

CYBER LAWS

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I INTRODUCTION

IN THE last few years development of cyber laws in India has been rapid and progressive. Pertinent issues relating to cyber privacy, censorship in cyberspace, jurisdiction and protection of Intellectual Property Rights have been dealt with by Indian courts in a number of cases and important principles of law have been elucidated therein.

This survey discusses the recent developments in cyber laws in India, in particular, the recent decisions passed by the Indian courts to interpret and elucidate the extant of cyber law.

II COPYRIGHT INFRINGEMENT IN CYBERSPACE

In a land mark case titled *Super Cassettes Industries Ltd., v. MyspaceInc*,¹ the plaintiff filed a suit for permanent injunction against defendant, My space for restraining copyright infringement and claim for damages. Defendant no.1 is a social networking site which offers entertainment based content including sharing, listening to music, viewing images, cinematograph works and is based out of United States of America (USA). The defendant no. 2 was the owner of the defendant no. 1, being a division of News Corporation, Fox Interactive media which provides online network that offers its users a place for entertainment and its corresponding applications. The plaintiff's contention was that the defendant makes available through its platform infringing songs, pictures, video clips which the users can copy and share freely over the internet including recently released infringing material, as well as materials which are yet to be released into market. An Indian user on accessing the site is automatically directed to its Indian website, namely *in.myspace.com*. The plaintiff contended that the defendant by providing such services has directly as well as adversely affected its rights causing him financial loss. By authorizing free illegal uploading and then distribution of such content through downloading or streaming content to end users and making profits through advertisements has been a cause of concern. My space as one of its features allowed

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1 2011 (48) PTC 49. (Del).

internal search on its website enabling users to select the file one wants to download and a user could upload any music or video file on Myspace. Myspace then converted such content in its own software format, and stored it on its own servers to be indexed as materials available through the service for downloading. The plaintiff had entered into a non disclosure agreement with defendants to take licenses from plaintiff which had not materialized. Plaintiff had served a legal notice on defendants to remove infringing materials from its website and the defendant responded stating that it had complied with this request. However, on learning that the infringing materials still existed on defendant's website, plaintiff filed a suit for permanent injunction wherein an interim application was filed for seeking interim injunction restraining defendants from infringing their copyrights. The defendants objected on grounds of lack of jurisdiction and argued exemption from liability available to an intermediary that does not moderate or have knowledge of contents of any user content on its website under section 79 of Information Technology Act, 2000 (hereinafter referred to as ITs, Act, 2000). It was contended that it only allows file sharing which is a 'means' to download and the same does not amount to an infringement. The defendants supported their stand pointing out that its terms of use in fact, prohibit infringement of copyright and reserve right with them to terminate user's access incase a user commits any illegal activity or infringes anyone's copyright while using their services. *Vide* clause 6.1 of the user agreement, the said defendant took from its users a limited license to use, modify, delete from, add to, publicly perform, publicly display, reproduce and distribute such user generated content. The defendants have also set a small procedure to take corrective action once any complaint of infringement is received. The *Hash Block* filter prevents the deleted content from being reposted by taking finger print of the content. The *Take Down* stay down contents also prevented the repetitive reposting of the file containing identical content. The website had a unique feature termed as rights management tool which called upon copyright owners to register themselves and leave fingerprints of its content and set the option to block all their content or give limited rights to download pieces if copyright holder so opts. This would in effect, scan and block all copyrighted content of its owner as per its instructions known as copyright management tool.

The plaintiff's contention was that defendant is liable as primary infringer under section 51 (a) (i)² of the Copyright Act. It was further contended that the defendant is also liable under section 51 (a) (ii)³ of the Act as the defendants by providing a space to the users permitted them to communicate the work to the public for making own profit. These acts amount to permitting a platform for infringement aimed at making profit which is an infringement prescribed under section 51 (a) (ii) of the Act. Defendants deliberately made profits from the advertisers by putting the advertisements alongside the sound recordings and the cinematographs works of the plaintiff. These acts were committed with full knowledge of defendants and they could not claim any exception to the section.

2 See Copyright Act, 1957.

3 *Ibid.*

Further, they had a reason to believe that such acts would amount to infringement of copyright. This is evident from tools of rights management that defendant makes available on its website and explicit warning to users not to infringe copyright of others in its terms of use. On the other hand, the defendants contended that it was impossible to monitor each content user upload on the website.

The court held that use of words “any place” in section 52 (a) (ii) includes cyberspace and not just the physical world. The court observed:⁴

that the acts of the defendants whereby they are offering the space over the internet, getting the works uploaded through users, thereafter saving in their own database with the limited licence to add, amend, or delete the content and thereafter communicating the said work to the public by providing some advertisements alongside the work or in the alternative gaining advertisements or sponsorships on the said basis thereafter would prima facie tantamounts to permitting the place for profit for infringement as envisaged under Section 51 (a) (ii) of the Act.

The court took the view that defendants had knowledge and had reasonable cause to believe that such infringing activity took place on their website. This is implied by the existence of rights management tool made available by them. Moreover, the defendants took limited licence to amend, delete or modify the works suitably from the user. The court observed that the authorization in section 51(a) (i) requires countenance or sanction or approval from that of the person authorizing the said act which requires element more than knowledge and can be inferred only during trial. However, the court clearly observed if defendant continues to publish infringing material even after receiving actual notice, it amounts to authorization, sanction or approval.

The court also expressed doubts on eligibility of the defendant to claim exclusion from liability under section 79 of the IT Act, 2000 as an intermediary. Defendants had claimed to be an intermediary who had no knowledge or control over user generated content and had exercised due diligence. However, the court took the view that the provisions of section 79 (2) (a) are not fulfilled as the function of the defendants were not merely access provider but also “the defendants provides access only after a limited licence to add or modify the work and thereon by adding advertisements to the said works, modifying the works which means permitting the place for profit with knowledge”.

The court took the view that defendant did not satisfy due diligence requirement in section 79 to claim exclusion of liability. On the issue of due diligence measures the court held:⁵

The defendants have sufficient means to modify the work by taking licenses from the users, adding advertisements to the works of the

4 *Supra* note 1 at 86.

5 *Supra* note 1 at 110.

plaintiff. Consequently, the effective means for pre infringement enquires are also necessarily have to be performed by the defendants only. If the defendants state that there no means to do so due to some impossibilities, the defendants must take preliminary measures at the time of modification of the works and prior to making them available to the public so as to ensure that the same does not infringe any one's copyright.

In other words, the court was of the view that defendants had ability to control and had reserved rights to control, did in fact monitor content so it was under an obligation to filter infringing materials as matter of pre infringement due diligence and not later when it receives actual notice. This situation is different from those networks who do not modify any third party content and simply provide access to internet or other service and fall within exclusion criteria provided under section 79 of IT Act, 2000.

On above said facts, the court granted interim reliefs to the plaintiff restraining defendants from modifying works of the plaintiff, adding advertisements to it and earning profits through it, by allowing users to upload or download of their works on its website, and for future works, defendants were directed to immediately take infringing works down, and also take active due diligence measures in order to prevent repetition on their own after putting to notice by the plaintiff by availing their own tools and not requiring the plaintiff to take a subscription for the same.

This case illustrates *inter alia*, social networks that indicate exercise of some modification control over user generated content will disentitle it from benefit of exclusion from liability available to certain intermediaries within section 79 of IT Act, 2000. Also, intermediaries that exercise control over user generated content such as modification or monitoring cannot escape liability for copyright infringement by claiming exclusion of liability under section 79 of Information Technology Act, 2000. This case adds to the jurisprudence on satisfying 'due diligence' criteria stipulated in section 79 of IT Act which is quite ambiguous in absence of pre filtering guidelines for user generated content on social networks in India.⁶

In another case, *Vodafone India limited v. M/s R.K Productions (P) ltd.*,⁷a civil suit for permanent injunction was filed to prevent copyright infringements in plaintiff's work, movie '3' and the second suit for movie 'Dhammu' restraining defendants who were internet service providers and unknown persons by way of john doe suits.⁸ It was contended that action lies against defendants who were internet service providers as they contribute in the infringement process by

6 Similar complaint cases were filed by super cassette industries against Yahoo www.video.yahoo.com and You Tube.

7 2013(54) PTC 149(Mad).

8 When a party suing (plaintiff) is not sure if he/she knows if there are unknown persons involved in the incident or the business being sued, there are named fictitious persons. Naming fictitious defendants stops the statute of limitations from running out even though the true name is not yet known.

providing their services and also gain monetarily through such illegal infringement actions. Relying on *Super Cassettes industries* case,⁹ the court took the view that exclusion available to intermediaries under section 79 of IT Act is, applicable to all other internet wrongs wherein intermediaries may be involved including auctioning, networking servicing, news dissemination, uploading of pornographic content but not relating to the copyright infringement or patent infringement which have been specifically excluded by way of proviso to section 81. The court observed that this can be only possible harmonious construction between the two Acts which makes both the Acts workable. Further relying on *Super cassette industries* case, the court held that even where future infringements are sought to be prevented, an action for permanent injunction is maintainable. The court held:¹⁰

The principle of *quia timet* is applicable to any tortuous liability wherever there is an apprehension of infringement likely to happen. This can be seen even in the cases of trespass where the injunctions are sought even when there is threat of invasion in the property of someone.

The court affirmed its earlier interim direction that and on such receipt of particulars of URL from the plaintiffs /applicants of where infringing movie clips are published, the respondents /defendants will be required to take necessary steps to block such URLs.

In Reliance Big entertainment v. Multivision network court decided a john doe case wherein plaintiff succeeded in making a *prima facie* case for grant of interim injunction restraining defendants and other unnamed and undisclosed persons, from copying, recording or allowing cam cording or communicating or making available or distributing, or duplicating, or displaying, or releasing, or showing, or uploading, or downloading, or exhibiting, or playing, and/or defraying the movie 'DON2' in any manner without a proper license from the plaintiff or in any other manner which would violate/infringe the plaintiff's copyright in the said cinematograph film 'DON2' through different mediums like CD, DVD, blue- ray disc, VCD, cable TV, DTH, internet services, MMS, pen drives, hard drives, tapes, CAS or in any other like manner. In this case plaintiff had exclusive copyright over the film 'DON2' which was yet to be released. The court took the view that in case, CDs/ DVDs/Blue-ray discs/VCDs are made and the film is copied by using any other device and uploaded on internet by the defendant no. 1 to 15 or any other unidentified persons and distributed and shown on cable TV, DTH, internet, MMS, tapes and CAS, plaintiff will indubitably suffer irreparable loss and injury and therefore granted the interim injunction.

III TRADEMARK INFRINGEMENT

In *Tata Sons ltd. v. Greenpeace International*, the High Court of Delhi dealt with a case wherein plaintiff sought decree of permanent injunction and damages

9 *Supra* note 1.

10 *See also*, *Super Cassette* case at 113.

of Rs/-10 crores from the respondent. Plaintiff submitted that despite all regulatory clearances having been obtained for developing 'Dharma' as an eco-friendly port, the defendants have been raising concerns about the alleged probable dangers to the nesting and breeding of Olive Ridley Turtles by the proposed port at various quarters, which are based on false, frivolous and misleading facts. The plaintiff submitted that the defendants have made an online game by the title "Turtle v. TATA" wherein they have unauthorizedly used the plaintiff's trade mark, "TATA" as well as the "T" within a circle device without the permission of the plaintiff thereby infringing its trade mark rights and maligned their reputation too. The defendants contended that the online game is designed as creative, peaceful and non-confrontational platform to draw attention to the threat that the Olive Ridley Sea Turtles are facing due to the project. Dismissing the application of interim injunction the court took the view that the issue, which the defendant's game seeks to address, is also one of public concern and granting an injunction would freeze the entire public debate on the effect of the port project on the Olive Ridley Turtles habitat. That would not be in public interest; it would most certainly be contrary to established principles. The court did not accept that the plaintiff's trademark was infringed by the game and observed that use of a trademark, as the object of a critical comment, or even attack, does not necessarily result in infringement.

IV JURISDICTION IN CYBERSPACE

In case, *Super Cassettes industries Ltd.* case the Delhi High Court dealt with online copyright infringement wherein plaintiff alleged that defendant directly infringed its copyright by uploading infringing songs and videos on defendant's website. The court dealt with issue of lack of jurisdiction as defendants operated its service out of USA wherein the defendants contended:¹¹

- a) The defendant No.1 is a foreign national and engaged in business outside the jurisdiction of this court
- b) No part of cause of action has arisen within the territorial jurisdiction of the court.
- c) The defendant No.1 is not amenable personally to jurisdiction of the court and cannot be compelled to submit to the jurisdiction of the court.
- d) The website of defendants cannot fall within the jurisdiction of the court as it does not qualify the tests laid down in the case of *Banyan Tree v. A. Murali Krishna Reddy*.¹²
- e) The exercise of jurisdiction by this court would mean that the court is giving extraterritorial effect.

11 *Supra* note 1 at 70.

12 2008 (38)PTC 288(Del).

The court considered these objections and held that the case relates to infringement of copyright wherein the specific remedies are conferred under the Indian Copyright Act. Section 62 of the Copyright Act provides that suit for infringement of copyright can be filed and initiated at the place wherein the plaintiff carries on business, or personally works for gain which is additional ground available to plaintiff besides section 20 of Civil Procedure Code, 1908 (CPC). The court held that even assuming that the rules of private international law may have any role to play, the same stands superseded by the express provision of the special Act which is Copyright Act, 1957 which entitles the plaintiff to sue at the place of its own forum. The court observed regarding two aspects of downloading and uploading of infringing content that:¹³

In the first case, the tort or civil wrong is caused in India as the aspect of downloading to the computer has been occurred in India when the said work is communicated to Indian users without the permission of the plaintiff. In the second case too, the initiation of the tort or part of the same has occurred in India as the infringing work without the authority of the plaintiff is communicated to the defendants with a limited licence to further modify and communicate further. The said commission of the acts or the part of the overt acts constitutes the part of cause of action within the meaning of Section 20 (c) of the Code of Civil Procedure.

The court also distinguished *Banyan tree* case¹⁴ judgment from the facts of the present case noting that *Banyan tree* case pertained to passing off which cannot apply to copyright infringement cases which are governed by special provisions. Also, the court applied principle of degree of interactivity of website with its users and specific targeting of customers in India to assume jurisdiction and to decide the matter.

In a landmark case before the Delhi High Court in *Nirmaljit Singh Narula v. Indijobs at Hubpages.com.*,¹⁵ the plaintiff was granted an *ex parte* injunction in a suit for permanent injunction against defendant from publishing defamatory articles about plaintiff on its website *www.hubpages.com* which was based out of a server in USA. The court directed the illegal materials to be removed within 36 hrs from service of the court order failing which it directed the registrar of the website to block the website from public access within India. This is the first case in India wherein an order of disabling illegal content within 36 hours of notice was directed by the Indian courts as per IT (Intermediaries Guidelines) Rules, 2011. The plaintiff relied on the *Banyan Tree* case¹⁶ to substantiate its contention that the Delhi High court could assume jurisdiction over the foreign defendant as it carried on business in India and specifically targeted Indian customers.

13 *Supra* note 1 at 94.

14 *Supra* note 12.

15 2012(50)PTC 320(Del).

16 *Supra* note 12.

In another case *World Wrestling Entertainment Inc. v. M/s. Reshma Collection*¹⁷ a suit had been filed to seek permanent injunction restraining infringement of Copyright, infringement of Trademarks, Passing Off, dilution, rendition of accounts, damages and delivery *etc.*, by the *World Wrestling Entertainment Inc.*, a company incorporated under the laws of the state of Delaware, United States of America. The defendants were located in Mumbai. The jurisdiction of the court has been invoked by relying upon section 134(2) of the Trademarks Act, 1999 and section 62(2) of the Copyright Act, 1957. The defendants, according to the plaintiff, were infringing the plaintiffs registered trademarks. The plaintiff alleged that the garments sold by the defendants bear the images of WWE talents, and representations of the well known WWE characters are displayed very prominently on the defendant's products. The court took the view that the plaintiff was not a resident of Delhi and failed to establish that it carries on any business at Delhi. The court held that it is possible that the goods manufactured by the plaintiff are available in the market of Delhi or they are sold in Delhi but that by itself would not mean that the plaintiff carries on any business in Delhi. The court further held that for the purposes of a passing off action, or an infringement action where the plaintiff is not carrying on business within the jurisdiction of a court, and in the absence of a long-arm statute, in order to satisfy the forum court that it has jurisdiction to entertain the suit, the plaintiff would have to show that the Defendant 'purposefully availed' itself of the jurisdiction of the forum court. For this it would have to be *prima facie* shown that the nature of the activity indulged in by the defendant by the use of the website was with an intention to conclude a commercial transaction with the website user and that the specific targeting of the forum state by the defendant resulted in an injury or harm to the plaintiff within the forum state.¹⁸

Cyber defamation

In another case titled *Nirmaljit Singh Narula v. Yashwant Sinha*,¹⁹ the plaintiff filed suit for permanent injunction and damages against *Bhadas4media.com*, a website that claimed to be a news portal. The plaintiff in its application for interim relief of temporary injunction submitted that the defendants have been carrying out false and malicious propoganda against the plaintiff by publishing defamatory statements against him. It was alleged that these defendants are not publishing any kind of news on their website but are running a targeted malicious campaign to defame the plaintiff and making undue profits. Despite service of legal notice the defamatory articles had not been removed by defendants. The court granted a conditional injunction restraining the defendants from licensing, writing, publishing, hosting or advertising any defamatory material against the plaintiff on their website or through any other print/electronic media to defame the reputation of the plaintiff.

17 2014 (58) PTC 52 Del.

18 See *Rajesh v. State of Kerala* 2014 Cri LJ 204 court held that cyber police station has no power or authority to file final report in the absence of any offence under the IT Act, 2000 in the final report.

19 2012(132)DRJ 370.

Also in *VyaktiVikas Kendra v. JitenderBagga*,²⁰ Delhi High Court dealt with a similar case wherein in a suit for injunction and damages, an interim injunction was ordered against defendants restraining publication of highly defamatory materials about Sri Sri Ravi Shankar, owner of the Art of Living Foundation, on *www.blogger.com* in a blog that was created by defendant no.1. The court observed that defendant no.2 is an intermediary within the definition of section 2(1) (w) and section 79 of the Information Technology Act, 2000. Under section 79 (3)(b) of the IT Act,2000, defendant no.2 is under an obligation to remove unlawful content if it receives actual notice from the affected party of any illegal content being circulated/published through its service. The court further observed that defendant no.2 is bound to comply with Information Technology (Intermediaries Guidelines) Rules 2011. Rule 3(3) of the said rules read with rule 3(2) requires an intermediary to observe due diligence or publish any information that is grossly harmful, defamatory, libelous, disparaging or otherwise unlawful. Further, the court noted that rule 3(4) of the said rule provides obligation of an intermediary to remove such defamatory content within 36 hours from receipt of actual knowledge. On the said facts, the court directed that the defendant no. 2 to remove all defamatory contents about the plaintiffs posted by the defendant no.1 on defendant no.2's website *blogger.com* as well as the defamatory links within 36 hours from date of knowledge of the order passed by the court. By the same order, the defendant no.1 was also restrained from sending any e-mails, or posting any material over the internet which has a direct or indirect reference to the plaintiffs or the Art of Living Foundation or any member of the Art of Living Foundation, or Sri Ravi Shankar.²¹

There were few other cases seeking injunction from publishing defamatory content on internet. In *Ratan N Tata v. UOI*²² the petitioner filed a petition under article 32 of the Constitution of India seeking issuance of writ directing the respondents to ensure that no further publication of recordings, wherein his name figured in conversations made by *Nira Radia tapes*, be made either as audio files through internet or print as transcripts appears in any media-print or electronic and for that purpose, take steps as may be necessary, including but not limiting to steps under, The Cable Television Networks (Regulation) Act, 1995 and The IT Act, 2000, the Cr PC, 1973 read with the IPC, 1860 and any other law wherein CBI was directed to investigate the matter. In another case titled *Swatanter kumar v. The Indian Express*,²³ interim injunction was granted to the plaintiff against

20 2012 AIR (Del) 180.

21 See also Kerala Mahila Congress Chief Bindu Krishna took recourse to the Information Technology Act to get 111 people booked for alleged "obscene and defamatory" posts on *Facebook* against her and Rajya Sabha deputy chairman P J Kurien. "Cases against anti-Kurien Facebook posts draw experts flak", *The Times of India*, Feb 26, 2013. Available at: http://articles.timesofindia.indiatimes.com/2013-02-26/india/37308770_1_kerala-mahila-congress-posts-section-66a (last visited on May 26, 2013).

22 2013 (13) SCALE 201.

23 207 (2014) DLT 221.

respondents from writing about the alleged incident of sexual harassment of interim by the plaintiff by media channels and on internet

Right to privacy

In a recent case *Shashank Shankar Mishra v. Ajay Gupta*²⁴ the Delhi High Court dealt with a suit for permanent injunction restraining defendant from disclosing private information pertaining to plaintiff and his family members and also using his software. Plaintiff also sought damages from defendants alleging that defendant had illegally taken away his laptop which had saved copies of his copyrighted work including a new programme he had prepared named *Quiz prowordpressplugin*. In an *ex parte* order, the defendant was restrained from using any data, letting it or deleting the same, with direction to return the laptop or pay the amount equal to value of laptop and damages of Rs. 10 lakhs. The court while protecting right to privacy under article 21 of the Constitution of India restrained defendants from disclosing any personal information or private information of plaintiff or his family members in laptop to anyone else. The court took the view that even a public authority is not entitled to invade one's privacy in India except in accordance with procedure prescribed by law and granted compensation as damages to the plaintiff.

Censorship of internet

Recently there have been few cases of censorship on the internet which have created controversy and have been widely reported by media. In one of the cases the government directed internet service providers to block 55 Facebook pages related to Afzal Guru. The notice was issued by the Department of Telecom (DOT) after Afzal Guru was hung.²⁵ In another case Cartoonist Aseem Trivedi was arrested for sedition charges allegedly for using National Emblem in an unlawful manner in his sketch. However, Mumbai High Court was reported to have condemned such action of police on ground that it violated his right to freedom of speech and expression.²⁶ In another case, IIPM was brought under a scanner when several pages were blocked by internet service providers (ISP) on government orders. The sites allegedly contained defamatory material about IIPM or its head and were directed to be blocked by a court in Gwalior based on a complaint filed by IIPM's representative.²⁷

24 2011 (184) DLT 675.

25 "Government moves to block 55 Facebook pages on Afzal Guru", *The Times of India*, Feb 19, 2013. Available at: http://articles.timesofindia.indiatimes.com/2013-02-19/social-media/37179189_1_afzal-guru-facebook-pages-block-notices (last visited on May 29, 2013).

26 "Tomorrow, you will attack a filmmaker and a writer" rediffnews, May 29, 2013 Available at: www.rediff.com (Sep. 14, 2012).

27 "Free speech controversy rages around Arindam Chaudhari", NDTV Available at : <http://www.ndtv.com/article/india/free-speech-controversy-rages-around>. In *Google India Pvt. Ltd. v VinayRai* the trial court has issued summons against the petitioners under SS. 292/293/120B IPC, 1860 for allegedly publishing unlawful materials on

Liability of director for cybercrime committed by company

An interesting twist was seen in the DPS MMS or popularly known as the *Bazee.com* case wherein its director was arrested under section 292 IPC and section 67 of IT Act, 2000 for publishing obscene clip on its website. In *In Aneeta Hada v. M/s. Godfather Travels & Tours (P) Ltd.*,²⁸ the Supreme Court considered criminal appeal no.1483 of 2009 titled *Avnish Bajaj v. State*²⁹ along with other criminal appeals involving same question of law, whether a director can be held liable even where a company is not arraigned as an accused. The court considered section 85 of the Information Technology Act, 2000 which deals with deemed liability of directors in case of offences committed by companies and held that a director cannot be held liable without impleading the company as an accused. The court quashed the proceedings against the appellant director as the company was not even arraigned as an accused in *Avnish Bajaj v. State*. The court applied the doctrine of strict construction, and held that commission of offence by the company is an express condition precedent to attract the vicarious liability of a director.

Section 66A of IT Act's constitutionality challenged

In *Shreya Singhal v. UOI*,³⁰ a public interest litigation was filed before Supreme Court challenging constitutionality of section 66A of the IT Act, 2000 wherein the state of Maharashtra was directed to explain the manner in which Ms. Shaheen Dadha and Ms. Renu Srinivasan, came to be arrested after a posting was made by Ms. Dadha on Facebook about shutting of Mumbai following death of a political leader. Similarly, Aseem Trivedi who was also arrested by Mumbai police under section 66A of the IT Act, 2000 filed for impleadment in this writ petition which was allowed by the court. The writ petition challenges the constitutionality of section 66 A being arbitrary, ambiguous and contends that the section violates fundamental right to freedom of speech guaranteed under article 19 of Constitution of India. The court issued notice to the centre and 4 states in the matter and the matter is still *sub judice*. Thereafter, the Central government passed advisory guidelines to police that no FIR under section 66A will be registered unless it is

website .The petitioner submitted that services in question do not belong to Google India Pvt. Ltd. / petitioner, but are provided by Google Inc. The court issued notice on the petition and summoned records of the case. See similar case, *Facebook India Online Services Pvt Ltd v. VinayRai*. Recently, courts dealt with a case challenging legality of opening minor accounts on facebook. The Delhi High Court issued notice to the Union government to explain how it was allowing minors to set up accounts in Facebook and Google."illegal for minors to open Facebook account: petition", *The Hindu*, April 25, 2013, Available at :<http://www.thehindu.com/news/national/illegal-for-minors-to-open-facebook-account-petition/article4654571> (accessed on May 26 2013), see also *Maulana Mahmood Azad v. UOI* (blocking of religious sensitive film on muslims by court order on all websites).

28 2012 (5) SCC 661.

29 150 (2008) DLT 769.

30 2013 (12) SCC73.

approved by Inspector General (IG) police in metros. In case of rural areas and non-metros, no action for violation of section 66A can be taken until approved by an officer of the rank of deputy commissioner of police.

Identity theft-section 66C IT Act, 2000

In a recent case, *Sanjay Jha v. State of Chhattisgarh*,³¹ bail application was allowed by the Supreme Court of a petitioner facing trial under sections 420,467,468,466,471,475,484/34 IPC and under section 66C of IT Act.

Accused person allegedly generated fake documents from internet, used fake letter head of railway minister, appended his forged signatures, prepared forged medical report and obtained payment of Rs/- 20 lakhs from the complainant.

Phishing cases

In the case *ShriUmashankar Sivasubramanian v. Branch Manager, ICICI bank*³² an application was filed by applicant under section 43 and section 46 of the IT Act, 2000 for claiming compensation in a phishing case. The applicant contended that the bank was liable to compensate him for the loss suffered by him through unauthorized debits to his account caused due to bank's negligence in not providing secure communications to customers as no digital signatures or other valid authentication mechanisms were used. The adjudicating officer held the bank guilty of negligence and directed the bank to compensate the applicant with an amount of approx. 12 lakhs. In another phishing case, *Sourabhjain v. ICICI bank*, the adjudicating officer of Maharashtra found the bank guilty of negligence which led to unauthorized phishing attacks from the complainant's account wherein Rs/- 2 lakhs were transferred by internet banking into unknown ICICI bank fake account created by ignoring KYC³³ norms. The adjudicating authority directed the bank to pay a compensation of Rs 150,000 to the complainant and idea cellular a compensation of Rs/- 25,000 for negligently issuing duplicate sim card by not following reasonable security practices.

Hacking case

In a case titled *Sanjay Kumar v. State Of Haryana*,³⁴ before High Court of Punjab and Haryana a criminal revision petition was dismissed which was preferred by the petitioner against judgment passed by the Sessions Judge, Faridabad, whereby an appeal preferred by the petitioner has been dismissed and judgment of conviction passed by Judicial Magistrate First Class, Faridabad, was upheld, *vide* which the petitioner had been convicted for offences punishable under sections 420, 467, 468, 471 of the IPC and sections 65 and 66 of the Information & Technology Act, 2000 and sentenced to undergo rigorous imprisonment. The accused had cheated the bank and forged the electronic record to cause wrongful

31 (2014) 3 SCC 202

32 Petition no. 2462 of 2008, order passed by Adjudicating officer, Chennai, dated 12 April 2010.

33 "Know Your Customer", is the process used by a business to verify the identity of clients.

34 2013 CRR No.66 of 2013 (O&M) 1.

loss to bank and wrongful gain to himself. The prosecution has been able to prove beyond reasonable doubts, the ingredients of sections 420, 467, 468 and 471 IPC. The accused had tampered with the computer source document and he has also altered in the information which resided in the computer resource and by doing so he committed the offences under Sections 65 and 66 of the Information & Technology Act, 2000.

Cyber stalking case

In *S. Raju Aiyer v. Jawaharlal Nehru University*³⁵ the High Court of Delhi dismissed an appeal that impugned the order passed by a single judge of the Delhi High Court. The court had dismissed the writ petition filed by the appellant whereby the appellant had, *inter-alia*, challenged the punitive measure of compulsory retirement imposed on the appellant on account of him being found guilty of sexual harassment. The high court held there was no perversity in order passed by the enquiry committee and dismissed the appeal. The enquiry committee had found the appellant guilty of cyber stalking and harassment as the plaintiff complained that she was being cyber stalked and obscene mails containing sexually explicit content were sent by the respondent on her email.

Obscenity

In one case before Mumbai High Court, *JanhitManch v. UOI*³⁶ dealt with a petition seeking relief to direct the respondents to make coordinated and sustained efforts, to have a blanket ban on websites which according to petitioners are displaying obscene material harmful to the youth in their formative years. The high court declined to exercise its extraordinary jurisdiction and held that if the petitioner comes across any website/s which according to him publishes or transmits any act which amounts to offence under section 67 or 67A of the IT Act, 2000, he can file a complaint. The court held:³⁷

Courts in such matters, the guardian of the freedom of free speech, and more so a constitutional court should not embark on an exercise to direct State Authorities to monitor websites. If such an exercise is done, then a party aggrieved depending on the sensibilities of persons whose views may differ on what is morally degrading or prurient will be sitting in judgment, even before the aggrieved person can lead his evidence and a competent court decides the issue. The Legislature having enacted the law a person aggrieved may file a complaint.

Electronic evidence in cyber cases

In the case of *Katari Sunil Kumar v. B. Hemanalini*³⁸ importance of electronic evidence was emphasised. This was a criminal petition filed under section 482 Cr.P.C. by accused Dr. Katari Sunil Kumar to quash the proceeding therein. Dr. B.

35 2013 LLR 1213.

36 2007 (2) Bom CR 958.

37 Ibid.

Hema Nalini-no.1 respondent lodged a report with Cyber Crime Police Station, Hyderabad, alleging that she received obscene messages .The Cyber Crime Police Station, Hyderabad, registered a case for the offence under section 509 IPC. Later, the report filed by police indicated that there was a professional rivalry between complainant and accused and dropped the action. The no. 1 respondent filed a private complaint in the court of the Judicial Magistrate of First Class, Kurnool, contending that the emails received by her are generated from the laptop/computer of the petitioner/accused. She also enclosed the hard copies of mails along with her complaint. The forensic lab report stated that the alleged obscene mails were in fact received by complainant from the respondents email id. The court on basis of electronic evidence proceeded to take cognizance of the offences punishable under section 67 of the IT Act, 2000 and section 509 IPC and registered the case. Hence, in view of electronic evidence found in the case the court dismissed the criminal petition under section 482 Cr.P.C. filed by accused.

In *Mohd.Ajmal Amir Kasab v. State of Maharashtra*³⁹ the important evidence of conspiracy was traced from the intercepted mobile phone call recordings of accused. It was found that the terrorists who had attacked hotel Taj in Mumbai belonged to Pakistan and during the attack were regularly in contact with co-conspirators in Pakistan through mobile phones. The terrorists concealed their identities and locations from where they made calls by using the services of Callphonex. The terrorists at hotel Taj were using a sim card which they procured by giving fake identity documents. The terrorists at hotel Taj and Nariman house used sim snatched from the victims which they used to make calls from their own mobile devices. From the documents on record of the case, it was proved that all five mobile phones of the accused were made in china and shipped to Pakistan. In this manner, the electronic evidence gathered in the case proved crucial evidence to decide this case.

In *Mohd.Arif v. State (N.C.T of Delhi)*,⁴⁰ the appellant (a Pakistani national) challenged his concurrent conviction by the trial court and high court and award of death sentence. The case concerned accused who had committed gun firing near the Red Fort in Delhi. Electronic evidence of call records traced from a number found on a slip of paper from the crime site was relied on in the case. Police found that the number was used to make calls from two handsets with two IMEI⁴¹ numbers which were found from *Essar* telecom on investigation. It was found that the same person had another mobile number he used extensively to make calls. Checking frequency of calls made pointed to two locations which were raided and the accused was apprehended and arrested. The case discusses how with assistance of data available from mobile phone towers, the location of a subscriber making or receiving calls from his mobile phone can be traced.

38 2013(1)ALD(Cri)251.

39 2012 (9) SCC 1.

40 (2011) 13 SCC 621.

41 Is a 15 digits long serial number, the IMEI code is broken into sections that provide information about a phone, such as its manufacturer, to the mobile network that the phone is connected to.

In *K, K velusamy v. N. Palanisamy*⁴² the court observed that amended definition of evidence in section 3 of the Evidence Act, 1872 read with definition of 'electronic record' in section 2(1)(t) of the IT Act, 2000 includes a CD containing an electronic record of a conversation. Section 8 of the Evidence Act, 1872 provides that any conduct of a party or of its agent to any suit in reference to such suit or any fact in issue therein or relevant thereto is relevant if such conduct influences by any fact in issue or relevant fact whether it was previous or subsequent thereto. The court observed that electronic record can be received in evidence.

Appointment of grievance officer

Recently in *Amitabh Thakur v. UOI*⁴² through Secretary, Ministry of Information Technology, before High Court of Allahabad, petitioners approached court complaining about non compliance of this provision in IT (intermediaries Guidelines) Rules 2011 that requires name of grievance officer to be published on website by service providers. The court directed the Secretary, Ministry of Information technology to decide representation made by petitioners with department within 3 months.⁴³

E-auction is legal

In *Tamilnadu Organic Private Ltd., v. Tamilnadu Organic Industries Private Ltd., S. Janakiammal and S. Anandaraj v. State Bank of India*.⁴⁴ In this case a petition was filed to quash the e-auction of sale of properties wherein respondent bank had opted for e-auction sale procedures regarding secured assets. There was no specific prohibition under rules restraining respondent banks from employing e-auction sale process for sale of secured assets. Method of e-auction was chosen to be user friendly and obtain best possible price for properties. The court held e-auction notice of sale of properties by respondent banks to be fair and sustainable.

V CONCLUSION

The approach of Indian courts has been quite logical and clear and the trend has been to give liberal interpretation to extant laws on Information Technology. *Super cassette industries v. Myspace* is a landmark judgement which will directly affect working model of social media and social networking sites and affect their liability criteria considerations. A Number of cases relating to jurisdiction in cyberspace such as *Nirmaljit Singh* case⁴⁵ emphasized on principles of purposeful availment and targeting of customers to determine jurisdiction on internet. Important cases have been filed in the last few years and are *sub judice*, such as *Shreya Singhal* case⁴⁶ challenging constitutionality of section 66A of IT Act which, upon final decision, are expected to bring clarity and make the implementation of the IT Act more efficacious in India.

42 (2011) 11 SCC 275.

43 2014(2) ALJ 260.

44 Ministry of Information technology, Available at:http://deity.gov.in/sites/upload_files/dit/files/Court_Order%20.pdf (last visited on May 27, 2013).

45 2014(2)CTC465

46 *Supra* note 15.

47 *Supra* note 30.

