

Now 'Privacy' gets IT definition

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MUMBAI: Shakti Kapoor should have waited for the amendment to the Information Technology Act to become law, before allegedly making passes at journalists on a sting operation. He may then have been able to sue TV channels for violating his right to privacy.

One consequence of the proposed amendments may be that sting operations will become difficult. On the positive side, sleazy hotels recording unsuspecting couples in intimate moments will face a stronger deterrent if the amendments are approved by the Parliament.

The amendments to the IT Act, which have been submitted to the law ministry for approval, address issues never explored before in Indian legal history. The issues of privacy, including the definition of what constitutes a private moment and which are the private parts of a human body, have all been dealt with in the version of the Act submitted to the law ministry.

According to legal experts, there is strict legislation governing privacy in all developed countries, but this is the first time these issues have been addressed in India. The law on privacy in India, as it stands today, is limited to the right enshrined under Article 21 of the Constitution and case law on the subject. However, like other fundamental rights, it is not absolute, and is subject to reasonable restrictions imposed by the state.

The proposed amendment adds a paragraph to the IT Act which states, "Whoever intentionally captures or broadcasts an image of an individual without consent, and knowingly does so under circumstances violating the privacy of that individual, shall be held liable." This is the first time that a right to privacy has so expressly found its way into the statute books in India.

Vivek Kathpalia, lawyer with Nishith Desai Associates, says, "Section 72 (3) of the draft of the IT Act, once finalised and brought onto the statute books, will not only help in tackling this particular type of invasion of privacy, but will help the courts in reaching broader interpretations on privacy in general as the case law build up on the subject." According to Akil Hirani of legal firm Majmudar & Co, the wording has loopholes. "The repetition of 'intention' and 'knowingly' dilutes this statute as criminal intent should be reason enough for prosecution."

The Act also recommends a compensation of Rs 25 lakh to the person whose privacy has been infringed. The offender can also be jailed for one year with a fine of Rs 2 lakh. This means that even television channels which carry images of MMS clips can be held liable even though they may not have originally captured it.

'Private area' has also been defined in the Act in detail to prevent any misinterpretation. But according to lawyers here, while defining this in detail narrows its misuse, the impact of the legislation is reduced. "Infringement of privacy may not just involve images of a person disrobed or their private parts.

Even the law on obscenity does not define privacy, but leaves it to interpretation to capture it in entirety as it may vary from person to person and may even be affected by religious leanings," Akil Hirani, says.

Some lawyers feel that by defining the private parts and infringement of privacy, the purpose of the legislation has been lost. "For instance, acts like sexual intercourse with the private parts covered may destroy somebody's privacy, but are not covered by the Act," lawyers feel.

Violation of privacy has been much more widely defined as "circumstances in which a reasonable person would believe he or she could disrobe in privacy without being concerned that an image or a private area of the individual is being captured." Some lawyers feel that the Act has limited the definition of privacy by limiting it to just disrobing.

The definition also covers public places. It says, "Circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or a private place"

On the issue of child pornography, which has again not been expressly covered under the Indian statute, the Act takes a fairly conservative view. For the purpose of child pornography, the Act defines it as material that features a child engaged in sexually explicit conduct. According to lawyers, famous cases in the West like those involving Michael Jackson's have shown that it need not be "sexually explicit conduct".