

JURISPRUDENCE AS A LAWYER'S EXTRAVERSION: A CRITICAL ANALYSIS WITH RESPECT TO CYBER LAW

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ABSTRACT

This study explores the rapidly developing area of Indian cyber law jurisprudence, illuminating its evolution and significance via the analysis of significant court rulings and interpretations. The meaning of cyber law and its importance in the current digital world are explored at the outset. The study places a strong emphasis on how lawyers have shaped the legal system and how legal education must change to reflect new perspectives, democratic theory, and social scientific research. The section provides insights into the early pioneers in the field, such as Donn B. Parker, who laid the groundwork for the study of computer crimes and security. Subsequently, the article delves into the principles of cyberspace law, covering a range of topics including digital and electronic signatures, intellectual property, data security, and privacy. The Indian legal system—particularly the Information Technology Act of 2000—is used to clarify these subjects. It discusses whether cyber law requires a special philosophical and theoretical study, or if standard jurisprudential concepts are adequate for its complex subtleties. The following section of the article provides a thorough examination of two well-known court cases that had a significant impact on the development of Indian cyber law: "Shreya Singhal vs Union of India" and "SMC Pneumatics (India) Pvt. Ltd vs Shri Jogesh Kwatra." The earlier case demonstrated the significance of preserving freedom of speech and expression in the digital era by overturning Section 66A of the Information Technology Act as unconstitutional. The latter case established a standard for cases to come by demonstrating the judiciary's position against online defamation. This essay demonstrates how the jurisprudence of Indian cyber law is dynamic, characterized by important legal interpretations and changing viewpoints. It highlights the critical role of lawyers, courts, and the legislative process in adapting to the ever-changing digital landscape while safeguarding fundamental rights and privacy.

Keywords- Lawyer's Extraversion, Copywrite, Trademark, Telecommunications, Cyber Regulations, Technology etc.

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I. INTRODUCTION

“Jurisprudence is the study of the theory and philosophy of law, as well as the interpretation and application of legal ideas.” It involves the investigation of legal systems, legal reasoning, and the development of legal concepts. Cyber law is a new idea and has become increasingly important in the digital age. With the rapid advancements in technology and the rise of the internet, new legal issues have emerged that require specific regulations and guidelines. However, we have reached the cyber era and the law - on all fronts - is trying to keep pace with technical changes in cyberspace.¹

Legal and social education should focus on comprehending the major role attorneys play in the social decision-making system. Lawyers can assume numerous roles, from alter egos for litigants to governmental or corporate administrators, social critics, and engineers. While the appellate judiciary is the final decision-maker, many problems may not reach it owing to lawyers' incapacity to formulate cases. Additionally, attorneys should be attuned to evolving interests, democratic philosophy, and social sciences to guarantee that huge areas of decision-making are not disregarded or dominated by judicial review or administrative bodies. The emphasis on the role of the lawyer as an unattached, practical intellectual and social critic would, therefore, be welcome.²

Information technology (also known as cyber law) law examines legal problems relating to technology usage and regulation, notably in the digital environment. It includes subjects including data privacy, cybersecurity, intellectual property, and e-commerce. As technology progresses, IT law plays a critical role in addressing legal concerns, combining innovation with preserving legal rights and interests. It fosters fair competition in the internet economy and safeguards personal information.

The cyber law is the recent development. The cyber-crimes have outnumbered the other crimes in 21st Century, causing problem to the society. The role of lawyer is prominent in understanding the cyber law and their interpretation will solve the problem caused by it in the

¹ Peter R. Stephenson PhD, *Defining a Cyber Jurisprudence*, Annual ADFSL Conference on Digital Forensics Security and Law, 2017.

² J. STONE, SOCIAL DIMENSIONS OF LAW AND JUSTICE 1 (1966).

society. It was in year 1820 when the first cybercrime was recorded. That is not unexpected that the history of the abacus, one of the earliest known calculators, extends back thousands of years and it is also known as world's first computer. The usage of it can be traced back to countries like Japan, China and India as it was present there from around 3500 B.C. However, it was the analytical engine the invention of Charles Babbage which revolutionized the world and gave birth to the modern age computers that can process and handle much complex data and algorithms.³

J. Stone said, "*Jurisprudence as a lawyer's extraversion*" and general meaning of jurisprudence is theory or philosophy of law, on analyzing both together along with the origin of cybercrime in the world, it becomes very clear that interpretation and analysis by the lawyers must have an impact on the basis of formation of cyber law.

RESEARCH METHODOLOGY

Problem of the Study

The cybercrimes in the world had deeply affected the trust of the society on the technology, importance of that cannot deny. Initially the countries didn't think about the cybercrime, which can be easily interpreted that they didn't include these crimes in their constitution and had made separate acts in late 20th century. The lawyers had a great impact in analyzing the crimes and helping in making certain laws. The researcher will be analyzing the cyber law in accordance with the statement of J. Stone - "*Jurisprudence as Lawyer's Extraversion*". The researcher would also analyze the current and prominent cases on the cyber law and the role of lawyers in solving them.

Rationale

This study tries to understand the various aspects of the cyber law through the eyes of lawyers and the impact in the society. The study is very relevant in the present scenario as because the number of the crimes is increasing day by day. Legal Realism has evident role to play, legal realism is a naturalistic approach towards law and is in the view that jurisprudence should

³ [http://www.inf.tsu.ru/WebDesign/libra3.nsf/161d3ebc95608f55c62571f5003467e9/3b47f7a6821452fdc62572040016d843/\\$FILE/cybercrime.pdf](http://www.inf.tsu.ru/WebDesign/libra3.nsf/161d3ebc95608f55c62571f5003467e9/3b47f7a6821452fdc62572040016d843/$FILE/cybercrime.pdf) (Assessed on 13 August 2018)

emulate the methods of natural science. The judicial interpretation has cured many of the social problems in the society, it's important to understand that in due process of law the lawyers have the inevitable role.

Objective

The objectives of this project are:

1. To analyze the statement “*Jurisprudence as a lawyer’s extraversion.*”
2. To study history and origin of Cybercrimes in world with special emphasis on India.
3. To study the jurisprudence of Cyber law.
4. To study and analyze the role of Lawyers in Cyber law Jurisprudence.

Review of Literature

1. “*The Role of Law and Foreign Policy*” by Julius Stone

Roscoe Pound, the esteemed legal philosopher from Western society and former dean of the Harvard Law School, is a fitting mentor and teacher of Stone in the sociological approach to law. This discusses the complicated connection between legal principles and foreign policy. He thinks that legal norms create the framework for global contacts, with treaties, conventions, and customary international law playing a key role. Stone also investigates the influence of legal institutions, international organizations, and home legal systems in affecting foreign policy decisions. He also dives into historical instances to highlight the complicated links between law and foreign policy. Stone emphasizes the contradiction between national interests and adherence to international legal norms, stressing the intricacy of the connection between law and foreign policy.

2. “*Legal System and Lawyers' Reasonings*” by Julius Stone

Julius Stone's 1964 paper, "Legal System and Lawyers' Reasonings," is a fundamental addition to understanding legal systems and the cognitive processes involved in legal reasoning. Published in 1964, Stone opposes standard positivist perspectives, proposing for a more holistic worldview that encompasses societal values, historical evolution, and cultural norms. He investigates the thinking processes of attorneys, stating that legal

reasoning involves a complex interaction of legal, social, and moral issues. Stone attacks formalism in legal thinking, calling for a flexible, context-sensitive approach. He also analyzes the importance of judicial decision-making in developing the law, highlighting the creative aspect in legal interpretation. Stone's multidisciplinary approach provides a comprehensive framework for comprehending the multidimensional nature of law and legal reasoning.

3. “*A Reply to Julius Stone*” by Ian Brownlie

It is a thought-provoking criticism of Stone's legal philosophy. Brownlie contends that Stone's emphasis on the sovereignty of nations fails to account for the relevance of individual rights and global obligations. Furthermore, Brownlie thinks that Stone's positivist approach to international law hinders its capacity to solve the complex concerns of the current world. Ultimately, Brownlie presents a convincing alternative perspective that underlines the need for a more comprehensive and sophisticated understanding of international law.

Hypothesis

Analytical approach which addresses the dogma or presentation of the abstract principles of law as it exists always has been a cornerstone of building of any code of law, which is urgent requirement of society. Cyber Jurisprudence like any other Jural Science is the study of laws associated to cyber. While technology conquers the physical world at amazing velocity, the issues affecting its regulatory elements are also on the horizon, producing difficulties for jurists all over the globe. Since the global cyber recognizes no national boundary, any such regulation required to have universal perspective and uniformity, requiring united and numerous efforts of the country around the world. Cyber technology is a double-edged sword- a nuisance in wrong hands and without managed it is more devastating than nuclear weapon. Therefore, even though a fresh entrance in the field of law, Cyber jurisprudence poses National as well as international challenges.

Nature of the Study

The research paper addresses the growing landscape of cyber law within jurisprudence, concentrating on the interaction of legal ideas and digital issues. It covers major legal doctrines, precedents, and emerging concerns in cyberspace, helping to understanding how traditional legal frameworks adapt to the difficulties of the digital age.

Sources of the data

The study utilizes primary and secondary sources of data, including case laws, legislations, rules, bills, books, journals, articles, and the internet.

Chapterization

This project has been divided into 4 chapters. Chapter 1 comprises of Introduction and Research Methodology, and it mainly deals with the general introduction to the topic and aspect of Cyber Jurisprudence. Chapter 2 includes Jurisprudence of Cyber Law; this chapter includes Indian and global perspective separately. Chapter 3 discusses about the Julius Stone's Statement "Jurisprudence as lawyers extraversion". Chapter 4 discusses few important Indian Cyber law cases, which includes interpretation of lawyers and judiciary and its relationship with cyber jurisprudence.

Contribution of the Study

This project work has tried to cover mainly the cyber jurisprudence and the role of lawyers in analyzing and interpreting the law. The project work does analyses me Indian cases and the judicial and lawyers' interpretation to it.

II. JURISPRUDENCE OF CYBER LAW

Origin of Cyber Space⁴

In 1820, Joseph-Marie Jacquard, a French textile producer, was the first to be reported as a victim of cybercrime. He had designed the Jacquard loom, a weaving machine employing punched cards to make elaborate patterns. Jean-Baptiste Bouchon tampered with Jacquard's cards, forcing the loom to make defective patterns, heralding a new era in crime. The contemporary computer, springing from early computing devices like the abacus and astrolabe, was created in the mid-20th century. Early electronic computers, like ENIAC and UNIVAC, were huge machines that employed vacuum tubes and punch cards for data storage and processing.

Banks and financial institutions were among the first to adopt large-scale computer usage in the private sector, contributing to the emergence of computer fraud. One example is the equity-funding business in the US, where fraud was easily caught due to auditors and regulators interpreting computer printouts as verification of legislation. When the fraud was exposed, 64,000 out of 97,000 policies were phony, generating in approximately 1 billion pounds in losses. As technology evolved, the frequency of cybercrime occurrences rose, yet there is no clear statistics on the damages victims incur owing to the lack of detection. Efforts against cybercrime began, with Donn B. Parker being a significant role in the early phases of the struggle. Parker played an important role as he was the main author of the first basic federal handbook for law enforcement in the USA. He served as the Senior Computer Security Consultant at SRI International. Computer Crime –Criminal Justice Resource Manual (1979) this manual served as a guide for law enforcement outside the US, giving detailed knowledge on legal topics. It became a vital reference for police agencies and investigators worldwide, boosting their awareness of global legal concepts.

⁴ Security, Prevention and Detection of Cybercrimes by Asherry Magalla, Tumaini University Iringa University College; retrieved from http://www.academia.edu/3471542/THE_INTRODUCTION_TO_CYBERCRIME_SECURITY_PREVENTION_AND_DETECTION_OF_CYBERCRIME_IN_TANZANIA

What is Cyber Law in Cyberspace?⁵

Cyber Law is the law controlling cyber space. *“Cyber space is a very broad phrase that comprises computers, networks, software, data storage devices. (Such as hard drives, USB disks etc.), the Internet, websites, emails and even electronic gadgets such as mobile phones, ATM machines etc.”* Cyber Law covers the norms of conduct that individuals and corporations must follow in the digital environment. These laws involve a wide variety of concerns, such as internet privacy, intellectual property rights, and cybercrime. With the fast evolution of technology, cyber laws play a critical role in defending individuals' rights and providing a fair and secure online environment. Violation of cyber laws can lead to serious repercussions, including hefty fines, jail, and reputation harm. Therefore, it is necessary for people and companies to keep knowledgeable and compliance with cyber laws to prevent legal difficulties and defend themselves in the digital world.

Violation of the guidelines that are laid by cyber law might lead to commitment of crime and to government can take action against the person or organization committing it the action includes imprisonment or fine or an order to pay reparation. Cyber law comprises legislation pertaining to:

1. The protection of personal data and privacy in the digital age.
2. Intellectual property rights in the digital realm.
3. Cybercrime prevention and prosecution
4. The legal framework surrounding Electronic and Digital Signatures.

Cybercrimes are criminal conduct when the computer or computer networks are used to commit crime where they can be used as a tool or target or both. As the technology advanced there is a massive rise in electronic commerce (e-commerce), digital transactions and online share trading has led to a spectacular spike in incidences of cybercrime. Also now Electronic signatures are there in every field for the authentication of the electronic records to make sure it is original and belongs to the original person who has created it. Digital signature is an example of electronic signature. Digital signatures are legally legitimate owing to their validity, integrity,

⁵ Introduction to Indian Cyber Law by Rohas Nagpal, Asian School of Cyber Law; retrieved from http://www.cccindia.co/corecentre/Database/Docs/DocFiles/india_cyber.pdf

and non-repudiation. Authenticity verifies the signature is from the sender and hasn't been tampered with. Integrity assures the document hasn't been changed after application. Non-repudiation prohibits the sender from refuting their signature, giving credible evidence of intent.

These characteristics make digital signatures a safe and acknowledged mechanism for certifying electronic documents' authenticity and integrity. They are more trustable than handmade signatures as it cannot be altered without the permission of the original owner also it has its own unique character and effectiveness. Intellectual property is referring to the legal rights that are awarded to people or organizations for their works or innovations. It comprises copyrights, patents, trademarks, and trade secrets. These rights allow artists and inventors to enjoy exclusive control over the use and distribution of their intellectual assets for a defined length of time. Intellectual property laws not only protect the financial interests of the inventors, but also stimulate innovation and creativity by offering a reward for their hard work and inventiveness.

These dimensions include copyright, trademarks, patents, and trade secrets. Cyber law provides legal protection and enforcement measures for these types of intellectual property in the context of the digital environment. By addressing these dimensions, cyber law helps create an equitable and secure cyber space where individuals and organizations can confidently innovate and create without the fear of their intellectual property being infringed upon.

Data protection and privacy legislation strive to reconcile individual rights with the interests of data controllers like banks and hospitals. They address privacy threats from emerging technologies like cloud computing and big data analytics. These rules guarantee individuals have control over their personal information and utilize it appropriately. They mitigate possible abuse or unwanted access, establishing confidence in the digital realm. They also encourage openness and accountability, forcing corporations to explain their data practices and ensure individual data security.

Cyber Jurisprudence – General Perspectives⁶

To understand cyber jurisprudence, it is important for us to first understand what jurisprudence is. Black's Law Dictionary provides us with two definitions of the jurisprudence for understanding it in the context of cyberspace (Garner, 2010).

“A method of legal study that concentrates on the logical structure of law, the meanings and uses of its concepts, and the formal terms and modes of its operation.”

and

“A system, body or division of law. Both of these definitions are useful because they cover the general – sometimes stated as the theory and philosophy of law – and the specific – a system or body of law.”

The first definition from Black's provides us the relevant information for the research and which also give birth to the second definition.

“Cyber Jurisprudence is the legal study that concentrates on the logical structure, the meanings and uses of its concepts, and the formal terms and modes of operation of cyber law.”

To effectively apply criminal and tort principles to cyber law, it's crucial to acknowledge the unique challenges of cybercrime, such as its cross-border nature and anonymity, and develop innovative legal frameworks and international cooperation to protect individuals' rights and safety. The set of obligations that apply to situations that have a direct bearing on cyber science is known as cyber law.

Thus, we learn that no unique philosophy or any other theory of law is necessary to handle events that occur on or which hampers the internet. In the second case we concede that cyber law is a different sector of the law, but we acknowledge that contemporary jurisprudential thought is adequate to apply existing theory to its research and analysis. In the third case we conclude that cyber law is a peculiar and unusual issue of the law, little contemporary law or

⁶ Real world cybercrime cases by Rohas Nagpal, Asian School of Cyber Laws; retrieved from http://dict.mizoram.gov.in/uploads/attachments/cyber_crime/real-world-cybercrime-cases.pdf

theory is adequate to address it and it needs its own distinctive and unique philosophical and theoretical examination.

Indian Cyber Law Jurisprudence in Cyber Space⁷

The development of Indian cyber law jurisprudence has been a dynamic and complex process. The interpretation and execution of laws pertaining to cyber activities have undergone ongoing evolution in tandem with the fast improvements in technology. Determining what constitutes a cybercrime and whether a court has jurisdiction over it have presented many difficulties for courts. Furthermore, the way that conventional legal concepts and laws unique to the internet interact has further influenced Indian Cyber Law's jurisprudence. Therefore, the necessity to safeguard people and businesses from cyber dangers and the development of innovative technologies continue to affect the growth of jurisprudence in this sector.

The “*Information Technology Act, 2000 (IT Act)*”, India's primary cyber legislation, was created to recognize electronic trade and facilitate the filing of electronic papers with the government. Cybercrimes, such as identity theft, online fraud, and hacking, carry harsh punishments, such as fines of up to Rs. 1 million and jail terms of up to 10 years. The Act also encourages the creation of cybersecurity measures and computer emergency response teams in order to properly prevent and respond to cyberattacks.

Guidelines for safeguarding networks and acquiring Digital Signature Certificates were contained in an Executive Order dated 2002. Minor concerns were resolved with the approval of the “*Information Technology (Removal of Difficulties) Order, 2002*” on September 19, 2002. With the passage of the “*Negotiable Instruments (Amendments and Miscellaneous Provisions) Act of 2002*”, shorter and electronic checks were accessible. The “*Information Technology (Use of Electronic Records and Digital Signatures) Rules, 2004*” establish the legal foundation for submitting papers to the government and obtaining licenses, in addition to providing guidelines for using digital signatures in electronic transactions.

“*The Cyber Regulations Appellate Tribunal (Procedure) Rules, 2000*” provided people and organizations with a structure for seeking a license to serve as a CA under the IT serve. The

⁷ Introduction to Indian Cyber Law by Rohas Nagpal, Asian School of Cyber Law; retrieved from http://www.cccindia.co/corecentre/Database/Docs/DocFiles/india_cyber.pdf

Cyber Regulations Appellate Tribunal (CRAT) was established to hear appeals of judgments made by adjudicating officers.

"The Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003" set the requirements for adjudicating officers. Adjudicating Officers play a critical role in upholding the integrity and security of digital networks and in bringing cybercriminals accountable. The IT Act provides law enforcement agencies the capacity to predict and counteract cyberattacks, hence enhancing the overall security of India's digital environment. The Reserve Bank of India Act was also amended by the IT Act.⁸ It was done to expand its jurisdiction in regulating and overseeing digital payment systems. This decision was in reaction to the fast expansion of digital transactions in India and the need for a robust regulatory framework to safeguard consumer interests and promote financial stability. The amendment authorizes the Reserve Bank to create rules and regulations for digital payment service providers.

III. JULIUS STONE –“JURISPRUDENCE AS LAWYER’S EXTRAVERSION”: CRITICAL ANALYSIS

Julius Stone (7 July 1907 – 1985) was an Australian lawyer and legal philosopher. He was born in Sydney and educated at the University of Sydney, where he eventually became a professor of law. Stone is well recognized for his work in international law and his seminal book, "The Legal System and Lawyers' Reasonings." He made substantial contributions to the field of legal positivism and was a staunch supporter for the rule of law. Throughout his career, Stone highlighted the relevance of legal concepts in sustaining a just society and supporting human rights. His work continues to be studied and admired by legal experts across the world.

The author, a notable legal thinker, has produced 27 volumes on jurisprudence and international law. His papers have substantially affected the subject and are regarded core literature in law schools. Notable books include "The Nature of Law," "International Law and World Order," and "Rights and Duties in International Law." His contributions have reinforced his place as a

⁸ Introduction to Cybercrime (.pdf); retrieved from <http://webcache.googleusercontent.com/search?q=cache:UuufsII00FQJ:wsilfi.staff.gunadarma.ac.id/Downloads/files/13309/W03- Cyber%2Bcrime.pdf+&cd=1&hl=en&ct=clnk&gl=in>

notable figure in jurisprudence. Stone inspired generations of attorneys who studied at University of Sydney. For much of his tenure there, the Law institution was a practice-based institution and students studied what they needed to become practicing attorneys. “*According to A J Brown of Griffith University, the former Justice of the High Court of Australia Michael Kirby was highly impacted at university by Stone.*”⁹

Stone, a realist, considered law as a mirror of societal norms and ideas, noting that court judgments are impacted by political and social circumstances. He underlined the need of researching judicial behavior and the influence of legal rulings on society to better understand and predict court actions. Realists believe that certainty of law is a fallacy, as predictability relies on the collection of facts before the court. They argue that law is significantly related with society and cannot be totally clear owing to fast cultural change.

The examination of Stone's work reveals that he is either over-inflating the importance of judicial decision-making in society or anticipates that courts would be more employed as routes for achieving new demands. However, it would be more suitable for research to exist for legal and social education broadly, given attorneys impact the entire social decision-making system. Their ability to construct cases and present arguments in lower courts can considerably affect whether a problem reaches the appellate tribunal. Research should focus on legal and social education to ensure that attorneys are equipped with the essential abilities to understand the nuances of the legal system and successfully advocate for their clients.

Legal and non-legal social controls are interrelated, and the extent of effective direct social control through legislation is a consequence of other social controls, both direct and indirect. Lawyers and administrators have a significant role in increasing legal authority, particularly in discretionary or policy choices. Their competence in interpreting and executing laws can assist guarantee that justice is upheld, and policies are executed in a fair and equal way. Social critics play a key role in holding these legal and administrative experts responsible, pressing for reforms and campaigning for the rights of vulnerable people.

⁹ *Biography of Julius Stone* Archived 23 June 2006 at the Wayback Machine., Julius Stone Institute of Jurisprudence, Sydney Law School, University of Sydney. URL accessed 5 May 2006

Stone's intellectual voyage participates in a lawyer-like eclecticism in the selection of evidence and hypothesis, resulting to an imbalance of treatment. It is a yeoman labor in bringing major findings, theories, and methodologies of the social sciences to legal researchers and attorneys, so expanding the peoples understanding of social ordering and society . Through their critical analysis, social critics may uncover and question current power structures and prejudices within society, driving change and achieving a more inclusive and equitable society.¹⁰

IV. UNDERSTANDING JURISPRUDENCE OF INDIAN CYBER LAW INRELATION WITH J. STONE'S DEFINITION OF JURISPRUDENCE

“In India, at least one cyber-attack was reported every 10 minutes in the first six months of 2017. In 2017, according per the Indian Computer Emergency Response Team (CERT-In), a total of 27,482 incidences of cybercrimes have been recorded around the globe. These include phishing, site infiltration, malware, and ransomware. The cyber experts informed Times of India that with the projects such as Digital India in place, more Indians are using the Internet and thus, it is necessary to have vital infrastructure in place to foresee and prevent cybercrimes.”¹¹

The growth in internet use and the rising dependence on digital platforms have rendered people and companies exposed to different cyber dangers. As the number of connected devices continues to expand, so does the opportunity for cybercriminals to exploit flaws and obtain unauthorized access to important information. Therefore, it is vital for governments and corporations to prioritize cybersecurity measures and invest in modern technology to defend against cyberattacks.

To understand the Indian perspective, here are two prominent cases on IT Act,2000 which have drastically changed the Jurisprudence of Indian Cyber law.

¹⁰ J. STONE, SOCIAL DIMENSIONS OF LAW AND JUSTICE 1 (1966).

¹¹ <https://timesofindia.indiatimes.com/defaultinterstitial.cms> Assessed on 14 August 2018

1. Shreya Singhal vs Union of India¹²

The Supreme Court of India ruled in a landmark case that challenged the constitutionality of Section 66A of the Information Technology Act, 2000, arguing it violated the fundamental right to freedom of speech and expression Article 19(1)(a) of the Constitution of India. The court struck down Section 66A, declaring it unconstitutional and a violation of free speech, marking a significant victory for internet freedom and online rights in India. The primary basis for worry in these petitions is Section 66A of the Information Technology Act of 2000. The section was not initially included in the Act but was incorporated through an Amendment Act of 2009, effective from 27.10.2009. Since all the arguments submitted by numerous lawyers for the petitioners relate with the unconstitutionality of this Section it is given down below in below:

"66-A. Punishment for sending offensive messages through communication service, etc.- Any person who sends, by means of a computer resource or a communication device,-

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation. - For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message."

The petitioners' diverse lawyers argued a vast number of concerns relating to the legality of Section 66A. According to the other party, the first and the foremost Section 66A undermines the basic right to free speech and expression and is not rescued by any of the eight issues listed

¹² AIR 2015 SC 1523

in Article 19(2). According to other party, the cause of irritation, obstruction, discomfort, danger, insult, harm, criminal intimidation, animosity, hate or ill- will are all beyond the ambit of Article 19(2). Section 66A of the Act suffers from the vice of vagueness, as it fails to define the terms of the offense, resulting in the inclusion of innocent and uninnocent individuals. This lack of clarity allows authorities to be arbitrary and whimsical in booking such individuals under the same section, allowing them to be categorized as either innocent or not. This lack of clarity in the definition of words under provision 66A creates a scenario where innocent persons might be unfairly accused, while also permitting authorities to conduct arbitrary and whimsical acts in interpreting this provision. As a consequence, there is a compelling need for clear and specific definitions to guarantee that persons are not mistakenly targeted or punished under this provision. In reality, a huge number of innocent folks have been booked and numerous examples have been presented in the form of a note to the Court. The application of the abovementioned Section would genuinely be an insidious type of censorship that damages a key principle stated in Article 19(1)(a).

The Section in dispute has a chilling impact on freedom of speech and expression, undermining the right of viewers to freely exchange thoughts and ideas. This hinders the evolution of a varied and inclusive society, restricting the right of viewers to make informed judgments and engage with other viewpoints. The internet, as a forum for open interchange of ideas, should not be subjected to such restraints that hamper the free flow of information and inhibit intellectual advancement. The petitioners say that there is no discernible distinction between individuals who use the internet and those who utilize traditional modes of communication. They say that punishing persons for using the internet as a medium of communication is discriminatory and breaches their rights under Articles 14 and 21. They say that there is no reasonable reason to distinguish between people who use the internet and those who use traditional modes of communication, which would be unlawful and contrary to the principles of equality stated in Article 14. In this case various interpretation arose from attorneys from both the parties.

Mr. Tushar Mehta, the Additional Solicitor General, supported Section 66A, arguing that the legislature is better qualified to grasp and appreciate the concerns of the people. The Court intervenes only when a statute infringes the rights granted on people under Part-III of the Constitution. The Constitution does not impose insurmountable conditions for judging legality,

and imprecise phrasing may have been exploited in Section 66A to disturb other people's rights by utilizing the internet as a weapon.

Mehta mentioned various precedents from this Court and outside to buttress his views. The issue focused about infringement of freedom of speech and expression under Article 19. India is a sovereign, democratic, and republic country, and liberty of thought and expression is a core value. *“The content of freedom of speech and expression is three: discussion, advocacy, and provocation.”* A statute is invalid and unconstitutional if it violates a public order under section 19(2).

The evaluation of public order requires deciding whether an act disturbs community life or merely affects an individual, guaranteeing the harmony of society. Without clear rules for judging guilt, confusing provisions might be regarded arbitrary and irrational. It is necessary for legislation to set objective standards for evaluating the amount of disruption created by an act to maintain society's peace and harmony. Clear description of crimes and commensurate punishments provide justice and preserve individual rights, so ensuring the legal system maintains fairness.

The terminology utilized in Section 66A are open-ended, vague, and ambiguous, and prospective offenders and authorities have no practical criteria to book a person for an infraction under Section 66A. Section 66A is unlawful on the basis that it takes protected speech and innocent speech within its scope, which might stifle free expression. Additionally, there is a clear distinction between speech on the internet and other channels of communication, and hence Section 66A is not discriminatory under Article 14.¹³

2. SMC Pneumatics (India) Pvt. Ltd vs Shri Jogesh Kwatra

It is considered as the first case of cyber defamation that happened in India, and the Court of Delhi took jurisdiction over a dispute where a business corporate's reputation was defamed via emails. The plaintiff received obscene, filthy, abusive, humiliating, frightening, vulgar, insulting, and defamatory emails on 2nd April 2001. They linked one of the emails to a

¹³ <https://indiankanoon.org/doc/110813550/>

Cybercafe in New Delhi, which was confirmed by the Cybercafe Attendant as the same individual who sent the email. The emails were sent to senior executives of numerous subsidiaries of SMC globally, including Australia, where the defendant worked. Copies of the communications were provided to group firms Managing Directors to disparage plaintiff No.2. The plaintiff received a copy of all these emails and filed a police complaint against the defendant on 11th May 2001. On 11th May 2011, the defendant was terminated of services by the plaintiff owing to the injury caused by the emails.

A written declaration was produced by the defendant, alleging that the plaintiffs had not come to the court with clean hands and that the claims levied against the defendant were untrue and contrived. *“Six witnesses were summoned from the plaintiff's side, including the Secretary of Plaintiff No.2, employee of Plaintiff No. 1, and the defendant himself. According to the Specific Relief Act, if the plaintiff has not gone to court with clean hands, he is not entitled to perpetual injunction.”*¹⁴

Of all the emails received, only one was tracked to Cybercafe, and the defendant was identified via an image of a picnic. The plaintiff counsel stated that the contents of the emails revealed the originator of the email was the defendant, since the highlighted problems were verbally addressed with management, notably with plaintiff No. 2. The plaintiff counsel further pointed out that once the temporary order was imposed, the emails ceased coming save once, showing that the defendant was the one undertaking the behavior. *“An ex-parte injunction prohibiting the defendant from defaming the plaintiffs by sending disparaging, defamatory, abusive, or obscene emails to the plaintiffs or their subsidiaries is granted in this order by the Delhi High Court, which takes great significance as it is the first time an Indian court takes jurisdiction in a matter involving cyber defamation.”*

The case gave introduced a new term to Indian Law “cyber defamation” as it was first such instance to happen. This case serves as a framework for future cyber defamation trials in Indian courts, stressing the need for laws and guidelines to handle this rising problem. The verdict also

¹⁴ Tiwari, P. (2020, July 27). *Analysis: SMC Pneumatics (India) Pvt. Ltd. vs Shri Jogesh Kwatra*. Black N' White Journal. <https://bnwjournals.com/2020/07/17/analysis-smc-pneumatics-india-pvt-ltd-vs-shri-jogesh-kwatra/>

provided the framework for establishing culpability and identifying the legal implications of online defamation in India.

V. CONCLUSION AND SUGGESTIONS

Cyber technology is a double-edged sword- a nuisance in wrong hands and without controlled it is more deadly than nuclear bomb. Therefore, although though a young newcomer in the realm of law, Cyber jurisprudence presents National as well as International subtleties. The computer-generated world of internet is known as cyberspace and the rules governing in this region are known as Cyber laws and all the users of this space fall within the purview of these laws since it bears a form of international jurisdiction. Cyber law may also be regarded as that field of law that deals with legal concerns relating to usage of inter-networked information technology. In summary, cyber law is the legislation controlling computers and the internet.

Cybercrime is neither specified in Information Technology Act 2000 nor in the National Cyber Security Policy, 2013 nor in any other statute in India. This difficulty is treated by the attorneys, who interpret and evaluates the crime and present before the court. Lawyers must be attuned to developing interests, democratic philosophy, and social sciences to guarantee that huge areas of decision-making are not disregarded. This may lead to greater possibility for injustices and prejudices. It is vital for attorneys to acquaint themselves with social requirements and apply multidisciplinary knowledge into their work. This would enable a more extensive and impartial assessment of rulings, preserving the norms of a genuinely democratic judicial system. This will prevent injustices and prejudices from going unchallenged in these areas.

J. Stone assigned equal priority to the attorneys and judge in exercising power of judicial review. The attorneys have a big influence on decision making which may be studied by the situations stated above. Cases like State of Tamil Nadu Vs Suhas Katti and NASSCOM vs. Ajay Sood & Others clearly proved the necessity of the attorneys to apply the new notions of cyber law in India. The attorneys are the backbone of criminal system in a nation.

Lawyers' problem is to remind people that they have a common interest, shared grounds and common aspirations. They hold duty of the society at large and defend against the persons who

discover loopholes in the criminal system and damage the society. It is argued that the attorneys should be allowed broader latitude to speak. The primary barrier is the contempt of court, which depends on the discretion of the judges. The overuse of contempt of court is hurting the freedom of speech and expression of the attorneys. This limitation is generally harming the justice system and is producing weak power of judicial review.

“Being a lawyer is not merely a vocation. It is a public trust, and each of us has an obligation to give back to our communities” - Janet Meno

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