

# Affects of Social Media on Our Privacy Rights

Sarthak Dugar

<sup>1</sup>Final year student of B.B.A. LL.B. Law College Dehradun, Uttarakhand University, Dehradun, India

<sup>2</sup> Professor, Law College Dehradun, Uttarakhand University, Dehradun, India

**Abstract:** *With the continuous advancements in Information Technology the ability to spread information has advanced rapidly. To be specific the recent developments in "Social Media" have led to personal information of its users being published on the World Wide Web. These social networking sites are creative moods for expressing one's personality but it also raises some serious privacy concerns. Social media can also be called as a double edged sword. It is very important for the laws to keep a watch on these developments and evolve accordingly in order to provide protection to its users from such violations of the privacy rights. This paper is to highlight the issues faced by the people on using social media and how it effects our right to privacy in respect with the existing laws and the need to make changes to protect the privacy rights guaranteed to them.*

**Keywords:** Data privacy, data protection, privacy, freedom of expression

As someone had rightly said- "In a world where everyone shows and tells everything.....I value discretion and privacy"

## 1. Introduction

With the ongoing development and increasing popularity of social networking sites, Cyber-crimes are increasing as a surge [1]. It has become very important for every country to prioritize the issues in regard with one's privacy and make laws which also runs parallel to the constant development in technology as well. Social media with time has become a basic necessity for individuals, users especially with the age group of 15-40years who further falls as a prey to the unknown people with fake identity, whom they mingle through their original online registered profiles. [2] Nonetheless the friend list or contact list include a lot of unknown friends. Social media does offer some privacy measures regarding this which provide some privacy to the user. But the major question that arises here is, whether such privacy offered by any social media to its users enough for the safeguards of their privacy? Hence, the post would focus on how safe it is to share personal information online, the crimes taking place, issues in it, the laws regarding social media privacy in India and some suggestions regarding the development of such laws.

"Privacy is a fundamental human right guaranteed by most of the countries to its citizens. It aids human dignity and other values such as freedom of association and freedom of speech & expression. It is the most important human rights issues of this modern age. Privacy as a right is recognized around the world in various regions and cultures. It is mentioned & protected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and in many other international and regional human rights treaties. Nearly every country in the world includes a right of privacy in their constitution." [3]

In India where privacy is not specifically recognized in the constitution, the court has found and evolved that right in other provisions as Article 21[4]. The court have proclaimed that "in one sense all human rights are aspects of the right to

privacy". The framers of our Constitution knew then the immense power vested in the print media, therefore they assimilated the Freedom of Speech and Expression in Article 19(1) (a) of the Indian Constitution from Article 19 of the UDHR, and also reflected similarly in Article 19 of the International Covenant on Civil and Political Rights 1966 (ICCPR). At the same time UDHR 1948 in Article 12 and ICCPR 1966 in Article 17 provided protection to the concept of privacy. Though freedom of speech and expression given in Article 19 of the UDHR 1948 and ICCPR 1966 was incorporated in Article 19(1) (a) of the Indian Constitution. We cannot find such recognition given to privacy in Constitution of India. "With media both press and social are being one of the most reliable public's sources of information and awareness, privacy of individuals, are often harassed and infringed. Media tends to write stories from their own partiality, heartlessly intruding the private lives of citizen who happens to stumble in to the public forum. While Media should prioritize on individual's right to privacy which is widely recommended as "ethical journalism", but there are times when the individual's right to privacy is brutally eroded by the media which should be strongly resisted. As a result, there was a need to protect Privacy as a fundamental right in the Constitution and also to give a higher status to it in reference to Press & Social Media" [5].

*"Privacy is not something that I'm merely entitled to, it's an absolute award."*

## 2. Meaning & Interpretation of Right to Privacy

Definitions of privacy vary widely according to the context and environment. In many countries, the concept has been fused with data privacy & protection, which interprets privacy in terms of management of personal information & data [6]. However, outside this rather strict context, in India the right to privacy is frequently seen as a protection by way of drawing the line at how far society can intrude into a person's affairs. Allan Westin, author of the seminal work titled as " Privacy and Freedom," defined privacy as the , desire of people to choose freely under what circumstances

and to what extent they will expose themselves, and their attitudes and their behavior to others [7]. "The Right to Privacy means the right to be let alone; the right of a person to be free from unwarranted publicity and the right to live without unwanted interference by the government or any private individual in matters with which the public is not to be concerned with. It prevents unlawful disclosure of personal information as well. It is the right of the person to review their information and ask for any corrections, and to be duly informed before any disclosure." [8] In sum up I may say that the right of privacy is the right of the individual to be protected against intrusion into his personal life or affairs, or his family, by direct physical means or by publication of information on any platform.

However, in India the Right to Privacy has now become a Fundamental Right after a never-ending controversy. The Supreme Court of India held in the case of Justice K.S.Puttaswamy V. Union of India [9] it was a resounding victory of privacy. The judgment ringing validation of the right to privacy as a fundamental right mark a turning point in the constitutional history of India. The order passed was signed by all nine judges declares:

"Right to Privacy is protected as an inseparable part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution."

This ruling furthered the judgment given in Maneka Gandhi [10] and R.C. Cooper [11] that "liberty and freedom is of no effect without right to privacy". This judgment, in which the judges state the reasons behind the one-page order, spans 547 pages and includes opinions from six judges, creating a legal framework for privacy protections in India. The opinions cover a comprehensive range of issues in illuminating that privacy is a fundamental inalienable right, intrinsic to human dignity and liberty. The decision is especially timely given the rapid roll-out of Aadhaar.

### 3. Right to Privacy and Social Media

"Social media is a web-based form of communication. Many other forms of social media like blogs, micro-blogs, wikis social networking sites, widgets, virtual worlds also exist. But social networking sites such as Facebook, Twitter, WhatsApp, Instagram and Myspace have become vogue in the past few years. But in order to use a social networking site and descry other people posts the person has to first create a profile. The main purpose of these social networking sites is to establish a kinship in the virtual world. But little did the users know that this boon was accompanied by crime too. The concept of cybercrime emerged during 1990's and has climbed the ladder of success reaching to a whole new level. But it is us who have signed the deal with the devil and now our privacy has been compromised. IP address, key words used in searches, websites visited which seem harmless, from information that we share on social media, to online transactions, to cookies collecting user browser history, to mobile registration- personal details about an individual is engendered by each use of internet. The site instantly records our personal details like in Amazon.in case. They do it so because, the more personal

information they provide, and more attractive they are to potential advertisers. As a result, cases of identity thefts, sexual predators, unintentional fame, cyber staking and defamation have started to gain focus." [12]

"Usually, youngsters are the ones who easily fall prey. Nowadays, they don't even hesitate to share their personal details with individuals whom they don't even know. This happens due to the lack of enough mental maturity and capacity to judge right and wrong. As a result, these sexual predators and identity thieves are easily able to hunt them down. Twitter has itself admitted that they had scanned the phone contacts of their users and imported them onto their website database so as to learn more about their users. The contradictory nature of Facebook is seen when it first says that we own all our contents that we post on the Facebook and on the other hand it says that we users grant Facebook to use any IP content that we post in connection to Facebook. People have also been reported of committing suicide after their humiliating videos had been uploaded on YouTube. This lack of transparency of the social networking sites and the day to day crimes taking place in the cyberspace have forced us to critically think what we really want to share and how our information is being handled.

Therefore, the privacy policies should be read very carefully before giving our consent." [13] However, Facebook has helped by introducing options of blocking, reporting, protect etc. Twitter has the option of sharing information only with followers.

### Indian Legislation on Social Media Privacy and Data Protection

"With the debut of social media, a new term of Internet privacy has come into lime-light. There is no specific legislation on Internet privacy and data protection. However, our constitution has provided Article 21 as a privacy lock which is insufficient to provide adequate protection to the data. However, in the year 2000, legislature made effort to embrace social media privacy issues and currently India's most comprehensive legal provisions that speaks of privacy on the Internet is the Information Technology Act, 2000" [14]. Even though it cannot completely safeguard the privacy, it can dilute it to an extent. "Provisions that clearly protect user privacy include Section 43, 66, 66F and 67 of the Information Technology Act, 2000 and also the rules of the Act. India is one step closer to having its own data protection law after the Srikrishna Committee submitted its initial assessment and recommendations on data privacy and management last week in a 176-page report, as well a draft of the legislation on data protection titled Personal Data Protection Bill, 2018" [15]. But it still remains to be seen if the data protection bill finds its way through in the upcoming monsoon session of the Indian Parliament for further debate, the report's recommendations suggest far-reaching ramifications for India's rapidly growing technology industry. With over a billion population, there are nearly 500 million active internet users and India's online market, which is second to China [16].

"Internet penetration has grown in the last five years, thanks to the growth of start-ups, e-commerce companies and technology offerings across industries in the country. Since

India is making ways into the digital market. The press is overstepping in every direction the obvious bounds of propriety and of decency” [17].

#### Trial by Media

“Recently the press, especially the electronic media has been very enthusiastic to grab and report it even before the Police or other channels get to know about it. This investigative journalism is good but at the same time it is going out of hand. There is no way to regulate it or stop it” [18]. Though we have the Press Council of India, which was established around 22 years before, still the electronic media will not come under its regime [19]. “The PCI entertains more than 10,000 complaints a year, but it has no teeth and the purpose is defeated as it evokes no fear or sanction. Simply an apology is demanded from the press, if found guilty. These types of liberal approaches are not going to provide remedy to the harm caused by press reporting. More strong measures are to be adopted to curb the infection through self-regulation which can operate as a useful and viable tool. The Government in its zeal to bring liberalization in media has allowed foreign direct investment into it. The policy brought in 2003, permits upto 26% in print media, while in broadcasting, it is allowed upto 100%. This is in a situation, where there is no law to control the tyranny of electronic media. With the doors open for the foreign media to invade India with their ideas and experiment with the Indian youth, the government is taking no urgent steps to bring in a regulation to control of the widespread electronic media. Remedy for protection of Privacy of Individual by Media” [20].

In the study for development of privacy the traces were found way back to the case of Nihal Chand v. Bhagwan Dei [21] in 1935, where the High Court recognized the independent existence of privacy from the customs and traditions of India. India even before independence became a member of UN and was signatory to the UDHR 1948.” The UDHR was almost fully incorporated into the Indian Constitution. One of the exceptions to it was in giving no recognition to the concept of privacy in India.” [22] “UDHR gave privacy a foremost position in Article 12, while freedom of speech and expression found place only in Article 19 in the Indian Constitution. Article 19 was subject to conditions such as reputation, national security, and public order and of morals. In the Indian Constitution, the restrictions imposed on freedom of speech and expression in Article 19(2) was on the bonds of libel, slander, defamation, contempt of court or any matter which is against decency or morality or which undermines the security of the nation or tends to overthrow the state. This clause was later amended by the 1st Amendment Act of 1951, and a new clause was inserted instead of the above clause. The new clause brought necessary & reasonable restrictions on the lines of security of state, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.” [23]

The framers of the Constitution failed to imbibe the full spirit of UDHR 1948 by neglecting to recognize the right to privacy as a fundamental right It was in Kharak Singh [24], that the Apex Court had the opportunity to discuss privacy for the first time, wherein it struck down domiciliary visits

on an accused under Article 21 of the Constitution. But it was only through the minority view of Justice Subha Rao, that privacy found a place in Article 21 of the Constitution. This was due to lack of an article on privacy. Article 21 of the Indian Constitution protects life and personal liberty which is on the lines of Article 3 of the UDHR. Therefore Article 21 is not the solution to the problem faced in the matter of privacy protection. Article 21 is only an interim relief till legislative weapons are put in action to bring in a parallel Article on the lines with Article 12 of the UDHR in the Indian Constitution to protect Privacy.

#### 4. Conclusion

Due to lack of Constitutional and legislative measures to protect privacy, the victims of press abuse have to take the help of tort law. Tort law does not refer to privacy but only other offences such as libel, slander, defamation, morality and decency. These different offences form part of the term „Privacy“ but individually these offences can never full fill the need of protection of privacy faced by individuals. Even Indian penal code has allowed punishment or penalty for the above offences but not for privacy. Privacy as a term never come into the minds of legislators. The courts have also given decisions on the lines of the various offences mentioned above. The other grounds left for the victims were only Article 19(2) and Article 21 of the Constitution. There is no legislative effort to codify and protect privacy till date neither in the Constitution nor in any legislation. The victims have to always depend on the court’s discretion and interpretation of privacy, when the question of infringement of privacy is considered. This has been a loophole since the time of independence. It is therefore recommended that the Constitution should be amended to include this right to Privacy as the first step. Once the ground norm is amended, the position of privacy will be legally at par with international standards. Then is the need to enact a Privacy Act. Thirdly the need to amend the Contempt of Court Act 1971, to give the courts, specific powers apart from the general powers to issue gagging orders and other orders to protect an accused from media intrusion which has the effect of tampering with evidences and witnesses and causing interference in administration of justice. Besides this the intellectuals should initiate a movement promoting a "right to be forgotten" by which the freedom of expression should be balanced by a right to erase information which affects an individual, under certain conditions. Rights to privacy need extending and strengthening in the digital era. Also as stated in Rajendra Sail’s case, we need a strong press council in India. It should be a strong regulatory authority with representatives of legal, social, common man and press. Presently the Press Council is dominated by the different newspapers.

#### References

- [1] Privacy concerns with social networking services, available at: [https://en.wikipedia.org/wiki/Privacy\\_concerns\\_with\\_social\\_networking\\_services](https://en.wikipedia.org/wiki/Privacy_concerns_with_social_networking_services), (Visited on 14<sup>th</sup> march,2019).
- [2] Number of Facebook users across India as of January 2018, by age and gender, available at: <https://www.statista.com/statistics/717615/india->

- number-of-facebook-users-by-age-and-gender/, (Visited on 14<sup>th</sup> March, 2019).
- [3] THE RIGHT TO PRIVACY AND IDENTITY ON SOCIAL NETWORK SITES: A COMPARATIVE LEGAL PERSPECTIVE, available at: <https://core.ac.uk/download/pdf/154915227.pdf>, (Visited on 14<sup>th</sup> March 2019).
- [4] The Constitution of India, 1949.
- [5] KarpuraKanti Nanda &DevikaPattnaik, RIGHT TO PRIVACY: CONCERNS VIS-À-VIS SOCIAL MEDIA, RSSR (2018).
- [6] Data Protection,<https://privacyinternational.org/topics/data-protection>, (Visited on 15<sup>th</sup> March, 2019).
- [7] Privacy and freedom, Available at:<http://igpub.com/privacy-and-freedom/>, (Visited on 15<sup>th</sup> March,2019).
- [8] Evolution of Right to Privacy In India, available at:<http://www.legalserviceindia.com/legal/article-276-evolution-of-right-to-privacy-in-india.html>, (Visited on 15<sup>th</sup> March,2019).
- [9] (2017) 10 SCC 1
- [10]Maenka Gandhi v Union of India,[(1978) 1 SCC 248
- [11]R.C Cooper v Union of India, 1970 AIR 564
- [12]THE RIGHT TO PRIVACY AND IDENTITY ON SOCIAL NETWORK SITES: A COMPARATIVE LEGAL PERSPECTIVE, available at: <https://core.ac.uk/download/pdf/154915227.pdf>, (Visited on 16<sup>th</sup> March, 2019).
- [13]SuprateekNeogi, RIGHT TO PRIVACY AND SOCIAL MEDIA, RSRR BLOG SERIES.
- [14]Social media law: Knowing the rights of privacy, available at: <https://www.dailypioneer.com/2018/sunday-edition/social-media-law--knowing-the-rights-of-privacy.html>, (Visited on 15<sup>th</sup> March, 2019).
- [15]Justice Srikrishna committee submits report on data protection, Available at: [http://economictimes.indiatimes.com/articleshow/65164663.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/65164663.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst), (Visited on 16<sup>th</sup> March,2019)
- [16]India to have 2nd largest online user-base after China by 2016, available at:<https://www.financialexpress.com/industry/technology/india-to-have-2nd-largest-online-user-base-after-china-by-2016/11763/>, (Visited on 16<sup>th</sup> March, 2019).
- [17]India is fastest growing e-commerce market: Report ,Available at: [http://timesofindia.indiatimes.com/articleshow/66857926.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/66857926.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst), (Visited on 16<sup>th</sup> March, 2019).
- [18]Trial by Media, Is it fair?, Available at:<https://www.civildserviceindia.com/subject/Essay/trial-by-media1.html>, (Visited on 17<sup>th</sup> march,2019)
- [19]Press Council of India, available at: [https://en.wikipedia.org/wiki/Press\\_Council\\_of\\_India](https://en.wikipedia.org/wiki/Press_Council_of_India), (Visited on 18<sup>th</sup> March,2019).
- [20]Freedom of Press in India - Constitutionality and Scientific Development, available at: [https://www.academia.edu/34368018/Freedom\\_of\\_Press\\_in\\_India\\_-](https://www.academia.edu/34368018/Freedom_of_Press_in_India_-) Constitutionality\_and\_Scientific\_Development, (Visited on 18<sup>th</sup> March,2019)
- [21]AIR 1935 All 1002
- [22]Domestic Implementation of Human Rights, available at:[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2007967](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2007967), (Visited on 19<sup>th</sup> March, 2019)
- [23]Right to Privacy under UDHR and ICCPR, available at:<https://privacy.sflc.in/universal/>, (Visited on 19<sup>th</sup> March,2019)
- [24]Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295