

THE FLIP SIDE OF CURBING CYBER CRIMES- VIOLATION OF HUMAN RIGHTS

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Abstract

Human rights are the rights which are provided to an individual by virtue of him being a human being. These are the rights which a human being can enjoy everywhere. The point of global concern arises when we talk about safeguarding human rights in the cyberspace. When we talk about the human rights and cyberspace, we also talk on the issue of cybercrimes. Crimes which are done on the internet or by making internet a medium are known as cyber-crimes. Many a time cyber criminals perform such crimes which violate the human rights of the individuals. The solution which the legal authorities take out to combat this issue is by limiting the content which is being posted on the internet which in turn curtails the human rights of the individuals. Thus the human rights on the cyberspace are violated in both the ways, by crimes also and by application of laws also. The international organizations have now started to take this issue seriously and laws are being made on this issue. This paper focuses on the human rights violation in the cyberspace due to commission of cybercrimes and the application of laws. The paper concludes with describing the initiatives which the UNO and other like organs have taken to cater to this matter.

Keywords:- human rights, cybercrime, cyberspace, cyber security, united nation organization, international organization, law, internet.

Introduction:

Human Rights in cyber space is a new field of global concern. With the advent of internet and the popularity which it has gained in the recent years, it is necessary to monitor the cyber space and protect the human rights of people in it. The internet has given birth to a new category of criminals i.e., cyber criminals. The cyber criminals are intruding into the private lives of the

individuals thereby infringing the human rights of the internet users. The internet is a strong medium of expression of your ideas and thus it should be without any restrictions. To control and supervise the criminal activities on the internet, the human right of expression many at times can be violated. The internet provides you a platform to exercise the right to freedom of expression and information. The United Nations Human Rights Council (HRC) has stated that the freedoms of expression and information under Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) include the freedom to receive and communicate information, ideas and opinions through the Internet¹. Article 19(3) of the ICCPR, provides that, “The exercise of the right provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subjected to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health and morals.” The UN Human Rights Council has stated that “the same rights that people have offline must also be protected online”². Thus the freedom of speech and expression, privacy etc is provided in the cyber space also.

What Are Cyber Crimes, Cyberspace And Human Rights?

Cyber Crime³- Cyber crime is any criminal activity in which a computer or network is the source, target or tool or place of crime. According to The Cambridge English Dictionary cyber crimes are the crimes committed with the use of computers or relating to computers, especially through the internet. Crimes which involve use of information or usage of electronic means in facilitating crime are covered under the ambit of cyber crime. Cyber space crimes may be committed against persons, property, government and society at large.

Cyber Space⁴ - according to Webopedia, “A metaphor for describing the non-physical terrain created by computer systems. Online systems, for example, create a cyberspace within which people can communicate with one another (via e-mail), do research, or simply window shop. Like physical space, cyberspace contains *objects* (files, mail messages, graphics, etc.) and different modes of transportation and delivery. Unlike real space, though, exploring cyberspace

¹ "Human Rights Committee". *General Comment no.34, note 4, para 12.*

² "The promotion, protection and enjoyment of human rights on the Internet". *Human Rights Council Resolution*. Retrieved April 29, 2017

³ <https://www.lawctopus.com/academike/cyber-crimes-other-liabilities/>

⁴ <http://www.webopedia.com/TERM/C/cyberspace.html>

does not require any physical movement other than pressing keys on a keyboard or moving a mouse. Some programs, particularly computer games, are designed to create a special cyberspace, one that resembles physical reality in some ways but defies it in others. In its extreme form, called *virtual reality*, users are presented with visual, auditory, and even tactile feedback that makes cyberspace feel real. The term was coined by author William Gibson in his sci-fi novel *Neuromancer* (1984)”.

Human Rights⁵ - The Universal Declaration of Human Rights which is the pioneering document in this field provides the definition of human rights in its first two articles as follows:-

“Article 1- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.”

Brief history of Human Rights:

Every human being by virtue of his or her humanity is entitled to certain rights which are known as human rights. Many cultural and traditional documents talk about the existence of human rights. It was World War II which brought the issue Human Rights. The Hindu Vedas, The Code of Hammurabi, The Bible, The Quran and the Analects of Confucius are the five of the oldest written sources which provide for the duties, rights and responsibilities of the people. The Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791) are the pioneers of Human Rights documents in the present day. After the World War II the government of many countries decided on establishing the United Nations, with the primary goal of bolstering international peace and preventing conflict and later on the United Nations Charter in 1945 was made. On December 10, 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the 56 members of the United Nations. International Covenant on

⁵ <http://www.un.org/en/universal-declaration-human-rights/>

Civil and Political Rights (ICCPR) , International Bill of Human Rights, Convention on the Elimination of All Forms of Discrimination against Women, 1979, Convention on the Rights of the Child, 1989, The Convention on the Elimination of All Forms of Racial Discrimination, The Convention on the Prevention and Punishment of the Crime of Genocide, The Convention on the Political Rights of Women, The Slavery Convention of 1926, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are some of the documents on Human Rights.

List of some human rights are as follows⁶:-

- Right to life
- Right not to be tortured
- Right to freedom of expression
- Right to political participation
- Right to education
- Right to privacy, etc

Cyber Crimes affecting Human Rights:

- Cyber bullying-
Discriminatory behaviour that occurs ‘off-line’ also occurs ‘online’ One of these acts is ‘cyber bullying’. It creates an impact on a range of human rights including: the right to the highest attainable standard of physical and mental health⁷, rights to work and fair working conditions⁸ the right to freedom of expression and to hold opinions without interference⁹, a child or young person’s right to leisure and play¹⁰.
- Cyber-racism-
Cyber racism can be in the form of individuals posting racist comments or participating in group pages specifically set up for a racist purpose.¹¹ A famous example of this was

⁶ <http://www.religion-online.org/showarticle.asp?title=283>

⁷ "UDHR, art 25". ICESCR, art 12 (1); CRC art 24.

⁸ "UDHR, art 23". ICESCR, arts 6 and 7.

⁹ "UDHR, art 19". ICESCR, art 19.

¹⁰ "CRC, art 31".

¹¹ "Background Paper: Human Rights in Cyberspace" , *Australian Human Right Commission*. Retrieved April 29, 2017

an Aboriginal memes Facebook page which had various images of indigenous people with racist captions. Facebook reported that page as ‘controversial humour’

- Hate speech-

Article 20 of the ICCPR states “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”¹²Such speech is given with an intention to disturb, promote violence or prejudicial actions against a group of people based on their ethnicity, race, nationality or sexual orientation. Cyberspace has also been used in this way as a medium for destruction. the human rights are open to danger when terrorists collude to instigate people to commit violence towards a common good. “Al-Qaeda” moved to cyberspace, “the ultimate ungoverned territory” where schools were set up for promotion of ideological and military training and active propaganda arms.¹³ It has become a subject of importance and such situations are monitored to prepare the future generations to tackle the menace of cyber-terrorists.

When we talk about human rights we also include the public privacy. Public privacy applies to the expression on the internet and its safety on the cyberspace. When any violation of Human Rights takes place in the cyber security, the Internet Service providers engaged in the publication of the content on that particular website can be held liable. The service providers which act as a mere distributor of the content shall not be held liable for any such violation of Human Rights. Moreover the service providers shall act as moral guardians so that the content which is being posted shall be monitored. But on the other side of the coin if such monitoring rights will be provided to them then they may compromise with the right to expression of the internet users. The governance in the cyber space is a difficult task as cyber space has no boundaries. Cyberspace harbours more individuals than any other country in the world, yet it is without any government, legislative bodies, law enforcement or any other sort of constitution. It is difficult to protect the rights of the individuals without the effective mechanisms in the cyberspace. The United Nations Organization, the Organization of American States, the African Union, the European Union aim to set international standards for the use of cyberspace and the Internet to be enforced by national governments, but have failed

¹² "International Covenant on Civil and Political Rights". *Office of the United Nations High Commissioner for Human Rights*. Retrieved 29 april 2017.

¹³ https://en.wikipedia.org/wiki/Human_rights_in_cyberspace

to do so. This leads to problems where cyber criminals find it easier to cross borders through the web, because it is unclear where jurisdiction lies. If a governing regime was ever established it would most likely consist of multiple stakeholders and actors including national, and international as well as private actors, such as representatives of companies, social networks, NGO's and individuals¹⁴

Human Rights Protection in Cyberspace:

Human Rights Protection in Cyberspace is urgently needed at National and International level. It is on the United Nations to have a rapid approach towards it rather than the slow one in this regard. The United Nations provides for safeguarding the Human Rights of the people and thus, it must start thinking towards its new form in this Internet Era. The human rights in the cyberspace must be given equal importance as to that of the traditional human rights. Human Rights like Right to Speech and Expression, Right to Information, Right to Know, Privacy Rights, etc are similar in Cyberspace. In fact, violation of Human Rights in Cyberspace is much easier and more frequent as compared to the traditional ones.

Information and Communication Technology (ICT) has changed the way we looked at traditional Human Rights and Civil Liberties. Earlier the Human Rights were only limited to physical and mental aspects. In the present scenario, with the introduction of Information and Communication Technology, Human Rights and Civil Liberties have taken a totally different meaning. But to our misfortune, the legislations around the world are lagging behind in protecting the Human Rights in Cyberspace.

On *October 5th, 2016* the United Nations Institute for Disarmament Research (UNIDIR) held a side event on cyberspace and international peace and security. Three expert presenters viz., Mr. Karsten Geier, Camino Kavanagh, and Daniel Stauffacher discussed the important details of cyber security in the modern world and how Information and Communications Technologies (ICT) are increasingly influential on economic, scientific, social, and political developments. Privacy is a human right provided by the universal declaration of human rights which is to be secured in the cyberspace also and thus digital privacy is the need of the hour. In the event the focus was made on the human rights and cyber terrorism.¹⁵ International cyber security

¹⁴ Mihr, Anja (2013). "Public Privacy Human Rights in Cyberspace".

¹⁵ <https://www.un.org/disarmament/update/the-un-cyberspace-and-international-peace-security-side-event-october-5th/>

concerns have pointed out the human rights concerns also which are needed to be safeguarded in the cyberspace. potential of misuse of cyberspace and the ease with which terrorist groups have been able to propagate, radicalize and recruit supporters, raise funds, and incite hatred and violence, remarks that some states have engaged in mass surveillance and censorship. Controlling the cyber sphere can undoubtedly infringe on internet users' freedom of speech and expression. . For its part, it was held that the United Nations System is working to solve these three issues by shaping and implementing norms, confidence, and capacity building measures. An overview of the different international organizations that are working on cyber security issues, including the Global Forum on Cyber Expertise (CFCE), the Global Cyber Security Capacity Centre (GCSCC), the Organization of American States, and the African Union Commission was provided in the event. Confidence building, international assistance, and capacity building were stressed as the main issues to be discussed and decided.

The Future Trends:

The future of human rights in cyberspace depends on the evolution of the law and its interpretation. Official discussions have taken place as to the future of cyberspace on April 2008 in the Virtual Law Conference which was held in New York and which had the participants such as Microsoft, Sony and the Walt Disney Company. It witnessed the discussions on Intellectual property enforcement, legal issues in virtual currency, legal issues in virtual property, ethical concerns for attorneys and executives in virtual worlds and how to litigate a virtual lawsuit. The US Congressional Hearing on Virtual Worlds also took place and its purpose was to educate and sort out the prospects of virtual worlds. The agenda included analysing concerns related to consumer protection, intellectual property protection and child protection, amongst other things. The hearing was one of the first legislative inquiries into virtual worlds. Now it is to be seen that these gatherings have any lasting results or not.

Conclusion:

As the world became too small, some started dreaming and writing about virtual and infinite worlds that they could navigate without being affected any longer by daily problems. Suddenly they felt that the result of putting together internet service providers (ISPs), connecting computers to the internet and browsing websites maintained by web hosting services, lead to the emergence of a new domain, global and common for everyone which transcended boundaries, but the cyberspace with its benefits has a darker side also and marks the presence

of cyber crimes which ultimately lead to the violation of human rights. The cyberspace is the space for the free expression of the ideas of the individual which should take place without any interference of governmental or private individual. Cooperation amongst authorities in every field is needed so that the human rights of the individuals are not violated.

An internationally acceptable law should be there to safeguard the human rights of the individuals in the cyberspace. If there is no “Internationally Acceptable Standard” for Protection of Human Rights in Cyberspace, Countries would enact and apply rigid laws so as to keep an eye on the criminal activities thereby infringing the right to expression of the human beings. In the recent years we can see that in the UN Human Rights Council’s 17th Session, the UNO considered Internet access a Human Right and disconnecting or limiting the people from expressing their views on the internet , a violation of Human Rights.

Thus to protect human rights of the individuals in the cyberspace, international organizations must prepare effective and efficient laws which can stop the cybercrimes that affect the human dignity and honour i.e., human rights and while monitoring the happening of such cyber-crimes, the human rights of expression and such other rights should also be provided. It’s a two-pronged process for the law making authorities, first to stop such activities which violate human rights and second to ensure that checking such crimes does not lead to the violation of human rights. Therefore a unique flavor should be provided to the Internet which allows individuals to exercise a range of Human Rights, and to promote the progress of the society as a whole.

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