

HUMAN RIGHTS OF WOMEN WITH SPECIAL REFERENCE TO THE INFORMATION TECHNOLOGY LAW IN INDIA

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Abstract: Outstanding growth and appreciations in the field of science and technology has its merits with demerits in society. With the development of multimedia and communication convergence technology, such as, mobile smart phone, smart watch, e-wallet with WhatsApp, network, internet, Shareit, Facebook, Flipcart and like Applications the horrible crime charts are sadly mounting higher and are causing more harm to individuals and society at large. Though, we have Law but cyber-attack on women causing online and offline harm to their life, identity, dignity, chastity of person, property and so on are at a highest speed. Few basic, inherent and sacrosanct human rights are guaranteed by the Indian Constitution either as Fundamental Rights or as Directive Principles. However, the Universal Declaration of Human Rights, 1948 with Two Covenants in the year 1966 and several Conventions recognized certain rights and has specified guidelines to be followed by member States for protection of Human Rights. All these rights are equally enjoyed by men and women though there are several special rights and protection provided by Indian Constitution and International Conventions as well as treaties for the purpose of social security and all round progress of contemporary society. As without restrictions if rights are allowed it can destroy society and cause social chaos, therefore, rights are not absolute whether in the natural world or cyber world. Right to freedom of speech and expression means express freely by words of mouth, writing, printing, pictures or any medium. We enjoy freedom of speech and expression with reasonable restrictions to maintain decency, morality, public peace etc. under the Indian Constitution which is the basic and supreme Law of our country. Restrictions and penalties are also imposed by the Indian Penal Code. Following United Nations Model Law on Electronic Commerce of 1997, the Computer Misuse Act of the United Kingdom, the Computer Fraud and Abuse Act of the United States of America, the Indian Parliament enacted and passed the Information Technology Act, 2000 and Rules as amended in the year 2008 for proper regulations of cyber world, e-commerce, online contract, e-governance, digital and electronic signatures and for prevention and control of cyber abuse, misuse, unauthorized use and other cybercrimes, e.g., cyber hacking, fraud, Piracy, pornography, flowing of objectionable data and virus, terrorism, Tampering of source code etc. However, the consequence of cyber pornography, obscene and objectionable materials transmissions etc. are mostly cause violence against women which also cause negative effect in society. Indian Judiciary through their valuable interpretations and landmark decisions tried and are trying to protect women as well as every members of the civil society at large from cyber-attacks and online violence. This paper is relating issues of cyber-crimes against women and violation of their rights in cyber world with legal protections and social security.

Keywords: Cyber Crime, Women, Rights, Duties, Constitution, Information Technology, Law, Implementation, Judicial Decisions, Protection, Prevention, Control, Security, Social Awareness.

Introduction: Few basic, inherent and sacrosanct human rights are guaranteed by the Indian Constitution either as Fundamental Rights and Duties or as Directive Principles. However, the Universal Declaration of Human Rights, 1948 with Two Covenants in the year 1966 and several Conventions recognized certain rights and has specified guidelines to be followed by member States for protection of Human Rights including rights of women. All these rights are equally enjoyed by men and women though there are several special rights and protections provided to women and children for the purpose of social security and all round progress of contemporary society.

At this juncture we can refer Prof. H. L.A. Hart who reaffirmed natural law theory in the form of semi-sociological natural law and said that there are certain substantive essential rules or minimum human conduct for human being to live with close proximity, such as, human vulnerability, approximate equality, limited altruism, limited understanding and strength of will and limited resources. According to him the core of indisputable truth in the doctrine of natural law are these minimum human conducts which are also the minimum contents of Natural Law. These rules are essential and human being needs to live continuously and jointly in close proximity with these rules. So, he had advocated for the protection of basic, natural and indisputable rights in society, i.e., right to live together with liability, equality, humanity (sacrifice), thoughtful (speech and expressions), power of determinations and right to property as well as employments or works for wealth or income or wages. However, he said these are to be limited, i.e., not absolute rather restricted for social progress. Therefore, in his thinking we find the concepts of reasonable restrictions for social interests and social progress.

Prof. Jhon Finnis said that there are seven basic common goods (good) and these are very essential, pre-moral and sacrosanct in society. These are life, knowledge, play, sociability and friendship, aesthetic aspiration, religion and practical reasoning. He also said that three basic common methodological requirements which should be followed in society for social progress. These are needs, functions and capacity which are concern of natural law. So, in his thinking we find the concept of basic, sacrosanct, inalienable human rights, such as, right to Life, Education, Work, hospitability and friendship, desire, religion and sensible way of thinking (speech and expressions). Everyone has certain needs and desires as well as determinations to achieve certain goals in society, therefore, they have to perform their functions (do their work) according to their capacity, circumstances and boundary to achieve those goals. Dwarkin in his Rights Thesis said that Rights should be with corresponding Duties. If one exercises his duties honestly others can enjoy their rights freely. John Rawls advocated for fairness, Justice and equality. Prof. Amartya Sen in his book 'the Idea of Justice' advocated for Advancement of Social Justice and social choice.

Feminist Jurists are raising their voice for protection of rights of Women, Equal Justice/Gender Justice to improve status of women and to provide more safety-security through Education and Empowerment. All basic, inherent, inalienable, sacrosanct human rights with reasonable restrictions and reservations, duties and directive principles of state policy in one or the other way are significant in every society for fulfillment of needs and desires of the individuals, social interests, social justice and all-round social progress. Protection of life, liberty, equality, justice and pursuit to happiness are core of human rights. In democratic society everyone should be able to form their own opinion and express, communicate or transmit it freely through traditional or digital media with reasonable restrictions. So, liberty of publications is essential in contemporary welfare social scenario. Undoubtedly, without reasonable transmission the publications will be of less significance. However, in the name of communication, transmission, expression or publication no one can cause harm to others in any way which are objectionable morally or legally or both though, if it is legally recognized as wrong or prohibited as offence then will be treated as contravention or offence respectively and compensation with or without other civil liabilities will be imposed for contravention or penalties will be imposed for offence by the appropriate adjudications. In **Regina v. Hicklin**,¹ Lord Cockburn observed the test of obscenity are as follows: (i) whether the tendency of the matter charged as obscenity is (a) to deprave and (b) corrupt those, whose minds are open to such immoral influences and (ii) into whose hands a publication of this nature may fall. This is popularly known as Hicklin test. Professor J.S. Mill in his book 'On Liberty' said that unless there is 'harm to others' in the society state must not interfere with individual's right to liberty. The freedom and privacy are protected unless and until it cause harm to others. The Wolfendon Committee's Report (1957) was in favor of individual liberty with reasonable restrictions. H.L.A Hart and Lord Devlin's debate was concluded with the concept of shared morality which is significant even in contemporary society for balancing of democracy, freedom as well as morality.²

Though, we have Law but cyber-attack on women are causing online and offline harm to their life, identity, dignity, chastity of person, property and these are increasing at a highest speed. As without restrictions if rights are allowed it can destroy society and cause social chaos; therefore, everyone should

be aware of the fact that rights are not absolute whether in the natural world or cyber world. Right to freedom of speech and expression means express freely by words of mouth, writing, printing, pictures or any medium which includes digital media. We enjoy freedom of speech and expressions under article 19(1)(a) with reasonable restrictions to maintain decency, morality, public health, peace etc. under article 19(2) of the Indian Constitution. Restrictions imposed and penalties are also prescribed under the Indian Penal Code for such acts. Following the United Nations Model Law on Electronic Commerce of 1997, the Computer Misuse Act of the United Kingdom, the Computer Fraud and Abuse Act of the United States of America, the Indian Parliament enacted and passed the Information Technology Act, 2000 and Rules which were Amended in the year 2008 for proper regulations of Cyber World, E-Commerce, Online Contract, E-Governance, Digital and Electronic Signatures and for the prevention and control of cyber abuse, misuse, unauthorized use, cyber-crimes, e.g., hacking, fraud, piracy, cheating, pornography and modification of data, tampering of source code etc. Along with other cyber offences the consequence of cyber pornography, obscene and objectionable materials transmission etc. are mostly causing violence against women which has negative effect on society. However, right to freedom of speech and expressions is reasonably restricted under the Indian Constitution for individual as well as social security and protections.

Cyber Attack/Crime in India:

- Cyber Hacking
- Cyber Fraud
- Cyber Theft, Piracy etc.,
- Cyber Pornography,
- Crime against Privacy
- Flowing of immoral and objectionable information/data
- Cyber Cheating
- Flowing of Virus /Virus Attack
- Cyber Terrorism

Above List is not exhaustive as it is increasing in every moment.

Indian Law to Prevent and Control Cyber Attack/Crime:

Traditional:

- The Indian Constitution,
- The Indian Penal Code,
- The Indian evidence Act, The Indian Contract Act, Banking Laws etc.
- The Indecent Representation of Women (Prohibition) Act, 1986 etc.

Information Technology Related: The Indian Parliament has passed the Information Technology Act, 2000 with Rules following the United Nations Model Law of 1997, to provide legal recognition of

- e-records
 - e-governance,
 - e-commerce,
 - e-communications
 - online transactions
 - digital and electronic signatures,
- through computer, computer system, computer network, internet and allied services with software and other applications.

* The Act has extra territorial application for violation of any provisions.

* A separate Chapter deals with cyber offences and punishments.

* All provisions are applicable for men and women.

However, this paper deals with Rights of Women in Cyber World in Indian Legal context.

European Union's Committee on Computer Crime Problems: The European Union's Committee on Computer Crime problems and Experts drafted the Convention of Cyber-crimes in the year 2000 which categorised crimes as follows:

Offences against the confidentiality, integrity and availability of computer data and system which includes illegal and unauthorised access, use of devices and modification of data, interference to devices and data, computer system, network and so forth.

Computer related offences e.g., cyber forgery, fraud, damage, cyber stalking/annoyance/irritation and so forth. (3) **Content related offences** e.g. Child Pornography in cyber space, Cyber Pornography, Cyber Piracy and so forth.

International Challenges against Cyber Crimes/Attacks: The challenges or disputes that Law Enforcement Agencies face to prevent and control cyber crimes/attacks are generally being divided into three categories. These are as follows:

Technical Challenge: Technical disputes often obstruct law enforcement facility to come across and take legal action against criminals who are operating online even some times offline.

Legal Challenges: These are basically resulting from Law, Legal agency and implementations. Law and Legal investigations against cyber crime are lagging behind technological advancements, actions and social change.

Operational Challenges: Present requirement is to ensure the existence of a network of well-trained, well-equipped investigators and prosecutors who work together with unprecedented speed even across the national borders.³

Causes of Cyber Attack in general which contravene rights of Women in India:

1. New Communication Convergence Technology is being misused and abused by criminals in cyberspace which are causing violence against women and society at large.
2. Cyber pornography, online child pornography, cyber spamming, cyber hacking, cyber fraud, cyber terrorism etc. are increasing in contemporary social phenomenon at higher speed with the outstanding development of science and technology.
3. With the development of multimedia and communication convergence technology, such as, mobile, smart phone, smart watch, e-wallet with WhatsApp, network, internet, Shareit, Facebook and other Applications the horrible crime charts are sadly growing higher and are causing more attacks/ crimes against women.
4. Sometimes, these are the result of lack of awareness and using of new technology without care and caution.
5. Most of the times crimes are committed by technology experts and motivated net users.
6. Computer system, mobile, tab, smart phone, smart watch, network, Compact Disks (CD), DVD, videos and other information processing devices are easily accessible to everybody in contemporary social scenario. It is one of the causes of cyber attack on women largely.
7. Only one mobile phone with facilities can act as television, telephone, tape recorder, fax machine, camera, video, worldwide web etc. Social networking, video clip, Multimedia Service (MMS) clip etc. are increasing with increasing computer and mobile software, such as jelly Bean Android, Android Kit Kat and the like which can easily trap innocent users information.
8. Wrong doers in the Cyber World think that their victims are vulnerable and Evidence will not be available to punish them.
9. Jurisdictional issue is also one of the burning factors to prevent and control cyber attack.
10. Social media and several mobile Applications without security measures are also contributory factors for online violence against women.
11. Still non-willingness and Lack of infrastructures, training at Government and Non-Government Sectors are in reality contributed increasing of cyber crimes in general.
12. Though we have Law and Cyber Crime Cells but at the same time overall crimes in society are also increasing, therefore, administration and investigative officials are busier on actual world crimes.
13. More people know about Freedom of Expressions through ICT even without knowledge of its reasonable restrictions and consequences.
14. So, Lack of Social Awareness is in existence even now-a-days.

However, discussion of certain relevant cases will be easier to draw workable conclusion to prevent and control cyber attack on Women in India.

Case Study on Cyber Crime where Victims are Women in India:

Financial: Cyber Frauds and Victims Were Women⁴: There was country wide alert in India through news media that anybody who is getting bank related calls should cross-check the same with bank officials about its authenticity. In March, 2016 the victims were mostly woman, filed complaints to police about unauthorized online money transfer from their Bank Accounts. Police traced the suspected accused that called-up and convinced them to disclose confidential information relating account with intention of fraudulent transfers. The accused then were arrested after massive SBI account fraud news was published in media. In another similar case in March, 2016 the victim was 34-year-old Sayara Pathan who registered a complaint with Sangvi Police. Police traced Aman kumar Gupta who was having a fabricated name to avoid detection and evidence. The case was treated under section-420 (cheating) of the Indian Penal Code and under sections 65, 66, 66A etc. of the Information Technology Act as *cyber-cheating*. Sayara received phone call from a man on her cell phone who claimed himself as bank officer and asked her about details of her ATM cards and bank account's information with the State Bank of India and the Bank of Maharashtra. She shared the information with the accused who allegedly misused it to withdraw about Rs.34,890/ from her bank accounts without her consent through *illegal online transactions* on March 16-17, 2016. Police suspected that Aman kumar Gupta is not the real name of the fraudster which was proved subsequently.

In another incident, **53-years old resident of Akurdi named Kalpana Mahajan was cheated of Rs.1.10 Lakh by online unidentified fraudsters⁵**. The victim lodged a complaint at Nigdi police station. As per the Police statement a man was claiming himself as bank officer and made phone calls on victim's mobile phone on March 8, 2016. The accused asked about personal information and details of bank account. The wrongdoer received such confidential information and transferred money from her account online without her consent. It was cybercrime through illegal online transaction.

Massive ATM Fraud and Bank Account Fraud of SBI Account Holders⁶ in October, 2016 where female victims were the maximum. The accused used spycamera within ATM box and other techniques to copy ATM Cards, received accounts information over telephone from victims fraudulently and cheated them by withdrawing from there bank accounts by online transactions and ATM withdrawals massively which caused the country to think for other alternatives for prevention and control of Bank related fraud and cheating.

Aadhaar Card and Bank Fraud: Recently in November, 2017⁷ we are evidence of **online bank fraud after getting confidential information about Aadhaar Card in India**. The wrongdoer represented himself as bank officer and called the victims to resolve some conflicts about their Adhar Link with bank account numbers. This is how the wrongdoer controlled the confidential financial information and transferred funds from the bank accounts of the vulnerable people in India and victims were maximum elderly women.

So, people need to be aware about fraudulent phone calls and should avoid unwanted calls as well as sharing of personal details with third person offline and online too. Bank, ATM and other places of public financial transactions should also need to be under confidential supervisions by the authenticate authorities as they are responsible and accountable to public trust and confidence.

Social Media Related:

Fake Facebook Profile Case Wrongdoer Was Arrested: In Kolkata one 23 year old man was arrested for creating of fake profile for the purpose of uploading obscene links on Facebook⁸. He used photograph of one 31 year old Woman, resident of Kolkata with a caption 'popularize'. The likes crossed about hundred and the victim started receiving porn links on her own profile. She lodged complaint to the Cyber Crime Cell on 29th November, 2015 which was swiped from suspected accused Sayantan Sarkar

of Burdwan. As per the Police investigation about the case one S. Sarkar confessed that he sourced the picture from some of his friends in Boral, near Kolkata and committed such crime.

Smart Applications and cyber pornography in West Bengal: Recently, most people are trying to avoid such Smart Applications, social media and groups for the sake of own reputation, safety and security as preventive measure. In October, 2017 one Mr. Soren was arrested by Police in West Bengal⁹ as he had allegedly committed cyber pornography by using photo and video clip of School and College going girl students⁵. Police found out few smart phones and Information communication technology related devices containing obscene pictures of girls. As per Police investigation the wrongdoer used to collect photo and video clip of girls offline and online even from social media and then modified those into obscene picture to flowing in the internet, posting in the social media and circulation among his friends.

Group WhatsApp and SMS use and Misuse: We can communicate with friends and groups and exchange our opinions through WhatsApp and SMS. However, receiving of messages which has immoral contents and tendency, such as, 'please call me I am alone', 'want Friend', 'wish to marry' etc. when unwanted and repeated then it cause annoyance in the mind of the recipients and it is increasing in India in every moment where victims are women maximum.

Mobile Phone Was Used For Friendship And Then Two Innocent Girls Became Friends And Victims Of One Criminal Group: They were emotionally blackmailed online by their boyfriends and one evening went out of their home with their so called online boyfriends without informing their family members which was resulted in sexual abuse to those girls in North Bengal in June, 2016¹⁰. TV News and local news papers published the fact but accused were identified and arrested.

Photo of Bengali Television Actress¹¹ was allegedly used for unauthorized, defamatory, immoral, objectionable and obscene purposes by Bangladeshi offender in the year 2016 which was traced and controlled by Kolkata Cyber Crime Cell with co-operation of Bangladesh Police and the matter was under Judicial process. The Victim along with her Husband lodged the police complaint in Kolkata and obtained the justice.

Matrimonial.com.: One fraudulent profile was posted by naming as Ranjan Sen and then as Pratap Chakraborty in Matrimonial.com¹². The accused was connected with girls for the purpose of friendship and marriage. Few girls were sexually abused by him and his friends. he posted the picture of one girl in WhatsApp group. When the victim lodged complaint the actual name was disclosed as Udaysankar Som, the resident of Kardah Police Station. According to Lal Bazar Police, on 15th January, one women of Ballygunge Station Road lodged complaint against the accused to the Cyber Crime Cell, Kolkata. According to police investigation the accused used mobile phone to mislead women through matrimonial.com to abuse women online and offline. He convinced the victim with marriage proposal to go with him outstation where he sexually abused her and recorded every activity which he sent to his friends through WhatsApp. One of the friends of the victim received those pornographic pictures and informed the victim immediately. The accused also represented himself as astrologer named Himadri Chattopadhyaya and received rupees 10,000 from victim. The accused was arrested and was in police custody till 25th February, 2016 according to Courts order.

This is how women are victims of uncontrolled online services like matrimonial.com. In West-Bengal and all over world through WWW women are victim of several crimes. However, sections 67 and 67A does not extend to any books, pamphlets, papers, writings, drawings, paintings, representation or figure in electronic form (i) the publication of which is proved to be justified as being for the public good on the ground that such books, pamphlets, papers, writings, drawings, paintings, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or (ii) which is kept or used as bona fide for religious purposes.

Some Issues Raised before Indian Judiciary:

Tamil Nadu v. Suhas Katti¹³ was significant as within seven months of filing of FIR the conviction was achieved successfully. This case is a strong evidence of working of the cyber crime cell of Chennai. Indian police had shown their ability as investigator by producing effective, relevant and satisfactory evidence against the accused. The case was relating to frustrating a divorcee woman with obscene and defamatory messages in the yahoo message group. The false e-mail account in of the victim was created by the accused so that anyone can send her electronic-mails. The victim was receiving numerous harrowing e-mails and phone calls. The accused was convicted and sentenced with rigorous imprisonment for 2 years under sections 469 and 509 the Indian Penal Code, 1860 with Rs. 500 fine and under section 67 of the Information Technology Act, 2000 with 2 years rigorous imprisonment and Rs. 4,000/- fine.

Delhi Public School and Multimedia Messages Service (MMS) Clip¹⁴: Teachers and parents of Delhi Public School at R.K. Puram location were worried about the reputation and immoral application of the mobile pornographic activities in society by students aged about 17 years. The school boy was a member of Delhi under-17 cricket team. He played against Himachal Pradesh at Una and also against Haryana (Gurgaon). He had withdrawn himself before the match against Jammu and Kashmir in December 12-14 after the incident of MMS-video oral sex clip incident and went to Nepal in December 2004 to avoid the legal process. It was like opening a Pandora's Box that a Delhi Public School boy allegedly used his mobile phone and filmed his girlfriend in an act of oral sex with him which was in the format of MMS clip or Multimedia Message Service Clip. He forwarded this video clip to his friends. Most of the recipients of that MMS-clip were of the age of 18 or below. Within fraction of a minute it was available to net users. It was not the end rather the clip was available for small cost in roadside vendors. The clip was copied to VCD (Video Compact Disk) for sale and distribution. Ravi Raj of 23 years age who was then the student of IIT Kharagpur posted the MMS clip of 2.37 minutes for auction on the Baazee.com which was India's top auction website and owned by e-Bay. The clip contained title 'DPS Girl Having Fun' for sale on November 24, 2004. On 9th December, 2004 at night the case was registered and on 11th December, 2004, the Delhi Police Crime Branch found out from Mumbai that Alice Electronics of Kharagpur through Mr. Ravi Raj IIT placed the video clip on Mumbai based auction website Bazzee.com. He also sold the CD to 8 persons by that time. The clip removed from Bazzee.com as soon as they noticed the same as per their own guidelines against pornographic materials. It was also found out that the Alice Electronics was a fake company. VCD was posted on webpage for regular interaction of sellers and buyers which was also removed after few days. However, selling of such VCD in public is offence under IPC and the IT Act 2000. Delhi police arrested Delhi Public School student from the Indira Gandhi International airport on 19th December then Mr. Ravi Raj Singh and CEO of Bazzee.com Mr. Avnish Bajaj were arrested in December 2004. However, they were released after judicial custody and court proceedings. Thereafter, the Information Technology Act, 2000 was amended in the year 2008 which inserted section 6A and increased liabilities of wrong doers.

Pune Police found out Landlord Mohan Kulkarni¹⁵ installed few web cameras in the twilight of the room which was provided by him to the girls as pay guests. Police seized and sent the articles for decoding to the technology expert and the bungalow was initially sealed. The accused was arrested by the police under section 509 Indian Penal Code, violation of right to privacy under Articles 21 and 19(2) of the Indian Constitution and section 67 of the Information Technology Act. Police also seized camera, a computer, rupees 5.92/ Lakh in cash and pornographic video cassettes featuring Kulkarni and his maid. Both were remanded in police custody for more than a week. A similar incident was occur in Kolkata in December 2013 near Alipore and the accused was arrested by Kolkata Police.

In **Fatima Riswana v. State Rep. by A.C.P. Chennai**¹⁶ case the accused was allegedly violated section 67 of the IT Act, and several provisions of the Indecent Representation of women (Prohibition) Act, 1986, Immoral Traffic (Prevention) Act, 1959 and IPC. The issue was on the exploitation of women, their use in sexual adventures and storing of evidence in CD which could be embarrassing for a women Officer to view. Therefore, the High Court transferred the case from one First Track Court to another. The Supreme Court rejected such order of the High Court and observed that it is natural that any decent

person would be embarrassed while considering the evidence in such a case, but it cannot be attributed to a Lady Officer only.

Dr. L. Prakash v. State of Tamil Nadu,¹⁷ the accused was convicted under section 67 of the Information Technology Act for manipulating his patients and forcefully making pornographic images and posting pictures with video clips in cyber world. The first track court sentenced him with life imprisonment and other three co-accused with 7 years rigorous imprisonment and imposed fine of Rs.1.27 lakh on the main accused and Rs.2,500 each on three co-accused.

In MouthShut.com (India) Pvt. Ltd. v. Union Of India¹⁸ the writ petition was filed by MouthShut.com under Article 32 of the Constitution for quashing the Information Technology (Intermediaries Guidelines) Rules, 2011 as contrary and infringement basic rights enshrined in Indian Constitution under articles 21, 19 and 14 i.e., right to Life, liberty and equality. The Rules impose burden forcing the petitioners to screen content and exercise on-line censorship. The petitioners receive notices and phone calls from Cyber Crime cells and police stations to delete contents and disclose information of users, which resulted their business difficult.

In the light of the above facts, the following issues have been raised before the SC:

- 1) Are the Rules liable to be set aside as they contain arbitrary provisions which place unreasonable restrictions on the exercise of free speech and expression, as well as the freedom to practise any profession, or to carry out any occupation, trade or business as guaranteed by Articles 19(1)(a) and 19(1)(g) of the Constitution of India?
- 2) Are the Rules liable to be struck down because of their failure to conform to the Statute under which they are made and exceeding the limits of authority conferred by the enabling Act (IT Act)?
- 3) On determination of the above-mentioned issues, the petitioner prays that:
- 4) A direction be issued that no coercive action may be initiated against the petitioners in relation to the Rules, during the pendency of W.P.(C).No. 217 of 2013; and
- 5) Such other order for direction be passed as this Hon'ble Court deems fit in the circumstances of the case in the interest of justice.

In PUCL v. Union of India¹⁹ case under article 32 of the Constitution of India the public interest litigation was filed. There were several complaints under section 66A of the Information Technology Act, 2000 and the Rules. The issues were (a) criminalization of speech in cyberspace and mobile phone communication as violation of articles 14, 19 and 21, and (b) section 66A penalizes and restricts on-line speech to better degree than off-line speech. (c) Restrictions in an unreasonable manner is contrary to article 19(1)(2) of the Constitution of India. (d) the Information Technology (Intermediaries Guidelines) Rules, 2011 provide for vague and undefined categories that require legal determinations and effective censorship by private on-line service providers, are contrary to articles 14, 19 and 21, and are not reasonable restrictions falling within the permissible categories of restriction in article 19(1)(2). (e) The Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 provide for blocking of web pages without proper publication or notice to public containing the reasons for blocking. So, the process of blocking is completely secret and *ex facie* and violation of natural justice under articles 14, 19 and 21. It does not meet the procedural natural justice standards for book banning and e-books may be banned easily.

In Kamlesh Vaswani v. Union of India²⁰ case the writ petition was filed before the Supreme Court of India under article 32 of the Constitution of India challenging sections 66, 67, 69, 71, 72, 75, 79, 80 and 85 of the Information Technology Act 2000 as unconstitutional, as they are inefficient in tackling the rampant availability of pornographic material in India. The petitioners submissions was as follows: (a) the porn industry has become a large profit making machine. (b) Advertisements of pornographic websites are often displayed without the permission of viewers. Such uncontrolled displays of porn usually occur while browsing the internet at home or at business meetings and (c) this is extremely offensive to the viewers. (d) Pornography is a moral cancer that corrupts our social values every second across the country. (e) The respondents are to ensure (i) the protection of all women, children, and (ii)

the punishment of all offenders. (iii) The proper psycho-social counseling and rehabilitation of victims, and (iv) education of all women or children.

Conclusion:

Initiatives to Prevent and Control Cyber Crime against women and some Conflicting Issues: *State government took initiative* through a panel for pocket friendly security technology for App cabs. The panic button and CCTV cameras will effective for revising fares to recover added cost and it will be a preventive measure for passengers specially women.

CrimebabuApps of Kolkata Police to prevent and Control Cyber Crimes: Security App invented by IIT Kharagpur with the object to protect school students in school premises and school bus so that sexual atrocities may be controlled. This App will give information about every activity within Bus or premises, Bus routes, timings, and guardians will get every such information about their child. All over India every year more than 7 thousand child are victim of sexual harassment as per the survey. Most of them are abused within school Bus. Therefore, parents are feeling uncomfortable with the School Bus and pool Car for their child and compelled to use private transport which is also a cause of transport hazards. Psychologist has given opinion that it is very natural for responsible parents to be worried about their child. Few Schools agreed to use this App immediately. With identity proof of students a chip will be attached and School Bus will be under the control of Global Positioning System (GPS) which will enable to reach information to the mobile phone of parents. Respective Police Station will undertake every action and can control every unnatural events, if happen, to provide every security to school children. It should be appreciated by all and we welcome such development in science and technology.

Government of India has issued Advisory: The Union Ministry of Communications and Information Technology has issued Advisory to State Governments and Union that in connection with a complaint registered under section 66A of the Act the concerned police officer under the State's jurisdiction may arrest any person only with prior approval of such arrest from an officer not below the rank of the Inspector General of Police in the Metropolitan cities or an officer not below the rank of Deputy Commissioner of Police or Superintendent of police at the district level, as the case may be.

Conflicts within Law: Section 79 of the Information Technology Act, 2000 exempts intermediaries from liability in certain cases, however, the Information Technology (Intermediaries Guidelines) Rules, 2011 watered down these exemptions by strengthening intermediaries (i) to access even confidential information and (ii) censorship. Moreover, the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 provide for blocking of web pages without due publication or notice to public comprising the reasons for blocking. Therefore, the process of blocking is undisclosed, arbitrary, contrary to Constitutional principles and the natural justice principles. Undue restrictions are being imposed on freedom of net users, social media, online performers, online broadcast and inventors in digital world.

The Rules Relating Obligations of the Intermediaries: Intermediaries may restrict and remove access to any content if they receiving any complaint from any aggrieved or affected person about the fact that the alleged content falls under the category of unlawful contents as specified in the IT Rules, 2011 in India, i.e., the content is either improper, libelous, grossly harmful, harassing, or the like.

However, about duties, obligations, responsibilities and accountabilities of Intermediary the law has to be more specific.

Balance between Rights to Privacy, Expression and Obligations: There is need of legal reform to balance between rights to privacy, expression, obligations and responsibilities of intermediaries. There is need of free and fair access to internet and allied service with reasonable restrictions following due process of law. In the era of smart technology in smart society denial of service without following natural justice is not only violation of right to information but also violation of right to life. This basic right also not absolute as we know, nothing is absolute in this universe and it is for the social interests

that following due process of Law and to achieve social justice there may be denial of service. However, it should not be unconstitutional, arbitrary or fanciful on the part of the state, its authorities or its agencies.

The Parent Act and Rules Conflicts: The rules are delegated legislation though Law as per the definition given under article 13(3) of the Indian constitution but it should be consistent with Constitutional provisions as provided under article 13(2) of the Indian Constitution and should not exceed the vision and mission of the parent Law, i.e., the Information Technology Act, 2000. Therefore, there is need of legal reform for free and fair cyber world in safeguarding a sharing democratic system protecting the freedom with reasonable restriction at every level.

Fundamental Rights and Fundamental Duties: As we know rights includes duties, therefore, Indian Constitution specifically guarantees fundamental rights in Part-III and provides Part-IVA for Fundamental Duties, however, we find these in the Preamble of our Constitution and Part-IV provides for the Directive Principle of State Policy to achieve social, economic, cultural progress in society which are in one or the other way enjoyed as human rights in consonance with the United Nations Declaration of Human Rights and the International Covenants on Civil and Political Rights as well as the International Covenants on Social Economic and Cultural Rights with other allied International Instruments. So, people use net and social media social, enjoy free speech, expression, communications and democracy should not misuse it rather they should also be aware about their duties, responsibilities and accountabilities to society at large. Therefore, there is need of proper and specific regulation of social media, not its censorship..

Appropriate Government may take the initiatives: Appropriate Government may take more initiatives for cyber security generally and specially for child and women as they are victims most of the times. The existing legal provisions are not sufficiently implemented to prevent and control crime in cyber world, social media and allied services. So, we require more specific and defined legislation with specific and liabilities as well as penalties with active special adjudicatory authority to regulate social media, intermediaries, e-commerce, e-governance, e-marketing, e-transactions and Communication Convergence Technology in the smart-way.

Conflicting Rights: Another conflict may rise in the process of free and fairness of cyberspace as the enjoyment of one's right may become as infringement of others right. In social media, the exercise of freedom of speech may result in the violation of privacy and defamation to others as the feelings of objectionable content, ethics and morality varies from person to person, generation to generation, society to society as there is no definite yardstick to calculate which are moral and which are immoral in diverse situation. Therefore, we need to have faith on human prudence, due process of Law, shared morality and temple of justice to achieve social, political, economic, cultural progress with social justice. So, it is the obligation and responsibility of the Government to form a Committee and commitment of the authorities and prudent persons including technical experts to look into all the possible aspects of the use and misuse of social media and to adopt a suitable way in which it can be prevented and controlled without hampering the reasonable and basic human rights of people.

Suggestions: Basic, fundamental and sacrosanct rights should be enjoyed with due care and caution. While enjoying rights everyone should be well aware about their duties, liabilities and responsibilities as sober human being. It appear very easier to use, distribute, circulate and sale objectionable materials through media in the information age. Sometimes, these acts affect moral, cultural and psychological growth of society too. It influences in women psychologies and cause social disorder, disturbs law and order in society.

Information technology is very popular that is true with the fact that it facilitates for offences. Spam is horrible and threatening act, therefore, India needs to enact the Anti-spam Law.

About social networking, e-mail etc. if contains are transmitted between two or more consenting adults without causing any harm to society, maintaining decency and morality then it will be treated as freedom of speech and expression in the age of Communication Convergence Technology. There is need to spread awareness among minors, parents, adult and institutions about misuse and abuse of multimedia technology with its socio-legal effects.

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