

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 3

2024

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Recent Landmark Developments in IT Laws: The Indian Judicial Approach

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ABSTRACT

Information Technology (IT) Laws is one of the most rapidly developing areas of law in today's time, not just domestically but internationally as well. The field of technology has seen rapid change at an unprecedented rate in the last two decades, with new technologies emerging every second and becoming accessible to the public at large. To keep pace with these developments, various legislative actions have been undertaken by amending the existing laws such as the Information Technology Act of 2000 and formalising rules and regulations to supplement the laws. However, it is now the need of the hour to bring in new legislation to overhaul the existing legal machinery pertaining to IT.

While the legislature is working towards executing this overhaul with the impending Digital India Act, the process to accomplish this is time-consuming. In the past two decades, the Indian judiciary has stepped in at various junctures to keep abreast with the latest developments in technology so that the existing laws are not regarded as being redundant or outdated. The judiciary has done so by incorporating various interpretations and jurisprudence while adjudicating disputes pertaining to the IT sector. In this article, we will explore the recent judicial developments in IT laws. For the purpose of this discussion, we will limit our scope to landmark judicial decisions pertaining to specific areas such as the constitutionality of IT laws and rules, intermediary liability, and evidentiary value of electronic records in the past decade (2014-2024).

I. RECENT JUDICIAL DEVELOPMENTS IN INDIA

The past decade has undoubtedly been an eventful period in India's cyber legal developments. The country's judiciary has had to cope with the fast-paced technological developments which opened the doors to newer, unprecedented nature of disputes arising with the increased usage of cyberspace on a massive scale. The judiciary has, time and again, opined on these developments through various judgments and has attempted to keep pace with the changes occurring in the tech space.

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II. CONSTITUTIONALITY OF IT ACT 2000

A discussion on judicial decisions in the area of cyber law cannot be justified without referring to the landmark case of *Shreya Singhal v. Union of India* (2015)², wherein There was a challenge against Section 66A³ of the IT Act, 2000's constitutionality. The petitioner argued that their fundamental right to freedom of speech and expression is violated by this section. It was argued that Article 19(2)⁴ of the Constitution of India, 1950 does not even save or permit the restrictions imposed by the aforementioned clause. The petitioner's second main argument was that the section in question suffers from the vice of ambiguity because several of the phrases employed therein are not defined. This thereby opens the door for the State to act arbitrarily and capriciously against a great number of innocent people. Additionally, it was claimed that the aforementioned Section infringes upon the Right to Equality guaranteed by Article 14 of the Indian Constitution, 1950 by making an unreasonable distinction between individuals who utilise the internet and those who utilise alternative forms of communication. Respondent, conversely, contended that the legislature is in the best possible position to comprehend the needs of the public. Accordingly, the court cannot get involved in the legislative process until there has been a blatant infringement of the rights guaranteed by Part III of the Indian Constitution. It was argued that the presumption also favours a statute's validity and that a statute's specific provisions cannot be invalidated based just on the likelihood of abuse.

The Hon'ble Supreme Court invalidated Section 66A of the IT Act, 2000 in its entirety for violating Article 19 (1) (A) after hearing thorough arguments from both sides. It is noted that Article 19 (2) does not save the aforementioned Section. Nonetheless, the court maintained the constitutionality of the IT (Procedure & Safeguards for Blocking for Access to Information by Public) Rules, 2009, as well as Sections 69A⁵ and 79⁶ of the IT Act, 2000. This case is considered a landmark in the realm of enforcement of fundamental rights in the 21st century. It was the first major decision involving penal law pertaining to electronic communication. There have been multiple judgments on the interpretation of the right to freedom of speech and expression prior to this case, however, what sets this judgment apart is the involvement of the Internet as the medium of communication of information.

² *Shreya Singhal v. Union of India*, AIR 2015 SC 1523

³ IT Act, 2000, S. 66A - Punishment for sending offensive messages through communication service, etc.

⁴ India Const. Art. 19 - Protection of certain rights regarding freedom of speech, etc.

⁵ IT Act, 2000, S. 69A - Power to issue directions for blocking for public access of any information through any computer resource.

⁶ IT Act, 2000, S. 79 - Exemption from liability of intermediary in certain cases.

III. INTERMEDIARY LIABILITY

An important case concerning intermediary liability as an e-commerce operator is that of *Christian Louboutin SAS v. Nakul Bajaj & Ors.* (2018)⁷. In the aforementioned case, the complainant, a producer of luxury shoes, applied for an injunction against www.darveys.com, an online marketplace, and the seller of counterfeit products for violating trademarks. Whether the defendant was permitted to use the plaintiff's trademark, photos, and logos under Section 79 of the IT Act was one of the main questions on the court's agenda in this case. The defendant's website, Darveys.com, was found to have complete control over the things it sold, and the court noted that the website operated as much more than a simple intermediary. Excellent interpretation of the Intermediary Guidelines and Section 79 of the IT Act, 2000 was done by Honourable Judge Ms Pratibha M. Singh. It is crucial because it establishes the conditions under which the intermediary cannot avoid liability since it will be presumed to be aiding and abetting the sale of online goods and services. It was emphasized that e-commerce websites must use care and caution in order to benefit from immunity under section 79 of the IT Act. To claim an exemption under section 79 of the IT Act, the company must, as a general rule, make sure it is not actively involved in the selling process.

In the wake of the increasingly political atmosphere of the country that regularly uses internet and cyberspace as a major communication channel, the court's ruling in the case of *Google India Pvt. Ltd. v. M/S Vishaka Industries Limited* (2016)⁸ provided clarifications pertaining to the exemption to be claimed by an intermediary under Section 79 of the IT Act. The key facts of the case were that an individual had posted some defamatory articles in a group that Google (Appellant) sponsored, targeting the Respondent and a few national figures. The respondent had sent the appellant a notice requesting that the defamatory content be blocked, but the appellant made no attempt to comply. In light of this, the High Court observed that the Petitioner was not entitled to any exemption under Section 79 of the IT Act and issued a judgment in favour of the Respondent.

Even though it has been ensured through various judgments that intermediaries do not escape liability by hiding behind the protection offered by Section 79, there are certain cases where the court has provided this exemption where the facts, laws, and general reasoning permitted to do so. In the case of *KENT RO SYSTEMS LTD & ANR v. AMIT KOTAK & ORS* (2017)⁹, Kent RO had filed a complaint with eBay alleging that a seller on the latter's platform had

⁷ *Christian Louboutin SAS v. Nakul Bajaj & Ors.*, AIR ONLINE 2018 DEL 1962

⁸ *Google India Pvt. Ltd. v. M/S Vishaka Industries Limited*, AIR 2020 SC 350

⁹ *Kent RO Systems Ltd. and Ors. v. Amit Kotak and Ors.*, 2017 (69) PTC 551 (Del)

violated its intellectual property rights. Kent RO asked eBay to confirm the products before they were posted on their site. According to the court, the IT Intermediary Rules merely oblige the intermediary to notify users of its computer resources not to host, display, maintain, or publish any content that violates any intellectual property rights, as well as to publish the Rules and Regulations and Privacy Policy. Additionally, the IT Rules mandate that eBay, acting as an intermediary, disable any infringing information within 36 hours of receiving a written complaint from a plaintiff alleging that a product violates their patent, trademark, or copyright. According to the court, information is automatically hosted on these portals, and eBay is not required to review every piece of content unless it is brought to its attention. Thus, it would be unfair to interfere with an intermediary's ability to conduct business by making it perform such screening.

IV. EVIDENTIARY VALUE OF ELECTRONIC DOCUMENTS

With the advent of technology and its increasingly wide usage, one of the major challenges that the Indian courts have faced has been assessing the legitimacy and validity of the electronic documents or evidence that are placed on record during trials and checking their admissibility. A landmark case in this regard is the 2015 case of *Shamsher Singh Verma v. State of Haryana*¹⁰. In this instance, the accused filed an appeal with the Supreme Court after the High Court denied their application to exhibit the Compact Disc they had submitted as part of their defence and to have it verified by the Forensic Science Laboratory. The Supreme Court held that a compact disc counts as a document as well. It further noted that, in accordance with Section 294 (1) of the CrPC¹¹, it is not required to directly ask the accused, the complainant, or the witness to admit or deny the existence of a document.

The Apex court provided a detailed clarification on the admissibility of electronic data in the case of *Anvar P.V. v. P.K. Basheer and Ors.* (2014). According to the Supreme Court, secondary data on CDs, DVDs, and pen drives can only be admitted with a certificate under Section 65B(4)¹² of the Indian Evidence Act. Oral testimony is insufficient to support electronic evidence; a certificate under Section 65B is required. Furthermore, the expert's opinion under Section 45A¹³ of the Indian Evidence Act does not serve as a means of avoiding the Section 65B procedure. The sole way to validate electronic evidence as primary or secondary evidence, respectively, is to present the original, a copy of it, or a counterpart

¹⁰ *Shamsher Singh Verma v. State of Haryana*, (2016) 1 UC 543

¹¹ Code of Criminal Procedure, 1973, S. 294 - No formal proof of certain documents.

¹² The Indian Evidence Act, 1872, S. 65B – Admissibility of electronic records.

¹³ The Indian Evidence Act, 1872, S. 45A – Opinion of examiner of electronic evidence.

coupled with a certificate under Section 65B.

This position was reiterated in the 2020 Supreme Court case of Arjun Pandit Rao v. Kailash Kushanrao¹⁴, wherein the Hon'ble Apex Court ruled that the electronic record must comply with Section 65B of the Indian Evidence Act in order to be admitted as evidence. The certificate filed in accordance with this clause contains information on the electronic records and the identity of the submitter, including the authorised signature of the official with regard to the administration and use of the relevant equipment.

V. CONCLUSION

The emergence of new technologies has catapulted the Indian legal system towards new challenges. These technologies have improved human convenience and there is no question about it. However, it has also brought with it an unprecedented set of challenges. Since the revision of legislation has been long due, the courts have had to assume the forefront responsibility and interpret facts, laws, rules, and the prevailing jurisprudence to keep in touch with the changing times.

The court has heard numerous matters on the constitutionality of various sections and rules under the IT Act 2000 wherever a question of ambiguity has arisen and it continues to do so. Various petitions have been recently filed challenging the constitutionality of IT Rules 2021 on the grounds that they are violative of Article 14¹⁵, Article 19¹⁶, Article 21¹⁷, Article 50¹⁸, and Article 312¹⁹ of the Indian Constitution. The Hon'ble Supreme Court of India recently transferred all the petitions from across the country challenging the aforementioned rules to be heard by the Delhi High Court. In terms of intermediary liability, the courts have had to define the ambit within which protection may be granted to intermediaries. It has been challenging to maintain a balance between the liability of an intermediary and its rights and privileges. However, the Indian courts have reasoned their decisions and provided some clarity in the judgments of the last decade to create an outline of the scope. Another question that the courts have had to struggle with is the evidentiary value of electronic records. Keeping in consonance with the provisions of the Evidence Act, the courts have successfully attempted to define the necessary requirements for electronic data to be submitted on record as evidence.

The rigour to keep abreast with the latest technology is not only seen through various decisions

¹⁴ Arjun Pandit Rao v. Kailash Kushanrao, 2020 Scej 1156

¹⁵ India Const. Art. 14 – Equality before law

¹⁶ India Const. Art. 19 - Protection of certain rights regarding freedom of speech, etc.

¹⁷ India Const. Art. 21 – Protection of life and personal liberty

¹⁸ India Const. Art. 50 – Separation of Judiciary from executive

¹⁹ India Const. Art. 312 – All-India Services

of the higher courts in the country but also in the operations and functioning of the judicial system. Most courts are progressing towards the electronic medium by incorporating virtual hearings, e-filing, and the use of court documents in an electronic format in their daily operations. Hon'ble Justice DY Chandrachud has time and again emphasized the use of electronic copies of court documents such as pleadings in the courtroom to encourage advocates to use technology to streamline the process while also advocating for accessibility of reported judgments of the Hon'ble Supreme Court to the general public in an electronic form via the internet.

Therefore, we see an emerging reform with this judicial system becoming more adaptable both in terms of the judgments being delivered and in the operational aspects of the system. However, the judiciary's role is limited to interpretation as it cannot become a legislative body. Therefore, updated legislation to keep abreast with the new technologies is the need of the hour for this country.
