



PRIVACY V SOCIAL MEDIA

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What is privacy?

If we define, privacy in a simple way it can be said a state of a person that cannot be disturbed or observed by the other people. A more comprehensive definition of privacy may be found in Black's Law Dictionary that define privacy as "right to be let alone, right of a person to be free from unwarranted publicity and right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned"¹. Even the word "privacy" has been defined in many judicial cases as the state of being free from intrusion or disturbance in one's private life or affairs.²

Privacy is a right of an individual to be left alone which is recognized by the common law. Right to privacy is a birth right. The common saying "your liberty ends where my nose begins" is reflective of the layman's interpretation of their right to privacy. In the Indian legal context, the right to privacy is been implicit in the fundamental rights by the Article of Indian Constitutional Law. Right to privacy is not enumerated as a fundamental right in our constitution. However, in many Landmark judgements it has been inferred from Article 21.

Right to privacy under Article 21

¹ "Privacy" Black's Law Dictionary

² Distt, Registrar & Collector v Canara Bank, 2005 (1) SCC 496.

³ Kharak Singh v State of U.P., AIR 1964 SC 1295.

⁴ Maneka Gandhi v Union of India, AIR 1978 SC 597.

Article 21 has been held to be the heart of the Indian Constitution, the most organic and progressive provision in our living constitution, the foundation head of ours laws. In Indian Judiciary, many new dynamic dimension and different interpretation has been given to Article 21. As the result of different interpretation, one is the right to privacy. Is right to privacy is a fundamental right under Article 21 of Indian Constitution? This question was firstly answered in the case of Kharak Singh v State of U.P.³ where a strict interpretation of the word "life and personal liberty" was made and ruled that Right to privacy, was not part of the fundamental right guaranteed by the Indian Constitution. But, in the Maneka Gandhi v Union of India⁴ the Supreme Court ruled right to live under personal dignity under the purview of Article 21 of Indian Constitution.

Later on, different content and scope of the right to privacy was interpreted in many other landmark judgements. As in the case of People's Union for Civil Liberties v Union of India⁵ the Supreme court held tapping of phone as the breach of the right to privacy unless procedure established by law under Article 21.

In 2017, in the case of K.S. Puttaswamy v Union of India⁶ the Supreme Court said right to privacy is a fundamental right under the constitution and is constitutional core of human dignity and this right is protected, as an intrinsic part of the right to life and personal liberty.

Emergence of social media

⁵ People's Union for Civil Liberties v Union of India, AIR 2004 SC 456.

⁶ K.S. Puttaswamy v Union of India, AIR 2015 SC 3081.



In the today's generation, social media has been an important part of life not only for adult but also for all age group people. What is social media? In a simple way, it can be said as medium for interaction between friend and family. However, in a more complex way, it may be defined as computer-based technology that facilitated the sharing of ideas, thoughts and information through the building of virtual networks and communication. It is electronic communication of content, which includes personal contents, documents, videos and photos. The power of social media is the ability to connect and share information with anyone on earth or with many people simultaneously. Social media is not only one-way communication but also allow other people to comment and share views related to its. Like by sharing a photo by person "A" on social media allow other person also to comment and share it view related to that particular photo posted by "A".

Today, we can say that Social media has become ever changing and evolving web based platform. Social media can become many forms of tech-enabled activities. Social media has not been become a platform for the various activities like sharing photo or exchanging text or uploading video and other stuff but now it has become a platform for some business activities also. As it can be used to form a large network, find people across the globe with their interest, thought, and feeling or help to make network career opportunities also. Not only this, now it been a tool for the different politicians to utilize social media to engage with the voters. Even, government use it to promote its various schemes and other policies.

The most popular social media tool and platform used by different people across the world is WhatsApp, Facebook, Instagram, Snapchat, twitter, YouTube, blogs. This list of tools and platforms are not exhaustive in nature as the time passes more and more platform and tools are build. These tools preform different function to maintain a social network like YouTube users video to build a social network, Facebook, Instagram snapchat users' uses video and photo to attract people and to form social networks. WhatsApp which is worldwide global used tool to exchange text messages, videos, photo, audio recording across any part of world through a network.

Law and Social media

As social media has been a worldwide platform for different people across world. With the emergence of social media, there should be rules, regulation or law to regulate the activities related to the social media platforms and to protect the interest of public. Recently with the emergence of social media, there has been a rapid change in the Information and Communication technology. As, with the constant violation of regulation and rules related to social networking has resulted in civil and criminal cases which need urgent attention with the increase of fake news and trolling and infringing the privacy and other right of the people.

In India, the law related to social media are not sufficient. There are almost no judgement by court regarding social media content and other information. The law that exist are mostly related to the defamation and noting more. Various judgments can be interpreted in context of social media but there are not sufficient to give a clear picture of crimes



done by different people through social networking sites.

In India, the Information Technology Act, 2000, regulates social media. This act was enacted to regulate the problem related to usage of Information Technology. This act provides legal recognition for transactions through electronic communication. This act also penalizes various form of cyber-crime. In 2009, this act was amended and a new section was inserted, Section 66A which describes different crimes with respect to social media and other advance technology. Now, what does Section 66A of IT act say? This section criminalises the sending of offensive messages through computer or any other electronic form. Under this section, many people were arrested for posting offensive comment and post. However, many people misuse this law and lead to disproportionate arrest of many innocent people. Therefore, a Public interest litigation was filed for this provision as unconstitutional as it lead to violate fundamental right under Article 19 of Indian Constitution. Subsequently, SC issued guideline for arrest of people under Section 66A. However, no changes was made itself to Section 66A.

Related to Section 66A of IT act, Private bill and resolution was also formed to amend the section or to explain the scope of applicable of this particular section. However, both bill and resolution for the Section 66A was withdrawn. The main objective behind this Section was to stop the misuse of social media, and to prevent person from posting “offensive” content online. However, this Section was also misused by some authorities against whom citizen criticise the illegal act

of these authorities. However, the PIL was filed to challenge the validity of section 66A. In the case of Shreya Singhal v Union of India⁷ the SC struck down Section 66A and said provision as “draconian” provision. There were two main reason behind this was firstly, it lead to violate the fundamental rights of people as which include right to know also and second it lead to unwanted arrest of many innocent people.

Right to privacy and Social media

However, the SC said that Section 66A lead to violation of Article 19 of Indian constitution as freedom of speech and expression but it’s forget to see how the freedom of one person can lead to violation of fundamental right of other person as can violate its right of privacy. If a person “A” posted a video or a photo, under his/her right of freedom of speech and expression and on the same time its lead to a violation of a privacy of person “B”. At this particular point of time it’s create a confusion in the mind of people that either Article 19 which give a right to a person to post such video will prevail or either Article 21 will be prevail. Rather than striking the whole provision as unconstitutional and making it open for the people to violate the right of other person who are effected from the post, the SC should interpreted the Section to that extend that neither it lead to violation of Article 19 as freedom of speech and expression nor its lead to violation of right to privacy under Article 21 of Indian Constitution.

While dealing with this type of situation, the SC should consider the reason and the motive behind posted such video/photo. If court satisfies that the uploading such type of

⁷ Shreya Singhal v Union of India, (2013) 12 SCC 73.



video/post on social media is relevant to the extent to bring the attention of the public toward a unlawful act and illegal act of any person or authorities it's should not be offence under cyber law. But, in case it just for the trolling or mocking purpose, than such time of content uploading on social media should be declared as offence. This approach is better than striking whole proviso as unconstitutional.

Few month earlier, a video was made viral on social media about a middle age woman commented on girl dressing-sense. We can say that whatever was commented by that lady was not even was not illegal act or an offence act which is not related to a public at large but a simple situation of defamation can be said that. However, rather than dealing with this situation privately the girl choose to viral the video/post of that woman without even hiding her face. The video/post not only lead to violation of right to privacy of a person but also can lead to danger the life of her and her family. Who will be the responsibility? If something, happen to her or her family. Does government take an action regarding this? Does this act was stopped by cyber bureau on social media to protect her right to privacy?

Through various judgement and interpretation of Article 21 of Indian Constitution, many new aspect of Right to privacy has been defined. However, Indian Judiciary has fail to define and interpret the law to the extent of social media. However, under the Information Technology Act, 2000 has enacted a provision related to right to privacy under Section 66E of IT Act 2000. However, this act has understand the word "privacy" by a literal interpretation and does not capture the essence of privacy as a

concept. Section 66A refer privacy only to the extent of the physical privacy and not as a whole concept, which mean this provision has a limit to the extent to interpret the privacy of a person. If a person post a video or photo on social media or any social networking sites related to a person private area defined in this Section than only it violate the provision of this Section. However, Section 79 of IT Act 2000 also state that the social media or social networking sites on which these video or photo is posted which violate the exciting law related to it will not held liable for the same. If person "A" posts a post of private area on Facebook than Facebook will not held liable for this.

There should be particular statue or a body like Consumer forum which only deal with problem related to consumer, which only deal with the crimes related to social media and should regulated these Social networking sites to protect people from the harmful and offence comment and post. These post and comment should be pre-censor by the social networking sites before posting or uploading on internet as if films are pre-censor before released to public.

Screenshot and Privacy

A screenshot is a photo of what is on device screen. As in the emergence of social media platform like WhatsApp, Messenger and other text exchanging, many friend or family member share their personal as well as other information which is too sensitive for their life. No only text but other data like photos or any video are also shared through these platforms. Some application comes with the feature that a particular messages or data will be deleted after a particular period. Screenshot help in storing these photo or



messages in form of photo that is on the device screen. If a person “A” is viewing some message send by the other person then through the feature of Screenshot the message viewing on the screen can be stored in the form of photo in the device memory and same can be send to other person Screenshot can be a useful feature for many people as save memorable photo of friend and family. It is also useful to save important text out of thousand-text in-group or other personal. But there is also a negative use of Screenshot as many people use to screenshot there personal text which are exchanged in the name of trust but same are used to blackmail the other person. This is also one of the reason for increase crime rate in India as people are blackmail through Screenshot of their personal photos and text to influence them to do crime and other illegal activities. This can also be reason for the case of suicide as they have a fear in their mind that these screenshot will be posted on social media or will be exploited.

Screenshot can lead to infringe the privacy of the other person as can be used as a weapon against them. There are few Social media platform which provide feature about notifies the other person who’s photo or chat screenshot has been taken. However, there always some lacuna related to one or other feature. As these feature can be bypassed through third party application. One of most used platform about notifies is the Snapchat where if a Screenshot is taken of chat or photo the same is notifies to the other person about the screenshot.

The legislation should make a law related to these Feature, which should be used only for bona-fide purpose and not to blackmail other person and use it as a weapon for influence them to do various crime. The feature of

Screenshot in Social media platform should be banned or restriction should be applied as to protect the privacy of one parties.

Conclusion

In the field of Social networking sites and platform, the proposed changes and action should be taken:-

1. A comprehensive Statute should be made by the parliament, which should cover various aspect of social networking sites and platforms.
2. The scope of Section 66A in the Information Technology Act 2000 should be revised to all the aspect of the privacy not only the naked photo.
3. Use of Screenshot should be restricted and Screenshot of personal data in the Social media platform or sites should be banned as to protect privacy of people.
4. Status Qua action should be taken to revise the Judgement of Shreya Singhal v Union of India rather than struck down as unconstitutional as completely.
