



Right to Freedom of Speech and Expression – Social Media

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Abstract

The Internet and Social Media has become a vital communications tool through which individuals can exercise their right of freedom of expression and exchange information and ideas. 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 frontier without outside interference, such as censorship, and without fear of reprisal, such as threats and persecutions. Freedom of expression is a complex right. This is because freedom of expression is not absolute and carries with it special duties and responsibilities therefore it may be subject to certain restrictions provided by law. In this paper an attempt has been made, how the social media has become a key means by which individual can exercise their Right to Freedom of Speech and Expression and the reasons for censoring of social media and cyber laws of India. In this paper it is also suggested the Government to control the social media in a suitable manner in which it can be regulated without hindering the right to Freedom of Speech and Expression.

Key words: Social Media, Natural Right, Duties and responsibilities.

Introduction:

The Internet and Social Media has become a vital communications tool through which individuals can exercise their right of freedom of expression and exchange information and ideas. 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 frontier without outside interference, such as censorship, and without fear of reprisal, such as threats and persecutions. Freedom of expression is a complex right. This is because freedom of expression is not absolute and carries with it special duties and responsibilities therefore it may be subject to certain restrictions provided by law. The term freedom of expression

itself had existed since ancient times, dating back at least to the Greek Athenian era more than 2400 years ago. The following are some of the most commonly agreed upon definitions of freedom of expression that are considered as valid international standards:

“Everyone has the right to freedom of opinion and expression; this right includes freedom hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” - Universal Declaration of Human Rights, 1948. Similarly, 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: Social media can be defined as any web or mobile based platform that enables an individual or agency to communicate interactively and enables exchange of user generated content. The Organization for Economic Cooperation and Development (OECD) specifies three criteria for content to be classified as "user generated:" (1) it should be available on a publicly accessible website or on a social networking site that is available to a select group, (2) it entails a minimum amount of creative effort, and (3) it is "created outside of professional routines and practices."

In the past years or so, a growing movement of people around the world has been witnessed who are advocating for change, justice, equality, accountability of the powerful and respect for human rights. In such movements, the Internet and Social Media has often played a key role by enabling people to connect and exchange information instantly and by creating a sense of solidarity. Emphasizing the importance of internet, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his Report, which was submitted to the Human Rights Council, stated that the internet has become a key means by which individuals can exercise their right to freedom and expression and hence, internet access is a human right.

Thus, it is seen that freedom of speech and expression is recognized as a fundamental right in whatever medium

it is exercised under the Constitution of India and other international documents. And in the light of the growing use of internet and social media as a medium of exercising this right, access to this medium has also been recognized as a fundamental human right.

Types of Social Media:

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, Blogs, Micro blogs, Video blogs, Wiki, Social Bookmarking, Social News, Media Sharing etc. The most popular are Face book and LinkedIn.

Censoring Social Media: Information is a buzz word today. It is essential to march along with the progressive trends in today's world. Technology savvy world with an increasing capacity for communicating, Simplifying and storing information with amazing speed has put information at the core of development. There can be no democratic participation in decision making without transparency and sharing information. Social media has the power to reach the masses and distribute information, which in turn has resulted in everyone acting as a watch dog, scrutinizing the powerful and exposing mismanagement and corruption. Till recently, governments across the globe have tried to withhold information from the common man on one pretext or another. And, now with the advent of social media with immense power of delivering information to the masses, is perceived as a threat by Governments who are carefully trying to regulate it. Internet has become the basis of modern civilization due to its limitless possibilities and widespread reach. As it is quite instrumental in the storage and



dissemination of information and opinion, it has acquired a unique role in the functioning of democracies all over the world. Through social media and internet, the citizens can unite despite territorial limitations. Although everyone is not physically present, the force of the protest is not diminished in any way. Thus, it is evident as to why Governments across the world seek to censor the internet.

Again, apart from its beneficial role, Internet is open to misuse as well, which gives the State a justification to regulate online content in the interests of the public at large. 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.

China is the leader in Internet censorship in the World. Coming to India, according to the Freedom House's report 'Freedom on the Net, 2012', India's overall Internet Freedom Status is "Partly Free". Report contained a list

of 'Enemies of the Internet' that restrict online access and harass their netizens; and a second list of 'Countries under Surveillance' for displaying a disturbing attitude towards the Internet. Report put India in the list of 'Countries under Surveillance'. In its seventh transparency report, published on 27th April 2013, Internet giant Google noted that the Indian government has nearly doubled its requests to Google for removal of content in the second half of 2012 as compared to the first six months. The report, further noted that between July and December 2012, Google had received more than 2,285 government requests to delete 24,149 pieces of information. In 2014 also the Indian Government tried to restrict her denizens.

Although the Information Technology Act was in force since 2000, India did not police the cyber space with much vigour before the 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. In this backdrop, India has been considered as a country engaged in 'selective' Internet filtering.

Cyber Laws of India and Social Media: Although there is no specific legislation in India which deals with social media, there are several provisions



in the existing so-called cyber laws which can be used to seek redress in case of violation of any rights in the cyber space, internet and social media. The legislations and the relevant provisions are specifically enumerated as under:

The Information Technology Act, 2000:

Under Chapter XI of the above Act, Sections 65 to 67B contains 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. The Information Technology (Procedure and Safeguards of Interception, Monitoring and Decryption of Information) Rules, 2009, 2011 also put restrictions on Freedom of Speech and Expression on Social Media.

Conclusion:

It is clearly evident that social media is a very powerful means of exercising one's 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. Where on the one hand, the misuse of social media entails the need for legal censorship, on the other hand, there are legitimate fears of violation of civil rights of people as an inevitable consequence of censorship. What is therefore desirable is regulation of social media, not its censorship. However, the present cyber laws of India are neither appropriate nor adequate in this respect. An analysis of the existing IT laws shows that there is unaccountable and immense power in the hands of the Government while dealing with security in the cyber space. Even then, it is not sufficient to check the misuse of social media. Hence, a specific legislation is desirable to regulate social media.

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