



# EFFICACY OF EXISTING LAWS IN COMBATING CYBER CRIMES IN INDIA: A CRITICAL STUDY

SUNNI SHARMA  
STUDENT  
CHAMANLAL LAW COLLEGE, LANDHORA

## INTRODUCTION

We're left with a dilemma. — What exactly are cyber crimes? The way cyber crime is described is extremely problematic. Defining cyber crime is the first challenge, as there is currently no commonly accepted definition. There are a variety of legal traditions around the world, which isn't surprising considering that cyber crime is used as an umbrella term for a relatively new range of actions that have yet to be fully incorporated into national legal systems. The term "cyber crimes" is almost always used in conjunction with "computer crimes," "computer abuse," or "IT crimes," which are all synonyms. Because of this, the term "computer crimes" is being phased out in favour of "computer-related crime." Second, there is a dearth of reliable and objective data. In order to have a complete picture of cyber crime, there is no reliable quantitative data. Officials from law enforcement agencies have stated that reported computer crime figures do not accurately reflect the true number of crimes committed via ICT. The lack of data on cyber crime is cited for two reasons. There are several technical reasons for this. The first is that because of the massive storage capacity and lightning-fast processing power of computers, it is impossible to identify computer crime until the victim is told. This is due, in part, to investigators' lack of familiarity with electronic data processing and its associated complexity.<sup>1</sup>

In the year 1820, the first known cyber crime was committed. That's not surprising, given that the abacus, widely considered to be the earliest known computer, has been used in India, Japan, and China since 2500 B.C., according to archaeological evidence. **Charles Babbage's** analytical engine, on the other hand, laid the groundwork for today's computers.

The loom was invented by **Joseph-Marie Jacquard**, a French textile manufacturer, in 1820. Special fabrics could be woven using the device because it allowed for a series of steps to be repeated. Employees at Jacquard feared that their jobs and livelihood were under threat as a result of this change in policy. They engaged in acts of sabotage in order to prevent Jacquard from using the new technology in any further capacity. The first recorded cyber crime has been committed.<sup>2</sup>

With the rise of the Internet, a new generation of crimes has emerged. An increasing number of crimes, such as computer tampering, espionage, password-cracking and other forms of spoofing and identity theft, have already made their mark on the criminal justice system over the last few years. Credit card fraud, cyber laundering, and criminal use of secure Internet communications are among the new threats on the scene. Due to the current weak electronic payment system, unauthorized withdrawals from banks and counter-money laundering operations pose a significant risk. The video and phonographic industries are collapsing around the world as a result of rampant software piracy.

<sup>1</sup> www.cybercrime.planitindia.net visited on 24/4/2021 at 10:40am.

<sup>2</sup> www.cybercrime.planitindia.net visited on 24/4/2021 at 10:40am.

## 1.1 Definition of cybercrimes-

It has only been very recently that the phrase "cyber crime" has gained currency in the security community. Despite its widespread use, there is no agreed-upon definition. There is no doubt that computers play a role in cybercrime, but there is no agreement on whether or not those computers must be linked together. There are some definitions that clearly exclude computer-related crimes that are not committed online, while others favour a broader definition that includes all computer-related offences. Most computer crimes are committed online, though. Cyber crime is defined as "harmful activities done from or against a computer or network" in a report by McConnell International (2000), an international technology policy and management consulting organisation. Computers (and networks like the internet) can be both targets and means of delinquency, according to this notion.<sup>3</sup>

According to the United Nations Manual on the Prevention and Control of Computer-Related Crime, cyber crime is defined as: Theft, fraud, forgery, and general malfeasance are typical criminal offences that can also be committed through the use of computers. Many new criminal offences may or may not be possible due to the widespread usage of computers (UN 1994, par. 22).<sup>4</sup>

Project Trawler, an investigation into cybercrime by the UK's National Criminal Intelligence Service, began in July 1996. All three names are used interchangeably in the study. The following is how Project Trawler defines cyber crime: A crime in which the use of a computer network plays a significant and direct role in committing the offence. An fundamental feature of computer systems is their ability to communicate with each other.<sup>5</sup>

In the words of Pavan Duggal, "Cybercrime refers to all the activities done with illegal intent in cyberspace or using Internet as a media." It's possible that these could be criminal acts in the traditional sense, or activities that have evolved as a result of the rise of new media. Cybercrime encompasses a wide range of activities that outrage the sensibilities of others.<sup>6</sup>

### Need to Fight Cyber crime:

The benefits of ever-improving technology have left us all with a common inheritance in cyberspace, which we must never forget. In light of the irreversible position of this Cyberspace, it is the responsibility of every netizen to contribute to making this Cyberspace free of any trouble or cyber crime. Where there is no fear or crime and the head is held high; where knowledge is free; where tireless striving stretches its arms towards perfection; into that cyber heaven of freedom... O my father let our humanity awake."<sup>7</sup>

Non-doctrinal secondary data from a variety of sources will be the focus of this study. There should also be a look at the literature on the subject matter. Court rulings on the subject would also be referred to in this context.

A study of international instruments related to 'Cyber Crimes' (A Challenge to the Criminal Justice System) in the modern era will be conducted through library research. There are many different statistics, reports, websites, and country papers that are presented at national and international seminars and conferences that can be used for secondary research.

The goal of this research is to shed light on the myriad facets of cybercrime that the criminal justice system must grapple with. Due to the widespread use of computers and the internet around the world, cybercrime is a problem that affects everyone. The e-crime problem affects India as well. It is one thing to be aware of the problem, and quite another to be able to deal with it effectively. Cybercrime is not deterred by Indian legislation, which is still in its infancy.<sup>8</sup>

### The E-crime scenario in India-

Only 40% of PCs in the United States are connected to a local area network. Large databases like the Railway Reservation System, Airlines reservation system and NICNET's District information system are all available. They're more like Internets (according to Wikipedia: An intranet is a private computer network) "in which the

<sup>3</sup> [www.meconnellinternational.com](http://www.meconnellinternational.com) Visited on 20/10/2021 at 4:12pm

<sup>4</sup> <http://www.uncjin.org/documents/irpc> Visited on 21/10/2021 at 4:59pm

<sup>5</sup> Dr. Amita Verma, Cyber Crime in India & Law, Central Law Publisher 3 Ed., Page. 68.

<sup>6</sup> D.P. Mittal, Tax mann's law of information technology. New Delhi Paxmann ALLIED Service 2000, 2 Ed Page 96.

<sup>7</sup> Alien, Legal Duties, 111 51; "Winfield, Province of the Law of Tort (Tagore Law Lectures, I'WO) 197.

<sup>8</sup> <http://en.Wikipedia.Org>. Visited on 20/74/2021 at 4:12pm

most visible service (the internal website) is the only part of an organization's information that is securely shared via Internet protocols and a network-connected telecommunications system (preterm refers only to this service). There are still a lot of government departments and public sector firms like Banking, Insurance, etc. that are still very labor-intensive, and the use of computers in these organisations is still quite low. While the world average is 25 personal computers per 1000 people, the US average is 450, the country's density of personal computers is only 1.8 per 1000 people (0.018 percent). However, things have changed. It's crucial to consider how, or if, we want to restrict access to certain material as the technical infrastructure becomes less of a barrier to obtaining it.). When addressing who should have access to specific content, we can use the phrases "intranet" and "extranet," even if they are imperfect. A growing number of industries rely on data processing and its components, including tax administration, the financial markets and other areas that require large amounts of data to be processed.

There is a perception that computer-related crimes are relatively recent in the United States. There can be no doubt that the rate of crime in the country will rise as the popularity of computers and networks grows.

The Central Bureau of Investigation (CBI) organised a National Seminar on Computer Crime in New Delhi in February 1999. (CBI). There were experts from public sector institutions, multinational banks, and other financial institutions at the event to assess the consequences of rapidly growing computer-related crime.<sup>9</sup>

This warning was made while emphasising the importance of amending the Indian Penal Code and other related regulations, since cyber crimes might have a devastating impact on the country's economy and bank systems. Further emphasis was placed on the importance of keeping up with the latest and most sophisticated crime tendencies. It was also stated that changes are needed in the Criminal Procedure Code, 1973; Indian Penal Code, 1860; Indian Evidence Act, 1972; and the Copyrights Act, 1957.

Despite the rising enthusiasm and curiosity in cybercrime, there is a fundamental reluctance about connecting to the Internet. Hackers, crackers, sackers, stalkers, phone freaks, and other creepy web crawlers call the Internet's "Bad Guy" home.<sup>10</sup>

Some people use the term hacker to describe "a clever programmer," while others use it to describe "someone who tries to break into computer systems." Crackers, on the other hand, are often incorrectly referred to as hackers because of this.

The ubiquity of cybercrime can be ascribed to its widespread nature "follow-up:

1. **Anonymity** First and foremost, computers have given criminals an incredible amount of power that they couldn't have previously had. Encrypted messaging and virtual private networks allow the operatives to communicate with each other in complete secrecy. To prevent cyber criminals from abusing the anonymity afforded to internet users, the breadth of anonymity must be restricted. Traditional "offline" crimes are often performed in a new form online. In this regard, the "application of existing laws" to crimes committed on the internet should be the major guiding principle until there are particular legislation related to the topic.
2. **Jurisdictional issue**, It is also a concern arising from Net's global coverage. Because of the difficulty in collecting evidence of crimes performed beyond one's jurisdiction or even one's nation, local law enforcement and security, as well as international cooperation and coordination, may appear evident in dealing with crimes conducted in the cyberspace.<sup>11</sup>
3. **Evidentiary Value hardship** the destruction of E-communication-related documents adds another another layer of complexity. Measures of cooperation must also be hashed out for "the exchange of material on electronic communications by law enforcement agencies in mutual support. Legislation should be enacted to ensure that computer users who operate within a certain jurisdiction are held accountable for their activity on other jurisdictions' soil and must follow orders and warrants issued thereon. Criminal Procedure Code, 1973 contains provisions that allow the investigation of a crime in another nation, but these provisions are woefully out of date in light of the scope and speed with which evidence can be destroyed that are associated with cyber crimes. Another example of a rule that appears out of step with the global nature of computer activity is the requirement for prior

<sup>9</sup> R.C. Nigam, "Law of Crimes In India", Principles of Criminal Law, Vol I (Asia Publishing House 1, Ed 2005) Page 60.

<sup>10</sup> Dr. Verma Amita, Cyber Crime in India & Law, Central Law Publisher, 3 Ed. Page. 68.

<sup>11</sup> Blackstone, Commentaries on the Laws of England, Vol. IV, 4 Ed 2017 Page 59.



approval from the Central Government to inquire into or try offences committed outside the country.<sup>12</sup>

## 1.2 Statement of Problem

Cyberspace will continue to evolve at a rapid pace as communication technologies advance. Legislators have the challenge of balancing technologically dependent legislation with practical considerations in order to keep the legal and regulatory structures up to date in a continuously evolving field. As a result of rapid innovation and the lack of territorial boundaries in cyberspace, there are additional challenges. Lawmakers must now assess whether acts are under their jurisdiction and devise new ways to pursue cyber criminals who may be operating in another country, but who nonetheless commit a crime within a sovereign nation state's borders. Cybercrime is exacerbated by the absence of publicly available data on cybercrime, making it nearly hard to quantify the volume of criminal activity on the internet.

There are many reasons why cybercrime is more dangerous than any other type of criminal activity: the massive amounts of money that can be lost as a result of it, the ease with which it can be committed, the lack of visibility and disregard for geographical boundaries, the difficulty in identifying the perpetrator, gathering evidence, and bringing a case against him, as well as the high costs of law enforcement and protective technology in combating it. Cyber crime, if left unchecked, could have a devastating effect on society as a whole when the internet becomes an essential part of everyday life for everyone. Internet expansion should be closely connected to a rise in cyber crime prevention technology and other measures. Growing the internet culture would be pointless if there was no way to effectively check cybercrime. Internet and e-commerce should grow slowly but gradually rather than become a bubble that bursts. This is in the best interest of society.<sup>13</sup>

## 1.3 HYPOTHESIS:

You can think of hypotheses in two ways: as a "concept," or as a way of thinking about something. Thus, a hypothesis is a statement or proposition's underlying notion.

The following theory is based on the substantial study that has been done:

- Indian Constitution's preamble is crucial. It does not discriminate between men and women, but rather treats them as equals.
- Indian law should accept the concept of a living will.
- Passive euthanasia should be legalized in India, as it is in many other nations.

## 1.4 Methodology

The doctrinal approach of research was employed to finish this study. In terms of primary sources, I'm relying on a wide range of materials from books to commentaries to journals to articles to news stories to websites to case law.

Secondary sources include things like books from the library and the like.

## 1.5 OBJECTIVE OF STUDY

Due of its anonymity, cybercrime might go unnoticed, undiscovered, and unreported. Encryption is the most frequent way for ensuring anonymity, but there are many others." Even for small businesses and individuals, encryption has become a fundamental aspect of doing business online. The FBI has long expressed alarm about the increasing use of encryption technology, which it has claimed may have a disastrous effect on criminal investigations. "Within seconds, cyber criminals can hack/attack several computers in different regions of the world. Cybercrimes are crime without a scene. The typical crime scene is an integral part of the investigation process. In spite of this, cybercrime can't be confined to a single location. Software can be used to transport payments out of a bank in Japan to a person's account in Australia by an Indian hacker. A regular police officer will have a hard time locating the crime location and may even doubt whether there is a crime to begin with. Borderless cybercrimes are a threat. It can go beyond the boundaries of cyber crime. A "black figure" in the world of criminology refers to an unsolved computer crime. It's possible there are a number of explanations for this black figure's existence, including:

- Detection of criminal behavior in the data processing environment is extremely challenging due to the high operational speeds and storage capacity of modern computer systems.

<sup>12</sup> Dr. Verma Amita, Cyber Crime in India & Law, Central Law Publisher, 3 Ed. Page. 69.

<sup>13</sup> Dr. Amita Verma, Cyber Crime in India & Law, Central Law Publisher 3 Ed 2000, Page. 69.

- When criminal behavior is discovered, many businesses are reluctant to report it for fear of negative publicity, embarrassment, loss of public confidence, investment loss, or economic ramifications.
- Many victims of computer crime have failed to build contingency plans to cope with computer crime.

### Importance of Cyber law

Cyber law is important because it encompasses nearly every aspect of Internet, WWW, and Cyberspace transactions and activities. Although at first glance, Cyber laws appear to be an extremely technical field, they actually have a significant impact on the vast majority of online activities. While this may be true, the truth is that nothing could be more incorrect. All of our actions and reactions in Cyberspace are subject to legal scrutiny, even if we don't realize it at the time. Some legal and cyber legal perspectives are involved in every reaction in Cyberspace.<sup>14</sup>

### CYBER CRIME: THE NEW SPECIES OF CRIME

A complete overhaul and replacement is long overdue. Current legal frameworks can't keep up with the sophistication and speed of today's online criminals. Because of this, traditional legal ideas like property and the burden of proof, locus standi, and concepts of "mens rea" have been seriously weakened by the internet's technological innovations.

Some argue that new legislation is needed to deal with cyber crimes, while others argue that existing laws are flexible enough to handle this new kind of criminality. According to one school of thought, cyber crimes are not any different from the more traditional crimes like trespass, theft, and conspiracy. The distinction is that a computer has been used as the medium or instrument for the conduct of the crime. According to the opposing viewpoint, developing technologies present a distinct set of issues that have yet to be addressed by existing criminal law. These include issues like the complexity of cybercrime, the difficulty of discovering the perpetrator, jurisdiction, and enforcement. Lawmakers are calling for comprehensive laws to combat cybercrime. For the most part, governments that are serious about combating cybercrime have taken two approaches: treating it as a typical crime committed via computer as well as a crime distinct from other types of crimes that necessitate a new set of legal frameworks.<sup>15</sup>

### REVIEW OF LITERATURE

The development of every country is depends on the legal system of the state.

Now a day, Criminal law has well developed, but the need and situations are always changes in every country, so it is necessary to the country to develop the criminal law as per the situation. In 20th century, the World is called as a cyber world. The information technology is very much developed in present days. Internet is the essential part of the human beings life today. Internet make the world a globe, which bring with it the misuse of the computer means the cyber crime. Cyber crime is inevitable but the highly educated person generally commits it. To prevent the cyber crime every country made cyber laws. Indian legal system also enacted the Information Technology Act 2000. However, it is more business law than the cyber law.

The present research is undertaken by researcher to analysis the cyber law, its investigation, and its comparative study with conventional crime. The researcher adopted doctrinal research methodology and hence gone through primary and secondary data to complete this research work.

1. M.P. JAIN, INDIAN CONSTITUTIONAL LAW 98 (6TH ED., 2010) This book is well known in criminal law, the author is renowned writer in criminal law. The first chapter of the book deals title and extent, in this chapter the author rightly discussed the concept of crime and the development of the criminal law in India. This book discussed all the provisions of penal law. The author tries to describe the each section

<sup>14</sup> www.indiakanoon.com visited on 24/6/2021 at 10:40am.

<sup>15</sup> Retrieved from Talot Palima, Cyhcr Crimes, 2nd ed, Eastern Book Company, Lucknow 2006 page 35.

along with the landmark judgments, which help the reader to understand the interpretation of the section. This book helps the researcher to understand the criminal law in Indian legal system. It is useful to see the content of

the conventional crime and that can be compared with the cyber crime

## 2. D.D. BASU, COMMENTARY ON THE CONSTITUTION OF INDIA (8<sup>TH</sup> ED 2008) –

The author of this book is well known in research and former head of the Law Department of Pune University, the book deals with the conventional criminal law or Indian Penal code. All the offences are discussed in detail along with its ingredients and the commentary in the section gives the central idea of the said section. While reading the section from the book, we can easily understand the nature of the sections object of the lawmaker. The research work of the book regarding the references guides the new researcher, how to refer the books and the case laws while.

3. AHMAD Dr. FAROOQ NEW ERA PUBLICATION 4th edition 2011. This book is the collection of the various articles by the expert on the cyber law and related subject. It is great collection on the cyber law and cyber crime. This book provides the information regarding the jurisdiction and related concept of the cyber crime. Apart from this, the different author discusses the cyber crime and the cyber law in different facets. This helps the researcher to understand the concept of the cyber crime and the practical problems. It discusses the Information Technology Act 2000 and the related issue.

4. RATANLAL AND DHIRAJLAL, CRIMINAL PROCEDURE CODE, 1973(12TH This book deals with the procedural aspect in the criminal law. Cyber crime is subject of state and the proper investigation needs to protect the society from the said crimes. The Information technology Act is quite business law and the offences are subject to general investigation by the same agencies. This book deals with the procedural aspect in conventional crime so it is useful to the researcher.

5. N. VDr..PRANJPE, CENTRAL LAW PUBLICATION, NITTH EDITION-2018 This book is useful to understand the relation of technology and law. The book is contented in 10th part, the first part deals with the technology and the use of technology in the life of common people. Then the author discusses how the misuse of technology affects the right of individual as like the right of privacy. Now interfering in the privacy of person by using the technology of computer is amount to the cyber crime. In next part of the book, the author discussed the conceptual analysis of the cyber crime.

The book deals with specific cyber crime, and investigation of cyber crime.

Cyber crime investigation is now a complex issue before the investigation machinery due to lack of knowledge. The author gives the processes and the solutions on the problem regarding the investigation. Lastly, the author discussed the problem of jurisdiction of the cyber crime; therefore, the book is useful which gives the central idea of cyber crime and policy and perspective of the cyber crime.

## 6. D.P. MITTAL TAX MANN, S LAW OF INFORMATION TECHNOLOGY.

In this book “fundamentals of cyber law” author has discussed about basics terms and definition related to computers and cyber space. There is detailed explanation about the IT Act 2000, Indian Penal Code (IPL) and Indian Cyber Law. Author has also discussed almost 21 cyber crimes which are committed in the cyber space and what are the liable punishments for these cyber crimes. There is an overview of IP addresses, Blogs, Domain name spaces (DNS) and working of email system.

The book provides complete insight into cyber law and its basics.

## Technology Aspects

More than \$250 billion in fraud, theft, damages, and other criminal activity is estimated to have been committed in cyberspace in 2013. That's a huge number, and it shows how easy it is to commit crime in this new environment, even if it's only 10% of the total. Three things set online crime apart from traditional forms of crime:

- It's done much more quickly;
- It's easy to do anonymously;



- It can be committed quickly and then the perpetrator disappears—the Website is shut down, e-mail addresses are disabled, etc.—even before the victim knows he's a victim.<sup>16</sup>

## 1.6 The scope of cybercrimes-

Almost 30 years ago, the American Bar Association undertook a survey of more than 300 firms and government bodies regarding the scope of computer crime and the damages that resulted. 72 of the people who took part in the survey said they had been the victims of computer-related crime in the last year, with damages ranging from \$145 million to \$730 million.

To find out more about the prevalence of computer-related crime in the US, Canada, and Europe, a survey of 3,000 VANs was carried out in 1991. As many as 8% of the respondents had no idea whether or not their security had been compromised. 43 percent of the respondents stated that they have been a victim of a criminal offence in the past. In the past year, 72 percent of respondents indicated they had been the victim of internet crime.

The Colloquium on Computer Crimes and Other Crimes against Information Technology was organized by the Association International de Droit Ponal (AIDP) at Wartburg, Germany, in October 1992. The AIDP research revealed that just 5% of cyber crime was reported to law enforcement.

According to computer crime statistics, the full scale of computer crime is not accurately represented. Unsolved computer crimes are referred to as "dark figures" by criminologists. One reason for this dark figure is that criminal activity can be very difficult to detect due to the speed and capacity of computer hardware, as well as the lack of technical expertise in law enforcement to deal with criminal activity in data processing environments. Many victims of computer crime have failed to create contingency plans for dealing with computer crime.

## Characteristics of cybercrimes-

As a result of its anonymity, cybercrime can go unnoticed and unreported. In order to maintain anonymity, there are a variety of methods available, including encryption." When it comes to doing business online, encryption has become a need for both businesses and customers. It's been a longstanding concern of the FBI, which has warned that the increasing use of encryption technology might have a devastating effect on criminal investigations. "In a matter of seconds, cyber criminals are able to hack/attack computers in different regions of the world. Cybercrime is a crime without a scene. The standard definition of a crime scene is vital to the detection procedure. However, cybercrimes are not limited to a single location. It is possible to hack into a computer in the United States and transfer money from a bank in Japan to an account in Australia using software. If you're a traditional police officer, you may have a hard time figuring out where the crime scene is or even if there is one. Borderless cybercrime is a reality. Is capable of going beyond the realm of computer crime. Unsolved computer crimes are referred to as "dark figures" by criminologists. In addition to the various factors that contribute to this gloomy figure, some of which may include are:

Police typically lack the technical expertise to deal with criminal behaviour in a data processing environment, due to the high operational speeds and large storage capacity of computer technology.<sup>17</sup>

When criminal conduct is discovered, many firms are reluctant to report it for fear of negative publicity, loss of goodwill, embarrassment, the loss of public confidence, or economic ramifications.<sup>18</sup>

## Impact of cyberspace on law-

In the same way that laws influence the development of cyberspace, laws influence the development of cyberspace. Law is generally viewed as a state-sanctioned instrument for establishing some standards of accountability or enforcing specific conduct on individuals within the sovereign's political borders. Cyberspace challenges our preconceptions of law and requires us to consider new models. From a police perspective, the question is whether or not a shift in regulatory systems is beneficial. A newer and less-tested form of regulation must now be based on established values. Cyberspace has unquestionably expanded information freedom, but other democratic principles such as equality and dignity should also be taken into consideration. Democracy's core principles, such as freedom and equality, aren't uniformly embedded in digital networks. Legal rules, on the other hand, will have a distinct impact on these values depending on which stakeholders they apply to.

<sup>16</sup> R.C. Nigam, "Law of Crimes In India", Principles of Criminal Law, Vol I (Asia Publishing House 1, Ed 2005) Page 30.

<sup>17</sup> <http://www.neiassociates.org/cybercrime.htm>. Visited on 20/12/2021 at 8:12pm

<sup>18</sup> Dr. Verma Amita, Cyber Crime in India & Law, Central Law Publisher, 3 Ed. Page. 67.

It may be concluded that the issue of cyber crimes is here to stay and cannot be ignored any longer because it is swallowing not only the economic interest but also four private lives and society and moral values.<sup>19</sup>

Since the advent of the Internet, the field of cyber law has only recently begun to take off. There was no plan or regulation for the Internet's growth; it just happened. Cyberspace has a scope and effects that no one could have predicted, not even the Internet's original creators. Cyberspace is rapidly becoming the preferred habitat of the globe, with the population of the Internet growing nearly every 100 days. Cyberspace's rapid expansion sparked a number of new and fascinating legal questions.<sup>20</sup>

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