

Concept of Cyber-Litigation and Its position in India

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Date of Submission: 10-12-2022

Date of Acceptance: 20-12-2022

I. INTRODUCTION

The rules and legal system around technology have undergone a significant change as a result of the growth of the technology sector and the evolution of technology itself. The majority of technology is still out of the reach of lawmakers. The majority of them continue to play catch-up as technology advances.

During Mark Zuckerberg's congressional testimony, this was made clear to the entire globe. Legislators questioned Zuckerberg about several significant concerns involving the exploitation of user data. The difficulty of the politicians in comprehending the finer points of the technology and its uses was evident when Zuckerberg described them. Though that happened in the United States, local conditions are not very dissimilar. With the rapid rate of technological development, we are also having trouble keeping up with our laws. In dealing with issues like data abuse, data storage without user authorization, cyberbullying and other crimes, ransomware, etc., our laws are far behind.

To understand more firstly we should understand what is litigation then the concept of cyber litigation and its scope in context with India.

Litigation

The majority of individuals believe that litigation entails appearing in court and arguing cases before a judge. Before a judge makes a decision, many cases are resolved outside of the courtroom. However, some disputes necessitate in-person court hearings before they may be settled, even though settlements outside of court are typically the best option for both the plaintiff(s) and defendant(s).

To reduce the expense of litigation, when a plaintiff brings a claim, many actions are tried before going to court. Every stage of the procedure is subject to litigation, which might take years to resolve.

Investigations and Demands

A lawsuit occurs when a client presents their lawyer with a claim or dispute, ranging from unpaid rent to conflicts with business partners. The lawyer (or legal team) determines if the case has a chance of being financially successful and winning. Although the saying "you can sue for anything" may be accurate, a lawyer frequently stays away from pointless disputes.

The investigation follows the lawyer's decision to accept the case. The lawyer and researchers examine the evidence and gather as much information as they can. Researching the defendant, gathering evidence to support the plaintiff's allegations, and recording everything that could be relevant to the case are all steps in the investigative process. Whether the case goes to trial or is resolved out of court, this phase is essential to the lawsuit's success.

Demand Letters and Pre-Trial Negotiation

A letter of demand is issued by an attorney describing the demands and claims of their client. How the letter is written and organized is influenced by the investigative process. To allow the offended party to bring the accusations to their counsel, an attorney must provide all facts to them. The purpose of a demand letter is to persuade the offending party that the plaintiff has a strong case for seeking damages for legal misconduct. A strong demand letter persuades the reader that the plaintiff would prevail in court if the matter ever came to trial.

Typically, payment requests are far more than the lawyer anticipates being paid, but the defense lawyer will reply with an offer. The offer typically falls short of what the defendant is prepared to provide. After the first demand an answer, several offers, and counteroffers often exist. Sometimes, both sides reach a compromise, and the conflict is resolved.

It benefits both parties to agree at this stage since litigation is costly. Even though it may take many months for both sides to reach an agreement, settlements are frequently advantageous to both parties. In reality, lawyers work to resolve cases without going to court if they can persuade the other side to make a concession.

Out-of-Court Options

In certain agreements, parties stipulate alternate, less expensive methods of dispute resolution. These options are preferred to a full courtroom appearance with litigation since they spare both parties from expensive legal bills and years of court expenditures that might exhaust them both financially and emotionally.

- **Facilitation:** The least formal method and one that is most cost-effective for both parties is facilitation. The disagreement is overseen and assisted in resolution by an unbiased legal professional. Normally, a disinterested lawyer supervises facilitation arguments and establishes the number of damages.
- **Mediation:** Additionally, mediation is less casual and frequently comes before arbitration or a formal lawsuit. The offending party is allowed to make a counteroffer in response to the claimant's monetary request. After the mediation process, an agreed-upon sum is determined, and the plaintiff is compensated. The case progresses to more expensive options if a settlement sum cannot be reached during mediation.
- **Arbitration:** Arbitration is the most formal and expensive choice. In an arbitration hearing, both parties are in front of a retired judge or unbiased attorney who hears their arguments. There is no need for compromise, and the arbitrator conducts the dispute like that of a traditional court case but with significantly less expense and resources. After hearing both sides' arguments, the arbitrator renders a ruling that both parties must abide by. The plaintiff may receive the entire amount sought, a portion of it, or none of it.

Courtroom Proceedings

The parties never enter a courtroom if any of the aforementioned choices end in a settlement. Since filing a lawsuit is expensive, it is the last resort after all other options have run their course. Most lawyers aim to convince their clients to settle before their cases go to court since litigation might take years to be resolved.

The discovery phase, a pre-trial inquiry into claims to gather information to put in front of a

judge, is something attorneys do before coming to court. An attorney could hire a third party to help with parts of the investigation since a successful discovery process is essential to winning a lawsuit.

After completing the discovery phase, attorneys may file pre-trial motions that revisit the validity or legality of the case to be argued before a judge. Sometimes, the defense attorney can convince the judge to throw out a case, even when they believe that the evidence may only be slightly against the defendant. This happens rarely, mostly because the evidence behind the case may be airtight.

The judge makes sure that the attorneys present the facts in a fashion that complies with trial rules, while the attorneys choose possible jurors to serve as the fact-finders if a jury is involved. Both sides present their cases before the court during the trial. Depending on where the case is tried and the court's timetable, trials might span months or years. A verdict is reached after a protracted trial, and both parties must consent to abide by the judge's rulings. If one or both parties believe errors were committed or are dissatisfied with the result, an appeal may be lodged to a higher court.

Attorneys oversee the completion of all financial transactions after a trial and receive a portion of the settlement. If the losing party needs to deliver the funds gradually rather than all at once, a payment plan could be made.

What Is Cyber Litigation?

Every field of law focuses on a particular problem, and cybercrime attorneys often handle lawsuits regarding cybersecurity problems. Attackers may be external cybercriminals or internal risks to the enterprise. Numerous dangers might push businesses to the edge of their ability to maintain business continuity, where any error could be expensive. Cyber litigation can assist in recovering part or all of the expenses when an attack hurts an organization's reputation or income.

Similar to how ordinary litigation is described above, cyber litigation is conducted similarly. The sole distinction is that it emphasizes crimes using systems, the internet, and data more than other types of crimes. Investigating attacks and their origins needs professionals. To assess the amount of the damage and if the network is still vulnerable to assaults like advanced persistent threats or those with undetected backdoors, forensics is also required in many cyber scenarios.

A cyber litigator has a challenging task. In addition to becoming experts in litigation, they must also be able to explain and demystify

technology so that judges may understand it. They must have a thorough awareness of the technology sector and a firm comprehension of its fundamental problems.

Types of the client in cyber litigation

- ❖ Government
- ❖ Companies
- ❖ Individual

Government

When it comes to cyber legislation, the government is one of the major clients. Cyberterrorism, website hacking against the government, sedition, and other cybercrimes against the government would be the main ones. In addition to the federal government, each state government also chooses prosecutors for any further cybercrimes that people raise.

Hacking into government networks and databases and stealing sensitive material of major national value would be considered cyber terrorism. It would also be relevant if a virus or other malicious software were to temporarily impair the government network or infect the computers with viruses that would then take control of them, erasing the whole government database that is housed online along with all backups. Terrorists then use any place to access the systems, change the data, and acquire the information.

In situations like the one where a former scientist broke into a government website and sent emails to the Department of Atomic Energy endangering national security, sedition charges were brought against him.

Regulations, which are frequently contested in court, also require a lot of labor. For instance, several organizations, some of which embrace cryptocurrency and others of which oppose it, have brought lawsuits before the Supreme Court over cryptocurrency in India. The government has also been desperately attempting to develop a sensible rule.

Both the federal government and state governments appoint prosecutors, standing counsels, and consultants at various levels. This is a prominent job that is also fairly highly paid.

Business Clients

Companies increasingly frequently require the assistance of cyber attorneys due to new-age crimes including cyber espionage, hacking, data breach, data theft, cyber defamation, ransomware, impersonation, etc. Data or pure financial gain are the two main targets of cybercrimes against organizations.

More litigation also results from increased compliance duties.

For instance, in one incident, a group of thieves pretended to be bank employees to trick consumers of private banks into disclosing their personal information. While the consumers' money was unlawfully transferred into other accounts, it exposed a significant hole in the institutions' cyber security. Additionally, it undermines customer confidence in a bank's IT infrastructure, which is extremely harmful to the banking industry.

Due to stringent data protection rules, data theft has also become a common issue. Companies frequently require legal counsel to defend themselves against claims that they have broken data legislation.

There was the recent WannaCry ransomware worldwide cyberattack. The largest port in the nation, Jawaharlal Nehru Port Trust in Mumbai, shut down operations at one of its three terminals, making India one of the nations impacted by the ransomware. As a result of the worldwide ransomware assault, which crippled major central banks and numerous significant enterprises in Europe, it was claimed that operations at one of the three terminals of the nation's main container port were damaged.

There are times when trolls or bought poor reviews may harm someone's reputation online or in the era of reviews and online reputation. The cyber litigator then intervenes to control the harm or take action against this online libel.

Companies need to create legal strategies in addition to building defenses against cyberattacks so they can hold the attackers accountable and avoid financial penalties or liabilities. The major banks are now spending money on commercials to urge consumers not to share sensitive account information to reduce liability. However, this has hardly made a dent in the spiraling cyber fraud, and businesses, particularly financial institutions, frequently need to engage attorneys to fight claims from consumers who have been duped and robbed.

The cyber litigator may also have the opportunity to represent the business in disputes involving its intellectual property. Internet IP infringement, which mostly involves trademark and copyright infringement, is pervasive and has given attorneys who handle these infringement cases a lot of work.

Additionally, the cyber litigator may represent the business in disputes involving its intellectual property. There are many occupations for attorneys who handle these infringement cases

since IP infringement, namely trademark and copyright infringement, is common on the internet.

Individual clients

The requirement for a cyber litigator differs greatly on a personal basis. Stalking, harassment, cyberbullying, defamation, extortion, abuse of data or personal information, impersonation, fraud, etc. are just a few of the offenses the lawyer has to deal with.

It's interesting to note that online attorneys are becoming more crucial in divorce proceedings. Spouses frequently utilize technology to spy on one another, and some even employ hackers to discover their partners' secrets. They occasionally exploit compromising films or private images to gain an advantage. Due to this, there is a high need for online attorneys with litigation experience in family law disputes.

Actor Alok Nath's wife launched a defamation lawsuit against the supposed victim in the #MeToo movement after the putative victim's Facebook post went viral. The Facebook post and the ensuing media frenzy form the core of the entire case. Therefore, the attorney must establish a defamation case against the accused post. The test of defamation could be valid given the length of time between the claimed offense and the plea for justice, the absence of a formal complaint, and the paucity of supporting documentation.

When someone is falsely or rightfully accused of various forms of misbehavior on social media, cyber defamation proceedings are sometimes their final line of defense. It is used by media trial victims as well.

It is quite challenging for online litigators to prove that data was obtained illegally in the era of oversharing personal information on social media. The prosecution is challenging unless there is enough digital evidence to support the claimed cybercrime.

A purported Dr. Prakash received a jail term in 2002 for publishing internet photos of women in their underwear. Even though the legislation has changed in the present, the difficulties have multiplied. There have been instances when people have exchanged explicit photos of themselves with ex-partners who have afterward blackmailed them. The Indian Penal Code's provisions are also applicable in these situations.

There are instances where user data is compromised, such as with Aadhaar, where millions of people's personal information were exposed owing to inadequate data security by the government, or Facebook data loss. It will be

difficult for the cyber litigator to hold Facebook or the government responsible and demonstrate the same. The regulations governing data privacy and storage are still in their infancy. In terms of technological hurdles and statutory protection, we have not been able to keep up.

Challenges and Scope of Cyber Litigation In India

- The IT Act of 2002 is the primary source of our cyber legislation. However, IPC prohibitions are also applied to some cybercrimes. There are several data privacy regulations. On the horizon comes a significant data protection bill. Several regulations apply to activity in the cyber realm. When you offer any financial services online, whether they are authorized or not, laws like FEMA or the Banking Regulation Act could apply.
- Cyber law, in contrast to many other types of litigation, is novel and intellectually stimulating since every case presents a different set of difficulties. Unlike many other areas of litigation, it is not a regular job.
- Currently, civil responsibility is triggered under Section 43 of the IT Act in situations when there has been no fraudulent or dishonest hacking, virus introduction, denial of service assaults, etc.
- The lack of clarity surrounding the laws and their range of interpretation presents the biggest hurdle for cyber litigators. It becomes more challenging for attorneys to bring the subject matter inside the purview of current laws as technology develops. To support their position, they must turn to out-of-date statutes and attempt to interpret them.

II. CONCLUSION AND SUGGESTION

- Litigation is a wider concept that deals with every situation whereas cyber litigation is part of it dealing with IT Laws and the cyber world.
- Cyber Litigation is a new field in Litigation that deals only with the cases of the cyber world.
- It is required that the courts and tribunals dealing with cyber litigation should have experts in the cyber world who may work as juries and Inspectors so that It is easier to get justice fast.
- There is a huge requirement to deal with Cryptocurrency as there are no such laws that regulate it.

- Separate tribunals or courts should be made where there is enough technology available to examine the case.
- The Litigators should be trained enough to understand the latest technology and they should be provided with time-to-time training to update according to present needs.
- Like every state has its judiciary exams there should be separate exams for the position of cyber tribunals so that trained personnel be fit at the right positions.

REFERENCES

- [1]. <https://www.theguardian.com/technology/2018/apr/11/mark-zuckerbergs-testimony-to-congress-the-key-moments> (Accessed: October 25, 2022).
- [2]. <https://www.totallylegal.com/article/litigation-job-description> (Accessed: October 25, 2022).
- [3]. <https://www.totallylegal.com/article/litigation-job-description> (Accessed: October 25, 2022).
- [4]. <https://scholarship.law.edu/cgi/viewcontent.cgi?httpsredir=1&article=1101&context=lawreview> (Accessed: October 25, 2022).
- [5]. <https://www.td.org/talent-development-glossary-terms/what-is-facilitation> (Accessed: October 25, 2022).
- [6]. <https://www.wipo.int/amc/en/mediation/what-mediation.html> (Accessed: October 25, 2022).
- [7]. <https://www.findlaw.com/litigation/going-to-court/courtroom-proceedings.html> (Accessed: October 25, 2022).
- [8]. <https://www.proofpoint.com/us/threat-reference/cybersecurity-litigation> (Accessed: October 25, 2022).
- [9]. <https://www.findlaw.com/litigation/going-to-court/courtroom-proceedings.html> (Accessed: October 25, 2022).
- [10]. <https://blog.ipleaders.in/practicing-cyber-litigation-opportunities-challenges/> (Accessed: October 25, 2022).