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## **I. ABSTRACT:**

*“The internet has brought a revolutionary change in the 19<sup>th</sup> century which has also marked the industrial revolution. With the growth in the society and thinking capacity of an individual the internet spread its arms to the business group and became a viable tool in the commercial activities. Today most of the business group have turned to online mode to gain a bigger exposure in the market, resulting in a higher rate of unhealthy competition where people try to bring the other person down by copying their work or misusing their trade name to earn monetary benefits on the goodwill associated to other’s work. This step of establishing business in cyberspace will seek to register a domain name, which in turn have increased domain name abuse and misuse in form of cybersquatting. Cybercrimes have garnered a lot of attention in the present era in many forms. Like any other crime, they too are also harmful to the society. Cybersquatting has no definite legislation in India nor in the Information Technology Act, 2000 neither in any other laws present in India. This research paper thus focuses on the current legal framework on cybersquatting in India, it also gives attention on the global perspective as well as the international framework in this regard. The aim here is to highlight the need of a specific legislation in India for Domain Name Protection.”*

***Keywords: Domain Names, Cybersquatting, Cybercrime, Information Technology Act, 2000, India.***

## **II. INTRODUCTION:**

We live in an era of globalization, an era of science and technology, an era where life can be cherished through a single click. The internet has brought a revolutionary change in the 19<sup>th</sup> century which has also marked industrial revolution. When the internet was launched in the early 60s it was for the purpose of information sharing and connecting people, but with the advancement in the technologies and also the society the internet became a major tool in our lives. They are now used for business transactions, social interaction, online business, start-ups, maintaining accounts, and many such other works. We have often heard in our childhood that every coin has two sides in the same way every invention, technology, etc. has two sides and it totally depends on the user that how he deals with that. Duplication, piracy, copying are

the major concerns in the intellectual property fields. When we talk of intellectual property right, we often confuse that how can cyber space and cyber attackers be dealt under this field when they have explicitly been categorized under the *Information Technology Act, 2000*. But in certain instance there are subjects which cannot be made a part of Information Technology but instead need an attention under the Intellectual Property Rights and this concept of cybersquatting is thus one such subject. Before understanding what is cybersquatting, we need to understand the main term associated with it and that is domain name. A clear understanding of the term domain name will give a clear conception in dealing the other concepts ahead.

Cybersquatting and Domain name both the concepts are dealt under *Trademarks Act, 1999*, not through any explicit provision but by the approach of Indian courts. The crime rate in the field of cybersquatting witnessed a drastic increase in the past decade affecting the rights of Intellectual Rights Holder. Henceforth this paper is an approach towards understanding domain name, cybersquatting, provisions which deal with this concept and cases under India as well as U.S.

### **II.I RESEARCH SCOPE & OBJECTIVES:**

- 1) To understand the concept of Domain names.
- 2) To understand the different types of domain name.
- 3) To understand the concept of Cybersquatting.
- 4) To study the provisions that support domain name disputes in Indian courts.
- 5) To study the major case laws in regard of cyber-squatting in India.

### **II.II RESEARCH QUESTIONS:**

- 1) What is the legal scenario in case of cybersquatting?
- 2) How has the coronavirus pandemic fueled an increase in cybercrime of domain name?

### **II.III RESEARCH HYPOTHESIS:**

Absence of direct laws or any particular legislation in the area of domain name has led the crime of cybersquatting to rise day by day.

## **II.IV RESEARCH METHODOLOGY:**

The researcher here has adopted doctrinal method of research. The primary sources involved in the research are *ICANN, WIPO, UNDRP, INDRP, IT Act, 2000; Trade Marks Act, 1999; etc.* The secondary sources used are Reference books, Journals, Internet Sources, Newspapers, Official Statistics, Published Official reports, etc.

## **III. MEANING, CONCEPT AND TYPES:**

### **III.I DOMAIN NAMES:**

In an era of globalization where internet plays an important part of our living, we cannot ignore the peripheral terms which are associated with it. Domain names are thus one such concept in the era of internet. In this 21<sup>st</sup> century lives without the mobile phone is unimaginable and every mobile phone is operated with a different number, when we want to connect with someone, we dial this provided number. In the same way, when we want to access any website like the most famous website <http://www.facebook.com>, we need its *Internet Protocol (IP) address 69.63.176.13.69.63*. Every website has this kind of different IP addresses which is needed to visit any different sites. But the problem here that exists is that there are several websites and therefore remembering a lot of IP address is not possible. So, developing an alternate was the need of the hour and this is how domain name came into play. These domain names combine with Uniform Resource Locator (*it is a virtual address for any data that is present online*) to produce the desired result.

*Domain Name System (DNS)* was adopted to lower the burden of remembering these large numerical Internet Protocol. It is a system which the internet uses to provide an alternate to numerical values with alphabetical values. This provides the user with some comfort and ease in accessing any website. Domain Names are arrangement of different letters and numbers combined with domain name extensions like *.com, .net, .org, .in*, etc. We can understand this with an example, let us assume [www.qwerty19.com](http://www.qwerty19.com) is a website here *www* is hostname, *qwerty19* is the domain name and *.com* here is the domain name extension.

### **III.I.I CLASSIFICATION OF DOMAIN NAME EXTENSIONS<sup>1</sup>:**

- **Generic Top-Level Domains (gTLDs):** These are TLDs with three or more characters, such as .com, .org, .info, .net. It can be further subdivided into 2 parts:
  - ❖ Sponsored Top Level Domain Name (sTLDs)
  - ❖ Unsponsored Top-Level Domain Names (uTLDs)
- **Country Code Top Level Domains (ccTLDs):** They are two-lettered domain names corresponding to any country, territory or any location. E.g.: .in (India), .uk (United Kingdom), .fr (France), .sa (South Africa)

### **III.I.II REGISTRATION OF DOMAIN NAMES<sup>2</sup>:**

Validation is the most important aspect of owning something, whether be it name or address or our date of birth, we need a government authorized identity as a proof. Similarly, every work or creativity needs acceptance, acceptance is done in the form of registration. Domain Names can also be registered and they must be registered. Domain Name registration are not expensive and are provided on first come first serve basis, due to which large number of domain names come for registration which is in most cases an already existing trademark.

The domain name registration needs to be renewed yearly as it is a swift process, if not done immediately they pose a threat of getting registered by the active cyber-squatters online. Therefore, registration of domain name is of utmost importance before making it available in public square. Beside playing the role of site searcher, domain names also facilitate business and many startups on the Internet. Today, half the population is dependent on Internet, not just for gathering information but also to connect with each other and to run business and buy stuffs. This has created an environment of intense competition among all the people. Companies most often try to get a domain name which can easily be searched by the public with their registered trademarks.

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<sup>1</sup> KEVIN WOOD, *What Are the Different Types of Domains*, available at <https://www.hostgator.com/blog/different-types-domains/>.

<sup>2</sup> *Domain Name Registration Process*, available at <https://whois.icann.org/en/domain-name-registration-process#:~:text=In%20order%20to%20reserve%20a,the%20domain%20name%20registrant's%20information.>

### **III.II CYBERSQUATTING:**

The threat of cybersquatting first came into play around 1900s when the internet started gaining popularity in the world. The High Court of Delhi in the case of *Manish Vij v. Indra Chugh*<sup>3</sup>, has defined Cybersquatting as “an act of obtaining fraudulent registration of a domain name with intent to sell it to the lawful owner of the name at a premium”. The Anti Cybersquatting Consumer Protection Act in the case *Shields v. Zuccarini*<sup>4</sup>, defined Cybersquatting as, “an expression that has come to mean the bad faith, abusive registration and use of the distinctive trademarks of others as Internet domain names, with the intent to profit from the goodwill associated with those trademarks.”

Thus, cybersquatting is a practice of registering a well-known trademark, brand name, company’s name as a domain name in a fraudulent manner and then selling it to the owner at a higher rate.

#### **III.II.I SOME OF THE COMMONLY USED TYPES OF CYBERSQUATTING ARE**<sup>5</sup>:

- i. **Domain Name Squatting:*** In this type of squatting an already registered trademark is registered as domain name, it is then offered to the real owner in exchange of higher price payment. It is in common a way of online extortion.
- ii. **Identity Theft:*** In this case the online predators keep a watch on domain names who are on the verge of expiration, once the expiry of the famous domain name happens, they immediately get it registered to themselves.
- iii. **Typo-squatting:*** A well-known trademark or brand name when registered as domain name with a spelling error is called typo-squatting. In this practice stakes are put on chances that user might commit a spelling mistake while conducting the search of the desired page and will be directed to the web page created by squatters.

<sup>3</sup> AIR 2002 Del 243.

<sup>4</sup> 254 F3d 476 (3d Cir. 2001).

<sup>5</sup> SANKALP JAIN, *Cyber Squatting: Concept, Types and Legal Regimes in India & USA*, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2786474](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2786474).

- iv. *Name Jacking*: This is the act of registering a name having goodwill of its own or which is reflective of endorsement by the person whose name is included in the domain name<sup>6</sup>.

#### **IV. INTERNATIONAL SCENARIO ON CYBERSQUATTING:**

##### **IV.I INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)<sup>7</sup>:**

It was incorporated in 1998 and is a US-based (Mueller, 2002) non-profit international organization. The main responsibilities carried on by ICANN are allocating space to *IP address, identifying protocol, gTLDs, ccTLDs*, etc. ICANN looks over the distribution of unique technical identifiers used in the Internet's operations, and delegation of *Top-Level Domain names (such as .com, .info, etc.)* which is responsible for ensuring universal resolvability of DNS to all internet users in finding valid address.

##### **IV.II UNIFORM DOMAIN NAME DISPUTE RESOLUTION**

###### **POLICY (UDRP):**

It was implemented by ICANN on 26<sup>th</sup> August 1999. UDRP is a set of guidelines followed by ICANN to resolve disputes related to domain name. The main purpose behind the creation of UDRP was to provide protection to the existing well-known trademarks and brands from being abusively used and registered by the third-party, whose sole purpose is to malign the existing brand name and make money by such registration. UDRP is applicable to all the generic as well as country code top level domain names who have voluntarily accepted to adopt it. It is the first foremost global online dispute resolution system. On a global level it has solved almost 20,000 disputes pertaining to domain name. It is basically an arbitration process on global level. The main idea that was looked in making of this policy was to address the disputes arising between trademark holders and domain name registrants. This implies that for filing a

<sup>6</sup> Rupal Jaiswal, "The Web of Cybersquatting: Do we need a Law to clean it", Journal of Penacclaims (2019).

<sup>7</sup> *Uniform Domain-Name Dispute-Resolution Policy*, available at <https://www.icann.org/resources/pages/help/dndr/udrp-en>.

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complaint under UDRP, the owner of the trademark must establish that his trademark has been similarly and confusingly registered as a domain name in bad faith. He must also prove that the domain name registrant is not having a legitimate interest in the domain name. UDRP will stand inapplicable if it is found that the registrant is using the name in good faith.

In the case of *Interstellar Starship Services Ltd. v. Epix Inc*<sup>8</sup>, the U.S court has stated that registrant using a domain name in bonafide faith related to services and products, cannot be said to have committed cybersquatting. Domain name disputes under UDRP are resolved by arbitration, court action, agreement. The resolutions that are provided are suspension, revocation or transmission of the said domain name to the original possessor. UDRP focuses on creating a process that must be cheaper and faster than our legal system. The UDRP proceedings are conducted by arbitrators having expertise in trademark law. This guarantees that UDRP cases are decided by the experts, which may or may not happen in courts. In January 2015 popular internet company eBay won one of the largest cybersquatting cases, winning ownership of more than 1000 domains that had used its trademark<sup>9</sup>.

***At present the dispute resolution bodies which follow the policies stated in UDRP are as follows:***

- Asian Domain Name Resolution Centre
- National Arbitration Forum
- World Intellectual Property Organization
- The Czech Arbitration Court Arbitration Centre for Internet Disputes
- Arab Centre for Domain Name Dispute Resolution

***World Wrestling Federation Entertainment Inc. V. Michael Bosman*<sup>10</sup>,**

It is the first case decided under UDRP. In this case a suit was brought against Michael Bosman who was a California based resident by WWF a US based Federation on registration of domain

<sup>8</sup> 983 F. Supp. 1331.

<sup>9</sup> eBay Inc. vs Du Hongxia, Case No. D2014-D2015.

<sup>10</sup> 1. N.C.J.L. & Tech. 3 (2000).

name [www.worldwrestlingfederation.com](http://www.worldwrestlingfederation.com). Later, he offered WWF to purchase that domain name on higher rate. WWF claimed that this domain name was confusingly or identical to the trademark registered by them and it was done by the registrant in bad faith. The court in this case decided that the domain name should be transmitted to World Wrestling Federation.

#### **IV.III WORLD INTELLECTUAL PROPERTY ORGANIZATION**

##### **(WIPO):**

It is a specialized agency of UN, which was signed at Stockholm on July 14, 1967. It was entered into force in 1970, to promote protection to Intellectual works and promote and encourage the creative minds all over the world. It is a self-funded agency consisting of 192 members around the globe. At present it is headed by *Francis Gurry*, who is also the Director-General. WIPO has its head-quarter at Geneva, Switzerland. WIPO originated from the *United International Bureaux for the Intellectual Property (BIRPI)*, established in 1893. The origin of WIPO can be traced in the United International Bureaux for the Protection of Intellectual Property (BIRPI), established in 1893. Since 1999 WIPO is providing arbitration to the owners of the trademark who claim squatting of their domain name. UDRP claims that a total of record 3447 case has been filed by the trademark owners with WIPO's Arbitration Centre in the year 2018. *Google Inc. v. Herit Shah<sup>11</sup>*, In this case a domain name googblog.com was registered by Herit Shah who was an Indian teenager. Googblog.com was found to be confusingly similar to the existing google trademark. WIPO ordered Herit Shah to transfer the rights of 'googblog.com' to Google Inc. This case was determined to be one of cybersquatting cases.

#### **IV.IV ANTI-CYBERSQUATTING CONSUMER PROTECTION**

##### **ACT, 1999 (ACPA):**

Prior to the establishment of ACPA no explicit legislation was there in U.S.A to deal with cybersquatting. The trademark owners in U.S. severely dependent up on *Federal Trademark Dilution Act (FTDA), 1995*, to deal with matters of domain name dispute. The two landmark

<sup>11</sup> Case No. D2009-0405.

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judgements *Intermatic v. Toeppen*<sup>12</sup> & *Ponavision v. Toeppen*<sup>13</sup>, played an important role in the creation of Anti Cybersquatting Consumer Protection Act. This Act played a key role in providing protection to trademark owner. Immediately after its enactment, in the year 2000 John Zuccarini (a well-known cyber-squatter) and was ordered to pay statutory damages of Rs. 36,962,694.56 along with the attorney fee. This Act was enacted on November 29, 1999. In spite of being the first cyber specific law, yet it was based on Lanham (Trademark) Act of 1946.

**Some of the requirements needed to claim protection under ACPA are:**

- Registrant had bad faith of earning money by using the protected name.
- That the domain name registered is identical or confusingly similar to any famous mark.
- That it must be a trademark word or name which is already in use.

There are instances when the original registrant of domain names cannot be located or are beyond the jurisdiction of the Court, for this the in-rem provision has been inserted. In simple words, this provision helps trademark owners to file suit against domain names themselves, instead of domain name owners, in cases where jurisdiction over owners cannot be established or located.

**Sporty's Farm, LLC v. Sportsman's Market Inc<sup>14</sup>,**

Sportsman's Market, a catalog company used the logo and trademark "Sporty's" to identify its catalogs. Another catalog company Omega Engineering which dealt in scientific instruments got a domain name registered as "sporty's.com". The owner of Omega was a pilot and was completely aware of Sporty's trademark. On passage of 9 months sporty's.com was transferred to a subordinate company names as Sporty's Farm, created by Omega to grow and sell Christmas Tree. It was observed by the court that it was intention of Omega to give direct competition to Sportsman's in the aeronautics consumer market with a primary objective of

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<sup>12</sup> 947 F. Supp. 1227.

<sup>13</sup> 141 F. 3e. 1316.

<sup>14</sup> Sporty's Farm, LLC v. Sportsman's Market Inc. 202 F.3d. 489 (2d Cir. 2000).

not allowing Sportsman's from using sporty's.com. But due to the reason that sporty's.com was registered before the implementation of ACPA, damages were not granted.

## **V. CYBER-SQUATTING: SCENARIO IN INDIA:**

Cyber-squatting is a threat which has no limits, and is extending with a great speed. Despite being aware of the threat and chaos created by the emerging problem of cybersquatting, yet India has no explicit legislation dealing with cyber-squatters. A lot of companies as well as start-up business has faced the wrath of cybersquatting in India. In comparison to all the developed countries, India does not have any Domain Name Protection law to deal with Cybersquatting. In India, the Trademark Act, 1999 deals the cases related to Domain name, which leads to securing domain name protection in India a tedious job. Unfortunately, the only law concerned with cyberspace and cybercrime i.e., Information Technology Act, 2000 has also ignored a deadly crime like cybersquatting.

The Hon'ble Supreme Court in *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd*<sup>15</sup>, has stated that "As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Marks Act, 1999 itself is not extraterritorial and may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off".

### **In India, the options available to the victim to combat cybersquatting are as follows:**

- By sending cease and desist letters to the cyber-squatters.
- Initiating Arbitration proceeding under rules of ICANN.
- Suit for remedy under law of passing off and Trademarks Act,1999.

### **The cybersquatting in itself raises two important questions that need an answer:**

#### **1. Is there a provision for registration of domain name as a trademark?**

Domain names from its very nature are similar to an address, for e.g., House no. 11, Ratu Road, Ranchi. The domain name in itself is a unique identity to the extent that it cannot be same for

<sup>15</sup> AIR 2004 SC 3540.

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two persons. A domain name can include name of any person or any term which is descriptive, which therefore deduce that domain names cannot be under the purview of Trademarks. In this online realm where e-commerce has gained popularity day by day, domain name becomes the biggest source for identifying goods and services. Therefore, resulting Indian judiciary to deal the concept of domain name infringement under Trademark law.

***2. If not Trademark, which law must govern the offence of Cybersquatting in India?***

Currently, seeing the status of law present in India, the matters related to cybersquatting can be brought under the notice of court by litigation by sending cease and desist letters to the cybersquatters, and by initiating Arbitration proceeding under rules established by ICANN. The disputes can also be registered to National Internet Exchange of India under .in registry which provides speedy resolution. The Information Technology Act, 2000, being the main legislation in the stream of cyber laws remains silent in the matters of Cybersquatting. Thus, the principle of passing-off comes into play for domain name disputes.

***Passing-Off: In N.R. Dongre v. Whirlpool Corporation<sup>16</sup>,*** it was observed by the High Court of Delhi that one company cannot sell the goods pretending it to be of other company. If the owner of the trademark is able to prove that the domain name registrant has done so with an intention to create confusion among the public, then injunction can be granted.

**V.I CASES RESOLVED IN INDIA:**

- ***Dr. Reddy's Laboratories Limited v. Manu Kasouri<sup>17</sup>:*** In this case Manu Kasouri (defendant) was abstained from using "dreddyslab.com" as domain name similar to the trade name used by the plaintiff. The court opined that domain name holds importance in the world of e-commerce holding defendant liable under passing-off.
- ***Yahoo Inclusive v. Akash Arora & Another<sup>18</sup>:*** A case was filed by the internet search engine (Yahoo) against Akash Arora and Another for the use of www.yahooindia.com.

<sup>16</sup> N.R. Dongre v. Whirlpool Corporation 1996 (16) PTC 583 (SC).

<sup>17</sup> Dr. Reddy's Laboratories Limited v. Manu Kasouri 2001 PTC 859 (Del).

<sup>18</sup> Yahoo Inclusive v. Akash Arora & Another 1999 IAD Delhi 229.

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The Delhi High Court held that Yahoo has been recognized globally, in spite of being a dictionary word. Therefore, an injunction was granted against Akash Arora.

- ***Rediff Communications Ltd. v. Cyberbooth & Another*<sup>19</sup>**: A domain name www.radiff.com was registered by Cyberbooth which was similar to the existing domain name www.rediff.com. It was laid down by the High Court of Bombay that the domain names are of great importance and a high value is attached to it which makes it a corporate asset. It also specified that resemblance of domain name can be confusing for the public, in particular the first-hand clients. Therefore, the use of www.radiff.com was restrained.
- ***Tata Sons Limited v. Manu Kishori & Others***<sup>20</sup>: The defendant got registration for series of domain name including well-known trademark TATA. The court referring to the decision of Rediff Communication decided the matter in favor of plaintiff and put a restraint on the use of domain name.
- ***Acqua Minerals Limited. v. Pramod Borse & Another***<sup>21</sup>: The defendant Mr. Borse registered a domain name www.bisleri.com in its name which is similar to the trademark of Bisleri in India. The Delhi High Court stated that the defendant was liable for infringement of Trademark allowing transfer of domain name in the name of plaintiff.
- ***Mr. Arun Jaitley v. The Network Solutions Pvt. Ltd***<sup>22</sup>: Mr. Jaitley is a prominent figure in India. He is the former Finance Minister of India (2014-2019). The defendant in this case registered a domain name www.arunjaitley.com. Mr. Jaitley made constant efforts in buying this name from the offender, however the respondent wanted a price much higher than the cost. It was held by the High Court of Delhi that the respondent was guilty for offensive registration of a renowned personality as domain name. the domain name was thus transmitted to Mr. Jaitley.

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<sup>19</sup> AIR 2000 Bom 27.

<sup>20</sup> 2001 IIIAD Delhi 545.

<sup>21</sup> AIR 2001 Del 463.

<sup>22</sup> 181 (2011) DLT716.

## **V.II INDIAN DOMAIN NAME DISPUTE RESOLUTION POLICY**

### **(INDRP)<sup>23</sup>:**

India was not a subscriber to the UDRP since the very beginning. In India the generic TLDs are dealt under the UDRP Approach but ccTLDs were not included. To fill this loophole India, implemented a policy to deal with ccTLDs known as Indian Domain Name Dispute Resolution Policy. In India the .in extension is the Top-Level Domain Name and is administered under National Internet Exchange of India (NIXI). The .in registry in India is sponsored by The National Centre for Software Technology. INDRP is the policy which deals with the dispute related to it. Under NIXI, the .in registry acts as an autonomous body with primary responsibility of maintaining .in country code top level domain name for India<sup>24</sup>. INDRP was formulated in 2006 mixing the rules laid in UDRP and Information Technology Act, 2000.

#### **There are two similarities between INDRP and UDRP:**

- The first one is the paragraph 4 of the IDRP and paragraph 4(a) of the UDRP<sup>25</sup>.
- Second one is procedure for filing grievance in both the policy.

Today after 15 years of being in existence, NIXI has resolved around an estimate of over 1177 matters so far. On analysis of these disputes, it is found out that majority was decisions were in favor of plaintiff or complainant.

### **V.II.I INDIAN CASES DEALT UNDER INDRP:**

**Bloomberg Finance L.P., (BF) v. Mr. Kanhan Vijay (2009):** It is considered as one of the most important case placed before an Arbitration Panel in the year 2009. In this case [www.bloomberg.net.in](http://www.bloomberg.net.in) was registered as domain name, similar to a prevalent to a service mark Bloomberg known in India as well as in Abroad. The malafide intention of the respondent was recognized and the board ordered transfer of the domain name to plaintiff.

**YOUTUBE LLC v. Rohit Kohli (2007):** A domain name [www.youtube.in](http://www.youtube.in) resembling to the popular platform YouTube was registered by the defendant. The complainant in this case had

<sup>23</sup> Mr. Deepanjan Dutta Roy, "Cybersquatting: A new form of IP Extortion-Position in India & U.S. and it's remedies", Vol. 3 Issue 12, *Journal of Law Mantra* (2016).

<sup>24</sup> Christine Chiramel, "India: The Domain Name Chaos- A Legal Perspective", *mondaq.com* (2011).

<sup>25</sup> Supra note 19.

applied for Trademark not just in India but also in other countries. Hence the panel ordered for transfer of domain name to the complainant as the domain name was similar to the trademark in many aspects.

***M/S Mahindra Holidays & Resorts India Ltd. v. Rahul (2019):*** As per the plaintiff [www.clubmahindraholiday.co.in](http://www.clubmahindraholiday.co.in) was registered and used by the defendant to make monetary benefit out of this Trademark. The .in Registry ordered for transmission of the domain name to the plaintiff.

Though INDRP is a major policy in regard of domain name in India yet it lags behind on major issues. The first one being ignorance of gTLDs. In simple words it should not differentiate between TLDs and should include all of them.

## **VI. CORONAVIRUS AN OPPORTUNITY:**

The year 2020 witnessed a deadly outbreak around the globe. The world today is fighting a battle to survive in the threat of deadly virus covid-19. The virus has taken away so many lives and is yet dominating several more lives, and it may continue for some time yet. Many people either rich or poor, have used this situation as an opportunity to serve the needy as per his/her capacity and serve to their fullest to the world. Stories of generosity and charity have hit the globe. On the other hand, we have the scammers who take any situation as an opportunity to deceive for their monetary gain. Domain names, as the 'indicators of origin' for the internet, are used as vehicles to deliver fraud to unwary, and often vulnerable, online users<sup>26</sup>.

Scammers or plagiarizers are nothing but are opportunistic in nature. They hunt for opportunity to make their move, and this pandemic was the biggest opportunity they could have thought for. The whole world had turned online due the ongoing national, international lockdown. Everything from food to grocery to medicines to fruits and vegetables and everyday stuffs was sold and purchased online, leading it to be an opportunity for the ones who just want to make

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<sup>26</sup> James Taylor, "Cybersquatting and Opportunism: The Heightened Threat During Coronavirus", *GlobaldatingInsights* (2020).

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money out of anything and everything. One such example of making opportunity out of such type of situation is the 2009 swine flu pandemic. The drug company Hoffmann-La Roche filed at least four UDRP complaints against domain names that contained the words “swine” and “flu” plus one of its trademarks each of which it won<sup>27</sup>.

When anything new emerges, a trend to copy it follows among the people from all corners of the world, be it a dance step, a meme challenge, a reel video on Instagram or any such type of thing. Same goes with any word, phrase or logo which starts trending, we witness a heavy rush for its registration as trademark. Domain name the most used internet medium, unsurprisingly has become the part of the same trend, where a new word or phrase that is trending worldwide is combined with different words or letters or numbers to be registered as domain name. Coronavirus and COVID-19 the new emerged words in this pandemic have been evidently used with several trusted existing brand name to form a new domain name for registration to make profit. Twenty years later on November 20, 2020, WIPO had administered 50,000 UDRP-based proceedings covering almost 91,000 domain names, and involving parties from over 180 countries<sup>28</sup>. The COVID-19 pandemic has acted as fuel in filing of cybersquatting cases with Arbitration and Mediation Centre of WIPO.

***The Director of WIPO Arbitration and Mediation Centre Mr. Erik Wilber while giving a comment on growth in filing of cases under WIPO had stated:*** “With a greater number of people spending more time online during the pandemic, cyber-squatters are finding an increasingly target-rich environment. Rights owners, meantime, are stepping up their brand enforcement on the Internet as they further shift to marketing and selling online.”

***Facebook, Inc. v. Super Privacy Service LTD (2020),***

Facebook the worldwide used social app which connects people from all corner of the world operating since 2004. It has been the most popular used social media app among youngster’s

<sup>27</sup> DOUG ISENBERG, *Cybersquatters Take Advantage of 'Coronavirus' Domain Names*, available at <https://giga.law/blog/2020/3/26/cybersquatters-coronavirus>.

<sup>28</sup> World Intellectual Property Organization, “WIPO Cybersquatting case filing surges during COVID-19 Crisis”, (WIPO 2020)

as well as adults. The complainant has trademark registered in his name in all formats across the world since a long period of time. Facebook owns well reputed name and assets in its name and is consistently a top brand in the market since a very long period. Wuhan, China. In March 2020 it was declared as a pandemic by the World Health Organization. On April 1, 2020 the domain name [facebook](https://www.facebook.com) was registered by the respondent in his name. The Respondent was accused of using the dispute name for displaying Pay-Per-Click. The plaintiff asserted the rights vested in the mark FACEBOOK. Despite the addition of the term covid19, Facebook remained prominent and recognizable in the disputed domain name. The Arbitration Panel Contended ordered transmission of the domain name to plaintiff<sup>29</sup>.

## **VII. CONCLUSION:**

Cybersquatting at present is the fastest growing cybercrime which needs immediate attention and care. Every invention and discoveries come with pros and cons, so is the case with the internet. With India being one of the greatest users of internet there must be proper laws to deal with scammers and cybercrimes. In my view, the laws have become old and the problems are new, therefore these old laws need to be refurbished. This is an age of internet, where everything is just a click away, therefore not providing the real owners of the website with a proper protection will result in more cases of the rapidly growing cybersquatting. Law is made for the benefit of the society and needs to be renewed after every decade or whenever it appears that there is a need for its renewal.

A new legislation is the need of the hour to deal with cases of cybersquatting. As we have already discussed above that laws in India have no explicit mention of cybersquatting, therefore amendments must be made in IT ACT, 2000, or Trademarks Act, 1999, and an explicit section should define cybersquatting and the punishment for the same. Amendment can also be made in the Indian Penal code, 1860, making way for cybersquatting as a criminal offence. Domain names should be given recognition under Trademarks and cybersquatting should be prohibited

<sup>29</sup> *Facebook, Inc. v. Super Privacy Service LTD c/o Dynadot / Xiamen Tianmu zhuangshi sheji youxian gongsi*, available at <https://www.wipo.int/amc/en/domains/search/text.jsp?case=D2020-0885>.

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and made a penal offence. The major problem that still persists with domain is about the jurisdiction issue. The Courts in many instances are not able to decide the jurisdiction of the dispute, for a squatter who is residing in another country, they cannot be brought under the purview of national laws. Moreover, each time it is not easy to determine the location of the squatter leading in failure to charge him for the offence of squatting. When such problem persist India should opt for the “in rem” provision discussed under Anti Cybersquatting Consumer Protection Act, 1999.

The Alternative Dispute settlement established under WIPO or ICANN have been a success to a great extent. More emphasis can be given on the registration of case related to cybersquatting to be done under them. These are some of the flaws and suggestion for the same in my view. I believe the Indian Judiciary have always played a great active role in being a changemaker in the society and have always impacted the society with their unexpected decisions, so may be today or in the coming times ahead they will understand the need for an effective law for the offences of cybersquatting.