

Cyber Jurisprudence: Jurisprudence of the 21st Century

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Submitted: 25-01-2021

Revised: 05-02-2021

Accepted: 08-02-2021

ABSTRACT: In this contemporary era, humans changed their lives in many ways such as food, costumes, transportation, social life, professional life and personal life, but they feel much difficult to change their behavioural pattern such as frugal in spending money, not sharing the food to the stranger, conservative in social life, aloof in professional life and closed family life. These are the fragments in the individual life of every human. These psychological aspects are inculcated in the human mind for the ages and also they carry out even in the virtual world. Whatever the humans practiced conventionally in the physical world, the same set of things had been practiced in the virtual world, with the help of science and technology. In physical world, humans made laws to regulate the society; likewise we need appropriate laws to regulate the virtual world.

I. INTRODUCTION:

Starting from the Old Stone Age and the New Stone Age, human minds are sustained only with the existing needs of that particular day. The "Wants Theory" does not arise, because they were not able to project the uncertain future. Hence, the present needs are only to equip with minimum possibilities in the given context. After discovery of metals, bronze age and iron age made the humans to grow significantly in agriculture, arts and crafts, constructing royal places temples and other religious structures became more sophisticated and system of writing and written documentation including alphabets began to emerge, city planning also took place with blocks of homes erected along paved or cobblestone streets and water system were put into place in the early historical period.¹

Slowly, the man becomes social animal and took care of their family, relatives and other belongings. In those ages, the only wealth was land and only through the land they started to lead their life with their wants and needs. After ages, the men

changed from social animal to political animal and try to dominate others through their wealth and by establishing dynasties they started to rule their own territories. For orderly society, they made certain rules for regulatory and prohibitory activities and thus it becomes the law of that land.

If we look on to the behavioural aspects of the political ruler, they tried to merge more territories to his own country through subjugation. The people of the defeated land become slaves to the conquering ruler. This kind of traditional battle was existed till 15th century of Common Era.

From 15th century to 20th century, for around 4 centuries, humans changed the entire world through their inventions and discoveries, research and development in the field of art, culture, philosophy, science, social science, medicine, mathematics, engineering and technology. These radical changes were made due to critical innovative thinking of the human and their ideologies and behavioural patterns are also changed from morality to legality.

This paradigm shift was happened due to five books which contributes the human development in the entire field of knowledge and changed the human lives to run faster than before 15th century. Those five books listed by the intellectual world are: (1) "Revolution of Celestial Bodies" by Copernicus; (2) Dramas of Shakespeare; (3) "Mathematical Principles" by Sir Issac Newton; (4) "Interpretation of Dreams" by Sigmund Freud; (5) "Das Kapital" by Karl Marx.

In this physical world, the humans shifted their way of doing things from conventional method to the technological method through their inventions and innovations which helped to go for in-depth research in all the fields of knowledge. This made the humans as self sustained, self developed and self motivated in the global arena. This paves the way to travel from physical world to virtual world. Thus the dawn of virtual world starts from second half of 20th century.

1 The Prehistoric Ages by Lesley Kennedy published in <https://www.history.com/news/prehistoric-ages-timeline> dated 21-10-2019

Global Initiatives:

After the invention of ARPANET network, the human wants the whole world shall be

in one network. Thus in 1990's the INTERNET was born. Immediately the laws were not enacted to regulate internet either nationally or globally, but in the year 1996, with the tireless efforts of the members of UN made to conglomerate the global trade through international law, they enacted the UNCITRAL Model Law on Electronic Commerce and the same was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in the same year in furtherance of its mandate to promote the harmonization and unification of international trade law, so as to remove unnecessary obstacles to international trade caused by inadequacies and divergences in the law affecting trade.

Over the past quarter of a century, UNCITRAL, whose membership consists of States from all regions and of all levels of economic development, has implemented its mandate by formulating international conventions (the United Nations Conventions on Contracts for the International Sale of Goods, on the Limitation Period in the International Sale of Goods, on the Carriage of Goods by Sea, 1978 ("Hamburg Rules"), on the Liability of Operators of Transport Terminals in International Trade, on International Bills of Exchange and International Promissory Notes, and on Independent Guarantees and Stand-by Letters of Credit), model laws (the UNCITRAL Model Laws on International Commercial Arbitration, on International Credit Transfers and on Procurement of Goods, Construction and Services), the UNCITRAL Arbitration Rules, the UNCITRAL Conciliation Rules, and legal guides (on construction contracts, countertrade transactions and electronic funds transfers).²

Cyber Science:

The concept of "Cyber Science" is concerned with the study of phenomena caused or generated by the cyber world and cyber-physical, cyber-social and cyber-mental worlds, as well as the complex intertwined integration of cyber physical, social and mental worlds.³ The strong implication is that cyber science is related to some sort of interaction within the cyber space and the physical space, had been taken into account.

2. <https://www.jus.uio.no/lm/un.electronic.commerce.model.law.1996/history.background.html#:~:text=The%20UNCITRAL%20Model%20Law%20on%20Electronic%20Commerce%20was%20adopted%20by,to%20international%20trade%20caused%20by>

3 Ma, et al., 2016

Cyber science is the study of phenomena caused or generated within the cyber space, which may or may not interact with phenomena caused or generated within the physical space. These precludes phenomenons that are generated within the physical space and, for one reason or other simply touch the cyber space. To clarify this relationship, it is useful to define concisely the roles that a computing device may play in such an interaction. Computing devices can play one or more of three roles: (1) the source of a cyber event, (2) the target of a cyber event, and (3) the repository of evidence relating to a cyber event. So, for example, the theft of a computer containing the evidence of a crime, while, perhaps, fitting the criterion number (3), is not an example of the application of cyber science because the action is entirely within the physical space. However, the theft of passwords from the same computer may be because accessing the computer, removing the password file and cracking the passwords in the file likely is a cyber event in toto.⁴ These things made the Nation State to enact their own law related to cyberspace. So, as per the mandates of the international law, India also enacted Information Technology Act in the year 2000.

Cyber Territory:

The enforcement of law is undoubtedly territorial in nature which includes flag ships, aircrafts or any other vessels registered under its territorial law which is applicable from time to time. Besides that, the law applicable to cyber space is quite different from the territorial based law due to its virtual character. It is considered that the activities involved in the cyber world causing legal consequences are not less than those in the physical world. Hence, there is jurisdictional problem in fixing the territory and the appropriate laws in the arena of cyber space, because it involves both national element and foreign element.

Cyber Jurisprudence:

As per the Black's Law Dictionary, Jurisprudence is "The philosophy of law, or the science which treats of the principles of positive

4 Stephenson, Peter R. "Defining a Cyber Jurisprudence" (2017). Annual ADFSL Conference on Digital Forensics, Security and Law. 8 at <https://commons.erau.edu/cgi/viewcontent.cgi?article=1373&context=adfs>

law and legal relations”⁵ But, the legal issues relating to the electronic communication and internet in this contemporary world as being necessitated of new kind of jurisprudence, which may be Cyber Jurisprudence with a virtual approach. Cyber Jurisprudence gives an analysis of the law where, is no land and even there is no border, where all things may be different from the physical world, they may be virtual from origin and nature. We may find virtual world with virtual rules and policies, along with the virtual subject matter, virtual contract, virtual disputes, virtual property, virtual possession and virtual court. Cyber jurisprudence deals with the composite idea of cyber jurisdiction and cyber court’s venue in the cyberspace. Thus, its prominence is to recognize cyber uniform rules and policies at international level.⁶

It is observed that in recent judicial reviews, whenever implementation of existing laws of the real space to Cyber Space has encountered a conflict, the laws of the real space has prevailed. This tendency in due course is likely to develop into a principle of “Primacy of Meta Space” and become the bedrock of Jurisprudence.⁷

In *Bragg Vs Linden Lab*, the court observed that “although the facts of the case are virtual but the dispute is real”.⁸ The modern jurists have to had getting heads together to endow with the rationale pedestal of jurisprudence to this ruling, now we can ascertain utmost exact definition of cyber jurisprudence as “the principles of legal issues, which exclusively regulates the cyberspace and internet”⁹

As the conceptual jurisprudence talks about the law and justice, ethics and morals, rights and duties, ownership and possession, title and property, crime and tort, obligation and procedure, logic and metaphysics, etc., the same has been the legal concepts even in cyber jurisprudence. The

cyber law encompasses the concepts of traditional jurisprudence and the applicability of law in different jurisdiction made to live in the virtual world peacefully as like in this real world. The 21st century changed the human lives that enable them to do every work virtually such as teaching and learning, work from home, digital communication and evidence, electronic commerce, online banking, online trading, etc. were reduced the time and costs and utilizing the time involves more productivity.

Besides all these positive aspects, there are also negative impacts faced in this digital world such as cyber crime and cyber tort, gambling, pornography and other illegal and immoral activities are also happening frequently. In spite of strong legislation and authoritative precedents, the cyber crimes take new dimensions and travelling in the virtual world. Thus we need to curb the negativity; we need to follow the cyber ethics as the jurisprudence says.

II. CONCLUSION:

In the era of globalization, the activities done in this virtual world made the vast globe as “Global Village” and the laws are applicable in the virtual world are in pursuance with the physical world, so as to enables the man to compete in the global market place. The law related to cyber space helps in yielding with quicker, easier and better life style. Cyber space dominates some distinctive attributes, which generate a series of challenges for our existing laws. These attributes are: its lack of respect for jurisdictional boundaries, the sheer volume of traffic that it can handle virtually instantaneously, its openness to participation, the potential for anonymity of members of the virtual community, its apparent economic efficiency. The emergence of cyber law as a distinct discipline of study promotes the jurisprudence of cyber space and the applicable law as it is and the law ought to be, so as to redress various issues with the appropriate remedial measures.¹⁰

As the famous dictum in “Law of Horse”¹¹, the cyber jurisprudence also extending its concepts in addressing various issues of general jurisprudence. Hence, it is the need of the hour to

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<https://www.assignmentpoint.com/science/computer/term-paper-on-cyber-jurisprudence.html>

¹¹ A Murray, “Looking Back at the Law of the Horse: Why Cyberlaw and the Rule of Law are Important”, (2013) 10:3 *SCRIPTed* 310 at <http://script-ed.org/?p=1157>

⁵ Black's Law Dictionary 4th Ed. Rev. 6-1971, pg.992

⁶ <http://cyberethics.cbi.msstate.edu/biblio/update/2001/>

⁷ Ahmed, Dr. Zulfiquar ; *Cyber Law in Bangladesh*, Published by- Sheikh Mohammad Ali Hasan, National Law Book Company, Nilkhet, Dhaka-1205. P. 36-37

⁸ *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593 (E.D. Pa. 2007)

¹⁰ <http://www.articlesbase.com/cyber-law-articles/cyber-jurisprudence-a-developing-concept-561596.html#ixzz17WicKnT>



synthesize the general jurisprudence and cyber jurisprudence, to eradicate the jurisdiction issues by enforcing the international law in the municipal sphere. Evolving the cyber jurisprudence will be the only jurisprudence in the midst of 21st century, to redress the various legal issues made by human intelligence and also by artificial intelligence.



**International Journal of Advances in
Engineering and Management**

ISSN: 2395-5252



IJAEM

Volume: 03

Issue: 01

DOI: 10.35629/5252

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