

JOURNAL FOR LAW STUDENTS AND RESEARCHERS**JURISPRUDENCE OF CYBER CRIMES**

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ABSTRACT

In 21st century, internet is quiet popular for research purposes and various aspects. This paper focuses on jurisprudential aspect of cyber-crimes in cyberspace. Cyber-crime is a new form of crime that has emerged due to computerization of various activities in an organization in a networked environment. With the rapid growth of information technology cyber-crimes are a growing threat.

In simpler words, cyber-crime is one of the unlawful acts wherein the computer is either a tool or a target or we can say both. Cyber-crimes involve criminal activities that are traditional in nature, such as theft, fraud, forgery, defamation and mischief, all of which are subject to the Indian Penal Code. The abuse of computers has also raised the gamut of new age crimes that are mentioned in Information Technology Act, 2000. Cyber-crimes are punishable under various statutes besides IT Act.

Hacking into someone's private property or stealing a person's intellectual work is a complete violation of right to property. Right to privacy creates boundaries around an individual where the unwelcomed interference is completely restricted. The Apex Court of India has clearly affirmed in its various judicial pronouncements that right to privacy is very much a part of the citizens fundamental right guaranteed under Article 21 of the Constitution of India.

CYBER JURISPRUDENCE

‘Jus’ and ‘prudential’ is derived from a *Latin* term whose English meaning is “*knowledge of law*”. Cyber jurisprudence is the study of laws which is directly associated to cyber-crimes. It also describes the legal issues and the principles on which it is based. It gives us the analysis of that may be different from physical world but have virtual origin and nature¹. In addition to all other, one of the common things between law and society is that both are evolving and dynamic in nature. Both are related to each other. What society undergoes or would be undergoing surely affects the law. Law is a subject which is not to be dealt in vacuum it has to be studied as an interdisciplinary approach; it is an applied science employing functional methods of investigation and analysis for solving social and individual problem. Without the control of the law, the society becomes the jungle or at least barbaric.

The exponent of sociological school considered law as social phenomena. According to this school, law should be to represent as common interaction of men in social groups whether past or present, ancient or modern. The main concern of the jurist is to study the effect of law and society on each other. They treat law as an instrument of social progress. The functional role of law and its effect on society constitute basic philosophy as *Dean Roscoe Pound* has rightly pointed out, “*Social Jurists look more for the working of the law than for its abstract content*”².

It is multifaceted approach to resolve immediate problems of society with the tools which may be legal or extra-legal and techniques which promote harmony and balance of interest in the society³. The approach is empirical to study functional aspect and adopting realistic approach. Law also encircles some normative aspect as it deals with prospective aspect as ‘*what it ought to be*’. *Holmes* has defined law in terms of judicial prediction through the verdict of law courts whereas *Roscoe Pound* treats law an instrument for adjustment of human condition to social forces operating in a given society⁴.

Today we are experiencing time-crunch. We are really in-short of time. But the use of internet and technology has reduced the time consumption and is very much convenient to access in day to day irrespective of how big or small the problem is. Once leisure has now become a part

¹ Farroq Ahmed, cyber law in india

² Roscoe Pound: The Scope and Purpose of Social Jurisprudence (1911)25Har.L.Rev.489

³ Dhyani S.N : Fundamental of Jurisprudence – the Indian Approach (2004) p.306

⁴ Cohen & Cohen :Reading in Jurisprudence and lehal Philosophy, pp 416,423

of life it won't be wrong to say that it has strangled deep with our day to day task. With the use of internet and technology the scope and definition of law in the particular aspect has expanded and a growth in the terms of crime and punishment has also evolved. The change in cyber-crime, intellectual property, Indian Penal Code, Information Technology act, cyberspace etc. has been noticed.

The term 'cyber' or 'cyberspace' can simply be understood as everything related to computer, internet, website, database, emails, network, data storage device and even electronic devices such as mobile, ATM machines etc. So, the law governing cyber threat is Cyber Law, which includes Cyber Crime, E-commerce, IPR (Intellectual Property Right), Data protection and Privacy.

The technology has evolved and so the mode of committing crime. When technology is used to commit crimes using computers or the internet as tool, the effect and spread of the crime has increased drastically. The accessibility and connectivity has brought everything in reach with a click or tap, global accessibility website is very easy. The modern problem requires a modern approach and solution. Like an example of 'mobility of Data' can be considered for an instance. The crime can be broadly be divided into two groups a crime *where computer is used as a tool* and the second being *computer related crime*. In India, Information Technology Act which has been amended and evolved from time to time in whenever the need for the same arose. For example Section 65, 66 and 67 provides the law, when computer is used as a tool to commit various crimes.

Cyber-squatting is where two people claim for the same domain name either by claiming that they had registered the name first. Ransom ware or hacking is.

Intellectual property like Patent, Trade mark, Copyright or industrial design the computer becomes the tool to when these rights are misused. In other words, whether for publicity, e-commerce or committing a crime this is used.

Economic offences has increased by leap and bound. Fraudulent Credit card, insurances and securities are another area involving manipulation of bills and claims. In fact where there is computers there are chances of misusing the technology for one's own selfish motives. Money laundering is on rise, cyber space is so vast that a person sitting in one part of the world can transfer the money from one country to another without noticed.

Wars are not limited to traditional means or limited to borders; advent of technology has enhanced the mode of war. It is no more limited to guns or bullet cyber-attacks, cyber-warfare; cyber-terrorism is basically war of information.

The e-court is a technology to make judicial process across India more effective and speedy. It is being implemented by the Department of justice, Ministry of law & justice, Government of India and e-committee, Supreme Court of India. It can be understood in two phases, first was to enable computerization of 14,249 district and subordinate Courts by 2015 and second was for further enhancing judicial service delivery for litigants and lawyers by improving infrastructure and providing technology enabled judicial process involving video conferencing, information Kiosks, judicial service centre.

The focus being information and communication technology(ICT) infrastructure, technology-enabled judicial processes and wide area network connectivity across districts and taluka courts, secondly the delivery of digital court services through the website, email, mobile app, SMS, Judicial Service Centres and touch screen kiosks and lastly to change management and re-engineering of the judicial processes.

The new and innovative services like National Service and Tracking of Electronic Process (**NSTEP**) through which serving of summon, real-time update in process of serving, tracking of service and GPS connectivity with Bhuvan (which is geo-platform from ISRO), **e- Payment** which helps in Official payment facility for courts in India, enables digital payment of fine, penalties court fees integrated with e- Filing process and payment through electronic form without the use of cheque or cash. **E-Filing** facility with no or limited physical visit to the Court registry, file case and its replies which is simplified for the common man and the facility of **e-Sign** which is to sign document in quick, remotely and in a secure manner which is efficient process and saves time and cost.

India ranks fifth among countries reporting the maximum number of cyber-crime services provides lawyers and litigant quick delivery of court services like case status information, Case next Date notification, Daily Orders, proceedings, online certified copies and Judgement. It's an efficient and effective access to case information anytime, anywhere. It is also an enhanced case management system for judicial officers as enabling to generate cause list, drill down the calendar, customize report generation with periodic statistic or statement have an '*on go*' menu, reference to case laws of the High Court and Supreme Court and also have video and tutorial manuals for helping them.

The e-court is touted by its services through the mobile application available on both iOS and android platform which gives case status and entire case history of almost all 3.2 crore pending cases across 21 high courts and 18,000 district and subordinate courts in India except for the Supreme Court and four High courts (Delhi, Bombay, Karnataka and MP). All other High courts have been linked. The App bagged the top Digital India Award this year. The App is aiding the litigants and lawyers can e-pay court fees, download judgement, view case history, cause list and can store multiple cases within the App and monitor the update and monitor their progress. The retired Judge *Justice Madan B Lokur* of Supreme Court, who spearheaded the computerisation of the Courts over last decade said technology, has aided in expeditious service and delivery and disposal of the cases and E-Court Service App is not limited to litigants and the lawyers but also to citizen, police governmental agencies and other institutional litigants. It has been a significant reform which not only track court cases but also helps the higher judiciary in monitoring performances of judges of districts and subordinate courts.

The advantage of this system is that, it saves time and money. There is no issue of storing files which gets piled up in a room and very hard to maintain. The managing of the record becomes easy and convenient. The rapid expansion of vistas of information technology presents new challenges to the legal system across the globe. Law must change with the changing social concepts and values. If law fails to respond with the need of the changing society either it will stifle the growth of the society and choke its progress. Society should be pragmatic and vigorous enough to cast away the law, which stands in its way of growth.

There should be preventive measures taken in order to maintain public order and protect electronic records. Crime conception should be aimed at making the criminal law breathe for preservation and minimization of crime protection of potential victims and a meaningful treatment of cyber criminals.