each Bench of the Cyber Appellate Tribunal may exercise its jurisdiction.(Inserted vide ITAA-2008) (4) Notwithstanding anything contained in sub-section (3), the Chairperson of the Cyber Appellate Tribunal may transfer a Member of such Tribunal from one Bench to another Bench (Inserted vide ITAA-2008)(5) If at any stage of the hearing of any case or matter, it appears to the Chairperson or a Member of the Cyber Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of more Members, the case or matter may be transferred by the Chairperson to such Bench as the Chairperson may deem fit. (Inserted vide ITAA-2008)50 Qualifications for appointment as Chairperson and Members of Cyber Appellate Tribunal (Substituted vide ITAA 2006)(1) A person shall not be qualified for appointment as a Chairperson of the Cyber Appellate Tribunal unless he is, or has been, or is qualified to be, a Judge of a High Court; (substituted vide ITAA-2008) (2) The Members of the Cyber Appellate Tribunal, except the Judicial Member to be appointed under sub-section (3), shall be appointed by the Central Government from amongst persons, having special knowledge of and professional experience in, information technology, telecommunication, industry, management or consumer affairs. Provided that a person shall not be appointed as a Member, unless he is, or has been, in the service of the Central Government or a State Government, and has held the post of Additional Secretary to the Government of India or any equivalent post in the Central Government or State Government for a period of not less than two one years or joint secretary to the Government of India or any equivalent post in the central Government or State Government for a period of not less than seven years. (Inserted vide ITAA-2008)(3) The Judicial Members of the Cyber Appellate Tribunal shall be appointed by the Central Government from amongst

persons who is or has been a member of the Indian Legal Service and has held the post of Additional Secretary for a period of not less than one year or Grade I post of that service for a period of not less than five years.⁵¹ Term of office, conditions of service etc of Chairperson and Members (Substituted vide ITAA 2008)(1) The Chairperson or Member of the Cyber Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier. (Inserted vide ITAA 2008)(2) Before appointing any person as the Chairperson or Member of the Cyber Appellate Tribunal, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member. (Inserted vide ITAA 2008) (3) An officer of the Central Government or State Government on his selection as the Chairperson or Member of the Cyber Appellate Tribunal, as the case may be, shall have to retire from service before joining as such Chairperson or Member. (Inserted vide ITAA 2008)⁵² Salary, allowance and other terms and conditions of service of Chairperson and Member. (Substituted vide ITAA 2008) The salary and allowances payable to, and the other terms and conditions of service including pension, gratuity and other retirement benefits of, the Chairperson or a Member of Cyber Appellate Tribunal shall be such as may be prescribed: (Inserted vide ITAA 2008)^{52A} Powers of superintendence, direction, etc (Inserted vide ITAA 2008) The Chairperson of the Cyber Appellate Tribunal shall have powers of general superintendence and directions in the conduct of the affairs of that Tribunal and he shall, in addition to presiding over the meetings of the Tribunal, exercise and discharge such powers and functions of the Tribunal as may be prescribed.^{52B} Distribution of Business among Benches (Inserted vide ITAA 2008) Where Benches are constituted, the Chairperson of the Cyber Appellate Tribunal may, by order, distribute the business of that Tribunal amongst the Benches and also the matters to be dealt with by each Bench.^{52C} Powers of the Chairperson to transfer cases (Inserted vide ITAA 2008) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may deem proper to be heard, or suo motu without such notice, the Chairperson of the Cyber Appellate Tribunal may transfer any case pending before one Bench, for disposal to any other Bench.^{52D} Decision by majority (Inserted vide ITAA 2008) If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Cyber Appellate Tribunal who shall hear the point or points himself and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.⁵³ Filling up of vacancies (Amended vide ITAA 2008) If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding officer Chairperson or Member as the case may be of a Cyber Appellate Tribunal, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Cyber Appellate Tribunal from the stage at which the vacancy is filled.⁵⁴ Resignation and removal (Amended vide ITAA 2008)(1) The Presiding officer Chairperson or Member of the Cyber Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office: Provided that the said Presiding officer Chairperson or Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.(2) The Presiding officer Chairperson or Member of a Cyber Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairperson or Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the aforesaid Presiding officer Chairperson or Member.⁵⁵ Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings (Inserted vide ITAA 2008) No order of the Central Government appointing any person as the Chairperson or Member of a Cyber Appellate Tribunal shall be called in question in any manner and no act or proceeding before a Cyber Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Cyber Appellate Tribunal.⁵⁶ Staff of the Cyber Appellate Tribunal (Error in amendment...item 28)(1) The Central Government shall provide the Cyber Appellate Tribunal with such officers and employees as the Government may think fit.(2) The officers and employees of the Cyber Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.(3)

The salaries and allowances and other conditions of service of the officers and employees of the Cyber Appellate Tribunal shall be such as may be prescribed by the Central Government.⁵⁷

Appeal to Cyber Regulations Appellate Tribunal

21(1) Save as provided in sub-section (2), any person aggrieved by an order made by a Controller or an adjudicating officer under this Act may prefer an appeal to a Cyber Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Cyber Appellate Tribunal from an order made by an adjudicating officer with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Controller or adjudicating officer is received by the person aggrieved and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Cyber Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Cyber Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Cyber Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Controller or adjudicating officer.

(6) The appeal filed before the Cyber Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure and Powers of the Cyber Appellate Tribunal

(1) The Cyber Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.

(2) The Cyber Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents or other electronic records;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte
- (g) any other matter which may be prescribed

Every proceeding before the Cyber Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Cyber Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Right to legal representation

The appellant may either appear in person or authorize one or more legal practitioners or any of its officers to present his or its case before the Cyber Appellate Tribunal.

Limitation

The provisions of the Limitation Act, 1963, shall, as far as may be, apply to an appeal made to the Cyber Appellate Tribunal.

Civil court not to have jurisdiction (Amended vide ITAA 2008)

22 No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Cyber Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Provided that the court may exercise jurisdiction in cases where the claim for injury or damages suffered by any person exceeds the maximum amount which can be awarded under this Chapter. (Inserted vide ITAA 2006)

Appeal to High court

Any person aggrieved by any decision or order of the Cyber Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Cyber Appellate Tribunal to him on any question of fact or law arising out of such order: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Compounding of Contravention

(1) Any contravention under this Act [substituted for "Chapter" vide amendment dated 19/09/2002] may, either before or after the institution of adjudication proceedings, be compounded by the Controller or such other officer as may be specially authorized by him in this behalf or by the adjudicating officer, as the case may be, subject to such conditions as the Controller or such other officer or the adjudicating officer may specify: Provided that such sum shall not, in any case, exceed the maximum amount of the penalty which may be imposed under this Act for the contravention so compounded.

(2) Nothing in sub-section (1) shall apply to a person who commits the same or similar contravention within a period of three years from the date on which the first contravention,

committed by him, was compounded. Explanation - For the purposes of this sub-section, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention. (3) Where any contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the person guilty of such contravention in respect of the contravention so compounded.

64 Recovery of Penalty or compensation (Amended vide ITAA 2006) A penalty imposed or compensation awarded under this Act, if it is not paid, shall be recovered as an arrear of land revenue and the license or the Electronic Signature Certificate, as the case may be, shall be suspended till the penalty is paid.

XI. OFFENCES

65 Tampering with Computer Source Documents Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

23 Explanation - For the purposes of this section, "Computer Source Code" means the listing of programmes, Computer Commands, Design and layout and programme analysis of computer resource in any form.

66 Computer Related Offences (Substituted vide ITAA 2008) If any person, dishonestly, or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to two three years or with fine which may extend to five lakh rupees or with both.

Explanation: For the purpose of this section,- a) the word "dishonestly" shall have the meaning assigned to it in section 24 of the Indian Penal Code; b) the word "fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code.

66 A Punishment for sending offensive messages through communication service, etc. (Introduced vide ITAA 2008) Any person who sends, by means of a computer resource or a communication device,- a) any information that is grossly offensive or has menacing character; or b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently makes by making use of such computer resource or a communication device, c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages (Inserted vide ITAA 2008) shall be punishable with imprisonment for a term which may extend to two three years and with fine. Explanation: For the purposes of this section, terms "Electronic mail" and "Electronic Mail Message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.

66 B Punishment for dishonestly receiving stolen computer resource or communication device (Inserted Vide ITA 2008) Whoever dishonestly receives or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both.

66 C Punishment for identity theft. (Inserted Vide ITA 2008) Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.

66 D Punishment for cheating by personation by using computer resource (Inserted Vide ITA 2008) 24 Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees. (Inserted Vide ITA 2008) Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both

Explanation.- For the purposes of this section (a) transmit means to electronically send a visual image with the intent that it be viewed by a person or persons; (b) capture, with respect to an image, means to videotape, photograph, film or record by any means; (c) private area means the naked or undergarment clad genitals, pubic area, buttocks or female breast; (d) publishes means reproduction in the printed or electronic form and making it available for public; (e) under circumstances violating privacy means circumstances in which a person can have a reasonable expectation that (i) he or she could disrobe in

privacy, without being concerned that an image of his private area was being captured; or (ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

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