

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 4

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

The Right to Privacy: An Overview to the New Era of Privacy Breaches Emerging from the Advent of Social Media Platforms

JITESH KADIAN¹ AND PRADUMAN KRISHAN²

ABSTRACT

It wasn't until the year 2017 that the Judiciary in India recognised the Right to Privacy as an inherent Fundamental Right under Article 21 of the Indian Constitution. The advent of social media and its growing influence on people, businesses and economies led to the emergence of numerous opportunities and violations of the right to privacy of the people. Recent studies reveal that there exists a void between the laws in place to curb these privacy breaches and the mechanism in order to implement these laws. According to a report from the National Crime Records Bureau, between 2012 and 2014, that is in just a span of two years, the number of cyber privacy related crimes have risen by 104% and this number is undoubtedly much higher in today's world as the access to internet and social media is the highest and the easiest it has even been. This paper aims to bring about an understanding about the various threats to an individual's right to privacy that has been conceived owing to the advancement of social media, and the laws in place to curb and regulate such illicit activities.

Keywords: Privacy, social media, Phishing, Morphing, Impersonation, Harassment, Right to Privacy.

I. INTRODUCTION

Since its conception in 1996, social media has managed to reach half of the world's population of 7.7 billion people. In the previous decade, social networking platforms' overall user population has nearly tripled, from 970 million in 2010 to 4.48 billion in July 2021. The 4.48 billion people actively using social media in the world this year is an increase of 13.13% year-on-year from 3.69 billion in 2020. There were only 2.07 billion users in 2015, indicating a 115.59 percent growth in users in only six years.³

With over half the population of the entire planet on social media, human existence has become more reliant on social networks. People have started sharing their information such as text,

¹ Author is a Research Scholar at Faculty of Law, Jagannath University, India.

² Author is an Advocate in India.

³ Dean.B, How Many People Use Social Media in 2022? (65+ Statistics),2022.

photos, and messages in the Media domain, question papers, assignments, and workshops in the Education domain, online surveys, marketing, and customer targeting in the Business domain, and jokes, music, and videos in the Entertainment domain. We can identify social networking media as today's internet culture because of its widespread use by Internet

We have reached a situation where life without social media is unimaginable. Our personal lives, education, entertainment and even our jobs rely social media on a daily basis. This has resulted in people sharing a myriad of personal information to these networking sites. This includes a lot of their personal information and pictures from their family lives, jobs, vacations and even the details of their pets. Some standard information includes their telephone number, email address, name, occupation, age, gender and sometimes even address. Needless to say, this type of information in the wrong hands can open up wide gates to criminal activity. The habit of sharing such information without a second thought has led to the emergence of various crimes against a person's privacy which include the theft and misuse of such information. The right to privacy of people is violated in various different ways while misusing the information available on public domains due to such platforms. Not only is the information being stolen by individuals, but such sensitive data is also being sold by the social platforms themselves. This was recently seen in the Facebook's Cambridge Analytica case, where Facebook being the leading social media platform was held liable for selling user's private information to companies for targeted advertisements.

A case against Facebook was even filed in the Indian Supreme Court⁴ with regards to the WhatsApp privacy policy that allows the data of the people to be transferred from WhatsApp to Facebook.

With the ease of availability of peoples' sensitive information and the lack of awareness and caution amongst the vast majority of people, various crimes against the privacy of people have merged. These include Morphing, Impersonation, Cyber Stalking, Revenge Porn, Sale of Private Data among other things. All of these issues violate the fundamental right to privacy granted to every single citizen of India under Article 21⁵ of the Constitution of India.

II. RIGHT TO PRIVACY

Many international accords recognize privacy as a basic human right. It is crucial for the preservation of human dignity and is one of the most critical cornerstones of a democratic state which defends one's own and others' rights. By virtue of their being, all humans have the right

⁴ Karmanya Singh Sareen v. Union of India, SLP (C) 804/2017, 2017

⁵ Article 21, The Constitution of India, 1950

to privacy that comprise of physical integrity, individual autonomy, free expression, and the freedom to travel or think. This indicates that privacy encompasses integrity, personal autonomy, data, voice, permission, objections, movements, ideas, and reputation in addition to the body.

It is vital to investigate what defines privacy in order to comprehend the Right to Privacy. According to Black's Law Dictionary⁶, Right to Privacy is the "Right to be left alone; the right of a person to be free from any unnecessary publicity; the right to exist without any unwarranted public intrusion in things with which the public is not necessarily interested". The Supreme Court has opted to read Article 21⁷ in conjunction with the Universal Declaration of Human Rights⁶ in order to broaden its reach.

Article 21's right to life can be construed in any way, thus it encompasses all elements of life that make a person's existence more meaningful, including the right to privacy. The Supreme Court first addressed this issue in *M.P. Sharma & Ors. vs. Satish Chandra and Ors.*⁸ Where the Supreme Court's eight-judge bench ruled that the Indian Constitution does not include a right to privacy.

However, in the case of *Kharak Singh vs. The State of UP*⁹, the court ruled that Regulation 236 of the UP Police Regulations was unconstitutional because it violated Article 21 of the Constitution. The right to privacy was held to be included in the right to life and personal liberty, according to the Court. The Court in this instance for the first-time linked privacy with personal liberty.

This connect between right to privacy and right to life and personal liberty was once again seen in the case of PUCL case of wiretapping phones where the court held that "The right to privacy "is a part of the right to 'life' and 'personal liberty' enshrined under Art. 21 of the Constitution".

It was further opined that the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy" since telephonic conversations are often of an intimate and confidential nature and any right enshrined under Art. 21 cannot be curtailed except according to the procedure established by law, which has to be just, fair and reasonable. In the *Puttaswamy Case*¹⁰, a nine-judge bench of the Supreme Court established the 'Right to privacy' as a fundamental right under the Indian Constitution, based on

⁶ Brian A. Garner, editor in chief. *Black's Law Dictionary*. St.

⁷ *Supra* Note 3

⁸ *M.P. Sharma & Ors. vs. Satish Chandra and Ors*, 1 SCR 1077, 1954

⁹ *Kharak Singh vs. The State of UP*, AIR 1295, 1963

¹⁰ *Justice K.S.Puttaswamy vs. Union of India*, 10 SCC 1, 2017

the notion that "privacy is the highest manifestation of the sacredness of the individual."

III. MORPHING

Photo/video morphing is a technique for modifying the form or appearance of a picture with a smooth transition. The image is modified to something that isn't exactly the same as the original. Even identifying any flaw on the morphed image might be challenging at times. However, it is dependent on the programme used to morph the image. It's a terrific technique for editing that's mostly employed in the animation and film industries, but the technology also has a negative side. While it can be a fantastic tool for some, for others, it's a tool for wreaking havoc. Recently, in a case in Kerala, an actress filed a complaint in the Cyber Cell with regards to her photos being morphed into scandalous and explicit images and being circulated. This is just one of many instances where the photos of people, especially women are morphed with the nude pics available online and circulated for vulgar and vile entertainment.

There has been a tremendous rise in such cases since the popularity of social media has started to increase. The access to a person's pictures has never been easier with tens or hundreds or even thousands of pictures of people are available on their own social networking accounts which they themselves have posted. This makes it easy for the ones who are looking to morph pictures to find photos which suit their requirements. Such morphed photos are even used to blackmail the victims.

Section 67 of the IT Act¹¹, makes it illegal to divulge or disclose any content that is, among other things, lascivious or engages in prurient interests. The first sentence has a penalty of up to three years in jail and a fine of up to five lakh rupees, with successive convictions carrying a penalty of up to five years in prison and a fine of up to 10 lakh rupees. The punishment will be doubled if the offender is a habitual offender, that is, if the offender attempts to morph and harasses again notwithstanding action taken against him/her.

Other provisions that also deal with such cases are Section 292, 509, 499 and 500 of the IPC¹³ where section 292 deals with obscene representation, 509 deals with insult to modesty of a woman, and section 499 and 500 deals with defamation.

In the case of *State of Punjab v. Major Singh*¹², it was opined by the court that section 509 of the IPC makes it illegal to send a message that contains lewd or lusty comments about a girl's body and circulates the image of the same. Under this Section, acts that degrade a woman's

¹¹ The Information and Technology Act, 2000

¹² *State of Punjab vs. Major Singh*, AIR 63, 1967

dignity are punishable by up to one year in jail, a fine, or both.

IV. IMPERSONATION

Impersonation is the act where one person pretends to be another in order to either trick people, gain something illegally or even defame the person in question. Such acts of impersonation which were extremely difficult to execute earlier has just become extremely easy since the evolution of social media. All it requires now to impersonate someone is a phoney email address to create a social media account and some pictures of the person that you want to impersonate which can be easily available through the person's social media accounts.

Facebook which is the world's biggest social media platform is also the platform with the highest number of such fake and impersonating accounts.

As per a study by the Statista Research Department , Facebook removed close to two and a half billion fake accounts in the year 2019. That is more than one fourth of the entire world's population. It is also claimed that 16% of all Facebook accounts are either fakes or duplicates even now, which amount to about one hundred and thirty-seven million user profiles.

These fake accounts can be used for various different purposes by the creators of it and could be a serious threat to privacy of the victims. In India, if it is proven that someone stole or dishonestly used another person's password, digital signature, or any other unique identifying feature, Section 66C of the act¹⁶, which deals with identity theft, provides for three years in prison and a fine of Rupees one lakh if it is shown that someone stole or dishonestly used another person's password, digital signature, or any other unique identifying feature. Section 66D punishes cheating by personation through the use of a computer source, as in the case when someone establishes a phoney social media account in someone else's name and uses it to defraud others.

V. CYBER STALKING:

Cyber Stalking as per Merriam Webster¹³ is "the use of electronic communication to harass or threaten someone with physical harm." The term "stalking" refers to the practise of following someone for an extended period of time. Harassment or threatening actions are also part of this activity. The stalker follows a person around at all times, even at home, the market, and threatens them by sending them texts and making blank phone calls. However, in cyber stalking, the internet or any other electronic media is used to communicate with the target individual via e-mails or SMS. A cyber stalker depends entirely on the internet's invisibility, which allows

¹³ "cyberstalking." Merriam-Webster.com. Merriam-Webster, 2011.

them to stalk their target without being recognised.

Ritu Kohli, whose name and contact details were placed on a chatting service without her consent by her husband's friend, filed the first ever complaint against internet stalking in India in 2003. She filed a case with India's cyber department for infringing on her modesty under Section 509 of the Indian Penal Code.

The crime of cyber stalking is on the rise in India, with fresh incidents of internet stalking being reported every day. Cybercriminals can easily stalk and harass a person due to the ease with which they can obtain a person's personal information online.

As per Section 354D of the IPC, the act of continuously pursuing or contacting a woman, whether online or in person, when she has made it apparent that she does not want the attention, is illegal. It carries a three-year sentence for the first crime and a five-year sentence for subsequent offences. The sole exception is when a man is following a lady as part of his legal responsibilities.

VI. REVENGE PORN

Revenge porn is the act of distributing or publishing another person's explicit and private sexual photographs, films, and materials without their consent in order to inflict humiliation, embarrassment, hurt, or distress to a former partner. According to the Merriam-Webster dictionary, Revenge porn is defined as "Sexually graphic photos of a person released online without that person's consent, especially as a form of retribution or harassment."

Pornography is an immoral behaviour that has acquired international attention in recent years as a result of several cases and occurrences. Private information such as name, address, and connections to social network accounts is sometimes included in leaked photographs and videos by vengeful ex-partners who utilise this tactic locally or online to exact retribution. The worst part of all is that this is not limited to only adults but even include children.

Such acts have drastically increased since the popularity of social media. Ever since social media been on a rise, it has become the easiest way to share such information in a way that the people closest to the victim see it and it inflicts humiliation, embarrassment, hurt, or distress upon the victims.

There are various different legislations that prescribe punishments for revenge porn. Section 13 and 14 of the POCSO Act²⁰ punishes whoever distributes and shares pictures or videos of children for the purposes of sexual gratification. Similarly, Section 67 of the IT Act punishes the sharing of obscene pictures, Section 509 of the IPC talks about harming the modesty of a

woman and Section 354A prescribes the punishment for sexual harassment.

In a ground-breaking case¹⁴ in March 2018, a sessions court in Tamluk, West Bengal, determined a case on Revenge Porn and gave the victim justice.

The victim was in an intimate connection with a 23-year-old guy. He received intimate and sexual photographs from the victim on the promise of marriage. When the victim's marriage fell apart, the accused blackmailed her into returning to him with the victim 'sand her father's personal information by posting graphic content on porn sites. The defendant was sentenced to 5 years in prison and a fine of Rs. 9000 by an East Midnapore district court, which found in favour of the victim. The accused was found guilty under Indian Penal Code Sections 354A, 354C, 354 and 509, as well as the Information Technology Act Sections 66E, 66C, 67 and 67A.

VII. CONCLUSION

The main issue with cybercrime is the cybercriminal's modus operandi and perseverance. To rapidly identify the real culprit, the police, courts, and investigative agencies must keep up with the newest innovations in web-based applications. The legal system and regulatory bodies have a responsibility to keep up with technological advancements and guarantee that emerging technologies do not become weapons of exploitation and harassment. Governments can enact legislation to defend human rights, particularly women's rights, in the same way that they are protected in physical areas. It is indeed true that rapid development of technology is extremely crucial for the progress of humanity but this should not come at the cost of a fundamental right. With the rapid progress in technology, the laws and the methods of implementing the rules and executing the deterrents must also rapidly progress, adapt and overcome the challenges posed. Legislation should not only protect users, but also educate and enlighten all groups on how to use their freedom to communicate. Individuals must also become aware both online and offline; they must understand how to take precautions in the cyberspace and how to seek redressal if their rights are abused. As a society, we are moving in the right direction to protect every individual's privacy, but we should not be oblivious to the already existing issues with the same and must address it as soon as we can with utmost priority. To conclude, I would like to quote that "Privacy isn't negotiable. It is a birth right of every single citizen of India."

¹⁴ State of West Bengal v Animesh Boxi, C.R.M. No. 11806 of 2017, GR/1587/2017.