

## ADMISSIBILITY OF INSTAGRAM CHATS AS DIGITAL EVIDENCE IN RELATION TO BOYS LOCKER ROOM CASE

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### ABSTRACT

*It has become appallingly obvious that our technology has exceeded our Humanity” -Albert Einstein. In the present digital world, computers, smartphones, and other technical gadgets are widely used. There are numerous opportunities to commit crimes in the digital age. One such great example is, when the world was in a crisis of the Covid pandemic in the year 2020, the incident happened in the cyber world using social media platforms. The crime was committed by minor boys against women and minor girls which shows the negative impact of technology. This paper discusses the recent Boys Locker Room case in India which has highlighted the importance of digital evidence in cybercrime investigations. Specifically, the admissibility of Instagram chats as evidence in court has become a crucial issue. It explores the legal framework governing the admissibility of digital evidence, particularly in relation to Instagram chats, in the context of the Boys Locker Room case. It was already said in the Indian Evidence Act that information in electronic form can be used to prove or disprove a relevant fact or a fact-in-issue. And this paper also focuses on the role of intermediaries or social media platforms and the legislation relates to this Boys Locker Room case. As technology continues to evolve, the legal system must adapt to ensure the effective collection, analysis, and presentation of digital evidence in court.*

**Keywords:** Admissibility, Instagram Chats, Digital Evidence.

### BACKGROUND OF THE CASE

In the year 2020, when the whole world was in lockdown due to Covid pandemic, a distressing incident was reported in New Delhi on May 3, 2020. A group of boys who are school teenagers between the age group of 13-18 created the Instagram group chats (a popular social media platform) in April and named it "BOYS LOCKER ROOM". The teenagers are the school students from different elite schools in Delhi. The boys lewd comments about minor girls,

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exchanged private photographs of minor girls by morphing them, used abusive language talking about gang-raping girls, and discussed other acts of sexual attacks. It is said that there are almost 27 members in the group which includes some of the college students also. This incident was reported only after the screenshots of chats of the boy's locker room were circulated on WhatsApp as well as Twitter and other social media platforms. It was found that the individuals in group chats were sharing pictures of their classmates and other underage girls without their knowledge or consent along with rough comments ranging from body shaming to jokes on sexual assault and rape<sup>1</sup>.

## INVESTIGATIVE ACTIONS

As soon after the incident was reported, Delhi police took up the case and investigated a 15-year-old school student and also identified 10 other members from that group chat who passed comments about the minor girls. Moreover, the Cyber Crime Cell Police has seized mobile phones and other devices of these boys. Both non-minors and minors are found among the identified 10 persons. It was noticed that one Instagram group by the name "Boys Locker Room" was being used by the participants in the group to share obscene messages and morphed pictures.

On 4th May 2020, the FIR was registered against the teenagers at a special cell and an investigation was taken by the Cyber Prevention Awareness Detection (CyPAD) unit of Delhi police<sup>2</sup> under the relevant legislations such as the Information Technology Act, 2000 and Indian Penal Code, 1860, Juvenile Justice Act, 2015 as the perpetrators are the minors and POCSO act, 2012 where the victims are mostly the minor girls. Police officials directed Instagram to provide the details of members in the group like the details of admin, contact details, IP address, and other important details.

The "Delhi Commission for Women" had taken Suo motto cognizance of the case and had issued a notice to the Delhi police cell for immediate arrest of the members of the Boys Locker Room and to the Instagram, registration of FIR against them and the directions for an

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<sup>1</sup> Tulip de and Nishtha Das, 'Boys locker room: controversy and intermediary liability', (S.S.Rana & Co, 14 May 2020) <<https://ssrana.in/articles/boys-locker-room-issue-of-intermediary-liability/>> accessed 16 June 2024

<sup>2</sup> 'Boys Locker Room' case: 15-year-old held in South Delhi, 10 others identified', The New Indian Express (India, 06 May 2020) <<https://www.newindianexpress.com/nation/2020/May/05/boys-locker-room-case-15-year-old-held-in-south-delhi-10-others-identified-2139576.html#:~:text=NEW%20DELHI%3A%20After%20a%2015,other%20devices%20of%20these%20boys.>> accessed 16 June 2024

investigation into the matter. This action was sought after the chairperson of the Delhi Commission for Women (DCW) Ms Swati Maliwal retweeted the news reports regarding the screenshots of the boy's locker room case. She further commented that these screenshots show a gruesome Criminal and rapist mindset. She went on to state that "each member boy of this group should be arrested and there is a need to send a clear message." She also mentioned a notice that is about to be issued to Instagram and police relating to the matter. The tweet had a fair reach with 618 retweets and 1.8k likes and the official and verified Twitter Handle of DCW also retweeted the same<sup>3</sup>.

The Public Interest Litigation was filed before the Delhi High Court seeking the government of Delhi and the Government of India to transfer a matter of Boys locker room case to the special investigation team (SIT) or Central Bureau of Investigation in order to arrest the minor teen boys who are accused of committing cybercrime against girls and women. *"the action of these students shows the mindset of the young generation towards the girls and if it is not stopped at this time and these people are not punished at this time, so it will lead to creating a lot of issues and increase of crime against the girls and women in the future time."*<sup>4</sup>

### **SIMILAR INCIDENTS**

There were some incidents that were thought by the police officials related to the boy's locker room case, but not. One such incident happened in Gurugram, Haryana in the year 2020, after the controversy created by the boys' locker room incident. Manavsingh, a 12th-standard schoolboy in Gurugram committed suicide because of a false allegation of molesting a girl. He jumped from the 11th floor of his resident building. Rishi Singh, brother of Manavsingh says Manav Was Not A Rapist. He Didn't Deserve To Die in his posts on social media and also said he was not related to the boy's locker room case. He committed suicide out of pressure he could not handle after a girl falsely alleged him of sexual assault, molestation, and rape. Manavsingh tried to defend and convince others that the allegation was false and he was innocent but he could not and committed suicide. This was the incident that happened two years ago in the boys' locker room case. The girl was booked under section 305 (abetment to suicide) and section 34 (common intent) IPC where she got anticipatory bail in advance. As she is a minor and our

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<sup>3</sup> Nilashish Chaudhary, 'Boys Locker Room' : Delhi Commission For Women Takes Suo Moto Notice; Writes To Instagram, Delhi Police', LiveLaw (India, 04 May 2020) <<https://www.livelaw.in/news-updates/boys-locker-room-delhi-commission-for-women-takes-suo-moto-notice-writes-to-instagram-delhi-police-156207>> accessed 16 June 2024

<sup>4</sup>'Boys Locker room' incident: Plea in Delhi High Court for SIT/CBI probe', The Hindu (India, 03 Dec 2021)

country's law focuses mainly on reformation than on retribution she was sent to the juvenile justice board and will face trial in juvenile court.

Defamation on social media can be harmful to the mental health of people, wrote Rishi Singh claiming that social media made his brother into a rapist overnight and further quoted that it is proof of how devastating the Instagram story is and he demanded justice for his brother<sup>5</sup>.

Another incident is the Snapchat conversations which were revealed out of an investigation of the boys's locker room case. Police officials said the screenshots of conversations on Snapchat and screenshots of boys locker room chats circulated virally, thought it was the same but after further investigation, it is known that the two conversations were not related. According to the Delhi Police's Cyber Cell (DPC), a young girl who pretended to be a teenage boy made a false Snapchat profile and discussed "sexually assaulting" a girl with another young boy. It was revealed that a girl had created a fake profile as "Siddharth" on Snapchat and messaged her classmate boy as Siddharth of sexually assaulting herself merely to see how he reacted. The police cell found the alleged conversation was between a girl who created a false profile in the name of Siddharth, suggesting a plan of aggravated sexual assault of a girl with another boy and a boy, who initially replied, later he refused to participate in sexual assault and stopped replying. Later took screenshots of the chats and sent them to his friends and to the girl who chatted with him on a fake account and by this the conversation circulated.

It was initially believed that the Snapchat conversations were by the boys indulging in boys' locker room chats. Later none of the boys in the boys' locker room chats was involved in these Snapchat conversations.<sup>6</sup>

## **ROLE OF INTERMEDIARIES**

As this case occurred in digital platforms, it is necessary to understand the role of intermediaries or social media platforms here, because social media and society become inseparable nowadays. As more and more activities (personal or commercial) expand into the virtual world, it is anticipated that intermediaries' responsibility will rise with time. Social media platforms

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<sup>5</sup>“He was not a rapist, stop calling him that,” brother of the Class 12 boy who committed suicide says that social media made him a rapist overnight’, (India, 07 May 2020) <<https://www.opindia.com/2020/05/he-was-not-a-rapist-stop-calling-him-that-brother-of-the-class-12-boy-who-committed-suicide-says-that-social-media-made-him-a-rapist-overnight/>> accessed 16 June 2024

<sup>6</sup> Boys locker room: 'siddharth' is actually a girl; fake account used to suggest plan for sexual assault, (New Delhi, 11 May 2020) ,<<https://timesofindia.indiatimes.com/city/delhi/sidharth-is-actually-a-girl-fake-account-used-to-suggest-plan-for-sexual-assault/articleshow/75667020.cms>> accessed 16 June 2024

were created with the purpose of bringing together and fostering communication between people who were separated by distance. It would be interesting to see if a compromise between laws governing content regulation and personal privacy regulations could be reached.

*Shreya Singal v. Union of India*<sup>7</sup> This case, section 66A Information Technology Act, 2000 was struck down by the Supreme Court as it violates freedom of speech and expression enshrined under article 19(1)(a) of the Indian constitution. Section 66A says that Punishment for sending offensive messages through communication services, etc. This case not only established freedom of speech and expression as superior but also exempted the liability of social media platforms as intermediaries where they can take safe harbour protection under section 79 of the Information Technology, 2000 as they merely act as facilitators.

In the case of *Google Pvt Ltd v. Vishaka Industries and Anr.*,<sup>8</sup> the Supreme Court held that intermediaries or social media platforms could not claim protection under the safe harbour principle if such intermediaries did not take action after having 'actual knowledge' that the content published is unlawful. If the intermediaries have been notified about the unlawful content, it has to remove or disable the content within 36 hours and such to be preserved for the prescribed period for investigative purposes.

If a social media platform removes any content without any order, report or complaint, the platform is liable to the users who posted. When this boy's locker room case is concerned, there are only private chats no public postings or chats or comments. Expecting the intermediaries to look into the private chatroom was in question as it violates article 21 of the Indian constitution (right to privacy)<sup>9</sup>, where all legislations in India regulating freedom of speech are in respect of public speech only. But the case became reported just because the screenshots of the conversation in the chat were shared and published, which took the case to the next level.

Social media platforms generally have an ER policy to be signed by users digitally. Under the IT Act and Information Technology (Intermediaries guidelines) Rule, 2011 it is stated that due diligence is required for Social media platforms. If any of the users posted unlawful content, then it can be reported as per the report abuse policy, where social media platforms have certain obligations towards users. In the present case, there is a publication of unlawful

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<sup>7</sup> *Shreya singal v. Union of India*, [2015] AIR 2015 SC 1523

<sup>8</sup> *Google Pvt Ltd v. Vishaka industries and anr*, [2020] AIR 2020 SC 350

<sup>9</sup> "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

content and is explicit, that there is an obligation on social media platforms to take down or remove such content immediately upon receiving a report or complaint.

## **LEGAL PROVISIONS**

The boys' locker room case is not between the 2 individuals or two parties, it impacted greater in society, where the accused being a minor, stresses the need for sex education. There are certain legislations this case subjected to.

### **Information Technology Act, 2000**

One of the purposes of the IT Act, of 2000 is to regulate the crimes committed in the virtual world. An FIR was registered against the minor boys in the boy's locker room case by the Delhi cyber cell police under the IT Act, 2000. They were charged charged with sections Section 43 (b), Sec 66E<sup>10</sup>, sec 68, Sec 67<sup>11</sup>, 67A, 67B and Section 72<sup>12</sup> of the IT Act, 2000. These sections involve downloading, morphing and extracting images and videos of women and sending pictures of private acts of women and publishing or transmitting any obscene material in electronic form and publishing or downloading any sexually explicit material of underage minors etc., The accused had posted pictures of women and minor girls without their consent and made comments on them, thus violating the privacy rights of women and minor girls. In the famous case, *K.S Puttaswamy v. Union of India*<sup>13</sup>, the Supreme Court held section 66E protects the privacy and personal space of a person which cannot be infringed by anyone. In this boy's locker room case, there is a clear violation of privacy and section 66E.

### **Indian Penal Code, 1860**

Indian penal code punishes the accused for publishing sexually explicit materials in electronic form, voyeurism and breach of confidentiality, offensive messages through electronic medium of communication and more.

Boys'locker room case members used the group not only to outrage the modesty of women but also to mock them which is punishable under section 354 of IPC. In this case, the platform was used by the members to share nude/morphed photos of underage girls and women, which

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<sup>10</sup> Section 66E - Punishment for violation of privacy.

<sup>11</sup> Section 67 - Punishment for publishing or transmitting obscene material in electronic form.

<sup>12</sup> Section 72 - Penalty for breach of confidentiality and privacy.

<sup>13</sup> *K.S Puttaswamy v. Union of India*, (2017) 10 SCC 1



is a clear-cut violation of privacy and is termed as the offence of voyeurism under section 354C of the Indian Penal Code. Section 354D of IPC talks about stalking which also includes cyberstalking which means following the women in digital media. Making false documents dishonestly or fraudulently, documents which include electronic records also<sup>14</sup>. Section 469 will also be attracted where the accused minor boys morphed the pictures of women and minor girls. They will be held under the offence of forgery.

The present case explicitly has defamatory statements about women and minor girls. Hence attract sections 499 and 500 of IPC. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment up to 3 years and fine<sup>15</sup>. This case also involves action 506 of IPC about criminal intimidation where there must t be a threat and intent to cause alarm to the complainant. The court has the role of looking into the facts and circumstances of the case to decide how much the victims were influenced. As far as the Oys locker room case is concerned, the victim was influenced and directly had d death threat to the victim.

### **POCSO Act, 2012**

It is important that the law operates where paramount importance is given to the best interest and well-being of the child at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child<sup>16</sup>.

Sexually harassing a child below 18the yrs of a child are accused under section 12 of POCSO Act, 2012. This section also includes sexually harassing the minor in the boy's locker room case, the women and minor teen girls (15-16 years) were sexually harassed on social media and threatened to leak their pictures which is offendable. Child pornography is an offence under the POCSO Act which may extend to 7 years and also shall be liable for fine<sup>17</sup>. Child pornography refers to the use of a child in any form of media whether for personal use or for distribution, for the purposes of sexual gratification by representation of the sexual organs of a

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<sup>14</sup> Indian Penal Code,1860 sec 464

<sup>15</sup> Indian Penal Code,1860 sec 509

<sup>16</sup> Era v. State (NCT of Delhi) [2017] 15 SCC 133

<sup>17</sup> POCSO Act, 2012 sec 14

child; usage of a child engaged in real or simulated sexual acts (with or without penetration); the indecent or obscene representation of a child<sup>18</sup>.

In the case of *Independent Thought vs. Union of India*<sup>19</sup>, it was held that section 42 of this Act deals with alternate punishment and holds that when the offender found guilty of such offence (which includes 354 offences and 509 IPC) shall be liable to punishment under this Act or under the Indian Penal Code which is greater in degree. Also, section 42A holds that POCSO provisions will be supplementary to the provisions of IPC (or any other law) and in case of any inconsistency, the provisions of POCSO will have an overriding effect over any other law.

### **Code of Criminal Procedure, 1973**

Under the Juvenile Justice Act a child cannot be arrested but to be placed in charge of the Special Juvenile police unit or under the designated Child Welfare Police officer for production before the concerned Juvenile Board within 24 hours of such apprehension<sup>20</sup>, where section 438 of Crpc cannot be invoked.

### **Juvenile Justice Act, 2015**

Any person under the age of 18 who has not attained majority is called a Juvenile. Juvenile Justice Act, 2015 plays a major role in the boys' locker room group chats case because the accused involved in this case are mostly minor boys. Our country has this special legislation to deal with juveniles who are accused of offences, where they are not tried in courts but by juvenile justice boards. Similarly, the accused in the boys' locker room case was also tried under this act.

### **INTERNATIONAL CONVENTIONS**

India is a signatory to many of the conventions like UDHR, CEDAW, ICCPR, CRC, and ICESCR. These conventions have provisions relating to childhood where they are entitled to special care and assistance. The Convention on Rights of the Child guarantees certain rights including the right to benefit from social security, the right to a standard of living adequate for a child's physical, mental, spiritual and social development, right to protection of the law

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<sup>18</sup> Arpita singha, "Analysis Of 'Boys Locker Room' Case With Reference To Repercussions Of Media Trial", *Journal Of Legal Studies And Research* Volume 6 Issue 5 – ISSN 2455 2437 October 2020, accessed 16 June 2024

<sup>19</sup> *Independent Thought v. Union of India* [2017] 10 SCC 800

<sup>20</sup> Juvenile Justice act 2015 sec 10



against arbitrary or unlawful with his or her privacy, family, home or correspondence. These conventions relate to this case as they directly affect the rights of women and minor children.

### **ADMISSIBILITY OF INSTAGRAM CHATS**

Before the Information Technology Act, of 2000 was enacted, the Indian Evidence Act, of 1872 did not have an express provision for the admissibility of electronic evidence. After the IT act came into force, it brought amendments in IEA, 1872 which paved the way for admissibility of electronic evidence in both civil and criminal cases. The word "Evidence" was added to the Indian Evidence Act by amendment which includes electronic records. The IT Act defines electronic records as "data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche"<sup>21</sup>.

Following the IT Act, section 65B was inserted in IEA which talks about the admissibility of electronic records. The requirements provided under section 65B clause (2) to clause (5) need to be satisfied to admit the content of electronic records as admissible. Even the secondary copies of a primary electronic record will be admissible in a court of law without further proof. Thus, section 65B (1) is an exception to the best evidence rule. The Best evidence rule means the content in the documents can be proved by providing the original document itself.<sup>22</sup> Here the question arises,

Whether Instagram chats be considered electronic evidence under section 65B of IEA, 1872?

Whether the requirement of a certificate under section 65B is mandatory or not?

For the first time, the Supreme Court decided about the admissibility of electronic evidence in a case of State (NCT of Delhi) v NavjotSandhu<sup>23</sup>, where it also held that secondary electronic evidence can also be produced under sections 63 and 65 of IEA, 1872. This decision was overruled by the Supreme Court in the case of Anvar P V v. P K Basheer<sup>24</sup>, **which** held that sections 65A &65B form the complete framework for the admissibility of electronic evidence and no secondary evidence under section63 65 are admissible before a court of law.

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<sup>21</sup> Information Technology Act 2000 Sec 2(1)(t)

<sup>22</sup> Indian Evidence Act, 1872 sec 91

<sup>23</sup> State (NCT of Delhi) v NavjotSandhu (2005) 11 SCC 600.

<sup>24</sup> Anvar P V v. P K Basheer(2014) 10 SCC 473

In the case of *Tomaso Bruno & Anr. Vs. State of UP*<sup>25</sup> dealt with the admissibility of evidence in a criminal case. The Court held that the computer-generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65B of the Evidence Act. Sub-section (1) of Section 65B makes admissible as a document, a paper printout of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in sub-section (2) of Section 65B.

The Hon'ble Supreme Court in the case *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*<sup>26</sup>, gave a clear explanation and observed, the differentiation between primary electronic records and secondary electronic records. Primary electronic record means information first stored in a device and secondary evidence is the copy of the primary electronic record. Further, the court held that a certificate is required as per section 65B(4) when secondary electronic evidence is produced. The Certificate is not required if original electronic evidence is produced. If any person fails to provide a certificate, the court can ask for the certificate to be produced. The Court held the certificate is mandatory, not voluntary.

There are certain cases where WhatsApp messages are admissible. There are certain cases where the WhatsApp messages are admissible. *Ambalal Sarabhai Enterprise Ltd v KS Infraspac LLP Limited and Another*<sup>27</sup>, the Hon'ble Supreme Court held that WhatsApp chats are admissible as evidence if the certificate requirements are satisfied under section 65B of IEA.

The court issued an order using WhatsApp chats as evidence for the granting of bail. Additionally, the Commercial Court of Delhi has used WhatsApp chats to support a judgement in a case under section 65B. There have recently been allegations concerning using WhatsApp messages in divorce proceedings. It is stressed by the Punjab & Haryana High Court that WhatsApp chats are admissible only with a certificate under section 65B IEA in the case *Rakesh Kumar v UOI* <sup>28</sup>.

Coming to the boy's locker room case, the above case laws are to be considered by the court of law to decide the case with Instagram chats as evidence. Nowadays, the world started using social media platforms at large, which also stresses the courts to admit social media content as

<sup>25</sup> *Tomaso Bruno & Anr. Vs. State of UP* (2015) 7 SCC 178

<sup>26</sup> *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, Civil Appeal no. 20825-20826 of 2017

<sup>27</sup> *Ambalal Sarabhai Enterprise Ltd v KS Infraspac LLP Ltd and Anr*[2020] JC (SC) 1859

<sup>28</sup> *Rakesh Kumar v UOI* [2001] AIR SCW 1458

evidence after analyzing the authenticity and reliability of such content. In the case of *Largent v Reed*<sup>29</sup>, the court ordered Facebook to submit login details for further investigation in a case. In this case, it is known that online social media platforms can be used as legal evidence before a court of law, and posts and chats have evidentiary value. But still, the authenticity of screenshots of chats is again questionable before a court of law.

## CONCLUSION

The Boy's locker room case created a huge controversy because the offender was a minor teenage boy and the victim was a woman and a minor girl. The technological world provides merits as well as demerits (as impacted in boy's locker room cases). The Delhi cyber cell police registered a case against a minor, the Instagram chats to be admissible as digital evidence as the judgement is awaited. Thus when the admissibility of social media platforms content is concerned, the condition precedent is that the requirements under section 65B of Indian Evidence Act, 1872 to be satisfied. Several High courts and Supreme Court judgements made clear-cut explanations about the admissibility of electronic records as evidence. Thus in the boys' locker room case, following similar judgements quoted by the Supreme Court, Instagram chats can be used as evidence like how WhatsApp chats are admissible to decide the case. But there is a lacunae that, screenshots of social media chats lack authenticity before a court of law, which can be rectified by enacting proper provisions in addition to section 65B of IEA.

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<sup>29</sup>*Largent v Reed*, Case No 11-4463 (CP Franklin Nov 8, 2011) Walsh, J.

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