



FACULTY OF JURIDICAL SCIENCES

COURSE:BA.LL.B

Semester : VIII th

SUBJECT: Cyber Law

SUBJECT CODE:BAL-805

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Lecture-1



LECTURE 3: Jurisprudence of cyber law

Principles of Jurisdiction

- i. **Territoriality Principle:**
 - if one of the acts constituting an element of the offense has been committed in the territory then the offense is said to be committed within the territory of a state
 - if the effects of the offense became manifest there.
- ii. **The Flag Principle:** This principle is considered to be a variant of the territoriality principle and it applies if the cybercrime is committed on a ship or aircraft that is beyond the territory of the Flag party, the state of registry will be the one exercising jurisdiction over the offense.
- iii. **Nationality Principle:** It applies the active nationality principle. It gives an obligation to nationals of a state to comply with the domestic law even when they are outside its territory. This prevents nationals of a state to travel to a foreign state to commit a cybercrime and return without the risk of being prosecuted.

Is the internet a vanishing point of law?

There is a controversy like cyber law as to the question, whether cyber law is a law or not. The emergence of cyberlaw has an inseparable yet precarious connection to the analytical tradition in jurisprudence. It is said that Law cannot function in free space or vacuum as it seeks a definite place and people voluntarily abiding by it. But if law requires some definite place to be operated and few individuals consciously abiding by it, then what is the need for recognizing a group of individuals as a society and for making separate rules for their governance? Above all, is it mere physical existence or is there any other thing that substantiates the matter which makes a group of individuals as society?

There is demand for resolving these questions while using the term “cyber society” and its nature. Technological inventions have created and developed products that enable people to meet, talk and live in cyberspace in ways not possible in the real space whereas information technology has facilitated processes like the process of buying, communicating, sharing ideas, etc. Cyberspace comparatively has more intimate, accurate, and unceremonious aspects.

The internet as a medium of interaction is growing exponentially with individuals facilitating each other with mailing, shopping, sharing online news, etc., and this ability of online users to communicate in sophisticated ways form “virtual communities”.

The term ‘cyber society’ or ‘cyber community’ is discreetly used by social thinkers, lawyers, and research scholars to refer to internet users due to its accessibility to every individual. And the same paved the way for the sharing of ideas, moods, and building of common interests and consensus. Now leaving laws to be built on the premise of this consensus itself. Law has to identify the common principles, customary practices, cultures, usages and the basic norm, etc. on which the cyber society is working and what norms are governing them out of such commonalities has to formulated.

Jurists like Sir John Austin, Salmond, Sir Frederick Pollock, etc. have evolved many schools of thought and gave possible propositions to the jurisprudence in accordance with the physical society but as far as cyber society is concerned, jurisprudence is not yet formulated and is still in the realms of legal academia. Ironically the ‘cyber society’ is more of a reality today than it was ever before as the Internet has a stake in the economies of the world and seized popular imagination by furnishing easy communication, entertainment, leisure, and relaxation.

The law needs to be in sync since the Internet is continually changing the dynamics of the world. It must be flexible, overhauled continuously, and refitted continually as well as stable to the change in

social life which it is to govern. There is a viewpoint that the cyber laws are followed by states by courtesy and are much weaker than their counterparts in the municipal law. As it cannot be strictly contented that cyber law is not enacted by the sovereign or that it has no agency for enforcement and sanction, it is now well settled that cyber law is the law even if it's considered as weak law.

Conclusion

The existing laws of India, even with a liberal interpretation cannot interpret all aspects involving the internet, World Wide Web, and different activities in cyberspace as every action and reaction has some cyber legal angles. Should the flow of information or the place where information is flowing be regulated when one or the other device, whether ethical (self) or institutional is carrying on activities in cyberspace? Or is it the subjects that are the individuals who are accessing the information to be regulated?

Some significant legal status has to be invariably attributed to cyberspace, if it is the place where information is flowing, to be regulated and accordingly the character, nature, jurisdiction, and functions of the cyberspace have to be deliberated. Whereas if the subject matter of law are the individuals, then they be are in physical space using physical devices themselves. Here the existing laws suffice to clampdown misuse of IT and to curb technological malpractices. There is no need to search terminologies to name the crime committed or establishing new institutions like cyber police stations, cybercops etc.

An arduous task in this approach is that at times it becomes impossible to trace out the individual behind a crime committed and unfeasible to expect that every cyber offense originates from physical space. If it is the 'information' that has to be regulated by the law then the horizons of the IT law should be so expended to deal with the production, distribution, dissemination, processing of information as a whole.

The notion of jurisprudence in criminal law or law of torts can be intercepted and applied similarly for the comprehension of cyber law due to the offered polyphonic views of the interaction and consequences by an actor's negative acts accompanied by the actor's victim. This is an era where cyber-attacks could range from inconvenience to death. Hence there is rising demand for a jurisprudence of cyberlaw but that jurisprudence does not dictate a completely new body of laws.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.			
2.			
3.			
4.			
5.			

Answers: 1-(),2-(), 3-(),4-(),5-()