

# Bloggers Beware

By

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## **Preface**

Significant developments have been noticed in India in drawing the spot light on the Impact of Cyber Crimes on the Indian Corporate sector. The arrest of the CEO of Baze.com in December 2004 made every body in the IT industry sit up and take notice of the presence of Cyber Laws in India.

The industry however reacted angrily to the developments and instead of debating the “Due Diligence” aspects of the incident, was more concerned on the fact that a CEO of a MNC could be arrested for an offence of one of the customers of the auction website. It also attracted US diplomatic interference and a call for revision of ITA-2000 by the industry leaders.

The Ministry of Information Technology moved quickly and constituted a special committee to review Information Technology Act 2000 (ITA-2000). From the indications that are emerging, it appears that a major revision of the ITA-2000 is being attempted including the issues such as inclusion of “Spam”, “Cyber Stalking”, “Privacy Infringement”, “Cyber Squatting” etc under the list of offences. Even some changes to the “Digital Signature System” is expected to be considered. The committee is expected to provide its views shortly.

In the meantime the reported fraud at CitiBank by the ex employees of the call center MSource suddenly brought the BPO s into the focus of Cyber Crime Risks. Now the need for Cyber Law Compliance as an inevitable Business Strategy is being realized by most of the industry players.

When I first wrote an article in [www.naavi.org](http://www.naavi.org) (Then under naavi.com) in November 2000 raising the question to the industry “Are You Cyber Law Compliant?” and later took the question to a CII seminar in Chennai in July 2001, it was a lone voice in the country trying to promote voluntary Cyber Law Compliance.

Even when I moved ahead with the concept of CyLawCom audit under [www.cylawcom.org](http://www.cylawcom.org) and the Techno Legal Cyber Security course under [www.cyberlawcollege.com](http://www.cyberlawcollege.com), the industry failed to appreciate the importance of the need to follow “Due Diligence Practices”.

It is heartening to note that after the Citibank fraud, now several persons have started advocating the importance of “Due Diligence Practices” and calling for Cyber Law Compliance practices.

Keeping in tune with the trends, Cyber Law College along with Cyber Society of India, of which I am the founding secretary, introduced “CyLawCom

**Certification” programmes for Cyber Cafes and Web Publishers.**

**I also undertook a statewide Cyber Law Awareness movement in Karnataka which included writing of a book in Kannada on Cyber Crimes, opening of a website in Kannada dedicated to Cyber Laws ([www.naavika.org](http://www.naavika.org)) and a series of lectures at various Law Colleges in Karnataka. The programme titled “Karnataka Cyber Law Awareness Movement” (KCLAM) marks a new era in my mission to create better “Cyber Law Literacy” amongst the masses.**

**As a part of this movement, a workshop on Cyber Law Compliance was planned to be held in different cities of Karnataka starting with Bangalore. Though, as in the past, the IT industry was slow to warm up to the significant positive contribution that the workshop could bring to their organizations, the Citibank fraud appears to kindle additional interest.**

**To mark this important occasion when the IT industry is being introduced the need for a voluntary Cyber Law Compliance programme, I thought that the series of articles which I had written in December 2004 just before the breaking of the Bazee.com issue should be brought out in the form of a booklet.**

**This set of articles address various issues such as the impact of Section 67 of ITA-2000 as well as other legal liabilities of a content owner. They also address**

the general principles of “Due Diligence” which is of interest to many IT Companies.

I hope that the book will be found useful to all content owners in particular and IT Companies in general.

Na.Vijayashankar  
(Naavi)  
April 16, 2005

## **The Issues**

Some time in December 2004, before the now famous Baze.com issue surfaced in Delhi, an issue erupted in the Chennai circles which focused on the liabilities of a “Blog Owner” for content that could be considered “Obscene” or “Defamatory”, posted by a visitor the Blog.

A set of articles were then written to address some of the issues that my friends raised during the blog discussion. These were published on [www.naavi.org](http://www.naavi.org). They have now been reprinted in this booklet since they are of interest to all web publishers.

The issues that were raised are

- 1) Is there a difference between a Forum and a Blog?
- 2) Is there a difference in "Creating an Object of Information" and "Publishing the Object"?
- 3) Is the Blog owner responsible for a hyper link posted by a visitor?
- 4) Is the Blog owner responsible for Copyright Violations if he posts a picture?
- 5) What are the ethics of posting comments in a disguised identity and to what extent "Anonymity" encourages "Adventurism" on the Internet?
- 6) Does calling one an "Idiot" on a Blog constitute cause for action in a defamation case?
- 7) If a person places his work in a public domain, what are the rights of the public to criticize? and is

there a difference between criticism and defamation?  
or between criticizing the author and criticizing the work?

8) Is it correct to invoke Section 292 of IPC and Section 67 of ITA-2000 for the same offence?

9) Can we trust that "Law will take Its own Course" and "Freedom of Speech" will protect the Blog Owner from action under Section 67 or any other section of IPC if the powers be take note?

10) Is there a need for "Self Governance" amongst Bloggers and if so how?

I have tried to give my views on each of the above points through a series of articles here. I feel that these are interesting academic questions which can be debated again and again.

I am also fully aware that many of the views remain subjective and cannot ever be said as the truth and only the truth. Even when a Judge expresses his views in a given case (such as in a Defamation suit), which is cited as a "precedence", lot of reliance is placed on the circumstances of the case, the personalities involved, the culture of the society, the manner and tone of a spoken word, the actions of the persons involved prior to and after the event and lastly the admissible evidences that are laid before the Court. The same judge under a different circumstance may reverse his own decision after giving full consideration to his earlier view.

So what I state here will be just one of the many views that may co-exist.

I also would like to say that I am myself an advocate of "Freedom" and "Preservation of Democratic Traditions of Free Speech and Right To Privacy". Though I assist the Police from time to time for Cyber Crime investigations and would be proud to be called a "Friend of the Police", I am aware that just as in any other field, there are good and bad people even in the Police and it is better for the Citizens as well as the "Good Policemen" that public vigilance is maintained on the law enforcement activities to prevent "Mis-Interpretation of Law.

I believe that the views expressed here are without any prejudice from my other activities as a consultant of the Police or the Government/s. I therefore request the readers not to presume that I am making certain statements here because I support the Police and not the Netizens. We may have to wait and see if the views expressed here get vindicated in a Court of Law.

Naavi  
April 16, 2005

## **Blog Publishing**

Internet was born free. Anonymity and Pseudonymity were the norms of the Internet society as it gathered momentum and became a "Communication Revolution". Under these circumstances, Internet was the dream of those who cherished "Freedom of Speech".

Unfortunately, some where down the line, as "Commerce" started spreading on the internet, the initial "Free Medium" was burdened with the responsibility of being provided with a "Trusted" medium. The first casualty of this development was the "Privacy" of the Internet users and reduction in the freedom of speech. In order to protect business, regulations came into being and the Internet began to be chained.

The cultural difference brought in by the new communication possibilities of the Internet also made the regulators think of "Protecting" the current society from the ill effects of the emerging Internet Society. Countries like India adopted therefore a regulatory system which also attempted to control pornography on Internet. Whether such "Cultural Policing" is desirable or not may be debated.

But the truth is that the Indian law at present applicable to the Internet usage, represented by the Information Technology Act 2000 (ITA-2000) has a

section 67 containing a stringent provision against publishing and distribution of obscene material in electronic form. This provision is of great importance to all web site owners who are "Publishers" and also e-mail list owners, and mobile phone users who may be "Transmitting" information in electronic form.

Of late, many enthusiasts on the internet are maintaining personal "Blogs". A "Blog" is essentially a shared on-line journal where people can post diary entries about their personal experiences and hobbies. The essence of a "Blog" is its ability to allow expression of the views of a large number of visitors to the site by posting their comments. It is the totality of the initial posting and the comments that distinguish a "Blog Site" from another traditional website under the control of an "Editor".

The prevalence of stringent laws of Cyber Publishing creates a high degree of "Risk" in "Blog Publishing". Blog owners will do well to reflect the needs of "Cyber Law Compliancy" for their activity without which they are just a step away from the jail room.

It may be recalled here that one of the Blogs from a Chennai software professional recently raised a huge controversy for posting an information about the existence of a video clipping of a famous actress in which she had been secretly filmed while bathing in a Hotel room. This post attracted hundreds of

curious enquiries from the blog visitors including some who pleaded for the source of the clip and even offered to pay money or exchange other similar stuff. One of the visitors even posted a link from which the clip was available. As a result of all these activities the blog contained information, discussions and the source of the offending clip which was perhaps obscene.

Ultimately the blog owner realized that it was a mistake to take up the topic for discussion and removed the posting along with the offending link from his site.

This raised an issue of what is the responsibility of a blog owner vis-à-vis the ITA-2000. I would like to place here my views for the general information of all blog owners so that they donot erroneously stray into a legally dangerous zone.

The relevant sections we need to closely check in ITA-2000 to get a better view of things are Section 67 and Section 79. We shall first visit section 67 which is reproduced below.

**Section 67 of ITA-2000: Publishing of information which is obscene in electronic form**

*Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its*

*effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it,*

*-shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.*

The key elements of this section are

a) Whether the activity constitutes "Publishing" or "Transmitting" or "Causing to be Published"

b) Whether the material is lascivious or appealing to the prurient interest or having an effect such as to tend to deprave and corrupt persons

-who are likely, having regard to all relevant circumstances to read, see or hear the matter

("Lascivious" means "Driven by lust; preoccupied with or exhibiting lustful desires".)

There is no doubt that "Blog" as well as any "Website" is a "Publishing Activity". Transmitting however refers to "Sending E-Mails" though it can be argued that sending a one on one e-mail may be more a personal communication which needs to be distinguished from "Transmitting" which term should be applied to a case of "Sending to Many". "Causing.." distinguishes an "Owner" of the website from a "Programmer" who works for such a owner or a "Computer" which is programmed to automatically to respond. The blog comments posted by visitors which is automatically published is therefore the responsibility of the blog owner.

Whether the material is lascivious or not is a matter of subjective interpretation and has to be seen in the context of the persons who are likely to have access to the information.

If the blog is accessible publicly then we can say that any person including a minor who is more likely to be deprived or corrupted may visit the blog and view the same. It also gets reflected in search engines and is widely accessible across the globe.

If the blog is for members only and accessible with some access restrictions and such members are say sociologists or criminologists who are studying the impact of Internet on the society etc, then there is a possibility to argue that the post is for academic

discussion amongst persons who are unlikely to be corrupted.

It is needless to say that the punishment of 5 years imprisonment is stringent enough and we can recall that Chennai had the distinction recently of getting the first conviction in India where an offender was given 2 years of imprisonment under the section. He was also given another 3 years imprisonment under sections of IPC or other laws which concurrently apply in such cases ..such as "Defamation", "Outraging the Modesty of women" etc. Since the terms were to run concurrently the punishment in effect was 2 years of imprisonment. Nevertheless this should put the blog owners on guard.

We may also recall that some time back, the owners of rediff.com were dragged to court for having provided a search facility leading to pornographic sites.

The risk of Blog owners being successfully convicted under Section 67 is therefore too real to be brushed aside under faith on "Freedom of Speech" and other human rights.

We all know that, in India, "Human Rights" can be a subject matter of diverse interpretation as law takes its own course in cases of public importance. Accordingly, a terrorist who dies in an encounter would be sympathized and supported while a 70

year old Hindu Seer will be pronounced "An Undeserving Criminal" based on the statement extracted from a "Known Contract Killer" (who also retracts his statement as made under duress) or pronounced a "Sexual Exploiter" based on a short story weaved by a lady story writer with a suspected mental illness.

Our media is so efficient that when it comes to select cases of public interest, it is the media which conducts the trial and pronounces judgment while the law is taking its own course.

Blog owners are therefore advised not to take the law lightly and take immediate steps to make their sites "Cyber Law Compliant".

Now it is our turn to visit Section 79 of ITA-2000 and see what is its relevance.

The section is reproduced here:

**Section 79 of ITA-2000: Network Service Providers not to be liable in certain cases**

*For the removal of doubts, it is hereby declared that no person providing any service as a Network Service Provider shall be liable under this Act, rules or regulations made there under for any third party information or data made available by him if he proves that the offence or contravention was committed*

*without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention*

*Explanation. - For the purposes of this section*

*a) "Network Service Provider" means an intermediary*

*b) "Third Party Information" means any information dealt with by a network service provider in his capacity as an intermediary*

Under the provisions of this section, the Blog owner can claim immunity for the postings of the visitors provided that

- i) He can prove that the offence was committed without his knowledge and
- ii) He had exercised all due diligence to prevent commission of such offence or contravention.

Now the Blog owners know what is required of them. If they are interested in running their blog without risk, then they need to know "What is Due Diligence" and exercise such "Due Diligence". Secondly if they come to know of an offence they should take immediate action to rectify the situation.

Perhaps removal of the offending information by the blog owner when he comes to know of the

offence is one such minimum requirement under Section 79 to claim immunity as an "Information Intermediary".

As regards "Exercising Due Diligence", it is a subject to be discussed with a "Cyber Law Compliancy" consultant (Such as the Undersigned!) as a part of the investment to be made for web publishing.

Before I end, let me make just two points related to the above.

1) Viewing of a pornographic material on the web either at the private residence of an individual or the private premises of an office or in a Cyber cafe is not "publishing" or "transmitting" and hence may not be termed as an offence. (Promoting viewing of such sites by spreading information and particularly inducing children would however be an offence)

2) The issues discussed above for blog owners on the need to be "Cyber Law Compliant" also applies to Companies who maintain websites, service providers such as Sify, Rediff, Indiatimes etc who let public host web pages with un monitored content.

Naavi  
December 5, 2004



## Forum Vs Blog

In our previous article we had discussed the impact of Section 67 of ITA-2000 on the Blog owner when "Information which is Obscene in Electronic Form" gets displayed on the blog space.

The continuing discussions on the issue has raised certain other interesting academic debates which are worth discussing here.

### **Issue (1): Is there a difference between a Forum and a Blog?**

The word "Blog" is a recent addition to the vocabulary and some legal dictionaries have no entry on the same. I have therefore decided to refer [www.dictionary.com](http://www.dictionary.com) for the acceptable definition.

A Blog is defined by dictionary.com as

**Definition:** an online diary; a personal chronological log of thoughts published on a Web page; also called Weblog, Web log

**Example:** Typically updated daily, blogs often reflect the personality of the author.

**Etymology:** shortened form of Weblog

**Usage:** blog, blogged, blogging v, blogger n

A Forum is defined as :

The public square or marketplace of an ancient Roman city that was the assembly place for judicial activity and public business.

A public meeting place for open discussion.

A medium of open discussion or voicing of ideas, such as a newspaper or a radio or television program.

A public meeting or presentation involving a discussion usually among experts and often including audience participation.

A court of law; a tribunal.

The other web definitions of a "Blog" run on these lines:

-A Blog is basically a journal that is available on the web. The activity of updating a blog is "blogging" and someone who keeps a blog is a "blogger." Blogs are typically updated daily using software that allows people with little or no technical background to update and maintain the blog. Postings on a blog are almost always arranged in chronological order with the most recent additions featured most prominently..

[www.matisse.net/files/glossary.html](http://www.matisse.net/files/glossary.html) ]

-A blog is basically a journal that is available on the web. The activity of updating a blog is "blogging" and someone who keeps a blog is a "blogger."..[[www.mitsol.co.za/help\\_glossary.htm](http://www.mitsol.co.za/help_glossary.htm)]

-A blog is a Web page that serves as a publicly accessible personal journal for an individual. Typically updated daily, blogs often reflect the personality of the author. [<http://www.webopedia.com/TERM/b/blog.html>]

A Forum on the other hand is defined as

-An online discussion group. Online services and bulletin board services (BBS's) provide a variety of forums, in which participants with common interests can exchange open messages. Forums are sometimes called newsgroups (in the Internet world) or conferences.....[Webopedia]

Others define a Forum thus:

-An online discussion group or newsgroup (see USENET). [[www.wmo.ch/web/www/WDM/Guides/Internet-glossary.html](http://www.wmo.ch/web/www/WDM/Guides/Internet-glossary.html) ]

-A discussion area (containing post and reply messages) within an ezboard community. A community may have one or more forums. A forum may have one or more topics.....[[www.ezboard.com/help/glossary.html](http://www.ezboard.com/help/glossary.html) ]

-A forum is an online discussion group. Forums can be newsgroups, or they can be Web-based.

..[[www1.sympatico.ca/help/Glossary/f.html](http://www1.sympatico.ca/help/Glossary/f.html)]

I leave the readers to make their analysis of the above definitions and present my views.

Whether a facility is a "Personal Diary" or "Place for public Discussion" has to be determined from the manner in which the facility is sought to be used.

If there is a "Blog" where a person keeps entering his own perceptions and does not open it out to the public, it amounts to a "Personal Web Diary". Subject to other authentication requirements (I am not going into a detailed discussion on the topic of authentication) this can be taken as evidence just as a personal diary would be in case of any crime or disputes.

Since there is no practice of a "Personal Diary" being shown around to friends and others, a Blog of the kind we normally come across where public view

and comment cannot be considered as an equivalent of a "Personal Diary" though it is colloquially referred to as such.

Now compare a "Blog" and the web site such as [www.naavi.org](http://www.naavi.org). To the extent the contributions in [naavi.org](http://www.naavi.org) is predominantly from one single person who is the owner of the site, the website [naavi.org](http://www.naavi.org) appears similar to a Blog. However, as more and more writers start writing on the website, it changes its "Blog like" status and acquires a character of a "Magazine" with several contributors and one editor who controls the content. The publisher can be some times different from the Editor. As such, in an "Electronic Publication" there are Content Contributors, Editor/s and the Publisher. Comments from the visitors get reflected from time to time just like "Letters to Editors" and does not form the significant part of the content.

In a typical Blog however, the blog owner acts as a catalyst to place a comment of his own in a public place with the invitation to the public to contribute their ideas around the central theme.

The very purpose is to make the main post and the comments together constitute "Content". There may be more visitors to a blog to read the comments rather than the main post itself.

The same objective is also seen in a "Forum" as we know on the web (such as an Yahoo group or a Message Board in Forum.onecenter.com). The group/forum owner here generally enlists members and any of the members may contribute an original point for discussion or comment on posts made by others. The information that so accumulates becomes the content.

There are obvious differences in forums. Some may be viewable by any but postings could be restricted to members. Some may restrict even the viewing to members only. Some may restrict the postings only to the owner and in some cases postings may be subject to moderation.

One essential difference between a typical forum and a Blog is in the way the new content may be distributed. A Forum may or may not distribute the postings by means of individual mails or digests. A Blog normally encourages people to visit the blog to make a comment. So is a website which would like visitors to come to the website rather than just receive the content. In recent days there are some alternatives developing in this field also with "Notify me when there is a Change" kind of service or "RSS feeds" supplementing the distribution systems.

Considering all the above practices, there is no essential difference between a typical "Blog", "Forum" and even a "Website". They differ in

presentation, style of organizing contributions and distribution. Essentially all present "Electronic Content" in Cyber Space and allow others to view them and provide interactive responses.

When we are interpreting "Publishing" under Section 67 of the ITA-2000, we need to consider that a "Blog", "Forum" and the "Website" stand on the same pedestal.

Naavi  
December 7, 2004



## **Creating and Publishing**

In our previous articles we had discussed the impact of Section 67 on the Blog owner when "Information which is Obscene in Electronic Form" gets displayed on the blog space and the difference between a Forum and the Blog.

We shall now discuss some of the other Legal issues involved in Blog management.

**Issue (2): Is there a difference in "Creating an Object of Information" and "Publishing the Object"?**

In a recent incident in Chennai a blogger had reported that he was in receipt of a video clipping through e-mail which consisted of a short video clipping of a well known actress taking bath in a Hotel room apparently filmed through a peep hole camera attached some where in the bath room.

The report generated viewer interest some of whom pleaded for the hyper link for the video, some offered to pay money for the clipping and some even offered to exchange another video clipping (The Delhi Public School Mobile Clipping) if some body was interested.

Though the blog owner refused to provide the hyper link one of the visitors posted the hyper link which

stayed on site for some time before the blog owner removed the posting containing the hyper link.( Shortly there after the entire blog entry with the comments were also removed by the blog owner. For the time being let us accept that the film was "Obscene" in content as per the definitions of Section 67 of ITA-2000 and proceed to discuss the implications.)

This is a very interesting case to study the various issues involved in such an incident.

This incident had many players and many actions such as .

1. Fixing a peephole camera in a Hotel Room and taking obscene pictures during the private moments of an individual who also happens to be a celebrity in her own right.
2. The film was processed digitally (saved in some specific file format with or without editing) in a computer
3. The distributable version of the film was placed in a web repository which is owned by somebody.
4. Different persons who were informed directly by the first distributor, saw the clipping.

5. Some of the recipients started distributing hyper links to the public.
6. Many Netizens saw the clipping online.
7. Some of the Netizens downloaded it to their computers
8. Some of the Netizens distributed the file through e-mail to their friends
9. Some sold the clipping for a price in the Meta Society.
10. Some Citizens bought the clipping from a market place paying money and viewed them in their personal computers or shared computers.
11. Some of the persons who bought the Clip in the Meta Society or acquired through the Cyber Space, caused the clipping to be exhibited to others through Cyber Cafes or private shows.
12. The information about the existence of the video, the location where it was available, etc was made available to the public through Blogs, websites and perhaps through News Reports in the physical world by distributors, Journalists, Crime Analysts, Sociologists etc.

It would be necessary for us to consider the legal implications of the incident and consequential action on each of these category of persons.

These discussions would also be relevant in cases such as the famous "Dr Prakash Case" in Chennai where the accused was alleged to have photographed women under duress or otherwise in compromising positions and published it through a website hosted abroad by his brother and friends. The trial is still going on in Chennai Courts against Dr Prakash, while his brother is still at large in a foreign country.

There are many more such incidents where the Crime is a combination of Cyber Crime and a Non Cyber Crime and there will be need to look at law for Cyber Crimes in conjunction with the law for other crimes. In India the Cyber Crime Law is available in ITA-2000 effective from October 17, 2000 and Non Cyber Crime related penal Laws are available mainly in Indian Penal Code (IPC).

Let us restrict our present discussion to the provisions of ITA-2000 and IPC. (Since some points have already been discussed in the first article of this series, we shall now focus only on what has not been discussed.)

The 12 activities listed above revolve around the following.

- a) Creation of the object which is the subject of crime
- b) Using the Object in a specific manner.

To start with, we can consider that the video film might have been created by an individual to satisfy his own sensuous desires. In such a case the film would have been seen only by him and not transmitted. (A similar incident had been reported a few months back where a Hotel Owner had fixed a web cam in the bath room attached to a swimming pool.)

In such case it is purely a crime of "Violation of Privacy" of the woman. If it is a single incident, perhaps the cause of action lies only with the victim and the remedy may vary according to the effect of the violation on the victim. In case such filming has been resorted to as a matter of routine or at least in more than once, then it may be construed as a "Crime against Society" and criminal prosecution may be in order, under the assumption that "They were meant to be used" for Sale or for harassment etc.

After the Video having been created, the manner in which it is used defines other crimes associated with the incident.

For example,

if the copy of the film is shown to the lady herself for the purpose of embarrassing her, perhaps section 509 of IPC may be invoked.

If it is used to cause harassment to the lady it may come under Section 503 of IPC and

if it is used to extort money from her it may come under section 383 of IPC.

In case the video film is exhibited in the form of a cinematographic film, then the provisions of Cinematographic Film Act pertaining to prohibition of display of a film without censor approval may become applicable.

In case the video film is "Published" or "Distributed" or "Caused to be Distributed" to persons who are likely to be adversely affected as per Section 67 of the ITA-2000, then Section 67 of ITA-2000 becomes applicable.

When the film gets distributed, it also has the effect of causing dis-reputation for the victim. This reduction in the value or esteem of the person in the minds of the public itself may be an act of "Defamation". If the distribution was accompanied by words or gestures of explanation then "Defamation" under Section 499 of IPC would result without any doubt.

According to Section 499 of IPC,

*Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person..*

According to Section 500,

*Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

Additionally the person who is defamed may claim damages by way of a Civil suit.

In case the original digital film has been edited and modified (Such as in the case where pictures are morphed and altered), it may constitute "Hacking" under Section 66 of ITA-2000.

According to Section 292 of IPC

*Whoever-*

*(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation,*

*makes, produces or has in his possession any obscene book, pamphlet, paper, drawing painting representation or figure or any other obscene object whatsoever, or*

*(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or*

*(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or*

*(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or*

*(e) offers or attempts to do any act which is an offence under this section,*  
*shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.*

In the list of 12 categories of people indicated earlier in this article, different persons will come under different categories described by the above section.

Lastly, According to Section 120 A of IPC

*When two or more persons agree to do, or cause to be done,-*

*(1) an illegal act, or*

*(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*

*Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.*

*Explanation- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.*

According to this section, those who participate in the creation of the film and in its distribution can be considered as "Conspiring" towards the common illegal activity.

Therefore one of the bloggers creating a blog and another expanding on it, yet another posting a link, yet another talking of where it is available etc.. may amount to a conspiracy under a deemed agreement.

"Seeing the Video" is not defined as a Crime either under the ITA-2000 or IPC. However, Being in possession of a "Copy for Sale" could be an offence under Section 292 of IPC.

Thus, law recognizes different punishments for "Creation of the Video" and "Using of the Video" in different manners. "Publishing" is one such act.

The different crimes of creation and publication can be done by different people for gain or otherwise.

Thus the surreptitious photographer may be liable for the Violation of Privacy, while the Blogger and the Link Provider may be liable for publication and Others asking for the link and offering payment may be liable under IPC...and so on.

Naavi  
December 8, 2004

## **Hyper Links**

In our previous articles "we had discussed some of the legal issues regarding Blogging. Let us visit a few more here.

### **Issue (3) Is the Blog owner responsible for a hyper link posted by a visitor?**

There are two points to be considered here.

First is whether the "Comments" posted by the visitors is part of the "Original Posting" or is a "Continuation of the Original Posting".

Second is whether a "Hyperlink" either in the main posting or in a comment is a continuation there of.

Technically speaking, "Hyper Link" is a software command that initiates a http request for a designated file. When a user "Clicks" on the hyper link, he initiates the software process leading to reaching out to the designated file.

The link itself is provided by the web page designer who is the "Programmer" at the instruction of the web page owner "Who causes the link to be made available".

If therefore a person clicks on a hyper link, the consequences of such action has to be borne by

both the person clicking the hyperlink as well as the person who made the link available.

In case the person who created the link mislead the person clicking by creating a fraudulent or misrepresenting hyper text, then the user would not be responsible for the consequence. For example if the linked hyper text says "Here is a Picture of Tirumala Temple" and then links it to an obscene photograph, the person who is clicking the hyperlink would be absolved of the adverse consequences.

But if the link provider says that the linked file contains some explicit material and the user is visiting the link at his risk and responsibility, then the responsibility for the consequences is squarely on the visitor. I may recall here that the website tamilsex.com involved in Dr Prakash's case did have such a disclaimer on the home page which stated to the effect " ..Please do not visit the site if it is illegal in your country to visit such adult material ".

By the same logic if the link provider says "It is exciting,..must see.." etc then he is actually urging the visitor and canvassing him to visit.

There is also another way of looking at "hyper linked documents". For example, just as a document may contain references to "Annexure" (which may actually be separate documents) and such a document along with the annexure is considered as a

single document, an electronic document with a hyper linked document can be considered as one single document. As far as the hosting responsibility is concerned therefore, the web page owner who provides a link is actually intending that the linked document is to be considered as a part of the content of the web page itself, though, for logical clarity it is presented as an "linked annexure".

In case the linked document is stored in the hosting space owned by the web page owner, then the association of the linked document and the main page is even more explicit.

Unlike a physical world scenario where a person may give a direction "Please go to Burma bazaar..Shop number ..... You will get this material", in a hyper linked environment, the web page owner is not only giving direction to where the offensive material is available but is also initiating the delivery process automatically because the link may automatically initiates the file download process. So the link provider is both canvassing and delivering the material himself (may be free of cost).

If we apply Section 292 IPC provisions to such an activity, there are multiple offences committed by a blog which hosts information about an offensive material and also provides a hyper link.

We have already discussed in the earlier article that the "blog" by definition is meant to consolidate content from a group of people. The blog owner is therefore considered having consented to the provision of hyper link posted by the visitor.

It is however granted that a link may get posted without the approval of the blog owner. In such a case it is important for the Blog owner to act within a reasonable time to remove the offensive material.

If such action is taken then we can say that the consequences of the link having been posted by a visitor can be avoided.

Naavi  
December 9,2004

## **Copyright**

In our previous articles " we had discussed some of the legal issues regarding Blogging. Let us visit a few more here.

### **Issue (4) Is the Blog owner responsible for Copyright Violations if he posts a picture?**

This is an issue which has been discussed extensively at naavi.org and other places with reference to a website. Whatever is applicable for a website should also be applicable for blogs.

We need to remember that Copyright is an automatic right vested with the creator of a literary work. As regards a photograph, the copyright vests with the photographer unless the photograph was taken on contract on behalf of some body else.

It is also not necessary for the Copyright owner to specify that he has a copyright on a material by affixing some symbol such as ©. It is also not necessary for Copyright to be registered with any authority.

This means that prima-facie, any material reproduced from any other website is a potential copyright infringement unless the copyright object is being used under permission, or if it has been put in

public domain by the creator, or its use can be considered a "Fair Use".

Specific permission is when the creator has told specifically on the website that the photograph can be reproduced without permission.

"Putting an object of Copyright" in the "Public Domain" is to be implied when the nature of publication is itself indicates the intention of the creator that it can be reproduced. One example often quoted is the "Letter to the Editor" which the publication can publish while a personal letter from A to B is not to be construed as being in public domain.

In the Blog environment, the "Comment" is meant to be published and hence there is no infringement of copyright. But if a comment is sent by somebody to a web site owner by e-mail or otherwise, it is not to be automatically construed as being meant for publication.

"Fair Use" in any literary or artistic work includes "Reproduction" for comments, or parody or journalistic reporting which does not constitute infringement. However such reproduction is normally restricted to a portion of the original work and not the entire work.

In the case of a photograph which is considered an "Artistic Work", there is some ambiguity as to whether reproduction of a photograph is a reproduction of the "Entire Work". Normally, when a collection of photographs has been published by an artist and a few of photographs from the collection are reproduced, the distinction between "Entire Work" and "part of the Work" is explicit. If however a single photograph of an artist is reproduced it is not clear whether it constitutes an "entire work".

However, the normal circumstance in which a photograph is reproduced by the blog owner is when he comments on a photograph published in a news article in some other publication. In this case the "Entire Work" with reference to the "publication" refers to the article and the photo together and the reproduction of photograph alone with comments may be construed as "Partial Reproduction" only.

Therefore, a Blog owner who is not reproducing pictures for commercial gain and is only on certain occasions reproducing some pictures for commenting is within the framework of "Fair Use".

It is however recommended as a means of abundant caution that the source of the picture is properly mentioned so that the credit is given to the earlier publication.

The remedy in case of Copyright infringement may be both Criminal and Civil. However, if the blogger did not have the intention to make financial gain out of the publication, the damages that can be claimed may be insignificant and "Intention to cause harm" may also not be indicated. As a result, the possibility of loss occurring to the blog owner is limited.

If however the blog owner is having a regular habit of reproduction of copyrighted photograph and there is an indication that he wanted to make a commercial gain or a gain in any other terms by such publication, it is open to the discretion of the judge in question to award both civil and criminal penalties.

Naavi  
December 10, 2004

## **Anonymity**

In our previous articles " we had discussed some of the legal issues regarding Blogging. Let us visit a few more here.

**Issue (5) What are the ethics of posting comments in a disguised identity and to what extent "Anonymity" encourages "Adventurism" on the Internet?**

Anonymity has been both the boon and the bane of Internet. But for the possibility of anonymity Internet would not have developed as a global media of communication as fast as it could. It could not have enabled the world to get information from a war zone such as Iraq or from a country such as Burma or China during days of oppression. Democratic people all over the world cherish and value this ability of the Internet to enable bold expression of views under the cover of anonymity. Pseudonymity also has similar beneficial impact on the society.

Unfortunately however, society also consists of individuals who misuse their freedom and tarnish the image of Internet by using anonymity as a cover for blasphemy or pseudonymity as a criminal tool.

As a result, we find persons passing irresponsible comments and unsubstantiated charges while

posting views on a Blog under a false name or under no name.

It is a matter of human psychology that persons tend to do acts which the society considers as incorrect when they think they cannot be caught. Even most murders take place with the belief that the murderer cannot be caught. If every murderer knew that he would be caught, the number of murders in the country would have grossly come down. In a crowd, even the most decent person does not mind throwing abuses some times for the kick he gets out of it and nothing else.

While upholding the value of anonymity to the "Freedom of Speech", it is to be said that " Misuse" of this feature of Internet is not to be encouraged.

What this means in the context of a Blog is that if a visitor posts a comment anonymously, it should be subject to moderation so that anonymity is not used as license to flame. Comments from people who would not mind to be identified may be allowed without moderation since they take responsibility for the consequences.

It is therefore advocated that Blogs should implement a system of "Membership" which when approved should provide the "License to post without prior screening".

While the issue of "Anonymous" posting is one of ethics, when an anonymous posting is allowed to be used for committing a crime, then the question of "Complicity" of the Blog owner comes into being. Since the offence is committed in the Blogger's space, the Blog owner has the vicarious responsibility to identify the offender.

In this connection, we can read the intention of law from Section 85 of ITA-2000 which states as under.

### **Section 85 of ITA-2000: Offences by Companies**

*(1)Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made there under is a Company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly*

*Provided that*

*nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.*

***(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly***

***Explanation-***

***For the purposes of this section***

***(i) "Company" means any Body Corporate and includes a Firm or other Association of individuals; and***

***(ii) "Director", in relation to a firm, means a partner in the firm***

It is clear from the above provision that "Vicarious Responsibility" of the "Company" and a "Director" is recognized in law. Since the term "Company" also includes any "Association of Individuals", a non corporate entity can also come under this provision. There is an inclusive definition of the Company for which other extension of meaning may be ascribed in future.

While one can argue on the semantics if this is applicable in the case of a particular website owner or not, there appears to be no ambiguity on the intention behind this clause.

It is therefore within the realms of possibility that a Court may take a view in a particular case that what is stated here for a "Company" or an "Association of Persons" may be extended to a "Collective Publication on the Net such as a Blog".

It is my personal view that such an extreme view is not warranted in the case of offences under the umbrella of "Obscenity" but would be warranted when a Blog is used for spreading terrorist messages or carrying on an anti national propaganda.

When such unfortunate thing happens and a Competent Court holds a Blog owner responsible, for carrying anonymous postings that constitute a threat to the integrity of the country, it would then be cited by lawyers as a "Precedence" and some times quoted out of context.

Readers may remember that Indian Government blocked the entire yahoo group sites because a group with 26 members appeared to carry on discussions about secessionist activities in Mizoram.

**Bloggers must therefore be careful and avoid such Possibility for a particular blog or to a group of Blogs under a Blog service provider.**

**Pseudonymous posting of offensive messages in a Blog are even more dangerous particularly if the identity of another known individual is spoofed either by design or by accident.**

**Naavi  
December 11, 2004**

## **Defamation**

In our previous articles " we had discussed some of the legal issues regarding Blogging. Let us visit a few more here.

**Issue (6) Does calling one an "Idiot" on a Blog constitute cause for action in a defamation case?**

**Issue (7) If a person places his work in a public domain, what are the rights of the public to criticize? and is there a difference between criticism and defamation? or between criticizing the author and criticizing the work?**

As we have already discussed, Blog can be treated as an "Electronic Speech". Blog is also normally a public space.

According to Indian law, any material rendered in electronic form is equivalent to what is rendered in paper form as can be implied from Section 4 of ITA-2000. If such a document is authenticated as per the provisions of Section 5 (i.e. by Digital Signature), it is equivalent to a written and signed paper which is a prima facie evidence in a Court of Law.

If the electronic document is not digitally signed, it may be proved in a court of law with other witnesses

and /or with certification from service providers such as [www.ceac4india.com](http://www.ceac4india.com) .

It is therefore necessary to remember that anything written on a Blog either by the owner or any of the visitor is equivalent to speaking in the public. The writing therefore can be subject matter of "Defamation", "Fraud", "Misrepresentation", "Breach of Trust", "Threat" etc.

Let us for the time being restrict our discussion to "Defamation" only. In order to understand what IPC says about "Defamation", let us see the complete section in IPC which talks about Defamation.

According to Section 499 of IPC,

*Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person*

*Explanation 1- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near relatives.*

*Explanation 2- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.*

*Explanation 3- An imputation in the form of an alternative or expressed ironically, may amount to defamation.*

*Explanation 4- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.*

*Illustrations*

*(a) A says- "Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.*

*(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation unless it fall within one of the exceptions.*

*(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.*

*First Exception- imputation of truth which public good, requires to be made or published- It is not defamation to impute anything which is true concerning*

*any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.*

*Second Exception- Public conduct of public servants- It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.*

*Third Exception- Conduct of any person touching any public question- It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.*

*Illustration*

*it is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending a such meeting in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharges of the duties of which the public is interested.*

*Fourth Exception- Publication of reports of proceedings of Courts- It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.*

*Explanation- A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a*

*trial in a Court of Justice, is a Court within the meaning of the above section.*

*Fifth Exception- Merits of case decided in Court or conduct of witnesses and others concerned- It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.*

*Illustrations*

*(a) A says- "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this is in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.*

*(b) But if A says- "I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, in as much as the opinion which he express of Z's character, is an opinion not founded on Z's conduct as a witness.*

*Sixth Exception- Merits of public performance- It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgement of the public, or respecting the character of the author so far as his character appears in such performance, and no further.*

*Explanation- A performance may be substituted to the judgement of the public expressly or by acts on the*

*part of the author which imply such submission to the judgement of the public*

*Illustrations*

*(a) A person who publishes a book, submits that book to the judgement of the public*

*(b) A person who makes a speech in public, submits that speech to the judgement of the public*

*(c) An actor or singer who appears on a public stage, submits his acting or signing in the judgement of the public*

*(d) A says of a book published by Z- "Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.*

*(e) But if A says-"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertines. A is not within this exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.*

*Seventh Exception- Censure passed in good faith by person having lawful authority over another- It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other; to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.*

*Illustration*

*A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier-are within the exception.*

*Eight Exception- Accusation preferred in good faith to authorised person- It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.*

*Illustration*

*If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, and child, to Z's father-A is within this exception.*

*Ninth Exception- Imputation made in good faith by person for protection of his or other's interests- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.*

*Illustrations*

*(a) A, a shopkeeper, says to B, who manages his business-"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.*

*(b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.*

*Tenth Exception- Caution intended for good of person to whom conveyed or for public good- it is not defamation to convey a caution, in good faith, to one person against another; provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.*

According to Section 500 of IPC,

*Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

Let us now analyze implications of "language" used in a weblog comment.

Without much need for explanation it is clear that there is a difference between stating that a person is an "idiot" and his work is "idiotic". The former is a comment on the person while the latter is a

comment on the work. Former could be "Defamatory" and the latter is not. Hence even in the case of a work placed in the public, criticism is allowed to be made of the work. However, if this has to extend to a criticism of the author, there are certain limitations which the persons making comments need to keep in mind.

Secondly, one has to check if the comment was done in good faith or casually. If it has been made in good faith, it may come under an exception. But otherwise the comment could be defamatory. "Good Faith" normally requires that the person has made some reasonable effort to come to the conclusion. For example if a person want to comment on even say the work of an author, he should have at least read it before branding it as idiotic.

If a person calls another whom he has not seen nor understood by reading any of his work, an idiot without being open to the charge of defamation.

Another aspect which is normally considered as "Not Amounting to Defamation" is when some thing stated is actually true. However, this applies only if the person making a comment believes that it is in the public interest to disclose the information. If not, defamation can be implied even when the statement is true.

The laws regarding "Defamation" is very subjective and what constitutes defamation may vary from case to case. For example, words such as "Idiot", "Shit" etc may be common terms in certain societies and culture but not so in others. Accordingly what constitutes defamation also varies.

It is often seen that persons commenting in Blogs hide behind an anonymous name and freely throw insults at others. This constitutes defamation and in the absence of proper identity of the person committing the crime, can render the Blog owner responsible.

We can therefore conclude that there is enough reason to believe that "Calling a person Idiot" on a Web Blog, and more so when it is "Un substantiated", "Without Specific Knowledge" and "In Bad Faith", could constitute "Defamation" and render the person saying so liable both under Section 499 of IPC as well as for Civil liability to the victim.

In the Case of work placed in public, unless the comment is reasoned and made in the "opinion" of a person, in good faith, there can be cause of action for defamation.

The final word on this depends on the circumstances of the case.

Naavi  
December 12, 2004

## IPC & ITA

In our previous articles " we had discussed some of the legal issues regarding Blogging. Let us visit a few more here.

**Issue (8) Is it correct to invoke Section 292 of IPC and Section 67 of ITA-2000 for the same offence?**

Section 292 of IPC mainly refers to Sale etc of Obscene Books. We can see this along with Section 292 A of IPC which refers to printing of scurrilous matter for blackmail, Section 293 of IPC which refers to sale to persons below a certain age, and Section 294 of IPC which refers to obscene acts and Songs.

For the information of all, I will reproduce the relevant sections here.

**292. Sale, etc., of obscene books, etc.**

*( 1 ) For the purposes of subsection (2), a book, pamphlet, paper, writing drawing painting representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having*

*regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.*

*(2) Whoever-*

*(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing painting representation or figure or any other obscene object whatsoever, or*

*(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or*

*(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or*

*(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or*

*(e) offers or attempts to do any act which is an offence under this section,*

*shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees].*

*Exception- This section does not extend to-*

*(a) any book, pamphlet, paper, writing drawing painting representation or figure-*

*(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing drawing painting representation or figure is in the interest of science, literature, art of learning or other objects of general concern, or*

*(ii) which is kept or used bona fide for religious purposes;*

*(b) any representation sculptured, engraved, painted or otherwise represented on or in-*

*(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or*

*(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]*

### **STATE AMENDMENTS**

#### **State of Orissa:**

*Same as in Tamil Nadu [Vide Orissa Act No. 13 of 1962].*

#### **State of Tamil Nadu:**

*In section 292 the words "shall be punished with imprisonment of either description for a term which may extend to three months or with fine or with both" substitute the following namely:-*

*shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.*

*Provided that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years and with fine."*

*[Vide T.N. Act No. 25 of 1960].*

***State of Orissa:***

***Section 292A***

***Same as in Tamil Nadu [Vide Orissa Act No. 13 of 1962].***

***State of Tamil Nadu:***

***Add after section 292 the following new section namely:-***

**292A: Printing, etc, of grossly indecent or scurrilous matter or matter intended for blackmail.**

***Whoever,-***

***(a) prints or causes to be printed in any newspaper, periodical or circular, or exhibits or causes to be exhibited, to public view or distributes or causes to be distributed or in any manner puts into circulation any picture or any printed or written document which is grossly indecent, or in scurrilous or intended for blackmail; or***

***(b) sells or lets for hire, or for purposes of sale or hire makes, produces or has in his possession, any picture or any printed or written document which is***

*grossly indecent or is scurrilous or intended for blackmail; or*

*(c) conveys any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail knowing or having reason to believe that such picture or document will be printed, sold, let for hire distributed or publicly exhibited or in any manner put into circulation; or*

*(d) takes part in, or receives profits from, any business in the course of which he knows or has reason to believe that any such newspaper, periodical, circular, picture or other printed or written document is printed, exhibited, distributed, circulated, sold, let for hire, made, produced, kept, conveyed or purchased.. or*

*(e) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any Act which is an offence under this section, or that any such newspaper, periodical, circular, picture or other printed or written document which is grossly indecent or is scurrilous or intended for blackmail, can be procured from or through any person; or*

*(f) offers or attempts to do any act which is an offence under this section \*[shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both]:*

*Provided that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months \*[and not more than two years].*

*Explanation 1- For the purposes of this section, the word scurrilous shall be deemed to include any matter which is likely to be injurious to morality or is calculated to injure any person:*

*Provided that it is not scurrilous to express in good faith anything whatever respecting the conduct of-*

*(i) a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further: or*

*(ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.*

*Explanation II- In deciding whether any person has committed an offence under this section, the court shall have regard inter alia, to the following considerations-*

*(a) The general character of the person charged, and where relevant the nature of his business;*

*(b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;*

*(c) any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section.*

*Vide 'T'.N. Act No. 25 of 1960].*

*\*Substituted by T.N. Act No. 30 of 1984*

**293. Sale, etc., of obscene objects to young person**

*Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.*

## **STATE AMENDMENTS**

### ***State of Orissa:***

***Same as in Tamil Nadu [vide Orissa Act No. 13 of 1962].***

### ***State of Tamil Nadu:***

#### ***In Section 293-***

***(a) for the words "any such obscene object as is referred to in the last preceding section" the words, figures and letter "any such obscene object as is referred to in section 292 or any such newspaper, periodical, circular, picture or other printed or written document as is referred to in section 292-A" shall be substituted;***

***(b) for the words "which may extend to six months" the words "which may extend to three years" shall be substituted;***

***(c) in the marginal note, after the words "obscene objects" the words "any grossly indecent or scurrilous matter intended for blackmail shall be inserted."***

***[Vide T.N. Act No. 25 of 1960].***

## **294. Obscene acts and songs**

*Whoever, to the annoyance of others-*

*(a) does any obscene act in any public place, or*

*(b) sings, recites or utters any obscene song ballad or words, in or near any public place,*

*shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.*

In the light of the above readers can evaluate the gravity of the offence referred to in the earlier article where a link to an obscene material was posted on a Blog by a visitor.

In as much as Section 67 of ITA-2000 applies to publishing and distribution of Electronic Documents while Section 292/293 of IPC apply to print objects and "other objects" which also gets extended to Electronic Documents by virtue of Section 4 of ITA-2000, there is an overlap between the two sections in different Acts.

Section 292 of IPC perhaps is wider in respect of the type of offences covered, while Section 67 of ITA-2000 restricts itself to Publishing, Distribution and Causing Publication and Distribution only.

In an actual incident referring to acts covered by Section 67 of ITA-2000, it would be appropriate to invoke this section from a specialized act applicable for Electronic Documents. For the same offence it would be in appropriate to invoke Section 292 also since this may indicate "Double Jeopardy".

In respect of offences other than Publishing and Distribution covered by Section 292/293 of IPC, the section can be invoked in addition to Section 67 of ITA-2000 without raising the issue of "Double Jeopardy". It would be necessary for the prosecution to be very specific about the charges and the invocation of specific sections so that there is no dilution of the charges.

Naavi

December 12, 2004

## **Freedom of Speech**

In our previous articles " we had discussed some of the legal issues regarding Blogging. Let us visit a few more here.

**Issue (9) Can we trust that "Law will take Its own Course" and "Freedom of Speech" will protect the Blog Owner from action under Section 67 or any other section of IPC if the powers be take note?**

Many of the Blog Owners and those who comment profusely there on belong to the Techie Community. They are not Lawyers themselves nor they are businessmen. They are half in the US Culture or more correctly they are typical Netizens of the Cyber World with Cyber Culture. They are well educated but some times restricted in their vision to the technical aspect of things. Generally, they are also young and adventuristic.

Often exposed to the US thoughts, the Blog owners and Commentators are influenced by the thoughts of "Freedom of Speech" as enunciated in the US Constitution and represented adequately in the early era of Internet which I refer to as the "Free Internet Era". We in India did experience such an era upto around 1998 or early 1999. This was the time anonymity and pseudonymity was the norm than an exception. Internet was considered the "Free Information Exchange Place". Everything in

Internet was free from e-mail and web hosting to content and service. Domain Name Squatting was common and Napster was the most popular service.

The advent of E-Commerce in particular and the threat felt by traditional business houses from dot-com establishments changed the scenario later. Big Business houses in the Real World started taking active interest in Cyber Regulations to protect their individual turfs. Established meta society business houses suddenly started realizing the importance of being on the Internet Space and protecting their Meta Society "Brands" on the Internet Space and started pushing stringent IPR regulations to the Cyber Society. Cyber Squatting Laws and demise of Napster like companies followed. The established E-Commerce entities also supported regulations since they had to protect their online business from frauds and crimes. The convergence of the interest of these two potential competitors gave a boost to "Internet Regulation" and slowly but surely regulations started being imposed on Web transactions.

Some regulation was also necessary to maintain organized development of the Cyber Activities. But along with what was necessary, what the business interests wanted also became a regulation with the support of law and the law enforcement machinery. Many of the laws which some Techies today reflect as "Ridiculous" have become laws because of such vested interests who wielded influence in the law

making bodies. Techies who are suddenly realizing the power of the laws when they see a Dmitry Sklyrov arrested or a College student fined for downloading music, contributed to the formation of inefficient laws because they never interacted with the law making bodies when it was necessary.

I recall that when naavi.com (Now naavi.org) first started discussing the legislation in India in mid 1998 ( when the draft of E-Commerce Act 1998 and later as Information Technology Bill 1999 was brought up for public discussion) and Cyber Law College proposed education in Cyber Laws for the Techies, none of the Techies considered that it was important to them. Even an attempt to start discussions on the need for CERT with the participation of the IT majors did not evoke any response from the Industry.

Techies should realize that their responsibility to the Cyber Society does not end with talking loosely on Blogs and discussion fora. They need to understand Cyber Laws, Respect them and Implement Cyber Law Compliance in practice.

In India where "Terrorism" is a reality and also in USA, post 9/11, the cherished rights of the past era namely "Freedom of Speech" have been tempered with the need to protect the integrity and sovereignty of the nation. Therefore the "Right To Privacy" and

"Freedom of Speech" has been subordinated to the needs of the State.

Moreover, for those who have their eyes and ears open, in India the phrase "Law will take its own course" has its own meaning. If any person wants to place his trust in the system entirely and take on the state, he will do so at his own peril.

Blog owners and those who post Comments who reside in India or hold Indian Passports should therefore be extremely careful on taking liberties with law. The threat of the Blog owners and participants being arrested and tried under Section 67 of ITA-2000 or Section 292 and other sections are very real.

Remember Mr Suhas Katti who was sentenced to 5 years of total imprisonment (Net 2 years) for posting obscene and harassing information about a lady on Yahoo group. Remember Mr Prem Kumar, the web master who is in custody because he sent an e-mail with bomb hoax. You will then realize that you could be the next victim if you are rash.

I have come across a case of a lady employee of a software company filing a false complaint against a co-worker stating that he had sent her an obscene mail and made the person spend some time behind bar. He is still pursuing the Court process and has lost his job for more than two years now. In another incidence, a software employee wanted to prevent

his lady colleague from being promoted ahead of him and conveniently sent across a few mails in the Intranet stating illegal relationship between her and her immediate boss.

Imagine if the same victims had been maintaining Blogs, the cunning co-employee could have very easily posted an offending message and sent an anonymous mail to appropriate places and all hell would have been let loose.

Remember that the message may not be a simple link to an obscene video. It could be ostensibly a message from Al-Queda to its cadres to launch an attack or a drug peddling offer hidden in a steganographic image and then it would be difficult even for God to save the person in whose name the posting might have been made. The Blog owner may also have a lot to explain particularly if it is an anonymous post.

( I agree that the innocence of an accused can be proved through forensic means and it is the profession of people like us to ensure that innocent persons are protected. I assure from my side that it will be done when some thing is in my hands. But the suffering in the first one month of being arrested in a Criminal case is some thing which a later acquittal will not be able to remove. I would not advise any body to put to test the dictum "Justice will prevail" by placing himself at risk)

In summary we can state that Blogging like any other web based operation has its own share of Cyber Law related risks. It is not a gossip chat around the lunch table in a software company where anything can be said about anybody. Worst thing is that some body may talk and some body else may get hurt.

If we want to survive and do not want our other friends to get into trouble, it is necessary for us to use the Blogs responsibly. I suppose Wise Techies get the message.

Naavi

December 12, 2004

## **Self Governance**

In our previous articles “we had discussed some of the legal issues regarding Blogging. In conclusion, let us discuss what Bloggers can do to meet the Cyber Law Risks associated with the maintenance of Blogs and participating in the Blog Discussions.

### **Issue (10) Is there a need for “Self Governance” amongst Bloggers and if so how?**

Having discussed various legal issues that may affect Bloggers, it is time now to take stock of what needs to be done to mitigate the risks. This is in keeping with the expectation of law that Blog owners need to exercise “Due Diligence” to prevent occurrence of Cyber Crimes.

In case Bloggers do not act now and clean up their activities we can expect them to face a plethora of problems. Some of the actions that may be considered are,

1. To secure themselves, Blog owners should also post Blog Ethics and warn the visitors of the consequences of ignoring law.

This will also help them establish “Due Diligence”. In the coming days a link to this set of articles (available on [www.naavi.org](http://www.naavi.org)) could be one of the alerts that Blog owners would do well to provide.

2. Blog owners should monitor the posts regularly and remove offending comments as soon as they are noticed

3. If and when it is feasible it would be better to retain the Blog as “Moderated by default” and provide select moderation powers to such of those members whom the Blog owner knows personally to be responsible. (This system works well in Forums though is not found at present in Blogs.)

4. If possible, posting of hyperlinks in comments should be subject to moderation.

5. All copies of Photos and materials reproduced should be acknowledged for the source.

6. The language used should be clean and in an attempt to make it informal, should not border on obscenity or be disrespectful of others.

7. Third party ads should be allowed with circumspection and only from known sources.

8. Pictures reproduced should be screened for “Steganographic Messages” to the extent feasible or chosen from trusted sources only.

9. Anonymous postings should be discouraged. If possible, source IP address should be recorded along with the message.

10. Blog owner should ensure Cyber Law Compliance Audit of the Blog from time to time from some respectful authority. (Cyber Society of India, would take up such audits and certifications initially for its members.)

If a good system of self governance is not introduced by the Blog community, Blog Culture may not be able to show the kind of growth we are now witnessing. It will also encourage regulators to bring in their own regulations which the Blog owners will find difficult to digest (Remember the plight of Cyber Cafes who are reeling under regulations which they would have done without if they had adopted a good self regulation system) .

I therefore urge Blog Owners in India to come together and form their own association of Blog Owners and exchange good Blog maintenance practices amongst themselves.

Alternatively they may become members of other like minded entities such as Cyber Society of India which are willing to take up the cause of Netizens in the right for a.

Naavi

December 12, 2004

## **About the Author**

Naavi is an E-Business Consultant based presently in Chennai, India. An Ex-Banker and a Financial Services Expert, Naavi worked as a Merchant Banker and a Financial Products Marketing Consultant for a better part of his long corporate career.

With the opening up of the Internet in India since 1995, Naavi turned his attention to the Internet media and since 1997 has been focusing on the harnessing of the Internet technology for business.

With a long teaching career in Banking behind him, Naavi turned his attention to Cyber Law Education in early 1998 itself when the draft E-Commerce Laws were contemplated in India. In the next few eventful years, Naavi had many pioneering achievements to his credit.

Naavi pioneered the first Cyber Law related website in India by converting his personal website [www.naavi.com](http://www.naavi.com) (Now available as [www.naavi.org](http://www.naavi.org)) into a Cyber Law information center in mid 1998. In December 1999, he authored the first book on Cyber Laws in India. In October 2000, he launched formal virtual courses in Cyber Laws through the dedicated Cyber Law Education center [www.cyberlawcollege.com](http://www.cyberlawcollege.com).

Through the next few years, Naavi launched [www.verify4lookalikes.com](http://www.verify4lookalikes.com) a concept to relieve the Cyber world of substantial part of Domain Name disputes. He also launched the first Cyber Evidence Archival center in India through [www.ceac4india.com](http://www.ceac4india.com) trying to find solutions to many of the problems that arose in the Cyber Law Compliance area.

Release of the first E-Book in Cyber Laws from India was yet another pioneering achievement from Naavi.

Pursuing his objective of encouraging a voluntary compliance of Cyber Law, Naavi has pioneered the CyLawCom concept and is creating skilled manpower with Techno Legal Cyber Security Skills to act as CyLawCom Examiners to assist Companies in pursuing Cyber Law Compliance as a business strategy.

Naavi is today a prominent Cyber Law Educationist in India and a member of some Advisory bodies related to Cyber Law regulation in India.

He is a regular guest faculty in a number of educational institutions including the School of Excellence in Dr Ambedkar Law University, Chennai and Police Training College Chennai.

Naavi assists Police when required in Cyber Evidence Collection and interpretation to judicial

standards. He also offers services to Companies for conducting Cyber Law/Security programmes and Compliancy Consultancy.

Naavi is also the founder secretary of Cyber Society of India which has an ambitious plan as a Society of the Netizens, By the Netizens and For the Netizens.

Naavi can be contacted at [naavi@vsnl.com](mailto:naavi@vsnl.com).

For records, Naavi is the popular name by which Na.Vijayashankar is known, was born in Mysore, Karnataka,(India), is aged 51, and is a Post Graduate in Physics with Banking and Management qualifications.

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# Bloggers Beware

By

**Naavi**

Naavi has been an advocate of “Building a Responsible Cyber Society” for which his website [www.naavi.org](http://www.naavi.org) has been disseminating Cyber Law information to Netizens. Additionally through [www.cyberlawcollege.com](http://www.cyberlawcollege.com), Naavi has been providing structured courses on Cyber Law. His two earlier books namely “Cyber Laws for Every Netizens” published in 1999 as the first book on the subject in India and “Cyber Laws for India...ITA-2000 and Beyond” published in 2003 as the first E-Book on the subject in India have also contributed to the Cyber Law Awareness Building in India.

The recent developments where several website owners have faced allegations of violating provisions of ITA-2000 has made it necessary for them and Blog Owners to give consideration to understanding ITA-2000 as it applies to them and taking suitable steps to prevent them from being held liable.

This book is a compendium of some of Naavi’s articles published in December 2004 on the Cyber Law Portal, [www.naavi.org](http://www.naavi.org) and specially produced in print for the CyLawCom 2005 at Bangalore on April 22, 2005.

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