

ANNUAL REGIONAL PCS CONFERENCE 2019

OPPORTUNITIES IN CYBER LAW

VAISHALI BHAGWAT, B.C.S , LL.B
TECHNOLOGY LAWYER
Chevening Scholar

Law that governs cyberspace

- Networks
- Internet
- IOT
- Block chain
- Disruptive technologies
- Artificial Intelligence and Machine Learning
- 5G

Digital Revolution

- Communication
- Payments
- Business transactions
- E-learning
- Shopping
- Banking
- Entertainment
- Government services, filing and compliance
- Critical Information Infrastructure

INDUSTRY 1.0 TO 4.0

- Industry 1.0 – In 1800's Water and steam powered engines developed to aid workers to increase production capability
- Industry 2.0 – Beginning of the 20th Century, Electricity became the primary source of power
- Industry 3.0 – Last few decades of the 20th century- invention and manufacture of electronic devices, I Cs that fully automated machines
-
- Industry 4.0 – connects IOT with manufacturing techniques – sharing of information and analysis for intelligent action. Integration with other cutting edge technologies -additive manufacturing , robotics, AI other cognitive technologies and augmented reality

DISRUPTIVE INNOVATION

- TESLA
- SMARTER
- PURPLE
- AIRBNB
- UBER
- BREWDOG
- NETFLIX

AeroFarms



Doppler Labs



Hyperloop One



Saildrone



Capella Space



Applicability of Law

- Technology does what technology can
- Technology is not concerned about rights, limits, obligations and remedies
- Data is shared, information is hoarded, knowledge is en-cashed and IPR is used as a strategic weapon.
- Cross border transfer of data, money, people, transactions and also of malware and other thefts
- Threats to Cyber Security and Data Protection
- Law steps in

INFORMATION TECHNOLOGY ACT 2000

- facilitate and regulate e-commerce and e-governance
- facilitate use and acceptance of digital signatures
- accept electronic records as evidence
- Prevent Cyber Crimes
- Ensure use of security practices and procedures for protection of sensitive personal information
- Protection of Critical Information Infrastructure
- Regulate Intermediaries
- Powers of Interception, monitoring and decryption

OTHER LAWS

- Contract Act: Contracts, policies, disclaimers and information security fill the gaps. [[Crucial role for CS](#)]
- Payment Systems and Settlement Act
- Digital Banking Ombudsman Scheme
- Prepaid instruments / closed system payment instruments
- Indian Penal Code : Cyber crimes
- Other regulatory guidelines : RBI, SEBI, CERT-IN, etc

CYBER OFFENCES

- Unauthorised Access/ Denial of Access
- Unauthorised Copying, Downloading or extraction
- Introducing a Computer Contaminant
- Causing Damage, disruption, destruction or diminishing of value
- Source Code theft
- Identity theft – phishing / spoofing
- Disclosure of personal or sensitive personal information
- Breach of confidentiality

Corporate Liability

- Liability for employee actions
 - Cracked License
 - Sending hate mails from Company e-mail id
 - Defamatory material on Company website / blog
 - Unauthorised access using Company computer infrastructure
 - Spam
- Insider Frauds
 - Data Theft / IP theft
 - Breach of NDA
 - Third party Liability

Intermediary Liability

- Intermediary not liable for content
- Duty to exercise due diligence
- Accountability for content
- Role of intermediary in investigations and co-operation with law enforcement
- Take down orders
- Right to Forget

Criminal Liability

Punishment in terms of imprisonment and fine

- Information Technology Act 2000
- Copyright Act
- Indian Penal code

Civil Liability

Damages / Compensation and injunctive reliefs

- Contract Act
- Information Technology Act 2000
- Copyright Act
- Specific Relief Act
- Compensation maximum Rs 5 Crores- harms based approach

Jurisdiction with the Adjudicating Officer
Appeal to TDSAT

OTHER IMPLICATIONS

- **Cyberspace and IPR :**
 - Copyright and Trademark Violation / infringement
 - Protection of confidential information or Trade secrets
 - Cyber Squatting and other domain name related disputes
- **Cyberspace and Consumer Protection :**
 - Privacy and confidentiality
 - Deficiency in service / product
 - Violation of terms and conditions
- **Digital Payments and Consumer Protection**
 - RBI Guidelines and Digital Ombudsman

Date Protection and Privacy

- **Local and international legislation**
 - IT Act and Rules
 - Data Protection Bill
 - GDPR
 - US sectoral data protection laws
- **Data protection obligations include**
 - lawful procurement
 - lawful purpose
 - lawful use
 - adequacy test - not excessive
 - accuracy and updation
 - access to persons concerned
 - Security
 - Right of erasure
 - Penalties for unauthorised disclosures
 - Data localization

Role of the Company Secretary

- Debate and understand implications
- contribute to “soft” infrastructure eg.,
 - Policies / contracts /documents
 - insurance and liability advisories
 - IPR advisories
 - Taxation and other monetary implications
 - Regulatory compliance and implications of non compliance

THANK YOU

Vaishali Bhagwat, Advocate

9822050602

vabhagwat@gmail.com

www.vaishalibhagwat.com