

# The Student

Online Student Magazine of Faculty of Law, IFHE

Vol.XVIII

April 2015



**IFHE (Icfai Foundation for Higher Education)**

## Contents

|  |    |
|--|----|
| FOL News   | 3  |
| Articles   |    |
| Identity Theft - Cyber Crime   | 9  |
| About Books  |    |
| Law of Tort – Including Compensation under the<br>Consumer Protection Act                    | 13 |
| Sources & Framing of the Constitution of India with<br>Special Reference to Vedic Governance | 14 |
| Legal Luminaries   |    |
| Hon'ble Mrs. Justice R. Banumathi  | 15 |
| Colloquium   |    |
| Maxims   | 16 |
| Competitions   | 17 |

## Magazine Committee

|               |                                  |
|---------------|----------------------------------|
| Chief Editor: | Ms. M. Annapurna Devi            |
| Advisor:      | Dr. V. Hemalatha Devi, Dean, FOL |
| Composer:     | Mr. S. Murali Mohan              |
| Sub-Editors:  | Mr. Prajeet Daniel               |
|               | Ms. Gehna Banga                  |
|               | Mr. Sourya Banerjee              |
|               | Ms. Manveen Sandhu               |
| Contributors: | Mr. Rahul Shanker Shammukh       |

**National Seminar on “Corporate Spectrum: Legal Facies” on 10<sup>th</sup> and 11<sup>th</sup> April 2015 organised by Faculty of Law, IFHE, Hyderabad**







TRITI 2015 - Prize distribution









## **Identity Theft - Cyber Crime**

### **Identity Theft – In The Web World**

Data is one of the valuable assets in the digital age. Stealing of data and information through hacking is the most prevalent cybercrime. There are various methods in which identification information can be fraudulently obtained by the actual possessor of an identity. The most famous method of tricking people into giving their personal identification information by way of using internet is phishing.

### **Phishing**

Phishing, in simple terms, is impersonation of a trusted entity on the internet, to dishonestly and fraudulently induce the victim to provide information. On the internet, since there is no face-to-face interaction, the identity of the originator of the communication is generally trusted as genuine. This characteristic of the internet is misused by phishers. There have even been cases where phishing equipment with a screen was mounted on the bank's ATM machine making it appear as if it was part of the ATM machine. Hence, the unsuspecting customer was induced to key-in his bank account details including the passwords.

### **Skimming**

This is a prevalent method which can be described as a cyber crime as against an internet crime. In every credit card there is a magnetic strip at the back that carries information about the specific card. Many criminals use a skimming machine to clone a credit card. Then, this fake card is used by the cyber criminals on the internet or otherwise to make unauthorized purchases or debits from user's accounts online.

### **Identity Theft – Data Misappropriation**

The terms data theft, data breach, identity theft and phishing, are commonly and loosely used in common parlance and cannot be strictly used as legal expressions, although identity theft is now defined in Section 66C of the IT Act. These crimes have elements of theft and cheating, from the legal perspective. Theft is a crime that has existed in our law since time immemorial. Section 378 of the Indian Penal code defines “theft” in the following words:

*Written By*



*Mr. Rahul Shanker Shammukh  
Semester X, BBA.LLB.(Hons.)*

Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Similarly, even in India, the IT (Amendment) Act, 2008 brings into existence the offence of "data theft", where theft is of pure data which is not even encapsulated in a medium such as CD, computer pen-drive or floppy. Clauses (b) and (j) of Section 43, reproduced below, cover "data theft", which has been made punishable by Section 66 after the 2008 amendment Act. These clauses are: 43. Penalty and Compensation for damage to computer, computer system, etc. – If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network, - (b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium; (j) Steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;

The punishment for offence under Section 66 i.e., computer related offence which substantially includes data theft, has been amended by the IT (Amendment) Act, 2008, with an increase in fine from Rs.2 Lacs to Rs.5 Lacs.

### **Identity Theft In India**

In Indian law, identity theft as a crime was never addressed separately. It could be read in various offences described in the IPC such as cheating under Section 415, IPC, cheating by personation under Section 416 IPC, breach of trust under Section 403, IPC, etc. but not as "theft" under Section 378 of the IPC. Even the offence of identity theft specifically by way of use of a computer resource, was never addressed by any law before the 2008 amendment to the IT Act.

This crime was registered under section 66 of the IT Act, sections 419, 420, 465, 468 and 471 of the Indian Penal Code and sections 51, 63 and 65 of the Indian Copyright Act, 1957 which attract the punishment of three years imprisonment and fine upto Rs.2 lakhs which the accused never thought of.

Thus, theft of any feature intimately associated with the identity of a person is now a punishable offence. It includes impersonation by making use of electronic signature, password or any other unique identification feature of any person.

Section 66D (as quoted above) prescribes punishment for whoever cheats by personating, without defining it. In such a situation, it can be assumed that cheating by personation would carry the same meaning as it does in Section 416 of the Indian Penal Code, 1860. According to section 416 of the IPC: A person is said to “cheat by personation” if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

A person is said to „cheat“ when he or she: by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

The main difference between the provision dealing with cheating by personation (Section 66D) and identity theft (Section 66C) is that the communication device or computer resource is the necessary instrument of crime of cheating by personation. In the latter case, electronic signature or password may be stolen and then used for impersonation. In the former case, computer resource or computer device is being used for misrepresentation of one’s identity.

### **Identity Theft – International Scenario**

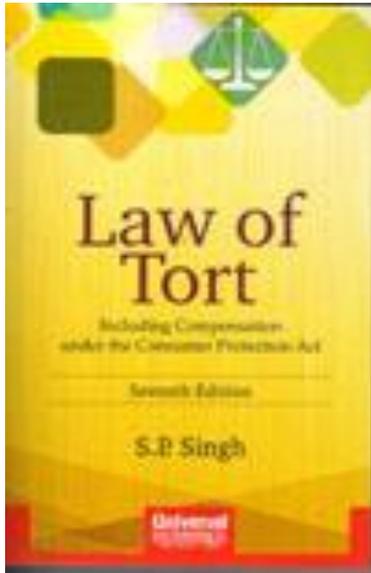
The Model Law on Electronic Commerce was framed by the United Nations Commission on International Trade Law in the year 1996. It was recommended that all States need to give favourable considerations to the Model Law and the States should amend, enact or revise the existing laws. The European Union has two main legislations for cyber crimes and protection of data which are relevant to identity theft. The European Union Data Protection Directive was passed by the EU in 1968 designed to restrict data collection, processing, dissemination, and storage in Europe. The directive is not self-executing; it requires states to create implementing legislation on their own. In the United States, the growing problem of identity theft was addressed by the US legislature by way of a dedicated legislation for identity theft. The Identity Theft and Assumption Deterrence Act of 1998 which became effective October 30, 1998, makes identity theft a Federal crime with penalties up to 15 years imprisonment and a maximum fine of \$250,000.<sup>74</sup> It establishes that the person whose identity was stolen is a true victim.

### **Conclusion**

The intensity of identity theft is immense, and it can have disastrous consequences. It can demolish the image, reputation, credibility and health of the victim. It can lead to monetary losses to banks and financial institutions, and lead to unjust enrichment. It possesses the potential to destroy the online economy and deprive it of any faith and trust from the general public, the users of internet. Thus, identity theft is a serious crime that affects as inherent a part of a person as his identity. It has two stages – wrongful collection of personal identification information; and dishonest or fraudulent use of such a stolen identity. It can exist independent of internet, but with computers and internet, it escalates the stages, theft as well as use of another person's identity. The younger generations, which use the internet and other online technologies extensively are the most vulnerable to these attacks as they staying connected for all day to day work and entertainment, including information, e-mails, social Networking, e-banking, e-shopping, web-TV, news, education, home-work research, online gaming, downloading music, videos, movies and other contents etc., are more vulnerable to targeted cyber-crime. Therefore, the user should be very vigilant and active to combat the crime.

## **Law of Tort -Including Compensation under the Consumer Protection Act**

**Authored by: Singh S.P.**

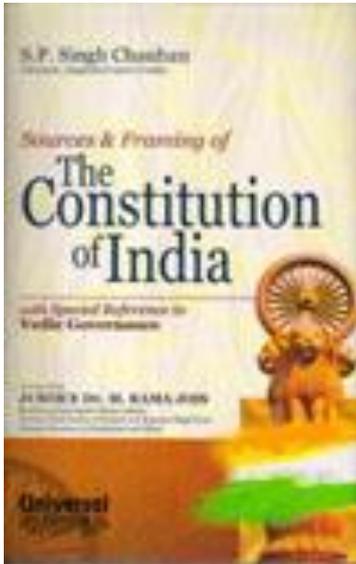


S.P. Singh`s Law of Tort is the most comprehensive book explaining the fundamental principles of this judge-made law. The book was first published in 1986 with a view to present analytically the concepts, elements, nature and scope of this still developing law. Keeping in mind the need and requirement of Law Students, comprehensive critical analysis of all the concepts is provided which is useful for clear understanding of the law. The later editions have maintained its standard and have qualitatively improved taking into consideration the recent developments and the peoples` awareness of their less known rights. The book has been updated with the important, relevant and latest case-laws and the new amendments.

The present book shall be of immense help to the law students, lawyers, judges and all those who want to keep themselves abreast with the Law of Tort.

## **Sources & Framing of the Constitution of India with Special Reference to Vedic Governance**

**Authored by: Chauhan S.P. Singh**



In this book there is an unprecedented effort to lucidly demonstrate that the basic features of present Constitution have been taken out from the Vedic concepts which included truth and non-violence. Heretofore the Sources of our Constitution were described as Western constitutions/acts none of which existed before 18th Century. Details in the book, however, show that the Framers, mindful of Britishers` cultural and divisive policies, had drawn light Â from the Eternal Vedas, Upnishads and subsequent scriptures, and that even before 18th Century there used to be an ideal governance. As per, Rigveda,III.38.6 God enjoins that the governor and the governed (we the people)

should co-operate in fostering prosperity and enlightenment by establishing ideal assemblies comprised of righteous and expert members who would also select the best out of them as their king and all of them being always answerable to the people. Such assemblies were to frame Constitution with constitutional guarantees. It was required that the set up so organized should guarantee to all the subjects freedom, better standard of living, education and righteous way of life and by providing men (and women) with all-round education, liberty, piety, training, wealth etc.

The wise recognized law as Dharma. Dharma is morality. It is a mould to promote prudent behavior based on justice and fair-play and the authority of the csriptures. The author has also supported his view on eternal liberties/rights and the assemblies of Vedic Era with appropriate citations of the Apex Court cases.

Luminaries have also expressed that the book becomes a Bible, Gita and Quran for the Students of Constitutional Law and that it is worthy of being studied not only by students of law but also a must read by Research Scholars, Constitutional lawyers and all the Citizens to know their rich heritage and be proud of it.

**Hon'ble Mrs. Justice R. Banumathi**



**Term of Office:** (DoA) 13.08.2014 (F.N.) to (DoR) 19.07.2020

- Born on 20.07.1955. Enrolled on 07.01.1981. Practised in Mofussil Courts at Tirupattur, Krishnagiri and Harur, State of Tamilnadu. Entered Tamilnadu Higher Judicial Service as a direct recruit District Judge in 1988 and worked as District and Sessions Judge in various Districts of the State.
- Elevated as a Judge of High Court of Madras on 03.04.2003.
- As a Member of Board of Governors and as President of Board of Governors in State Judicial Academy, played a key role in organising systematic Training Programmes for judicial officers and staff members. Authored the Book "Hand Book of Civil and Criminal Courts Management and Use of Computers" for guidance of District Judiciary and published Hand Books for the guidance of Judicial Ministerial Staff.
- Executive Chairman of the Tamilnadu State Legal Services with effect from 15.07.2013. Chairman of Madras High Court Legal Services Committee from 21.02.2011 to 20.01.2012 and actively involved in Legal Services and organizing Lok Adalats.
- Sworn as the Chief Justice of Jharkhand High Court on 16.11.2013. Instrumental in improving the infrastructure of the District Judiciary, recruitment and filling up vacancies of Ministerial Staff. Published Hand Books for guidance of judicial officers and staff members.
- Elevated as a Judge of the Supreme Court of India on 13.08.2014.

## Maxims

*Aequitas legem sequitur* - Equity follows the law.

*Aequitas nunquam contravenit legem* - Equity never contradicts the law.

*Amicus curiae* - A friend of the Court.

*Consensus ad idem* - Agreement as to the same things.

*Consuetudo loci observanda est* - The custom of the place is to be observed.

*Doli incapax* - Incapable of crime.

*Ex concessis* - In view of what has already been accepted

*Ex dolo malo actio non oritur* - A right of action cannot arise out of fraud.

*Fieri facias (abbreviated fi. fa.)* - That you cause to be made.

*Filiatio non potest probari* - Filiation cannot be proved.

*In delicto* - At fault.

*In esse* - In existence.

*In extenso* - At full length.

*Mala grammatica non vitiat chartam* - Bad grammar does not vitiate a deed.

*Per quod* - By reason of which.

*Sui generis* - Unique.

*Stare decisis* - To stand by decisions (precedents).

*Visitationem commendamus* - We recommend a visitation.

.

### **NUALS Kochi's 1st IPR National Essay Competition 2015**

All the entries should be mailed to [cipressay@gmail.com](mailto:cipressay@gmail.com) on or before **31st of MAY 2015**.

<http://www.lawctopus.com/wp-content/uploads/2015/05/cipr-essay.pdf>

### **Call for Papers: TISS Tuljapur's National Conference on Exclusion & Atrocities on Dalits**

**Date :** 29th & 30th June, 2015 **Venue :** TISS, Tuljapur Campus

**Last date of submission of abstract:** 15th May, 2015

<http://download.tiss.edu/workshops-seminars-conferences-programme/NationalconferenceDalitAtrocity-May8.pdf>

### **Call for Papers: Amity Law School Delhi's National Symposium on Competition Law**

**Submit abstracts by June 20.**

<http://www.amity.edu/als/pdf/127Final%20Invite%20for%20the%20symposium%202015.pdf>