

## FIR in Cyber Squatting: Misinterpretation of IT Act

Recently, a FIR has been lodged by the Economic Offences Wing of the Delhi Police on the complaint of the President Secretariat citing a copy of an article published in the Economic Times, dated November 29, 2009, which allegedly pertained to the fake use of the names of politically powerful personalities as a domain name on websites. It was further alleged in the said complaint that a website exists with the domain name [www.pratibhapatil.com](http://www.pratibhapatil.com) having no connection with the Hon'ble President, which allegedly hawks financial advisory, DVD rentals, education insurance, lingerie and much more. The police made some preliminary enquiry and it was found that the website was got registered by one Joy Antony, Kala parambath, Pathadam House, Kunnappi Hissey Puliyanan, P.O. Angamaly via Kochi, Kerala. The website was found to be hosted from Germany. The website has been got removed from the internet. There was no content on the website. Only some links of the other websites were given on the website. However, when the prosecution opinion was sought on the matter, the Ld. Chief Prosecutor opined that prima facie offence u/s 66/66A IT Act and Section 469 Indian Penal Code is made out. The FIR u/s 66/66A IT Act and Section 469 Indian Penal Code was registered by the EOW promptly acting on the aforesaid complaint and the opinion of the Public Prosecutor.

How much it is difficult for a common folk to get register FIR in a genuine case as heinous as rape where police simply turn down the complaint and do not register the FIR except when they are forced to do so by the order of the Court. The aforesaid example of the registration of FIR by the EOW is a glaring example, when on a sheer complaint of the president secretariat, promptly FIR has been registered where the preliminary enquiry by the police reveals that no cognizable offence is made out. Simply, a domain name containing the name of the President of India was registered having no content in it except some links of the other websites. There is no offence made out and Sections imputed under the Information Technology Act and Indian Penal Code is gross abuse of law and wastage of time by the investigating agencies that should devote its productive time to curb crimes and do some meaningful investigations into the genuine complaint registered as FIR. The Sections imputed in the aforesaid FIR has no connection with the allegations as mentioned in the FIR.

### Let's see the applicability of the Sections:

- **Section 66 IT Act:** Section 66 Information Technology Act is applicable when a person dishonestly or fraudulently, does any act referred to in section 43 which contains mainly ten acts which mainly comprises of downloading, copying from computer without permission, introducing virus or contaminant, hacking etc. Now, if one looks into the ten instances of the cyber contraventions as mentioned in the Section 43 Act which if done dishonestly or fraudulently attracts Section 66 IT Act, it is very difficult to fathom how registering the domain name containing the name of the President of India attracts Section 66 IT Act.
- **Section 66A IT Act:** This is a penal provision newly inserted under Chapter XI of the IT Act vide IT Amendment Act which makes punishment for sending offensive messages through communication service etc. The hosting of website containing the name of the President does not attract the Section 66A IT Act either.
- **Section 469 IPC:** This section of the Indian Penal Code is attracted when electronic record forged is used or intended to be used to harm the reputation of other. As per the own inquiry made by the police, the alleged website with the domain name containing the name of the President, is without any content. Now, the question arises, how can it harm the reputation of the President except misleading the general public.

The aforesaid allegation in the complaint simply discloses the abusive registration of the domain name using the name of the President, which is a case of cyber squatting. The word "cyber squatting" is not defined under the Indian Laws. However, Cyber squatting (also known as domain squatting), according to the United States federal law known as the Anti cyber squatting Consumer Protection Act, is registering, trafficking in, or using a domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else. The cyber squatter then offers to sell the domain to the person or company who owns a trademark contained within the name at an inflated price.

The aforesaid case of cyber squatting or domain name squatting is not first of its kind in India. There have been instances where the domain names in the name of the famous personalities have been registered. One such domain name [www.arunjaitley.com](http://www.arunjaitley.com) containing the name of Senior Counsel and BJP Leader Mr. Arun Jaitley was registered by the cyber squatter. Mr Jaitley filed the suit in the Hon'ble Delhi High Court, stating that his name was being used by some other person who had made a website using his name. Justice S Murlidhar granted an injunction to use the website and directed Network Solutions & Portfolio Brains Ltd not to sell or transfer the domain in his name until the proceedings of the court were completed. The Hon'ble Delhi High Court observed that:

*“The present suit raises very significant questions in the realm of intellectual property law concerning the protection that a person is entitled to, particularly when the persons name had acquired distinctiveness, goodwill and reputation. It also raises an important question whether the right to ones own name is part of the bundle of personal rights enshrined in the right to life under the Article 21 of the Constitution of India, and Article 17 of the International Covenant on Civil and Political Rights. Is a person entitled to protection of such a right and all other rights incidental to and stemming from that right viz., the rights to publicity and to privacy. It appears to this Court that the Plaintiff has more than a stateable prima facie case.”*

The Hon'ble High Court further observed that *“The Plaintiff has prima facie demonstrated, with the help of all several documents, that Defendant No.3 is squatting on his name with the intention of exploiting it for profit. If not enjoined, the domain name [www.arunjaitley.com](http://www.arunjaitley.com) could well be purchased by any person. Such person could then use it for any purpose detrimental to the goodwill and reputation of the Plaintiff. The balance of convenience in restraining the Defendants from transferring, alienating or offering for sale the domain name “arunjaitley.com” to any third party and from creating any third party interest in the said domain name “arunjaitley.com” appears to be in favour of the Plaintiff at this stage.”*

To understand the legal issues involved with the allegations in the complaint it is necessary to understand the concept of internet, domain names, their registration and cyber squatting etc.

The internet is a vast expanding network of computers and other devices linked together by various telecommunications media, enabling them to exchange and share the data. It can be described as "World Wide Web" of computers each connected to one and another, hosting information or facilitating commerce through website. To facilitate communication between them every computer connected to the internet (Host) is assigned "numerical IP (Internet Protocol) address" which comprises of four groups of numbers separated by decimals. As these are difficult to remember, Internet authorities also assign alphanumeric addresses called "domain names". The user may only need to know the name of the company of which he wishes to get information. A website can be reached by typing the "domain name" which usually gives fair indication of the content of the website. All websites on the internet have meta tags in the source of Web document. A meta tag is a HTML (Hyper Text Mark UP Language) intended to describe the contents of the website and also referred to as software source code of the website. Search for information on the Web is usually through Internet directories and search engines, such as Alta vista, Lycos, Yahoo, etc.

Every "domain name" is divided into levels. The "top level" domain name is a suffix which serves to place the within one of the broad category such as .com (for commercial), .edu (for educational) , .gov (for government) .org (for organization), .net (network) etc. The "second level" domain name appears before the top level and serves as a trademark or trade name function. The prefix “www” is a standard for all World Wide Web addresses. For example, user of the internet wishing to get information from Economic Times newspaper, has a reasonable expectation of reaching the Economic Times website by merely typing the address [www.economictimes.com](http://www.economictimes.com), into software programs that are used to navigate the World Wide Web, without actually knowing internet address of the newspaper. Thus, domain name indicates to user information as to the content of a website. It shares many of the attributes of trademarks or trade names. Each domain name is unique. The "domain name" cannot be same irrespective of geographical distance, which may not so in case of trademarks or trade-names. Once registered the "domain name" may be used from anywhere in the world.

The key players involved in the domain name system (DNS) are:

- Network Solutions, Inc. (NSI): The NSI bagged the contract for DNS registration from National Science Foundation (NSF), an US organization which is responsible for coordinating and funding the non-military portion of the Internet infrastructure. The NSI managed registration, coordination and maintenance functions of the DNS until competition was introduced. The contract of NSI expired on November, 1998. It now acts as a registrar and registers the domain names in the gTLDs on a first come, first served basis.
- The Internet Corporation for Assigned Names and Numbers (ICANN): ICANN was formed in the year 1998 to privatize and internationalize the management of domain names. It coordinates the management of the DNS and facilitates competition in the allocation and management of domain names. Additionally, ICANN maintains the directory linking domain names with the IP numbers of domain name servers and the authoritative database of Internet registrations (i.e. InterNIC).

As the system of assigning the domain name was on first-come-first-registered basis, it lead to the reserving of many well known trade names, brand names, company names, etc. by individuals/corporations other than the ones with a genuine interest in the domain name, with a view to trafficking/doing business on the said domain name or offering the domain name to the genuine buyer. The growing phenomenon of cyber squatting has troubled individuals, corporations and other entities whose names have acquired distinctiveness. It has resulted in the policy of the Uniform Domain Name Dispute Resolution Policy (UDRP) created by the ICANN on the recommendation of World Intellectual Property Organization (WIPO) which is designed to resolve the conflicts in all open gTLDs, between domain names and trademarks. It is a purely administrative procedure, conducted largely online, and so is able to reduce the time and costs of domain name disputes. Useful especially when the parties reside in different countries, the UDRP is an efficient alternative to court litigation. However, the UDRP does not diminish either party's right to have the dispute resolved through the courts. The UDRP is an essential part of the contract between each domain name registrar involved in the registration of gTLDs and each domain name registrant.

Domain name holders must submit to UDRP proceedings, which means that they may lose their domain name in the event that a trademark holder submits a complaint and proves that:

- (a) the domain name is identical or confusingly similar to a trademark or service mark in which the trademark holder has rights; and
- (b) the domain name registrant has no rights or legitimate interests in the domain name; and
- (c) the domain name has been registered and is being used in bad faith.

Thus, the recourse available to the prominent person in whose name there is abusive registration of the domain name as alleged in the complaint filed by the President Secretariat is to:-

- (a) Filing a case under the Uniform Domain Name Dispute Resolution Policy (UDRP)
- (b) Pursuing a litigation in the Court of Law or
- (c) Buying the Domain name

Thus, the allegation as contained in the complaint made by the President Secretariat do not attract any provisions of the Information Technology Act or the Indian Penal Code and the registration of the FIR is gross abuse of process of law and wastage of time by investigating agency.

