
A NEW INDIA AND ITS NEED FOR A TECHNOLOGICALLY DRIVEN JURISPRUDENTIAL RENAISSANCE

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ABSTRACT

This article looks into the subject of technological readiness and adaptive capabilities of our country's legislature. The basic requirement for a country to remain in the contention of the development race in today's day and age is to develop a jurisprudence which is technologically sound and adaptive to new innovations.

While India enters a new dawn of a younger workforce, it is in its best interests that we look at formulating avenues and opportunities to test and develop a new line of thought with respect to technology and law. The growth of technology and us as a society is imminent, we as a country must capitalize on this opportunity of growth and work at formulating a technological jurisprudence capable of outlining and developing legislation with respect to emerging technologies.

The article talks about the procedural ambiguities in our legislative system which need to be revamped in order to facilitate an emerging line of tech based legal thought. In order to create an environment of growth and innovation it is imperative that we have a system in place to regulate the procedural aspect of creation of a law. It is an established legal principle that a law with weak procedural foundations will always fail to address the issue it was created to address.

A new India provides a perfect opportunity to create a holistic renaissance in the field of law with respect to emerging technologies. The article also addresses various issues of unregulated technology while also talking about how the ambiguities of law are being exploited by technologies which are hybrid in nature and cannot be compartmentalized into named sectors in the society.

Law as a subject has always evolved via trial and error, the firm juristic principles of today were once merely ideas of contention. This principle also applies to technological jurisprudence, only by being committed to create change in the field of technology-based law can a jurisprudence that will endure the test of time emerge. This article drives upon these principles while providing possible ways of tackling technology related legal ambiguities.

“Growth can be truly achieved only if one understands that there is no end to learning, adapting and self-analyzing”

India, as a country has evolved through a lot of significant events; while other countries went through a cultural renaissance, we experienced what I call a legal renaissance. Law in this country is derived from various sources, unlike other countries in the west, we derive and utilize a lot of customs and traditions of our forefathers in our legal system. A premier example of this would be the land laws and land-based revenue system, the patwari and jamabandi system still form the basic metrics of land laws in this country.

India, a former British colony achieved independence in 1947 and came up with our own constitution by 1950, while many thought that since we are a tradition-rich country our laws would be dominant with such cultural references, the makers of the constitution took a modernized approach and created a constitution way ahead of its time. It is this foresight that has allowed us as a country to grow even when all political powers during our inception doubted the longevity of our country’s democratic system.

It has been a dominant rule of this world that once a new generation takes over from a previous generation there is rapid growth in the society, while growth is usually perceived to be a beneficial event it can prove to be disastrous if the world is not ready to adapt to it. To cite an example, look at the 2000’s tech boom, a new generation of tech savvy and entrepreneurship prone generation came into the picture giving rise to companies like Apple, Microsoft, PayPal, Amazon etc. However, the world was not fully ready yet; issues such as data privacy, consumer protection, false advertising, internet scams, legal ambiguity with respect to private data, hacking, big data scams plagued the world. While there were always hotfixes for such events, in the recent years we have seen technology come into its vicious forms several times; in some situations, even causing a threat to democratic procedures.

The Cambridge Analytica scandal brought to light what many feared was a remote possibility, manipulation of user data online to conduct targeted elections. Cambridge Analytica is a British political consulting firm that had access to the data of millions of users, some of which was allegedly used to psychologically profile US voters and target them with material to help Donald Trump's 2016 presidential campaign. The data was acquired via a quiz, which invited users to find out their personality type. As was common with apps and games at that time, it was designed to harvest not only the user data of the person taking part in the quiz, but also the

data of their friends. Facebook has said it believes the data of up to 87 million users was improperly shared with the now defunct consultancy.¹

This is just one of the many examples that are a cause for serious concern, countries across the world need to prepare themselves adequately so that there is no legal ambiguity with respect to new technological advancements and the rule of law is not disturbed. It cannot be denied that there has been movement with respect to making law more sensitive and adaptive in nature to new technologies and innovations, the crypto currency debacle is a premier example.

Cryptocurrency in simple terms is a digital, decentralized and encrypted medium of exchange which is not regulated by any central authority like the RBI or the US Federal reserve, Bitcoin is widely regarded as the first cryptocurrency, it was first outlined in principle by Satoshi Nakamoto in a 2008 research paper titled “Bitcoin – a peer to peer electronic cash system”. In his paper he has described Bitcoin as “an electronic payment system based on cryptographic proof instead of trust. That cryptographic proof comes in the form of transactions that are verified and recorded on a blockchain”.²

The idea in itself is a novel idea, however the problems arise when an unregulated medium of exchange arrives in a market sternly regulated by economic bodies and their principles. Keeping the aspect of democratization of money/medium of exchange aside the potential of cryptocurrency is truly daunting, not because of its revolutionary nature but because of the millions of ways it can be misused to harm the world economy. While some countries like El Salvador have embraced this new financial renaissance with open arms by declaring Bitcoin to be a legal tender, several countries like US, UK, Canada, France and India have openly declared the need to regulate these cryptocurrencies via domestic legislation.

In India the situation with respect to cryptocurrency is headed towards a legal renaissance, instead of the expected action of banning such unregulated financial products the government is looking at options to regulate them using a new generation legislation developed while keeping digital innovation in mind. Ajay Seth the secretary for economic affairs had said in the press a while ago that the government was working at forming a fresh consultation paper on cryptocurrencies while a legislation on digital assets would take a while to develop.

¹ www.bbc.com/news/world-us-canada-48972327

² [bitcoin.pdf](#)

The government seems to believe that they can successfully develop a regulatory legislation to govern and control such digital assets, the Reserve Bank of India seems to be bearish about the entire idea. Top officials at RBI made it clear to the government panel on digital assets that they believe allowing such cryptocurrencies to flow in the market would lead to the “Dollarization of the economy”³ which would be against the sovereign interest of the country. Although the views of the central bank are less optimistic, they do bear a pang of truth in their bearings, private cryptocurrencies have known to wreak havoc on bullish investors by creating a fake sense of value only to later crash when the market corrects itself.

I believe that cryptocurrencies can be attributed to be the “Louis XVI” of the legal revolution in the country. It has often been argued that the IT Act 2000 was the first step in establishing and creating a digital regulatory infrastructure for the country, however I disagree partly with that claim; while it does create regulatory guidelines in many sectors the legislation itself has not been able to keep up with the rapid developments in technology. In simple terms the Act is outdated and in need of a revamp, the tricky part is it will probably require revamps at regular intervals if we as a country are to make our way through the era of technological dominance.

Social media and digital media platforms also form a part of new age technology, their existence is thanks to the internet and its global outreach. It is not new news that the government over the years has struggled to contain misinformation and propaganda-based information on such digital platforms, however in 2021 the Ministry of Electronics and Information Technology developed and notified the “Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021” under the IT Act 2000. The said guidelines seek to regulate platforms such as Twitter and Facebook so that the government can control the spread of misinformation and prevent the spread of fake propaganda.

The reason why I bring out the point of these guidelines is not to talk about the guidelines itself but the mechanism of the country to draft said legislations to regulate new technological advancements. It is the Ministry of electronics and information technology (MeIT) that has the rights and powers to draft such regulations under the IT Act, however there is a legal ambiguity present here especially in the case of digital media. Digital media as a source of publication comes under the ambit of Ministry of Information and Broadcasting (MIB) and in normal

³ India Economy: Cryptos can lead to dollarisation of economy: RBI officials to parliamentary panel - The Economic Times (indiatimes.com)

course of action would be empowered to regulate such activities, however the MIB is not empowered to make regulations for the IT act as it is under the ambit of the MeIT. In the same way MeIT is also not empowered to create regulations for digital media as it comes under the powers of MIB.

The Doctrine of Colourable legislation clearly states that “what can’t be done directly cannot be done indirectly”, this doctrine establishes a certain guideline for legislations to be developed in the future in order for them to be failure proof. This ambiguity over what ministry can or cannot draft legislation on new technology severely hampers the future proof aspect of said legislations; hence I feel that while the thought of having an emerging digitally sound and technologically driven legislation is great its entire premise will hang by a thread unless we develop an emerging jurisprudence and guideline procedures to act as its foundation.

“The basic concept of law flowers from an idea to give form to chaos, no society is an exception to this principle of law”

The only relief one can have with regards to this chaos is that the foundation guarding the gates of its orders are solid and not prone questions of validity and enforceability. Keeping this in mind I feel it is imperative for a “New India” to have a technologically driven jurisprudence, in simple terms an emergence of legislation driven by the acceptance and regulation of technology. One can look at it as striking balance between giving encouragement while ensuring the said technology is not used to harm people.

The need of the hour for us as a country which is on its way to becoming the largest young workforce in the world is a clear-cut system enabling our legislature to clearly identify which ministry would be empowered to formulate laws or guidelines with respect to new technologies. In an ideal world this task would be easy as we have separate ministries, unfortunately the overlapping nature of technology creates a conundrum; a problem no one knows who is responsible to solve often turns into a catastrophe.

It is my firm belief that there is no problem that does not have a solution, in this case it would be most prudent to select senior members from overlapping ministries to formulate a joint committee which would then contemplate on possible guidelines together. The enforcement aspect of said guidelines as to which ministry would be responsible for the enforcement part of things would be resolved via parliamentary voting thereby making the entire operation in

consonance with the spirit of democracy. This solution would address the issue of ministries not having complete authority to legislate as well as formulating a clear guideline as to enforcement of said rules/guidelines.

With the advent of a new age upon us it is unquestionable that there will be situations that no one thought about or had made provisions for, there will be situations with emerging technologies that our existing boxes of categories would fail to categorise. It is in situations like these that a mature technologically driven jurisprudence would emerge as a beacon of light to guide our legislature and judiciary to safe shores. The emergence of a new jurisprudence is not a quick process, it is built on graves of failed thought-provoking ideologies and laws of the past. The steel of technological jurisprudence has entered the furnace of legislative action, it is now up to the jurists and the judiciary to give this hot steel a shape worthy of its cause.