

THE EMERGING NEED TO CONTROL FREEDOM OF SPEECH IN REGARDS TO SOCIAL MEDIA

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ABSTRACT

The Internet swept the information age for a few decades. It has now become embedded in the lives of many people. The Internet has revolutionized the way people exchange knowledge and interact. Social networking is now one of the most widely used platforms. Computer-mediated communication is a common mode of communication. It has reduced the planet to a global village. Information overload has become the standard as people share information from all corners of the globe. In the majority of countries, the government has some power over what kind of details individual shares. If used in the right way, media can transform the lives of the individual as social media has changed the way we communicate, consume, or share information. As a result, through this we have acquired more knowledge and widened the mindsets of the people; otherwise, it may harm society. Thus, an emerging need to regulate and govern the use of social media platforms arises. Proper social media regulation that does not compromise on the fundamental rights granted by the Indian Constitution is required. Yet, complete freedom should not be permitted; rather, a medium ground of control rather than censorship should be sought. There is a razor-thin border between enjoying one's right and infringing on the rights of others. Using one's right to free speech and expression on social media might result in a violation of one's privacy. In view of the foregoing assertions, the Indian government should protect the right to free expression and expression, as well as the right to privacy. It is now one of the most popular forums for expressing oneself, and it should be respected.

Keywords- Social Media, Fundamental rights, human rights, information technology.

1.1 INTRODUCTION

Human beings have tried to connect with friends and family over long distances as people have always relied on contact to improve their relationships as social animals. When face-to-face communication has seemed to be impractical, humans have successfully devised a variety of inventive alternatives. Social networking grew in popularity after the advent of blogging. In the beginning 2000s, sites like Myspace and LinkedIn rose in popularity, while Photobucket and Flickr enabled online photo sharing. In 2005, YouTube debuted, ushering in a whole new way for people to connect and interact across vast distances. Allowing for the publishing of derogatory expressions has both positive and negative implications. However, assessing whether or not a specific expression is covered is a slippery slope as sometimes due to the interference of social media freedom of speech might take an ugly turn when someone tries to defame someone or make negative comments against another.

Social media has taken over for a few decades which has increased the controversy regarding what and how one should express themselves. Even though over the years the media is proven to be a boon, it sometimes might prove to be unhealthy as people misuse it for their own benefit or to let others down like if it is being misused in the society leading to hurting one's sentiments or oppressing somebody's views leading to insecurity among the people for instance, spreading some untrue rumors or unrealistic views of other people's lives, defamation, hindering one's self-esteem or causing anxiety and depression and causing questions on self-worth (cyberbullying), privacy infringement, issues related to intellectual property law like copyright infringement, misinformation, etc.

In the case of **Maneka Gandhi v Union Of India**¹, the petitioner filed a case because her passport was impounded without any reasonable reasons given by the passport authorities. The authorities claimed that the action was taken to ensure public order which was later declared by the court as a reason not valid and which violated her fundamental right. It was held in this case that there was an unreasonable restriction on the freedom of speech and expression of the petitioner which violates article 19(1)(a) of the constitution. It was also said that the act of the defendant violated article 21, which when interpreted includes the liberty to travel and it also violated article 14 of the constitution.

¹ (1978) AIR 597, (1978) SCR (2) 621

Social media can spread false information, rumors, and conspiracy theories quickly, leading to confusion and fear among the public. This can have real-world consequences, such as the spread of misinformation about Covid-19 vaccines that these vaccines increase the chances of death or that people with suppressed immune systems shouldn't get vaccinated which we all know was a deception of the fact.

On the other hand, Social media has not only been instrumental in creating awareness about an array of issues related to politics, economies, society, or culture. It has been used as a forum for discussing and learning a wide range of issues, besides being able to connect to people all around the world. Recently, during Covid, we were able to know about the circumstances that were prevalent in the most affected countries like their government policies or remedies or the precautionary measures that were taken the UK was the first country to approve Pfizer and BioNTech's vaccine or the Covid isolation ward in China with very strict measures.

Social media enlightens the main issues present in the world and helps society and people all around the globe as a whole, to get solutions through each and everyone's opinion which is true and not partial in getting a wider picture for the betterment and upliftment on social issues such as transgender community, women empowerment or environment where each person is expressing what they feel about freely, providing them a stage for liberty and acceptance.

1.2 CONCEPT OF SOCIAL MEDIA AND FREEDOM OF SPEECH

Social Media has catapulted the entire universe with its instant news and messaging services. People can freely express their opinion on anything and let it be heard through the use of hashtags or with the latest trends on any of the social media platforms whether it is a life hack or comedy video or any dialogue. Social media has enabled people to express themselves like their views, perceptions, ideas, and beliefs about anything which they feel free but on contrary, due to some unwarranted comments or hurtful messages sometimes the respondents refrain themselves from commenting or posting which leads to violation of their freedom for expressing themselves creating a sense of insecurity for their voice. For instance, if one gets

criticism or hostility or disregard resulting in refraining one's judgment on an opinion by having a negative connotation or disrespecting the other person. So, therefore, to avoid controversies, people stop themselves.

Social media are the websites and applications that enable people to develop, share, and exchange knowledge, ideas, career interests, and other modes of expression through virtual networks, and freedom of speech is generally described as the belief that everyone has a right to freely express oneself across any medium and across any border without interference from the outside world, and without fear of retaliation, for example, threats.

The right to obtain, and transmit knowledge and ideas of any sort, by any means, is known as freedom of speech but the right to freedom of speech and expression extends to all ideas, including those that may be profoundly objectionable. Because of social media's ability to reach the masses and disseminate knowledge, everybody has become a watchdog, scrutinizing the powerful and revealing improper management. Many cyber-crimes, such as slander, breach of privacy, incitement of offenses, racist comments, stalking, bullying, and others, can be easily perpetrated by social media, and once such offensive material is posted, it quickly becomes viral, making it impossible to contain. Therefore, the role of the government in controlling social media cannot be overstated. There can be no opposition to government control as long as the interests of citizens are protected. The issue occurs when it begins censoring, i.e., encroaching on people's civil rights, such as the right to express.

In the United States, the First Amendment of the Constitution protects freedom of speech, including online speech. However, this does not mean that social media platforms are legally obligated to allow all forms of speech on their platforms. Social media companies have the right to set their own content policies and terms of service, which may include restrictions on hate speech, incitement to violence, and harassment as they are private entities and are therefore not bound by the First Amendment of the US Constitution, which protects freedom of speech from government censorship. This means that social media companies have the legal right to set their own content policies and terms of service, which may include restrictions on certain types of speech through their content moderation policies and practices, restrict the free exchange of ideas and limit the diversity of viewpoints available on their platforms.

Estonia is also known as the ‘digital republic’ for its strong commitment to digital rights and its emphasis on technological innovation with the highest rates of internet penetration in the world, to promote free expression and online privacy. Similarly to which Iceland has relatively liberal policies to protect online privacy and promote digital rights.

On the contrary, India has some firm restrictions on social media platforms on the grounds of misinformation, hate speech, and incitement to violence.

Hate speech is a serious issue in India as many incidents have arisen due to the violence reported from various parts of the country like in Jammu and Kashmir or the Delhi Riots 2020 where 53 people died and many were injured as they were triggered by hate speeches made by several politicians and social media influencers like what happened in the Farmers Protest. Baba Masjid demolition where in December 1992, the Babri masjid was demolished due to the hate speeches made by several leaders of BJP and other nationalist groups. The Muzaffarnagar Riots of 2013 were the riots initiated due to the circulation of a fake video clip that went viral on social media. “One-sided information, deception, misrepresentation, and non-information, all equally generate an uninformed populace which makes democracy a farce” the Hon'ble Supreme Court stated in **Union of India v/s Association for Democratic Reforms**². Freedom of speech and expression involves the right to impart and receive information which includes the freedom to have opinions.

Section 66 A of the Information Technology Act prohibits any offensive video, audio, or text message which is sent with the intent of hurting or annoying someone. Therefore, the Indian Government has introduced several measures to regulate social media platforms. In February 2021, the Indian Government announced new rules under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which led to the appointment of a grievance officer to address user complaints, removing any content within a time period of 36 hours of receiving a court order or a government directive and any content which is considered to be defamatory, obscene or invasive of privacy within 24 hours of receiving a complaint. The key question of whether Section 66A of the Information Technology Act, 2000 (IT Act) violated the Right to Freedom of Speech guaranteed by Article 19(1)(a) of the Indian Constitution was challenged before the Supreme Court of India in the landmark decision of **Shreya Singhal v. Union of India**³

²[2002 AIR 2112]

³ AIR 2015 SC 1523

(2015). The Court also had to take into account that the Union Government has the authority to enforce "reasonable restrictions in the interests of India's sovereignty and integrity, the security of the State, friendly relations with foreign States, public order, decency, or morality, or in relation to contempt of court, defamation, or incitement to an offense" as an exception (Article 19(2)) to the right guaranteed in Article 19.

However, all laws and regulations are always subject to some limitations in the interest of public safety, national security, and other important considerations. As any measures taken to regulate social media should be carefully designed to balance the need to protect public safety with the need to protect public safety as to uphold fundamental rights and freedoms.

1.3 RELEVANT LEGAL PROVISIONS

1. **Article 19(1)⁴** deals with that all citizens should have the right to freedom and expression, to assemble peacefully without arms, and to freely move and settle throughout the country where anyone can practice any profession or occupation or trade or business.
2. **Article 19(2)⁵** empowers the state to put reasonable limits or restrictions on various grounds like the security of the state or defamation, public order, etc.
3. **Article 21⁶** deals with the right to live where no person should be deprived of personal liberty.
5. **Section 499 of the Indian Penal Code⁷** deals with defamation i.e if any person makes a false or complicated statement for someone resulting in harming the reputation of that person is defamation.
6. **Section 500 of the Indian Penal Code** deals with the punishments regarding defamation i.e imprisonment for a term of 2 years or fine or both.

⁴ Article 19(1) of the Indian Constitution

⁵ Article 19(2) of the Indian Constitution

⁶ Article 21 of the Indian Constitution

⁷ Section 499 of the Indian Penal Code

7. **Section 124 A of the Indian Penal Code** says that whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the person shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine like in the case of *Kanhaiya Kumar v State of Delhi*.

8. Also under **Article 19 of the UDHR**⁸, it says that everyone has the right to freedom of opinion and expression including the freedom to hold opinions, suggestions, and viewpoints without any interference.

1.4 ANALYSIS

If used in the right way, media can transform the lives of individuals by gaining more knowledge and widening the mindsets of people. For instance, now using social media the non-Indians are now aware of Indian festivals, cuisines, and diverse languages all around the globe. It helps to develop more social skills instead of being socially awkward while interacting with people and broadening up one's community by connecting to people from anywhere irrespective of the geographical location or religion. Social media has helped people find their lost and loved ones, whether it is school friends, parents, or their children, etc. there was a case when YouTube helped a Manipur man to reunite with his family after 40 years as a video of him became viral on social media where he was seen singing an old Hindi film song.

Secondly through social media, one can express their views, opinions, and beliefs about anything they feel about as the right of freedom of speech and expression is a fundamental and universal human right that is given to everyone irrespective of their caste, culture, religion, gender, etc as mentioned in Article 15 of the Indian Constitution as everyone is equal before law according to Article 14 of the Indian Constitution. However, in extreme situations like when the Supreme Court of India gave judgment on the internet shutdown and curbing of other civil liberties like a network in Jammu and Kashmir which resulted in a violation of the Right to access the Internet and, released guidelines on imposition of section 144 of CrPC

⁸ Article 19 of the Universal Declaration of Human Rights

which does not allow more people to assemble at one place like riots, etc. leading for the purpose of national security and for the protection of the citizens of the country. However, On January 10, 2020, the Supreme Court declared that freedom of speech and expression under Article 19(1)(a) and Article 19(1)(g) of the Indian Constitution as per the case of **Anuradha Bhasin vs Union of India & Ors.**⁹ which led to the victory of people for freedom of speech and movement in the state.

Like in the case of **Faheema Shirin v State of Kerala**¹⁰ case. The plaintiff raised an issue regarding whether the restrictions imposed by the hostel authorities on the use of mobile phones infringed her right or not as it violated her fundamental right of speech for the denial of not using mobile and internet access forming a violation of her right to privacy as well. The Supreme Court accepted that the freedom of the press was a crucial component of the right to freedom of speech and expression in **Romesh Thaper v. State of Madras and Brij Bhushan v. State of Delhi**¹¹. In Romesh Thapar, Patanjali Sastri J. noted that freedom of speech and expression also covered the dissemination of ideas and that this right was guaranteed by freedom of movement.

However, social media has some negative impacts which cannot be ignored, unless used correctly and wisely, such as hacking out one's personal information and misusing it leading to cyberbullying or blackmailing, or even risking the nation's security, if the information technology act 2000 not adhered properly ultimately leading to scams and frauds. It becomes complex and sometimes leads it to absolute in nature such as to maintain proper peace and harmony in the society where it becomes the need of the hour to preserve and restrict people from the right to speech and expression for the maintenance of social order and for the betterment of the society living. However, it does not mean that the right is completely absolute i.e no one can give their views or raise their voice if they want, but it is somehow unrestricted too like anyone can speak anything for anyone which can hurt someone's beliefs or sentiments like with the use of bad words and so on.

During the formation of the Indian Constitution, there was great debate about whether the term "sedition" should be included as a constraint on the right to free expression. The words 'sedition' and 'public order' were included in the Draft Constitution as a basis for laws limiting the fundamental right to speech

⁹ WP (C) NO. 1164 OF 2019.

¹⁰ WP(C). No.19716 OF 2019(L).

¹¹ AIR 1950 SC 124

(Article 13)20, but in the final draught of the Constitution, both words were removed from the exceptions to the right to freedom of speech and expression (Article 19(2)). Therefore, the state can limit freedom of speech on the following grounds as mentioned in article 19(2) of the Indian Constitution. But sometimes situations occur where the right needs to be absolutely like the hue and cry in JNU, in which it was held initially that Kanhaiya Kumar's statements were seditious in nature.

In **Bennett Coleman & Co v. Union of India**¹² (1972), the SC held that press freedom encompasses the right of the people to free speech and expression. "Freedom of the press is both qualitative and quantitative," it was said. "Freedom exists in both circulation and content Similarly, a few years ago, there were some violent protests against the screening of the movie Padmavati in Haryana and Rajasthan where it was claimed to have insulted the religious sentiments of certain sections of the society which aroused a conflict between the right to expression in the form of art and censorship. **Subramanian Swamy vs. Union of India**¹³- Dr. Subramaniam Swamy made several allegations against Ms. Jayalathitha in 2014. A defamation suit was filed against him and many others as a result of this. Dr. Swamy and other legislators then questioned the constitutionality of India's criminal defamation law. The court ignored the petitioners' contentions about the inspection of rights and their enjoyment under Articles 19 and 21, maintaining that every person has access to all of the constitution's rights at the same time. While deciding the validity of Section 499 and its deviations one at a time, the bench stated unequivocally that there is no lack of detail in the entire section.

1.5 CONCLUSION

Freedom of expression is an important human right. It is, however, still one of the most contentious social topics. The right to freedom of speech requires certain obligations, such as respect for other people's privacy and the outcomes of their intellectual work. The social media and communication processes are changing as a result of the advancement of information technology. The latest trend provides both opportunities for freedom of expression and threats of false information being spread. People are increasingly using social media platforms such as Facebook, WhatsApp, Twitter, Instagram, and YouTube to read and share news and information as technology advances. Social media is defined as a mobile and web-based

¹² 1973 AIR 106

¹³ (2016) 7 SCC 221

technology that uses a collection of online communication channels to form a virtual social network. Because people in one section of the country can access information shared by a user in another, social media technology has shrunk the planet. Freedom of expression refers to every individual's right to hold opinions freely and to seek, receive, and impart information and ideas through any means, regardless of borders. In a democratic country like India, every individual has the right to express themselves and share information via social media. Given that the Internet has emerged as an international network for the exchange of ideas and perspectives that is not reliant on traditional mass media, the Committee recommended that governments make all necessary efforts to ensure that these new media remain independent while providing access to their citizens. The right to free expression is guaranteed under both Article 19 of the Universal Declaration of Human Rights and Article 19(2) of the International Covenant on Civil and Political Rights, and this protection extends to the internet and social media platforms. Freedom of expression, including the right to free speech, is recognized as a basic right under India's Constitution and other international treaties, regardless of the medium through which it is conveyed.

As the human role is replaced by computers and the internet, the rapid advancement of information technology and digital communication systems creates the risk of false data being circulated. Around the same time, new technology can help counter media bias in information dissemination.

1.6 SUGGESTIONS

There is a need for proper social media regulation that does not infringe on the constitutional rights guaranteed by the Indian Constitution. However, total freedom should not be granted; instead, a middle ground of control rather than censorship should be pursued. There is a razor-thin line that separates one's enjoyment of one's right from the infringement of another's rights. On social media, exercising one's right to free speech and expression can lead to a violation of privacy. In light of the above statements, the government of India should uphold the right to freedom of speech and expression, as well as the right to privacy. It is now one of the most widely used platforms for expressing one's viewpoint, and it should be valued. As a result, it is proposed that the government form a committee with some technical experts to investigate all aspects of the use and abuse of social media and make recommendations about how it can be regulated without jeopardizing citizens' rights. The Indian government has legitimate concerns about the impact of social media on the

country's society. Social media sites should also be held accountable for the harm they cause, and guidelines for how they should conduct themselves on the internet should be set. The line between adhering to one's ideals and being excluded from the lucrative markets into which private enterprises must venture is thin. While it is possible to assume for the purpose of argument that today's social media site CEOs are apolitical, this cannot be assumed of future CEOs. Furthermore, during a political disagreement between the government and opposition parties, any action taken by social media platforms would be perceived as partisan by the public.

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