

THE FUNDAMENTAL RIGHT TO INTERNET (2011). By Vivek Sood. Nabhi Publication, N-101 A, 2nd Floor, Munshiram Bldg., Connaught Place, New Delhi – 110001. Pp. xxix + 285. Price Rs: 875/-.

THE EMERGENCE of Internet has transformed the contemporary world into an information society. In the present world, information technologies govern all aspects of our daily life. Although, there are plethora of positive effects of Internet in day-to-day life, one cannot overlook the negative sides of Internet as evidenced from the mushrooming of cyber cases worldwide. While the world is divided on the debate on the positive and the negative aspects of the Internet, another debate getting momentum in the modern times is whether the Internet is a fundamental human right or not? The book under review is written in this backdrop.

As the very title of the book suggests, the issue of fitment of right to Internet into part III of the Constitution as a fundamental right is the ongoing theme of the book. The book thus generates a keen interest in the minds of the readers as to “is there something called fundamental right to Internet.”

The book has four chapters. Chapter one focuses on the issue of right to Internet as a fundamental right. The concept of fundamental right is well settled by courts of law through a number of judicial decisions. The author puts forward arguments to find the fundamental right to Internet, in part III of the Constitution. One can find a detailed discussion of fundamental rights including its history, analysis of various judicial pronouncements pertaining to fundamental rights, description of the third wave-information revolution, origin and development of Internet, *etc.* The discussion on the right to Internet and freedom of speech and expression in the light of articles 19(1) and (2) are interesting. Even though the state has the authority to restrict the said freedom, to the author the battle between the state and the information society appears to be fascinating. The author feels that the intelligence agencies must get smarter in their investigation and approach to security rather than slap a legal ban on information and communication technologies including social networking sites.¹ The author argues that the Internet is a tool to materialize the unfulfilled dream of the right to free education in India enshrined in article 21A of the Constitution and to bring about equality, secularism, fraternity and opportunity as envisaged in the Preamble to the Constitution. In the view of the author, the right to Internet is a fundamental right and would qualify in future as part of the basic structure of the Constitution.²

1 Vivek Sood, *The Fundamental Right to Internet* 47 (Nabhi Publication, New Delhi, 2011).

2 *Id.* at 106.

Chapter two entitled ‘Cyber Pornography Versus Law’ analyses the relevance of *Hicklin* test of obscenity in the Internet age. This chapter also makes a critical analysis of the existing legal provisions on cyber pornography in India and other countries such as the United States of America, Canada, the United Kingdom and Australia. At the beginning of the chapter the author throws the question: Whether the adults in India have a legal/or fundamental right to (i) enjoy and (ii) share adult-entertainment/sex-material, electronic or otherwise? And after examining various cases in the light of legal provisions in the Constitution of India, IPC and the Cinematograph Act, 1952, the author concludes that the adults in India have no recognized legal or constitutional right to access and enjoy sex/adult material *per se*. The author vehemently disagrees with many judicial decisions on obscenity including the judgment in *Ranjit D. Udeshi v. The State of Maharashtra*³ which holds the field as authority on obscenity from 1966 onwards. The author criticizes the view of the apex court that “obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech and expression” and treats the same as a conservative approach. The author also feels that the apex court lays more emphasis on ‘reasonable restriction’ imposable under article 19(2) on the freedom of speech and expression, than the ‘right’ itself! The author induces the readers to debate whether to carry the *Hicklin* test formulated in 1868 and *R. D. Udeshi* in the digital age and opines that the law must move with the Internet. The author advances numerous reasons to formulate a new legal model for IT society to deal with adult-entertainment, sex-material, obscenity and cyber pornography. At the same time, he feels that there must be classification of adult/sex material and grossly offensive forms of cyber pornography. He proposes to form a nodal agency and a classification agency comprising members from different walks of life for protection of rights of adults to adult/sex material. The author goes on to say that “it is better for law to legitimize adult-material on the Internet than not being able to do anything much about it.”⁴ The author agrees that there cannot be universally acceptable morality and legal policy towards adult entertainment. However, it is surprising to note that the chapter finds no analysis of obscenity and adult right in the light of Indian society, Indian notion on morality, *etc.* At this juncture, the readers may well recall Albert Einstein as Dipak Misra J did while writing the Introduction of the book, that “as far as laws of mathematics refer to reality, they are not certain and as far as they are certain, do not refer to reality.”

Chapter three which fairly examines *inter alia* the issue of protection of children from cyber pornography, the effectiveness of filtering techniques (to filter out unwanted electronic content), balancing of rights of adults with protection of

3 AIR 1965 SC 881.

4 *Supra* note 1 at 15.



children with respect to e-porn, and the mechanism to deal with child pornography, deserves special attention. The author says that Internet pornography is a grave threat to childhood and children. Studies have found numerous personality disorders and problems in children exposed to pornography. It negatively impacts the mental, emotional and spiritual aspect of child's personality apart from healthy human intimacy. And there is a danger that children may imitate what they see. The author feels that existing filtering technologies are imperfect tools for protection of children against cyber pornography and it should not be taken as the only solution to the problem.⁵ The author is successful in bringing about the impact of child pornography on Internet and analyzing the related legal provisions.

Chapter four *inter alia* discusses the issues such as (i) criminal liability of intermediaries, (ii) the risks of prosecution that the intermediaries face in the digital age, (iii), the reasonableness of present model of intermediary's liability and (iv) the legal model of criminal liability that should apply to intermediaries. The author advocates that section 79 of the Information Technology Act, 2000 (as amended by the Information Technology Amendment Act, 2008) should be modified to formulate standards of due diligence.

In a nutshell, the book attempts to reveal the utility of Internet in an egalitarian society. The book is formatted in such a manner that any person interested in the subject can read it, including lawyers, students, policy makers and IT professionals. It seems that the author does not intend to make his work a reference book to teach law. Still, the book will certainly make a joyous reading for every keen reader. It is written in a very easy to understand language. Whether the readers would agree or disagree with the views of the author, his straightforwardness and openness to argue for what he feels right should be appreciated.

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⁵ *Id.* at 194.

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