

Volume No. 2

Issue No. 1

June 2023 - July 2023

Pages: 66 - 76

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A BATTLE TO REGAIN CONTROL: A SEXUAL ASSAULT VICTIM'S RIGHT OVER PERSONAL INFORMATION

I. Introduction

Sexual abuse in India has turned into a wide spread epidemic, plaguing every sidewalk across the nation. As per the provisions enshrined in our constitution, women and children deserve the nourishment of care and protection which should be freely available to each one of them. The plight of women and children who have suffered abuse need not only be discussed over glass tables but active steps should be taken to alleviate it. Unfortunately, the suffering does not end here for these women; time and again, the identities of sexual assault victims have been exposed despite there being legislations in place to protect them. Their scars are not only physical and mental but with the advancement of technology, they are forever etched into the digital space. The internet never forgets; these women are unable to escape their traumatic past as their identities are made available at the click of a button. Thus, this essay shines light on the gross violation of the right to privacy of sexual assault victims. The authors endeavour to elucidate the psychological and physiological harm faced by the victim on the dissemination of information while also touching upon their right to privacy and right to be forgotten.

In recent times, there have been many instances wherein personal information about sexual abuse victims was disseminated and put in circulation in the public domain. Errors of this magnitude lead to the identification of victims, thus making them susceptible to social, physical and mental harm. For instance, Swati Maliwal, the Chairperson of the Delhi Commission for Women was criticized for making public the identity of the Dalit girl who was raped in Burari by circulating photographs of the girl on Whatsapp. Two police officers

from Bihar made a colossal mistake when they shared the names and addresses of two rape victims on Facebook.¹ Even though the post was taken down, the damage had been done.

II. Psychological and Societal Repercussions

Publicity around a person's victimization heightens their risk of experiencing shame and stigmatization. One study found that the greater the number of people who were told about a rape, the greater the likelihood that the victim received messages of blame or hostility.² Research shows that if details of a victim are divulged, the public often perceive victims as partially responsible for the assault.³ Negative reactions (e.g. blaming and patronizing comments, treating the victim differently) by those in victims' social and support systems substantially impair their ability to heal. Such reactions are highly and consistently predictive of problematic psychological adjustment for victims.⁴

In one study, over half the surveyed rape victims reported that they would be 'a lot' more likely to report an attack to the police if there was a law prohibiting the news media from disclosing their name and address.⁵ For victims to feel secure and be able to raise their voices, they need to be assured that their suffering will not be broadcasted.

Finkelhor and Browne⁶ identified stigmatization as a cause for rejection and future societal isolation⁷. Shame is a stronger predictor of ongoing trauma and depression for victims than the severity of the abuse or the nature of the victim-offender relationship⁸.

¹Gaurav Bhatia, 'Disclosing The Identity Of Rape Victim Remains A Grey Area In The Justice System' (*The Wire*, 2018) <<https://thewire.in/law/identity-of-rape-victims>> accessed 18 April 2020.

²Sarah E. Ullman and Henrietta H. Filipas, 'Predictors of PTSD Symptom Severity and Social Reactions In Sexual Assault Victims' (2001) *Journal of Traumatic Stress* 14.

³Susan T. Bell, Peter J. Kuriloff and Ilsa Lottes, 'Understanding Attributions Of Blame In Stranger Rape And Date Rape Situations: An Examination Of Gender, Race, Identification, And Students' Social Perceptions Of Rape Victims I' (1994) *Journal of Applied Social Psychology* 24.

⁴Sarah E. Ullman and Henrietta H. Filipas, 'Predictors of PTSD Symptom Severity and Social Reactions In Sexual Assault Victims' (2001) 14 *Journal of Traumatic Stress*.

⁵Kilpatrick DG, 'Rape In America: A Report To The Nation' [1992] Charleston: National Victim Center & the Crime Victims Research and Treatment Center, Medical University of South Carolina.

⁶David Finkelhor and Angela Browne, 'The Traumatic Impact of Child Sexual Abuse: A Conceptualization.' (1985) *American Journal of Orthopsychiatry* 55.

⁷Eric S. Buhs and Gary W. Ladd, 'Peer Rejection as Antecedent of Young Children's School Adjustment: An Examination Of Mediating Processes.' (2001) *Developmental Psychology* 37.

⁸Candice Feiring, Lynn Taska and Kevin Chen, 'Trying To Understand Why Horrible Things Happen: Attribution, Shame, And Symptom Development Following Sexual Abuse' (2002) *Child Maltreatment* 7.

To aid the victims in their healing process and to protect them from stigmatization, the Supreme Court in two significant cases namely *State of Punjab v. Ramdev Singh*⁹ and *State of Karnataka v. Puttaraja*¹⁰ stated that the social object of preventing social victimisation and ostracism of the victim of the sexual offence is why Section 228A¹¹ of the Indian Penal Code, 1890 (IPC) had been enacted and the judges went on to say that in the judgments rendered by all the courts, the name of the victim should not be indicated even though there technically is no restriction on the publication of a judgment of the high court or supreme court. The same was reiterated in *Om Prakash v. State of UP*¹² where the bench laid emphasis on importance of privacy, anonymity of the identity of victims in judgments. The most crucial judgment related to this is the decision of the Delhi High Court in the Kathua Rape Case¹³, wherein it penalised the media houses for revealing the identity of the 8 year old victim by paying a fine of Rs. 10 Lakhs each.

Unfortunately even after all these safeguards that have been implemented by the Judiciary and Legislature, a study conducted by Rahat, initiated by NGO Majlis in 2015 surveyed over 600 victims over three years, revealed that in 36% cases between 2011-12, the victim's name appeared in the judgment despite the Supreme Court guidelines to keep it confidential. Out of 154 cases that were studied, it was found that the charge sheet given to the lawyers of the accused had all the details of the victim despite the fact that truncated charge sheets should be given in such cases. Moreover, the survey had pointed out that in some cases, especially high-profile cases, copies of the charge sheet are given to the reporters present in trial courts.¹⁴

⁹AIR 2004 SC 1290

¹⁰*R. Lakshmipahri v. Ramalingam* 1998 CrLJ 3683 (Mad)

¹¹Indian Penal Code 1872, S. 228A 'Disclosure of identity of the victim of certain offences, etc.--(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.(2) Nothing in subsection (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is- (a) by or under the order in writing of the officer-in charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or (b) by, or with the authorisation in writing of, the victim; or (c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next-of-kin of the victim: Provided that no such authorisation shall be given by the next of-kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.'

¹²*Om Prakash v. State of UP* 2006 CrLJ 2913 (SC)

¹³*Suo Motu v. Union of India and Ors.*, W.P. (C) 3725/2018.

¹⁴Gaurav Bhatia, 'Disclosing the Identity Of Rape Victim Remains A Grey Area In The Justice System' (*The Wire*, 2018) <<https://thewire.in/law/identity-of-rape-victims>> accessed 18 April 2020.

This harsh reality was brought to light in 2018 when identities of a few girls who had been tortured and sexually exploited in a shelter home in Muzaffarpur, Bihar were revealed. One girl's identity was revealed through a Facebook post which was later widely circulated across all social media. The Supreme Court in an order in the matter of *SampurnaBehrua v. Union of India and Others*¹⁵ held that photographs of the victims of sexual abuse anywhere should not be displayed either in morphed or blurred form as it is harmful for psychological and physiological health of the victim. It is important to note that when the names of child victims and other identifying information appear in the media it can exacerbate trauma, complicate recovery, discourage future disclosures and inhibit cooperation with authorities for the children involved.¹⁶

III. Right to be Forgotten in India

Over the years, the various machinations of our democracy have laid emphasis on protecting the dignity of women and the judgment given by Supreme Court in the *Justice K.Puttuswamy (retd) &Anr v. Union of India &Ors.* was another step in that direction. The Supreme Court held that the right to privacy is a fundamental right enshrined in the Constitution of India. The court reiterated the decision in *Rajgopal's*¹⁷ case and stated that right to privacy includes right to be left alone. Critical personal information cannot be published without a person's consent especially that of a woman who has been subjected to sexual violence. She should not be stripped of her dignity by publicising her name and grizzly details of the incident. In the *Justice K.Puttuswamy* judgement, the court raised the progressive point of 'Right to be Forgotten.'

The machination, that is the internet does not allow for things to be buried or forgotten, people's shame is often on the internet long after their passing for generations to witness. This right was introduced to give individuals a fresh start, to allow them to move on from the derision and stigma of their traumatic pasts. It was recognised for the first time by the European Court of Justice in 2013 in *Google Inc. vs Agencia Española de Protección de Datos*¹⁸. It then was incorporated in the General Data Protection Regulation (GDPR) which

¹⁵*SampurnaBehrua v. Union of India &Ors.*, M.A. NO. 2069/2018 in WRIT PETITION (C) No(s). 473/2005.

¹⁶Lisa M Jones, David Finkelhor and Jessica Beckwith, 'Protecting Victims' Identities In Press Coverage Of Child Victimization' (2010) *Journalism: Theory, Practice & Criticism* 11.

¹⁷(1994) 6 SCC 632

¹⁸*Google Spain SL, Google Inc v Agencia Española de Protección de Datos and Mario Costeja González* [2014] ECJ.

was implemented on 25th May, 2018. In *Google Inc. vs. AEPD*, it was established that right to privacy would be favoured over the freedom of expression. Therefore, the Right to be forgotten is enshrined in Article 17 of GDPR.¹⁹

Under GDPR, data subjects can approach search engines like Google by using a form and listing URLs that they want removed by stating the reasons. Google has an obligation “to remove from the list of results displayed following a search made on the basis of a person’s name links to web pages, published by third parties and containing information relating to that person”, even if the information was lawful.²⁰ However, it is up to Google to decide whether information should be removed or not by balancing public interest, freedom of expression and right to privacy. According to the Google Transparency Report in 2018, Google received 3,40,000 requests for erasure or delinking of over 1.2 million URLs of which 41.9% were approved by Google.²¹ Therefore, a victim of rape asked them to remove a link to a newspaper article about the crime. The page was removed from search results for the individual’s name in pursuance to her Right to be Forgotten.²²

A right congruous to the one in GDPR has been made a part of the Personal Data Protection Bill, 2019. As per Section 20(1)²³ of the Bill, a data principal can prevent or restrict a data

¹⁹General Data Protection Regulation, Article 17 ‘The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

- (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;
- (c) the data subject objects to the processing pursuant to Article 21 (1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);
- (d) the personal data have been unlawfully processed;
- (e) the personal data have to be erased for the compliance with the legal obligation in Union or Member State law to which the controller is subjected the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).’

²⁰Melanie Dulong de Rosnay and Andres Guadamuz, 'Memory Hole Or Right To Delist?' [2016] RESET.

²¹Google Transparency Report' (*Google.com*, 2020)
<<https://www.google.com/transparencyreport/removals/europeprivacy/?hl=en>> accessed 20 April 2020.

²²Google Transparency Report' (*Google.com*, 2020)
<<https://www.google.com/transparencyreport/removals/europeprivacy/>> accessed 20 April 2020.

²³Personal Data Protection Bill, 2019, s. 20(1) ‘The data principal shall have the right to restrict or prevent the continuing disclosure of his personal data by a data fiduciary where such disclosure— (a) has served the purpose for which it was collected or is no longer necessary for the purpose; (b) was made with the consent of the data principal under section 11 and such consent has since been withdrawn; or (c) was made contrary to the provisions of this Act or any other law for the time being in force’

fiduciary from disclosing or continuing the disclosure of personal data if three conditions are fulfilled: if the data is no longer necessary or has served the purpose of collection; previously given consent has been withdrawn; was made contrary to the provisions of the Act or the law. Under this Bill, unlike under GDPR, the data principal cannot go directly to the data fiduciary, he must go to the Adjudicating Officer to exercise his right to be forgotten and it is this Adjudicating Officer who has the power to decide whether the data must be “forgotten” or not.²⁴ Failure to comply with the request would result in of Rupees five thousand for each day during which such default continues, subject to a maximum of ten lakh rupees in case of significant data fiduciaries and five lakh rupees in other cases.²⁵

Previously in a landmark judgment the Karnataka High Court in the case of Sri Vasunathan v/s The Registrar General & Ors in 2017, acknowledged the right to be forgotten stating that it must be implemented in sensitive cases involving rape or those affecting the reputation and dignity of the person concerned.²⁶ Whereas in Zulfiqar Ahman Khan v/s Quintillion Business Media Pvt. Ltd. and Ors²⁷, the Delhi High Court stated that Right to be Forgotten and the Right to be left alone are inherent facets of the Right to Privacy. Thus, the Right to be Forgotten if implemented in India could be useful to sexual abuse victims for it allows control over the narrative that is often spun on the internet and allows them to reclaim privacy lost.

IV. Rape Shield Laws

After the bone chilling Nirbhaya incident, India in order to safeguard victims of sexual exploitation from social stigmatization and further mental trauma, came up with their version of rape shield laws after looking to the West for inspiration.

A rape shield law refers to legislation which restricts the defence from examining or cross-examining a sexual assault victim on her past sexual conduct and includes a prohibition against publicly disclosing the identity of sexual assault victims in order to safeguard their privacy. A need for rape shield laws was felt because mistreatment of rape victims and widespread disregard for their privacy, rape shield laws were enacted to ensure that rape victims are treated with dignity and respect during a criminal trial by ensuring that victims

²⁴ Personal Data Protection Bill, 2019, s. 20(2)

²⁵ Personal Data Protection Bill, 2019, s. 58

²⁶ 2017 SCC Online Kar 424

²⁷ 2019 (175) DRJ 660.

will not be subject to a public airing of their sexual reputation.²⁸ Introducing such evidence in rape trial deters rape victims from reporting sexual assault incidents.²⁹ In India, the defence often introduces a victim's sexual conduct in the past to undermine their credibility and testimony, as seen in *Tukaram V. State of Maharashtra*³⁰ where the victim was labelled as habituated to sex and her character was besmirched in open court. This makes it extremely difficult to prove a case 'beyond reasonable doubt'. The non-application of rape shield law also violates the Right to Privacy of a person when their ordeal is laid bare in public during a trial.

To well-condition the rape laws the Criminal Law (Amendment) Act, 2013 was enacted, thereby inserting Section 53A³¹ in the Indian Evidence Act, 1872 which states that while establishing the evidence of the victim's character, that individual's past sexual behaviour will be considered irrelevant in establishing consent in certain criminal offences.

Section 146³² of the Evidence Act was also amended thus prohibiting evidence or questions in cross-examination aimed at discussing a victim's previous sexual experience in rape cases. It is noteworthy that these new amendments made to the Evidence Act, provide a complete rape shield without prescribing circumstances where this can be held inapplicable. Indian legislations such as Section 228A (1)³³ of the IPC and Section 23³⁴ of the Prevention of

²⁸Simon Bronitt and Bernadette McSherry, the use and abuse of counselling records in sexual assault trials: Reconstructing the "rape shield?" (1997) *Criminal Law Forum* 259

²⁹National Crime Victim Law Institute, Confidentiality and Sexual Violence Survivors: A Toolkit for State Coalitions(2005). <<https://law.lclark.edu/live/files/6471-confidentiality-and-sexual-violence-survivors-a>> accessed 20 April 2020

³⁰*Tukaram v. State of Maharashtra*, (1979) 2 SCC 143

³¹ In a prosecution for an offence under section 354, section 354A, section 3548, section 354C, section 3540, section 376, section 376A, section 3768, section 376C, section 3760 or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

³² Indian Evidence Act 1872, S 146 'When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend:(1) to test his veracity, (2) to discover who he is and what is his position in life, or (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:¹[Provided that in a prosecution for an offence under section 376, ²[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB] or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.]'

³³Indian Penal Code 1860, S 228(1) 'Disclosure of identity of the victim of certain offences etc.—(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to

Children from Sexual Offences Act, 2012 also prohibit the dissemination of information related to the identity of the victim. However, despite having such protective laws in place, on multiple occasions the Courts as well as the media has played a part in violating the privacy of the victims, thus, leading to the circulation of intimate details of the victim's trauma.

Confidentiality is often an issue when it comes to sexual abuse survivors, one must keep in mind that confidentiality is the foundation of the healing process. To ensure that the victim's recovery process is not hindered, Section 327(ii) of the Criminal Procedure Code, 1973 allows for in-camera proceedings in sexual assault cases, if the presiding judge deems it fit. In-camera trials are an important feature safeguarding the privacy of sexual abuse victims, it makes the victim feel more comfortable, and reduces the stigmatisation that they feel. Thus, this gives the power to victims to decide what personal information they disseminate with whom, when and how.

V. Recommendations

What our country needs to do to is overhaul the current system we have in place for sexual assault victims and replace it with a system that focuses on privacy, confidentiality and one that imbibes the tenants of therapeutic jurisprudence.

After being sexually abused privacy and confidentiality is essential for a victim to regain confidence and acclimate themselves with their current situation while learning how to overcome the psychological trauma faced.

In this situation the court can take from the existing jurisprudence. Therapeutic jurisprudence is a process whereby the court is used to effect and promote healing for crime victims and

have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine'.

³⁴S 23. Procedure for media. '(1)No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy; (2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child; (3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee; (4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both'.

offenders.³⁵ It considers the various ways the law may be utilised as an instrument of healing, rehabilitation, and also how to reduce the anti-therapeutic effects of law³⁶.The most vital aspect of therapeutic jurisprudence is finding out how the law can be used as a therapeutic agent without displacing the due process and procedure established by law.³⁷

The neglect and abuse of crime victims in the criminal justice process only buttresses the weaknesses of justice systems magnifies their suffering .Distress and hardships that victims face, such as proving *locus standi*, makes the purpose of therapeutic jurisprudence even more indispensable for the criminal justice system.

The first of such purposes is to ensure that crime victims are treated with respect by criminal justice agencies. In pursuance of this, training should be to be given to police officers, who are first responders, on how to interact and behave with people who have suffered sexual violence through workshops. As new officers get trained in the academies, they should be given sensitisation training. The Second is to minimize the stress crime victims go through during criminal proceedings and enable the interests and views of crime victims to be taken into consideration when making decisions³⁸Problem solving courts should be created in India.

Problem Solving courts emerged because traditional criminal courts rooted in adversarial prosecution and punishment, were not working for certain classes of offenders and their victims.³⁹ Sex offense courts have been implemented in New York⁴⁰ and have been quite successful; the same can be done in India. Intensive training on issues related to sexually offending behaviours should be provided to the judges and court staff in order to keep all personnel abreast with the latest research and practices in the field.

³⁵Slobogin, 'Therapeutic jurisprudence: five dilemmas to ponder' (1995) *Psychology public policy and law* 193

³⁶Erez and Hartley , 'Battered immigrant women and the legal system: a therapeutic jurisprudence perspective' (2003) *Western Criminology Review* 155

³⁷Hartley and Petrucci , 'Practicing culturally competent therapeutic jurisprudence: a collaboration between social work and law'(2004) *Washington University Journal of Law & Policy* 133

³⁸Sanders, 'Victim impact statements: don't work can't work' (2001) *Criminal Law Review* 448

³⁹Paul A. Haskins, 'Problem solving courts: Fighting crime by treating the offender' (2009) *National Institute of Justice* <<https://nij.ojp.gov/topics/articles/problem-solving-courts-fighting-crime-treating-offender>> accessed 4th April,2020

⁴⁰Sex Offence Courts, Office of Policy and Planning, New York Unified Court System <http://ww2.nycourts.gov/courts/problem_solving/so/home.shtml> accessed: 4 April, 2020

The third purpose is giving a voice to the crime victims, this has the effect of improving the mental condition and welfare of crime victims.⁴¹ Each court should be affiliated to an NGO that can counsel the victims and help them with their mental well-being, resolving issues such as PTSD. The court can also have a roster of advocates who are specialised in dealing with sexually violent crimes. These courts should also have the provision of all the cases to be conducted in camera, details of the victims should only be allowed to be revealed if the judge deems it to be in the interest of the victim. This will help maintain confidentiality and the victims can remain out of the eye of the media. Furthermore, these courts should be empowered to punish media houses and people for revealing the identity of the victim and violating their privacy.

Although in India we have existing legislations to protect and safeguard the dignity and identity of sexual abuse victims, but there is a disparity between the existing laws and their implementation. In *Nivedita Jha v. State of Bihar*⁴², the news broadcasting standards authority put forth several complaints in front of the Supreme Court and stated that the police was not taking action to protect the identity of the victims. In the avant-garde world that we live in today the identity of a sexual abuse victim is a click of a button away. It is imperative that the laws that we already have in place are executed.

VI. Conclusion

The laws of India with regard to the circulation of the victim's information by media outlets provide much more protection to the victim in comparison to countries like the United States of America where the media takes advantage of the First Amendment⁴³ at the detriment of the victims. Our country is on the cusp of further progress by integrating the Right to be forgotten. Section 20(1) of The Personal Data Protection bill⁴⁴, is one step in the right direction. The bill should be further amended to include an exception to S.20(1) if the material published is in direct contravention of any law, the data principal shall have the right to bring it to the attention of the media house and have it erased immediately. In this way, the

⁴¹Freckelton, 'Therapeutic jurisprudence misunderstood and misrepresented: the price and risks of Influence'(2008) *Thomas Jefferson Law Review*

⁴²(2018) SCC Online SC 1616.

⁴³ US CONST. Amend I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

⁴⁴Personal Data Protection Bill, 2019 S.20(1) (n 23)

names of the victims who are part of the cases that fall under S. 228A(1) of the Indian Penal Code⁴⁵ can be removed forthwith, without going through the adjudicating authority or waiting for a court order in their favour, that would soon follow the expunging in any case. This new-age right will empower the victims by giving them a shield to defend themselves against the onslaught of information freely accessible on the world wide web. Thus, there is an imminent need to upgrade, update and upend the existing laws.

⁴⁵Indian Penal Code, 1860 S. 228(A) (n 11)