

## REGULATION OF THE SOCIAL MEDIA CONTENT

---

Hitesh Vacchani & Jasmee Sanghani\*

### **ABSTRACT**

Social Media is a form of an electronic communication used by people for social networking by creating online communities to express their ideas, personal message and other content. Social media platforms are designed to enable users to share *any content* with other users or to make such content available to the public (social network). However, there is no regulation on the content that is being posted on the social media and this, in the recent times, has caused a lot of communal unrest and questioned the unity and integrity of the country. People in order to exercise their fundamental right of expression under the constitution, often forget their duties and responsibilities as a responsible citizen of this country. The government should be worried about “inconceivable disruption to the democratic polity” from unfettered social media content. This paper argues that unregulated social media promotes misinformation, hate speech, defamation, threats to public order, terrorist incitement, bullying, and anti-national activities and thus needs a surveillance platform. Another objective will be to enforce traceability of content, apparently to make enable culpability.

**KEYWORDS:** Media, Content, Advertisement, Constitution, Expression, Surveillance and Culpability.

---

\* Students, B.A. L.L.B., GLS Law College, Ahmedabad

## 1. INTRODUCTION

- 1.1 Various social media platforms have become a topic of discussion quite recently due to the flow of content over these platforms which induce and emasculate the minds of citizens. Certain content that is allowed to be posted via these platforms are quite conjectural in nature due to broadcasting of posts that stimulates misinformation, hate speeches, defamatory content, threats to public order and anti-national activities.
- 1.2 Lack of regulation on the flow of content on the social media platforms, have attracted violence amongst the people which have caused communal unrest and have questioned the unity of the nation. Social media platforms often offer violent actors the opportunity to publicize their acts. For instance, in India, mob lynching and other types of communal violence have originated with the rumors on the WhatsApp groups and other social media platforms. Social scientists and others have also observed that social media posts, and other online speech, can inspire acts of violence.
- 1.3 Therefore, there arises a need to regulate the flow of content on various social media platforms like Twitter, WhatsApp and so on, by bringing in place a legislation (to exemplify: **Social Media Content (Prohibition and Regulation) Act**, which would prohibit the flow of any information and advertisement that is seditious, capable of inciting people thereby causing communal unrest, defamatory and which would disrupt the democratic polity. The objectives behind such a regulation would be twofold:
- Enactment of a Surveillance/ Regulatory Authority which would regulate flow of content that promotes hate speeches, incitement to violence and hindering security of the State via various social media platform
  - Suspension/blocking of impugned posts through a proper procedure which would be in compliance with rules of natural justice.

## **2. REASONABLE RESTRICTIONS ON THE EXERCISE OF THE FUNDAMENTAL RIGHT OF EXPRESSION.**

- 2.1 The fundamental right to freedom of speech and expression guaranteed under Article 19 (1) (a)<sup>1</sup> of the India Constitution is regarded as the first condition of liberty. It enjoys important position in the hierarchy of liberty. The sole of freedom of speech lies in free thinking and expression which is independent from any type of censorship.
- 2.2 However, in the recent times, freedom of speech and expression is not limited to express ones' view through words but it also includes circulating one's views in writing or through audiovisual instrumentalities, through advertisements and through any other communication channel.
- 2.3 **“Expression through the internet has gained contemporary relevance and is one of the major means of information diffusion. Therefore, the freedom of speech and expression through the medium of internet is an integral part of Article 19 (1) (a) of the Constitution and accordingly, any restriction on the same must be in accordance with Article 19(2) of the Constitution.”<sup>2</sup>**
- 2.4 As such, this right is so fundamental that it cannot be taken away or abridged under any circumstances. However, under our constitution no fundamental right is absolute and reasonable restrictions, as mentioned in Clause (2), of Article 19<sup>3</sup> can always be put on the exercise of those fundamental rights.
- 2.5 Be that as it may, under special circumstances, **a law should be enacted to prohibit and regulate the flow of content on the social media under the garb of fundamental right of expression**. It is important to refer to Article 13(1)<sup>4</sup> which specifies that any law which violates the fundamental rights would be void to the extent that it violates the fundamental rights. Thus, a law (if enacted) to regulate the flow of content on the social media will have to be viewed from the constitutional perspective. It is also clear that the fundamental freedoms guaranteed under the Constitution are not absolute but are subjected to certain reasonable restrictions. The term “reasonable” has to be construed on factual basis and may vary from case to case.
- 2.6 There have been instances where the social media platforms such as Twitter have suspended the twitter account of the users, either on the request or by themselves and put restrictions on the exercise of people’s fundamental right of expression. For instance, recently the twitter account of Rangoli Chandel, sister of national award winning actress Kangana Ranaut was suspended on grounds of targeting a particular community and spreading

---

<sup>1</sup>*The Constitution of India, 1950* Art.19(1)(a)

<sup>2</sup> *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637, 33

<sup>3</sup>*The Constitution of India, 1950* Art.19(2)

<sup>4</sup>*The Constitution of India, 1950* Art.13(1)

disharmony and hatred among communities. And last year in August four twitter handles were suspended for allegedly spreading anti-Indian propaganda on Jammu and Kashmir on request by security agencies.<sup>5</sup>

- 2.7 Thus, it is important to note that the exercise of the right to freedom of speech and expression carries with it special duties and responsibilities and thus, it may therefore be subject to certain restrictions, but such restrictions shall only be such as would be provided by law and would be necessary.

### **3. REASONABLE RESTRICTIONS ON THE EXERCISE OF FUNDAMENTAL RIGHTS: AN INTERNATIONAL PERSPECTIVE.**

- 3.1 The United Nations International Covenant on Civil and Political Rights (ICCPR) under the Universal Declaration of Human Rights that is an ideal standard held in common by nations around the world, attempts to safeguard the protection of civil and political rights. It was adopted by the United Nations' General Assembly on December 19, 1966, and it came into force on March 23, 1976. The ICCPR be acquainted with the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights.
- 3.2 Moreover, countries that have ratified the Covenant are obligated "to protect and preserve basic human rights and compelled to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy."

Furthermore, ICCPR embraces provisions, Article 19 & 20 of the International Covenant on Civil and Political rights<sup>6</sup> as stated under: -

#### **"Article 19:-**

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities, it may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary.*

---

<sup>5</sup> 4 Twitter handles suspended for alleged anti-India propaganda, *Times of India*, Aug 12, 2019, [http://timesofindia.indiatimes.com/articleshow/70649219.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cpst](http://timesofindia.indiatimes.com/articleshow/70649219.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpst).

<sup>6</sup> ICCPR Art 19,20

- a. *For respect of the rights or reputations of others;*
- b. *For the protection of national security or of public order (order public), or of public health or morals*<sup>7</sup>.

**Article 20:-**

1. *Any propaganda for war shall be prohibited by law.*
2. *Any advocacy of National, racial or religious, hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*<sup>8</sup>.”

3.3 As per the above mentioned international law, it is settled that the State has to prohibit such type of hate speeches or advertisements which may cause hatred amongst communities, may be instigative and divisive against the society at large, threat to national security and against the spirit of Union of India for the purpose of protection of one's rights, and national security and maintaining public order. India has not only signed but also ratified the ICCPR and thus it is duty bound, not only to protect the fundamentally cherished rights of the people but also to ensure a sense of unity amongst the people of this country.

3.4 It is also important to note that Germany has enacted a new legislation namely Network Enforcement Act, 2017<sup>9</sup> which aims to combat hate speech and fake news in the social media. This newly enacted legislation will hold the social media service providers accountable. And not only this, Nigeria has also introduced the Protection from Internet Falsehood and Manipulation Bill 2019 which has already passed the stage of its first reading. However, the bill was criticized by the people on the social media and it is being observed that passing such a law could mean an unwarranted policing of citizen's freedom of expression. But others hold the viewpoint that the law would allow censorship of libelous or defamatory material on social media. The law will make it possible for persons inciting hate online to be liable to arrest and prosecution<sup>10</sup>.

---

<sup>7</sup>*Id*, <https://www.humanrights.com>

<sup>8</sup>*Id*

<sup>9</sup>Federal Law Gazette I, p. 3352 ff. Valid as from 1 October 2017, September 1, 2017

<sup>10</sup>Oluwatobi Opusunju, 'Bill To Regulate Social Media Use By Nigerians Passes First Reading', *I.T.Edge News*, 2018 , <https://itedgenews.ng/2018/06/27/bill-regulate-social-media-use-nigerians-passes-first-reading/>(Accessed June 27, 2018)

#### **4. REASONS WHY SOCIAL MEDIA CONTENT SHOULD BE REGULATED.**

- 4.1 It is important to note that social media platforms do not create their own content but it is only a platform wherein users produce the content and post on these social media platforms. This being the scenario, many social media platforms contend that they are not responsible for what users produce and are thus exempt from the libel, defamation, and other laws and regulations that govern traditional media like newspapers and television. In other words, **they are platforms for free speech and assume no responsibility for what their users communicate.**
- 4.2 It is true, that the modes/ways/manner, in which many of the social media platforms are used in the recent times, could not have been anticipated before. For instance, Facebook was created to help connect with people. But quite recently, it was in a limelight during the U.S Presidential Election. It is a wise saying in the media world: "*If it bleeds, it leads*". There is an acknowledged tendency for social media to show emotionally explosive content that speaks to convictions concerning politics, religion, or other prickly topics. This leads users to share content within their networks in exchange for likes and additional shares as a currency of status and self-affirmation. And this is what is called an amplifying effect. Just as a chemical factory has to abide with all the environmental norms, the social cost which is associated with the social media platforms has to be controlled/regulated/prohibited in order to mitigate the worst effects.
- 4.3 It is not true to blame one social media platform. All such platforms should cast upon themselves a sense of responsibility for a greater good. Social Media platforms like Twitter, Facebook, Instagram, ETC, are just like the ordinary local newspaper where they also do not produce their own content but post what is produced by others. But the only difference between the two is that the news posted via a local newspaper is regulated but their editing team thus preventing author's to write anything which might be derogatory, defamatory, against public morals and health. Hence the claim that the social media platform does not regulate the content of the producers is not sustainable.

#### **5. ABSENCE OF MEDIA REGULATION: PRESENT SCENARIO.**

- 5.1 Till date, we do not have any law in force which would regulate the social media content. Thus, people have been posting content which is not only inflammatory but also has the tendency to incite violence amongst the citizens.
- 5.2 India has seen multiple violent incidents triggered through online posts. Such as in 2012, during what became known as the "Northeastern exodus," thousands of people hailing from northeastern India boarded trains from Bangalore in southern India to Guwahati, following

- posts suggesting violent attacks on northeastern migrants. Then in 2013, the Muzzaffarnagar riots in the northern state of Uttar Pradesh, which left over 60 dead and thousands displaced, were triggered by a fake video circulating on social media, which was rumored to depict a Muslim mob brutally murdering a Hindu youth.
- 5.3 In 2017, India also saw a wave of mob attacks and lynching of innocent people spurred by online accusations of child abductions. At that time, people deemed to be "outsiders" were targeted by large mobs accusing them of kidnapping children, after warnings circulated on WhatsApp.<sup>11</sup>
- 5.4 Quite recently, **the Bombay High Court has ordered the State authorities to immediately block a video uploaded online** by one, "AIMIM-Abu Faizal", complained to have contained provocative content that would create hatred between the Hindu and Muslim communities.<sup>12</sup>
- 5.5 And on 31.01.2020, four people, including a minor had been arrested on charges of spreading fake messages on social media with intent to incite communal violence in Bantwal taluk of Dakshina Kannada District in Karnataka.<sup>13</sup>
- 5.6 Further on 27.05.2020 the Andhra Pradesh High Court had issued suo moto contempt notices to 49 persons, including a Member of Parliament and a former Member of Legislative Assembly, observing that they made intimating and abusive social media posts against the Judges.<sup>14</sup> This is nothing but a way to hold judiciary to ransom and mislead the general public. If posts like these are allowed to be circulated on the social media platforms than the public will lose their faith in the judiciary and which should be forbidden.
- 5.7 It is true that technology offers new fast-paths wherein rumors can travel. It lends new meaning to the old phrase 'A lie can travel halfway around the world, while the truth is putting its shoes on,'" said Chinmayi Arun, the founder of the Center for Communication Governance at Delhi's National Law University.
- 5.8 The absence of proper regulation on the social media content has fuelled the Constitutional Courts with writ petitions asking the Courts to take action. But, the question is whether the Constitutional Courts were designed to do this? The answer to this is no. If we had a proper self-regulatory surveillance authority for all the social media platforms, it would have saved the courts from additional burden that is being added upon it. The authority itself would have taken cognizance of the same. But in the absence of such authority, such regulatory matters are being filed in the Courts thus, wasting the precious judicial time.

---

<sup>11</sup> Murali Krishnan, 'WhatsApp in India: Scourge of violence-inciting fake news tough to tackle', *DW.COM*, <https://p.dw.com/p/3ZAER> ( Accessed March 11 2020)

<sup>12</sup> *Imran Khan v. State of Maharashtra* Criminal Writ Petition No.Asdb-Ld-Vc-7/20

<sup>13</sup> 'Four arrested in Mangaluru for spreading inciting communal violence on social media', *The Indian Express*, <https://www.newindianexpress.com/states/karnataka/2020/jan/31/four-arrested-in-mangaluru-for-spreading-inciting-communal-violence-on-social-media-2097161.html> ( Accessed January 31 2020)

<sup>14</sup> LiveLaw News Network, 'AP HC initiates contempt action against abusive social media posts against judges', *LiveLaw*, <https://www.livelaw.in/news-updates/ap-hc-initiates-contempt-action-against-abusive-social-media-posts-against-judges-157361> ( Accessed May 27 2020)

## 6. **HOW CAN SOCIAL MEDIA CONTENT BE REGULATED?**

6.1 The consequences of social media platforms that function on a large scale are just now beginning to be understood. They offer us many outstanding services that we could not imagine living without today. But, like many industries, there are undesirable consequences that work against the great social welfare. **Thus, there is need to regulate the social media platforms to minimize their social costs. Hence we intend to propose a new legislation which would minimize the risk against the great social welfare. The contour of the Act could be as this:**

### 6.2 **OBJECTIVE OF THE PROPOSED ACT**

6.2.1 To monitor, administer and promote standards of social media content broadcasting practices in India with a view to; ensure the truthfulness and honesty of representations and claims made through social media and safeguarding against misleading information posted via social media, ensuring that information broadcasted through social media is not offensive to generally accepted norms and standards of public decency, defamatory, discriminatory, hazardous to National Integrity and Security or which are unacceptable to society as a whole.

### 6.3 **SCOPE OF THE PROPOSED ACT**

6.3.1 **This proposed Act may be called the Social Media Content (Prohibition and Regulation) Act, 2020.**

6.3.2 This proposed Act shall apply to social media service providers operating within the whole territory of India; which, for profit-making purposes, operates internet platforms which are designed to enable users to share any content with other users or to make such content available to the public (social networks). Platforms offering journalistic or editorial content, the responsibility for which lies with the service provider itself, shall not constitute social networks within the meaning of this Act. The same shall apply to platforms which are designed to enable individual communication or the dissemination of specific content.

### 6.4 **DEFINITIONS**

- 6.4.1 **Surveillance Authority:** It would be a self-regulatory voluntary organization consisting of members, comprising of 2 members each from Ministry of Law and Ministry Information and Broadcasting, 2 Members from editorial board of all social media platforms and legal practitioners and any other members as it may deem fit in order to achieve the objective of the Surveillance Authority
- 6.4.2 **Service Provider:** Social media service providers operating within the whole territory of India; which, for profit-making purposes, operates internet platforms which are designed to enable users to share any content with other users or to make such content available to the public (social networks).
- 6.4.3 **Apocryphal Content:** The content that is offensive to generally accepted norms and standards of public decency, defamatory, discriminatory, and hazardous to National Integrity and Security or which are unacceptable to society as a whole.
- 6.4.4 **Content Creator:** Any person, body corporate, editorial or journalistic body posts certain content through any social media platform which disrupts public peace or tranquility.

#### 6.5 **ESTABLISHMENT OF SURVEILLANCE AUTHORITY**

- 6.5.1 It would be a self-regulatory voluntary organization of the social media industry aimed to achieve the following objectives; that information broadcasted through social media is not offensive to generally accepted norms and standards of public decency, defamatory, discriminatory, and hazardous to National Integrity and Security or which are unacceptable to society as a whole.

#### 6.6 **PROCEDURE FOR REPORTING COMPLAINTS ABOUT UNLAWFUL CONTENT**

- 6.6.1 Any person aggrieved by ANY post/content posted via any social media platforms may approach the surveillance authority by merely lodging a complaint on its website,
- 6.6.2 If prima facie it appears to the surveillance authority that the content is inflammatory or satisfies following grounds:
- Offensive to generally accepted standards.
  - Hindering the National Integrity and Security of the Union of India
  - Defamatory
  - Discriminatory
  - Cause Communal Unrest

- 6.6.3 Then it would either direct the respective service provider/social platform to remove the impugned post or certain contents of the impugned post to the extent to which it causes communal unrest, is discriminatory, against the public decency, defamatory or hazardous to national integrity and security. ORIt would direct the service provider/respective social media platform to send a pop-notice about the apocryphal content present in his/her post in order to/ with the objective to either direct the content creator to provide a proper explanation/context behind such post or to remove the impugned post by himself/herself.
- 6.6.4 The surveillance authority would also hold the power to direct the respective social media platform to block/suspend the social media account from where such impugned has been generated or created in order to perceive justice, equity and good conscience. Provided that, principles of natural justice should be integrated/ incorporated by the surveillance authority while exercising its discretion, the account of the respective content creator shall not be suspended without providing him/her an opportunity of being heard.
- 6.6.5 As mentioned earlier, the objective behind this proposed surveillance authority is to reduce the burden of the courts, the surveillance authority holds the sole discretion and the order regarding the removal of apocryphal content of the surveillance authority shall be final. Provided further that, the order/ direction by the surveillance authority (if passed arbitrarily or is unreasonable) can be challenged upon infringement of any fundamental rights conferred in the part III of the Constitution, under the usual writ jurisdiction of Supreme Court and High Courts.

6.7 **PROVISIONS ON REGULATORY FINE**

- 6.7.1 The proposed surveillance authority may impose a fine upon the respective service provider/ social media platform if it does not follow the guidelines under the proposed act.

## 7. CONCLUSION

7.1 Many social media platforms contend that they are not responsible for what users produce and are thus exempt from the libel, defamation, and other laws and regulations that govern traditional media like newspapers and television. In other words, they act as a platform for free speech and assume no responsibility for what their users communicate. But it is time that we make the social media platforms liable in order to curb the menace of hate speech, derogatory and defamatory content, seditious material and so on. It is only then, will they install a proper regulation on the content that is being posted by the users on their platform. And it is time that we amend the Information Technology Act, 2000 to combat such challenges and make the people liable who post such material on the social media platforms. And most important development with respect to blocking such objectionable material on social media via internet was in 2015 wherein the Hon'ble Supreme Court was posed with the challenge to the constitutional validity various provisions of the Information Technology Act, 2000 in *Shreya Singhal v. Union of India* (2015)<sup>15</sup>. The SC though struck down section 66A of the Information Technology Act, 2000<sup>16</sup>, it upheld constitutional validity of section 69A<sup>17</sup> (the government's authority power to block content).

---

<sup>15</sup> *Shreya Singhal v. Union of India* AIR 2015 SC. 1523

<sup>16</sup> *Information Technology Act 2000* s 66 A

<sup>17</sup> *Information Technology Act 2000* s 69 A:

**Power to issue directions for blocking for public access of any information through any computer resource.**—(1) Where the Central Government or any of its officers specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.

(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and also be liable to fine.