

SOCIAL MEDIA AND FREEDOM OF SPEECH AND EXPRESSION: A STUDY

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ABSTRACT

It's been a couple of decades since Internet took over the knowledge age by storm. Now a days it is being a very useful part of people's lives. The Internet has revolutionized the way information is shared and therefore the way people communicate. Social media is now one among the foremost popular means of computer mediated communication. It has shrunk the planet into a worldwide village. With people sharing information from every nook and corner of the planet, information overload has become the norm. What quite information an individual shares are, to some extent, controlled by the govt during a majority of the countries. There comes the concept of censorship. This paper aims to explore the web censorship of couple of important policies of our country then goes on to speak about the pros and cons of such censoring, with special emphasis on the situation in India.

Keywords: Social Media, Freedom of Speech and Expression, Legal Provisions, Censorship

Introduction

India is one among such paradises on earth where you'll speak your heart out without the fear of somebody gunning you down for that, or, it's been so far. Even if the case of Indians may be a lot better than that of their fellow citizens of other nations, the picture is not really soothing or mesmerizing for Indians any more. This assumption is being made in relation to the exercise of the right of freedom of speech and expression within the context of social media and therefore it crosses problems by the arbitrary of the so-called cyber laws of the state, particularly Section 66A of the Information Technology Act, 2000.

Before delving into the problem in details, it's but desirable to first understand the concepts of social media and freedom of speech and expression.

What is Social Media?

Social media comprises primarily internet and mobile based tools for sharing and discussing information. It blends technology, telecommunications, and social interaction and provides a platform to talk through words, pictures, films, and music. Social media includes web- based and mobile technologies accustomed turn communication into interactive dialogue. Social media are often defined as any web or mobile based

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platform that permits a private or agency to speak interactively and enables exchange of user generated content.

Types of Social Media

Social Media are often broadly divided into following categories

1. Social networking: Social networking is a web service that permits its users to make virtual networks with likeminded people. It offers facilities like chat, instant messaging, photo sharing, video sharing, updates etc. The most popular are Facebook & LinkedIn.

2. Blogs: Blogs are descriptive contents created and maintained by single users and will contain text, photos and links to other websites. The interactive feature of blogs is that the ability of readers to go away comments and therefore the comment trail is often followed.

3. Micro blogs: Micro blogs are almost like blogs with a typical restriction of 140 characters or less, which allows users to write down and share content. Twitter may be a micro blogging site that permits its users to send and skim tweets.

4. Vlogs and Video Sharing sites: Video blogs (Vlogs) are blogging sites that mainly use video because the main sort of content supported by text. You Tube is that the world's largest video sharing site. You Tube may be a video live casting and video sharing site where users can view, upload, share videos and even leave comments.

5. Social Bookmarking: These services allow one to save, organize and manage links to various websites and resources around the internet. Interaction is by tagging websites and rummaging through websites bookmarked by people. The most popular are Delicious.

6. Social News: These services allow one to post various news items or links to outside articles. The most popular are Digg, Reddit and Propeller.

7. Media Sharing: These services allow one to upload and share photos or videos. Interaction is by sharing and commenting on user submissions. The most popular are YouTube and Flickr. There are often overlap among the above-mentioned sorts of social media. Also, Flickr and YouTube have comment systems almost like that of blogs.

Freedom of Speech and Expression

Freedom of speech and expression is broadly understood the notion that each person has the natural right to freely express themselves through any media and frontier without outside interference, like censorship, and without worrying of reprisal, like threats and persecutions. Freedom of expression is a complex right. This is because freedom of expression isn't absolute and carries with its special duties and responsibilities therefore it's going to be subject to certain restrictions provided by law. The following are a number of the foremost commonly prescribed 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 to carry opinions without interference and to hunt, receive and impart

information and ideas through any media and despite frontiers.” [Article 19, Universal Declaration of Human Rights, 1948 (UDHR)]

- “Everyone shall have the proper to carry opinions without interference. Everyone shall have the proper to freedom of expression; this right shall include freedom to hunt, receive and impart information and concepts of all types, regardless of frontiers, either orally, in writing or in print, within the sort of art, or through the other media of his choice.” [Article 19 (2), International Covenant on Civil and Political Rights, 1966 (ICCPR)]

Similarly, Article 19 (1) (a) of the Constitution of India also confers on the citizens of India the proper “to freedom of speech and expression”. The freedom of speech and expression means the proper to precise one’s convictions and opinions freely by word of mouth, writing, printing, pictures or the other mode. It also includes the right to propagate or publish the views of individuals. Alexander Meiklejohn, one among the proponents of this link argues that democracy means self-government by the people and for the right functioning of which, an informed electorate is indispensable which, in turn, requires that there be no constraints on the free flow of data and concepts. Democracy won’t be faithful to its essential ideal if those in power are ready to manipulate the electorate by withholding information and stifling criticism.

Right to Freedom of Speech-Expression and Social Media-Internet

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. In the past year approximately, a growing movement of individuals round 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 web and Social Media has often played a key role by enabling people to attach and exchange information instantly and by creating a way of solidarity. The UN Human Rights Committee has also tried to supply application to freedom of opinion and expression within the radically altered media landscape, the centre stage of which is occupied by the internet and mobile communication. Describing new media as a worldwide network to exchange ideas and opinions that doesn’t necessarily believe the normal mass media, the Committee stated that the States should take all necessary steps to foster the independence of those new media and also ensure access to them. Moreover, Article 19 of the UDHR and Article 19(2) of the ICCPR also provides for freedom of speech and expression even just in case of internet and social media. Thus, it's seen that freedom of speech and expression is recognized as a fundamental right in whatever medium it's exercised under the Constitution of India and other international documents. And within the growing use of internet and social media as a medium of exercising this right, access to the present medium has also been recognized as a fundamental human right.

Restrictions on Freedom of Speech and Expression

The freedom of speech and expression doesn't confer on the citizens the proper to talk or publish without responsibility. It is not an un braided license giving immunity for each possible use of language and prevents punishment for those that abuse this freedom.

Article 19(3) of the ICCPR imposes restrictions on the subsequent grounds:

1. For respect of the rights of reputations of others.
2. For protection of national security, public order, public health or morals.
As per Article 19(2) of the Constitution of India, the legislature may enact laws to impose restrictions on the proper to speech and expression on the subsequent grounds:
 - (i) Sovereignty and integrity of India.
 - (ii) Security of the State.
 - (iii) Friendly relations with foreign States.
 - (iv) Public order.
 - (v) Decency or morality.
 - (vi) Contempt of court.
 - (vii) Defamation.
 - (viii) Incitement to an offence.

Cyber Laws of India and Social Media

Although there's no specific legislation in India which deals with social media, there are several provisions within the existing so-called cyber laws which may be wont to seek redress just in case of violation of any rights within the cyber space, internet and social media. The legislations and therefore the relevant provisions are specifically enumerated as under the Information Technology Act, 2000

- (a) Under Chapter XI of the Act, Sections 65, 66, 66A, 6C, 66D, 66E, 66F, 67, 67A and 67B contain punishments for computer related offences which may even be committed through social media viz. tampering with computer ASCII text file, committing computer related offences given under Section 43, sending offensive messages through communication services, fraud, 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 69A grants power to the Central Government to issue directions to dam public access of nay information through any computer resource on similar grounds.
- (c) Section 69B grants power to the Central Government to issue directions to authorize any agency to watch and collect traffic data or information through any computer resource for cyber security.
- (d) 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 within the below cases-
 - His function is restricted to providing access to a communication system over which such information is transmitted, stored or hosted.

- He doesn't initiate, select the receiver and choose or modify the knowledge contained within the transmission.

- He observes due diligence and other guidelines prescribed by the Central Government while discharging his duties. Again, an intermediary shall be liable within the following cases.

- He fails to expeditiously remove or disable access to the fabric which is getting used to commit the unlawful act, upon receiving actual knowledge or on being notified by the Government.

(e) If any intermediary fails to help, suits direction and intentionally contravenes provisions under Sections 69, 69A and 69B respectively, he shall be susceptible to punishment.

(f) Section 43A provides that where a body corporate possessing, dealing or handling any sensitive personal data or information during a computer resource owned, controlled or operated by it, it shall be liable to pay damages by way of compensation to the affected person.

(g) Section 70B provides for work place of the govt to be appointed by the Central Government called the Indian Computer Emergency Response Team, which shall function the national agency for performing functions concerning cyber security. The Central Government has also enacted rules to offer effect to varied provisions of this Act which are as follows: These rules are made by the Central Government in exercise of its powers under Section 87(2) (y) with regard to the procedure and safeguards for monitoring and collecting traffic data or information under Section 69B (3). Rule 3 provides that the interception or monitoring or decryption of data under Section 69 shall be distributed out by an order issued by the competent authority. Rule 2(d) defines competent authority because the Secretary within the Minister of Home Affairs, just in case of Central Government and therefore the Secretary responsible of the house Department, in case of a State Government or Union territory. Rule 4 provides for a bureau of the Government authorized by the competent authority to hold out the functions. The Information Technology (Procedure and Safeguards for Blocking for Access of data by Public) Rules, 2009 These rules are made by the Central Government in exercise of its powers under Section 87(2) (z) with reference to the procedure and safeguards for blocking for access by the public under Section 69A (2). Rules 3, 4, 5, 6, 7 & 8 contain the regular method of sending request for blocking to the Nodal officer of concerned organization who shall examine it and forward it to the Designated Officer of the Central Government who shall further examine it beside a Committee and so, their recommendation shall be sent to the Secretary, However, Rule 9 grants power to the Designated Officer to require a choice regarding blocking in cases of emergency where delay is unacceptable. Rule 10 provides that the Designated Officer, on receipt of a writ directing blocking of any information, shall submit it to the Secretary, Department of data and Technology and initiate action immediately. The rules made by the Central Government in exercise of its power under Section 87(2) (za) with reference to the procedure and safeguards for monitoring and collecting traffic data or information under Section 69B (3).

Rule 3 provides that directions for monitoring and collection of traffic data or information under Section 69B (3) shall be issued by an order made by the competent authority.

Rule 2(d) defines competent authority because the Secretary of the govt of India within the Department of data Technology under the Ministry of Communications and Information Technology.

Rule 3 further provides that the competent authority may issue directions for monitoring for purposes associated with cyber security. The Information Technology (Intermediaries Guidelines) Rules, 2011 These rules are made by the Central Government in exercise of its powers under Section 87(2) (zg) with reference to the rules to be observed by the intermediaries under Section 79(2). Section 2(w) of the knowledge Technology Act, 2000 defines “intermediary” with reference to any particular electronic records as a person who on behalf of another one that on behalf of another. Rule 3 makes it mandatory for the intermediary to tell the users by clearly stating that under the principles and regulations, privacy policy and user agreement, which are published on the web site, they're to not host, display, upload, modify, publish, transmit, update or share any information that's objectionable under Rule 3(2).

Once a violation under Rule 3(2) is noticed by or is delivered to actual knowledge of any intermediary by an affected person in writing or through e-mail, Rule 3(4) requires the intermediary to get rid of the objectionable content within 36 hours. The Information Technology Rules, 2011. These rules are made by the Central Government in exercise of its powers under Section 87(2) (ob) read with Section 43A with reference to the reasonable security practices and procedures and sensitive personal data or information under Section 43A. Rule 6 provides that the disclosure of sensitive personal data or information by body corporate to any third party shall require prior permission from the provider of such information. However, the knowledge are often shared with Government agencies, without obtaining prior consent, for the aim of verification of identity, or for prevention, detection, investigation including cyber incidents, prosecution, prosecution, and punishment of offences. Section 66A of the knowledge Technology Act, 2000. Besides all these provisions, Section 66A has been in news in recent times, albeit for all the incorrect reasons. For the needs of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computing system, computer resource or communication device including attachments in text, images, audio, video and any electronic record, which may be transmitted with the message. Section 66A was inserted by an amendment the Act in 2008. The Amendment Bill, which was introduced in Parliament in 2006, had only very first two sub-clauses under Section 66A. Section 66A was originally intended to tackle spam, defined as unwanted and unwarranted e-mails. The Department of data Technology told the committee that sub-clause (b) of Section 66A and Clause (i) of Section 43 of the Act sufficiently addressed the difficulty of spam. However, the committee on Information Technology, in its 2007 report, recommended that the Bill be made more stringent. Thus, sub-clause (c) was added to the provision, besides increasing the punishment for violation to three years imprisonment from up to two years. er electronic record, which may be transmitted with the message.

Censoring Social Media

When censorship is implemented in any form, it's one's freedom that's questioned. So, when applied to the context of social media, it is the freedom of speech and expression is under threat, though the extent of this threat is debatable. When a particular piece of information is censored, it means that the censoring authority does not want the public to know about it. Censorship generally comes into play within the light of either foreseen adverse impact or any adverse impact which may have occurred within the overdue to sharing of comparable information or content. The justification of this type of censorship is that public consumption of such information might end in disrupting the integrity or harmony of the state, or a specific community or individuals as such. However, such censorship becomes more complicated because the concept of international boundaries doesn't exist when it involves social media. When social media is employed as an outlet of expressing one's thoughts, the whole world is simply a click away. Further, content posted online could be legal within the country it originated but illegal in other places where there could be stricter policies. In this paper, we start with an summary of internet regulatory policies in several countries and later, through analysis of various alleged social media misuse cases (specifically in India), we analyze how social media censorship currently operates within the country. Information is a buzz word today. It is essential to march together with the progressive trends in today's world. There are often no democratic participation in deciding without transparency and sharing information. Social media has the facility to succeed in the masses and distribute information, which successively has resulted in everyone acting as a watchdog, scrutinizing the powerful and exposing mismanagement and corruption.

Till recently, governments across the world have tried to withhold information from the commoner on one pretext or another. And, now with the arrival of social media with immense power of delivering information to the masses, is perceived as a threat by Governments who are carefully trying to manage it. Internet has become the idea of recent civilization thanks to its limitless possibilities and widespread reach. As it is sort of instrumental within the storage and dissemination of data and opinion, it's acquired a singular role within the functioning of democracies everywhere the planet. Although most are not physically present, the force of the protest isn't diminished in any way. Thus, it's evident on why Governments across the planet seek to censor the web.

Conclusion

It is clear that on the one hand, the misuse of social media entails the necessity for legal censorship, on the opposite hand there are legitimate fears of violation of civil rights of people as an inevitable consequence of censorship.

However, these cyber laws of India are neither appropriate nor adequate during this respect. An analysis of the prevailing IT laws shows that there's unaccountable and

immense power within the hands of the govt while handling security within the cyber space. Even then, it's not sufficient to see the misuse of social media. Hence, a selected legislation is desirable to manage social media. However, there are many practical difficulties which can arise while doing so. There is a really thin line which demarcates the enjoyment of one's right and therefore the violation of the enjoyment of else's right within the process. In social media, the exercise of freedom of speech and expression by one may end in the invasion of privacy and defamation. Again, the thought of objectionable content varies from one person to a different. A cartoon could also be a harmless way of getting fun but offence may be taken by the person concerned. Similarly, hate speech, racist remarks, religious sentiments have different meanings for various people.

Keeping all this in mind, it's suggested that the govt should form a Committee including technical experts to seem into all the possible facets of the utilization and misuse of social media and recommend an appropriate manner within which it may be regulated without hindering the civil rights of citizens.

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