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# How Much is Too Much?: Exploring Sexual Privacy in the Context of Online Interpersonal Relationships

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## ABSTRACT

*In this rapidly developing digital era, the manner in which we create and maintain interpersonal relationships have drastically changed. The majority of intimate connections are presently shaped and kept up through online means. Establishing privacy is key when exploring online interpersonal communication, as you control how much personal data you disclose to the other person. Self-disclosure is accordingly, a significant relational instrument that is essential in creating any relationship. Divulgence of information is thus done on the foundation of trust and vulnerability. Intimate relationships are a result of increased self-disclosure, done willingly. However, imagine a scenario in which this limit of controlled self-divulgence is attacked. This paper will address the question, “how much divulgence is too much?”. The dialectical nature of privacy and self-disclosure and the degree at which divulgence proves detrimental will be explored.*

*This paper will secondly investigate sexual privacy and some emerging cybercrimes in this regard. Success in intimate relationships relies upon sexual privacy. Attacking this private boundary warrants recognition and protection as most often, women and sexual minorities shoulder this maltreatment and abuse. The judgement passed in the case of Puttaswamy v. UOI held that Right to Privacy shall come under the purview of Right to Life under Article 21 of the Constitution of India. The Information Act, 2000 protects online data in India. But these laws do not control the emerging issues of invading sexual privacy due to technological advancement. Dissemination of videos and images containing sexually explicit content is one such issue that is not classified as cyber crime under these laws. Thus, thirdly, this paper aims to analyse the adequacy of the present laws in regulating sexual privacy. Fourthly, the paper will suggest a new approach to protecting sexual privacy that focuses on law and the respective cyber markets.*

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## **I. INTRODUCTION**

### **What are interpersonal relationships? How has the digital age changed it?**

Interpersonal relationships can be described as the association, connection or acquaintance, that is a strong bond between two or more people. The kind of relationship shared can be friendly, romantic, parent-child relationship, relationships at work etc. Such relationships can be regulated by norms, law or any form of mutual agreement that is based on the society as a whole. There is usually a free flow of communication and understanding amongst such relationships.

With the help of technology such interactions and relationships have progressed very rapidly. Communication can be now done with the click of a button and the devices that aid such communication can be computers, mobile phones, email, social networking sites. Technological advancement has made it possible to connect with people that are not present physically in any situation. This has only solidified the way human interactions are united. For instance, texting and tweeting have become the more dominant forms of interpersonal communication among family, friends and colleagues<sup>2</sup>.

Internet and communication have thus now become a part of human life and society. The way mobile phones allow access to Internet nowadays with the reach of Internet into even rural areas, has made it possible to take people's lives online. The communication varies from text-based [example Twitter] or video-based forms [example Instagram reels, Facebook videos, video calls]. Relationships are nowadays validated by online "fans" or "followers". In a population of billions in India, 323 million active Internet users are accounted for 67% of the urban population.

### **How much indulgence is too much?**

Indulgence is the act of allowing one's conscience to do things they want to do. It is to an extent, extreme satisfaction of one's desires and wants. In today's digital age, this self-gratification has taken a very wrong turn. Self-indulgence for the youth is the validation blanket they want to wrap themselves in so that they don't have to deal with real life responsibilities.

The population today feels the need to be validated and adored by many. Fame has become an unquenchable desire. This has made it important to the youth to share everything that they do, on social media seeking that adoration. There is no thought put on what is necessary or

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<sup>2</sup> Harper, R., Rodden, T., Rogers, Y., & Sellen, A. (2008). *Being human: Human-computer interaction in the year 2020*. Cambridge: Microsoft Research.

unnecessary or the kind of dangers that may be posed by oversharing on social media<sup>3</sup>. Today's youth is more disturbed and depressed than the generations before as at the end of the day, these online communications do not have the 'human touch'. It can also be that while going after such adoration it is not necessary that social media will give it back. Thereby this also leads to a destruction of personal relationships that a person might have in their real life, for example, real friends, family or even siblings.

“Social networking sites like Facebook, Twitter and too much indulgence in WhatsApp have reduced human bondage thus making youth as a humanoid,” was rightly mentioned by Dr. M.N. Nandish, Assistant Professor, JSS Degree College<sup>4</sup> while delivering a speech on “Effective use of Youth power”.

The people find power in social media. But the dangers of overindulgence must be analysed. The dialectical nature of privacy and self-disclosure and the degree at which divulgence proves detrimental will be explored as<sup>5</sup> follows.

### ***Lack of awareness about reality***

People can remember intensive dance forms on TikTok but they forget the birthdays of close family members. They have thousands of friends on social networking sites yet they have no one to talk to in real life when they are down. This is the sad reality of today's world.

### ***Cyberbullying***

With the fame of young minds comes a responsibility to bear the over critical mentality of some individuals, also commonly known as trolls. But it is almost impossible to cope with the negativity that comes with the positivity which includes negative comments, body shaming, slangs etc. Almost 15% of people who become a victim of cyber bullying attempt suicide out of depression.

### ***Personal threats***

While sharing overly personal information on the Internet, the individuals forget that not everybody in this world is going to accept it the way the individual wants it to be accepted.

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<sup>3</sup> Brighter Kashmir. 2020. *Impacts of Self-Indulgence and Social Media and on Youth*. [online] Available at: <<http://brighterkashmir.com/impacts-of-self-indulgence-and-social-media-and-on-youth>> [Accessed 19 July 2021].

<sup>4</sup> 2017. *'Too Much Indulgence In Social Media Is Diminishing Human Bondage'*. [online] Available at: <<https://starofmysore.com/much-indulgence-social-media-diminishing-human-bondage/>> [Accessed 19 July 2021].

<sup>5</sup> Guidanceedge.com. 2019. *Overindulgence of Youth in Social Media*. [online] Available at: <<http://guidanceedge.com/Social-Media/126/Overindulgence-of-Youth-in-Social-Media>> [Accessed 19 July 2021].

This has resulted in a rapid progress of cases which include personal threats via social media, emails, phone calls or harassment like stalking, inappropriate proposals etc. Social media provides a veil to the attacker while exposing the one attacked.

### ***Lack of privacy***

With every passing day the number of cases reported on privacy infringement, information sold, identities misrepresented goes a long way to show that privacy has now become a mockery. Written in the small letters of terms and conditions and policies, the innocent sign up to sell their information willingly and then they cannot even press charges.

## **II. SEXUAL PRIVACY**

Even with our oversharing attitude, there are certain information we keep private to ourselves or limited to certain people. In personal relationships where there is a factor of trust there are information which are not to be revealed to the rest of the world. These may include intimate pictures shared in a romantic relationship, or a certain way of communication which was meant for one particular person. But the idea that such information shared will be private is what is known as sexual privacy.

“Sexual privacy thus captures many things at once. It refers to expectations concerning the seclusion of physical spaces where people have sex and undress, such as bedrooms, dressing rooms, and restrooms. It concerns assumptions about the concealment of genitalia, buttocks, and female breasts in varied contexts, including the street and the home. It involves the presumed confidentiality of communications with intimates about sex, sexual orientation, gender, sexual fantasies, or sexual experiences. It concerns expectations about the decision to share one’s nude body with others. While sexual privacy involves various activities, decisions, communications, thoughts, and information, the concept’s connective tissue and conceptual core is intimate life.”<sup>6</sup>

With sexual privacy comes the right of an individual to determine when and how they can be seen, recorded, photographed or exhibited. The right of sexual privacy guarantees the right to indulge in sexual intercourse, whilst protecting the sexual autonomy of an individual. The violation of such right gives rise to crimes. Such crimes born through digital means, is known as cybercrime. Cybercrime's though are not only related to sexual privacy violations, it plays large part in it. People are recorded in washrooms while performing intimate acts, filming their private parts without their knowledge, also known as “up the skirts” videos or sexual acts

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<sup>6</sup> *Id.*

filmed against their wishes or without their knowledge and then circulated on the internet would constitute cybercrime or abuse of the digital power to commit crimes in the cyber space.

“At the heart of these abuses is an invasion of sexual privacy—the behaviours and expectations that manage access to, and information about, the human body; gender identity and sexuality; intimate activities; and personal choices. More often, women and marginalised communities shoulder the abuse.”<sup>7</sup>

### **Cybercrime’s which have emerged in India with the invasion of sexual privacy and the laws in India that govern them**

#### ***Cyber stalking***

Stalking includes obsessively following someone's activities to an extent of invading their privacy. It is usually physical in nature. Cyber stalking is exactly this, but on the Internet domain. Section 354 of IPC, states the punishment for stalking. This also includes cyberstalking. Though cyber stalking is not physical in nature or to an extent also not sexual in nature- it includes torture, harassment, a feeling of fear instilled always, which is psychological in nature and is something very commonly reported as one of the more prevalent cybercrime in India today. In the case of **Yogesh Prabhu v. State of Maharashtra**<sup>8</sup>, where Prabhu stalked the woman obsessively online after she rejected his marriage proposal. The Court convicted Prabhu under S. 509 IPC (words, gestures or acts intended to insult the modesty of a woman) and S. 66E of the Information Technology Act, 2008 (punishment for violation of privacy).

#### ***Cyber pornography***

Section 292 of IPC deals with the offence of obscenity. This section makes selling, distributing, publicly exhibiting, putting into circulation, taking part in or receiving profit from any business related to the use of obscene objects, advertising, offering or attempting to do any act which is an offence under this section as a punishable offence. There can be a punishment of imprisonment or a fine of up to Rs. 5000. Section 354, IPC deals with sexual harassment where a man showing pornographic material to a woman against her will is illegal. Cyber pornography includes using the digital space to create, publish or distribute pornographic materials.

S. 67A of the IT Act states that “Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct

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<sup>7</sup> Citron, D., 2018. *Sexual Privacy*. [online] DigitalCommons@UM Carey Law. Available at: <[https://digitalcommons.law.umaryland.edu/fac\\_pubs/1600](https://digitalcommons.law.umaryland.edu/fac_pubs/1600)> [Accessed 19 July 2021].

<sup>8</sup> Ali, A., 2015. *First cyber case conviction in Maharashtra | India News - Times of India*. [online] The Times of India. Available at: <<https://timesofindia.indiatimes.com/india/first-cyber-case-conviction-in-maharashtra/article-show/47927461.cms>> [Accessed 19 July 2021].

shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.”<sup>9</sup>

In the case of **Suhaskatti v. State of Tamil Nadu**<sup>10</sup>, a woman complained to the police that a man was sending inappropriate messages in a Yahoo message group after she had rejected a marriage proposal. The woman also received various phone calls where she was believed to be a sex worker. Katti was punished with two years rigorous imprisonment and ₹500 fine under Section 469, IPC. He was also punished under Section 67 of the IT Act, 2000.

### ***Voyeurism***

Distributing images or video clips of women engaged in intimate acts is known as voyeurism. Such videos or photographs are usually taken against the consent of the woman or without their knowledge. Such photos or videos can be easily circulated on the Internet on various social networking sites or even pornographic websites. Section 354C of IPC, states about the offence of voyeurism. Under IPC it is punishable with 1-3 years of imprisonment on first conviction along with a fine and up to 3-7 years of imprisonment and fine for subsequent convictions. This section is read with Section 66E of the IT Act which states that capturing, publishing or transmitting the image of a private area of any person without his or her consent is a violation of their privacy and thus is a punishable offence.

One of the most famous landmark cases of voyeurism is the **Delhi public school MMS incident of 2004**, where pornographic MMS of two students of the school was filmed and then it was illegally distributed on eBay India, then known as Baze.com. It was even bid to auction. CEO of the website was criminally charged with various provisions of the act<sup>11</sup>.

Any kind of circulation of rape or gang rape is also considered as voyeurism. In any kind of romantic relationships, a woman or a man trusts their partner. They may have exchanged photos which is not for the public eye. For example, a woman wearing skimpy clothes or a man completely naked. Circulation of such photos on WhatsApp or other messaging platforms is a part of voyeurism. Such acts are also be considered under Section 406 of IPC which is criminal breach of trust.

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<sup>9</sup> Indiacode.nic.in. 2021. *India Code: Section Details*. [online] Available at: <[https://www.indiacode.nic.in/showdataactid=AC\\_CEN\\_45\\_76\\_00001\\_200021\\_1517807324077&sectionId=13093&sectionno=67A&orderno=84](https://www.indiacode.nic.in/showdataactid=AC_CEN_45_76_00001_200021_1517807324077&sectionId=13093&sectionno=67A&orderno=84)> [Accessed 19 July 2021].

<sup>10</sup> Order passed on 5 November 2004 in CC No. 4680 of 2004 by the Chief Metropolitan Magistrates Court, Egmore, Chennai (India).

<sup>11</sup> Avnish Bajaj v. State, judgment delivered by Justice S. Muralidhar of Delhi High Court on 29 May 2008 (India).

### ***Morphing***

Morphing is the edit of an original photo with something that is completely unrelated by someone who isn't authorised to do so. This is actually much more common than believed. It can usually be seen when the face of a woman is morphed on nude pictures or wearing very little clothing. Such images are produced to defame a person or tarnish their image. This can usually be seen done with the photographs of celebrities. Crimes against women with such morphed photographs are on a rise in India<sup>12</sup>. Such acts fall under Section 43 and Section 66 of the IT Act, which includes acts of unauthorised downloading or copying or extracting and destroying or altering data and also spells out various computer-related offences respectively. Also, Section 354A of IPC can also be charged along with Section 219, which is public nuisance, Section 292A for obscenity and Section 501 for defamation.

### ***Sending obscene, defamatory or annoying messages***

If someone posts the phone number of a woman along with her image on a pornographic site stating that she is a sex worker, such act comes under the category of a cybercrime. Sending annoying and inappropriate messages on various kinds of messaging platforms like WhatsApp, mail, messenger are also considered as other forms of such cybercrimes.

The legal provisions which may be attracted are sexual harassment under Section 354A IPC; defamation under Section 499 IPC and Section 509 IPC that deals with gesture or act intended to insult the modesty of a woman. Also, Section 299 of IPC which is the offence of defamation can also be correlated with such incidents.

### ***Online trolling or cyberbullying***

Cyber bullying is very easy to commit because the Internet provides the factor of anonymity to any individual. This makes it very easy to attack anybody and in any way without any consequence, most of the time. This is the reason why this crime is so rampant and that people are so confident in doing it. India ranks third after China and Singapore in cyberbullying<sup>13</sup>.

In **Saddam Hussein v. State of MP**<sup>14</sup>, where charges of outraging the modesty of the victim was brought against the accused who video recorded the victim and used the same to blackmail. After the proceedings had gone to the trial stage, the victim stated that they had a personal compromise with the accused and so they would like to take down the case. But the High Court instead decided to go forward with it because it stated that the offence was something which

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<sup>12</sup> Cyber Crimes Involving Morphed Photos Rising, THE TIMES OF INDIA, June 29, 2015.

<sup>13</sup> T.E. Raja Simhan, India Ranks Third in Cyber Bullying, BUSINESS LINE, June 26, 2012

<sup>14</sup> 2016 SCC Online MP 1471 (India).



affected the society at large and a personal compromise would not affect the proceedings of the case. This clearly showed that the Courts took cyberstalking and cyberbullying very seriously.

Usually, an individual who gets dumped like an ex-boyfriend or ex-husband or ex-wife, with the intention of revenge, commits such crime by blackmailing the individual with images or videos which may have been shared as a part of the relationship they shared. Section 503 and 506 of IPC are provisions of criminal intimidation which is usually charged in such cases of trolling, bullying or blackmail.

### ***Email spoofing and impersonation***

Email spoofing describes the use of fraudulent email activity in which the senders address and different other parts of the email are changed in a way that they appear to have originated from a known or authorised source. Impersonation is pretending to be another person which is very easy given the anonymity in cyberspace.

Section 415 of IPC deals with cheating and Section 416 of IPC deals with cheating by personation. Section 66D of the IT Act, also states the punishment for cheating by personation by using computer or any such other communication devices. The provisions provide for punishment by three years in imprisonment and a fine of up to one lac rupees.

## **III. ADEQUACY OF THE PRESENT LAWS IN REGULATING SEXUAL PRIVACY**

Right to privacy is a fundamental right guaranteed under article 21 of the Indian Constitution. It protects life and liberty of the citizens. On 24<sup>th</sup> August 2017, **Justice K.S. Puttaswamy v. Union of India**<sup>15</sup> gave an unanimous verdict confirming that Constitution of India guarantees to every individual a fundamental right to privacy.

Only recently, India has passed the IT rules, 2021. It intends to find out the person who is responsible for disseminating obscene images or videos. But instead of the government trying to take responsibility, it shifts the responsibility of tracking such offenders onto the intermediaries that is the digital platform which is used to distribute such inappropriate information. But with all good intent of enacting the rules it does not guarantee protection to people who face such cybercriminal acts. It only gives a form of resolution that can be taken up after the crime has been committed. The IT rules of 2011, Rule 5 stated that any corporate body or person on behalf of such corporation, cannot collect any personal data or information unless it is for some legal purpose. Also, the person whose information was taken was to be

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<sup>15</sup> WRIT PETITION (CIVIL) NO 494 OF 2012.

informed that such information was being collected. But this rule eliminated government as being recipients of such information as corporate bodies could share information collected from such individuals and share it with the government whenever necessary. But this rule only deals with the corporate body or any person on its behalf from collecting and distributing such data. There is no regulation for information that is available publicly or for information that people share every day in the cyber domain.

Awareness of such laws which are available to the victim is one of the biggest problems in India. Most people are not even aware that such laws are present or even if some women are aware they do not want to come out and press charges. This is because of the fact that the victim is usually shunned in the society and criticised for something they did not do rather than the one who is in the wrong.

Even though there are laws under the IPC and IT Act, the provisions of IPC are applied since there is no specific law which states punishment for different cybercrime like email spoofing, morphing or trolling. Even though the Act has a chapter on offences which includes computer related offences, the provisions are mainly focused on economic and financial issues and there is no specification of which clause ought to be applied in a particular situation of cybercrime.

Just like any other plethora of laws which is available under Indian law, right to privacy online or in the physical domain is a myth. Only if a person has the patience of putting through long litigations and trial of a case, do they see justice at the end. Even though the judiciary recognises that these are grave offences that destroy interpersonal relationships yet there is no regulation or legislation that prevents such crimes from taking place.

#### **IV. A NEW APPROACH TO PROTECTING SEXUAL PRIVACY THAT FOCUSES ON LAW AND THE RESPECTIVE CYBER MARKETS**

Cybercrime's are not to be taken lightly just because they are being committed through a veil. They have the potential to cause devastating physical crimes or injuries. The very first thing which can be done is to ensure that there are exact written laws for exact crimes that take place. Anybody can be a victim of cybercrime. Everybody needs to be aware of the laws or remedies that is available to them under law. Awareness building should be the first major step taken by the government to ensure that prevention of such crimes is done before providing remedies for such crimes committed. Also, awareness should be created among the individuals who are responsible for carrying out justice that is the police officers, investigating officers or public prosecutors in charges etc.

It is important that some form of redressal mechanism or a faster way of dispute resolution is undertaken so that the individuals who are affected by such crimes can easily lodge complaints or get remedies faster without having to go through another intensive and a mentally challenging proceeding along with the mental stress incurred from such crime committed.

In conclusion, it must be taken into consideration that the laws, policies and rules which are enacted are in pace with the rapidly evolving technology and the resultant cybercrimes and the rate at which they are committed. We live in a digital era where individuals are also required to be more conscious with who what and how much they share online. There should also be an extensive awareness mechanism in place to spread the information amongst the masses. With the increasing use of AI, it can surely be implemented in managing such cybercrime's as it will be easier to detect them with artificial intelligence. They can also be used to create advanced threat analytics or security risks detection before the crimes can even be committed. The remedies which are in place today do not prevent the crime which should be the main aim but rather offer remedies to an already committed crime. Laws and measures that echo the saying "prevention is better than cure" must be enacted. Trends of cybercrime are always changing and so the government agencies and other cyber cell institutions can put in place an Internet based alert system which can be used to notify Internet users of such crimes being committed.

If the citizens of the country and the government both work hand in hand then only can such crimes be largely prevented. The digital age has seen the largest destruction of interpersonal relationships. With the solutions suggested it can be a holistic approach to both managing cybercrimes and also rebuilding relationships. Communication, trust and interpersonal relationships are the foundation of any civilisation or society as we know of. It is important to uphold these three principles to make sure that our civilisation goes forward.

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