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Right to Privacy and in the Edge of Social Media and Digitalization in India

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ABSTRACT

Digitalization is the need of modern edge. India has adopted the same trend of digitalization like other nations as well. But in India protection of right to privacy and cyber security is one of the concern of contemporary India. Article 19 provides freedom of speech and expression with some reasonable restrictions. Freedom of speech and expression includes freedom of press. Right to privacy is also a fundamental right guaranteed under article 21. But in present society maximum population of current society of India is very much addicted to social media, social networking sites and with social entertainment apps. Due to digitalization internet banking and online payment apps are very much used by people. Digitalization is a progressive feature of a developing nation, though there are some positive effect in the country but on negative effect is also there specially cyber crime against citizens, some of the citizens are victims of cyber defamation, violation of right to privacy through hacking of social media profile of a person either common people or public figure, hacking of bank details, cybertheft of bank account. To protect citizens from cyber crime Information Technology Act,2008 was passed by parliament of India. To protect the intermediaries intermediary guidelines, 2018 and 2021 was passed by parliament of India, though there was Indian Penal code provides punishment for cyber crime. However, cyber is under control but it is still going on. India needs to strengthening cyber laws and needs improve cyber security and security officials should give advance training to fight with cyber crime. There is also need of strong government policies to make internet users aware against cyber crime and proper implementation of cyber law is essential for present society Of India.

Keywords: Right to privacy, cyber crime, social medial, digitalization.

I. INTRODUCTION

Media is a tool of mass communication through broadcasting, publishing and in present days through internet. In current days digital media is also a way to express opinion. Constitution provides right to freedom of speech and expression under Article19(a) and Article 21 provides right to personal liberty which includes right to privacy. Right to privacy is a fundamental right

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under our constitution. But now a days people are using social media as a medium of free speech and expression. Right to privacy also includes protection of social media from hacking and other cyber-crimes. Present society is the edge of digitalization cyber crime is increasing day by day. People are using internet not only for education but also using for business purposes like payment through various applications and huge number of internet user using internet for social media. On the One hand due to digitalization number of internet user increasing and other hand cybercrime including hacking social media profiles and bank accounts are also increasing. Through social people can express their point to view on any matter of local national or global concern. Protection of social media and cybercrime is prime concern of this digital edge. Raja Rammohan Roy was the first initiator of social reforms in India. In 1816 first Indian English daily newspaper Bengal Gazette published as because of initiative taken by Gangadhar Bhattacharjee.²

II. CONSTITUTIONAL PROVISIONS

Article 19(1) of Constitution of India provides following six freedoms³:

- a) Freedom of speech and expression
- b) Freedom of peaceful assembly that indicates assembly without arms.
- c) Freedom to form association and union.
- d) Freedom to move within the territory of India.
- e) Freedom to reside and settle in any part of within the territory of India.
- f) Freedom to practice any occupation or carry on any trade or business.

Though these freedoms are provided by constitution but these freedoms are not absolute freedom. Article 19(1) (a) provided freedom of speech and expression this freedom has some reasonable restrictions as follows: security of state, friendly relation with foreign country, Decency and morality, public order, defamation, contempt of court, sovereignty and integrity of India, sedition, incitement to any offence. Freedom of speech and expression includes freedom of press.

III. WIDTH OF FREEDOM OF PRESS IN INDIA

Article 19(1) not specifically mentioned directly freedom of press but freedom of speech and

² MEDIA LAW, including right to information Act; Dr. Rakesh Kumar Singh and Souvik Dhar; Vinod publications(P) Ltd;p-2

³ THE CONSTITUTION OF INDIA; BARE ACT With SHORT NOTES; UNIVERSAL LEXIS NEXIS;P-12-13

expression includes freedom of press. Scope of freedom of press is discussed below:

- i. **No pre-censorship on press:** IN Brij Bhushan V. State Of Delhi AIR1950 SC129. This is first case of Independent India where supreme court had passed an order against imposition of of pre censorship on press⁴.
- ii. **Right to approach to the source of information:** Andhra Pradesh High Court gave a landmark judgment in M. Hasan v. State of Andhra Pradesh AIR1998 AP.35. It Was held that denial of journalist and videographer from taking interview of a convicted prisoner is equivalent to violation of fundamental Right guaranteed under Article 19(1) (a) of constitution of India.⁵
- iii. **Free stoppage of publication of articles or any matter of public importance:** In R. Rajagopal v. State of Tamil Nadu⁶ Supreme Court held neither the government nor the Government official can impose any restrictions or impose any kind free stoppage of publication of article of public importance.⁷
- iv. **Freedom in case of volume of views and news :**Bennet Coleman and Co v.Union of India AIR1973 SC106 It was held that freedom of press also includes freedom of expression of views and news. Freedom press must be qualitative and quantitative. Quantity of print media cannot be restricted by authority or law.⁸
- v. **Freedom of circulation:** *Freedom* of speech and expression insets circulation of views ideas secured under freedom of circulation. In Romesh Thaper v. state of Madras AIR1950 SC124, It was held that freedom of circulation is equally important like freedom of publication and freedom of quantity of news, without freedom of circulation freedom publication is almost meaningless. If any action taken by government which adversely affects the circulation of the newspaper is a violation of article 19(1) (a).⁹
- vi. **No direct or indirect attack on press:** In Indian Express Newspaper Union of India , It was held that any kind of attack may be direct or indirect on press violative of article 19(1) (a). In this particular which kind of attack faced by press it was not only violative of article 19(1) (a) but also violative of article 14 of constitution of India.¹⁰

⁴ CONSTITUTIONAL LAW OF INDIA; Professor Narendra Kumar; Allahabad Law AGENCY; P-223

⁵ CONSTITUTIONAL LAW OF INDIA; Professor Narendra kumar; Allahabad Law Agency;p-224

⁶ AIR1995 SC264

⁷ CONSTITUTIONAL LAW OF INDIA; Professor Narendra Kumar; Allahabad Law AGENCY; P-223

⁸ <https://lawbhoomi.com/bennett-coleman-vs-union-of-india-bennett-coleman-case> (retrieved on1.04.2024 at 7.35 p.m.)

⁹ INDIAN CONSTITUTIONAL LAW, M.P JAIN;LEXIS NEXIS; P-1086.

¹⁰ AIR 1986 SC872.

Mohan Lal Sharma v. Union of India and others (CRL) No.314 2021. Court passed an order on Pegasus dispute investigation to constitute a technical committee to direct the Pegasus investigation. It was held that if there is any lawful infringement to right to privacy must be directed for the purpose of law court held that union cannot supplicate national security to avoid accountability. It was observed that freedom of press and right to privacy are the allies so fear of close observation or scrutiny or fear of using any spy software against press is equivalent to assault on press which is a fourth pillar of democracy.¹¹

- vii. **Implosion of no excessive taxes on press:** In Indian Express Newspaper (Bombay) pvt. Ltd. V. Union of India AIR1986SC515 It was held that at the time of levying taxes government should be more careful about the levying taxes on matter of press because there is a difference between levying taxes on other matters and levying taxes on press matters. if Excessive taxes imposed on press by government it is violation of fundament right freedom of speech and expression assured by article19(1) (a).¹²
- viii. **Reasonable restrictions on press under constitution:**(2) OF (19) provides some restrictions on freedom of speech and expression. Article 19 (1) provides six freedoms for citizens of India. But as per constitution of India there is no absolute freedom, citizens can enjoy six freedoms guaranteed under article 19(1) (a) guaranteed freedom of speech and expression but this freedoms is also not absolute and it has some reasonable restrictions which are mentioned under article 19(2) of constitution of India. These reasonable restrictions are as follows:
 - ix. **Security of state:** If freedom speech and expression not to be used where question of security of state arises. This freedom cannot be allowed at the cost of security of state.
 - x. **Friendly relation with foreign states:** India always maintained good relations with foreign states. No citizen has a right to destroy friendly relation between India and any foreign state by using his or her fundamental right freedom pf speech and expression guaranteed under article 19(1) (a). of
 - xi. **Decency or morality:** Freedom press does not allow publication of obscene material or article which are prohibited under section 292 and 294 of Indian Penal code,1860. In Ranjit D. Udeshi v. State of Maharashtra AIR1965 SC881 It was held that in India there

¹¹ <https://www.scoobserver.in/journal/sc-judgment-review-2021-freedom-of-the-press-pegasus-manohar-lal-sharma> (Retrieved on 05. 04.2024 at 8.03 p. m)

¹² CONSTITUTIONAL LAW OF INDIA; Professor Narendra Kumar; Allahabad Law AGENC; P-226

is prohibition of sale and distribution or exhibition of obscene pictures or any other product related to obscenity or any other obscene act or singing song by uttering obscene words in public place does not come under the purview of freedom of speech and expression protected under article 19(1) (a). these are prohibited under section 292 and 294 of Indian penal code.¹³

- xii. **Public order:** The term public order inserted by first Amendment Act, 1951 In *Romesh Thapper v. state of Madras* AIR 1950 SC124 It was held that term public order in dicates public safety, public peace, public tranquillity.¹⁴
- xiii. **Defamation:** Media has no right to defame someone by using the right freedom of speech and expression. Section 499 of of Indian Penal Code prohibits the crime like defamation is a punishable offence. Section 499 of IPC Is not violative of article 19(1) (a)¹⁵.
- xiv. **Contempt of court:** *Right* to freedom of speech and expression does not permit contempt of court. According to section 2(a) of contempt of court Act there are two kinds of contempt of court civil Contempt and criminal contempt. Media has no right to scandaliz judiciary or to unfair criticism of any judgement of court of law.
- xv. **Sovereignty and integrity of India:** Sixteenth Amendment Act, 1963 had been inserted the ground sovereignty and integrity of India. No one has a right to misuse freedom of speech and expression against the sovereignty and integrity of the nation.
- xvi. **Incitement to an offence:** If any kind of direct public speech or painting causes any incitement to an offence this kind of speeches or any other means expressions which can cause incitement of offence those are prohibited in India.
- xvii. **Sedition:** If any speech or written expression or any signs gestures or by visible representation brings hatred or dis affection towards the nation or lawful government of the nation will be punished under 124-A IPC.

IV. PROPORTIONS OF RIGHT TO PRIVACY

In *Maneka Gandhi v. Union of India* supreme court held that the expression personal liberty under article 21 have wide expansion. Right privacy is one of them. Only right privacy has its own wide dimension.

¹³The Case Relating to the Test of Obscenity (alec.co.in) (retrieved on 10.04.2024 at 7.42 p.m.)

¹⁴ Article 19(2) and 'Public Order' – Vidhi Centre for Legal Policy (vidhilegalpolicy.in) (retrieved on 11.04.2024 at 7.33 p.m.)

¹⁵ *Dr. Suresh Chandra v. panbit Goala*, AIR 1958 Cal 176

(A) Right to privacy and telephone tapping:

People's union for civil liberties v. union of India AIR 1997 SC568. It was held that in present days phone is part of not human society but also essential part of life of a human being. Phone tapping is not a violation of right to privacy if it was done in emergency situation for public interest.¹⁶

(B) Right to privacy and disclosure of dreadful diseases:

Mr. X v. Hospital Z AIR1999 SC495 division bench of supreme court held that right privacy is not a absolute right it can be altered on the grounds of morality public interest and public health.¹⁷

(C) Right to privacy and disclosure of information:

Right to privacy is a fundamental right comes under purview of personal liberty which is protected by article 21. Right to information also has given the status of fundamental right under article 19(1). Right to information Act was passed in the year of 2005. Citizens RTI was approved through this legislation. Peoples union Civil liberty v. union of India AIR2004 SC456 It was held that neither a journalist nor a lawyer has to collec information only about the information related to committed crime. But they don't have no right to known person details of suspect. Neither the journalist nor a lawyer has disclose the colleted information about the crime and criminal which is not only violative of right to privacy of accused but also against professional ethics. It was also observed that to hold telephonic conversation of someone's home or office is violative of right to privacy under article 21 if it is not permitted under procedure establish by law.¹⁸

(D) Right to privacy of a person conditional to medical test:

If a patient of HIV positive after knowing about his HIV POSITIVE disease he wants to marry though doctor cannot disclose about the disease of his patient but knowing about the fact that aids will spread through sexual relationship that HIV positive person wants to marry Than for the AND with good intention for protection public health and for public welfare doctor may disclose about hiv diseases of that particular patient, in that case it was not violation right to privacy of that particular patient. Sharada v. Dhrampal a matrimonial court directing a party of divorce proceeding to undergo a medical test. Sc held that to direct a party to undergo medical test is a violation of right to privacy of that party. Sc observed that Court only can give

¹⁶ <https://indiankanoon.org/doc/973841/> (retrieved on 16.04.2024 at 7.28 p.m.)

¹⁷ CONSTITUTIONAL LAW OF INDIA; Professor Narendra Kumar; Allahabad Law AGENC; P-312

¹⁸ <https://privacylibrary.ccgnlud.org/case/pucl-vs-union-of-india> (retrieved on 18.04,2024at 8.15 p.m)

the direction for medical test if the applicant has a strong prima facie case and sufficient cause and court had enough material to give that direction. Then only it is not violation of right to privacy.¹⁹

(E) Right to privacy and restitution of conjugal rights u/section 9 of hindu marriage act:

Conjugal rights between husband and wife is absolutely personal of husband and wife. But section 9 of Hindu marriage Act,1955 provides if without any reasonable excuse if one of them withdraw or detach himself or herself from other than other person can claim restitution of conjugal rights before court if court satisfied that without any reasonable excuse one party to the marriage withdraw from the society of other party than court may grant decree of restitution of conjugal rights. Now the question arises the person right conjugal rights discussing before the court is not violation of right to privacy In.T. Sareetha v. T. Venkata Subbiah Air 1983 A.P356, it was held that though conjugal relationship is private matter of husband and wife but marriage is social union . breakdown of marriage indicates breakdown of a part of society. Restitution of conjugal rights can protect a marriage form breakdown. If restitution of conjugal right is needed for welfare of society . if case of restitution of conjugal rights discussed before court of it not violation of right to privacy because it has been done for societal interest. Section 9 of Hindu Marriage Act,1955 is constitutionally valid.²⁰

(F) Right to privacy and right of an adult to live with any body:

India is a sovereign democratic country. Any citizen of India after attending the age of majority he or she can live freely with anybody. In jyoti v, state of U.P, it was held that According to section 3 of Indian Majority Act, 1875 provides when a person attains 18 years of age than he or she will considered as major person, because 18 years of age is age of majority. From the age of majority, a person has a reasonable understanding capacity. After attending age of majority a person will be eligible to cast his or voting rights, side by side he or she has right to privacy on that ground he or she can free to live with any one of his or her choice.²¹Abhijit Bikaseth v. state of Maharashtra and Other. 3 CrIj, 889,892 (Bom. 2009). It was held that it was not mandatory for women to establish her marriage to claim maintenance under section125 cr.p.c. women who is in live in relationship can claim maintenance under 125 Cr.P.C.²²

¹⁹ AIR 2003 DELHI 217

²⁰ HINDU LAW ; B,M. GANGHI; EASTERN BOOK COMPANY;P-280

²¹ AIR 2003 sc3057.

²² <https://lawsuitcasefinder.com/casedetail?id=U2FsdGVkX1ebh784HGVMzUAzLfZBO8sebh78S2770s1TUT4S364Mgs5> (Retrieved on 22.04.2024 at 7.45 p.m.)

(G)Article 361A:

Article 361A of constitution of India deals with Protection of Publication of Proceedings of Parliament and State Legislatures

Article 361 (1) provided that No one shall be liable to any proceedings either criminal or civil for publishing authentic report of in newspaper or in regarding any proceedings of either house of parliament or the legislative assembly of state unless it is proved that it was done mal intention. c with mama provided that nothing in this clause shall apply to any publication of any proceeding regarding secrete sitting of either house of parliament or either house of legislative assembly of any state.

(2) it was provided that clause (1) of article 361 shall apply to the matters which is published through newspaper or broadcasted by wiriness telegraphy as part of programme or service provided by broadcasting station.²³

V. SIGNIFICANCE OF RIGHT TO PRIVACY IN SOCIAL MEDIA

Digital media allows information to be interchanged and dispense collected information without verification of authenticity of sources and without no limitation of contents of information.²⁴ At present society maximum population of the nation very much habituated to collect information from internet. Especially the young generation for their entertainment, for their expression of opinion, for discussion and for studies also they are very much dependent on internet and social media as well. World famous social media platforms like Facebook, WhatsApp, X Handle through these applications one can maintain worldwide commination and can express his or her thought and views about any matter of concern. But it is very difficult to find out authenticity of. the sources of information spread by social media. sometimes fa fake news and fake story spreads through social media. Any people who have a social media profile can be a victim of fake news fake videos and if his or her profile is hacked by hackers than he or she will be victim of cybercrime. At present world cybercrime is increasing day by day. From the corona infection period maximum of the world population make not by hard cash but by digital payment or pay through UPI by various payment apps or otherwise payment had done through internet banking. However, bank details are hacked by hackers and account holder suffered by big monetary lose. Bank account details are private information of a person. In modern edge as per need of society everyone is paying either through online payment

²³ THE CONSTITUTION OF INDIA; BARE ACT2021; UNIVERSAL LEXIS NEXIS; P-167

²⁴24 MEDIA LAW (including Right to Information Act);Dr. Rakesh Kumar Singh, Souvik Dhar; vinod publication; p- 359-360

applications or through internet banking. If online payment applications hacked by hacker or username or password hacked then the right to privacy of account holder is violated by cybercrimes. especially the public figures are victims of fake news and fake information spreads about them. Profile hackers are infringing right to privacy through hacking social media profile of any people.

(A) Artificial intelligence and its misuse:

Artificial intelligence is programming process of computer where computer that can think like humans. The aim of AI is to store large amount of data in memory, AI is also eligible to recognise work patterns, make decisions and judge like human. some examples of AI generated products in present days . e.g. smart car, social entertainment apps, Internet banking apps, google predictive search along with search history, E- commerce, smart watches are now with AI feature. Smart watches with AI not only show time and date but also detect heart rate, blood pressure, blood glucose level. Sometimes artificial intelligence misused for biased decision making. AI can be biased if it was programmed with biased data and trained for biased decision. There are some disadvantages of artificial intelligence are as follows: -

- 1) Making a machine with artificial intelligence feature, it charges high cost.
- 2) Increase of artificial intelligence causes unemployment.
- 3) AI make human lazy in regular life.
- 4) Artificial intelligence has no moral or professional ethics.
- 5) Artificial intelligence is totally emotionless.
- 6) AI has no natural improvement like human. For improvement of Ai new programming must be done.

Sometimes artificial intelligence misused by students e.g. through Ai bypassing of plagiarism through software, plagiarism of written content done by students by misusing artificial intelligence. AI misused by students for non-supervised assessments also for artificial work, translation and misused for computation and programming.

(B) Laws relating to internet and social media:

In the year of 1966 for first time 1966 United Nations through international trade law had tried to unify the laws of different nations by approving E- Commerce model law passed by UN General Assembly. Information Technology Act, 2000 passed by parliament of India and India became twelfth nation who adopted cyber law. Present society is facing the serious problem like fake news. There are few kinds of pattern of fake news. There are few kinds of fake news.

These are as follows: i) news with misleading content, ii) fabricated news content. iii) news with pretender content, iv) Manipulated fraud news contents.

(C) Contribution of information technology act,2000 in prevention of cyber crime:

Life of current society has some drastic changes due to digitalization. Specially use of digital technology by media and social media platforms has a significant impact in society. Use of digital technology in business helps to improve quick and easier process of payment had made a big change in business world. A revolution is going on when people have made online payment transaction in the field of business. information regarding anything can be stored in electronic medium in place of traditional paper documentation. Data stored electronic device has so many advantages than traditional paper stored data. Main object of this Act to protect society from computer based and cyber related crime. some specific offences and punishment provided by the Act is as follows:

a. **Tampering with Computer source documents:** “Whoever intentionally or knowingly conceals, destroys or changes or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for computer, computer programme, computer network or computer system, where the computer source code is required to be kept secret or maintain by the law time being in force, shall be punishable with imprisonment up to three years or with fine which may extend to 2 lakh rupees.”²⁵

b. **Penalty and compensation for damage to computer and computer system:** section 43 of Information Technology Act,2000 provided that if anybody without permission of the owner or in charge of computer system or computer network;

- Accesses or secures access to such computer system or network,
- Download, copies or extracts any data store in any removable storage medium,
- If introduce any impurity or computer virus into the computer system or computer network,
- If any damages or causes to be damaged any computer system or computer network, computer data base or any other programmes of computer system or computer network;
- If anyone causes interruption causes of any computer system or computer network;

²⁵ Section 65 of INFORMATION TECHNOLOGY ACT.

- Shall be liable to pay damages by way of compensation to the affected person.²⁶
- Residuary penalty: According to section 45 of Information Technology Act, 2000 provided that if anyone contravenes any rules or regulations of this Act, shall be liable to pay compensation not exceeding twenty- five thousand rupees to the affected person.²⁷

c. **Computer related offences:** if any person fraudulently or dishonestly does any act which is mentioned under section 43 of Information Technology Act,2000 shall be punishable with imprisonment for term which may extend to 3 years or with fine which may extend to five lakh rupees or with both.

- Word dishonestly shall have the same meaning which is allocated under section 24 of Indian Penal Code;
- Word fraudulently shall have the same meaning which is mentioned under section 25 of Indian Penal Code.²⁸

d. **Punishment for sending offensive messages through communication service etc:** whoever sends through computer resources or any other communication device-

- if any information is of offensive or imperil in character or
- any information which is known by the person who spread it , it is a false information only to create annoyance, obstruction, causes injury to reputation of someone, with the intention of enmity, hatred by using a computer or any other communication device or
- any E- mail message was sent to the addressee or recipient with a intension to deceive or mislead that addressee about the origin of such message;

shall be punishable with imprisonment for a term which may extend to three years and with fine.²⁹

“whoever dishonestly received or received stolen resources or data from any communication device knowing or reason to believe the these are stolen data from any computer or communication device; shall be punished with imprisonment which may extend to three years or with fine which may extend to one lakh rupees , or with both.³⁰

²⁶ INFORMATION TECHNOLOGY ACT, 2000, BARE ACT, UNIVERSAL LAW PUBLISHING; P24-25

²⁷ INFORMATION TECHNOLOGY ACT, 2000, BARE ACT, UNIVERSAL LAW PUBLISHING; P-27

²⁸ INFORMATION TECHNOLOGY ACT, 2000; SECTION-66

²⁹ INFORMATION TECHNOLOGY ACT, 2000, BARE ACT, UNIVERSAL LAW PUBLISHING; P-34

³⁰ INFORMATION TECHNOLOGY ACT, 2000; SECTION-66B

(D) Criminal Law and Media:

Crime is such an Act which is punishable by law as because that act is prohibited by legislation. Crime is an act or omission which was done intention to cause harm to the society. Tort is a private wrong on the other side crime is a public wrong. Right of media is protected under Article 19 (1) right to freedom of speech and expression but Article 19 (2) provides some reasonable restrictions, however Freedom of media is not absolute. Defamation is one of the reasonable restrictions among other reasonable restrictions.

- a. **Defamation:** “Whoever by words either by spoken intended to be read, or by signs or by visible representation, makes publishes any imputation concerning any person intending to harm reputation of such person is said to defame that person.”³¹ Only defamatory statement is not causing defamation, Publication of that defamatory statement is essential to cause crime like defamation. There are two kinds of defamation. 1) Libel- Where defamatory statement is published in a written form. ii) Slander-Where defamatory statement made in a verbal(spoken) form. **Punishment for defamation:** Section 500 provided that **Whoever** defames another shall be punished with simple imprisonment for a term which may extend to two years or fine, or with both³².

Exceptions of defamation:

- i. If any true information published in a good faith for public good welfare is not a defamation under Indian Penal Code.
- ii. It is not defamation to publish in good faith true report of proceedings of a court of justice.
- iii. if someone is expressing his or her opinion in good faith conduct of public servant in discharge of duty towards public is not defamation. regarding
- iv. It is not defamation to publish opinion regarding merit of any civil or criminal case which has been decided by court of law.
- v. It is not defamation to convey caution with good intention to one person from another person , this convey was done with intention to save that person to whom the information conveyed or for some persons whose interests can be save with that person to whom the caution information conveyed.³³

³¹ Section 499 of INDIAN PENAL CODE, 1860.

³² THE INDIAN PENAL CODE; BARE ACT; Universal Law publishing; p-194

³³ MEDIA LAW (including Right to Information Act); Dr. Rakesh Kumar Singh, Souvik Dhar; Vinod publication;

b. Cyber Defamation:

Cyber defamation is an act of spreading false and misleading statements about a person or organization on internet through social media platforms, blogs and through any website. Cyber defamation indicates cyber bullying which includes a wide harm of reputation, spreading negative or derogatory statements about victim (either a person or organization.)

Section 66A (b)- of the information Technology Act, 2000 provided that any information is a false after knowingly this with a intention to causing inconvenience or annoyance or danger to someone by using computer or any other communication device.

(c) of The Information Technology Act, 2000 also provides if through any electronic mail or message only to defame someone or causing annoyance or with a intention deceive or mislead the recipient about the origin of such messages;

Shall be punished with imprisonment for a term which may extend to three years and with fine.³⁴

Section-469 of IPC Provided Forgery for purpose of harming reputation: Whoever commits forgery intending that the document or electronic record forged shall harm the reputation of any person after knowing that it is used for the purpose of defame, shall be punished with imprisonment of either for the term extended to three years and shall also liable to fine³⁵.

Offence: “Offence means any act or omission made which is punishable by any existing law in force and includes any Act in respect of which complaint can be lodged under which act crime is committed³⁶.”

Compoundable and Non Compoundable Offence: Offences which are less serious in nature are categorised under section 320 of CRIMINAL PROCEDURE CODE, 1973 those offences are known as compoundable offence.

Offences which are not mentioned under 320 of Cr.P.C, are considered as non- compoundable offence.

Section 469 of Indian Penal Code provides punished for crime like forgery for the purpose of cheating or crime like cyber defamation is a cognizable, non-compoundable and non- bailable offence.

Bailable and Non- Bailable Offence: Section 2(a) of Criminal procedure Code, 1973 provided

p-28

³⁴ SECTION 66A OF INFORMATION TECHNOLOGY ACT, 2000.

³⁵ THE INDIAN PENAL CODE 1860; BARE ACT WITH SHORT NOTES; UNIVERSAL LAW PUBLISHING LEXISNEXIS; P-180

³⁶ Section 2(n) of Criminal procedure Act, 1973.

that bailable offence means an offence is bailable offence as per first schedule of criminal Procedure Act, 1973 and any other offences.³⁷.

c. Media Trial:

The term Media trial or trail by media explained in united states by author Ray Surette in his book Media, Crime and Criminal justice had defined the term media trial there are some regional or national news events in which programme converted the criminal justice system in drama by media for public at large.³⁸In India the concept of media trial explained by supreme court as apperception of being guilty or innocent and this type of verdict of media can injure the chances of fair proceedings and also can damage the social reputation of an accused. It can also harm the right of accused person to get just and impartial trial. Trial by media causes impact of television and newspaper coverage on persons reputation spreading general perception about the guilt or innocence before or after verdict of court of law.R.k Anand v. Registrar, of Delhi High court(2009)8 SCC106 It was held that media trial has no legal importance in judicial system of India. Media trial creates conflict between freedom of speech and expression and with right to fair trial, both are the fundamental rights.³⁹

In Nilesh Navlakha v. Union of India 2021. Online Bom-56 Bombay High court for the first time provided some guidelines publication of report of legal proceedings through media. These are as follows:

- i) privacy and dignity of victim must be respected by media.
- ii) Confession or admission made in front of investigator cannot be published.
- iii) Any sensitive information related to the case should never be made public by publication or by broadcast.
- iv) Any interview given by any person who is connected with the case may not be handled by media when the matter is sub-judice.
- v) Press must publish or broadcast news stories in their original and accurate form.⁴⁰

VI. ROLE OF INDIAN JUDICIARY IN THE AREA OF CYBERCRIME

Indian judiciary had played an important role to stop and control cybercrime.

³⁷ The CRIMINAL PROCEDURE, CODE, 1973; BARE ACT WITH SHORT NOTES; Universal Law publishing co. Pvt. Ltd.; p-5

³⁸ https://www.google.com/search?q=media+trial&sca_esv (Retrieved on 27.05.2024 at 8.14 p.m.)

³⁹ <https://www.livelaw.in/lawschool/articles/media-trial-a-conviction-before-the-trial-> (Retrieved on 28.05.2024 at 7.55 p.m.)

⁴⁰ <https://www.livelaw.in/lawschool/articles/media-trial-a-conviction-before-the-trial-252276#:~:text> (Retrieved on 29.05.2024 at 8.04 p.m.)

In Priya Parameswaran Pillai **union** of India and ors.2015 SCC ONLINE DEL 7987. A defamation case filed against Priya as she in her blog something environment degradation due to power project of Essar group. Priya demanded that private companies should not be given right to file defamation suit. Court rejected the argument of Priya.⁴¹

Sreya Singhal **v.** Union of India. A.I.R. 2015 S.C.1523 Supreme court struck down Section 66A of Information Technology Act, 2000 as unconstitutional because it is violative of Article 19(1) (a) which secures freedom of speech and expression. It was also held that social networking sites will not be considered as offensive unless they committed crime under Indian Penal code, 1860.⁴²

Google India Pvt. Ltd. **V.** Vaisakha Industries. AIR 2020 SC.350. fact of the case is related to criminal defamation. A defamatory article published by co- Ordinator of ban asbestos India a google group. Asbestos cement sheet is the complainant. Asbestos cement sheet claimed that this defamatory article has caused damage to to the reputation of company in the market and affects their business. It was held that section 79 of Information Technology Act, 2000 exempted the network service provider from criminal liability only when proving that offence or infringement committed without its knowledge and internet service provider exercised all its power with care to control and prevent the offences and contraventions⁴³.

In SMC Pneumatics (India) Pvt. Ltd **v.** Jogesh Kawatra ES (OS) No.1279/2001 (Delhi High Court, 2001) An employee sent vulgar defamatory abusive emails the to fellow employers and to their sub ordinates with intention to defame the managing directors and the company. DELHI Hight court had issued an interim injunction prohibiting defendant from defaming the company physically or through cyber.⁴⁴

(A) Information Technology Intermediaries Guidelines:

Following rules must be carefully observed by intermediaries at the discharge of duties, these areas follow:

- 1.** The intermediary should publish the rules and regulations and privacy policies and user agreement for access-or-usage of the intermediary's computer resource.

⁴¹ MEDIA LAW(including Right to Information Act);Dr. Rakesh Kumar Singh, Souvik Dhar; Vinod publication; p-31

⁴² https://en.wikipedia.org/wiki/Shreya_Singhal_v._Union_of_India (Retrieved on 31.05.2024 at 8.05 p.m.)

⁴³ <https://blog.iplayers.in/google-india-private-limited-versus-m-s-visakha-industries-another/> (Rerieved on 2nd June 2024 at 10.33 a.m.)

⁴⁴ MEDIA LAW (including Right to Information Act); ;Dr. Rakesh Kumar Singh, Souvik Dhar; Vinod publication; p-32

2. this rules regulations, privacy policy and user agreement must be informed to the to the user of computer resources not to upload display transmit modify or update any information:

- a. which is belongs to any other person on which the user has no right.
- b. The information which can harm minors.
- c. Information which is harmful, harassing, defamatory, pornographic, paedophilic, obscene invasive and hateful of another's privacy or otherwise racially ethnically objectionable unlawful information.
- d. Information which is violative of any law which is time being in force.
- e. any data of information which consist of software viruses or any other computer files, computer code or computer programme which corrupt, destroy or limit the functionality of any computer.
- f. Any information which threatens the unity, integrity, sovereignty, security defence of India and also threatens friendly relations with foreign states.
- g. Any information or promotion which threatens the public health and safety like promotion of cigarettes, tobacco product and alcohol consumption.
- h. Any information which threatens the critical information structure.⁴⁵

The intermediary should not knowingly host, publish any information or shall not initiate the transmission, select the receiver of transmission or choose or modify information mentioned specified under sub-rule (2):

Provided that following actions taken by intermediary not amounts too hosting, publishing storing of any information under sub rule (2) of rule 3:

- (a) Temporary or impermanent intermediate storage of information automatically in computer resources as a congenital feature of such computer resource, but there should be no involvement of human editorial control, for ahead transmission or communication to another computer resource;
- (b) Removal of access to any information, data or communication link by an intermediary after such information, data or communication link comes to the actual knowledge of a person authorised by the compatible to any order or direction as per the provisions of Information Technology Act, 2000.⁴⁶

⁴⁵ THE INFORMATION TECHNOLOGY INTERMEDIARY GUIDELINES (AMENTMENT RULES)2018; RULE 3(2)

⁴⁶ INFORMATION TECHNOLOGY INTERMEDIARY GUIDELINES(AMENDMENT) RULES, 2018;

Intermediary must inform at least once in every month about non conformity with rules regulations, privacy policies, user agreement for access or usage intermediary computer resource, intermediary has a right to terminate the access of user of computer resource and remove any resistive information.⁴⁷.

If any lawful order required then intermediary will provide information within 72 hours of communication regarding information which was asked by any government agency or for assistance concerning security of state or cyber security⁴⁸.

“The intermediary who has 50 lakh users in India or the intermediary comes under the list of intermediaries specially notified by the government of India shall:

- a) Be the company incorporated under the Companies Act,1956 or Companies Act, 2013
- b) Have a permanent office in India with physical address; and
- c) Can appoint a contractual person or alternate senior designated functionary for 24x7 coordination with enforcement law agencies and officers to ensure compliance to their order and requests must be made in accordance with provisions of law.”⁴⁹

VII. CONCLUSION

It is observed from the above discussion that Right to privacy is a fundamental right which is granted under article 21 of constitution of India. But freedom of speech and expression includes freedom of press which is protected under article 19(1) (a). But this freedom is also restricted by reasonable restrictions provided under article 19(2) of constitution of India. But in this edge of digitalization Right to privacy also infringed by social media or through various cybercrimes. The Information Technology Act, 2000 provides protection against cybercrime. Sometimes intermediaries are falsely alleged for crime like cyber defamation, social media account or bank account hacking. To protect the intermediary and to control cybercrime Cyber Crime Intermediary Guidelines (Amendment Rule)2018 and 2021 passed by parliament of India. But still Crime like social media profile account, bank details and bank account hacking are increasing day by day. Digitalization has two side positive and progressive side for society and nation. Negative side for innocent citizens who are victims of cyber defamation, hacking

RULE3 SUB rule(3);

⁴⁷ INFORMATION TECHNOLOGY INTERMEDIARY GUIDELINES(AMENDMENT) RULES, 2018; RULE3 RULE-(4)

⁴⁸ INFORMATION TECHNOLOGY INTERMEDIARY GUIDELINES(AMENDMENT) RULES, 2018; RULE-(5)

⁴⁹ INFORMATION TECHNOLOGY INTERMEDIARY GUIDELINES(AMENDMENT) RULES, 2018; RULE-(7)

of bank details and bank account. However, it is the need of current society more strict cyber security, more strong cyber law and proper implementation of cyber law against cybercrime.
