

DIGITAL INDIA IN THE LAP OF RIGHT TO SPEECH: A SOCIAL MEDIA REVOLUTION

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Social media is one of the mainstream medium of communication of present and upcoming successive era which has been used for articulation of thoughts and opinions. The digital world in which everything including expression of opinions and thoughts has been going to be occurred by the way of digital means like social media including of all kinds information technology. As the social media plays a crucial and massive role in social and political interests of the subjects of state. Through which layman use to draw and express his/her opinion and the medium they used to draw their opinion may be sometimes not true unfortunately. Governments should keep in mind to give security to the interests of the state regarding social media attack on the name of right to speech. Although India does not have any specific legislation to regulate social media but the Information Technology Act, 2000 gives certain provision regarding to regulate social media content while balancing the Freedom of Speech and expression guaranteed in Article 19 in addition to this some rules were laid down to regulate the web content. The aim of this research paper to analyse the Right to freedom and expression in context of social networking sites in India and other jurisdictions. The adopted method for research is Non-Doctrinal Research Methodology. The authors will also intend to discuss about the pre-scrutiny of social media content and how necessary it is. The article will focus on the laws which use to regulate and restrict social media in India and what is the impact of social media. It will also be determined that what are the loopholes in the existing laws and what are the solutions is required to curb the abuse of social media while balancing the right to speech to become a new digital India.

Keywords: IT Act 2000, Freedom of Speech, Social Media, New Digital India, Reforms

INTRODUCTION

Social Media revolves around user generated content in interactive platforms allowing the kind of freedom that traditional forms of real and virtual media lack.

Political issues are an extraordinary and merciless race for the ability to impact and make decisions, with pioneers of different group of individuals seeking positions in the authority of making decisions of their particular nations. Vote bank based political issues rotates around growing the vote bank and bringing under impact or influence, however much of the voter base as could reasonably be expected. Politicians have dependably depended on immediate and individual communication with the voters to persuade them to practice their entitlement to vote and to utilize it to support them. Online and social networking is

based upon the start of immediate and individual communication. Customarily, politicians rely on their oratorical skills and door-to-door campaigning, to keep in touch with the general public and are now switching to an easier and more convenient means: Social media. Political battles over the globe now depend via social networking media to promote themselves and assault their rivals in approach measure. Political agenda and politicians promoting themselves on social media because one can target and hit any of the community and class without any criteria of age, sex, religion etc. over this platform.

PRIVILEGE OF SPEECH AND EXPRESSION IN CONTEXT OF SOCIAL MEDIA GLOBALLY

The Internet and Social Media has turned into an imperative specialized apparatus through which people can practice their privilege of freedom of thoughts. In the previous year or something like that, a continuous development of individuals around the globe has been seen who are supporting for change, equity, balance, responsibility of the intense and regard for human rights. In such developments, the Internet and Social Media has frequently assumed a key part by empowering individuals to connect and communicate in a split second and by making a feeling of solidarity.

Emphasizing the significance of internet, the UN Special Rapporteur on the advancement and protection of the right of opinion and expression in his Report, which was submitted to the Human Rights Council, expressed that the Internet has turned into a key means by which people can practice their entitlement to right of freedom of speech and expression and subsequently, to get and access of internet is a human right. Report additionally focused on that States ought to guarantee that internet get to is kept up constantly, notwithstanding amid times of political agitation and tension. The States were also helped to remember their positive commitment to elevate or to encourage the delight and enjoyment in the privilege of speech and expression and the methods important to practice this right, including the Internet. The States were additionally made a request to embrace approaches to make the Internet broadly accessible, available and easily moderate to all with low cost. The UN Human Rights Committee has likewise endeavoured to give pragmatic application to opportunity of opinion and expression in the fundamentally adjusted altered media scene, the inside phase of which is involved by the internet and mobile communication. Elaborating new media as a worldwide system to trade thoughts and suppositions that does not rely on the orthodox mass media, the Committee expressed that the States should find a way to encourage the freedom of these new media and furthermore guarantee access to them.¹ Besides, Article 19 of the UDHR and Article 19(2) of the ICCPR additionally accommodates the right to speak freely and articulation of thoughts i.e., expression even if there should be the case of web and social media networking.

¹ "Freedom of Expression and New Media", Available at <http://www.ohchr.org/EN/NewsEvents/Pages/FreedomExpressionandnewmedia.aspx> (Last accessed on Oct 10, 2017)

Consequently, it is seen that the right to speak freely and articulation of thoughts or expression as a fundamental right in whatever medium it is practiced under the Constitution of India and other universal reports. Furthermore, in the light of the developing utilization of internet and social media as a medium of practicing this right, access to this medium has additionally been perceived as a major human right. Thus it can be stated that to access social media to express your opinion is a human right universally accepted.

ANALYSING ARTICLE 19 IN THE CONTEXT OF SOCIAL MEDIA ACROSS JURISDICTIONS

The standards specified in Article 19 of the ICCPR have been deciphered with various degrees of liberalism crosswise over various jurisdictions over the world. The emphasis essentially lays on the understanding of the last prong i.e., inescapable danger and need since alternate prongs are examined comparatively in all jurisdictions.

- **THE U.S.A.**

The privilege to the right to speech and expression has been perceived in the First Amendment to the US Constitution. Courts inside the US have for the most part connected the triple test in regards to limitations entirely, trying to maintain most speech as constitutional.

An instance of the US Courts' views on the subject can be seen in the 2012 judgment, *Stand Up America Now v. City Of Dearborn*². Pastor Jones³ issued a tweet declaring 11 September 2010 "*International Burn a Koran Day*"⁴. This declaration made such frenzy that it got the consideration of Hillary Clinton and President Obama who expected that it would affect Afghanistan's troops. The minister in charge of a Christian church held up a half year just to post a Facebook video of a fellow pastor burning a Koran that pulled in enormous consideration social networking media. The demise of 30 individuals in Afghanistan could be faulted for that post. Be that as it may, the First Amendment makes it almost impossible to hold anyone responsible for the violent response of his or her audience.

Along these lines, Jones' *mens rea* made a difference more than the effect of the *Medium*. "*The ordinary murmurings and objections of a hostile audience cannot be*

² 969 F.Supp.2d 843 (2013)

³ Terry (Poster) Jones (born October 1951) is the pastor of Dove World Outreach Centre, a small nondenominational Christian church located, until July 2013, in Gainesville, Florida, United States. He is the President of a political group, Stand Up America Now. He first gained national and international attention in 2010 for his plan to burn Korans, the scripture of the Islamic religion, on the ninth anniversary of the September 11 attacks.

⁴ Available at <http://edition.cnn.com/2010/US/07/29/florida.burn.quran.day/index.html> (Last accessed on Oct 10, 2017)

allowed to silence a speaker,” but a speaker may be punished for his speech “likely to produce a clear and present danger of a serious substantive evil.” Consequently, for security in the US, free speech could be a genuine expression of political feeling.

In recent as June 1, 2015, the Supreme Court of United States overturned the conviction of a Pennsylvania man in the *Elonis v. United States*,⁵ for making violent and savage on Facebook demonstrating on kill his wife, associates and bomb a school holding that they weren't inevitable dangers and that the First Amendment applies to all kinds of speech. The author posted violent rap lyrics including lines such as “Pull my knife, flick my wrist, and slit her throat”. His wife indicated that she felt threatened by these. Elonis argued that he could not be convicted of making a threat because he did not intend to threaten anyone with his postings. In other words, he claimed that he didn't mean what he said in a literal sense. In legal terms, he said that he did not have a subjective intent to threaten anyone. At his trial, Elonis asked the court to dismiss the charges, stating that his Facebook comments were not true threats. He argued that he was an aspiring rap artist and that his comments were merely a form of artistic expression and a therapeutic release to help him deal with the events in his life. In an apparent attempt to underscore that his comments should not be taken seriously, he posted links to YouTube videos that he parodied, and noted that a popular rap artist often uses similar language in his lyrics⁶. For several of his comments, he also posted a disclaimer stating: “This is not a threat.” However, the Court held that the absence of explicit *mens rea* was enough to acquit him.

The issue before the court was that “Does a conviction of threatening another person under federal anti-threat statute 18 U.S.C. § 875(c)⁷ require proof that the defendant meant what he said in a literal sense?”

Along these lines, the US doesn't maintain a restriction on the right to speech and opinion freely unless the test has been entirely met. Especially, it has broken down the term 'risk' to just only mean a very clear, present and very danger that cannot be controlled by any other reasonable means to uphold a conviction.

- **INDIA**

Right to freedom of speech and expression is ensured under Article 19(1) (a)⁸ of the Indian Constitution. Though Article 19 is subject to the limitations which can be found in Article 19(2) that can be enforced by the State and are in light of a sovereignty and integrity of the State, the security of the state, inviting relations with outside states, public order, decency or morality, or in connection to hatred of court, defamation or incitement to an offense.

⁵ 575 U.S. (2015)

⁶ Available at <http://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-elonis-v-us> (Last accessed on Oct 13, 2017)

⁷ Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both

⁸ CONSTITUTION OF INDIA, 1950

The maximum cases in India are brought under S. 66 A of the Information & Technology Act, 2006, which punishes persons for sending offensive messages through social media.

In *Nithyananda Swami v. S. Arathi Rao and others*⁹, the Madras High Court used videos posted on social sites like Facebook and Twitter etc. as criminal evidence, noting that they has the potential to reach thousands of people and cause hatred for the plaintiff in the minds of others who could potentially hurt her.

Also one of a case from the United Kingdom but it is relevant to the Indian context is "*Chris Cairns v. Lalit Modi*"¹⁰. This case was related to a suit for defamation had been filed in the United Kingdom by Chris Cairns Lalit Modi, while Chairman and Commissioner of the Indian Premier League, Tweeted remarks affirming that Chris Cairns, a previous New Zealand cricket captain, had participated in match settling or fixing. The Tweet was expelled inside 16 hours of it being posted. The words were additionally repeated in a distribution through publication by Cricinfo UK, a cricket magazine. It was evaluated that roughly 65 individuals saw the Tweet and around 1,000 individuals read the publication. Cairns sued Modi for defamation and Modi depended on the safeguard of justification; i.e. that his remarks were valid. In any case, Mr Justice Bean discovered Modi subject to liable for act of defamation and granted £90,000 compensation to Cairns. The High Court ruled in favour of Cairns. The Court of Appeal added that the issue of "*percolation is of particular relevance and 'immeasurably enhanced' due to the emergence and ease of availability of the World Wide Web*".

Be that as it may, in the 2015 decision, *Shreya Singhal v. Union of India*, the Supreme Court held S. 66 A to be violative of the Indian constitution. One of the justification for the same was that it caused a 'chilling impact' on free speech because of the obscure measures utilized by the provision. Further, the Supreme Court noticed the significance of Facebook and Twitter as fundamental correspondence or communication stages that could be easily and effortlessly targeted under such statues, in this manner disregarding international principles that assurance free speech also. Hence, offensive social networking posts are not at liability of arrest.

Along these lines, the removing of S. 66 A of the IT Act brings some would like to the status of Article 19 in India. Be that as it may, its applicability social networking posts is yet on be chosen inside a courtroom. The standard applicable would appear to be fairly loose considering the arrests that have been made without any reference of the principles enshrined in the Constitution or ICCPR.

- CHINA

⁹ In the High Court of Madras, Original Application No.494 of 2012 in C.S.No.409 of 2012.

¹⁰ Case No: HQ10D00267 Available at <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/cairns-v-modi-judgment> (Last accessed on Oct 17, 2017)

Article 35 of the current Chinese constitution, written in 1982, stipulates, “*Citizens of the PRC have freedom of speech, publication, assembly, association, procession and demonstration.*” In 2012, Reporters without Borders claimed that 30 journalist and 68 Internet users have been imprisoned in China. The freedom of press index placed China at 174 out of the 179 countries. Liu Xiaobo was blamed for instigating subversion of state control with the distribution of Charter 8—an announcement calling for political change, more noteworthy human rights, and a conclusion to one-party govern in China. Liu Xiaobo was given eleven years of detainment and his family held under house arrest. Notwithstanding, he was granted the 2010 Nobel Peace Prize “for his long and peaceful battle for essential fundamental human rights in China.”

In 2005, Shi Tao, a columnist was condemned because of sending data about a Communist Party document through his email account. His email contained notes outlining the Party record, which was examined at a Contemporary Business News staff meeting and hence, was in fact open learning. The Chinese specialists held him blameworthy for “spilling state secret facts crosswise over national fringes” under Article 111 of the Constitution. Regardless of blocking social network communication, for example, Facebook and Twitter, China has begun to keep monitoring mobile communication closely as well. The incongruity of this issue is that at the UN Human Rights Council meeting on February 29, 2012, a few nations, with China driving the way, took a more grounded position on government intervention of the internet and China over and over accentuated that freedom of speech and expression on the web is a long way from absolute, condemning excessive intervention. In this way, the circumstance in China is a long way from applying the three-prong test, with extreme mediation and absence of any sensibility standard. The HRC has over and again approached China to get its laws conformity with global standards and ideally, this will be perceived soon by the legislatures.

PRE- SCRUTINY OF CONTENT ON SOCIAL MEDIA: IMPACT AND NEED

In December, 2011, the Indian Government asked the web organizations like Google, Facebook, and Microsoft and so on to make a system to pre-screen the information before it goes up on the site. Some defamatory substance was found on a social networking site and on that affection, Government has requested that the organizations chalk out an approach to guarantee that such substance is screened before it goes on the web. As a noteworthy level headed discussion broke out on the issue and it was depicted in a negative light, Kapil Sibal told media that for the sake of communal harmony the Government was not endeavouring to blue pencil the right to speak freely and to express on social sites; it only needed to prevent hostile material from being uploaded on. The companies also informed that it is not possible to meet with the demand due the volume of user-generated content in India and that they cannot be responsible for determining what is or is not defamatory.

In the *Secretary, Ministry of Information and Broadcasting, Government of India and others vs. Cricket Association of Bengal and others*¹¹ the Supreme Court held that "for guaranteeing the right to free speech of the subjects of this nation, it is essential that the citizens have the advantage of majority of perspectives or opinion every single issue of ji public. An effective democracy that is also majority rules system sets aware citizenry. Diversity of feelings, perspectives, thoughts and belief systems is fundamental to empower the citizens to come at informed judgment on all issues touching them. This can't be given by a medium controlled by an imposing business model or monopoly whether the monopoly is of the State or some other individual, gathering or association."

In the light of the above, it can be opined that instead of blue pencilling of social networking, its regulation required in a way which keeps up the privileges of users and furthermore secures that of the casualties or victims at the same time.

Let us take a look of present machinery for pre-screening of web content which we have now:

S.NO.	NAME OF SCHEME	NATURE OF INFORMATION INTENDED TO BE MONITORED	PURPOSE OF MONITORING
1.	NETRA (Network Traffic Analysis)	All Internet traffic including social media, emails, blogs, tweets, instant messaging services, and voice over IP	To detect suspicious activity for national security purposes
2.	NMAC (National Media Analytics Centre)	Social Media content, blogs, news and media channels	Sentiment analysis of posts for security purposes and big data analysis for detection of pattern of posting. Both domestic law enforcement and national security purpose
3.	Social Media Labs	Social Media platforms	To detect suspicious activity, and track mobilisation using social media for

¹¹ AIR 1995 SC 1236

			protests, and support domestic law enforcement.
4.	CCTNS	Crime data, geolocation data, call data records, social media data etc.	One of the stated goals of CCTNS is predictive policing using among other things, real time tracking of internet data including social media data, for domestic law enforcement.
5.	MyGov.In	Crowdsourced data on the platform, social media content and blogs.	While the main purpose is to serve as a platform from citizen engagement, it has been reported that data mining and analysis techniques will be used to follow public discourse and discussion on social media platforms and blogs.

Hence it has been recognised that some pre-scrutiny is needed for web content by constituting above arrangements by the Indian Government. So we can say that the government is aware and conscious about the harms and misuse of social sites and freedom of speech.

But the point is not just to make the government conscious about the pre-screening but to come up with really effective measures and mediums of pre-screening. It is also to be noted that the pre-scrutiny of social networking or web content is necessary in such a way so that we will live in the nation where one can recognise the social media platform as genuine and reliable. Then only we can say that this is the true essence of freedom of speech in digital India in going on modern and digital revolution.

After considering the importance of pre-screening test, it is also necessary to understand the impact of social media in daily lives of people and subjects. As we have discussed earlier in introductory part about the impact of social media which plays crucial role while drawing

an opinion and the opinion can be about of anything like any class, community, region, origin, government and etc. The opinion drawn by one by relying upon the fake news and agenda of social media will lead one's behaviour towards that class, community, region, person, government and etc. This behaviour impacts the society and also it may happen that some tension would occur in society. Obviously which is not favourable for the peace and development of the nation and it's the subject to be worried about.

A LOOK ON CYBER LAWS IN INDIA

Despite the fact that there is no particular enactment in India which manages social media, there are a few provisions in the current cyber laws which can be utilized to look for change if there should be an occurrence of infringement of any rights in the internet and social media. The enactments and the significant provisions are particularly listed as under:

- **The Information Technology Act, 2000**

(a) Chapter XI of the Act, Sections 65, 66, 66A, 6C, 66D, 66E, 66F, 67, 67A and 67B contain punishments for computer related offences which can also be committed through social media viz. tampering with computer source code, committing computer related offences given under Section 43, sending offensive messages through communication services, identity theft, cheating by personation using computer resource, violation of privacy, cyber terrorism, publishing or transmitting obscene material in electronic form, material containing sexually explicit act in electronic form, material depicting children in sexually explicit act in electronic form, respectively.

(b) Section 69 of the Act grants power to the Central or a State Government to issue directions for interception or monitoring or decryption of any information through any computer resource in the interest of the sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States, public order, for preventing incitement to commission of any cognizable offence, for investigation of any offence.

(c) Section 69A grants power to the Central Government to issue directions to block public access of nay information through any computer resource on similar grounds.

(d) Section 69B grants power to the Central Government to issue directions to authorize any agency to monitor and collect traffic data or information through any computer resource for cyber security.

(e) Section 79 provides for liability of intermediary. An intermediary shall not be liable for any third party information, data or communication link made available or hosted by him in the following cases-

- i. his function is limited to providing access to a communication system over which such information is transmitted, stored or hosted.
- ii. He does not initiate, select the receiver and select or modify the information contained in the transmission.

- iii. He observes due diligence and other guidelines prescribed by the Central Government while discharging his duties.

Again, an intermediary shall be liable in the following cases:

- i. He has conspired, abetted, aided or induced by threats, promise or otherwise in the commission of the unlawful act.
- ii. He fails to expeditiously remove or disable access to the material which is being used to commit the unlawful act, upon receiving actual knowledge or on being notified by the Government.
- iii. If any intermediary fails to assist, comply with direction and intentionally contravenes provisions under Sections 69, 69A and 69B respectively, he shall be liable to punishment.
- iv. Section 43A provides that where a body corporate possessing, dealing or handling any sensitive personal data or information in a computer resource owned, controlled or operated by it, is negligent in implementing and maintaining reasonable security practices and procedures thereby causing wrongful loss or wrongful gain to any person, it shall be liable to pay damages by way of compensation to the affected person.
- v. Section 70B provides for an agency of the Government to be appointed by the Central Government called the Indian Computer Emergency Response Team, which shall serve as the national agency for performing functions relating to cyber security.

The Central Government has also enacted rules to give effect to various provisions of this Act which are as follows:

- *The Information Technology (Procedure and Safeguards of Interception, Monitoring and Decryption of Information) Rules, 2009*
- *The Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009*
- *The Information Technology (Procedure and Safeguard for Monitoring and Collecting Traffic Data or Information) Rules, 2009*
- *The Information Technology (Intermediaries Guidelines) Rules, 2011*
- *The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011*

PROBLEMS & SOLUTIONS

Although we have legislation and rules for regulating and directing the information and technology but we do not have any exclusive legislation to control and regulate social media networking. We have admitted this fact earlier that we have institutional arrangements and organisations to regulate and direct the social media but not fully and in a needed way for upcoming scenario. The problem is that the legislators are not much aware about the importance of legislation which exclusively deals with social networking, which is unfortunate for the dream of true digital India of which we are dreaming for. As the print media was interrupted by television and television has been interrupted by social media. It is necessary to curb this evil on the democratic essence of India where people are actually having freedom of speech unlike other countries unlike China. It is not enough to make some arrangements for social networking regulation but its need to concentrate on it more likely. To make the true digital India with the essence of democracy, the authors have some suggestions to the law makers which are as follows:

- Law which meets the present requirement to curb the abuse of freedom of speech on social media which exclusively deals with social media.
- Committee shall be setup to determine the steps to be taken to inspect and control the content of social media exclusively, without polluting the essence of freedom of expression in true democracy, which will give recommendations to the government after thoroughly examining the contemporary problems and the upcoming digital revolution collectively.
- Authors further urged that like in every century man had different needs and problems according to the contemporary circumstances of that century, and change is the only constant. So there should be setup of separate cabinet ministry which exclusively deals with the social media networking. Because this is not any ordinary issue but it impacts the elections and integrity of Union of India and elections should be free and fair in any democracy but the impact of social media can hinder the elections as well by promoting wrong and private agendas, if not regulated properly. Elections are the first brick of India's democracy. So it should be needed to prevent the very basic essence of democracy.
- Committee should be guided by the principles of freedom of speech and making of new digital India and committee consists of highly qualified experts from all across the globe. More fund shall be allocated to advance the law and technology and research related to that to curb the abuse of freedom of expression on social media networking in new digital India. As social media is the future medium of exercising freedom of expression. Although India is the largest democracy as well.

CONCLUSION

India being a largest democracy in the world have more responsibility on its shoulders to keep preserved its essence of democracy of which freedom of expression is very basic of it. India is moving on the way of becoming a new digital India in which freedom of speech

and expression will be the mainstream medium of exercising freedom of speech and expression, digital means. Although we have laws related to regulate social media but not exclusively deals only with this issue. Some separateness is needed for this issue. As science and technology has been improvising extremely. We have to take such measures and preparations for the present and upcoming problems in our democratic new digital India. As we have discussed the freedom of speech and social media among other jurisdictions. Some innovative ideas and steps to be taken to curb this issue, otherwise in our opinion we would not become a new digital India in actually. Democracy should not be manipulated by wrong means and it is our duty to preserve it and prepare for the future.