

# CORPORATE BLOGGING IN INDIA- A LEGAL PERSPECTIVE

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Advancements in technology have made the world a smaller place. Due to widespread use of internet and computers, interactions can take place at a personal as well as mass level within a matter of seconds. A blog is defined to mean a website that contains an online personal journal with reflections, comments and often hyperlinks provided by the writer.<sup>1</sup> Blogging may be referred to as one of the most upcoming methods of communicating one's opinion to the public with the use of internet. When a company undertakes blogging activity as a communication strategy in order to build a close and personal relationship with its customers, potential customers, stake holders and other interested persons, it is called corporate blogging.

A corporate blog may be internal or external. An internal blog is a blog which only employees within the company can view. It can be accessed through the corporation's intranet and encourages employee participation, free discussion of issues, direct communication with various layers of the organization etc. On the other hand, an external blog is a publicly available weblog where the company's employees, teams, spokespersons share their views. It may be used to announce new products and services (or the end of old products), to explain and clarify policies, or to react on public criticism on certain issues. This article deals mainly with external blogs which are maintained by companies all around the world.

A blog may be called as one of the instruments of social media. Social media is defined to include all web-based and mobile technologies such as magazines, internet forums, blogs, photos, videos, social networking sites such as Facebook, Orkut etc., which are used to turn communication into interactive dialogue. In the absence of a clear-cut legislation on social media and corporate blogging, it is important for corporates to protect themselves from legal liability. Therefore, this article attempts to identify the major legal issues involved in corporate blogging, the existing legal framework in India which governs these legal issues and the need for a uniform law dealing specifically with social media and corporate blogging in India. This article, inter alia, also suggests some safeguards that companies, having their own blog, may undertake in order to avoid a lawsuit in future.

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<sup>1</sup>Merriam Webster's Dictionary

## **LEGAL ISSUES INVOLVED IN CORPORATE BLOGGING IN INDIA AND THEIR RESPECTIVE LEGAL FRAMEWORK:**

Corporate blogging is a great strategy which companies use to make their presence felt in the market and to attract customers. Usually companies carry on blogging activities based on their own blogging policy. However, a loosely drafted blog or an inefficient blogging policy can give rise to several legal consequences such as defamation, copyright infringement, secrecy and confidentiality issues, harm to reputation of company etc. As stated earlier, there is no law specifically dealing with social media or corporate blogging in India but all the legal issues concerning blogging by corporates have been covered separately under different laws. Some of these issues and the laws governing them have been discussed below:

### **1. TORTUOUS LIABILITY:**

The law of torts is not a codified law in India which provides for civil remedy by way of compensation for any wrongful violation of a legal right. There are various offences covered under the law of torts such as defamation, negligence, libel etc. Companies need to be careful as to what they post on their blog in order to avoid a suit under the tort law. The main offences for which a company can be sued under the law of torts are defamation, libel and vicarious liability for acts of employees. These have been discussed as follows:

#### **Defamation/ Libel of a third party:**

A blog maintained by or at the direction of the company needs to be carefully drafted. It should be ensured that there is no false or disparaging assertion made in the blog that can cause injury or harm to the reputation of another, or else the company may be at the risk of being sued for defamation or libel.

SAFEGUARDS: Companies should keep in mind that truth is an absolute defence in a suit for defamation or libel. Therefore, statements may be protected if they are true opinions and are not capable of being proved either true or false. However, it is still a good idea to use less than absolute words such as "may", "might", "alleged" or "reported". Also, fair reports of Governmental proceedings and other privileged reports are protected from any tortuous liability.

#### **Vicarious liability for negligent/ illegal acts of employees:**

Companies that run external blogs managed by employees also face the risk of being vicariously liable for any negligent or illegal acts of its employees. For example: A, an employee of XYZ company may post an objectionable content on his blog



sponsored by the company. Such act of A may harm the reputation and goodwill of XYZ Company and shall make it vicariously liable in any legal proceedings initiated against it.

**SAFEGUARDS:** Companies should ensure that they develop and implement a proper employee blogging policy which, inter alia, provides for training of employees prior to posting anything on the blog. There should also be an effective monitoring system which will enable conducting smooth blogging operations and would be advantageous to the company. Moreover, use of a properly worded disclaimer may not totally extinguish, but may reduce liability of the company to a certain extent.

## **2. INTELLECTUAL PROPERTY ISSUES:**

There are acts governing different types of intellectual property in India (patents, copyrights, designs and trademarks). Blogging by corporates can lead to various intellectual property concerns relating to the use of copyrights and trademarks of others. These concerns are briefly discussed below:

### **Copyright infringement:**

The Indian Copyright Act, 1957 protects as well as grants certain exclusive rights to the creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. These rights include right to reproduction, translation, adaptation, communication to the public etc. to the exclusion of others. "Fair dealing" is an exception to the restriction on the use of other's copyright. It allows other parties besides the copyright owner to use the copyrighted material in a reasonable manner without the owner's consent in certain circumstances. For example: research, criticism, commentary, news reporting etc. Therefore, a company should ensure that it does not use the copyrighted information of another without permission to do so.

### **Trademark infringement:**

The Trademarks Act, 1999 governs the law relating to trademarks in India. The Act provides for registration of trademark and gives the proprietor of the trademark the right to exclusively use the trademark for the purpose for which it is registered. Therefore, a company must be careful not to use the trademark of another in its blog without prior permission.

## **3. ADVERTISING AND CONSUMER ISSUES:**

As stated earlier, a blog is a great marketing tool used by companies to lure the

consumer into buying their products or availing their services. Thus, it is important for a company to ensure that whatever representation is made about their product or service in the blog is not false or misleading.

As far as the law relating to advertisements by way of corporate blogs is concerned, the following points may be noted:

- The first amendment of the Constitution of the United States of America distinguishes "commercial speech" from other forms of speeches. It does not offer the same degree of protection to commercial speech in comparison to other speeches. There is no such distinction made under the Indian Constitution. However, Article 19 of the Constitution of India guarantees the fundamental right to freedom of speech and expression subject to certain restrictions on the grounds of public order, morality, health etc.
- The Code developed by the Advertising Standards Council of India (ASCI) is the most specific law which regulates advertisements in India. It deals with complaints received from consumers and industry against such advertisements which are false, misleading, indecent, illegal, leading to unsafe practices or unfair to competition.
- The Consumer Protection Act, 1986 provides protection to the interests of consumers and makes provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith, including protection against unfair trade practices.
- Other Acts such as the Indian Contract Act, 1872, the Competition Act, 2002, Trademarks Act, 1999 etc. also contain provisions relating to advertising in India.

Therefore, it is important that companies keep in mind the applicable legal provisions while using blogs as a medium of marketing and advertising their products/services.

#### **4. ISSUES RELATING TO COMMENTS BY THIRD PARTIES:**

Certain companies allow comments by third parties on their blogs whereas others do not. There are various risks involved in allowing posts by third parties. Firstly, a company may be responsible on the basis of true ownership for any intellectual property infringement issue, obscene, illegal or defamatory content posted by a third party on their blog. Secondly, any comment by third party which severely criticizes the company's policies, products or practices can hamper the reputation of the company.

SAFEGUARDS: There is not much legal protection available to the company in this



regard except filing a suit of defamation in the court of law against comments by third parties which are indecent or defamatory in nature. Therefore, it is important that the company have a specific provision in their blogging policy in this regard. Corporates allowing comments by third parties should notify the latter that they shall be solely responsible for any legal consequences resulting from the comments so posted. A company may also consider prior reviewing of comments before making them visible on the blog. Effective management of the blog and quick responses to criticisms are also some ways by which a company can protect itself from a future legal liability.

## **5. SECURITY AND CONFIDENTIALITY RELATED ISSUES:**

The security and confidentiality related risks can be broadly grouped into the following categories:

- Potential security threats such as hacking, securing unauthorized access to the company's electronic system etc.
- Risk of employees leaking out confidential information about the company.
- Risk of posting statements on the blog that invade the privacy of others.

The privacy and data protection law in India is still in its infancy. The significant legal provisions relating to privacy and data protection are as follows:

## **RECOGNITION OF INDIVIDUAL'S RIGHT TO PRIVACY UNDER THE INDIAN CONSTITUTION:**

Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The Constitution of India does not specifically grant the fundamental right to privacy. However, the Supreme Court of India has affirmed in various cases<sup>2</sup> that the right to privacy of an individual is implicit in the fundamental right to life and liberty guaranteed under the aforesaid article of the Constitution.

## **THE INFORMATION TECHNOLOGY ACT, 2000:**

As far as electronic privacy and data protection over the internet and computers is concerned, The Information Technology (IT) Act, 2000 (hereinafter referred to as the "IT Act") is, by its nature, the only statutory enactment which provides for protection of right to privacy of individuals in respect of information contained in the vast, exhaustive and detailed databases, maintained and used by the provider of various corporate services.

<sup>2</sup>R Rajagopal v. State of Tamil Nadu AIR 1995 SC 264, Kharak Singh v. State of UP AIR 1963 SC 1295

The salient features of the IT Act are as follows:

- Section 43 of the Act provides for civil liability for certain acts such as:
  - (i) securing access to computer system, network or resource;
  - (ii) downloading, copying or extracting of data stored in a computer database, system, or network including information contained in any removable storage medium;
  - (iii) introducing computer viruses into the computer system or network;
  - (iv) damaging computer systems or networks or data base therein;
  - (v) disrupting computers;
  - (vi) causing denial of access to persons authorized to access such computers;
  - (vii) assisting any person in facilitating any of the above acts;
  - (viii) illegal charging for services on another's account;
  - (ix) destroying, deleting, damaging or altering any information contained in a computer resource; or
  - (x) stealing, concealing, destroying or altering any computer source code used for a computer resource with an intention to cause damage to it.
- Section 72A of the IT Act also imposes criminal liability for disclosure of sensitive data in breach of a lawful contract.
- Section 43A, which was introduced in the IT Act by way of amendment in 2008, stipulates that where a body corporate possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate will be liable to pay the prescribed damages by way of compensation.

### **THE INFORMATION TECHNOLOGY (REASONABLE SECURITY PRACTICES AND PROCEDURES AND SENSITIVE PERSONAL DATA OR INFORMATION) RULES, 2011:**

The provisions of the IT Act are more or less general in nature. Thus, in order to have a clear privacy law in force in India, very recently the Ministry of Communications and Information Technology have notified the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (hereinafter referred to as the "IT Rules") under the IT Act. These rules attempt to remove the uncertainties created under the IT Act as well as provide for



certain obligations that body corporates should fulfil in the interest of privacy and confidentiality.

The salient features of these rules are as follows:

- Sensitive personal information is defined to cover the following: (a) passwords, (b) financial information such as bank account or credit card or debit card or other payment instrument details; (c) physical, physiological and mental health condition; (d) sexual orientation; (e) medical records and history; and (f) biometric information.
- Every business is required to have a privacy policy published on its website which must describe what information is collected the purpose for which the information is collected, to whom or how the information might be disclosed and the reasonable security practices followed to safeguard the information. The business also has to appoint a Grievance Officer.
- A business cannot collect any sensitive personal information unless it obtains the prior consent of the provider by letter, fax or email. Moreover, a business can only use and retain the information for the purposes it was collected.
- The business should permit the provider of the information the right to review that information and should ensure that any information found to be inaccurate or deficient be corrected.
- A business can only transfer any sensitive personal information under a lawful contract to a party overseas if the overseas party ensures the same level of protection provided for under the Indian rules.
- Section 43A of the IT Act requires reasonable security procedures to be maintained by a company in order to escape liability. The rules appear to state that reasonable security procedures would be either (a) the IS/ISO/IEC 27001 on "Information Technology - Security Techniques - Information Security Management System - Requirements; or (b) a code developed by an industry association and approved and notified by the Government. The security procedure has to be audited atleast once a year by an independent auditor, who has been approved by the Government of India.

Thus, an overview of the privacy and confidentiality laws in India suggests that these laws are relatively new and there is ample room for further development. The recently enacted IT Rules have clarified many uncertainties created by the IT Act, however, the law, by large, is still unclear as there is a lot of scope for interpretations. Moreover, the application of these laws in the field of corporate blogging and social media is questionable as these provisions do not specifically relate to them. Therefore, it is still unclear as to how the issue of privacy and confidentiality in corporate blogs shall be dealt with under the laws of India.

## THE NEED FOR A UNIFORM SOCIAL MEDIA LAW IN INDIA:

As stated earlier, a blog is a type of social media and the importance of blogs, internet, computers and other such forms of technology is undisputed in the present era. It may be admitted that social media is a vast and expanding method of communication and is more or less unregulated in India. The abovementioned laws and legal provisions deal only with a certain aspect of corporate blogging, which forms part of social media. The applicability of the existing laws to the field of corporate blogging and social media is also doubtful in certain cases. For example: the applicability of the provisions of the IT Act and IT Rules is not clear. This gives rise to a lot of uncertainty and multiple interpretations which make implementation of the law difficult. Moreover, considering the plethora of issues involved in running and maintaining a blog, it is high time that India develops a consolidated and uniform piece of legislation on social media which, inter alia, deals with corporate blogging and its legal issues *in toto*. This will make the legal stand on the subject more certain and easier to implement.

The first step towards developing a social media law was recently taken in September 2011 where the Government circulated the Draft Guidelines for use of Social Media by Government Organisations. It may, however, be emphasized that the law on social media needs to be more than just "guidelines for use of social media". The main objective of the law on social media should be to lay down a comprehensive law governing different types of social media identifiable in India, to fill in the grey areas of the existing legal provisions and to clarify on the applicability of various existing legal provisions in the field of corporate blogging and social media. Moreover, the law on social media needs to be developed taking into consideration the various legal personalities that use social media i.e., individuals, companies, Government organizations, professional associations etc. A law is also needed to deal with all the issues relating to blogging and to suggest certain important safeguards that companies need to undertake while blogging. For example: the law may also provide for certain important clauses which companies shall include in their privacy as well as blogging policies.

On a concluding note, it can be said that there is a strong need to address the legal issues arising out of the development of a new method of social and corporate communications. It is a well laid down fact that only a clear and certain law can be successfully implemented. Thus, the ambiguities in law need to be removed so that social media communications, corporate blogging in particular, can be carried on in a more effective manner and the interests of companies, individuals and the society in general are well protected.