

NATIONAL CONFERENCE OF JUDGES OF DISTRICT JUDICIARY ON “LAW AND TECHNOLOGY (IPR AND CYBER CRIME LAWS)” 10-12 APRIL, 2015 (P-921)

DATE: 10th-12th April, 2015

TIME: 9:30 a.m.-5:00 p.m. (10th April, 2015), 10:00 a.m.-5:00 p.m. (11th April, 2015), 9:30-1:45 p.m. (12th April, 2015)

VENUE: National Judicial Academy, Bhopal.

PARTICIPANTS PRESENT

Shri Narendra Deo Mishra; Shri B. Nagamaruthi Sarma; Shri. N. R. Pradhan; Sri Suranjan Kundu; Mr. Shakti Singh Rajput; Mr. Raj Kumar; Shri. Jogeswar Bora; Mr. C. B. Patel; Shri. Rattan Singh Thakur; Shri. Anoop Kumar; Sri. Bal Mukund Roy; Sri. G. Rajesh; Shri. Manoj Kumar Tiwari; Shri. G. Chandrashekarani; Shri. A. Guneshwar; Shri Ishwari Lal Verma; Shri V.P. Debbarma; Sri. Pankaj Tomar; Shri Ragvendra Prasad (Pandey); Shri. Shaikh Jaheer Abbas A; Shri. Arupjyoti Baishya; Mr. Bhanushankar G Dave; Shri. Santosh Prasad Shukla; Shri P. Ravi; Shri. Manoj Shankar; Smt. Indu Pareek.

10TH APRIL, 2015 (DAY 1)

CHAIR

Mr. Mohan Dewan Advocate, Patent & Trademark Attorney Principal, R. K. Dewan & Co	Mr. Vipin Aggarwal Chair India Committee, BSA , The Software Alliance
Mr. Uday Singh Managing Director, Motion Picture Association	Mr. Rajdeep Banerjee Advocate, New Delhi
Mr. Biswajit Sarkar Advocate- IP Attorney	Kalpna Reddy First Secretary, Embassy of USA
Komal Kalha The US Patent and Trade Mark Office	Dr. Geeta Oberoi, Professor, National Judicial Academy
Mr. Prasad Raj Singh, Law Associate, National Judicial Academy	

• **SESSION 1 CALLED TO ORDER AT 09:30 A.M.**

TOPIC: Jurisdictional Issues in Trademark, Copyright, Patent Disputes by Mohan Dewan

Professor Geeta Oberoi initiated the session by introducing members of the Chair and all the participants. Mr. Mohan Dewan discussed on jurisdictional issues faced in the cases of trademark, copyright, patent disputes. He explained and compared jurisdictions in various matters including civil, criminal and intellectual property (IP) through case law Kiran Singh

and Ors. v. Chaman Paswan and Ors. He gave in depth presentation on IP laws and jurisdictional aspects related to it. He discussed statutory and non-statutory IP rights. He talked about different Acts related to IP, which include Patents Act, Copyright Act, Trade Marks Act, Designs Act, Semiconductor Integrated Circuits Layout-Design Act, Biological Diversity Act, Geographical Indications of Goods (Registration and Protection) Act, Plant Varieties and Farmers' Rights Act. He discussed Trade Dress in detail on how it reflects total image of a product. The basic features of trade dress include shape, size, color, patterns, graphics etc. He discussed jurisdictional aspects related to Trade Mark, Copyright, Patents etc. The provisions related to jurisdiction in trade mark cases are covered under Section 134 of the Trade Marks Act, also the provision of "passing off" is covered under Section 27 of the Trade Marks Act. The cases discussed in relation to jurisdiction of trade mark disputes include Vijay Industries v. Vijay Solvex Limited and Dhodha House v. S.K. Maingi. The provisions related to jurisdiction in copyright disputes include Section 62, Section 70 of the Copyright Act. The cases discussed include Exphar SA and Anr. v. Eupharma Laboratories Ltd. and Anr., Jay Engineering Works Ltd. v Sh. Ramesh Aggarwal etc. He discussed various case laws related to jurisdictional aspects of IP law with respect passing off, cause of action, website access, domain name, email transfer, e-commerce, trade dress, place of registration, carries on business. Professor Geeta Oberoi concluded the session by asking if anyone has question or any query, since no one responded, the session was concluded.

TOPIC: Overview of IP Issues in the IT industry by Mr. Vipin Aggarwal

Mr. Vipin Aggarwal started the session. He asked participants on how many years they have been in judiciary, whether it is less than five years or more than five years. He added that IP laws in India are very strong and he is very proud of it. He discussed on how judiciary has a part to play in cases of infringement of IP laws. He added the main role of judges is to interpret the law and apply it in the right way. Any case before the court of law depends on how the law is interpreted. Therefore, it is very important to recognise respect for IP laws. In India there is no respect for IP laws. That's why fundamental law with respect to IP are still discussed. He added that the IP sector in the last twenty years has grown tremendously. It has increased the business and work in India. He asked that why should we care about IT sector, IP and software. He answered because we are dependent on this sector mostly. Mr. Vipin Aggarwal talked about BSA, an association of world-class companies that invest billions of dollars annually to create software solutions which help in improving the economy and modern life. BSA pioneers best practice models for software asset management and advocates for public policies that foster technology innovation and drive growth in the digital economy. The BSA's members include Symantec, IBM, Siemens, Oracle, Intel, Adobe etc. He brought out the issues and statistics related to Cyber Crimes. He added that Cybercrimes in India are likely to double to 300,000 in 2015 and that there is a need to protect citizens against cybercrimes. He shared a case wherein Pakistan cyber firm was found accessing computer of Indian bureaucrats. He discussed on the link between pirated software and cybersecurity breaches. He shared statistics of infection rate in new computers, infection rate in pirated software. He discussed about World Justice Report and its rule of law index. He also added that out of 99 countries India ranks at 95 on world justice index on speed of civil

matters.He added that IP sector is developing and changing every day. Every day, young minds are creating new applications, software etc. He said that judiciary has a very strong obligation to make sure that any infringement of IP laws is punished. . Therefore, judiciary plays very important role in applicability and interpreting laws.

Session 1 adjourned at 10:30 a.m.

- **SESSION 2 CALLED TO ORDER AT 11:45 A.M.**

*TOPIC: Piracy in the Internet Age: 1. Types and Forms of Piracy 2. Enforcement Constraints
3. Important aspects to be covered while deciding related cases by Mr. Uday Singh*

Mr. Uday Singh started the session discussing the challenges which are mainly faced in cases of IP law infringement. He added that Motion Studio was set up in 1922. These studios changed a lot, including films, television shows. We represent these studios, where we make films. The reason why this industry is important is because film is not only about red carpet but also about those workers like carpenter, small workers have put their efforts into making of a film.Piracy is not only causing loss to the actors, directors or producers but also to these small workers. The reason why piracy is increasing is because many are not aware of the law. So it is hard to punish these offenders.

Mr. Uday Singh discussed on piracy and the challenges faced in combating piracy in India. He added that camcording in cinema halls cause 90% of all Piracy. He also shared that police is only not aware of provisions and its infringements related to technology therefore, it becomes hard to trace the offenders. He brought out that many countries like Hong Kong, Japan, Canada, France, US, Australia and many more have passed anti-camcording Acts to address this problem. He added that in India copyright piracy is a low priority for enforcement and getting convictions is difficult. Online piracy is the biggest challenge which usually happens through servers in other jurisdictions outside India so criminal actions are difficult to enforce. Web Site blocking is one of the effective tools to curb international online policy.He mentioned that countries like Malaysia, South Korea and EU member countries practice site blocking. He suggested recommendations for effectively combating piracy in India which include addition of specific provisions against camcording in Cinematograph Bill, site blocking actions on a suo moto basis. He also added that it took nearly ten years to amend the cinematography law, and by the time it was amended the technology was changed. He also requested all the participants to take strict action against the offenders specially offenders who practice camcording, as most of the time infringement of law has been done through camcording only. He added that

Session 2 adjourned at 12:45 p.m. the basic need of the public is “Roti, Kabda aur Makan”. And the practice of piracy is snatching it from the people who work hard to create the work. One of the participants questioned that since pirated versions are cheaper isn’t it helping people to get entertainment at cheaper prices.

To which, Mr. Uday Singh responded that while deciding the price of the work factors like affordability, availability, accessibility are kept in mind. Also, the main purpose of the

legislation is to make liable the distributors who are selling the work for free and not the retailers. Also, in cases wherein the price of the product was very low then in that case also, the consumers were not ready pay even a penny because they were getting it for free. He shared the example of Moserbaer wherein the company decided to sell its Moserbaer CDs for cheaper price. People still opted for free stuff which in return led Moserbaer to bankruptcy. Participants also objected that it is necessary to focus on practical tools. He questioned that why should we pay the higher price when the work is available for cheaper prices. To which, Mr. Uday Singh answered that such situation wherein after the release of the work, it will be immediately available on the internet for free because of which that particular will not be played in a theatre which will lead to loss to the owner of the work. This will discourage the public at large to create a work as it will be hard for them to get profit out of it. And many people will opt for changing their careers, which will not only lead to the economic loss but also act as a barrier for the development of the country.

- **SESSION 3 CALLED TO ORDER AT 01:30 P.M.**

TOPIC: Importance of Trade Secret Law in Cyber Crime by Mr. Rajdeep Banerjee

Mr. Prasad Raj Singh introduced Mr. Rajdeep Banerjee and requested him to share word on importance of trade secret law in cyber crime.

Mr. Rajdeep Banerjee shared that in the practice of intellectual property law, US has set tremendous examples. And therefore, US should be taken as an inspiration to develop IP laws in India. He also added that it is very important to protect IP laws. He said that the main reason why we are far behind in comparison to other countries is because there are no proper steps taken to protect IP law in India. He added that if we don't give protection to the IP laws then our society will not develop and will remain backward.

Mr. Rajdeep Banerjee brought out the importance of Trade Secret law in cases of cyber crimes. He explained various terminologies like "improper means", "misappropriation", "trade secret" under the uniform Trade Secret Act. he also discussed section 7 of the TRIPS Agreement which is related to the protection of undisclosed information. He also covered Computer Fraud and Abuse Act and Economic Espionage Act, 1996 during the session. He also dealt with various cases including Kewanee Oil Co. vs Bicorn Corp. wherein the question of protection of trade secret being preempted by operation of the federal patent law.

He discussed various cases including Forest Law Inc. vs Pillsbury Co., Faccenda Chichen Ltd vs Fowler, DVD-CCA vs Bunner, Hallmark cards vs Monitor Clipper Partners etc.

He also added Theft of Trade Secrets clarification Act, 2012 (Amendment to EEA). He concluded by discussion on Spring Board Doctrine which was developed in the case of Roger Bullivant vs Ellis, wherein it was stated that to prevent the defendant from taking unfair advantage of the spring board which the judge considered that they must have built up by the misuse of the information. He discussed landmark cases of Diljeet Itus, Advocates vs Alfred A. Adebare and others, Niranjan Shankar Golikari vs Century spinning and mfg. Co.

Session 3 adjourned at 02:30 p.m.

- **SESSION 4 CALLED TO ORDER AT 02:45 P.M.**

TOPIC: Comparative Advertisement and Trademark Violation by Mr. Biswajit Sarkar

Mr. Biswajit Sarkar gave a brief introduction on advertisement and how trade mark is used to facilitate and influence the market forces. He added that commercial advertisement is like a commercial speech which is protected under Article 19 of the Constitution. He explained trademark as a word or a phrase or a symbol or a design or a combination of these that identifies and distinguishes the source of good. It can word, phrase, slogan, numerals, shape, size etc. He talked about comparative advertisement and how it facilitates consumers to compare the price, quality etc. of different products. Terminologies like Puffery and Disparagement were introduced. He also discussed various cases regarding comparative advertisement which include Reckitt Benckiser (India) Ltd. v. Hindustan Unilever Ltd., Reckitt Colman of India Ltd. v. MP Ramachandran & Anr. He brought out statutory framework regarding advertisement and infringement of trademark which include Section 29, Section 30 of the Trade Marks Act, Section 36 of the MRTP Act, and Article 16 of the TRIPS Agreement.

One of the participants raised a question on whether a washing machine can advertise a particular detergent saying that the respective machine work best when used with the detergent, will there be any infringement.

To which, Mr. Prasad Raj Singh responded that so far there is no comparison of the product with the other product in a market, there will not be any violation.

Mr. Biswajit Sarkar added that every person or a company has a right to advertise and promote others product, therefore there will not be any infringement.

Session 4 adjourned at 3:45 p.m.

11TH APRIL, 2015 (DAY 2)

CHAIR

Ms. N. S. Nappinai Advocate Nappinai & Co., Founder Member – Technology Law Forum	Thomas Dougherty US Embassy, Dhaka
Hon'ble Mr. Justice Yatindra Singh Former Chief Justice of the Chhattisgarh High Court	Mr. Rodney D. Ryder Partner, Scriboard (Advocates and Consultants)
Mr. Sajan Poovayya Senior Advocate, Supreme Court of India & High Court of Karnataka, Former Additional Advocate General for Karnataka.	Kalpana Reddy First Secretary, Embassy of USA

KomalKalha The US Patent and Trade Mark Office	Mr. Prasadh Raj Singh, Law Associate, National Judicial Academy
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- **SESSION 5 CALLED TO ORDER AT 10:00 A.M.**

*TOPIC: Issues of Deceptive Similarities in Trademark Domain Name Dispute and
Jurisdictional Issues in Cyber Crime by Ms. N. S. Nappinai*

Ms. N.S. Nappinai initiated discussion on deception in cases of trademark domain. She discussed various kinds of trademark for example trademark for goods and services, certification marks, corporate names and marks, word marks, label marks, domain names, meta tagging etc. She also discussed the concept of passing off and the remedies available under common law principles with respect to the case of S M Dyechem Vs. Cadbury India Ltd. She discussed trademarks and their deceptions in various cases for example deception in cases wherein the concept of cartoon characters, movie figures, songs etc. are copied. She discussed the extent of protection under trademark with help of the cases which include Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., Falcigo Vs. Falcitab, S M Dyechem Vs. Cadbury India Ltd., Corn Products Refining Co., Vs. Shangrila Food Products Ltd. She discussed the concept of trade dress and how it facilitates consumer in making decision regarding purchase. Under this head she discussed the case law of L'Oreal India Pvt., Ltd., Vs. Henkel Marketing India Ltd., Colgate Palmolive Co., Vs. Anchor Health And Beauty Care Pvt. Ltd. wherein the Colgate claimed that the packaging of Anchor is similar to that of Colgate and therefore deceptive to the consumer, Cadbury Ltd. Vs. ITC Ltd. in this case Cadbury claimed that the purple color on the cover of Cadbury chocolates can only be used by them and no one else because it the trade dress for Cadbury chocolate. The other cases include Honda Motors Co. Ltd. Vs. Mr. Charanjit Singh Godrej, Consumer Products Ltd., Vs. Initiative Media Advertising, Annamalayar Agencies Vs. VVS & Sons Pvt., Ltd., Parachute Vs. VVD Gold Coconut Oil ad fight etc. She also discussed deception in cases of personalities, cartoon characters, video games character. The factors responsible for deception incases of personalities include facial expressions, facial structure, hair style etc. she also discussed the case of Kierin Kirby Vs. Sega of America Inc.

She also discussed on jurisdictional issues on cyber law. According to the Black's Law Dictionary, jurisdiction is a court's power to decide a case or issue a decree, a geographical area within which political or judicial authority may be exercised. She discussed cases related to cyber crimes which include Dr. L. Prakash case in which a doctor was caught hosting pornography online primarily by manipulating his patients, Air Force Balbharati School (Delhi) case wherein student was teased by classmates for pockmarked face, so he scanned photographs of his classmates and teachers, morphed them with nude photographs and uploaded on a website. She discussed about criminal jurisdiction in cases of kidnapping, dacoity, kidnapping, theft, bigamy, criminal misappropriation. She also covered extra

territorial jurisdiction under IT Act. She added that the two aspects of jurisdiction for cyber crimes are mainly depends on domestic offences and cross border offences. She discussed various cases with respect to jurisdictional problems faced in case of cyber crimes, these include U.S. v. Thomas wherein a couple was convicted for operating pornographic bulletin board from home. Other cases which were discussed during the session are State of Madhya Pradesh v. Suresh Kaushal, Nigerian Scam, Alexey V. Ivanov Case.

Session 5 adjourned at 11:00 a.m.

- **SESSION 6 CALLED TO ORDER AT 11:15 A.M.**

TOPIC: Combating Piracy: the US Experience by Thomas Dougherty

Mr. Thomas Dougherty introduced himself and shared that he often works on the criminal justice government programs in US. He shared the working of the US courts in cyber related statutes. He added that in US they have separate special courts to deal with such issues.

Mr. Thomas Dougherty discussed on Computer Crime and IP section (CCIPs), US IP statutes, collecting and sharing of evidence internationally. The CCIPs include criminal division from US department of Justice located in Washington for the prosecution of intellectual property crimes. He added that nearly forty prosecutors are dedicated to prosecute IP crime, assist in international coordination and also there is a cyber-laboratory for forensic and technical consultation. He also discussed about Copyright and Quasi-Copyright Statutes which include Criminal Copyright Infringement, Camcording, Digital Millennium Copyright Act, Counterfeit / Illicit Labels, Bootlegging. The Copyright infringement under US statutes include infringement of the copyright by reproduction or distribution of the work, which was done willfully for commercial or private financial gain. The Trademark infringement include trafficking in goods, services, labels, emblems, packaging, or attempted to trafficked intentionally, usage of counterfeit mark on or in connections with such goods or services, and use of counterfeit mark knowingly. He concluded by adding that every country need assistance from other countries to combat terrorism by sharing electronic evidences which can only be done when countries have adequate substantive and procedural laws as well as the ability to share evidence internationally. Also, successful investigations are possible using available tools therefore countries should assist each other to combat terrorism.

Session 6 adjourned at 12:45 p.m.

- **SESSION 7 CALLED TO ORDER AT 01:30 P.M.**

TOPIC: Technical Aspect of Cyber Crime by Hon'ble Mr. Justice Yatindra Singh

Hon'ble Mr. Justice Yatinder Singh discussed on technical aspects of cyber crime which include Cyber laws, violation of cyber laws, cyber crimes, remedies in cases of cyber crimes. He added that cyber laws are solutions to the problems created by Information Technology, these laws include Amendments/ Enactments – IPR, Information Technology Act (IT Act), Communication Convergence Bill, the 2008 Amendment Act. The cyber law violations

include illegal copying, distribution of software, copyright, trademark infringement through internet, trade secret, reverse engineering, patents infringement of software. The crimes using computer or communication device include offences affecting human body/person, property, affecting decency and morals. The other offences related to cyber crime include not obeying or not carrying out any direction, misrepresentation in obtaining licence or certificate, failure to carry out responsibilities and duties.

Session 7 adjourned at 02:30 p.m.

- **SESSION 8 CALLED TO ORDER AT 02:45 P.M.**

TOPIC: Liabilities in case of Cyber Crime with case studies by Mr. Rodney D. Ryder

Mr. Rodney D. Ryder discussed on liabilities in case of cyber crime with respect to security, privacy, legal compliance and social media. He discussed about internet law and policy and how it helps in governance of cyber space. He dealt with various kinds of offences under IT Act, 2000 which include tampering with computer source documents/‘code’, transmission of offensive messages through communication, dishonest receipt of stolen computer resource or communication device, punishment for identity theft, cheating by personation using computer resource, violation of privacy, cyber terrorism, publishing or transmitting obscene material in electronic form, publishing or transmitting of material containing sexually explicit act in electronic form, publishing or transmitting of material depicting children in sexually explicit act in electronic form. Duties under IT Act include duty of the organization that is maintaining reasonable security practices and procedures, offences by companies that is every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, and use of organization's IT Resources should be governed by Internal IT Use and Security Policies. He discussed various cases with respect to internet laws, these are- Vodafone Assar Ltd v Raja, State v. Navjot Sandhu Vinod Kaushik v. Madhika Joshi, Dharambir v. Central Bureau of Investigation, Societe des Produits Nestle SA v/s Essar Industries, Super Cassettes v. MySpace Inc, Syed Asifuddin and Ors. Vs. The State of Andhra Pradesh & Anr. etc. He explained data privacy and information security with respect to consumer security. He brought out various provisions in India regarding privacy and data protection. He added that there are no direct provisions on this. Although, it can be inferred from Article 21 of the Indian Constitution, Article 17 of the International Covenant on Civil and Political Rights 1966 and tort law. He discussed various provisions of IT ACT which include Section 43, Section 72 regarding the offences and infringement of data privacy. He discussed cases related to internet security which include Indian Oil Corporation Limited v. Nitin Jindal, Schlumberger Limited v. Manoj Kumar etc.

Session 8 adjourned at 3:45 p.m.

- **SESSION 9 CALLED TO ORDER AT 04:00 P.M.**

TOPIC: Cyber Defamation by Mr. Sajan Poovayya

Mr. Sajan Poovayya discussed on the Cyber Defamation cases in the present era. He added that virtual world is very similar to that of real world. Nothing in virtual world is non-comprehensible, which is comprehensible in the real world. The only difference is the application of law. He added that the applicability of law changes with the change in the region. Hence, the applicability of law depends on various factors like culture, conditioning of the one's mind, though process etc.

He added that the litigators, judges practicing in courts have not come from the era of technology hence at time it is difficult to apply and interpret laws in this domain. He also appreciated the efforts of the judges for understanding, interpreting and giving a platform to people to address the issues regarding technology even though there was lack of exposure of the technology to them. He appreciated judges by adding that he has never come across a judge who has not even considered his propositions. He added that we refuse take the example of real life to compare it with virtual life to resolve the issues and expect our judges to render justice. He gave an example wherein a bar association has a notice board so that members can communicate to each other the relevant information. But if in case anyone member uses that board to abuse or defame other, then in that case the assistant will not be held liable. Similarly, in the virtual world the intermediaries like google, yahoo etc. will not be held liable for any information provided on a search page as these sites are only search engines. He also discussed Section 66 A and Section 61 in detail. He also gave the example of Nirbhaya documentary wherein suits were filed against google to remove it. He concluded by adding that it is up to the judges to interpret law in the right direction as law and technology are evolving fields and that virtual life is part of a real life hence one should interpret laws in the right manner in deciding cases related to such sensitive issues.

Session 9 adjourned at 05:00 p.m.

12TH APRIL, 2015 (DAY 3)

CHAIR

Mr. G R Raghavendra Director (IPR) DIPP, Ministry of Commerce and Industry, Government of India	Mr. Anand Desai Managing Partner, DSK Legal, Advocates and Solicitors
Hon'ble Mr. Justice Kurian Joseph Judge, Supreme Court of India	Dr. S. Murugan Dy. Inspector General of Police, Villupuram Range
Mr. PavanDuggal Advocate, Supreme Court of India	KomalKalha The US Patent and Trade Mark Office
Dr. GeetaOberoi Professor, National Judicial Academy	Mr. Prasadh Raj Singh Law Associate, National Judicial Academy

- **SESSION 10 CALLED TO ORDER AT 09:30 A.M.**

TOPIC: Software Protection under the India Copyright Act and Initiatives taken by the Copyright Office/ Amendments in the Copyright Act and its Impact by Mr. G R Raghavendra

Mr. G R Raghavendra discussed on the concept of copyright, subject matter of copyright with special reference to literary works, publisher's rights, copyright issues in internet, copyright infringement & remedies related to it, international treaties, jurisdiction issues, latest amendments with respect to copyright. The famous case of Pepsi Co. Inc. v. Hindustan Coca Cola Ltd, 2003 was discussed in detail during the session. Copyright exclusion, Idea-Expression Dichotomy, software copyright, rights of the author, assignment and licence, remedies in case of infringement, principle of exhaustions were discussed in detail.

The various International Conventions regarding Copyright policy include Berne Convention for the Protection of Literary and Artistic works 1886, Universal Copyright Convention 1952, Rome Convention-1961, Geneva Phonogram Convention-1971, Brussels Satellite Convention-1974, Agreement on Trade Related Aspects of Intellectual Property Rights, (TRIPS) 1995, WIPO Copyright Treaty, 1996, WIPO Performances and Phonograms Treaty, 1996, Beijing Treaty on Audiovisual Performances, 2012, Marrakesh Treaty on Access to Published Works by Visually Impaired Persons and other Print Disabled, 2013.

The Copyright Amendment Act has added the new definitions of "rights management system" and "visual recording". Also it has amended the definition of few existing terms which include "Cinematograph Films", "Communication to public", "Performer". The Copyright Amendment Act has provided protection from circumvention of Technological Protection Measures, Rights Management Information.

TOPIC: Cyber Stalking by Mr. Anand Desai

Mr. Anand Desai gave a detailed introduction on Cyber Stalking. He explained Cyber Stalking as unwanted and obsessive harassment or persecution of one person by another by using the internet or other electronic means. Cyber Stalking include threatening emails, obscene emails, online verbal abuse, impersonation etc. He added that according to British Crime Survey of 2010-2011: 1 in 5 women and 1 in 10 men are stalked at some point in their lives and 77 percent of people experience 100 incidents of harassment before they contact the police. The victims of Cyber Stalking are mostly targeted at search engines, blogging sites, social networking sites, online forums, chat rooms etc. He shared major cases of Manish Kathuria, Karan Girotra and Avinash Bajaj regarding Cyber Stalking in India. He added that Indian legal regime has various provisions for Cyber Stalking which are included in IPC, IT Act.

He suggested few preventive measures which include usage of email accounts for trusted people only, not to use name as username, usage of gender neutral usernames, being careful while giving personal details, changing password frequently. He shared international statistics

wherein 25% of stalking victims are monitored through technology (email, instant messaging, internet, etc.) in US. He discussed US and UK legislations on Cyber Stalking. The US legislations regarding Cyber Stalking include California Penal Code, California Civil Code and Texas' Stalking by Electronic Communications Act, 2001. The UK legislations on Cyber Stalking include The Malicious Communications Act 1988 and The Protection from Harassment Act 1997. Session 10 adjourned at 10:30 a.m.

- **SESSION 11 CALLED TO ORDER AT 10:30 A.M.**

TOPIC: Reliability of Electronic Evidence by Hon'ble Mr. Justice Kurian Joseph

Hon'ble Mr. Justice Kurian Joseph discussed on reliability of electronic evidences and its importance. He also raised question on the difference between obscenity and vulgarity. To which, Mr. Anand Desai added that something which is vulgar may or may not be obscene. Hon'ble Mr. Justice Kurian Joseph shared that court often get PILs (public interest litigation) to ban porn. He added that India is a country of dharma therefore things like porn and other things related to obscenity should be avoided. Also, advertisement agencies should not depict the picture of woman in a vulgar way, this indirectly provokes the person to commit crime.

He also gave the example of AIB roast video which went viral on internet, after which several PILs were filed to block it on internet.

He discussed Anvar v. Basheer case in detail regarding the admissibility of the evidence. He added that the Evidence Act was drafted to codify principles of evidence in the common law. A fundamental rule of evidence is that oral evidence may be adduced to prove all facts, except documents, provided always that the oral evidence is direct. Oral evidence that is not direct is challenged by the hearsay rule and, unless it is saved by one of the exceptions to the hearsay rule, is inadmissible. In India, this principle is stated in sections 59 and section 60 of the Evidence Act. He explained in depth Section 15, Section 65, Section 63 of the Evidence Act with respect to the validity of electronic evidence. He raised a question on the factors that should validate the electronic evidence.

Participants added that along with electronic evidence, the details of the source of the electronic evidence has to be submitted to verify the electronic evidence. Factors like mobile number, hard disk, data card, sim should be submitted along with electronic evidence.

Hon'ble Mr. Justice Kurian Joseph concluded the session by adding that magistrates should take action and use their power in the right direction. He also added that the participants should activate the legal forces to take action to make judiciary strong.

At last, he added that the judiciary is the guardian of the society, hence should function effectively.

Session 11 adjourned at 11:30 a.m.

- **SESSION 12 CALLED TO ORDER AT 11:45 A.M.**

TOPIC: Reliability of Electronic Evidence by Dr. S. Murugan and Mr. Pavan Duggal

Dr. S. Murugan discussed the objectives of electronic evidence, OSN (Online Social Networking) issues, mobile devices, hash value, search and seizure of electronic evidence. He also discussed Edmond Locard's exchange principle to trace evidence. He talked about primary, secondary evidences and the importance of digital evidence. He shared that in India, digital evidence is covered under secondary evidence whereas in other countries digital evidence is not confused with primary or secondary evidence and has separate space for its admissibility. Anything which is original source is considered as primary evidence whereas anything which is inferred, referred or taken from original source is considered as secondary evidence. He added that technologies are improving day by day therefore it is very important to promote awareness among judiciary and government officials as most of the crimes include technological usage which can be used as digital evidence.

He discussed several IPC provisions related to defamation, public mischief, criminal intimidation, insulting modesty, sedition etc. He added that even after striking down Section 66 A of IT Act, under these provisions one can be held liable for misbehavior on online sites.

Mr. Pavan Duggal discussed on reliability of electronic evidences. He shared the example of a case wherein a video of gang rape was leaked in Hyderabad and was shared through WhatsApp. In this case, Supreme Court took suo moto action. He also discussed the case wherein an IPS officer was found dead and a suicide note in the form of electronic note was found. He added that at this age of technology it is very important to acknowledge digital evidences and take it very seriously as most of the crimes committed involve technology wherein one can find a trail of evidences. He emphasized on the importance and usage of electronic system in India. He shared few examples of electronic evidences which include hard disk, floppy, compact flash, tapes, cellphones, data storage tape devices, surveillance equipment, digital cameras, digital recorders, storage media, emails, servers etc. He discussed on the principles of electronic system and the challenges faced in using electronic system as evidence. He also threw light on Anvar P.V. versus P.K. Basheer case.

Mr. Prasad Raj Singh valued the presence of all the resource persons and participants to devote their time for the conference.

Professor Geeta Oberoi concluded the conference by thanking the Chair, and appreciated all the participants.

Session 12 adjourned at 01:45 p.m.

Minutes Prepared By: Naincy Jain, Intern, National Judicial Academy.