

Volatile cyber world: questioning the rights perspective of victims in India

Abstract

With the advance in technology the onerous responsibility has immensely widened upon the prosecuting bodies to bring in justice in a contended atmosphere. At times, the investigating authorities themselves fail to understand the nuances that are associated with the technology that guides the cyber world. Thereby, leaving the victim at distress. The victim gets trapped in the cobweb of procedure and courtroom dramas causing a diminishing trust on the justice delivery institutions that are in India for the time being in place. When a victim has purported and contributed to the cyber space, it is at times legally as well as technologically not conducive to keep an eye on to remove an iota of possibility of being getting victimised. However, this paper is a humble attempt to introspect upon the level of protection of rights and sense of security available to the supposed victims whose rights are at stake and further would showcase the subtle guidelines and directions by the authorities of the 'global village' for unrestricted enjoyment of cyber space giving just validation to the rights of the victims.

Volume 6 Issue 1 - 2018

Bishwa Kallyan Dash

Institute of Law, Nirma University, India

Correspondence: Bishwa Kallyan Dash, Institute of Law, Nirma University, AT/P.O.- Dompara Dist. – Cuttack, Odisha, 754007, India, Tel 8895182267, Email bishwakdash@gmail.com

Received: April 10, 2017 | **Published:** January 29, 2018

Introduction

If liberty means anything at all, it means the right to tell people what they do not want to hear-George Orwell.

India has seen many ups and down in framing the shape of its legal order over the centuries. Be it the time of inceptions of customary practices or the modern day aspects of legal entitlements. India has witnessed and brought in a world order for the safeguard of human rights in line with the International sphere. One of such mandates are the freedom of right to speech and expression which has been questioned time and again to give accord and satisfaction to what ought to be the limitations that the state shall impose over its citizenry. While the origins of free speech can be traced back to many ancient civilisations including Greece¹ and Rome,² it is generally accepted that the notion in its contemporary sense traces its roots to modern developments in constitutional law. The English Bill of Rights of 1689 recognised freedom of speech in Parliament. Then in 1789, the Declaration of the Rights of Man, promulgated in immediate aftermath of the French Revolution, states in Article XI: 'The free communication of thoughts and of opinions is one of the most precious rights of man: any citizen thus may speak, write, print freely, except to respond to the abuse of this liberty, in the cases determined by the law.' The Constitution of India also provides certain right to freedom of speech and expression under Article 19(1)(a) with some restrictions. In the present era of technology, where by most of the people used to communicate through the electronic medium, it is difficult to ascertain liability of an individual in case of excessive use of such freedom granted under Article 19(1)(a). To control the communications made on the cyber world, the legislature has come up with the Information Technology Act, 2000 which governs the acts done by the person at the cyber world. This Act provides provisions for punishment for the wrong

doer, but how far it is practicable to ascertain the individual liability, and protect the victim's right is an issue concern in the present article.

Free speech and the American constitution

Arguably it is in the American Constitution that freedom of speech received the form in which it is so familiar to us. The First Amendment, adopted on 15 December 1791, states: 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. This amendment clubbed the freedom of speech with another cornerstone of the American constitution, namely the separation of church from state. A feature common to both freedoms is the lack of exceptions offered by the language of the provision. This has led many to assert that these rights, particularly the right to free speech, are absolute in nature, that is, they do not brook any exception. This needs to be placed in context. Possibly the most lucid expression of this 'absolutist' doctrine may be credited to Justice Hugo Black, specifically his response to the view that 'Some people regard the prohibitions of the Constitution, even its most unequivocal commands, as mere admonitions which Congress need not always observe.'³ He identifies three forms that this belief may take, that is, three possible circumstances in which Congress may abridge a right: first, in the face of a clear and present danger; secondly, injury to the public interest of such magnitude as to outweigh the considerations to the individual rightholder; and thirdly, in the face of governments' competing interests. In rejection of these contentions he says: 'It is my belief that there are "absolutes" in our Bill of Rights, and that they were put there on purpose by men who knew what words meant, and meant their prohibitions to be "absolutes."⁴

This contention rests largely on the antecedents of the free speech right. Noting that under English law instruments such as the Magna Carta, did not impose binding obligations on Parliament, he claims that the American Constitution represented a clean break with the

¹See e.g. Enrico Berti, Ancient Greek Dialectic as Expression of Freedom of Thought and Speech (1978) 39 Journal of the History of Ideas 347; Stephen Halliwell, 'Comic Satire and Freedom of Speech in Classical Athens' (1991) 11 Journal of Hellenic Studies 48.

²MP Charlesworth, 'Freedom of Speech in Republican Rome' (1943) 57 Classical Review 49.

³Hugo L Black. 'The Bill of Rights'. 35 NYU L Rev. 1960;865:866.

⁴Hugo L Black. 'The Bill of Rights'. 35 NYU L Rev/1960;865:867.

former. This could be inferred from several of its characteristics, such as a written constitution that predominates over legislation, separation of powers, and judicial review⁵. These factors are what justify his conclusion: 'Neither as offered nor as adopted is the language of this Amendment anything less than absolute. Madison was emphatic about this. He told the Congress that under it "The right of freedom of speech is secured; the liberty of the press is expressly declared to be beyond the reach of this Government...."⁶ Other scholars who also argue in favour of this absolutist doctrine, in some form or the other. Brennan justifies it by quoting Madison's remark that 'The people, not the government, possess the absolute sovereignty.'⁷ Stephen Gardcontends: My point is not that the first amendment should be interpreted as being absolute in scope, nor that the meaning of the guarantee can be derived solely from a literal reading of the not-so-plain words of the constitutional guarantee. Rather, it is simply that before the Court can get to the 'balancing' stage, before it can worry about the next case and the case after that (or even about its institutional position) it is under an obligation to trace its premises to the charter from which it derives its authority.⁸

Be that as it may, from about 1919 onwards, the US Supreme Court has been imposing restrictions on free speech. The locus classicus in this regard is surely *Schenck v. United States*.⁹ Its facts concerned a group of left-leaning activists who were distributing leaflets to urge otherwise eligible men to oppose conscription or compulsory military service during wartime, which constituted a criminal offence. On that occasion the Court held that free speech could be curtailed in the face of any clear and present danger. This was followed in *Abrams v. United States*.¹⁰ *Chaplinsky v. New Hampshire*¹¹ carved out an exception for offensive speech or 'fighting words'. In *Brandenburg v. Ohio*,¹² the Court held that inflammatory speech can be punished only if it amounts to incitement to violence.

Free speech and the Indian constitution

Unlike in America, the Indian right to free speech has always been subject to qualifications. Article 19(1)(a) guarantees to all citizens the right 'to freedom of speech and expression', but is qualified by cl. (2) of the same article, which restricts free speech on the following grounds: security of the State, friendly relations with foreign States, public order, decency and morality, contempt of court, defamation, incitement to an offence, and the sovereignty and integrity of India. Interestingly, two of these grounds were not part of the provision as it originally stood, but were added through subsequent amendments. The 'public order' ground was added by the first amendment in the immediate aftermath of *Romesh Thappar v State of Madras*¹³ and *Brijbhushan v State of Delhi*,¹⁴ which held that sedition did not constitute a threat to state security. The 'sovereignty and integrity of India' ground was added much later by the sixteenth amendment.

⁵Id. 869-871.

⁶Id. 874.

⁷William J, Brennan Jr. 'The Supreme Court and the Meiklejohn Interpretation of the First Amendment. 79 *Harvard Law Review*. 1965;1:15.

⁸Stephen W Gard. 'The Absoluteness of the First Amendment'. 58 *Neb L Rev*. 1979;1053:1055.

⁹249 US. 1919;47.

¹⁰250 US. 1919;616.

¹¹315 US. 1942;568.

¹²395 US. 1969;444.

¹³AIR 1950 SC 124.

¹⁴AIR 1950 SC 129.

These grounds have been frequently adverted to by our courts on many occasions. In *State of Bihar v. Shailabala Devi*,¹⁵ it held that utterances intended to endanger the security of the State by crimes of violence intended to overthrow the government, waging of war and rebellion against the government, external aggression or war, etc., may be restrained in the interest of the security of the State. In *re Arundhati Roy*,¹⁶ the Supreme Court, in addressing the issue of contempt of court, reiterated US Supreme Court's views in *Pennekamp v Florida*.¹⁷ If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise.

Free speech and Indian criminal law

Indian penal code incorporates offences affecting public decency and morals. S.292 punishes selling or letting or distributing the objects (books or pamphlets etc) which are lascivious or appeals to the prurient interest or its effect tends to deprave and corrupt persons who are likely to read, see or hear. S.292 punishes selling of such objects to a person under 20 years. While S 294 punishes public exhibition, selling or singing of obscene objects.

IPC exempts certain publications from guilt of obscenity i.e.:

- i. Any publications done in the justifiable means of public good in the interest of science, literature, art or learning or other objects of general concern.
- ii. Which is kept or used bona fide for religious purposes
- iii. Any picture or print show casing the ancient monuments or engravings etc.

However, there is no definition of the word Obscenity been defined anywhere. S.292(1) that is added to the list of statute in 1969 tried to define it as 'any books or pamphlets etc which are lascivious or appeals to the prurient interest or its effect tends to deprave and corrupt persons who are likely to read, see or hear.'. This is a direct fallout of the supreme court's stringent view taken in *Ranjit D Udeshi's case*¹⁸ in 1965. In, India Freedom of Press though not guaranteed through any specific provision it is nevertheless taken to be an intricate part of Freedom of expression as guaranteed by Art.19(1)(a) of the Constitution.¹⁹ What is popularly known as the Freedom of Press is in essence the Freedom of expression of every citizen.²⁰ And most unfortunately this right also includes the right of citizen or press to lay down the sentiments he/she pleases before the public.²¹ It wouldn't be called unfortunate if a citizen can lay down his/her sentiments before public as those indicate his choices, his freedom. Rather it would be termed unfortunate because by virtue of

¹⁵AIR 1952 SC 329.

¹⁶3 SCC 343. 2002.

¹⁷328 US 331. 1946.

¹⁸1965 SCR (1) 65.

¹⁹See *Express Newspapers v. Union of India* 1958; SC 578:614.

²⁰Durga Das Basu "Law of the Press". 4 th ed. 2002;11.

²¹IV B1 Com 152. 1765.

this right the Media can also lay down its opinion or sentiment before public, and not just information. In this context the legal point of view was the Hicklin Test, which was focused on individual or isolated aspects of an entire work that could be deemed obscene, as well as its impact on “vulnerable” sections of society. For a long period, the legal proposition rests upon the Ranjit D Udeshi’s case which was trying to define an act, whether it falls under the domain of Obscene or not; until the Aavek Sarkar v. State of WestBengal²² was adduced where, the Court adopts what it called the “community standards” test: A picture of a nude/seminude woman, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire.

The picture should be suggestive of deprave mind (sic) and designed to excite sexual passion in persons who are likely to see it, which will depend on the particular posture and the background in which the nude/semi-nude woman is depicted. Only those sex-related materials which have a tendency of “exciting lustful thoughts” can be held to be obscene, but the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards.” (Paragraph 24). While welcoming the Supreme Court’s decision in getting rid of the Hicklin Test at last, the judgment is also problematic in many respects. First, the Court cites the 1957 US Supreme Court case of Roth v. United States, and its use of the phrase “contemporary community standards” has been lifted from Roth – but the test in Roth itself was superseded twice over – first in 1966, by *Memoirs v. Massachusetts*²³ and then in 1973, by *Miller v. California*,²⁴ neither of which are cited by the Court.

More troubling, however, Roth did not just speak about community standards test, but actually laid down a three-pronged test. Community standards constituted the first prong, but under the second prong, the material had to be “patently offensive”, and under the third prong, “of no redeeming social value” (*Memoirs* and *Miller* saw a liberalization of the third prong). The second and third parts of the Roth test are conspicuously absent from the Court’s judgment – in essence, it seems to be saying that if (on applying community standards), a particular work “has a tendency to arouse feeling or reveal an overt sexual desire”, it can be criminalized as obscene. This is worse than vague. On what ground does the Court hold sexual arousal to be something that ought to be criminalised? Additionally, the last Roth ground is crucial, because it is on the social value prong that works of art, literature, sculpture etc., that would otherwise be deemed obscene, are spared. The Court has referred to social value elsewhere, notably in *Udeshi* itself, and so its absence in this judgment, that otherwise rejects the foundation of *Udeshi*, leaves the law of obscenity in a state of flux.

The Court also cites the Canadian case of *R v. Butler*²⁵ in its support for the community standards test, but regrettably, doesn’t do much with it. This is a pity, because *Butler* restricted itself to outlawing “undue exploitation of sex”, which in turn it defined as either sex with violence, or that was “degrading or dehumanizing”. In this way, unlike in the US, while *Butler* made community standards relevant in its obscenity enquiry, it did not make them dispositive. This, naturally, is extremely important, because in determining “community standards”, time and time, again we have seen that the Courts simply adopt the dominant majority’s publicly affirmed views, and thus a fortiori

exclude alternative, marginalized and minority ways of thinking, especially about sexual matters. *Butler* tries to provide at least some protection against this tyranny of the majority.

The media through its various medium has showed the world what it is capable of doing. Every person in the world today is aware of the influence of media. From a humble beginning as a government pro-bono exercise, the media has become a fulcrum of social activity and societal transformation. The influence of media can be understood from the fact that all over the world numerous regimes, government and dictators have been toppled by the media. And what can be more interesting example than the recent ‘jasmine revolution’ in the Middle East where regimes which were in power for 30-40 years were toppled by a movement started by the youth on social media.²⁶ Interestingly, Lord Acton once said “power corrupts and absolute power corrupts absolutely”.²⁷ If media is wielding so much power, there is a high chance that it may corrupt itself and go astray from its goal of serving the masses. It may completely forget its duty and become a leviathan and then threaten the structure and composure of the society. Or even worse, it may lose its social service character and may become completely a money churning business entity i.e. reviewing everything from the lens of profit and loss. Change is a gradual process and a demand of nature. But sometimes this fast changing trend of media poses problems. This fast changing trend of media has given birth to many defects which pose a serious question to the current law, society and establishment. While, institutions like Supreme court has advocated for a change to be brought into the domain of S.292 of Indian penal code; its aspirations are far reaching.

Free speech and cyber law

Cyber space offers opportunity to people to express their opinion in front of whole world, where by the people used to access their right to free speech. With the advent of technological era, serious threats have been posed to the state machinery under the guise of freedom of speech and expression owing to the widespread reach of technology. It is therefore indispensable for the state to intervene by enacting legislations to curb down such abuse.²⁸ with the purpose of controlling such freedom of speech and expression, legislations has come up with Section 66A of the Information Technology Act, 2000. Section 66A of the Act make the person liable who sends any information through the computer or any other electronic device, which is offensive, creates danger or enmity in the mind of the public at large towards state or any of the functionaries of state. Thus, section 66A restrict the freedom of speech provided to the people at large but the Hon’ble Supreme Court reading it down in the historic case of *Shreya Singhal v. Union of India*²⁹ held it to be violative of Article 19 (1) (a) on account of vagueness that encumbered the freedom in an arbitrary and disproportionate manner. The legislature has set a scope of the section 66A in such a large manner, where by it will cover all the person using such offensive language in the cyber space. The court held that, the legislature can set wide scope of the section to punish the person having done some offence but setting up of such a wide net is not permissible when it is restricting the person to express his opinion, as such a thing is considered to be the violation of the freedom of speech and expression.

²⁶<http://www.turkishpolicy.com/dosyalar/files/Mahmoud%20El-May%20The%20Jasmine%20Revolution.pdf>

²⁷<http://www.phrases.org.uk/meanings/absolute-power-corrupts-absolutely.html>

²⁸<http://www.thedailystar.net/lifestyle/spotlight/crimes-the-cyber-space-1290073>

²⁹12 SCC 73. 2013.

²²CHN 694.2005;2.

²³383 U.S. 413. 1966.

²⁴413 U.S. 15.1973.

²⁵1 S.C.R. 452. 1992.

Supreme Court has set out the free speech jurisprudence by the decision in the *Shreya Singh* case, by considering S. 66-A of the Information Technology Act, 2000 unconstitutional on certain grounds at one hand and validating some of the provision of the said Act. The decision on the face of it highlights the importance and need of right to freedom of speech and expression in a democratic setup but fails to ensure it in the realm of cyber space for that the verdict does not make any good to the status quo. The scrapping of S. 66-A does not put to trash the bulk of draconian penal provisions contained in the Information Technology Act as well as other penal statutes. For Example Section 67 of the Act, punishes dissemination of sexually explicit information which does not necessarily need be obscene, which also in contradiction of the freedom of speech and expression, but the same is considered to be constitutional by the court of law.

Victim protection in cyber space

Increase use of Internet, resulted in the commission of different crimes which has attracted the new earning point for the lawyers, but the concept of victimization has been completely negated. It is evident from the very fact that, the victims of the cyber crime did not get any kind of protection because of the fact that, the legislature has enacted the laws governing the cyber space transactions as well as communications, but the same are ineffective. As shown by the data of 2012, there were 3682 cases of cyber crime registered out of which 1600 accused were arrested and out of which only 7 were convicted so far.³⁰ The said date shows the failure on the part of various governmental department with regard to the proper implementation of the laws. In majority of the cases, women as well as children were the victim of the cyber crime, and their protection is of almost importance in the present time.

a. Protection of child in cyber space

In the recent years, India has seen the rapid use of the smart phones and internet, whereby it is found that in the year 2016 almost 371 million of people use the smartphone and internet in their day to day life which includes children as well.³¹ The rapid development and expansion of ICT have generated new opportunities for the realization of children's rights as well as significant challenges for the protection of children from abuse and violence. Children are the most vulnerable sections of society and are easily exploited in the cyber world due to lack of majority level in them. Cyber bullying and online sexual abuse and child pornography are major issue with regard to the children in the present time. Children are easily exploited by online criminals not only because of their age and majority but also as they heavily rely on networking sites for social interaction. Offenders use false identities in chat room to lure victims for personal meetings. This leads to child abuse and exploitation such as trafficking and sex tourism. The child never knows the person with whom he or she is chatting. Children who are not having the knowledge about the act which have been done by them, or have done some act for the purpose of getting some money, which is actually resulted in the child abuse or child pornography. Provisions of the Information Technology Act, 2000 provides the punishment for the child sexual abuse as well as child pornography under section 67 C of the Act, but the said punitive measure cannot help in protection of the children from such kind of abuse and victimization. As there are very rare cases where by it has been reported and punishment has been provided to the accused

person. Irrespective of the fact that there are various provisions which protects the rights of children in cyber space under IT Act, 2000 as well as under IPC, but it is found that due to lack of the technical expertise and technical instruments the investigating authorities could not carry out investigation in the proper way which results in the injustice to child victim.

b. Protection of women in cyber space

With the advent of technology, cyber crime and victimization are on the high and it poses as a major threat to the security of a person as a whole. Since the inception of Indian information technology Act, in 2001, cyber crime has grown not only in numbers but also in characters in India. Women however remained the most chosen victims of cyber crimes in India since then. The prime reason being the violence that was unleashed against them on cyber media. In current time this cyber platform has become the modus to commit violence against women and little girls and the same is emerging as a new threat with severe implications over society and the economical arena all round the globe. Crimes such as cyber stalking, blackmailing, duping, cyber pornography, defamation etc are being committed against women over cyber platform. The existing cyber law was inept to protect and prevent cyber crimes against women in India. However, the amended version has removed many difficulties satisfactorily. Even though the new law cannot be given full marks as a highly appropriate measure to stop atrocities against women online, it is indeed a solace to victim prone women. For instance section 66A of the act for the first time introduced a unique provision of punishment for sending offensive messages, section 66C which deals with identity theft, Section 66 D which deals with anyone who with a communication device cheats by personation shall be punished etc. yet there are numerous cases which go unreported in India. The problem would be solved only when the victimised woman then and there report back or even warn the abuser about taking strong actions.

i. Article 19(1)(a): Article 19 (1) (a) Provides the freedom of speech and expression, where by the provisions of the constitution under article 19(2). Itself provides the restriction and says that such right or freedom is not in absolute nature. Such restriction can be put on the ground of Security of the state, friendly relation with other state, public order, decency, etc. The drafter has put such a wide terms which has left in the hands of the judiciary to interpret. Validity of such restriction has time and again challenged in the supreme court whereby in the different time, the same has been interpreted in the different manner. Validity of the restrictions imposed can be adjudged on two basis i.e. whether it is reasonable and whether it is for the purpose mentioned in the clause under which restrictions is being imposed.³²

In the case of *Romesh Thapar vs State of Madras*³³ the court held that, "Public Order means and includes that state of tranquillity which prevails amongst the members of a political society as a result of the internal regulations, enforced by the government, which they have established." In the another case of *State of Bihar Vs. Shaila Bala*³⁴ the court held that, "the expression security of the state refers to serious and aggravated form of public disorder and not ordinary law and order problem and public safety." In the recent case of *Shreya Singhal*³⁵ while judging the fact that some opinion written on the social media, whether amounts to violation of provision of 66A of IT Act, which

³⁰<http://www.rediff.com/money/report/tech-cyber-crime-1600-arrested-only-7-convicted/20121211.htm>

³¹https://www.unodc.org/unodc/en/frontpage/2015/July/cybercrime_protecting-children-from-online-abuse-and-exploitation.html

³²<https://lawupdaterblog.wordpress.com/2016/11/01/article-on-scope-of-article-191-a-constitutional-framework-reasonable-restrictions/>

³³1950 SCR 594.

³⁴1952 SCR 654.

³⁵Supra 30.

also specified the same grounds as specified under article 19(2), the court held that, the veauge grounds so specified under section 66A is unconstitutional, as in such a case everything will fall under the reasonable restriction and all the person who express their onion would be liable for some offence. In the another case of *Noise pollution (V), In re*³⁶ court held that a loudspeaker forces a person to hear what he wishes not to hear. The use of a loudspeaker may be incidental to the exercise of the right but, its use is not a matter of right, or part of the rights guaranteed by Art. 19(1).

The court has time and again held that the term speech and expression used in Art. 19(1)(a) has very widespread manning. The right to paint or sing or dance or to write poetry or literature is also covered by this article because the common basic characteristics of all these activities are freedom of speech and expression. In the case of *RanjithUdeshi*³⁷ the court while defining the term obscinty held that 'any books or pamphlets etc which are lascivious or appeals to the prurient interest or its effect tends to deprave and corrupt persons who are likely to read, see or hear.' where as in the recent case of *obscene or not; until the Aveek Sarkar v. State of West Bengal*³⁸ was adduced where, the Court while adopting the "community standards" test held that , A picture of a nude/seminude woman, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire. The picture should be suggestive of deprave mind (sic) and designed to excite sexual passion in persons who are likely to see it, which will depend on the particular posture and the background in which the nude/semi-nude woman is depicted. Only those sex-related materials which have a tendency of "exciting lustful thoughts" can be held to be obscene, but the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards."

Through these cases, it is clear fact that, with the change in time, the interpretation of the different terms has also been changed by the supreme court, and the major issue in that case is with regards to victims. In case when the positive approach has been taken up as in the case of *shreyasinghal*, it is in the benefit of the public at large and

protects the rights of the person. But the approach so adopted in the case of *Aveek Sarkar* may leads to the violation of the victims rights, as the term obscenity has not been defined anywhere in the statute book, it is the duty of the Supreme court to defined it in such a way so as to rights of the victim are protected, where by the court has leave it on the mindset of the person, leads to injustice to so many victims.

Conclusion

The victim protection in India is very much a subjective factor taking the circumstances and legal propositions into concern. While the state in India is the guardian of all rights of citizen; at the same time the state has the onus to eliminate any such element who tries to disturb the legal order. Many of a time it happens that the courts fail to identify the real victim i.e. victim whose rights has been curtailed due to someone's action or intervention or; a victim of legal procedure. Talking of the cyber space whose knowledge is lesser in the judicial domain often creates a hindrance on the way of attainment of justice. For instance; the IT Act, 2000 of India conveys the requirement of facilitation of expert opinion countersigned by the person facilitating the electronic evidence for the appreciation of the court. Most of the times; the courts are unaware of the fact that; who is to adduce the certificate or affidavit for the procedural appreciation of the courts. In lieu of the same i.e. procedural deficiency; the accused takes advantage and get out of the purview of law. This kind of instances has created a situation of unrest for the whole of India as a knowledge gap has been created in the modern day approach of cyber world which is has made the whole approach so much volatile. Thus, bridging the knowledge gap is the need of the hour. Which ought to be in consonance with the Constitutional rights perspective and not otherwise.

Acknowledgments

None.

Conflicts of interest

There was no conflict of interest for any of the authors in this study.

Funding

None.

³⁶5 SCC 733. 2005.

³⁷Supra 19.

³⁸Supra 23.