

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 4 | Issue 2
2021

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Need for Regulation of Cyber Cafe in India

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ABSTRACT

This paper focuses on why we need to regulate the cyber cafes in India? before years India do not have any laws that can restrict the limit of cyber cafes, without any registration any person can open a cyber cafe, the cyber cafes were so inappropriate in itself that it became a huge hub for online speculative business and illegal activities with no records of the users by the owner of café it became a severe issue for the entire country.

Without any registration the cafes provides services to the people, no records with the registration agency. This has become a major issue and the public needs to be aware about it as soon as possible the different types of internet café includes internet cafe, gaming cyber cafe, cyber cafe and restaurant, with this the owners takes a good Wi-Fi connectivity without any prior permission from the respective authority or government. A person as a user sitting in cafe age below 16 years put his age and email address and get access to porn videos or other speculative games the reason is no installation of software that blocks the sites. Children below the age of 18 became addictive to cyber cafes as the user id and passwords for accessing is already registered by the owner who may be above 18 years of age, so this children get access to all the sexual attractive games, fighting games or fashion games these games easily manipulates the mind of children with dirty thoughts and bad ideas and tricks to fight with others.

Another major drawback is hacking, with no details of time and records the hackers cannot be traced easily by the authority, the level of internet crimes was very high during the time, hacking the personal details of the person, hack personal messages from social media, viral any inappropriate videos, create nuisance through fake news that create disturbance or violence in societies such as news related to terrorist attacks. The person using online banking faces puts personal details the data stored by him was not secured in cyber cafes as a result person suffers from loss of money and the records was not mentioned who uses the same system next after that person. The issues with internet cannot be minimized till we get a solution from the central government.

On 11 September 2011, the government of India issues a gazettes notifying that no cyber café can run freely without any registration, registration from appropriate authority is very needful and compulsory. The owner running the cafe must contain the records of all the

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users and the staffs working inside the cafe. The café registered with the registration agency will get the unique number as the registration number.

I. INTRODUCTION

Cyber cafes are widely use networks that helps people to access the internet, avail the internet services, to access the internet information through worldwide, cyber cafes became a dangerous hub that promotes internet crimes, people were using internet to raise terrorism, or hacking bank passwords or card details or any personal details that can harm reputation or status of person in society. Such issues raise the attention of regulation and provision of cyber cafes in India.

Before, people without any authorized permission or prior permission from the government can start their cafes and there is no one to check the mismanagement or inappropriate use of internet in cyber cafes.

“This problem raises the demand of law to govern cyber cafes, through amendment of information technology Act, 2008 that changes the scope of cyber cafes by regulation the official gazette through the country that protects and regulates the cyber café’s since 2011.”³

Whereas the 2000 information technology Act still focuses on “network services provider” that took section 79 includes ‘due diligence’ that includes the punishment for the offences related to internet.

Whereas ‘CyLawCom’ guidelines initiated by the government that includes a test for the cafes, after passing the test, the certificate granted from the registration agency to open the internet café in their locality and after certificate the same get published to their official websites there can be number or owner can be one or more than one.

The definition of cyber cafe as given under this section 2(na) of information technology act 2008.

“Cyber café means any facility from where access to the internet is offered by any person in the ordinary course of business to the member of the public.”⁴

Before the information technology act was passed, some of the states passed the state laws and order to protect the public from cyber cafes crimes, these states includes Karnataka,

³ Naavi, *cyber cafes under ITA,2008*, <https://www.bloggernews.net/future-of-cyber-cafes-in-india/> January 9, 2009

⁴ Syed mohd uzair iqbal, *cyber crime and cyber terrorism in India*, <http://ir.amu.ac.in/9776/1/T%208845.pdf>, thesis, Aligarh muslim university, 2013

Maharashtra, Uttar Pradesh, Tamil Nadu and Kerala but after the enactment of cyber cafe regulation in official gazette by government of India that amends the provisions of information technology act, 2008.

Karnataka

“Any premise where the cyber café owner/ Network services provider provides the computer services including internet access to the public.”⁵⁶

Tamil Nadu

“Any establishment by what so ever name called where the general public have an access to internet in any of its forms, provides either or payment or free of charges for any purpose including recreation or amusement.”⁷

II. PROVISIONS TO PROTECT CYBER CAFE IN INDIA

Section 67(6) of information technology Act of 2008

Any intermediary has the authority to take any piece of information from any cyber cafes, as per the details mentioned in the gazettes provided by the central government.

Whenever someone tries to boycott the rules and regulation as mentioned under the clause (1) of section 67, shall punish with 3 years of imprisonment or fine or both.

The offences committed by cyber cafes are compoundable and bail able offences in nature. With the passage of time additional alternation were being made by the government, to protect the public from such offensive activities, section 69, 69(A), 69(B) gives authority to the government to randomly check any network, temporarily or permanently block any network or the user in case collect any information that is illegal or not authenticated to use in that particular country such networks can be traced and blocked a the same time.

Section 69(A) – The central government or any state within the geographical boundaries or any specialized person assigned by the government, or any expert from that maintains good terms with India, has the permission to encrypt or decrypt the personal messages or any chat between the users, monitor any chats or any information stores in any computer without any permission if found suspected by the any agencies.

Any person whosoever accessing the data relating to any internet crimes as per mentioned in

⁵ Syed mohd uzair iqbal, *cyber crime and cyber terrorism in India*, <http://ir.amu.ac.in/9776/1/T%208845.pdf>, thesis, Aligarh muslim university, 2013

⁶ Naavi, *future of cyber cafes in India*, bloggernews.net/future-of-cyber-law-India, October 10, 2009.

⁷ Naavi, *future of cyber cafes in India*, bloggernews.net/future-of-cyber-law-in-India, October 10, 2009.

clause (1) the authority has the right to call upon them to the agency.

- Such person liable to access the information to the authority of any transmission of data.
- The authority has the right to decrypt, monitor information store on any laptops, personal computers stored under the cyber cafes.
- If any person who don't show such information to the authority or agency is liable to 7 years of punishment and fine or both.

69(A)- this section contains the central government, state government has the power to appoint any agency or authority to protect the interest of people to search for the offences that are cognizable in nature, government and agency has the power to block any website, such as pornography or any app used by the user or any information that is inappropriate or hurts the sentiments of the society or any community or any message that circulated and provokes peace in the society, such websites, messages within seconds can be blocked by authorities or agencies. The punishment for such offences can be extended up to 7 years or with fine or both.

“69(B) - the central government or state government or any other agency specified by the government has the authority to collect traffic data from any user that includes the time, search history, cookies, data stores in computer, search, location history and the data send or receive from user.”⁸

The offence convicted by the person under section 69(b), shall be punished for an imprisonment up to 3 years with fine or both.

III. THE ROLE OF CENTRAL GOVERNMENT

“The government of India issues the guidelines for cyber café on 11th April 2011, the central government makes the guidelines by interpreting section 87 read with section 79 of information technology act, 2000.

The definition of this act states that the act of cyber café will be the part of information technology act, 2000 and it do not convey any other act by the information technology act.”⁹

The appropriate government denotes the role of central, state and union territory government. The central government through this gazette makes a strict rule that includes compulsory registration of café in India and authentic and compulsory identification of user with the valid

⁸ Prashad iyenger, *cis para-wise comment on cyber cafes rules, 2011*, <https://cis-india.org/internet-governance/blog/cyber-cafe-rules>, 25th February 2011

⁹ Anil kumarbakshi, *privacy in cyberspace:-A digital perspective*, ISSN 2249 -0558, <https://www.ijmra.us>, August 8TH, 2018

Identity proof.

Agency appointed by government of India for registering Cyber Cafes.

All cyber cafes that fulfill the requirements were given a registration number a unique key or unique identity number from registration agency.

The details must includes proper and correct name of the café, the permanent address of the café, with details includes phone number and email id, proprietors can be single ownership or with more than 1 ownership, correct date of opening the cyber cafe, the details of the owner it can be more than one in ownerships, if register then the copy of the registration must be submitted to the agency and if not registration agency after all the verification would provide the certificate of valid cyber cafe. Such details can be submitted online through online forms available at websites for registration. The most important task for cyber cafes is to submit the specification of services that charged in cyber cafes.

If not registered the person from registration agency would come on a random visit for inspection at any time for verification.

Ones the cyber café registered then the details of cyber café will get published on official site of registration agency.

IV. VALID ID'S FOR REGISTRATION

After registration, the cyber café cannot allow the user to use the resources of internet without Id proofs, the verification process became a very essential part it includes the Id cards of school and collages. For any payment purpose, must have a copy of debit, credit or copy or bank passbook. If not available then submission of voter id's like PAN cards, photo identity card, driving license, UID and UIDAI a copy of any of this items can be submitted with the cyber cafes.

All the cyber cafes after this notification were allowed to keep the copies of Id of users, which avails the services in any cyber cafes. If any user entered without the ID's then, the photos must be taken through web cam to maintain the records in registers for at least 1 year of duration.

A minor without any unique identity must be assisted by an adult.

Any person if found suspicious or with criminal intent, then cyber café owner has the right to call the nearby police station.

The cyber café has to maintain the monthly report of the user, they have to store the data in electronic form or through electronic signature, these register cannot be altered again and again.

This includes the login and logout time, details includes the name, address, gender, contact number and documents of the user.

This information after 1 month is submitted to the registration agency either in soft or hard copy by the owner of the cyber cafes.

Its mandatory for the cyber café owner to maintain the backup of the given data used by the users, if they face any difficulty then government allows to visit a website for assistance and help for any queries related to cyber café www.cert-in.org.in

V. NEEDFUL ESSENTIALS FOR CYBER CAFES

- All cyber cafes must mandatorily maintain the cubical, that cubical must have a 5 inch and 4 cm of heights and partition.
- Any person below the age of 18 years or a minor shall not be given a separate cubical for surfing net.
- Other than cubical all the screen of the computer must to keep open.
- The standard Indian time, must be set to all the computer and normal clock and it must show the same timing in all the clocks.
- All the computers in café must installed software that automatically block sites including pornography sites or any sites containing obscene matters or information.
- The details of staff and the users using the cyber café must be maintained and keep in records.
- The information ones recorded in record cannot be altered again and again by the owner.
- The system setting must be in such manner that the user cannot change the setting of the system or software, or which they works.

VI. CONCLUSION

In future there is a need to develop the laws and provisions for cyber cafes as the information technology act of 2005 and rules and regulation published in official gazettes is not enough the cyber crimes increasing day by day, criminals searching the new methods and techniques to make frauds or cheat with the any individual. This increases a demand to get a proper Act on cyber law in future.

The higher authority must look after this matter seriously, the crime related to internet has

become very harsh to find the evidence due to lack of stored data and network.

The government must be vigilant and must understand the cons of the cyber café and future threats that can harm any individuals.

The cyber institution must keep and vigilant eye on any encrypt text or any decoded word or text must react on it very suddenly.
