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# **TECHNO-PROGRESSIVISM: CONTRIBUTIONS AND CHALLENGES**

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## **ABSTRACT**

Technology is the bedrock on which the formalistic techno-society has framed. This lucrative human-made resource has maximized its capacities when it has introduced in the field of information and communication. It led to an abrupt change in all possible walks of human life. Such a quantum leap led to the attainment of an innovative, effective, and fruitful development across sectors. However, the technology is still at its embryonic stage in the legal field qua one of the most sensitive public systems.

The technology has brought up to disseminate knowledgeable information across boundaries. Since in the legal sector, a vast amount of tasks rely on facts and data, the necessity of technology has arisen to deliver the readily available resources and updates about recent amendments, research on cases, precedents, judgments, and so on. Withal, the technology has the solution even for the greater problems faced by the Indian judiciary, which include case backlogs and setbacks.

In laymen's terms, techno-progressivism or tech progressivism relates the technological changes with the societal changes or vice versa. In addition, it holds that the very nature of the technology is to empower the hoi polloi, and its benefaction will always depend on the government's regulatory approach towards it.

Per contra, the techno development in other facets has led to the emergence of a divergent crime of cybercrime. Either the commission or prevention of cybercrime requires technical know-how. There are always two sides to every coin: similarly, the advent of technology endeavors to alleviate judicial difficulties on one side. Meanwhile, it has been termed as a threatening factor for data privacy and security. Thus, this piece of writing deals and elucidates how far the essence of techno-progressivism has been depicted in society? i.e. a basic study on its favours and disfavour.

## **TECHNOLOGICAL BREAKTHROUGH IN THE FIELD OF LAW:**

Even though the technological contribution is comparatively less in the field of law since it is in its budding phase, it has managed to update itself with the status quo issues. It is a crucial question, why the law should embrace technology and how far its development is important in the legal space.

While the optimum level of technology has been achieved in other sectors, as being a pen-pushing working system, the primary concern of the judiciary is the case pendency. Through the practice

of e-court and e-justice, the aggrieved party can claim their justice by the mean of digitally available court halls, where the proceedings take place via video conferencing. Hence, the procedures might be convenient, no need to glue on the manual inspections, court visiting, and so on. This will reduce the expenditure and delays. Withal, the risk and auxiliary expenses associate with the moving accused to the court will be lessening.

In recent decades, technology has been employed extensively in the judiciary for the effective practice of E-justice. In Australia, a fruitful result has been evidenced after the introduction of “cyber courts” in dealing with pending cases. The use of court management software has evinced to ameliorate various developed countries in deciding cases within minimal framed time. For example, In UK, the data-based system called CASEMAN has applied to the Local Country Court Management System (LOCCS) for the purpose of registration of cases, storage of softcopies of evidence, generation of cause list, and update records. Moreover, the prevalence of web conferencing for witnesses and accused investigation is common in all major countries. As far as India is concerned, the Mission Mode Project (MMR) has been launched under the E-governance plan with the motive of e-justice implementation. As an initiative, the National Informatics Centre (NIC) governs the project of Court Information System (COURTIS) alias E-courts with the guidance of an E-committee. The E-courts are interconnected with the NICNET, a satellite-based network of NIC. The primary purpose of COURTIS is to provide up-to-date judgments, cause lists, and daily order updates on the internet. Besides, the LOBIS (List of business information) was implemented to organize cases for scheduling cause lists and eliminates the manual generation of cause lists. All the said advancement in the judicial arena was the aftermath of the technology launch.

Similarly, the practice of E-contracts will enable the law firms to store the bundle of contracts in digital form, and managing software can be used to evaluate, organize, scrutinize, and archive the same in an instant of time. Generally, the E-contracts are formed in three ways namely via electronic data interchange networks (EDI), online purchasing of advertised products, and the exchange of electronic attachments through mails. This innovation in the contractual world will make the contracting process more reliable and convenient. The digital conversion of litigation papers and hard copies of contracts will be achieved by uploading the same in OBR (online review bundles). The softcopies of such documents related to the proceedings will be accessed by the concerned parties in OBR. This practice will aid a lot since less time-consuming and reduce costs.

The computerization of dockets, files, statistics, cause lists, and list of pending cases, precedents will improve judicial effectiveness and monitoring system.

Since legal researching is the indispensable skill required to sustain in the field of law, the availability of the precise and relevant source of information is a prerequisite for conducting research work for a case. IT has aided a lot by removing the lack of enlightenment and conserved time by reducing paper works. Such a lengthy manual research process is one of the prime reasons for the litigation delays and pendency of cases.

Concerning Alternative dispute resolution (ADR), includes the mechanisms like arbitration, mediation, and conciliation for the mean of settling the arisen disputes legally other than the regular lengthy practice of approaching the court. But, the divergent disputes arising in e-commerce platforms may inhibit its inevitable growth in this digital era. The replica of ADR in cyberspace is called ORD (online dispute resolution), where the entire process of ADR runs online i.e. it includes online case filing, hearings, acceptance, negotiations, and pronouncement of awards. The lots of e-commerce companies have benefited from this ODR since it is economical, efficient, and rapid, which negates physical documentation and meetings.

### **LEGAL RAMIFICATIONS AND HARDSHIPS:**

The law per se is dynamic and connotes the rule of etiquette. Over several decades, the field of law has changed in accordance with the social change or vice versa. Even though it is evidently an instrument of social engineering, the advent of technology in legal space has had impacted a lot in the balance of contrary forces.

Concerning the positive outcome of employed technology in law, as already stated, one of the initial benefits is the rise of the internet has enlightened the layman with aggregated legal updates. For instance, recently, Harvard Law School has publicized its entire collection of case laws<sup>1</sup>.

At the same time, the ramifications are even more serious than the benefits. The advancement of technology in legal as well as in other sectors is observed to be a vanishing point of law since it is challenging the furtherance of existing legislation to safeguard cybersecurity and data protection. The electronic information of an individual has become the prime target of cybercrime. But, it is the obligation of law to shield data qua everything has gone computerized non-physical data. The

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<sup>1</sup> Bruce Burk, New Technology and its Impact on the Practice of Law, Expert Institute, (Feb. 12, 2021), <https://www.expertinstitute.com/resources/insights/new-technology-and-its-impact-on-the-practice-of-law/>.

cyber-world is much bigger and vast than any other dimension of communication. As it is open to all and anyone can participate, despite connecting people and aiding through the dissemination of novel information across boundaries, it has become a tool to commit crimes. Cyber invasion is a kind of cybercrime, which has been reported as a crime committed against a country. Thus, whether it is an individual or a country both are vulnerable to cybercrimes. The big question is that, does the law have effective legislation to combat such divergent crime particularly when it comes to privacy violation and data breaches?

### **PROVISIONS IN RELEVANCE:**

The prominent legislation which deals with the comprehensive list of offenses related to cyberspace is the Information Technology Act, 2000. Since India lacks separate stand-alone legislation for data protection and personal privacy of the cyber society, it relies on several IT Act provisions to castigate the offence of privacy breach. The said Act came into force on October 17, 2000, and an amendment was made in 2008.

### **PROVISIONS UNDER THE IT ACT:**

#### **Section 43A-** compensation for failure to safeguard data storage

As per this Section, a corporate body will happen to pay damages following negligence in protecting the customer's information and prescribes to avoid the shortfall in security practices. The term corporate body includes all the commercial firms and companies indulged in professional activities.

As mentioned, the essentials of this Section includes,

- Negligence of the concerned corporate body in implementing and maintenance of the requisite security practices
- Such negligence leads to either wrongful loss or gains to someone

Claims for damages can be made to an adjudicator appointed under Section 46 of the Information Technology Act of 2000.

#### **Section 72-** the penalty for breach of privacy and confidentiality

Punishment: 2 years imprisonment and/or fine of 1 lakh INR.

This section provides that any person, who secured access to any e-materials, discloses the information without the consent of the concerned party will suffer the aforesaid ramification of his wrongful deed.

**Section 72A-** disclosure of information in breach of contract

Punishment: imprisonment not exceeding the term of 3 years or/ with a 5 lakh fine.

This Section penalizes a person's action of (including inter mediatory) disclosing any accessed material of others despite the existence of a lawful contract and without the consent of the concerned party.

**Section 75** of the said Act has confirmed its applicability even beyond the Indian jurisdiction.

Apart from this, the IT Act penalizes the various criminal activities taking place in cyberspace and regulates such activities, which may infringe the rights of the cyber community. For example, Sections 43 and 66 of this Act deals with hacking or data theft. In which, **Section 43** is a simple civil offence, and the offender is liable for damages whereas, **Section 66** prescribes the punishment of 3 years imprisonment or 5 lakh fine or both.

**NOTABLE CASE LAWS:**

**THE RIGHT TO PRIVACY IS A FUNDAMENTAL CONSTITUTIONAL RIGHT:**

*Justice K.S. Puttaswamy v. Union of India*<sup>2</sup>, The bench of 9 judges has pronounced a verdict by which they affirmed that the Right to privacy is a fundamental right since it is an integral part of the Right to life<sup>3</sup> of the Indian constitution. This anonymous judgment was delivered on 24th August 2017.

Consequently, the Ministry of Electronics and Information Technology had set up a committee to draft a bill on Personal Data Protection (PDA Bill, 2019). It aims to protect the privacy right of every citizen via shielding personal data and organizing the same.

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<sup>2</sup> Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

<sup>3</sup> INDIAN CONST. art. 21.

Similarly, in the case of *Kharak Singh v. State of Uttar Pradesh*<sup>4</sup>, the Apex court upheld that, Right to privacy will come within the ambit of fundamental right on the grounds of Article 19(1)(d) and 21 of Indian constitution.

### **DATA THEFT CASE,**

State A.P v. Prabhakar Sampath<sup>5</sup>, wherein the well-known market research company InfoTech Pvt. Ltd has lodged a complaint alleging that their e-reports were hacked and downloaded from their adobe content server. Since registered users can access such research reports, a strange user has accessed them with a public server. Later than, by spotting the IP Address, Prabhakar Sampath was convicted under Sections 43(a) and 66 of the IT Act for his act of hacking through the server of InfoTech. The accused was sentenced to rigorous imprisonment for a term of 2 years with a 10,000 INR fine.

### **OBSERVATIONS AND ANALYSIS:**

The development of legal tech is the key element by which the potent of law can be achieved. To endeavour the same Indian government has initiated and implemented the practice of e-courts and e-justice under the e-governance plan. The judiciary is transforming accordingly. For instance, in the case of *Mukul V State of Punjab (2018)*, the admissibility of WhatsApp messages as a piece of electronic evidence has counted since it is even permissible under Section 65 of the Indian evidence Act of 1872. Even though the law is struggling with the sea change, the advancement of technology is compatible.

Per contra, catena of cybercrimes was reported every single day. One of the notable incidents is *a cyber attack on cosmos bank* this malware attack took place in august 2018 in the Pune branch. The hackers cracked and invaded the domain bank server and lucratively transacted 94 crores illegally to a bank in Hong Kong; even they tracked the details of VISA and user's debit cards by accessing the ATM server. At the same time, they attacked the payment gateway; thereby neither the bank nor the depositors could trace such transactions. Probably, if someone invades cyberspace to unshackle the foundation of most secured nations to hack the available information stored in a remote computer, to destroy, copy, to defraud the same, to make the country undergo an economic

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<sup>4</sup> *Kharak Singh v. State of Uttar Pradesh*, (1964) SCR (1) 332 (India).

<sup>5</sup> *State A.P v. Prabhakar Sampath*, (1986) AIR 210, (1985) SCRsupl.(2) 573 (India).

crisis. This malicious invasion of cyberspace by taking advantage of the existing flaws in the website maintained by the government will make the whole country fall as a victim of the new age crimes example: cyber terrorism, cyber espionage, hacking government website with the intention of trespassing, and steal the secured data of a nation. Even though the IT Act prescribes the punishment of life imprisonment under **Section 66F** for cyber terrorism, after all, it is flaccid since the cyber crooks are vastly superior in handling the technology than the authorities.

Cybersecurity laws and regulations in the United States are said to be the most effective and robust in the world. The US has a package of laws to deal with data theft and cyber privacy example, the consumer protection Act of 2017, aimed at securing user privacy and preventing data theft. This is applicable to all the institutions or organizations, which indulged in the collection and usage of the user's personal information. Apart from this, some Acts were introduced in the US for enhancing the common goal of cybersecurity viz. Cybersecurity Information-sharing Act (CISA), Cyber Enhancement Act of 2014, Federal Exchange Data Breach Notification Act of 2015, National Cybersecurity Protection Advancement Act of 2015. But India is still relying on IT Act for all computer-related crimes.

As the Roscoe Pound said, "*Legal order must be flexible as well as stable. Law must be overhauled continuously and refitted continually to the change in social life which it is to govern*".<sup>6</sup> Similarly, the law must change in accordance with social change. The technological development in law includes both judicial development and as well as the updated legislation to combat its ramification.

### **CONCLUSION:**

Whether the technology in law is a boon or bane, the question is not *Res Integra*, the techno-legal enhancement will never be considered as a bane since it is truly a blessing. The initial phase of its usage will be tricky, but it should be embraced to headway the subsequent progress in the field of law. The reason behind claiming technology a bane is based on lacking legal efficacy in combating the techno ramifications. Today's complex society is demanding a conflicting progression: it may be paradoxical. On the one hand, it calls for technological development; meanwhile, it is demanding personal privacy as well, there arise complications. It manifests a tension like

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<sup>6</sup>K.I. Pavan Kumar, *Cyber prudence*, <http://goforthelaw.com/articles/legaedu/legaedu2.htm>.

technology versus law or its development versus consequences. Anyways, everything has two facets; it depends on which face is being entertained and utilized. Thus the aforementioned concept of techno-progressivism has its impact on our society. At the same time, the subject matter of law is the individual. When that individual's rights got infringed, then the law comes into action. No matter whether it is a physical space or cyberspace, no one should fall victim to any sorts of crimes. Ultimately, the government is obliged to maintain and guard the individual's rights viz. right to development as well as right to privacy, since both are being an integral part of the constitutional right to life.

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