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## ROLE OF INFORMATION COMMUNICATION TECHNOLOGY IN INDIAN CRIMINAL JUSTICE SYSTEM : EMERGING TRENDS



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### ABSTRACT:

**L**aws are generally meant for meeting the ends of the society and it is therefore a dynamic concept which undergoes changes with the changing needs of the society. If law cannot attain to the changing needs of the society then the very aim of the law is defeated and it results in the failure of the justice. Therefore the law has to keep pace with time and change according to the needs.

**KEYWORDS :** Information Communication Technology , Indian Criminal Justice System , law of nature .

### INTRODUCTION

Change is the law of nature .The cave age to the information age man has indeed travelled a long journey. There has been a sea change in the face of life over generations. However the rate of change in the last hundred years or so has been so unprecedented. Technological advancements have brought this generation to a situation where everything is moving at a fast pace. There is no time for complacency and we hardly get any time to breathe. Unless we adapt changes around us we are bound to perish.

The modern information technology evaluation has enabled the man to prosper. The progressive trend of the computer technology has accelerated transfer of information and has increased our capacity to store, search, retrieve and communicate data over the world in the shortest possible time but at the same time given rise to new problems to mankind.

The development in the information technology and the electronic media has given rise to a new variety of the crimes which are called as cyber crimes. The widespread growth of these crimes has become a matter of global concern and the challenge for the law enforcement agencies in the new millennium. The criminal laws of the country have to change significantly to meet the new challenges of the cyber crimes. The criminal Justice system of India is also vulnerable to change in the era of information age. Accordingly the progress is done by the way of amendment in the various criminal laws and by bringing into existence new laws to cope with challenge.

However this new technology can be boon to our criminal justice system where lakhs of criminal cases are pending. Administration of criminal justice is already heading towards such a stage that if urgent steps are not taken on each every cause it will collapse totally and forever under its own weight. The struggling suffocation syndrome of our judicial instrument can usefully cured by the use of Information Communication Technology. It can be a boon to Indian Criminal Justice System if used in proper and effective manner. The role of Information Communication Technology in the future of Indian Criminal Justice will be significant.

### CRIMINAL JUSTICE SYSTEM IN INDIA:

Criminal Justice is generic term for the procedure by which criminal conduct is investigated, arrests

made, evidence gathered, charges brought, defenses raised, trials conducted, sentences rendered, and punishment carried out. Criminal justice is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime, or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. Those accused of crime have protections against abuse of investigatory and prosecution powers. The criminal justice system consists of three main parts:

1. Legislative (create laws);
2. The Prosecution(State)
3. Adjudication (courts); and
4. Corrections (jails, prisons, probation and parole).

In a criminal justice system, these distinct agencies operate together both under the rule of law and as the principal means of maintaining the rule of law within society.

Traditionally looking at the Criminal Justice System in India the laws which govern the Criminal Justice System in India are mainly

- a) Constitutional Law of India
- b) Indian Penal Code
- c) Criminal Procedure Code
- d) Indian Evidence Act
- e) Other Criminal Laws dealing with special Crimes

The Prosecution is done by the State. The Public Prosecutor brings out the case against the accused. The procedure for the trial as given under Criminal Procedure Code is followed and the prosecutor tries to prove the guilt of the accused and to secure punishment for the accused.

The Criminal Courts has to adjudicate on the accused. Various Criminal Courts has been created under Cr.P.C. and given different powers. After conviction the accused is sent to jail where the prison authorities have to play certain role.

#### AMENDEMENTS IN INDIAN PENAL CODE:

The Criminal Laws which are very important component of the Indian Criminal Justice system have undergone a radical change with advent of ICT. Indian Penal Code which is the cardinal law has been amended to keep pace with the information age. Accordingly the changes are made in IPC.

1. A new definition clause containing electronic record has been inserted in section 29A
2. Sections 167, 172, 173, 175, 192, 204, 463 have been amended to include electronic record also
3. Section 464 has been amended to provide punishment for making false document or electronic record
4. Sections 466, 469, 476 and 477 have been amended to include electronic record as well

#### AMENDEMENTS IN INDIAN EVIDENCE ACT:

The Indian Evidence Act which deals with the manner and mode in which the evidence is to be given has been amended to meet the ends of information technology. The amendments were made to take care of the admissibility of electronic record long with other papers based documents. The salient features of the amendments are.

- 1) In section 3 in the definition of evidence all documents including electronic records produced for the inspection of the court has been inserted.
- 2) The definition of Certifying Authority, Digital signature, Electronic record, information and subscriber has been inserted.
- 3) Section 22A has been inserted for relevance of oral admissions as to the content of the electronic record.
- 4) Sections 34, 35, 39, 59, 65, 131 have been amended to include electronic record.
- 5) New sections 47A, 67A, 73A, 85A, 85B, 85C has been inserted relevant to digital signature and certificates.
- 6) A new section 81A has been inserted with reference to presumption as to official gazette.
- 7) Sections 88A and 90A has been inserted for the presumptions of electronic messages and the records

### CYBERCRIMES: THE NEW SPECIES OF CRIMES:

The offences which take place on or using the medium of the computer and internet are called cybercrimes. The term cybercrime is an umbrella under which many illegal activities may be grouped together. Because of the anonymous nature of the internet there are many disturbing activities occurring in the cyberspace which may enable the perpetrators to indulge in various types of criminal activities which are called cybercrimes.

The weapon with which the cybercrimes is committed is technology and therefore the perpetrators of these crimes are generally are the most technically skilled persons who have a thorough understanding of the internet and the computer applications. Some of the newly emerged cyber crimes are cyber stalking, hacking, cyber terrorism, e-mail bombing, cyber pornography, cyber defamation virus attacks, worms etc. Some of the conventional crimes are also committed through the use of the internet. The examples are theft, mischief, fraud, cheating, and misrepresentation which are punishable through Indian Penal Code. Thus in addition to the traditional crimes the Indian Criminal Justice has to deal with these new species of the crimes called cybercrimes.

### INFORMATION TECHNOLOGY ACT 2000:

With the advent of the new species of the crime called cybercrimes and its bulging dimensions in India the Criminal Justice System had to provide a remedy for it. Accordingly to deal with this new menace, Information technology Act 2000 was passed. Further it was amended in the year 2008 to meet the ever expanding dimensions of cybercrimes. The salient features of IT Act 2000 are,

- 1) The Act defines the various cybercrimes and provides punishment for it.
- 2) The act applies to any cyber offence committed outside India irrespective of its nationality
- 3) The Act Provides legal recognition to e commerce
- 4) The act also provides recognition to the digital and electronic signature
- 5) Cyber Law Appellate Tribunal has been set up to hear appeal against the adjudicating authorities.

Thus IT Act 2000 is the another criminal law dealing with the special type of the crime called cybercrimes.

### CYBER FORENSICS AND BIOMETRICS VIS A VIS EXPERT TESTIMONY:

The term Computer forensic was for the first time used by the International Association of Computer Specialist in the year 1991. It is the branch of forensic science which is devised to identify local preserve of extract digital information from the computer system to produce and store the evidence of the cybercrime before the court. Internet related forensics broadly cover three major areas, 1) computer forensics 2) cyber forensics and 3) software forensics.

In *Firoz vs State of Kerala* the court observed that the cyber forensics helps the investigators of the cybercrime to prove the motive means and opportunity to commit the crime.

Cyber forensics mainly revolves round the proceeding related to electronic record as evidence before the court of law. Electronic Record have been give legal recognition under Indian Evidence act and IT Act 2000. The electronic record produced before the court cannot ordinarily be substantiated by written or tangible material or human witnesses. Therefore it has to be procured through cyber forensics which includes discovery, analysis, and reconstruction of evidence extracted from computer, computer system, computer network etc.

In *Parliament attack case* which took place on Delhi On December 13, 2001 wherein the court held that investigation of such crimes has to be entrusted to specially trained investigating official with the help of the forensic experts who have thorough knowledge of the working of the computers and its related techniques.

Biometric involves electronic analysis of the attributes arising from a person's physical characteristics that are unique to that person. For example the codes that are derived from the electronic analysis of

fingerprints footprints retinal scans body odor can provide important clues to identify the person accused of crime though it is to be corroborated by other material evidence.

#### USE OF VIDEO CONFERENCING IN CRIMINAL TRIALS:

A video conference is a televised telephone call whereby two or more parties can speak in real time and also see each other in real time. It necessarily involves a camera, one or more monitors, and microphones for each participant, audio speakers and other necessary equipment. The most important thing needed is a high-speed Internet connection or the video and audio will be choppy. Unlike traditional video conferencing which required massive amounts of bandwidth and was based on dedicated two-way lines, the new Web-based software requires significantly less bandwidth and is intelligent enough to permit only one speaker at a given time. In addition, before the video-conference begins, documents can be downloaded to each participant's personal computer. The materials can then be presented in sync when a moderator calls something up. Thus, through video conferencing, a person can effectively talk and see another person sitting anywhere in the world and hence, this technology can also be used to give evidences.

**Video conferencing is a great tool that can be used to take evidences. It can be used in various situations. In the following cases, resort can be had to video conferencing for recording evidences:**

1. In a case where the witness resides abroad and it is necessary to have his evidence, for the ends of justice
2. Video conferencing can be used in the cases where the witness is unable to attend the Court due to his health
3. It can also be used, where the Court, on facts and circumstances, do not want the witness to personally attend the Court and answer. It can happen in cases where the witness (victim) is a child who has been sexually exploited or in case if the child has suffered from unnatural offence against him.
4. In the subordinate courts, the Judicial Officer needs to record evidence of the witness in presence of under-trial prisoners. On many occasions, criminal trials get adjourned for absence of the under trials in the Court for want of security escorts from Jail resulting in unnecessary and avoidable adjournments. Here again, application of video conferencing facility, from the Court to the prison where the under-trials are housed, will be able to take care of the problem. Video conferencing service will not only help in avoiding unnecessary adjournments of cases but also save lot of money in transportation
5. In cases, where the security of the accused or a witness so warrants, the Court without mandating the witness to come to the Court to give the evidence, may allow to give the evidence through the video conferencing.
6. In cases, where the situation so warrants

Thus, as a general rule in case where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience the Court could consider issuing a commission to record the evidence by way of video conferencing. This would really help in the speedy disposal of the cases.

#### SPECIAL CYBER CRIME INVESTIGATION CELL FOR HI-TECH CRIMES:

In keeping with the demand of time the setting up of a Cybercrime Investigation Cell under CBI was notified in September 1999 which actually started functioning from March 31 2000. The cell is headed by Superintendent of police and has jurisdiction all over India. It has power to investigate the offences under IT act 2000 and is also empowered to probe into hi-tech crimes. There are presently cells functioning in India with headquarters in Delhi, Mumbai, Chennai, Bangalore, and Kolkata.

Similar to the establishment of Special Cybercrime Investigation Cell there has been growing demand for setting up Cybercrime Police stations by the state Governments. Taking initiative in this direction the State of Kerala was first to set up the country's first Cybercrime Police Station which has jurisdiction all over the state. Subsequently Cyber Police Stations were set up in all the metro cities.

#### E-JUDICIARY : THE FUTURE OF INDIAN JUDICIARY:

In view of the total pendency of the case in the various courts a National Policy and Action plan has been launched in the phased manner to introduce the information and communication technology in the courts of

India which could be useful in accelerating the judicial work and disposal of cases

On the suggestion of Justice R.C.Lahoti the former Chief Justice of India and under the chairmanship of Justice G.C.Bharuka with three other specialist member to formulate a National policy on computerization of the justice delivery system of India to be implemented in the phased manner.

#### Phase I-Extended to a period of two years and included the following reforms-

- a) Creation of computer rooms in all courts of India
- b) Digital Connectivity between all courts with Supreme Court
- c) Extending video conferencing at Supreme Court, High Courts and all District Courts
- d) Equipment of judicial officers with Laptop
- e) ICT training to judges and court staff
- f) Training modules for lawyers
- g) Software application for judicial system
- e) Digital presentation of under trial prisoners and evidence through video conferencing

#### Phase II-

- a) Automation of registry level process
- b) Digitalization of Law Library
- c) Digital availability of case law and other legal literature
- d) Online availability of legal resources to Judges Lawyers and Clients

#### Phase III-

It was intended to ensure the use of biometrics and other scientific tools for the availability of the information between courts; prosecuting agencies prisons land records and registration offices with a view to expediting disposal of civil and criminal cases.

Undoubtedly these developments have benefited all the repositories to the judicial system of India including litigant, lawyers, and prosecutors and also to the law enforcement personnel. Presently e judiciary in India is at its formative stage, it will gradually develop as the process of switchover to e-police stations and to e-courts in the coming years

#### CONCLUSION:

The information Communication Technology has brought tremendous development in all the spheres of world and Indian Judiciary is no exception to it. The Indian Criminal Justice System which provides for mechanism to prosecute and punish a offender is slowly and steadily opening doors for these dynamic technology to be adopted for better justice on the other hand cybercrimes a product of this technology is bulging its dimensions posing a new challenge to the Indian Criminal Justice System.

Though Indian Judiciary has taken this task to curb the menace of cybercrimes by passing Information Technology Act 2000 and by making various amendments in its various laws dealing with the administration of criminal justice new and new techniques of committing the crime is making the laws fruitless with the passage time. To cope up with this IT Act 2000 was amended in 2008 to meet the changing techniques of committing cybercrimes.

The prosecution and judiciary the other two limb of criminal justice system are in process of adopting the new tools of ICT to make the criminal justice a speedy and fair phenomenon. The E-Committee set up by Supreme Court has developed a policy for adoption of ICT technology in the administration of criminal justice. The setting up of Special Cyber Investigation Cell, e-police stations, use of video conferencing for recording evidence is the major steps in that direction. The e-courts though a distant goal will certainly help in the better administration of justice.

The Information Communication Technology though a curse in the form of cyber crimes is certainly a blessing in the form of facilities which it provides and will achieve for Indian Criminal Justice system a speedy and

fair trial.

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