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Is the Dark web Illegal in India: A Comprehensive Study

Purbita Mazumdar^a

^aKIIT University, Bhubaneswar, India

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The primary objective of this article is to explore the legal environment surrounding dark web usage. As a dynamic legal system, it is crucial for intensive empirical research to be actively encouraged within the Indian academic circles to keep the pace of legal change comparable to the simultaneously changing technical sphere and to identify, analyse and explain the social needs trends which cause certain technologies to be rapidly adopted and present an educated forecast of the long term effects of the usage of these new technologies. We carefully examine the peculiar legal challenges that arise out of the usage of the dark web, and we study the various concepts and features of the dark web in detail. By their nature, some of these features are in direct conflict with the current framework of IT law which involves a degree of administrative monitoring in order to protect the interests of the Indian citizen. Alongside this, certain aspects of IP law are also put into jeopardy due to the unregulated nature of the dark web. It can be inferred that using the dark web might potentially endanger the interests of both individuals and businesses. It is the need of the hour to extensively codify the dark web concept in order to eradicate any gray areas and loopholes, the existence of which presently offers a considerable opportunity that can be leveraged by unlawful entities to engage in illegal activities without facing appropriate ramifications for their actions.

Keywords: *dark web, law, illegal.*

INTRODUCTION

If you've ever found yourself in a position where you were unsure of delving into the opportunities presented by the dark web because you were wary of potentially crossing legal boundaries, you are not alone. The legality of using the dark web is a murky Playfield that is being constantly molded according to the rapidly changing technology surrounding it. As the relatively new legal study of intellectual property rights, privacy rights, and cryptocurrency are all deeply affected by the workings of the dark web, a formative understanding of the dark web and the challenges it presents to the legal world is imperative. This article is a humble attempt toward studying the legalities governing the dark web.

MEANING OF "DARK WEB"

The term "dark web" typically refers to content on the World Wide Web that is accessible only through specialised software or configuration on overlay networks that use the Internet. The deep web, commonly known as the "dark web," is the component of the Internet that search engines need not index. The networks which are tiny friend-to-friends, huge networks, and networks which are popular networks managed by individuals and public organizations are all a part of the dark web. Due to a layer of security, protection, and encryption, dark net users' identities and location information are mostly unknown and impossible to trace. This has been made possible by utilizing numerous intermediary servers, which safeguard user privacy. It is nearly hard to decrypt the data or information and monitor the users' locations and IP addresses related to the level of complexity required. As a result, dark net users' communications are extremely private, enabling them to communicate and share data in a secure method.¹

The component of the internet that is not readily accessible by popular searches like Bing, Google, Yahoo, etc. is known as the "dark web." High levels of anonymity are offered when using the dark web. It can be accessed through websites like The Onion Ring (TOR) and 12P,

¹ 'Is it illegal to access dark Web from India?' (*Asianet Fiber*) <<https://asianetbroadband.in/is-it-illegal-to-access-dark-web-from-india/>> accessed 17 July 2022

which are usually run by public agencies.² Data in TOR is encrypted in layers, much like an onion. The user's privacy is protected due to this encryption. The deep web's "dark web" is where both unlawful and lawful activities are carried out. It continues to be the primary location for criminals to advertise their illegal operations, such as drug trafficking, and engaging in the trade of pistols, guns, and other firearms, due to its high degree of anonymity and inability to track the IP address of a person.

It is frequently confused with the substantially bigger Deep Web and used as a substitute for it. The Deep Web includes the Dark Web. Due to internet encryption, the deep web is a collection of web pages that cannot be accessed by browsers, but it also contains trivial information about the text. The right to privacy is thus made actual. If no unlawful content is accessible, browsing the Dark web is legal. Users can send and receive emails on servers like SIGAINT and Proton Mail without revealing their location or identity. Because it is blocked in places like China and Iran, Facebook maintains a version of its website available on the dark web. The fundamental concept behind this is the maintenance of anonymity, which means it safeguards a user's identity and masks IP addresses to hide the user's location. TOR was developed by a non-profit organization before the government gained control of it. The Ford Foundation, Swedish International Development Cooperation Agency, and the United States Department of State's Bureau of Democracy, Human Rights, and Labour are its official sponsors.³

INDIA'S ABILITY TO ACCESS THE DARK WEB LEGALLY

It is absolutely legal to access the Dark Web from India. It is not considered illegal because TOR conceals the user's IP address and location, it is completely lawful. The issue of the legality of access in India won't come up because it is impossible to determine from which nation a user is accessing the Dark Web due to the location's secrecy. Nothing can prevent you from utilising it. We learned about the dark web and how it works above. After that, we realised that India considers accessing the dark web to be legal. It's a common misconception that only illegal

² Surbhi Jindal, 'Laws relating to the dark web in India' (*iPleaders*, 13 September 2021)

<<https://blog.ipleaders.in/laws-relating-dark-web-india/?amp=1>> accessed 14 July 2022

³ Scott Stevens, '15 Facts You Should Know About The Deep Web' (*The Clever*, 15 March 2017)

<<https://www.theclever.com/15-facts-you-should-know-about-the-deep-web/>> accessed 14 July 2022

activity may be conducted on the dark web. That is partly accurate. The dark web also offers a number of benefits. The dark web is used by individuals for a variety of activities, including reading books, gathering information, having private conversations they don't want others to see, and even for official investigations into crimes by journalists, activists, and other governmental agencies. But the issue remains why isn't this prohibited and why is access to the website legal in India if illicit activities like drug trafficking and child pornography occur there?

GROUNDINGS OF THE DARK WEB'S LEGAL SYSTEM IN INDIA

In India, using the dark web is permitted. The Indian government does not consider it to be unlawful behaviour because it is just another part of the internet you are accessing through services like Freenet, TOR, etc. However, this does not mean that you are unconstrained. When using the dark web, some constraints must be adhered to. If you choose to explore the dark web, be aware that one careless click could put your life at risk. On the dark web, the majority of shady crimes take place, and there is a clear distinction between what is lawful i.e., legal, and what is unlawful i.e., illegal when using the dark web.

HAS THE DARK WEB BENEFITED LAW ENFORCEMENT AND ITS AGENCIES?

The right to access the Internet is also assured by Article 21⁴ of the Indian Constitution. The court basically stated that this right is the fundamental support system for freedom of speech and expression. Because doing so would violate their right to free speech and expression, we are unable to prevent someone from using the website. Given that accessing the dark web is permitted in India, it presents particular difficulties for law enforcement organizations. Aside from this, India has minimal regulations governing online activity there. The laws in our nation are filled with gaps, and the dark web presents its own set of unique special challenges. The Information Technology Act, 2000 only contains six sections that deal with cybercrimes in India.

People have a tendency to click on the links they find while browsing the internet. But you shouldn't utilise the dark web recklessly. You may end up in jail with just one click. Five Mumbai

⁴ Constitution of India, 1950, art.21

students were busted while dealing with the purchase of drugs via the dark web, according to an article in the Indian Express. The 1,400 LSD dots that these five students purchased cost 70 lakhs.⁵ According to Mumbai DCP Mr. Shivdeep Lande, making an arrest is a challenging process because of the complex structure of the dark web version, thus these five students were detained after the packages were delivered. Additionally, a lot of anonymity-related elements are provided, making it challenging to find criminals. Employees of the US Naval Research laboratory invented the dark web in the middle of the 1990s to shield US intelligence communications. Despite being built with good intentions, it eventually turned into a hangout for crooks to carry out their evil schemes.

WHEN DOES INDIA REGARD THE DARK WEB TO BE AGAINST THE LAW?

You have correctly assumed up to this point that while the dark web is not illegal. Also, it isn't totally lawful. Several actions, such as the purchase of weapons including guns, pistols, and rifles, as well as the use of drugs, might land you in jail. I'll use a straightforward example to demonstrate this. First of all, realise that using the dark web is lawful. You could nevertheless end up in jail. When using the dark web, a person's actions or intentions are taken into consideration. It merely determines if you will get into some legal trouble or whether you may use it at will without running into any trouble.

The analogy now is as follows. It is not against the law to keep a licenced gun with yourself in your residence. However, it is against the law to shoot someone while using the same weapon. Either Section 307 or Section 324⁶ of the Indian Penal Code, 1860 will be used to charge you. Similar to this, how you utilise the dark web will determine if it is legal. You engage in illicit conduct if you do something that is illegal. Furthermore, you would not be protected from your crimes by any law in India. As an illustration, you indulge in viewing or in the promotion of child pornography which encourages it. Are you considering avoiding this situation altogether?

⁵ Mohamed Thaver, 'The dark web and how police deal with it' (*The Indian Express*, 17 September 2018) <<https://indianexpress.com/article/cities/mumbai/the-dark-web-and-how-police-deal-with-it-5359482/>> accessed 17 July 2022

⁶ Indian Penal Code, 1860, ss 307 and 324

Really sorry to say, but you won't be saved. In India, this is a crime, hence the dark web is prohibited in this country.

Even worse, it's against the law for you to assist in the sale of illegal items like drugs, weapons, or handguns. When accessing the dark web, you must be aware that there is a fine line separating "legal" and "illegal". People occasionally go beyond the point where they only engage in legal activities. Even worse, they are unaware of the mistake they have made or how it occurred. As a result, wherever you are in the world, you should use the dark web with extreme caution. As a result, after determining what is permissible and unlawful when utilising the dark web, let's look at the law and see under which sections you will be held accountable for engaging in various illegal acts.

WHAT IS DEEMED ILLEGAL WHEN ACCESSING THE DARK WEB?

- Section 67(B)⁷ of the Information Technology Act, 2000 and Section 14 and 15⁸ of the POCSO Act, 2012 both impose severe penalties for child pornography. These are the only parts that address the crimes of pornography involving children.
- In addition, the Indian Penal Code, 1860, defines the punishments for offences that are carried out against minor girls. According to Section 366(A)⁹, anyone found guilty of coercing, inducing, or seducing a minor girl to engage in sexual activity is subject to a 10 years prison sentence as well as a prospective fine. \
- The Indian Penal Code's Sections 372 and 373¹⁰ address the buying and selling of girls for prostitution. These types of illicit activity have been observed. They are included in the scope of human trafficking, either directly or indirectly. Trafficking in people is forbidden.
- The dark web is used for a lot of criminal activities involving child pornography. If you are discovered encouraging such behaviour, you could find yourself in serious difficulty.

⁷ Information Technology Act, 2000, s 67B

⁸ POCSO Act, 2012, ss 14 and 15

⁹ Indian Penal Code, 1860, s 366A

¹⁰ Indian Penal Code, 1860, ss 372 and 373

In addition to child pornography, selling criminal materials is prohibited, as is purchasing weapons and drugs.

- Whoever deals with narcotic drugs outside India is subject to punishment under this Act, according to Section 24¹¹ of the Narcotics Drugs and Psychotropic Substances Act, 1985. Now, if someone were to engage in external drug dealing on the dark web, that would undoubtedly be unlawful no matter whether the dark web was legal but the behaviour was not. Review the incident where five students were detained while purchasing LSD dots.

ANALYSIS

I'm talking about whether it's legal to access the dark web from India, I have to say that there aren't any written laws that ban it. Although most of these websites don't have names that are readable, so you can't really tell what's in them or where they can lead, it can also be considered illegal because you might unintentionally get yourself into problems. Therefore, it is best to avoid visiting such websites. If you use a reputable VPN service, you could potentially be completely traceable.¹² If you use Microsoft Windows, Unrooted Android, or iOS, privacy hackers who are crawling on the dark web can simply track you. The most crucial thing to keep in mind in this situation is to never download anything from a website you see on the dark web. If you attempt to purchase illegal weapons, engage in unlawful hijacking activities, engage in child pornography, etc. you risk going to jail as well. Additionally, there are websites on the dark web that display horrifying pictures of tortured human bodies and living individuals. These pictures might make you feel horrified and make you unstable for weeks or months. To put it simply, the dark web is an illustration of the depths to which individuals may sink or degenerate.

¹¹ Narcotics Drugs and Psychotropic Substances Act, 1985, s 24

¹² 'Regulating the Dark Web: Challenges & Opportunities' (*The Cyber Blog India*, 26 June 2020)

<<https://cyberblogindia.in/regulating-the-dark-web-challenges-opportunities/>> accessed 17 July 2022

CONCLUSION

We have now reached the article's end. Now we can confidently say that using the dark web in India is completely legal. However, it is undoubtedly prohibited to carry out illegal acts through the dark web. The Indian Penal Code, 1860 needs to include strong cyber laws, restrictions, and prohibitions. Furthermore, a special law is needed to prevent the rising crime rate from endangering Indian democracy.

I believe you are now well-informed about how to access the dark web in India. Now, if you want to live a simple life free from the troubles caused by the dark web, you probably won't go access it. One of the most significant innovations of the century, the Internet has seen a steady rise in the number of users. The Surface Web, which only makes up 4 of the internet, is what most people are familiar with. The Dark Web, which lies underneath the Deep Web and makes up around 4% of the internet, is where drug trafficking, TOR-encrypted websites, illicit material, etc. are found. If the internet were an iceberg, the Deep Web would be below the waterline and makeup about 90% of it. The Dark Web is a collection of websites that are encrypted and can only be viewed with specialised browsers, similar to The Onion Network, where the data is encrypted in layers resembling those of an onion.

A person's IP address and location cannot be tracked when they utilise the Dark Web. Whistle blowers and privacy-conscious people may utilise it, as well as pedophiles, hackers, terrorists, and drug dealers. It is used for both legal and illegal purposes. Because TOR conceals the user's IP address and location, accessing the Dark Web from India is not against the law. The legality of access in India won't be a concern because it is impossible to determine from which nation a user is accessing the Dark Web due to the location being disguised. Its utilisation simply depends on the user, just like everything else on the Dark Web, which has its pros and cons.