

ESSAY ON SOCIAL MEDIA AND THE CONSTITUTION OF INDIA

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"The press [is] the only tocsin of a nation. [When it] is completely silenced... all means of a general effort [are] taken away."

--Thomas Jefferson

What is Social Media?

The more time you spend in India, the more you realize that this country is one of the world's greatest wonders—a miracle with a message. And the message is that democracy matters."

—Thomas Friedmann

The best way to define social media is to break it down in two terms i.e. media and social. Media is an instrument on communication, like a newspaper or a radio, so social media would be a social instrument of communication.

Social media comprises primarily internet and mobile phone based tools for sharing and discussing information. It blends technology, telecommunications, and social interaction and provides a platform to communicate through words, pictures, films, and music¹.

Social media includes web- based and mobile technologies used to turn communication into interactive dialogue². 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.

Andreas Kaplan and Michael Haenlein define social media as “a group of internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of user-generated content.”³ Web 2.0 is the second stage of

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¹ Paranjay Guha Thakurta, *Media Ethics* (New Delhi: Oxford University Press, 2012), p. 354.

² “Social Media”, available on the Web, URL: http://en.wikipedia.org/wiki/social_media.

³ Andreas Kaplan & Michael Haenlein (2010), “Users of World, Unite! The Challenges and Opportunities of Social Media”, *Business Horizons*, vol. 53, 2010, pp. 59-68, at 61.

development of the Internet, characterized especially by the change from static web pages to dynamic or user-generated content and the growth of social media. So, while Web 2.0 is about creating a social web, it is also about creating a more interactive and responsive web. Web 2.0 ideas have taken on a life of their own. They have taken people and put them on the web, and the idea of a social web has transformed the way we think and the way we do business⁴.

Difference between Social Media and Social News

Social media and social news is not the same thing. It's easy to confuse between both of them because we often refer to members of the news as "the media." Adding to the confusion is the fact that a social news site is also a social media site because it falls into that broader category.

But social news is not the same thing as social media anymore than a banana is the same thing as fruit. A banana is a type of fruit, but fruit can also be grapes, strawberries, or lemons. And while social news is social media, social networking and wikis are also social media⁵.

Statistics on Social Media

Internet Usage

This is the year India is supposed to overtake the US—it may already have, but there are no data, only estimates—and become the world's second-largest user of the Net, with active internet users predicted to reach 269 million by June 2015. Claimed users are higher, with a figure of 302 million.⁶

Social Media in India

Indians are very active on different social networks and 88% of users share content on their social profiles and as well are increasingly spending time on various social networking sites in 2014 as mentioned below⁷.

- **Facebook** is the most browsed social network on social media with a large base of 100 Million users, clearly it is not fading away

⁴ <http://webtrends.about.com/od/web20/a/what-is-web20.htm>.

⁵ Daniel Nations, "What is social media", *webtrends.socialmedia.com*.

⁶ Devanik Saha, India's Stuttering Internet Revolution, Business Standard, March 23 2015.

⁷ <http://blog.digitalinsights.in/important-statistics-digital-and-social-media-users-in-india/05224987.html>.

anytime soon in India. More than 80% of those users access Facebook via their mobile phone.

- Total **Twitter** users in India are 33 Million and from this base 76% of users access it via their mobile phone.
- **LinkedIn** has 26 Million India users, of the total 300+ Million users.
- Of the total chunk of 70 Million total users in **Pinterest**, 5.5 Million comprise from India.
- **Instagram** the usage is more dominated by men in comparison to women; ratio being 75/25. It shows only 1/4th of the women population in India are on Instagram, looks like selfies are more appreciated by men than women!
- The most shared type of videos is film or movie trailers.

Mobile Usage

There has been a surge in the mobile usage, with the emergence of the Smartphone generation a major chunk of people access internet and social media from their mobile phones⁸.

- The mobile penetration of active internet users is 220 Million. It is of paramount importance to make your sites, pages mobile optimized.
- There are total 92+ Million active social media users via their mobile, which is almost 41% of the total mobile internet users.

Types of Social Media

Social Media can be broadly divided into following categories

- Social networking
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 etc. The most popular are Facebook and LinkedIn.
- Blogs
Blogs are descriptive content created and maintained by individual users and may contain text, photos and links to other websites. The interactive feature of blogs is the ability of readers to leave comments and the comment trail can be followed.
- Micro blogs

⁸ <http://blog.digitalinsights.in/important-statistics-digital-and-social-media-users-in-india/05224987.html>.

Micro blogs are similar to blogs with a typical restriction of 140 characters or less, which allows users to write and share content. Twitter is a micro blogging site that enables its users to send and read 'tweets'.

- Vlogs and Video Sharing sites
Video blogs (Vlogs) are blogging sites that mainly use video as the main form of content supported by text. You Tube is the world's largest video sharing site. You Tube is a video live casting and video sharing site where users can view, upload, share videos and even leave comments.
- Wikis
Wiki is a collaborative website that allows multiple users to create and update pages on particular or interlinked subjects. While a single page is referred to as 'wiki page', the entire related content on that topic is called a 'Wiki'. These multiple pages are linked through hyperlinks and allow users to interact in a complex and non-linear manner.
- 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 searching through websites bookmarked by other people. The most popular are Delicious and Stumble Upon.
- Social News
These services allow one to post various news items or links to outside articles. Interaction takes place by voting for the items and commenting on them. Voting is the core aspect as the items that get the most votes are prominently displayed.
- 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 can be overlap among the above mentioned types of social media. For instance, Facebook has micro blogging features with their 'status update'. Also, Flickr and YouTube have comment systems similar to that of blogs.

Constitution of India

Freedom of Speech and Expression

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.

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. Article 19(2) provides for a number of grounds for imposing reasonable restrictions on this right. These are the interests of the sovereignty and integrity of India, 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 offence. Only content that falls within these parameters as authorized by law could legitimately be considered “objectionable”. Rather than defining a new category of “objectionable speech”, what therefore would be useful is to assess all of India’s laws and policies as they relate to freedom of expression against these standards set by the Constitution. This would ensure that the distinction between content that is socially objectionable and that is legally objectionable remains firmly in place, as it should be. It would at the same time also help to ensure that the Constitution is operationalized as intended by its authors.

Social media has the power to reach the masses and distribute information, which in turn has resulted in everyone acting as a watchdog, scrutinizing the powerful and exposing mismanagement and corruption. 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. Although the Information Technology Act was in force since 2000, India did not police the cyber space with much vigor 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.

The recent case of banning the telecast of controversial BBC documentary 'India's Daughter' on the December 16, 2012, gang rape was the clear violation of the right to speech and expression guaranteed under Article 19 of the constitution of India. The documentary is about the gang rape of a 23-year-old trainee physiotherapist, who was brutally assaulted on December 16, 2012 in a moving bus in Delhi. It kicked up a storm after one of the convicts Mukesh Singh was interviewed in Delhi's Tihar Jail. The documentary also has comments from the convicts' counsel A.P. Singh and M.L. Sharma, who allegedly made derogatory remarks against women. The banning of the telecast of the documentary in all formats caused uproar in India.

The PILs have been filed In the Supreme Court saying the ban on the documentary was in clear violation of fundamental rights under Article 19 of the constitution.

In the *Secretary, Ministry of Information and Broadcasting, Government of India and others v. Cricket Association of Bengal and others*⁹ the Supreme Court held that "for ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an aware citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This cannot be provided by a medium controlled by a monopoly- whether the monopoly is of the State or any other individual, group or organization.

In light of all the above discussion, it can be opined that rather than banning and censoring of social media, its regulation is desirable in always that protects the rights of the users. Section 66A of Information Technology Act

⁹ AIR 1995 SC 1236.

The Supreme Court in its recent judgment strike down Sec 66A of the Information Technology Act saying it to be a “draconian” provision that had led to the arrests of many people for posting content deemed to be “allegedly objectionable” on the Internet. The bench of Justices J. Chelameswar and Rohinton F. Nariman said that it is clear that Section 66A arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right.

Section 66A of the Information Technology Act, 2000 inserted vide Information Technology (Amendment) Act, 2008 provides punishment for sending offensive messages through communication service, etc.

Right to Privacy

Privacy involves the right to control one’s personal information and the ability to determine how that information should be obtained and used. The volume and varying nature of transactions carried out on the net are such that the right to privacy must exist.

“Right to Privacy” is an implied right under Fundamental Rights. The Constitution of India does not expressly recognize the right to privacy but at the same time this right has been spelt out by our Supreme Court from the provision of Article 21 which deals with the right to life and liberty. The Apex Court of India has reiterated the “Right to privacy” in many cases; however, its application vis-à-vis internet content has not yet been directly clarified by a judicial ruling.

Many people view social networking sites as a kind of online cocktail party where one gets to establish contacts and raise a personal or corporate profile. But the cocktail party metaphor isn’t entirely accurate. In fact, users would be better served if they thought of social network services in the context of a loud glass house; a place with endless visibility.

This can be illustrated by few cases decided by the Indian Judiciary where it accepted activities done on Facebook as evidence. The case of *Mattel Inc. and Others v. Jayant Agarwalla and Others*¹⁰ decided by the Delhi High Court on 17 September 2008 is a good example where copies of Facebook pages were used to decide a case on Trademark Infringement. In another case of *Carla Gannon and Another vs Shabaz Farukh Allarakhia and another*¹¹ decided on 10 July 2009, Facebook activities were taken as evidence to decide the

¹⁰ (CS(O S) 344/2008).

¹¹ (Criminal Writ Petition No.509 of 2009).

matter of custody of a minor child. Hence it leaves no room to doubt the importance of activities undertaken mindlessly on a Social Networking Site. The Indian Judiciary also gives due recognition to the same.

The Delhi High Court in an ongoing battle against Social networking websites and other similar web forums has ruled that unhealthy content on such websites is required to be removed, failure of which would lead to a total ban of the same. The Indian government also sanctioned the court's stance after reviewing all the evidence and being satisfied that they can be proceeded against as per section 153-A, 153-B and 295-A of the Indian Penal Code (Singh, 2012). As with every fast-growing technology, security and privacy have not been the first priority in the development of such sites. As a result, along with the above benefits, significant privacy and security risks have also emerged (Gross & Sweeney, 2007). Although this case involves the question of integrity of our nation however it is a welcoming order in respect of pressurizing such multi nationals to consider privacy and security issues and built mechanism to control information on their respective websites.

Security issues have gained so much momentum now, that big names like Facebook and LinkedIn are forced to introduce a number of features on their websites to protect privacy of their users. A user can adjust how much information about posts, photos, online status and other factors are accessible to other people. Users can reduce what appears in their profile and what information about their online activities is public, such as their use of specific Facebook applications. Users can also block specific Facebook users from seeing more than a limited profile, or from finding users via search.

Facebook also limits the ability of search-site Web crawlers to harvest user information, saying in its privacy policy, "Facebook limits access to site information by third party search engine 'crawlers' (e.g. Google, Yahoo, MSN, Ask). Facebook takes action to block access by these engines to personal information beyond the name, profile picture, and limited aggregated data about the profile (e.g. number of wall postings)" (Policy, n.d.).

A new option has also been introduced by Facebook where a user who logs in from a different computer is asked for authorization. This login is notified to the registered email of the Facebook user. So if the account is hacked or an unknown user logs in, the information of such an access is instantaneously sent on the registered email.

LinkedIn is the most business like social networking website, and its users seem generally aware of the need to behave professionally. The site provides a wide range of tools for customizing others' views of users, such as the ability to change whether people the user is connected to can see just those having in common, or the entire connections list.

Conclusion

Social Media is a powerful means of exercising ones right to 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. On one hand there is a need to stop all the objectionable and illegal contents being uploaded on social media while on the other hand there are legitimate fears of violation of civil rights of people as an inevitable consequence of censorship.

Therefore, what is desirable is the proper regulation of the social media which does not violates the fundamental rights guaranteed under the Constitution of India. But it should not be so that there shall be absolute freedom given instead a midway should be followed of regulation and not censorship. 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.

However, there are many practical difficulties which may arise while doing so. There is a very thin line which demarcates the enjoyment of one's right and the violation of the enjoyment of else's right in the process. In social media, the exercise of freedom of speech and expression by one may result in the invasion of privacy and defamation. Again, the idea of objectionable content varies from one person to another. A cartoon is a harmless way of having fun but offence may be taken by the person concerned. Similarly, hate speech, racist remarks, religious sentiments have different meanings for different people.

Keeping all the above in mind, the right to freedom of speech and expression and the right to privacy should be protected by the government in the world of social media. It is now one of the main media to express one's opinion which should be respected. Therefore, it is recommended for the Government to form a committee with some technical experts in it and look into all the possible facets of the use

and misuse of social media and recommend a suitable manner in which it can be regulated without hindering the civil rights of citizens.

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