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Social media regulation: A comparison of legal frameworks in India and the US

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Abstract

This paper presents detailed information about social media and its related issues, social media regulations in USA and INDIA and a comparative study of Regulations imposed by India and the United States on social media. The Indian constitution, which went into force in 1950, was based on English common law and incorporated significant US court decisions. This paper discusses social media regulation in the United States of America, with reference to the Indian constitution, which borrows constitutional provisions from the United States. This study seeks to examine the laws, policies, cases, and regulatory structure that regulate social media in legal systems in order to explore potential implications for India.

Keywords: Social media, laws related to social media, Child pornography, fake news

Introduction

Definition

Social media are web-based communication platforms that allow individuals to communicate by sharing and consuming information. It is very different from the conventional i.e. Television, Radio and Print Media. Conventional media is only one sided where the information is shared and we are the consumers of that information but this is not the case with Social Media here the information could be shared like it is done in conventional media but the major difference is we can also share our opinions on the social media platforms.

Types of Media

Social media are a two-way communication where when the information or any content is shared on it we can also share our views, opinions and ideas (Bhargav & Puniya, 2021) ^[1]. Media generally refers to a vehicle or a system of message delivery. Media is broadly divided into four major categories.

- Print media.
- Broadcast media.
- Out of home media.
- Internet media.

Print media includes Newspapers, Magazines and other items published by a printing press. Broadcast media includes anything which is broadcasted to a wide range of audience for example, television and radio broadcast content over a wide range. Out of home media includes advertisements, posters, billboards etc. The Internet, on the other hand, is the most efficient and fastest media among all. Social media comes under this category. Being in the public domain, the use of the Internet totally relies upon how a user wants to use it.

India has become one of the countries having the most no. of social media users in the world. India has over 500 million social media users. WhatsApp is a mostly used platform by Indians having around 530 million users, followed by YouTube, Facebook, Instagram and Twitter having around 448 million, 410 million, 210 million and 175 million respectively as there are many users who have subscribed to multiple platforms. It still stays unregulated unlike conventional media which is regulated by a self-governing statutory body namely Press Council of India. Due to the extensive presence of social media, there is a heavy flow of information and data which largely remains unregulated. Now, this has caused a lot of hue

and cry in the country causing communal unrest, riots and lynching. This all has been caused because some private actors wanted to publicize their actions.

There arises an immediate need to regulate social media and to get hold of it. This could be achieved by establishing certain authorities which are dedicated to the same cause. To formulate regulations for governing social media there is a need to firstly identify the main issues or problems caused by the social media.

Regulation

The main problem which arises with social media is the freedom which it provides to its users. The freedom in itself is not a problem but its misuse by the users causes the problem. Social media grants a user power to post anything on any social media platform without realizing the consequences of posting it. This post might disregard the feelings of other people and the user may not realize the problem it may cause. Depending on the nature of the content it might hurt the sentiments of a particular class of people.

The various social media platforms across the globe have amassed a huge user base of around 3.8 billion. Due to a huge crowd on the various platforms a lot of content gets posted and shared across various platforms. Fake news and inflammatory content get a lot of traction on such platforms, as a result there have been many incidents of public outrage and unrest, communal riots and other harm to public order. Recent example of this is the 2020 Delhi riots where the videos posted by certain users went viral. This post was of a communal nature, targeting a particular section of society. It caused hatred among people, enough to start a Riot. An internal report by Facebook states that there was a 300% rise in the inflammatory content shared on the platform before the Delhi riots. Delhi assembly's committee had found Facebook as a complicit in riots as the platform failed to take timely action regarding the matter. This type of problem has now become regular, this happens because of a lack of a regulating body. The social media platforms say that they have an internal regulatory authority for the purpose of regulating the content which gets posted online but those internal bodies seem not to be working very efficiently and effectively. This leads to the need of a regulatory body to be formulated by the government to keep an eye on these social media platforms and prevent such mishappening (Roy, 2020) ^[4].

Inflammatory content is just one of several other threats that social media poses. The social media is mainly responsible for spreading Pornography and Obscenity. The government has put a sensor board to prevent obscenity in Indian Movies but removing the same content from the social media creates jurisdictional issues. Pornography and Obscenity is an offence against public decency and morals. Identity Theft is another such threat against a user. Social media websites generate revenue by targeted advertising. These websites collect Personal data from its users to show them Personalized Ads. This process is so common nowadays that no one hesitates to provide his or her information. PHISHING is a term given to a type of identity theft where a user is asked to provide his Personal details, which is then used to steal his identity. Any offender may use those details to create a fake digital identity of that user. The most common examples are the fake accounts which we usually come across on social media.

Being in the public domain, Social media is accessed by users all over the world. Since there is no check and balance over the content which a user posts, it increases its potential for defamatory use. A defamatory statement, in broad terms, is a false remark about a person that causes harm to that person's reputation. Defamation exposes a person to hatred and even being avoided by society. Defamation is a punishable offense under section 499 of Indian Penal Code. There are some jurisdictional issues in relation with the Defamation through social media. For example, a defamatory statement can be posted online at any place where the Internet is available. Since a lawsuit may only be filed in the jurisdiction where the statement is accessible, the defendant would be dragged to any jurisdiction where the statement is accessed, regardless of where he posted it.

For the purpose of regulating social media, the Government formulated the Information and Technology Rules, 2021. These provisions have given regular inhabitants of the country the capacity to seek redress for their concerns and command accountability in case of infringement of their rights. These regulations are made to protect the women and children from sexual offences, to prevent the spread of fake news and to prevent the misuse of the social media platforms as in the case of *Tehseen S. Poonawalla v/s Union of India*, (2018) 9 SCC 501, (Bhattacharya, 2021) ^[2]. The Supreme Court urged the government to limit and prevent the circulation of explosive texts and videos on different social media platforms that have the potential to inspire mob violence and lynching of any type. These guidelines have been drafted in accordance with the Supreme Court's directive in the *PRAJWALA CASE*, 2009 4 SCC 798, and after taking into account the recommendation of the *Rajya Sabha Ad-Hoc Committee*.

Social Media and the Indian Constitution

The first condition of liberty is freedom of speech and expression. It has been explicitly stated that it is the mother of all liberties. Freedom of expression is crucial in shaping public opinion on political and economic issues. But in this age a lot of these discussions took place in an online medium. So, the freedom of speech and expression becomes as much as important online as it has importance in conventional ways. (Raza, 2016).

Case- Anuradha Bhasin v/s Union of India, AIR 2020 SC 1308

The freedom of speech and expression, as well as the right to pursue any profession or undertake any employment, trade, or commerce on the internet, have been designated as a fundamental right since many businesses now take place online and internet is an essential source of livelihood for many people nowadays while also helping them to form a collective conscience without the need of physical meeting and showed that the apex court believes in changing thoughts and necessities with the changing times and the judgment upheld the importance of press freedom while balancing it with the requirements of Section 144 of Code of Criminal Procedure and need to curtail certain freedom for national security.

By the virtue of Part III, the citizens can express their views and opinions freely about an individual or Government without the fear of being apprehended for criticizing or appreciating. But no freedom cannot be unrestricted and absolute likewise this right to freedom of speech and

expression may also have to face reasonable restrictions. (General comments No. 34, HRC, 2011)

The restrictions can be put forth by the virtue of Article 19(2), 358 and 359.

- a) In the clause 2 of Article 19 of Constitution eight reasonable grounds are mentioned because of whom reasonable restrictions can be put
- b) Security of the state
- c) Friendly relations with foreign state
- d) Public order
- e) Decency or Morality
- f) Contempt of court
- g) Defamation
- h) Incitement of an offense
- i) Sovereignty and Integrity of India

Meaning thereby, if any user of social media posts anything or uses language which might lead to the conditions mentioned above can be restricted by the procedure established by law.

Regulations in USA

The Federal Communications Commission regulates all electronic communications in the United States. In the United States, the Federal Communications Commission governs interstate and international radio, television, wire, satellite, and cable communications. The commission, as an independent US Government body overseen by Congress, is the leading authority in the United States for communications law, regulation, and technology innovation. In its work facing economic opportunities and challenges associated with rapidly evolving advances in global communications. While the broad safeguards of the United States Constitution and the Bill of Rights have resulted in very little government-mandated filtering or censorship. On the internet, there is still a dispute over content control on a variety of themes. Many of the concerns include the First and Fourth Amendments to the United States Constitution.

There are no rules for the internet in the US. As in other countries, the proliferation of social media is a concern in the United States as well. Its regulations have been widely debated across the country and various laws have been passed. After the London riots in England, trouble broke out in San Francisco, California. A homeless man with a knife has been shot and killed by a traffic police officer on a train platform. Internet service was suspended for about three hours due to anger from local residents, and no emergency calls were made. Critics have argued that the government can impose reasonable restrictions on protests only when there is an obvious risk of danger. The government says measures are needed to protect public safety and that the right to safety of transit passengers is more important than freedom of speech and assembly.

Comparison of the Regulations of India and USA

If we compare social media regulation in India and the US, we can observe multiple differences. The core reality of India differs from that of the United States in terms of the implementation of laws, policies and regulations regarding social media. There are no specific laws that apply to social media. The key differences and similarities between India and the United States when it comes to social media regulation can be summarized as follows:

- a) To protect employee privacy, laws have been passed in the United States to prevent employers from requiring

passwords for employee social media accounts. In India, legislation in this area is not yet regulated and only, the ministry of Communication and Technology has issued guidelines on the use of social networks by the government organizations.

- b) To tackle the crimes and implementing the policy related with computer and Intellectual property, US department of Justice has the responsibility of doing so. In India CERT has a limited jurisdiction relating only to computer related crime but it possesses no powers in Intellectual Property Rights violations. India lacks in terms of both cybercrime detection and power to contain the social media perversity. It has powers which are of limited in nature.

The Safe Harbor provisions, combined with full protections of American freedom of speech, provided the social media mogul the freedom to operate independently without significant government interference. However, in India, according to the Information and Technology Regulation 2021, social media giants can now be held accountable for content posted on the platform. This IT Regulation provides for the appointment of a Grievance Relief Office (GRO) that must reside in India. Particular attention has been paid to protecting women and children from sex crimes, fake news and other social media misconduct.

Conclusion

For a number of reasons, neither country's legal systems have responded to social media regulation with a single legislation. In both India and the United States, there are separate sets of rules for different types of offenses committed on social networking accounts. Social media is governed by many laws in both India and the United States, although neither country has a single Act completely dedicated to its control.

India and the United States must enact a law dedicated towards regulating social media with the specifics of what can be posted or till what extent the content can be shared under the guise of Freedom of speech and expression. The rights which are recognised under Article 19(2) of ICCPR can be restricted as mentioned under article 19(3) of ICCPR. The limitations can put in place if-

1. Provided by law,
2. Necessary for the rights and respects of others, for the protection of national security, public order, or public health or morals.

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