



## **SOCIAL MEDIA AND FREEDOM OF SPEECH AND EXPRESSION: CHALLENGES BEFORE INDIAN LAW**

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### **ABSTRACT:**

It has been a few decades since internet took over the information age by storm. It has become an integral part in people's lives. Social media is now one of the most popular means of computer mediated communication and it has shrunk the world into the global village, with people sharing information from every corner of the world. India is one of the place in the world where you can speak your heart out, without the fear of anything, though the situation is lot better for Indians than the fellow citizens of other nations, but the picture is not really smooth for Indians any more. Further, it evaluates the reliability of free flow of information and authenticity of news item in the existing proliferation of the social media This particular observation has been made with regard to the exercise of the right of freedom and expression in context of social media and the problems placed on that by the arbitrary use of cyber laws of the nation, particularly Section 66A of the Information Technology Act, 2000.

In this paper, the researcher aims to examine the concept of Social Media in context with Freedom of Speech and Expression and its

challenges before the Indian Law. This paper will specifically aim to examine the Social Media in context with the concept of Freedom of Speech and Expression from the perspective of Indian Law and the critical challenges and issues faced in the implementation of the same.

**Keywords:** Social Media, Freedom of Speech and Expression, Indian Law, Information Technology Act, 2000.

### **INTRODUCTION:**

*"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 Friedman<sup>1</sup>

### **WHAT IS SOCIAL MEDIA?**

Social media comprises primarily internet and mobile phone based tools for sharing and discussing information. It blends technology, telecommunications, and social interaction through words, pictures, films and music.<sup>2</sup> Social media includes web- based and mobile technologies used to turn communication into interactive dialogues.<sup>3</sup>

Andreas Kaplan and Haenlein defines 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."<sup>4</sup> "Web 2.0" refers to

<sup>1</sup>Rohit Raj, "Defining Contours Of Press Freedom in Backdrop of National Emergency of 1975", *All India Reporter* (Journal Section), 2008, pp.155-160, at 160

<sup>2</sup> Paranjy Guha Thakurta, *Media Ethics* (New Delhi: Oxford University Press, 2012), p. 354.

<sup>3</sup> "Social Media", available on the Web, URL: [http://en.wikipedia.org/wiki/social\\_media](http://en.wikipedia.org/wiki/social_media), accessed on 30/05/2020

<sup>4</sup> Definition by Andreas Kalpan and Haenlien, Available on, <https://link.springer.com/referenceworkentry/10.1007>



Internet platforms that allow for interactive participation by users “User generated content” is the name for all of the ways in which people may use social media.<sup>5</sup>

Another variant of social media is mobile social media i.e. when social media is used in combination with mobile devices it is called mobile social media. Due to the fact that mobile social media runs on mobile devices, it differentiates from traditional social media as it incorporates new factors such as the current location of the user (location-sensitivity) or the time delay between sending and receiving messages (time-sensitivity).<sup>6</sup>

#### **TYPES OF SOCIAL MEDIA:**

According to Kaplan and Haenlein, there are six different types of social media<sup>7</sup>:

- collaborative projects (e.g., Wikipedia)
- blogs and micro blogs (e.g., Twitter)
- content communities (e.g., YouTube, Flickr)
- social networking sites (e.g., Facebook, MySpace)
- virtual game worlds (e.g., World of Warcraft, Whyville)
- virtual social worlds (e.g., Second Life)

Social Media can be broadly divided into following categories:<sup>8</sup>

1. **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.

2. **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.

3. **Micro blogs:** 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’.

4. **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 casting and video sharing site where users can view, upload, share videos and even leave comments.

5. **Wikis:** Wiki is a collaborative website that allows multiple users to create and update pages on particular or interlinked subjects.

<sup>5</sup> %2F978-1-4614-6170-8\_95, last accessed on, 30/05/2020

<sup>5</sup> Social Media and Freedom of Speech And Expression, by Neshapriyan N. Available on, <http://www.legalserviceindia.com/legal/article-426-social-media-and-freedom-of-speech-and-expression.html>, last accessed on, 30/05.2020

<sup>6</sup> Available on, [https://www.researchgate.net/publication/328476554\\_Social\\_Media\\_and\\_Freedom\\_of\\_Speech\\_and\\_Expression\\_Challenges\\_before\\_the\\_Indian\\_law](https://www.researchgate.net/publication/328476554_Social_Media_and_Freedom_of_Speech_and_Expression_Challenges_before_the_Indian_law), last accessed on, 30/05/2020

<sup>7</sup> Different types of social media, <https://www.coursehero.com/file/p4mmvri/According-to-Kaplan-and-Haenlein-there-are-six-different-types-of-social-media/>, last accessed on, 30/05/2020

<sup>8</sup> Available on, [https://www.researchgate.net/publication/328476554\\_Social\\_Media\\_and\\_Freedom\\_of\\_Speech\\_and\\_Expression\\_Challenges\\_before\\_the\\_Indian\\_law](https://www.researchgate.net/publication/328476554_Social_Media_and_Freedom_of_Speech_and_Expression_Challenges_before_the_Indian_law), last accessed on, 30/05/2020



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.

6. **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.
7. **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. The most popular are Digg, Reddit and Propeller.
8. **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.

### FREEDOM OF SPEECH AND EXPRESSION:

Freedom of Speech and Expression is understood as a notion that each and every person has the natural right to express themselves through any media without any interference (censorship or fear of reprisal), it is a complex right. This is because freedom of speech and expression is not an absolute right as it carries certain duties and responsibilities. Thus, it may subject to certain restrictions provided by law.

The following are some of the most commonly agreed upon definitions of freedom of expression that are considered as valid international standards:<sup>9</sup>

• "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers<sup>10</sup>."

• "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<sup>11</sup>."

• In the same way, Article 19 (1) (a) of Indian Constitution states that, all citizens have the right to freedom of speech and expression. Freedom of Speech and expression means the right to express one's own convictions and

<sup>9</sup> By Sirish Tiwari and Gitanjali Ghosh, Available on, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2892537](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2892537), last accessed on, 31/05/2020

<sup>10</sup> UNIVERSAL DECLARATION OF HUMAN RIGHTS[Article 19] (UDHR), <https://www.un.org/en/universal-declaration-human-rights/>, last accessed on, 31/05/2020

<sup>11</sup> Article 19 (2), International Covenant on Civil and Political Rights, 1966 (ICCPR), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>, last accessed on, 31/05/2020



opinions freely by words of mouth, writing, printing, pictures or any other mode<sup>12</sup>.

In the case of, *Secretary, Ministry of Information and Broadcasting vs. Cricket Association*, The term 'freedom of speech and expression' includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used. Based on John Milton's arguments, freedom of speech is understood as a multi-faceted right including not only the right to express or disseminate information and ideas but also including the right to seek, receive and impart information and ideas<sup>13</sup>.

#### **FREEDOM OF SPEECH AND EXPRESSION AND SOCIAL MEDIA/INTERNET:**

The internet and social media has become an important tool for communication, through which individuals can exercise their right of freedom of speech and expression and exchange the information and ideas. In the past years, a growing movement of people around the world has been witnessed who are advocating for change, justice, equality and respect for human rights and in such situations the internet and social media has played an important role by connecting people for exchange of information and by creating a sense of solidarity.

Emphasising 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.<sup>14</sup> This report further stated that, the states should ensure the internet access is maintained at all the times (during the times of political events also). The states were also asked to adopt policies to make internet available, accessible and affordable to all in all times.

The UNHRC has also taken a step forward to give application to freedom of opinions, speech and expression through internet and social media and by mobile communication. Moreover the committee has taken necessary steps in order to give access to these new media to everyone. Thus, the freedom of speech and expression is the fundamental right under the Constitution of India and also in the other International documents and right to access of these media is also a fundamental human right.

#### **RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION:**

This freedom of speech and expression does not allow the citizens the right to speak or publish any information without responsibility, they are answerable to what they speak and publish, this right gives the immunity to speak and publish but also

<sup>12</sup> Constitution Of India, Article 19 (1) (a), <https://constitution.org/cons/india/p03019.html>, last accessed on, 31/05/2020

<sup>13</sup> "Freedom of Speech", In its landmark judgment, the Indian Supreme Court in the case of the Secretary, Ministry of Information and Broadcasting vs. Cricket Association, (AIR 1995 SC 1236) has also recognised the 'right to information' as part of the fundamental

right of speech and expression under Article 19 (1) (a) of the Indian Constitution.

<sup>14</sup> 15 Report of the Special Rapporteur on Key Trends and Challenges to the Right of All Individuals to Seek, Receive and Impart Information and Ideas of All Kinds through the Internet, 2011,, available on web URL,

<https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>, last accessed on, 31/05/2020





provides certain restrictions and punishment when this freedom is been abused.

**Article 19 (3) of ICCPR, imposes restrictions on the following grounds:<sup>15</sup>**

- a) For respect of the rights of reputations of others.
- b) For protection of national security, or public order, or public health or morals.

**Moreover, according to Article 19(2) of the Constitution of India, the legislature may enact laws to impose reasonable restrictions on the right to speech and expression on the following grounds<sup>16</sup>:**

- a) Sovereignty and integrity of India
- b) Security of the State
- c) Friendly relations with foreign States
- d) Public order Decency or morality
- e) Contempt of court
- f) Defamation
- g) Incitement to an offence

**CENSORING THE 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 watchdog, scrutinizing the powerful and exposing mismanagement and corruption<sup>17</sup>.

Internet has become the basis of modern civilization due to its limitless possibilities and widespread reach. In the past years, the governments across the world had tried to stop the wide spread of information, but now with the growth of internet and social media delivering information is the threat to government who is trying to regulate it.

Again looking towards the benefits of internet, it is open to misuse also, 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<sup>18</sup>.

China is the leader in Internet censorship. It has an elaborate mechanism in place to effect censorship known as Great Firewall of

<sup>15</sup> Article 19 (3) of ICCPR, Available on URL, <https://humanrights.gov.au/our-work/4-permissible-limitations-iccpr-right-freedom-expression>, Last accessed on, 31/05/2020

<sup>16</sup> Available on URL, <https://www.mapsofindia.com/government-of-india/constitution/>, last accessed on, 31/05/2020

<sup>17</sup> Bal Mukund Vyas (2008), "Sharing of Information with citizens" Also available on, HATE CRIME Pg. 20-24,

<https://www.scribd.com/document/405242860/cyber-law-docx>, last access on, 31/05/2020

<sup>18</sup> *Ibid*, at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2892537](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2892537), last accessed on, 31/05/2020



China and officially as Golden Shield Project. Blocking web- pages with objectionable content is the regular mode of internet censorship.<sup>19</sup>

Coming to India, according to the Freedom House's latest report '**Freedom on the Net, 2012**', India's overall Internet Freedom Status is "**Partly Free**". India has secured a score of 39 on a scale from 0 (most free) to 100 (least free), which places India 20 out of the 47 countries worldwide that were included in the report.<sup>20</sup> On 12 March 2012, Reporters without Borders published a report titled '**Internet Enemies Report, 2012**' on the basis of the growing control over the net by Government.<sup>21</sup> 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.<sup>22</sup> 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 the first half of 2012, Google received 1,811 requests to remove 18,070 pieces of information. During the same six-month period, the Indian government — both by way of court orders and by way of requests from police—

requested Google to disclose user information 2,319 times over 3,467 users/accounts.<sup>20</sup>

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 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.<sup>21</sup>

In the *Secretary, Ministry of Information and Broadcasting, Government of India and others vs. Cricket Association of Bengal and others*<sup>22</sup>, 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

<sup>19</sup> Microblogging, digital and social media [Cyber Law]

<sup>20</sup> *Ibid.*

<sup>21</sup> THE CENTRE FOR THE INTERNET AND SOCIETY, [cis-india.org/internet-governance/blog](http://cis-india.org/internet-governance/blog),

[www.giswatch.org/ar/taxonomy/term/61/feed](http://www.giswatch.org/ar/taxonomy/term/61/feed), last accessed on, 31/05/2020

<sup>22</sup> "Indian Government v Social Networking Sites", available on the Web, URL:

[http://barandbench.com/indian\\_government\\_v\\_social\\_networking\\_sites.html](http://barandbench.com/indian_government_v_social_networking_sites.html), last accessed on, 31/05/2020



State or any other individual, group or organization.”<sup>23</sup> In the view of above, it can be said that rather than censoring of social media, it should be regulated in such a way which maintains the rights of users and also protects the victims.

### **CYBER LAWS IN INDIA AND SOCIAL MEDIA:**

The easy availability of access to social media on the go has also triggered the phenomenon where people invariably post information on social media without understanding its ramifications. A number of times, people post content on various social media sites like Facebook, Twitter, Pinterest, etc. on the spur of the moment or on an impulse without thinking it through.<sup>24</sup> The law in India is crystal clear regarding your publications on social media. The Information Technology Act, 2000, categorically makes you liable should you post any incriminating or illegal content or material on social media. In fact, the law has gone even further and recognised you, providing content on social media, to be a content service provider and network service provider. Hence, the law recognizes social media users as network service providers and hence, intermediaries under the law.<sup>25</sup>

There are several provisions in the existing 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:<sup>26</sup>**

- 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 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.
- b) Section 69 of the Act grants power to the Central or a State Government to issue directions for interception or monitoring or decryption of any information through any computer resource in the interest of the sovereignty or integrity of India, defence of

<sup>23</sup> “CENSORING THE INTERNET”, available on, [www.casemine.com/judgement/in/5609addee4b...<<](http://www.casemine.com/judgement/in/5609addee4b...<<), last accessed on, 31/05/2020

<sup>24</sup> “Social media and misuse of cyber law in India”, Pavan Duggal, October 7 2015, Available on URL, [https://www.business-standard.com/article/opinion/social-media-misuse-and-indian-cyber-law-115100700139\\_1.html](https://www.business-standard.com/article/opinion/social-media-misuse-and-indian-cyber-law-115100700139_1.html), last accessed on, 01/06/2020

<sup>25</sup> *Ibid.*

<sup>26</sup> India passed the Information Technology Act 2000 in May 2000 in pursuance of the United Nations General

Assembly Resolution A/RES/51/162 of 30th January 1997. This Resolution adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law. The Information Technology Act, 2000 came into force on 17th October 2000 and it has been substantially amended through the Information Technology (Amendment) Act, 2008. It got the Presidential assent on 5th February 2009 and came into force on 27th October 2009.



India, security of the State, friendly relations with foreign States, public order, for preventing incitement to commission of any cognizable offence, for investigation of any offence.

- c) Section 69A grants power to the Central Government to issue directions to block public access of nay information through any computer resource on similar grounds.
- d) Section 69B grants power to the Central Government to issue directions to authorize any agency to monitor and collect traffic data or information through any computer resource for cyber security.
- e) 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 in the following cases-
- His function is limited to providing access to a communication system over which such information is transmitted, stored or hosted.
  - He does not initiate, select the receiver and select or modify the information contained in the transmission.
  - He observes due diligence and other guidelines prescribed by the Central Government while discharging his duties.
- Again, an intermediary shall be liable in the following cases:*
- He has conspired, abetted, aided or induced by threats, promise or otherwise in the commission of the unlawful act.
  - He fails to expeditiously remove or disable access to the material which is being used to commit the unlawful act, upon receiving

actual knowledge or on being notified by the Government.

- f) If any intermediary fails to assist, comply with direction and intentionally contravenes provisions under Sections 69, 69A and 69B respectively, he shall be liable to punishment.
- g) Section 43A provides that where a body corporate possessing, dealing or handling any sensitive personal data or information in a computer resource owned, controlled or operated by it, is negligent in implementing and maintaining reasonable security practices and procedures thereby causing wrongful loss or wrongful gain to any person, it shall be liable to pay damages by way of compensation to the affected person.
- h) Section 70B provides for an agency of the Government to be appointed by the Central Government called the Indian Computer Emergency Response Team, which shall serve as the national agency for performing functions relating to cyber security.

*The Central Government has also enacted rules to give effect to various provisions of this Act which are as follows:*

**The Information Technology (Procedure and Safeguards of Interception, Monitoring and Decryption of Information) Rules, 2009<sup>27</sup>**

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).

<sup>27</sup> Available on, <https://cis-india.org/internet-governance/resources/it-procedure-and-safeguards->

[for-interception-monitoring-and-decryption-of-information-rules-2009](https://cis-india.org/internet-governance/resources/it-procedure-and-safeguards-for-interception-monitoring-and-decryption-of-information-rules-2009), last accessed on, 01/06/2020





- Rule 3 provides that the interception or monitoring or decryption of information under Section 69 shall be carried out by an order issued by the competent authority.
- Rule 2(d) defines competent authority as the Secretary in the Minister of Home Affairs, in case of Central Government and the Secretary in charge of the Home Department, in case of a State Government or Union territory.
- Rule 4 provides for an agency of the Government authorized by the competent authority to carry out the functions.
- Rule 10 requires the name and designation of the officer of the authorized agency to whom such information should be disclosed.
- Rule 13 requires the intermediary to provide all facilities, co-operation and assistance for interception or monitoring or decryption of information.

**The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011<sup>28</sup>**

These rules are made by the Central Government in exercise of its powers under Section 87(2) (ob) read with Section 43A with regard 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 information can be shared with Government agencies, without obtaining prior consent, for the

purpose of verification of identity, or for prevention, detection, investigation including cyber incidents, prosecution, and punishment of offences.

**Section 66A of the Information Technology Act, 2000<sup>29</sup>**

Of all these provisions, Section 66A has been in news in recent times, albeit for all the wrong reasons. Before discussing the issue in detail, it is desirable to first have a look at Section 66A, the provision itself. 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. and states:

Any person who sends, by means of a computer resource or a communication device,—

- a) any information that is grossly offensive or has menacing character;
- b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently by making use of such computer resource or a communication device,
- c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages shall be punishable with imprisonment for a term which may extend to three years and with fine.

<sup>28</sup> Available on, <https://cyberblogindia.in/>, last accessed on, 01/06/2020

<sup>29</sup> [ndiacode.nic.in/.../123456789/1999/3/A2000-21.pdf](https://ndiacode.nic.in/.../123456789/1999/3/A2000-21.pdf)



d)

**Explanation:** For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, images, audio, video and any other electronic record, which may be transmitted with the message.

Indian cyber law requires intermediaries, including users of social media, to exercise due diligence while they discharge their obligations under the law. Of late, we are witnessing tremendous misuse of social media. The recent case of a man being lynched to death on mere rumours of his storing beef has caught national headlines. Investigations by the Police have revealed that the said incident has also lead to fuelling of social media activities. That is the reason Uttar Pradesh Chief Minister Akhilesh Yadav directed his administration to take stern action against those "creating disharmony and inciting hatred" by circulating "baseless" content on social media.<sup>30</sup> As such, the police have written to twitter to disable and remove pictures and content that might create communal disharmony. Twitter as an intermediary is duty bound under Indian cyber law to comply with these directions.<sup>31</sup>

In the case of, *Shreya Singhal V/s Union Of India*<sup>32</sup>

The Supreme Court has already held that the intermediaries are duty bound when they are called upon by any order of the government

to move or disable access to any information as well as provide relevant connected information pertaining to identity of the offenders. I believe this power is a very special power which has been conferred under the Information Technology Act, 2000, and needs to be more frequently used.

In the face of widespread abuse of Section 66A, a writ petition has been filed in the form of a public interest litigation in the Supreme Court challenging the section's constitutionality wherein it has been submitted that the phraseology of impugned Section is so wide and vague and incapable of being judged on objective standards, that it is susceptible to wanton abuse and hence falls foul of Article 14, 19 (1) (a) and Article 21 of the Constitution.

Admitting the writ petition, Division Bench of Supreme Court, comprising Chief Justice Altamas Kabir and Justice J. Chelameswar, noted that the "wording of Section 66A is not satisfactory. It is made very wide and can apply to all kinds of comments." To prevent the misuse of Section 66A, however, Ministry of Communications and Information Technology, Government of India has issued Advisory to State/UT Governments on implementation of Section 66A. They have been advised that with regard to the arrest of any person in connection with a complaint registered under Section 66A, the concerned police officer of a police station under the State's jurisdiction may arrest any person only with prior approval of such arrest from an officer not

<sup>30</sup> <https://timesofindia.indiatimes.com/india/Beef-killing-Under-attack-UP-CM-trains-guns-at-those-misusing-social-media/articleshow/49217838.cms>, last accessed on, 01/06/2020

<sup>31</sup> *Ibid.*

<sup>32</sup> This writ petition has been filed by Shreya Singhal of Delhi. The writ petition can be accessed online, URL:

<http://www.scribd.com/doc/115031416/Shreya-Singhal-v-Union-of-India>.



below the rank of the Inspector General of Police in the Metropolitan cities or an officer not below the rank of Deputy Commissioner of Police or Superintendent of police at the district level, as the case may be.<sup>33</sup>

### **CONCLUSION:**

It is evident that social media is a powerful means of exercising the freedom of speech and expression, but it is also been misused and used for illegal acts, social media entails the legal censorship but there is a fear that the censorship will affect the rights of people. 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.<sup>34</sup>

Keeping all this in mind the government should include the technical experts to look into all the possible facets and regulate laws in a manner which does not affect the rights of the citizen. The issue of social media misuse is constantly evolving. It will be interesting to see how jurisprudence on social media misuse in India evolves with passage of time.

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*