

Legal Issues
In
Social Media & Networking, Gaming and IP in Artificial Intelligence

Legal Issue- I

Whether Governmental orders for takedown of posts/accounts on social media are violative of the freedom of speech and expression?

Introduction

- ❖ During the period of January-October 2019, the Ministry of Electronics and Information Technology had ordered for blocking access to around 3433 URLs on social media.
- ❖ Rising number of takedown and account suspension requests by the Government of India [over 1,000 in February 2021 alone].
- ❖ Notification of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
- ❖ **Article 19(1)(a), The Constitution of India –**
 - “(1) All citizens shall have the right— (a) to freedom of speech and expression”

3

Relevant Provisions

❖ Article 19(2), The Constitution of India –

- “Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence” (emphasis supplied)

❖ Section 69A, The Information Technology Act, 2000 –

- “Where the Central Government or any of its officers specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2) for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.” (emphasis supplied)

Anuradha Bhasin & Ors. vs. Union of India & Ors. [AIR 2020 SC 1308]

- ❖ *“There is a consistent criticism that the development of technology is not met by equivalent movement in the law...Non recognition of technology within the sphere of law is only a disservice to the inevitable. In this light, the importance of internet cannot be underestimated, as from morning to night we are encapsulated within the cyberspace and our most basic activities are enabled by the use of internet.”*
- ❖ *“Expression through the internet has gained contemporary relevance and is one of the major means of information diffusion. Therefore, the freedom of speech and expression through the medium of internet is an integral part of Article 19(1)(a) and accordingly, any restriction on the same must be in accordance with Article 19(2) of the Constitution.”*
- 5 ❖ *“We declare that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection Under Article 19(1) (a) and Article 19(1)(g). The restriction upon such fundamental rights should be in consonance with the mandate Under Article 19(2) and (6) of the Constitution, inclusive of the test of proportionality”*

Legal Issue- II

Whether Online Fantasy Sports are prohibited as amounting to “gambling”?

Introduction

- ❖ Online Fantasy Sports involve players creating their own virtual sports team with characters based on real-life players. The performance of these players in real-life contributes to the players' virtual points in the online sport.
- ❖ Section 12, Public Gambling Act, 1867- Exception of “*game of skill*”.
- ❖ State-wise Regulation.
- ❖ **Report No. 276, Legal Framework: Gambling and Sports Betting Including in Cricket in India, Law Commission Of India, July 2018-**
 - *“The main test to determine whether a game amounts to gambling or not is, what dominates/preponderates, whether skill or chance. Games of chance are those where the winner is predominantly determined by luck; the result of the game is entirely uncertain and a person is unable to influence such result by his mental or physical skill...On the other hand, the result of a game of skill is influenced by the expertise, knowledge and training of the player. In India, games of chance fall under the category of gambling, and are generally prohibited, while games of skill, falling outside the ambit of gambling are usually exempted.”*

Judicial Interpretation

❖ **K.R. Lakshmanan vs. State of Tamil Nadu and Ors. [AIR 1996 SC 1153]**

- *“Games may be of chance, or of skill or of skill and chance combined. A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, the shuffling of the cards, are all modes of chance. In these games the result is wholly uncertain and doubtful...A game of skill, on the other hand - although the element of chance necessarily cannot be entirely eliminated - is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player. Golf, chess and even Rummy are considered to be games of skill.”*

❖ **Shri. Varun Gumber vs. Union Territory of Chandigarh & Ors [2017 CriLJ 3827]**

- *“...I am of the view that playing of fantasy game by any participant user involves virtual team by him which would certainly requires a considerable skill, judgment and discretion. The participant has to assess the relative worth of each athlete/sportsperson as against all athlete/sportspersons available for selection. He is required to study the rules and regulations of strength of athlete or player and weakness also...Admittedly, the petitioner himself created a virtual team of a Cricket Match between two countries as indicated in the website by choosing 11 players out of total player, who were to play for two countries collectively and after forming a virtual team of 11 players as per his own selection, knowledge and judgment, which is thoughtful will, he joined various leagues for the leagues selected by him and after registration which was declared before participating, was not about possibility of winning or losing like horse riding not every better is winner.”*

Judicial Interpretation

❖ **Gurdeep Singh Sachar vs. Union of India and Ors. [2019 [30] G.S.T.L. 441]**

- *“The petitioner claims that the result would depend largely on extraneous factors such as, who amongst the players actually play better in the real game on a particular day, which according to the petitioner would be a matter of chance, howsoever skillful a participant player in the online fantasy game may be. The petitioner has lost sight of the fact that the result of the fantasy game contest on the platform of respondent No. 3, is not at all dependent on winning or losing of any particular team in the real world game. Thus, no betting or gambling is involved in their fantasy games. Their result is not dependent upon winning or losing of any particular team in real world on any given day. In these circumstances, there is no plausible reason to take a contrary view than that taken by the Hon'ble Punjab and Haryana High court”*

❖ **Ravindra Singh Chaudhary vs. Union of India and Ors. [2020(4)RLW3322(Raj.)]**

- *“the first issue as to whether the online fantasy sports games offered on Dream-11 platform are gambling/betting is decided against the PIL petitioner. Since the result of fantasy game depends on skill of participant and not sheer chance, and winning or losing of virtual team created by the participant is also independent of outcome of the game or event in the real world, we hold that the format of online fantasy game offered by respondent No. 5 is a game of mere skill and their business has protection under Article 19(1)(g) of the Constitution of India, as repeatedly held by various Courts and affirmed by the Hon'ble Supreme Court.”*

Legal Issue- III

Whether AI generated ‘Deepfakes’ would be entitled to copyright protection?

Introduction

- ❖ ‘*Deepfake*’ typically refers to a video (cinematograph work)/image (artistic work) that has been edited using a form of Artificial Intelligence known as deep learning to replace a person in an original video/image with another person or their likeness.
- ❖ Deepfakes have also come to include entirely fictional images created by Artificial Intelligence systems.
- ❖ Based on the type of media, deepfakes could be categorized as-
 - Original artistic works; and
 - Derivative works.

Relevant Provisions

❖ Section 2(a)(v), the Copyright Act, 1957-

- *““adaptation” means,- In relation to any work, any use of such work involving its rearrangement or alteration”*

❖ Section 14, the Copyright Act, 1957-

- *“For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:— (c) in the case of an artistic work, - to reproduce the work in any material form...(v) to make any adaptation of the work...(d) in the case of a cinematograph film,— to make a copy of the film, including— (A) a photograph of any image forming part thereof; or (B) storing of it in any medium by electronic or other means...(iii) to communicate the film to the public”*

❖ Section 17, the Copyright Act, 1957-

- *“Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein”*

Relevant Case Law

❖ **Eastern Book Company vs. D B Modak [(2008) 1 SCC 1]**

- *“In many cases, a work is derived from an existing work. Whether in such a derivative work, a new copyright work is created, will depend on various factors, and would one of them be only skill, capital and labour expended upon it to qualify for copyright protection in a derivative literary work created from the pre-existing material in the public domain, and the required exercise of independent skill, labour and capital in its creation by the author would qualify him for the copyright protection in the derivative work. Or would it be the creativity in a derivative work in which the final position will depend upon the amount and value of the corrections and improvements, the independent skill & labour, and the creativity in the end-product is such as to create a new copyright work to make the creator of the derivative work the author of it; and if not, there will be no new copyright work and then the original author will remain the author of the original work and the creator of the derivative work will have been the author of the alterations or the inputs put therein, for their nature will not have been such as to attract the protection under the law of copyright.”*

The Challenge of Personhood and Authorship

- ❖ Whether “author” as defined in the Copyright Act, 1957 is confined to natural persons?
- ❖ Current status of personhood for AI Systems in India
- ❖ Rights over authorship and copyright for non-humans
 - *Naruto et al v. David Slater*, No. 16-15469, 2018 WL 1902414 [9th Cir. Apr. 23, 2018], more popularly known as the *‘Monkey Selfie Case’*

THANK YOU!

Questions?

Krithika Muthuraman, Associate

15

© ALG India Law Offices LLP, 2021.

Disclaimer: Views, opinions, and interpretations are solely those of the presenters, not of the firm (ALG India Law Offices LLP) nor reflective thereof.

This presentation hosted at: https://www.algindia.com/wp-content/uploads/2021/03/LISS15_Krithika-Muthuraman_Legal-Issues-in-my-AOI_V1.pdf