

“Identity Theft in India: A Security Concern”

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INTRODUCTION

It takes 20 years to build a reputation and a few minutes of cyber-incident to ruin it, as rightly said by Stephane Nappo. The technology that we use today has unintended consequences and its growth has given rise to most trivial to most complicated cyber-crimes. One of the alarming crime in the world is Identity Theft. In the words of Frank W. Abagnale author of the book “ Stealing your life “. ‘In my entire career, I have never encountered a crime as easy to pull off as identity theft’¹.

Identity Theft refers to when any person through means of computer or internet illegally steals the identity of another person, called the victim, for his fraudulent purposes. Several laws apply for identity theft and its punishment. Section 66C of Information Technology Act, 2000² (herein referred to as ‘ IT Act, 2000) defines the punishment for identity theft. In this essay, we will see the types of identity theft, ways of committing it, preventive measures to be taken, and the laws applicable.

MEANING OF IDENTITY THEFT

It refers to crime in which one person illegally steals the personal information about another person for his fraudulent purposes or an economic gain. According to statistical data, Identity theft contributes to 28 percent of overall fraud in India. The fraud rates are higher for credit cards followed in Delhi and West Bengal and followed by Punjab, Uttar Pradesh, and Haryana.³

TYPES

There are various types of identity theft which can be seen across such as :

1. Criminal Identity Theft: This occurs when a person has committed a crime and he represents his identity as being another person who is even not aware of the crime that is being committed.
2. Medical Identity Theft: This occurs when the criminal uses someone else’s information to avail of the medical benefits. It may cause a serious impact on the victim’s record.

¹ Frank W Abagnale, Stealing your Life (2006)

² The Information Technology (Amendment) Act, 2008, No. 10, Acts of Parliament, 2009

³ Dignath Raj Sehgal, All You Need to Know About Identity Theft in Cyberspace in India, iPleaders (5th June, 2020, 11:20 AM), <https://blog.iplayers.in/all-you-need-to-know-about-identity-theft-in-cyberspace-in-india/>

3. Financial Theft: This type of theft occurs when someone illegally steals the personal information of the victim and takes over his accounts or financial transactions.
4. Child Identity Theft: It means when someone uses the identity of a child for a purposive gain.
5. Identity Cloning: It is committed when someone steals the identity to conceal his identity, it may be used by terrorists or any person who wants to live the life of some other person without disclosing his identity.

WAYS OF COMMITTING IDENTITY THEFT

There are various ways through which someone can steal your identity⁴.

1. Hacking: Hacking is identifying weaknesses in computer systems or networks to exploit its weaknesses to gain access. It is done by using computers to commit fraudulent acts such as fraud, privacy invasion, stealing corporate/personal data, etc.⁵ The act of Hacking is in direct violation of Article 21⁶ of the Constitution of India which guarantees the Right to Privacy.
2. Phishing: It refers to sending deceptive emails to the users which may cause misconception in their minds that the mail is received from an authorized source. Personal information is gathered by sending the mails and receiving them back.
3. Pharming: It refers to an illegal practice where the accused installs the malicious software in the victim's computer that directs him to the unsecured websites and subsequent leak of his personal information.
4. Credit Card Skimming: It is a type of theft where the information regarding the credit card and his user is stolen. It is done by using a small device known as 'skimmer'. When the user swipes his card, all information relating to his card is transferred to the thief. He can then use that information for making a cloned card and making false transactions.
5. Weak Passwords: Not using a strong password makes it easier for hackers to crack the passwords and steal the information of the victim.

The scary part here is that even amateurs can do all this with technology as a helping hand. The theft maybe straightforward like somebody getting hold of your credit card and using but what is more worrisome is a full blown identity theft. Its growing magnitude and mutations.

⁴ S.S Rana & Co. Advocates, India: Cyber Theft – A Serious Concern in India, Mondaq (7th June, 2020, 2:15 PM), <https://www.mondaq.com/india/white-collar-crime-anti-corruption-fraud/785836/cyber-theft-a-serious-concern-in-india>

⁵ What is Hacking? Introduction and Types, Guru99, (7th June, 2020, 4:00 PM), <https://www.guru99.com/what-is-hacking-an-introduction.html#:~:text=Hacking%20means%20using%20computers%20to,protect%20themselves%20against%20such%20attacks.>

⁶ INDIA CONST. Art 21

LAWS REGULATING OFFENCE OF IDENTITY THEFT

There are certain laws and regulations which govern the offense of identity theft. Because of the rise of identity theft and its results, the Parliament passed the Information Technology (Amendment) Act, 2008 which provided for the punishment of identity theft. Certain laws for the regulation of identity theft are :

1. Sections of Indian Penal Code (herein referred to as 'IPC')⁷: Identity Theft is a combination of both fraud and theft. Section 378 deals with the offense of 'Theft'. It's an interesting question that, Will the offence of identity theft be covered under this section ?. Some scholars are of the view that it is not covered under this as Theft under this section only relates to the movable property as defined under Section 22 of IPC. But some believe that it is covered under it. A conflict of opinion has not been settled so far but it is presumed to be that the offence of identity theft is not covered under this section. Section 416 deals with cheating by personation. Section 419 defines its punishment which may be extended to the imprisonment of three years and fine. Section 464 of IPC is regarding the forgery of documents. Section 465 deals with the punishment for Forgery which may be extended to two years or fine or both. Section 468 deals with Forgery for purpose of cheating shall be punished with imprisonment which may be extended to seven years and also liable to fine. Section 469 deals with Forgery for purpose of harming reputation shall be punished imprisonment which may be extended up to three years and also liable to fine.
2. Information Technology Act, 2000: One of the main legislation in respect of cyber-crimes is the IT Act. Some of the important provisions in respect of Identity Theft are :
 - a. Section 43: If any person without the permission of the owner damages the computer system, etc. He/she shall be liable to pay compensation to the person so affected.
 - b. Section 66: If any person, fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or both.
 - c. Section 66B: Punishment for dishonestly receiving stolen computer resource or communication device is Imprisonment for a term which may extend to three years or with fine which may extend to rupees one lakh or with both.
 - d. Section 66C: provides for punishment for Identity theft as Whoever, fraudulently make use of the any unique identification feature of any other person shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine with may extend to rupees one lakh.

⁷ The Indian Penal Code, Act No. 45 of 1860

- e. Section 66D: on the other hand was inserted to punish cheating by impersonation using computer resources.
- f. Section 65: protects against any tampering with computer source documents.
- g. Section 72: provides punishment for any breach of privacy and confidentiality.

IMPACT OF IDENTITY THEFT

When a person maliciously accesses your personal information and puts that to use for various illegal and unethical actions, he directly puts the victim at risk physically, emotionally, socially, and financially. The common type of data breach is identity theft, accounting for 58% of all data breach incidents.⁸ In the 21st century where internet hosts you economically and personally, sites that accustom personal interactions, any type of stranger intrusion will become the reason for many emotions being involved and triggered. The hurdles faced by victims maybe financial such as closing old accounts and opening new accounts, changing passwords, child's education, and legal fees. It may be emotional also such as feelings of anger, low self-esteem. According to a 2016 Identity Theft Resource Center survey of identity theft victims, 74% of the people reported feeling stressed, 69% reported feelings of fear associated with financial safety, 60% reported anxiety, 42% reported fearing for the financial security of family members⁹. Sleep disorders an inability to go to work may also be induced due to identity theft. You may get hurt physically if a crime is committed in the name of the victim, it is directly putting him under the risk of an arrest i.e. legal action against him until his records get clear.

PREVENTION OF IDENTITY THEFT

Even though technology has made identity theft easy to execute behind the shadowy cloak of a computer keyboard. We do agree that Prevention is always the best policy. We know identity theft as a crime that the victim cannot easily predict but we as a whole are aware of its growing magnitude which is proved by the fact provided by the Federal Trade Commission as 440,000 identity thefts were reported in 2018 which is 70,000 more than the number of 2017.¹⁰

So we may buckle up and take the following measures :

- a) Create different and strong passwords for the different sites that we use.
- b) Keep your cards in a secure location.
- c) Check your credit reports and credit scores frequently.
- d) Get updates on account details frequently.

⁸ Sonal Kheterpal, Data Theft increased by 783% in India in 2017, says study, Business Today (8th June, 2020, 12:47 PM), <https://www.businesstoday.in/technology/news/data-thefts-increased-783-percent-india-2017-gemalto-breach-level-index-study/story/277905.html>

⁹ Identity Theft: The Aftermath 2016, Identity Theft Resource Center, ITRC, Oct 2017, at 5,6

¹⁰ Consumer Sentinel Network Data Book 2017: Identity Theft Reports by Type, Federal Trade Commission Protecting America's Consumers ,(10th June, 2020, 3:15 PM), <https://www.ftc.gov/policy/reports/policy-reports/commission-staff-reports/consumer-sentinel-network-data-book-2017/id-theft-reports-by-type>

- e) Don't enter your bank information and credit card information on the sites you do not well know of.
- f) Destroy your documents through shredding.
- g) Setup 'suspicious activity' alerts on bank accounts.
- h) Save yourself from many phishing schemes by avoiding opening any email address which either doesn't include your full name and even if it does, do not directly open any attachment even if it seems authentic.

It is in its entirety possible that there are no red flags or even if there are, they are not easily visible. You become the victim, don't panic, if there is a crime, then there is a law.

The constitution of India very well takes cognizance of your rights concerning rendering your data private and under Art. 19(1)(a)¹¹ and Art.21¹². The same was held in the case of Justice K S Puttaswamy (Retd.) & Anr. vs. Union of India and Ors¹³. Meaning thereby all that data which is your identity is secured even though these articles have certain reasonable restrictions.

To learn how intricate an identity theft can be it becomes necessary to delve into a case¹⁴. This is known to be the first cybercrime that India witnessed.

In May 2002 someone logged onto the website under the identity of Barbara Campa and ordered a Sony Television set and a headphone. Acting under due diligence these items were to be delivered to someone under the name of Arif Azim which was done. Later on, the credit card agency informed the company that this was not an authentic transaction as the owner has denied any such purchase. The company complained to the Central Bureau of Investigation (CBI) which filed a report under Section 418, 419, and 420 of the Indian Penal Code. When looked into the matter it was a fraud on the part of Arif Azim taking up the identity of somebody else to make a purchase. He was convicted but was treated with leniency.

CONCLUSION

The new and strong evil ,that is, identity theft is among us all . The basic dimension of it to enter someone's wallet and personality and take over. It is no more a surprise and government and its agencies has taken up the responsibility to curb it. As we move into a world which has dark web and price for all your information it becomes important that we fight against this invisible crime. It has become a third certainty after death and taxes. The only step that you have to take is make yourself a harder target and know what to do when you become one anyway.

¹¹ INDIA CONST, Art 19, cl 1, sub-cl a

¹² INDIA CONST, Art 21

¹³ K.S. Puttaswamy (Rtd.) v. Union of India & Ors., Writ Petition (C) 494 of 2012 (India)

¹⁴ CBI v. Arif Azim,2003/ Sony Sambandh.com case