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Social Media and Constitution

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ABSTRACT

India is one of such country where you can speak your views without any fear of others. Freedom of speech and expression is broadly understood as the notion that every person has the natural right to freely express themselves through any media and without outside fear.

Social media has become a vital communications tool through which individuals can exercise their right of freedom of expression and exchange information and ideas. However, the freedom of speech and expression does not confer on the citizens the right to speak or publish without responsibility and the legislature may enact laws to impose restriction on the right to speech and expression on the several grounds. Social media is open to misuses as well, as several cybercrimes can be easily committed through social media.

The present paper makes a modest attempt to analyse the realization of the tight to freedom of speech and expression in the context of social media and the role of law in ensuring and regulating its exercise.

Keywords: *Social media, Face book, Social networking, Blogs, Twitter, Wikis, Social bookmarking, Internet, Social news, Freedom, Cyber law, PIL, Right to Privacy, Speech and Expression.*

I. INTRODUCTION

"The press [is] the only tocsin of a nation. [When it] is completely silenced... all means of a general effort [are] taken away."

--Thomas Jefferson

What is Social Media? The more time you spend in India, the more you realize that this country is one of the world's greatest wonders-a miracle with a message. And the message is that democracy matters." -Thomas Friedman

The best way to define social media is to break it down in two terms one is media and other is social. Media is an instrument on communication, like a newspaper or a radio or television, so social media would be a social instrument of communication.

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Social media comprises the internet and mobile phone for sharing and discussing information by using the technology, telecommunications, and social interaction and provides a platform to communicate through words, pictures, films, and music etc.

II. STATISTICS ON SOCIAL MEDIA

(A) Internet Usage

India is the second largest online market in the world. There would be over 650 million internet users in the country. Despite the large base of internet users, the internet percentage rate in the country stood at around 50 percent in 2020. This meant that around half of the 1.37 billion Indians had access to internet. There has been a consistent increase in internet accessibility compared to just five years ago, when the internet penetration rate was around 27 percentages had nearly 700 million internet users across the country. This figure was projected to grow to over 974 million users by 2025,

(B) Social Media in India

Indians are very active on different social networks and 85% of users share content on their social profiles and as well are increasingly spending time on various social networking sites in 2014 as mentioned.

Number of social network users in India from 2015 to 2018 with a forecast until 2023 (in millions)

Number of users in millions

2020 **376.1**

2019 **351.4**

2018 **326.1**

2017 296.3

Facebook is the most browsed social network on social media with a large base of 100 Million users. Anytime soon in India. More than 80% of those users access Facebook via their mobile phone.

Total Twitter users in India are 33 Million. 76% of users access it via their mobile phone.

LinkedIn has 26 Million India users, of the total 300+ Million users. Of the total chunk of 70 Million total users in Pinterest, 5.5 Million comprise from India.

Instagram the usage is more dominated by men in comparison to women; ratio being 75/25. It shows only 1/4th of the women population in India are on Instagram, looks like selfish are more appreciated by men than women!

The most shared type of videos is film or movie trailers.

(C) Mobile Usage

There has been a surge in the mobile usage, with the emergence of the Smartphone generation a major chunk of people access internet and social media from their mobile phones.

The mobile penetration of active internet users is 220 Million. It is of paramount importance to make your sites, pages mobile optimized.

There are total 92+ Million active social media users via their mobile, which is almost 41% of the total mobile internet users.

The number of Smartphone users in India was estimated to reach over 760 million in 2021, with the number of Smartphone users worldwide forecasted to exceed to 3.8 billion users in 2021.

III. TYPES OF SOCIAL MEDIA

Social Media can be broadly divided into following categories.

- Social networking -Social networking is an online service that enables its users to create virtual networks with likeminded people. It offers facilities such as chat, instant messaging, photo sharing, video sharing, updates etc.
- The most popular are Facebook and LinkedIn.
- Blogs - Blogs are descriptive content created and maintained by individual users and may contain text, photos and links to other websites. The interactive feature of blogs is the ability of readers to leave comments and the comment trail can be followed.
- Micro blogs - Micro blogs are similar to blogs with a typical restriction of 140 characters or less, which allows users to write and share content.
- Twitter is a micro blogging site that enables its users to send and read 'tweets'.
- Vlogs and Video Sharing sites - Video blogs (Vlogs) are blogging sites that mainly use video as the main form of content supported by text. You Tube is the world's

largest video sharing site. You Tube is a video live casting and video sharing site where users can view, upload, share videos and even leave comments.

- Wikis - Wiki is a collaborative website that allows multiple users to create and update pages on particular or interlinked subjects. While a single page is referred to as 'wiki page', the entire related content on that topic is called a 'Wiki'. These multiple pages are linked through hyperlinks and allow users to interact in a complex and non-linear manner.
- Twitter users in India. 34 million in 2019
- Social Bookmarking - These services allow one to save, organize and manage links to various websites and resources around the internet. Interaction is by tagging websites and searching through websites bookmarked by other people. The most popular are Delicious and Stumble Upon.
- Social News - These services allow one to post various news items or links to outside articles. Interaction takes place by voting for the items and commenting on them. Voting is the core aspect as the items that get the most votes are prominently displayed.
- Media Sharing - These services allow one to upload and share photos or videos. Interaction is by sharing and commenting on user submissions. The most popular are YouTube and Flickr. There can be overlap among the above mentioned types of social media. For instance, Facebook has micro blogging features with their 'status update'. Also, Flickr and YouTube have comment systems similar to that of blogs

IV. CONSTITUTION OF INDIA

(A) Freedom of Speech and Expression Article 19(1) (A)

To preserve the democratic way of life it is essential that people should have the freedom of express their feelings and to make their views known to the people at large. It is clear that the right to freedom of speech and expression carries the right to publish and circulate one's ideas, opinions and other views with complete freedom and by resorting to all available means of publication.

The right to freedom of the press includes the right to propagate ideas and views and to publish and circulate them. However, the freedom of the press is not absolute, just as the freedom of expression is not. Public Interest has to be safeguard by article 19(1)(2) which lays down reasonable limitations to the freedom of expression in matters affecting:

- a. Sovereignty and integrity of the State
- b. Security of the State
- c. Friendly relations with foreign countries
- d. Public order
- e. Morality
- h. Decency
- i. defamation

Article 19 (1) (a) of the Constitution of India also confers on the citizens of India the right “to freedom of speech and expression”. The freedom of speech and expression means the right to express one’s convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode. It also includes the right to propagate or publish the views of other people.

Social media has the power to reach the masses and distribute information, which in turn has resulted in everyone acting as a watchdog, scrutinizing the powerful and exposing mismanagement and corruption. Several cyber-crimes, defamation, invasion of privacy, incitement of offences, racist remarks, stalking, abuse, hacking, harassment and many more can be easily committed through social media and once such objectionable content is uploaded, it becomes viral and consequently, very difficult to contain. Hence, the importance of the State regulating social media also cannot be denied. As long as the interests of people, either individually or collectively are taken care of, there can be no objection to government regulation but the problem arises when, in the name of regulation, it starts censoring i.e. encroaching upon the civil rights of the people viz. freedom of speech and expression etc. Although there are safeguards in this regard, every State tends to surpass them in some way through its magnitude may vary from State to State. Although the Information Technology Act was in force since 2000, In 2008 terrorist attack on Mumbai. After the attacks, the Information Technology Act, 2000 was amended to expand and strengthen the monitoring and censoring capacity of the Government.

The cyber law of India now contains provisions relating to blocking of websites, monitoring and collecting internet traffic data, interception or decryption of such data, unhindered access to sensitive personal data, holding intermediaries’ viz. social media websites liable for hosting user generated objectionable content, etc.

The recent case of banning the telecast of controversial BBC documentary ‘India’s Daughter’ on the December 16, 2012, gang rape was the clear violation of the right to speech and expression guaranteed under Article 19 of the constitution of India. The documentary is about

the gang rape of a 23-year-old trainee physiotherapist, who was brutally assaulted on December 16, 2012 in a moving bus in Delhi. Connecting to this one of the media made a documentary.

The PILs have been filed In the Supreme Court saying the ban on the documentary was in clear violation of fundamental rights under Article 19 of the constitution.

In light of all the above discussion, it can be pinioned that rather than banning and censoring of social media, its regulation is desirable in always that protects the rights of the users. Section 66A of Information Technology Act.

The Supreme Court in its recent judgment strike down Sec 66A of the Information Technology Act saying it to be a “draconian” provision that had led to the arrests of many people for posting content deemed to be “allegedly objectionable” on the Internet. The bench of Justices J. Chelameswar and Rohinton F. Nariman said that it is clear that Section 66A arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right.

Section 66A of the Information Technology Act, 2000 inserted vide Information Technology (Amendment) Act, 2008 provides punishment for sending offensive messages through communication service, etc.

V. RAKESH SHETTY VS STATE OF KARNATAKA ON 5 NOVEMBER, 2020

Police to ensure that the social media/digital platform such as Facebook, YouTube through which the TV channel of the Petitioner is telecast be restored to its original position to enable the Petitioner to carry out telecast of the news channel.

The Petitioner is the Managing Director of M/s Power Smart Media (OPC) Private Limited, which is in the business of running Television News channel in Kannada under the name and style of 'Power TV' from the year 2018.

It is alleged that the Petitioner news channel has been running a program with regard to the allegations of corruption and illegal financial dealings, as well as interference in the day-to-day administration of the State Government by the family members of the present Chief Minister. It is alleged that the first telecast of the program by the title "Raja ParivaradaRochakaVrutanta" was aired on 2.9.2020, containing a three-minute audio conversation between Sri. B.S.Vijeyendra, s/o Sri. B.S.Yeddyurappa and reporter of Power TV.

(A) Right to Privacy

Privacy involves the right to control one's personal information and the ability to determine

how that information should be obtained and used. The volume and varying nature of transactions carried out on the net are such that the right to privacy must exist.

“Right to Privacy” is an implied right under Fundamental Rights. The Constitution of India does not expressly recognize the right to privacy but at the same time this right has been spelt out by our Supreme Court from the provision of Article 21 which deals with the right to life and liberty. The Apex Court of India has reiterated the “Right to privacy” in many cases; however, its application vis-à-vis internet content has not yet been directly clarified by a judicial ruling.

Many people view social networking sites as a kind of online cocktail party where one gets to establish contacts and raise a personal or corporate profile. But the cocktail party metaphor isn't entirely accurate.

Security issues have gained so much momentum now, that big names like Facebook and LinkedIn are forced to introduce a number of features on their websites to protect privacy of their users. A user can adjust how much information about posts, photos, online status and other factors are accessible to other people. Users can reduce what appears in their profile and what information about their online activities is public, such as their use of specific Facebook applications. Users can also block specific Facebook users from seeing more than a limited profile, or from finding users via search.

Facebook also limits the ability of search-site Web crawlers to harvest user information, saying in its privacy policy, “Facebook limits access to site information by third party search engine ‘crawlers’ (e.g. Google, Yahoo, MSN, Ask). Facebook takes action to block access by these engines to personal information beyond the name, profile picture, and limited aggregated data about the profile (e.g. number of wall postings)” (Policy, n.d.).

A new option has also been introduced by Facebook where a user who logs in from a different computer is asked for authorization. This login is notified to the registered email of the Facebook user. So if the account is hacked or an unknown user logs in, the information of such an access is instantaneously sent on the registered email.

LinkedIn is the most business like social networking website, and its users seem generally aware of the need to behave professionally. The site provides a wide range of tools for customizing others' views of users, such as the ability to change whether people the user is connected to can see just those having in common, or the entire connections list.

VI. CONCLUSION

Social Media is a powerful means of exercising ones right to freedom of speech and expression. However, it is also been increasingly used for illegal acts which has given force to the Government's attempts at censoring social media. On one hand there is a need to stop all the objectionable and illegal contents being uploaded on social media while on the other hand there are legitimate fears of violation of civil rights of people as an inevitable consequence of censorship.

Therefore, what is desirable is the proper regulation of the social media which does not violates the fundamental rights guaranteed under the Constitution of India.

However, there are many practical difficulties which may arise while doing so. There is a very thin line which demarcates the enjoyment of one's right and the violation of the enjoyment of else's right in the process. In social media, the exercise of freedom of speech and expression by one may result in the invasion of privacy and defamation. Again, the idea of objectionable content varies from one person to another.

Keeping all the above in mind, the right to freedom of speech and expression and the right to privacy should be protected by the government in the world of social media. It is now one of the main media to express one's opinion which should be respected. Therefore, it is recommended for the Government to pass such a law that controls both the media and the people without violating constitutional aspects.

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