

**SOCIAL MEDIA AND ITS INTERSECTIONS WITH
FREEDOM OF SPEECH AND EXPRESSION: AN
ANALYSIS OF RECENT DEVELOPMENTS.**

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ABSTRACT

Today, there is increasing debate about the impact of social media on society, especially its potential negative effects. Social media has become an essential communication tool through which individuals can exercise their right to freedom of expression and exchange information and ideas. However, freedom of speech and expression does not grant citizens the right to speak or publish without responsibility, and the legislature can make laws that limit the right to speech and expression for several reasons. Social media is also open to abuse as several cyber-crimes can be easily committed through social media. This gives the state the right to regulate online content in the interest of the general public, the necessity of which cannot be denied. We begin to analyse social networking sites and the role and development of social media since its inception at the beginning of the 21st century, pointing out its positive aspects. Current research therefore focuses primarily on the intersections of social media and basic freedoms, i.e., freedom of speech and expression. This research highlights some issues such as censorship, limits to freedom of expression, misinformation, diversity of sources, visions and opinions, user content and privacy etc. Finally, the researcher suggests some solutions to combat these problems.

Key Words: social media, Fundamental freedoms, Free speech, Restrictions, Malpractices, India.

INTRODUCTION

Social media has become an essential part of our lives to keep up with current events, news, entertainment, etc. Freedom of speech is one of the key features of a democratic society. Personal freedom cannot be achieved without the ability to freely express one's thoughts. It also means being able to participate in discussions and debates. The media is a powerful tool for social progress these days. A global social media audience is said to give individuals new rights, responsibilities and risks. However, freedom of speech and expression does not grant citizens the right to speak or publish without responsibility, and the legislature can make laws that limit the right to speech and expression for several reasons. Social media is also open to abuse as several cyber-crimes can be easily committed through social media. This gives the state the right to regulate online content in the interest of the general public, the necessity of which cannot be denied. As long as the interests of the people are taken care of, there can be no objection to government regulation, but the problem arises when in the name of regulation, it begins to censor, i.e., interferes with the civil rights of the people, viz. freedom of speech and expression.

Before dealing the issues in details, first we will understand the concepts of social media and freedom of speech and expression.

OBJECTIVES OF THE RESEARCH

This Research is intended to get acquaintance on the following;

- To discuss the significances of social media;
- To discuss the key features of social media and freedom of Speech and expression;
- To discuss the interaction between social media and freedom of Speech and expression;
- To discuss the key challenges posed by social media;
- To give suggestions.

RESEARCH METHODOLOGY

The proposed study shall be carried out in a very objective, systematic and unbiased manner. All the primary as well as secondary documentary sources will be utilized to make the study advanced, orderly and methodical. Various reports, articles, judicial decisions, international, national, constitutional norms and national measures will be taken as important research tools.

MEANING AND CONCEPT OF SOCIAL MEDIA

Social media are websites and programs that help people talk, engage, share information and collaborate. People use social media to stay in touch with their friends, family and neighbors. Social media is a computer technology that helps share ideas, thoughts and information through virtual networks. These are Internet media that provide users with quick information about content. Content includes photos, documents, videos, etc.

In the terms of Andreas Kaplan and Michael Haenlein, "virtual entertainment" is depicted as "a collection of web applications that grow with regard to the computational and mechanical foundations of Web 2.0 and that enable the creation and sharing of client-generated content. ." "Web 2.0" phases are the phases of the Internet that take client investment into account and are referred to accordingly. In web entertainment, "client-generated content" refers to all the ways clients can talk to each other and share data. Another variant of social media is mobile social media that means when social media is used in combination with mobile devices it is called mobile social media it is the most widely used variant of social media worldwide.

The "social" part: refers to interacting with other people by sharing information with them and receiving information from them.¹⁰¹

The 'social' part: refers to interacting with other people by sharing information with them and receiving information from them.

The 'media' part: refers to an instrument of communication, like the internet (while TV, radio, and newspapers are examples of more traditional forms of media).

From these two separate terms, we can pull a basic definition together:¹⁰²

Social media are web-based communication tools that enable people to interact with each other by sharing and consuming information.

About 3.8 billion people worldwide use social media. Social media is an ever-changing field. Almost every year, major social networks like Facebook, YouTube, Twitter, Snapchat and Instagram. so basically, social media is a phrase we use a lot these days, often to describe what we post on websites and apps like Facebook, Twitter, Instagram, Snapchat and more. So, one can deduce that social media is a website that allows people to interact with each other.¹⁰³

Indian population is actively using social media. An average Indian spends around 2.25 hours a day on social media. The number of Internet users in India has grown to a whopping 624 million, which is roughly 45% of India's total population.¹⁰⁴

Types of Social Media

There are many different types of social media and many services would fit into multiple categories. Here are some of the main types along with some examples:¹⁰⁵

Social networks

¹⁰² Available at <https://www.lifewire.com/what-is-social-media-explaining-the-big-trend-3486616> last visited on 3-08-2023.

¹⁰³ Available at www.economics.indiatimes.com last visited on 3-08-2022.

¹⁰⁴ Social Media Statistics 2021, The Global Statistics available at <https://www.theglobalstatistics.com/india-social-media-statistics> last visited on 3-08-2022.

¹⁰⁵ Available at <https://www.thebalancesmb.com/what-is-social-media> last visited on 3-08-2022.

¹⁰¹ Andreas M. Kaplan & Michael Haenlein (2010), "Users of the World, Unite! The Challenges and Opportunities of social media", *Business Horizons*, vol. 53, 2010, pp. Rohit 59-68, at 61.

Social networks specialize in connecting and exchanging thoughts, ideas and content with other users – often users who share tastes and interests. Facebook and Twitter are examples of social networks. Although LinkedIn is more professional than others, it can also be considered a social network.

media networks

Unlike social networks, which specialize in allowing users to share and exchange raw thoughts and ideas, media networks specialize in distributing content such as photos and videos. Instagram and YouTube are examples of this. For example, a YouTube user uploads a video they created, and other users can like, dislike, or comment on the video. If they like the video enough, the user can choose to "subscribe" to the creator so that new videos from that creator appear in their feed.

Discussion networks

Discussion networks like Reddit are an ideal outlet for posts that can spark in-depth discussion among users. Users can leave detailed responses in the comments section, and other users can respond directly to those comments, allowing conversations to grow and develop organically. Blogging sites such as WordPress can also be included in the category of news networks, although some would consider blogging to be its own type of social media.

Network review

Review networks like Yelp and TripAdvisor add social media aspects to user reviews of products and services. Users can communicate directly with reviewers as well as reviewed businesses.

FREEDOM OF SPEECH AND EXPRESSION

Freedom of speech and expression as stated in the Indian Constitution

India is one of the largest countries in the world which protects all the fundamental rights of the citizens. Every citizen has the right to express their thoughts through any medium, including social media. Personal liberty is a basic

fundamental right among others. Articles 19 to 22 of the Constitution of India deal with various aspects of this fundamental right. These four articles form the backbone of the chapter on fundamental rights. The most important of these is the right to speech and expression, which is guaranteed by Article 19(1)(a). According to Article 19 paragraph 1 letter a) all citizens have the right to freedom of speech and expression. However, this right is subject to limitations imposed under Article 19(2), which empowers the state to impose "reasonable restrictions" on specific grounds.¹⁰⁶

Freedom of speech and expression includes the right to freely express one's own beliefs and opinions by mouth, writing, print, pictures, theatre or any other means. Thus, it includes the expression of one's thoughts through any communicable medium or visible representation such as gestures, signs, and the like. Communicable medium includes social media where people express their opinions. This right also means publication and therefore the freedom of the press is also included in this category.

A basic element of a functioning democracy is to allow all citizens to participate in the political and social processes of the country. In a healthy democracy, there is sufficient freedom of speech, thought and expression in all forms i.e., verbal, written, broadcast, etc.

Freedom of expression is guaranteed not only by the Indian Constitution but also by international laws such as the Universal Declaration of Human Rights (promulgated on 10 December 1948), the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms etc.

Restrictions on freedom of speech and expression

Freedom of speech and expression does not grant citizens the right to speak or publish without responsibility. It is not a free license granting immunity for every possible use of language and preventing punishment for those who abuse

¹⁰⁶ Dr. J N Pandey, *Constitutional Law of India (Central Law Agency, 2019) pp.211*

that freedom. Article 19(3) of the ICCPR imposes limitations for the following reasons:

- a) For respecting the rights to the reputation of others
- b) To protect national security, public order, public health or morals.

According to Article 19(2) of the Constitution of India, the legislature can make laws to limit the right to speech and expression for the following reasons:

- a) Sovereignty and integrity of India
- b) State security
- c) Friendly relations with foreign states
- d) Public order
- e) Decency or morality
- f) Contempt of Court
- g) Defamation
- h) Incitement to an offence

SOCIAL MEDIA AND ITS INTERSECTION WITH FREEDOM OF SPEECH AND EXPRESSION

Social media is a source and means of disseminating information. It's hard to imagine what the world would be like if we didn't have media. The dissemination of truthful information is one of the pillars of a free society. In today's world, where the Internet and social media play a major role in almost everyone's life, access to this medium has also been recognized as a basic human right. The state has a constitutional duty to ensure conditions in which all citizens can meaningfully and effectively enjoy these rights, as well as to prevent the dominance of a few over others. There is no specific legislation in India that deals with social media. However, there are certain provisions in the so-called cyber laws that can be used to seek redress for any violation of any rights in social media including cyberspace and the Internet.

Cyber Laws of India and Social Media

Although there is no specific legislation that deals with the leverage of expression and opinions or violations on social media, but there are certain provisions in cyber law that can

be addressed in case of any violation or misuse of social media, let's discuss them briefly.¹⁰⁷

- a) Under Chapter XI of the Act, Sections 65, 66, 66A, 6C, 66D, 66E, 66F, 67, 67A and 67B contain penalties for computer related offenses which can also be committed through social media viz. tampering with computer source code, committing computer-related offenses listed in Section 43, sending abusive messages through communication services, identity theft, cheating using personal computers, invasion of privacy, cyber terrorism, posting or transmitting obscene material in electronic form, material containing sexual explicit act in electronic form, material depicting children in sexually explicit act in electronic form, or
- b) Section 69 of the Act empowers the Central Government or a State Government to issue directions for the interception or monitoring or decryption of any information through any computer resource in the interests of the sovereignty or integrity of India, the defence of India, the security of the State, friendly relations with foreign States, public order, to prevention of incitement to the commission of any cognizable offence, to the investigation of any offence.
- c) Section 69A empowers the Central Government to issue directions to block public access to any information through any computer resource on similar grounds.
- d) Section 69B empowers the Central Government to issue directions authorizing any agency to monitor and collect operational data or information through any cyber security computer resource.
- e) Section 79 provides for the liability of the intermediary. The intermediary is not responsible for the information, data or communication link of third parties that it makes available or hosts.

Information Technology Act 2000

¹⁰⁷ Available at <https://legaldesire.com/role-of-social-media-and-freedom-of-speech-and-expression>.

Section 66A of the Information Technology Act 2000 has been in the news recently, albeit for all the wrong reasons. Before discussing this issue in detail, it is desirable to first look at Section 66A, the provision itself. Section 66A of the Information Technology Act, 2000 inserted by the Information Technology (Amendment) Act, 2008 provides for the penalty for sending abusive messages through a communication service etc. and states:¹⁰⁸

Any person who, through a computer resource or communication device, transmits

- a) Any information that is grossly offensive or threatening in nature;
- b) Any information which it knows to be false, but with the purpose of causing harassment, inconvenience, danger, obstruction, insult, injury, criminal intimidation, hostility, hatred or malice, by persistent use of such computer resource or communication device,
- c) Any electronic mail or electronic mail message for the purpose of harassing or inconveniencing or deceiving or misleading the addressee or recipient as to the origin of such messages is punishable by imprisonment for up to three years and a fine.

KEY SOCIAL MEDIA ISSUES

Despite the fact that social media plays a vital role such as communication, collaboration, education, etc., it also presents several major challenges. Below are the most significant challenges that social media presents.¹⁰⁹

PRIVACY: The primary challenge of social media is privacy. Many people refrain from engaging in dialogue for fear of losing their privacy.

User consent and privacy settings

Related to this topic is the type of information that can and will be collected on these platforms. Users are usually not aware of what data a given service can collect from their activity. One of the most meaningful examples is what

Facebook refers to as self-censoring posts. This social media site records and stores everything a user posts and writes in its environment - every post, every comment - even if it is later deleted and never published.

In this context, user consent is essential. When users join and access social media sites, they accept a series of terms of use that resemble a contract, but the implications of which are rarely understood. They are usually presented to users in vague and complex jargon because their primary goal is to avoid lawsuits rather than clearly communicating the implications of the platforms.

Arbitrary censorship

Social media companies should clearly comply with legal requirements in each locale to prohibit the dissemination of illegal material through their user profiles. As mentioned above, special attention should be paid to terrorism, criminal organizations, hate speech and defamation.

An overview of social media censorship

When censorship is implemented in any form, a person's freedom is challenged. So when applied to the context of social media, the right to freedom of speech and expression is threatened, although the extent of that threat is debatable. When certain information is censored, it means that the censoring body does not want the public to know about it. Censorship generally comes into play in light of anticipated adverse impact or any adverse impact that may have occurred in the past as a result of sharing similar information or content.

Most social media sites allow audiences to create an account after accepting terms and conditions, which are often vague. The terms and conditions can be interpreted in several ways. They indirectly pose a threat. Most social networking websites receive consent from users that their information may be used by social media owners. This indirectly causes an invasion of privacy. Such a challenge is one of the key confrontations that social media presents.¹¹⁰

¹⁰⁸ Information Technology (Amendment) Act, 2008.

¹⁰⁹ Subramanian, K. R. 2017. *Influence Of Social Media In Interpersonal Communication. International Journal of Scientific Progress And Research*, 38, 70-75.

¹¹⁰ Justice Rajesh Tandon, "Policing the Web: Free Speech under Attack?", *Lawyers Update*, August 2011, also

HATE SPEECH AND BINGES

- Hate speech and rumours in India have long been responsible for acts of violence and deaths in many cases.
- The most recent is the case where two sadhus and their driver were lynched in Gadchinchale village in Palghar, Maharashtra this year.
- The incident was fuelled by WhatsApp rumours of thieves operating in the area and a group of villagers mistook the three passengers for thieves and killed them. Several responding police officers were also attacked and injured.
- Similarly, Hate Speech on Social Media played a big role in the 2020 Delhi riots.

FAKE NEWS

- A 2019 Microsoft study found that more than 64% of Indians have encountered fake news online, the highest among the 22 countries surveyed.
- Through social media platforms and messaging services such as WhatsApp, a staggering number of doctored images, doctored videos and fake text messages are circulating, making it difficult to distinguish between misinformation and credible facts.

ONLINE TROLLING

- Trolling is the new by-product of social media.
- Vigilantes take the law into their own hands and start trolling and threatening those who disagree with their views or narrative.
- It has led to anonymous trolls attacking an individual's reputation.

WOMEN'S SAFETY

- Women face cyber-rape and threats that seriously affect their dignity.
- Sometimes their pictures and videos are leaked and they are forced to cyber bully.

SECURITY CONCERNS: Social media sites pose an equal threat to the security of personal information and

other relevant data. Website hacking is the most common feature; with hacking, there is an imminent threat to the social media audience. This becomes another key challenge presented by social media.

FRAUD: The identity of an individual who joins a social networking site may be genuine or fake. The truth of his identity is not known to the co-user. In the recent past, many cases of cheating have been registered around the world. Social media is becoming an easy way to fool people with this technology.

RECENT DEVELOPMENTS

In view of increasing cases of misuse of Section 66A, a writ petition was filed in the form of a Public Interest Litigation in the Supreme Court stating that the phraseology of the impugned Section is so broad and vague and incapable by objective standards that it is liable to be misused and is therefore contrary to Article 14, Article 19 paragraph 1 letter a) and Article 21 of the Constitution. While admitting the writ petition, a bench of the Supreme Court comprising Chief Justice Altamas Kabir and Justice J. Chelameswar observed that the wording of Section 66A is not satisfactory and is very broad and can be applied to all kinds of comments.

In the Secretary, Ministry of Information and Broadcasting, Government of India and others v. Cricket Association of Bengal and others¹¹¹ the Supreme Court held that "to secure the right to freedom of expression of citizens of this country, it is necessary that citizens should have the benefit of a plurality of views and a range of views on all public topics. A successful democracy presupposes an informed citizenry. A diversity of views, opinions, ideas and ideologies is essential for citizens to reach an informed judgment on all issues that affect them. This cannot be ensured by a medium controlled by a monopoly - be it the monopoly of the state or any other individual, group or organisation. In the light of all the above discussions, it can be stated that rather than banning and censoring social

available on the Web, URL: <http://lawyersupdate.co.in/LU/7/65.asp>.

¹¹¹ AIR 1995 SC 1236

media, it is always desirable to regulate it, which protects the rights of users."

During the investigation into the Muzzafar Nagar Riots, it came to light that hateful content spread on social media fuelled the communal clashes. Nearly half a dozen communal clashes in India have been shown to be caused by content posted on social media. The current cyber laws in India are neither appropriate nor adequate in this regard. Although social media is the best platform to express yourself freely and without fear, the content you blog or post any video or photo stays on the internet forever and can be accessed by anyone and everyone, there needs to be regulation. also, social media.

In the past few years, social media has played an exceptional role and a suitable place for people to move towards the concept of equality, justice and accountability of powerful people, social media and the internet are the key resources through which ideas are transferred from one place to another, an excellent opportunity for people, who want to inform others about their rights and obligations through a digital platform. Even freedom of speech and expression is recognized by the United Nations Human Rights Council, which highly values communication and the Internet and also provides practical applicability of the right to speech and expression through altered media channels.

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The judgment in *LIC v. Manubhai D Shah* held that the right to freedom of speech and expression would include the freedom of a citizen as a viewer/listener/reader to receive and impart or disseminate information and ideas without interference. It is the constitutional duty of the state to ensure the conditions in which these rights can be meaningfully and effectively used by all citizens and to prevent its monopoly or dominance by a few citizens. When we talk about the freedom and rights of citizens, it should also be focused on the fact that freedom of speech and expression is not an absolute right, there are certain reasonable restrictions on this right so that the state can be protected from threats, for the sake of the integrity, sovereignty and security of India.

"Freedom of speech and expression is one of the most abused rights in recent times," said Chief Justice of India SA Bobde in response to the Centre's affidavit filed in the *Tablighi* case. Several cases of cyber crimes, defamation, invasion of privacy, incitement to crime, racist and sexist remarks, stalking, abuse, hacking, bullying, victim blaming, harassment and many more are committed through social media. Targeting a person or spreading rumors to tarnish a person's image in the general public is a widespread negative trend in social media. The most vulgar form of abuse can be seen in the comments section of social media sites, and the perpetrators are shielded by the declaration of freedom of speech and expression. Many have lost their harmonious and peaceful life due to the attack of these faceless people. Toxic influencers spreading fake news, stereotypes, racism and misogyny in society are a problem that needs to be addressed. The social media posts sparked communal violence and lynching mobs in many parts of the country.

In *Anuradha Basin v. Union of India*,¹¹² the Supreme Court held that freedom of speech and expression through the Internet is one of the integral parts of Article 19(1)(a). It also ruled that an undefined restriction on Internet service would be unlawful and that orders to shut down the Internet must meet the tests of necessity and reasonableness.

¹¹² *Anuradha Basin v. Union of India*, (2020) SCC Online SC 25

So we can conclude that freedom of speech and expression is recognized as a fundamental right in any medium which is enforced under the Constitution of India and other international declarations. And in light of the increasing use of the Internet and social media as a means of exercising this right, access to this medium has also been recognized as a basic human right.

With regard to the availability of the Internet in today's world, it is necessary to ensure the protection and securitization of data and information available to our citizens on the Internet, international standards also ensure the protection of freedom of expression and the right to equal protection. provided by international standards must be the backbone of every state and response to hate speech, intolerance and discrimination. States must ensure the protection of human rights when they come into contact with private individuals, it is also necessary for them to effectively enforce the rights of individuals to freely receive and spread ideas.

THE WAY FORWARD

Despite all these problems and challenges posed by the spectrum of social media, one thing is absolutely confirmed that the fundamental right to speech and expression cannot be taken away from people for constitutional needs. However, the advancement of technology, especially in the social media arena, has added fuel to the fire as it has allowed the common masses to express themselves on a public platform. From a broader perspective, it is a constitutional duty of the state to ensure the conditions under which these rights can be used meaningfully and effectively by all citizens and to prevent their monopoly or dominance by a few citizens.

The following Recommendations can be considered for solving social media problems¹¹³

Liability imposition: Social media platforms are not held responsible if any objectionable content is shared. However, they often moderate, promote and block content on their

platforms. As some platforms have even around 50 million Indian users and have reach in the hinterland as well. Seen in a positive light, the guidelines will help hold these platforms accountable for ensuring that any criminal activity is prevented.

Data Protection Act: In order to ensure citizens' right to privacy and to make the IT rules serve their ultimate purpose, the passage of the Personal Data Protection Act, 2019 needs to be expedited.

Fight misinformation with information

This is the second way that alternative information with false information is published alongside the content to expose users to true and correct information. This approach, implemented by YouTube, encourages users to click on links with verified and verified information that would reveal misleading claims in false or hateful content.

Brings regulations

- There must be comprehensive national law to address the ever-expanding horizons of social media.
- Liability must be firmly established and there must be legal disincentives.

Public awareness

- A digitally literate country is the must of today.
- Responsible use of social media must be taught in every school and college in the country and especially in rural areas where people can be easily manipulated.

Legal measures

- The Election Commission of India (ECI) must come up with measures to curb fake news and misinformation on social media platforms at election time.
- Must bring political parties' social media content within the scope of the model code of conduct and require candidates to disclose their social media accounts and all spending on their respective social media campaigns.

CONCLUSION

¹¹³ Available at <https://www.drishtias.com/daily-updates/daily-news-editorials/society-and-social-media> last visited on 4-08-2022.

Social media is a very powerful tool to exercise freedom of speech and expression. However, it is increasingly being used for illegal purposes, which is why it is necessary to regulate social media. This regulation should not violate human rights. Government, service providers and users should work hand in hand to develop a new healthy social media culture in our country. Service providers can help bring out the best in government regulations by providing timely updates. To prevent social media from becoming a source of conflict, regulation rather than restriction should be introduced. However, India's current cyber law is neither adequate nor sufficient. When it comes to cyber security, an assessment of current IT rules suggests that the government is found to have an irresponsible and vast jurisdiction. However, simply monitoring social media abuse is not enough to prevent it from occurring. As a result, specific legislation is required to regulate social media.

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