

# Paramount Law Times Newsletter



(For uptodating law and events)

2014-15 – (second half)

Issue no 0011

Dated 07 August, 2014

## WELCOME ANNOUNCEMENT

‘MY PERSPECTIVE’ by Justice S. D. Anand (Retired, Judge Punjab and Haryana High Court) is published in issue no 10.

### Cyber Law challenges

Law researcher and Cyber Law practitioner Mr. Nishant Ahlawat, has very graciously agreed to share his research in Cyber Law Domain. His first write up under the caption ‘Cyber Wars: Are we legally ready to counter the attacks’ is included in the present issue.

### Legal Audit and Moral Audit Services

Paramount Law Consultants Ltd., Delhi has completed its research and is taking up legal audit and moral audit services for the Corporates.

Subhash Nagpal  
Chairman  
Paramount Law Consultants  
Ltd., Delhi

## UPHOLDING THE PROBITY IN PUBLIC LIFE

Dr. S. K. Kapoor  
Ved Ratan

### I

#### Principle emphasized once again

1. ‘Probity in Public life’ is the fundamental principle of Governance, which has been, once again re-emphasized by the Supreme Court, in its judgment dated August 06, 2014 in *Writ Petition (C) No. 305 Of 2007 titled Manzoor Ali Khan Vs. Union of India & Ors.*
2. Hon’ble Justice Mr. Adarsh Kumar Goel, has specifically re-emphasized the observations of the Supreme Court in Vineet Narain case by way of para no 81 of the said judgment as that:

*“81. In my view, Parliament should consider the constitutional imperative of Article 14 enshrining the Rule of Law wherein “due process of law” has been read into by introducing a time-limit in Section 19 of the PC Act, 1988 for its working in a reasonable manner. Parliament may, in my opinion, consider the following guidelines:*

*(a) All proposals for sanction placed before any sanctioning authority empowered to grant sanction for prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.*

*(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.*

*(c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit.”*

## **II**

### **Constitutional imperative**

3. Sacrosanct Constitutional imperative about ‘due process of law’ pointed by the Supreme Court is expected to be a reality of ‘Governance’.

## **III**

### **Let there be no need for another public interest litigation on the point**

4. We, the citizens of India, faithfully believe that let the Constitutional Imperatives standing specifically spelled out by the Supreme Court are adopted in letter and spirit. Let there be no need of another public interest litigation on the point.

Link of the above referred Judgment

<http://judis.nic.in/supremecourt/imgs1.aspx?filename=41810>

\*

## **CYBER WARS: ARE WE LEGALLY READY TO COUNTER THE ATTACKS**

**Nishant Ahlawat**  
Cyber Law practitioner

### I

#### **Center stage perspective for India**

India as the world knows has become the centre stage for the corporate and political affairs of the globe. Having a sneak peek into the recent happenings, it becomes much evident that India is bound to face unprecedented friction in all spheres, be it social, political, structural, financial or related to national security. When we thought it was just the direct acts of strategic terrorism from our enemies operating within and from distant lands that we are facing, the booming IT industry and everyday improvising means and modes of communication and data transfer has opened new options for attacking and challenging the very existence of the greatest democracy in the world .

### II

#### **Advance communications Era**

The use of advance means of communication in terms of GPS, Blackberry, Switchable Sim cards, remailers and VOIP as was revealed in the investigations or the follow up cyber attacks by the Pakistani Cyber Army as they hacked into the websites of Indian Institute of Remote Sensing[i] , the Center for Transportation Research and Management etc this happenings have marked the advent a new cause for understanding our cyber and technology rights in backdrop of an almost complicated and inefficient regulatory regime as it exists on date.

### III

#### **Security incidents scenario**

The year-wise summary of various types of incidents handled by CERT IN is given below:

Security Incidents	2004	2005	2006	2007	2008	2009	2010	2011
Phishing	3	101	339	392	604	374	508	674
Network Scanning / Probing	11	40	177	223	265	303	277	1748
Virus / Malicious Code	5	95	19	358	408	596	2817	2765
Spam	-	-	-	-	305	285	181	2480
Website Compromise & Malware Propagation	-	-	-	-	835	6548	6344	4394
Others	4	18	17	264	148	160	188	1240
<b>Total</b>	<b>23</b>	<b>254</b>	<b>552</b>	<b>1237</b>	<b>2565</b>	<b>8266</b>	<b>10315</b>	<b>13301</b>

#### **IV Overview**

An overview of the table itself establishes the steep rise in number of security incidents related to cyber attacks. While these figures give an idea of the gravity of the situation, the actual picture is far grimmer. It becomes much difficult to ascertain and identify the conspirators of such attacks and their intentions as for executing such an attack they don't even have to leave the comfort zone of their houses.

#### **V Need for effective regulatory mechanism**

While lately the dependency on technology and networks in all walks of life has established the need for an active and effective mechanism for regulating the cyber world, the rules and legislations on date hardly make up to deal with the complicated situation which have and which will arise in years to come.

#### **VI Illustrative situation of Aadhar Cards**

Besides, the Aadhar cards that are being in the process of becoming the most effective Identity for the Citizens, the nature of data related to every citizen as is being profiled for the purpose of these cards and being stored in huge databases is not actually away from the eyes of the enemy. The nature of personal information which if exposed to wrong eyes can truly be misused in all possible sense.

#### **VII Need for data protection policy**

What further darkens the issue is the fact that except totally relying on the Constitution of India or some of the enabling acts, India has no data privacy or protection laws as on date to cope up with and handle any issue that may arise with the loss of any such data.

It's high time that a nationwide debate be called in for the country and countrymen to understand the very nature of these attacks that are and that will take place in future and be prepared to counter them in the true sense of maintaining and securing the integrity of this great country.

-----

#### References

[i] Kamlesh Bajaj, -'Tweaking the law to deal with the cyber terrorism,'liveMint.com,<http://www.livemint/2009/01/15222108/Tweaking-the-law-to-deal-with.html>,accessed on January 15,2009.<http://www.technolegals.com/internet-law>

\*