

Cyber Law & Information Technology

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Abstract— When Internet was developed, there was hardly any inclination that Internet could transform itself into an all pervading revolution which could be misused for criminal activities and which required regulation.

Today, there are many disturbing things happening in cyberspace. Due to the anonymous nature of the Internet, it is possible to engage into a variety of criminal activities in cyberspace. All existing laws had to be amended to suit the latest developments.

Since existing other laws cannot handle cyber legislations completely, the need was felt to introduce cyber law as a separate discipline. Reasonable Security Measures must be adopted while handling, storing, processing Sensitive Personal Information and Data.

Keywords— Cyber Law, Cyber Crime, IPR, Cyber Security, E-Contracts, Digital Evidence.

I. INTRODUCTION

The extensive use of computers particularly in various sectors like social, economic, political provides immense benefits to the world. The high standards, efficiency, accuracy in communications have become key issues for boosting innovations, creativity and overall rise in production.

The fast development of information technology and computers globally led to a transition of traditional crimes and growth of many internet and computer related crimes. With no physical boundaries in the virtual world, these crimes may create an impact across the globe.

II. CYBER CRIMES

Cyber Crimes are crimes committed either by using computer as a tool or target or sometimes both. They are generally classified as

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- CRIMES AGAINST PERSONS
- CRIMES AGAINST COMPANIES
- CRIMES AGAINST GOVERNMENT

There are different types of cyber crimes like theft of computer source code, phishing, hacking, unauthorized access, virus attacks etc. Indian Cyber Law comprises of the Information Technology Act 2000.IT Act 2000 is essentially not a penal statute. The Act is essentially intended to promote e-governance of which an essential part is e-commerce. All cyber crimes do not come under the ambit of IT Act; many crimes are covered under IPC.

The word cyber crime is not mentioned in the IT ACT for the reason not to scare away the potential users and keeping in mind the basic philosophy of reducing the digital divide(computer literate or not).

III. DIGITAL EVIDENCE

The court is concerned with evidence only. Evidence is the element which probablises a case in a court of law. The evidence in digital form is called Digital Evidence.

This digital evidence may be found in computer hard disks, cell phones, iPods, pen drives, digital cameras, CDs, DVDs, floppies, computer networks, the Internet etc.

In Civil Law, evidence is analysed on the principle of PREPONDERANCE OF PROBABILITY.

In Criminal Law, evidence is analysed on the principle of BEYOND RESONABLE DOUBT.

IV. AUTHORITIES

Authority to be approached in regard to Cyber Crimes

- ADJUDICATING OFFICER – up to 5 Crores –IT SECRETARY OF THE STATE.
- CYBER APPELLATE TRIBUNAL – appellate jurisdiction.
- SUB COURT or CITY CIVIL COURT

V. CONTRACTS & E-CONTRACTS

E-commerce refers to buying and selling products and services through electronic systems like Internet, Computer Networks.

Contracts- All agreements enforceable in a court of law

Essentials of Contracts

- PROPOSAL
- ACCEPTANCE
- PROMISE - CONSIDERATION
- AGREEMENT
- CONTRACT

E- Contracts are also called as Cyber Contracts, Online Contracts.

E -Contract: Contract entered through the medium of internet and software

- World Wide Web
- Exchange of e-mail stating offers
- Acceptance of terms and condition of a particular transaction.
- Software installation

VI. INFORMATION TECHNOLOGY ACT

India has made some progress in legalizing the electronic contracts format and electronic transactions through authentication of the electronic documents and records. E-commerce has moved a step forward towards m-commerce, social commerce.

The digital signature is not infallible it is only computationally infeasible. The rise in the information technology is leading to further developments. Instead of digital signatures; a technology neutral term of electronic signature was added in the IT AMENDED ACT 2008.

General consensus is that in the e-world, electronic signatures and electronic documents are equally legally valid as the hand-written signatures or hard copy paper documents. The IT Act has provided legal recognition to electronic records and transactions carried out by the way of EDI (Electronic Data Inter Change).

VII. INTELLECTUAL PROPERTY RIGHTS

Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. It is intangible property.

A Trademark is any sign which can distinguish the goods and services of one trader from those of another. A sign includes words, logos, colors, slogans, three-dimensional shapes and sometimes sounds and gestures.

A Service Mark, just like a Trade Mark is a mark used or intended to be used to identify, distinguish or indicate the source of origin in case of services.

E.g. restaurants & hotels, real estate, building & construction, financial affairs, etc.

Registering, trafficking, or using a domain name with bad-faith to profit from the goodwill of a trademark belonging to someone else is Cyber Squatting.

The **Cyber squatter** then offers the domain to the person or company who owns a trademark contained within the name at an inflated price, an act which some deem to be extortion.

In simple words, copyright is “Exclusive Right to Copy Original Work”. It is a branch of Law of Intellectual Property and is protected by the Indian Copyright Act 1957.

Copyright is a legal right, given exclusively to the creator/originator (or assignee) to make further copies for publication and public performance of work.

In India literary, artistic, dramatic, musical and other works, including computer programs, photographs, sound recordings, cinematographic films and other electronically disseminated information, as well as Engineering drawings, sculptures and engravings are covered under copyright.

“Computer Programme” as per section 2[ffc] of The Copyright Act, 1957 means, -

A set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.

An interesting element of computer databases is that copyright can exist in **two levels**.

○ Firstly, the information contained in the database may be the subject of copyright e.g. a list of computer vulnerabilities and the relevant security measures.

○ Secondly, the actual representation of this information may be the subject of copyright protection e.g. the above mentioned information in a searchable online database.

A **patent** gives an inventor the right for a limited period to stop others from making, using or selling an invention without the permission of the inventor.

It is a deal between an inventor and the Government in which the inventor is allowed a fixed period of monopoly in return for allowing the invention to be made public.

Patent usually refers to the right granted to anyone who invents any new, useful, and non-obvious process, machine, article of manufacture, or composition of matter.

An invention must, in general, fulfil the following conditions to be protected by a patent.

- It must be of **practical use**;
- It must show an element of **novelty**, that is, some **new characteristic** which is not known in the **body of existing knowledge** in its technical field. This body of existing knowledge is called "prior art".
- The invention must show an **inventive step** which could not be deduced by a person with average knowledge of the technical field.
- Finally, its subject matter must be accepted as "patentable" under law.
- Generally, scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, or methods for medical treatment (as opposed to medical products) are generally not patentable.

Passing off is available where there is a prospect of confusion of identity through the unauthorized use of similar marks or get up, and such use damages, or is likely to damage the goodwill and reputation of a business.

Passing off can apply to virtually any name, mark, logo or get-up which distinguishes a company, business, product or service from the other.

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations.

It is dedicated to developing a balanced and accessible international intellectual property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.

- Protection of Intellectual Properties is a very critical element in the offshore business model.
- There have been many cases where companies have lost their position in the market due to the loss of intellectual property.

Global initiatives to enforce cyber laws through drafting Model Conventions & treaties like European Union, USA, United Nations Commission on International Trade Law

(UNCITRAL) etc. In India, Information Technology Act (ITA) is also based on UNCITRAL model, all cyber laws are contained in Information Technology Act, 2000.

VIII. EXTRA TERRITORIAL PROVISION

Though S.75 of IT Act provides for extra-territorial operations of this law, but these should be enforced with orders and warrants of external authorities and demands a highest level of inter-agency cooperation.

IX. DATA PROTECTION UNDER IT ACT

The newly inserted section 43A of the IT Amended Act 2008 makes a start at introducing a mandatory data protection regime in Indian law.

The section obliges corporate bodies who 'possess, deal or handle' any 'sensitive personal data' to implement and maintain 'reasonable' security practices, failing which they would be liable to compensate those affected by any negligence attributable to this failure.

X. PENALTIES – BREACH OF REASONABLE SECURITY MEASURES

If a body corporate dealing with sensitive personal data is negligent in implementing and maintaining reasonable security procedures, practices and causes wrongful loss or gain thereby to any person, such body corporate shall be liable to pay damages by the way of Compensation to persons so affected. This is explained under Section 43 A of the Information Technology Amended Act 2008.

Civil Liabilities – Sec 43 A- IT AMENDED ACT 2008

Criminal Liabilities – Sec 66, 66 A-D, 67 C, 69 B, 70 B, 72 A, 85 -IT AMENDED ACT 2008

XI. CONCLUSIONS

Hence, cyber oriented lawyers and judges are another critical capacity building issue for enforcing cyber laws in any country. Reasonable measures should be adopted. The IT Act is an articulation of all existing laws with "e" added to most of the provisions.

Though the Internet is a goldmine, without adequate legal protection it could become a landmine.

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