



THE ROLE OF SOCIAL MEDIA IN ENSURING THE SOLIDARITY OF THE NATION

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Abstract

Media plays an extremely important role in contributing to the solidarity of the nation. We often see that the media becomes more active during campaigns and elections to an extent that it seems like the media is favoring certain set of people or a group with a particular mentality. It is quiet strange that we either purposely or by design do not allow a political party to use our platform for electoral benefits? Were we fair to all political parties concerned in our newspapers and television coverage? Were we slanted? Are we partners in crime in the paid news business or did we try to put a check to this assault on democracy? Did we actually inform the readers so that when they go to vote they do so with an informed judgment? After all, that is our primary role. Anything other than that is a public relations exercise, and, we are not in the PR business. There are always two sides of the coin as on one hand media is responsible for connecting masses and on the other hand it can be used as a weapon to manipulate the statements to benefit a particular group. What we need to work on is to strike a balance between freedom of press, freedom of action, freedom of speech and expression to compliment human solidarity and not work against it.¹

Introduction

²The role of the media is to defend the Constitution and is to be regarded as its primary motive. What we can imbibe from the word Constitution is that it is the supreme law of the land and circumscribes the power of the three pillars of the democracy namely the legislative, executive and the judiciary.

The one pillar which is often neglected is the media which is informally the fourth pillar of democracy pillar of democracy; a sort of savior that draws its strength from Article 19 (1) (a) of the Constitution. The primary role of the media is to inform and educate the public on the functioning of the above three pillars which are also the foundation of democracy. The media is, therefore, called the fourth estate of democracy because it is supposed to check and balance the other three pillars. Hence, a free media is extremely important to democracy and for holding the above three foundational pillars accountable, mainly because they possess important roles in nation building.

As stated above, freedom of media and press draws its origin from Article 19 (1) (a) of the Constitution which gives to every citizen the right to freedom of speech and expression. This freedom however has no bounds to restrict its power. The words 'reasonable restrictions' are again subject to interpretation. Media self-regulates keeping in mind those restraints but often we it tailoring information according to those in power hence leaving their existence to be baseless.

Today we do not prefer to critique on the sensitive issues to either maintain our

¹<https://www.eastmojo.com/opinion/2019/03/12/the-role-of-media-in-defending-the-constitution>

²<http://docs.manupatra.in/newsline/articles/Upload/FD3AFD92-81D1-4602-B280-238551FE13A1.pdf>



positions or because of external threats to existence of a particular organization which leaves us with very little scope of critiquing and expressing our views on a particular sensitive issue in the form of a debate in the bulletin

The judiciary interprets the Constitution for us and judgments given by courts are published by the media for public information. Similarly, the executive which is the government, although elected to provide good governance and to maintain law and order, often fails in its primary duty. It is the media which has to constantly be the judge and boost the government for its acts of omission and commission..

Today, MPs and MLAs are accused of taking their salaries and their sitting fees without actually performing the tasks assigned to them and without bringing the concerns of the people before Parliament or state assemblies. It is the media which ultimately becomes the savior and does the work which should actually be done by elected parliamentarians and governments because only an informed audience can stand up for a cause and stand up to the government against the wrong and demand justice. People can then vote according to the performance and not the age old ideologies. Hence, the media helps in the functioning of democracy by aiding the voters to make a wise choice.

The media is constantly enlightens citizens of their rights and freedoms under the Constitution and urging them to claim those rights. The media also highlights whenever constitutional rights are violated by those who run the country. Some rights therefore can only be claimed when the public is an aware public

However, it would be unjust to avoid the fact that media is a transparent and independent entity that uses its powers to enhance or deepen democracy and to safeguard the freedoms of the public for their larger good. In a set up where the country is ruled by the people, the media is supposed to be free and independent. But several media houses are today have become propaganda machines.

This is disheartening because in a democracy where power is actually given to the people, the power of the media also flows from the people and should actually be used to give voice to that constituency which is powerless and voiceless. These categories of people are most in need of information so they can claim their rights and freedoms. That is where the media becomes the bridge between the public and those vested with power to dispense the public good.

Since the Constitution is a document given by the people of India to themselves, it is the duty of the people to respect it and safeguard its existence. People should respect the Constitution and make it work to their benefit. Alas! That public duty is largely absent. As custodians of the Constitution, the people of India cannot allow their rights and freedoms to be compromised by any authority however powerful. Here the media is constantly reminding people to remain alert until their freedoms are not eroded.

It is the role of the media to ensure that the three pillars of democracy do not interfere in each-other's domain into. These days we hear of words like "judicial overreach" where the judiciary is pushed to decide on matters that should be executed by government. This happens because of the inclination of the executive to evade its responsibilities.



An important role of the media as a guardian of the Constitution is to act as the informer through use of the Right to Information Act. Hence the media calls out whenever constitutional rights are violated by those who run the country. Today, unfortunately, media is passing through testing times. While one accepts that we are not free from error in our day-to-day reporting, the role of the public is to bring those to our notice through a process and not through slanging matches on social media.

The journalists and reporters must constantly do a reality check and ask ourselves whose side we are on? Are we giving voice to the oppressed sections of the society and polity? Are we voicing the concerns of the ones affected or are we camp followers of political parties? In fact, the question here is whether media in our country is really free and independent.

With the assault of social media there are many who feel they don't need the traditional media with its outdated news. They have a point, except that not everything on social media is verified. There are so many fake news portals which are like unguided missiles. To the unqualified mind, every piece of news appears like Gospel. Hence, we must have an agency to verify contents shared through social media.

Another issue is the climate of oppression under which media operates today. If media is expected to be the guardian of the Constitution, who will stand with the media when it is pounded by powers that seek to throttle our freedoms? For the most part, media persons fight lonely battles. However, that's a journey we have consciously chosen and all that we face on a daily basis come

with the territory. Like they say, "No issues about that because hopefully the Constitution will defend us!"

Review of literature

The research for the sake of understanding has been broadly divided under the various heads/chapters. Firstly, regulatory challenges of social media has been discussed and analyzed in the perspective of legal and regulatory measures. While doing so, the role and responsibilities of authorities concerned have also been discussed. Secondly, issues related to extra territorial jurisdiction in social media offences have been discussed. This part of thesis has covered the basic issues and principles of jurisdiction and attempts to make an analysis of viable international jurisdiction mechanism. Thirdly, a comparative analysis has been made with regulatory systems of UK and US in order to find out the functioning of mischief addressing machinery in these countries. Fourthly, a study has been done of global internet governance regime and its implications for social media. This part of the thesis has covered in its ambit the working of international bodies which are instrumental in handling the internet affairs. In the last, few case studies have been selected (particularly those which made headlines in Indian media) and it has been analyzed to put forth the deficiencies and inconsistencies in the rules and regulations governing social media behavior in India.



Regulatory Challenges before Social Media³

The greatest gift to mankind from the scientific community has been the invention of information technology and the associated communication technologies in the last decade of the 20th century. This technology is of utmost importance that it has been rightly termed as InfoTech revolution. These technologies have put entire human civilization on a fast forward mode by introducing unprecedented speed in information & communication via social media. Social media in particular has greatly impacted political dynamics on a global scale by enabling users to express themselves publicly in ways previously unavailable. This shift in power to communicate has spawned greater efforts to restrict and control the use of the internet for information and communication on political, moral, cultural, security and other dimensions. This effort of controlling the internet has led to legal and regulatory initiatives to mitigate risks, associated with this new medium, ranging from privacy of users, intellectual property, national security, to frauds, pornography and hacking. Regulatory challenges of social media can be broadly addressed under two heads namely:

Legal Regulation

Moral and Ethical Regulation in the form of guidelines by various statutory bodies formed under the constitution.

Problems posed by social media

The basic architecture of social media platforms provide unique opportunity of interaction to the common masses, which have resulted in great problems to the society. With its proliferation social media has generated a lot of complicated social and legal regulatory issues which are as follows:

➤ Pornography

Sexual depictions which constitute “pornography” or “obscenity” are regulatory concern by the government in both offline and online world. Social media in particular with its fast circulation of obscene and pornographic materials has made regulation more difficult. Various social media websites like YouTube, MySpace and Facebook are full of these materials, causing public authorities to work hard to stop this. The difficulty in regulation was well evident when Govt. of India filed a counter before the Supreme Court showing its inability to prevent pornographic and obscene materials on the internet and social media pages. It is however punishable under section 292 of IPC 1860.⁴

➤ Hate Speech

The subject of hate speech has gained significance with the increase in communal outrages mainly causing communal hate

³ https://go.forrester.com/blogs/13-07-31-five_common_legal_regulatory_challenges_with_social_media/

⁴ Kamlesh Vaswani v. Union of India [W.P.(C). No. 177 of 2013 (Supreme Court)], This writ petition was filed before the Supreme Court under Article 32 of the

Constitution of India challenging Sections 66, 67, 69, 71, 72, 75, 79, 80 and 85 of the Information Technology Act, 2000 as unconstitutional on the ground that they are inefficient in tackling the rampant availability of pornographic material in India.



campaigns over the social media websites. Hate speech can be understood as “...antisocial oratory that is intended to encourage persecution against people because of their race, color, religion, ethnic group, or nationality, and has a substantial likelihood of causing . . . harm”. It has several dimensions e.g. context/content/targets/tone and potential implications of speech.⁵

In India hate Speech does not find place under Article 19 (2) of the Constitution and therefore, does not constitute a specific exception to the freedom of speech and expression under Article 19 (1) (a). However, it is read under other specified exceptions under Article 19 (2) such as ‘sovereignty and integrity of India’, ‘security of the State’, ‘incitement to offence’, ‘defamation’ etc

Some provisions of hate speech are:

- ⁶The Indian Penal Code, 1860 contains provisions which prohibit hate propaganda. Section 153-A penalizes the promotion of class hatred. Section 295-A penalizes insults to religion and to religious beliefs. Section 505 makes it a penal offence to incite any class, or community against another.
- The Information Technology Act, 2000 contains several provisions which will apply to mitigate hate campaigns on internet. It includes Sec. 66-A (now unconstitutional), Sec. 69 etc.

➤ Identity Theft

Identity theft is another problem generated by social media. Since, social media websites generate revenue with targeted advertising, based on personal information; they encourage their users to provide maximum personal/professional information. With

limited regulatory oversight by government, industry standards or incentives to educate users on security, privacy and identity protection, they are exposed to identity theft.

Intellectual Property Issues

- Trademark infringement and dilution
- Copyright infringement
- Trade secret disclosure

Trade Mark Infringement and Dilution

Social media acts as a platform where users discuss, create content and interact with brands more than ever before. It often results into harmful information about goods/services which injure a brand mark’s strength/reputation/goodwill. A quick search for any major brand name on Facebook will often reveal hundreds of results, which typically include some official results (often labeled ‘official’) and many unofficial results. The prevalence of various contents/pages in the same name often attempts to tarnish the image of famous brands. There are very little measures to prevent an individual or entity from adopting a user name or sub-domain name that incorporates a third party’s registered trade mark. Taking remedial action can often be problematic for the trade mark owner, both from the sheer scale of the problem, to considering issues of adverse publicity that may make a bad situation worse⁷

Copyright Infringement

The Copyright Act, 1957(Act No. 14 of 1957) dictates the applicable rules & laws related to the subject of copyrights in India. The Copyright Act complies with most

⁵ Alexander Tsesis, ‘Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements’ (NYU Press 2002), 211

⁶ Provisions as per IPC 1860

⁷ Georgie Collins, ‘UK: Social Media – The IP Angle’ (Mondaq, 17 November 2010) <<http://www.mondaq.com/x/115844/Trademark/Social+Media+The+IP+Angle>> accessed on 14 Nov. 2013



*international conventions and treaties in the field of copyrights.*⁸

C. Trade Secret Disclosure

*Social media and trade-secret protection represents a new dimension – one with relatively little case law, but with substantial implications. A customer list is the most notable area in which social media can affect a company’s protection of its confidential information. Employers often motivate their employees to use LinkedIn or other social media sites to establish and strengthen relationships with actual and potential customers. But sometimes this relationship raises question regarding ownership of that social-media account when salespeople leave and go to a rival company? The sales personnel leave the company with a de facto customer list. It is likely that the names and contact information of some or all of a salesperson’s key client relationships will be fed on that social-media account*⁹

Modes of Regulation

The regulatory authorities exercises two methods in regulating internet and social media websites-

A. Content Regulation

B. Access Regulation

Content Regulation

Content regulation of the internet is a controversial issue of which both govt. and internet users are concerned about. Govt. takes initiatives to take down the objectionable content from social media websites when it finds the content against the laws of state. ISPs at the instance of govt. put filtering software on their servers to restrict the distribution of certain kinds of material over the Internet. Terminate TCP (Transmission Control Protocol) is the mechanism which detects certain number of controversial keywords.

Access Regulation

Access regulation is a broader term which connotes different notions of preventing access to internet. It may be partially allowed access or completely prohibited access. Access regulation is related to state directed implementation of national content filtering schemes and blocking technologies affecting internet access. State and ISPs uses various methods such as take down, result removal or technical blocking to give effect to state mandated filtering.

Types of access regulation:

□ **Internet Protocol (IP) address blocking:** *through this mechanism access to a certain IP address is denied. If the web site which has to be blocked is hosted in a shared hosting server, every website on the same server will be blocked. It affects IP-based protocols such as HTTP, FTP and POP. However this*

⁸ G.Sandoval, ‘Prince lashes out at You Tube, eBay and The Pirate Bay’, (CNET, 2007) <http://www.news.com/8301-10784_3-9778087-7.html> as cited in Alex Newson, Deryck Houghton et al, Blogging and Other Social Media, (Gower Publishing Limited 2009)

⁹ Michael Elkon, ‘Social Media And Trade Secrets’ (labor lawyers, 1 July, 2013) <<http://www.laborlawyers.com/social-media-and-trade-secrets>> accessed on 16 feb 2020



mechanism can be avoided by using proxies that have access to the target websites, but proxies can also be jammed or blocked.

□ **Network disconnection:** *A technically simpler method of access regulation is to completely cut off all routers, by turning off machines & pulling out cables. This method immediately disconnects all the machines from internet. It appears to have been the case on 27 January 2011 during the 2011 Egyptian protests, which has been illustratively described as an "unprecedented" internet block. Full blocks also occurred in Myanmar/Burma in 2007, 147 Libya in 2011, 148 and Syria during the Syrian civil war.*

□ **Portal censorship and search result removal:** *Search engines and major internet portals may exclude those web sites which they would normally include in their search results. This makes a site invisible to people who do not know where to report for any activity suspicious in nature.*

Recent Steps taken by the Central government to regulate social media intermediaries:

- 1. Interception and monitoring of Emails and social media content:** Under sec 69 of the IT act, the central gvt has authorized 10 central agencies to intercept, monitor and decrypt any information which is generated, transmitted, received and stored in any computer resource. Further, the gvt. is also aiming at intermediary regulation and sec-79 of the IT act, 2000 deals with intermediary liability regime in India.¹⁰
- 2. Linkage of Aadhar with social media platforms:** Recently no. of petitions have

been filed in various high court, these petitions are seeking to link aadhar no. with social media and this is being sought in order to facilitate the traceability of the fake news in social media platforms. Sec-79 of the IT Act deals with the intermediaries in India and the gvt. has proposed to amend this sec and these are termed as intermediary guidelines amendment rules.

Proposed Amendments & the issues linked with them:-

- a) It aims at monitoring of Content:** - The rules propose that online platforms must deploy appropriate technologies to proactively identify, remove or disable the access to unlawful content.
- b) The gvt aims to do this because the unlawful content threatens critical information infrastructure in India.** The critical information includes power sector, banking financial institutions and insurance, governance etc. However the issue with such monitoring of content is that the emerging technologies like artificial intelligence and machine learning is making it difficult for the authorities to monitor the content online. Further the proactive censorship of the content stands against the freedom of speech, guaranteed under article 19 of constitution. Also it is against the right to privacy under Article 21 of the Indian Constitution.
- 3. Traceability of the Content:** -The gvt is imposing responsibility and liability on the intermediaries and they will be enabling tracing out of originator/ source of unlawful

¹⁰ [https://www.thehindu.com/news/national/supreme-court-to-examine-whether-facebook-whatsapp-](https://www.thehindu.com/news/national/supreme-court-to-examine-whether-facebook-whatsapp-should-give-govt-access-to-private-chats/article29766900.ece)

[should-give-govt-access-to-private-chats/article29766900.ece](https://www.thehindu.com/news/national/supreme-court-to-examine-whether-facebook-whatsapp-should-give-govt-access-to-private-chats/article29766900.ece)



content on its platform. The issue with this is that if this rule is implemented it will break end to end encryption provided by these intermediaries which would lead to breaking of the privacy of the users on these social media platforms.

4. **Corporate office in India:** - The gvt has made it compulsory for intermediaries with over 50 lakh active users in India to have a permanent registered office and appoint a nodal person to coordinate with law enforcement agencies to ensure compliance. However the challenge is that in India where there are more than 350 million internet users, it will become difficult to assess who is an active user or not.
5. **Ensuring Compliance:** - The draft rules require that the company will have to inform their users at least once every month that in case of non-compliance, their accounts and content would be removed. Issue with this rule is that it shifts the onus or responsibility to ensure compliance to private parties, such as intermediaries from gvt.

Suggestions

The examination of legal and regulatory issues indicates that the challenges posed by the social media are unlikely to be solved merely by adapting and extending existing legal concepts. The new ways of communicating via the social media raised legal questions which are fundamentally different for one of the two reasons. Firstly, the concept of freedom of speech and expression in online era is entirely different in contrast to offline world. Secondly, the cyber world demands new set of rules to be governed. Both of these issues have been highlighted in the Shreya Singhal Case. It

can also be concluded that India's Information Technology Act, hurriedly amended in 2008 and updated with rules for Internet intermediaries in 2011, is ill suited to deal with ICT innovations such as social media and user-generated content, with negative consequences for intermediaries and users alike.

It has also been observed that hate speeches on social media platforms are the biggest problem for social unrest and it need to be addressed on priority basis. However, till date there are no effective mechanisms to deal with it neither at international level nor at national level. Though, few mechanisms are working very hard but in the absence of a proper institutional setup and funding, they are facing problems in implementing their policies. Keeping in mind above conclusions, following suggestions are being made-

- *there is a strong need to protect the freedom of expression online the consonance of International Human Rights regime.*
- *there is a need to enact a law covering the rights, duties & responsibilities of social media agencies/users/ISPs. This law should be drafted keeping in view the international scenario of the related laws. The law should also make harmony with the existing laws which are presently governing the various issues of social media in India.*
- *there is a need to have a designated body which is totally devoted to regulate the functioning of social media. Social media labs, which have been established in few Indian cities, can be a viable option to monitor the online activities.*
- *A legal, moral and ethical code should be devised for social media application developers and there should be a body for granting approval to properly devised social media applications.*



□ *The organizations such as International Network Against Cyber Hate (INACH) and Governments across the world should unite to work against cyber hate. The problem of cyber hate can only be tackled by private public partnership.*

In the matters of extra territorial jurisdiction, it can be concluded that the transnational character of social media behavior has resulted in mainly following things:

Firstly, the national law controls on dealings in information, such as information assets and personal data, become less meaningful and in particular hard (or impossible) to enforce. Secondly, the multiplicity of overlapping applicable law and jurisdictions can lead us to situations where an activity is subject to multiple and contradictory regulation, or to no regulation at all. In the last, the absence of an international treaty on jurisdiction is causing a serious harm to the otherwise potentially beneficial communication medium. Thirdly, in India the provisions under Criminal Procedure Code for investigation of a crime in foreign countries under Section 166 A & 166 B are not easy and are inconsistent with cyber crimes.

Because of the complex nature of cross border jurisdiction, this issue is being left open ended. Suggestions are being made to strengthen the existing mechanism till the time international community come at an understanding.

□ *To meet extra territorial challenges the global system of laws has to develop new legal concepts and devise techniques for eliminating cross-border conflicts.*

□ *Till the time the scholars may reach at some mutually accepted terms, they may formulate principles-like-Common Concerns of Freedom and Liberty Principle (CCFLP) - on the suggestive lines of CHM principle- so that a common agreement on the protection of basic freedoms and liberties may be argued for the coming times.*

□ *An international committee could be created with the sole purpose of implementing universal standards created by the Treaty designed to bring order to and create jurisdictional rules for the social media*

□ *There is necessity that India should sign Mutual Legal Assistance Treaties (MLTs) with more number of countries till necessary amendments are made in the Criminal Procedure Code.*

The developed system like U.K. & U.S.A. are providing/devising new mechanism to address the issue primarily at their territorial level, but there is a pressing need for immolating these legislative measures effectively at international level. It can also be concluded that ISPs liability for the content on their server is not protected well in many countries. Various countries have imposed liability on Internet Service Providers if they do not filter, remove or block content generated by users that is deemed illegal. Others have imposed notice-and-takedown policies that often lead to the removal of content from the Internet and which are "subject to abuse by both State and private actors."

The basic restructuring and reorganization of social media/internet governance need to be done as per following principles:



□ A common global commitment which may be incorporated in the form of a treaty/protocol or convention.

□ Effective legislative measures to be devised at domestic level to better support and enforce the global commitment.

□ Designing and developing the authorities/organization and other similar mechanism both at national and international level so that the watchdogs may be effective and vigilant for ensuring better global commitment for protecting common freedoms and liberties of mankind.

□ Devising the models for better international coordination among different authorities both nationally and internationally.

On the basis of the research it can be concluded that multi stakeholder approach of governing the internet is very effective. These bodies with the help of private organizations, civil society, governments and others have been able to achieve their respective goals. However, in the absence of any power to implement their policies these bodies are facing failures. The internet governance provides a fertile ground for the states to respond with positive national and international commitments to address the mischief which is increasing by leaps and bounds day by day.

The concept of net neutrality is essential for the survival of fair and competitive internet environment. Though practically, it is followed by every internet service provider but there have been many attempts to violate this principle in many countries including India. Simultaneously, the principle of 'right to be forgotten' is not guaranteed by social

media websites in many countries. This behavior of social media agencies is violating the privacy rights of users. In this regard following suggestions are being made-

□ There is a need for an international agreement that when international bodies involved in governance of internet arrive at certain conclusion after due consultation, it should be made compulsory for the participating nations to follow the conclusion.

□ Concept of net neutrality should receive an international legal recognition.

□ Principle of 'right to be forgotten' should also be implemented worldwide in order to protect the privacy of the users.

This is also clear that any attempt by the Government to filter online content before it is posted, will not only be against the principles of free speech but also impractical to implement. Pre-publication crackdown is difficult, even unwarranted and, instead, efforts should be made to strengthen the existing IT laws. That includes making majority of the cyber-crimes non-bailable and amending and tweaking the legislation to keep pace with emerging platforms and newer devices. The approach towards a comprehensive regulation of social media has to pave way to a more balanced realization that lets us look at the IT Act which is outdated. It was last amended in 2008. In the case of social media, the subjects need to be given a clear picture of examples of online defamation & other crimes. The issue is not to give the discretion to the service provider to determine whether or not something is an offence, but to let the government come up with illustrations. The



Indian Penal Code defines an offence along with illustrations. If those illustrations could be given, they'll be a guiding principle.

Comparative Study b/w social media regulatory mechanisms of UK & USA with India

On comparing the regulation of social media in India with United States, many differences arise. The ground realities of India vary from USA and UK in terms of implementing the laws, policies and rules relating to social media. Though, the legal systems of the both countries don't offer a dedicated law to regulate the social media but its still regulated in a better way than in India.

Starting with US, all electronic communications are regulated by the Federal Communication Commission which regulates interstate and international communications by radio, television, wire, satellite and cable whereas in UK, Regulation of Investigatory Powers Act, 2000 confers power of intelligence agencies to intercept any communication. However no such regulation is seen in India.

For protection of privacy of employees laws i.e. Stored Communications Act, 1986 & Social Networking Online Protection Act (SNOA) have been enacted in US, to prevent the employer from asking username, passwords of employee's social media accounts & making it unlawful for an employer to have unauthorized access to an employee's private social media accounts whereas in UK, Protection from Harassment Act, 1997 protects the victims of harassment. It protects all victims of the harassment whether stalking behavior, racial harassment, or anti-social behavior by neighbors or harassment over social media pages. The laws in this field in India are still silent.

The Computer Crime and Intellectual property Section (CCIPS) of US Dept of Justice is responsible for preventing, investigating & prosecuting computer crimes by working with other gvt.agencies, academic institutions & foreign counterparts whereas in India, Computer Emergency Response Team works only for crimes related to computer. For the IPR violation matter's it has no power.

Cyber Crime Unit (CCU) of every U.S. State Police engages personnel having expertise in detecting cyber crime which covers offences committed on social media as well whereas, in India Cyber Cells are limited to specific regions and their power and functions are more investigatory in nature. They don't have much prohibitory powers to control the social media mischief.

The Computer Fraud & Abuse Act, 1984 (CFAA) has been invoked for creation of fake user accounts on social network sites, email spam, email phishing, robotic data mining, and unauthorized hard-drive wiping whereas in India no such statute has been passed.

The Digital Millennium Copyright Act (DMCA) provides a mechanism that provides protection to online service providers such as Facebook, Youtube etc from monetary damages for infringing materials posted or stored by their users whereas in UK, The Malicious Communications Act 1988 (MCA) makes it illegal in England and Wales to "send or deliver letters or other articles for the purpose of causing distress or anxiety". It also applies to electronic communications.

In US, The Communications Decency Act, 1996 Act regulates the pornographic material on the internet. It regulates both indecency



and obscenity in cyberspace whereas in UK, The Communications Act 2003 makes it an offence to send a message that is grossly offensive or of an indecent, obscene or menacing character over a public electronic communications network. Also in In England and Wales, the main pieces of general obscenity legislation are the Obscene Publications Act 1959 and 1964, which make it an offence to publish an obscene article. However, in India, there's no such act.

From the above study, it appears to be clear that there is no single statute/authority for regulation of social media in UK and USA. The safe harbor provisions coupled with complete protection of free speech in USA has given ISPs a free hand to work independently and without any substantial interference from the government. However, in India, ISPs immunity provision is ill drafted.

For various reasons, the legal systems of these countries have not enacted a single statute to deal with social media regulation. Different sets of laws have been enacted for different kind of offences committed over social media pages in India, United States and United Kingdom. Almost all these laws provide for safe harbour provision to intermediaries like facebook, youtube etc. All of these legal systems are more favourable for 'regulation' rather than 'monitoring' of social media behavior.

Conclusions

These days, even the most distracted social media user is forced to spend a couple of clicks to set the privacy settings of his beloved platform. To comply with the impending GDPR rules, social networking websites are asking users to accept their new privacy policies. Probably,

many users will not completely disregard the emails and banners they receive. Maybe the most curious ones will even open the privacy policy of their platform. However, there is no doubt that even these diligent users will eventually accept the terms of service of their social networking website of course, they could eventually not consent to Facebook's facial recognition, but for the rest they will not have any choice. Take it or leave it. And leaving is not an easy choice, notwithstanding the new option of data portability offered by the GDPR. Indeed, leaving would essentially mean to be excluded from a world, from a significant part of our society, in which today people interact together.

Are a couple of clicks sufficient?

What all tech savvies are asked to do these days stimulates a series of reflections. Firstly, are a couple of clicks enough to accept the rules which affect a significant part of our life? The motive behind asking this question is that today social media represent another space, parallel to the physical one, where individuals perform numerous actions, from finding their job, to recognizing their faith, which form the basis of democracy. It is therefore seemingly evident that the way in which social networking websites are shaped and regulated influences the exercise of our fundamental rights. By distractedly consenting to the new terms of our social media platform, we are undoubtedly underestimating the impact of our choice. We click on 'accept' while we are on the bus, at work, watching the TV; there is no polling station that gives us the impression that we are making an important choice, but in reality we are molding a critical vote that will influence several aspects of our life.



Can we still trust social media companies? Impossibility is that we are essentially forced – unless we decide not to be ‘social’ – to accept a series of rules established by social media companies, which, seemingly, we do not trust any more. The scandal involving Facebook and Cambridge Analytica has been the tip of the iceberg. We have even seen Facebook’s CEO apologizing before the US Congress, and the European Parliament, still leaving crucial questions unanswered. Moreover, beyond the question of trust, why should users simply consent the rules authoritatively established by private companies? When users agree to use a social networking website, they also agree in regard to the rules set by the owners of these virtual precincts. However, analyzing the effect of social media on fundamental aspects of our life, one could object that this situation is not fair and that users should have a say on these rules or, at least, establish a series of basic rules that no platform should infringe.

A constitution for social media

The lawyers will immediately criticize you when suggesting such an idea. The constitution is a document which is firmly imposed to the nation state. The constitution is a document that strikes a balance between the powers of the state and that protects citizens against those powers. Social media are mere private companies, subject to the law of the state and apparently, their terms of service are simply contracts between private parties. Nonetheless, at first glimpse, the idea that social media companies are similar to states seems to work. These websites are platforms with their own domain; their own population, the users; and, of course, their own law, the terms of service. Why should they not have a separate set of rules to govern the activities in their domain?

Bills of rights of social media users

This is probably the idea that motivated the authors of a series of texts which interestingly define themselves as ‘bills of rights of social media users’. These documents do not have any binding legal value, and are merely the output of single individuals or non-governmental organizations.

Facebook’s terms of service

Interestingly, this strange combination of norms guiding social media and the constitutional province does not seem to be an isolated occurrence. From a brief look at the terms of service of the main social networking websites, it is immediately possible to perceive that Facebook’s show a peculiar configuration. Its terms are called ‘Statement of Rights and Responsibilities’ and refer to Facebook’s Principles, a separate set of rights and freedoms broadly addressing the ‘People’ and ‘Every Person’. In this case, one could questionably consider Facebook’s adoption of this ‘constitutional tone’ as a mere way of legitimizing the arbitrariness of social media’s governance or even a simple tool of marketing, rather than thinking that it could reflect a real constitutional function.

An alert sign for national constitutional law

Indeed, both the bills of rights of social media users and Facebook’s terms are in fact weakened by a series of significant shortcomings, if regarded as constitutional mechanisms. Basically, the bills are not enforceable, and Facebook’s terms are intrinsically biased and undemocratic. Nevertheless, the fact that these texts are evoking the constitutional dimension is indisputable. Especially with regard to the bills of rights of social media users, pointing at a mere marketing strategy could not explain the emergence of these texts. This



circumstance allows us to consider the further option that these documents are emerging to compensate a failure of the existing constitutional system. Why should one write a constitution for social media if we already have plenty of these texts at national level?

Towards a multilevel system

Indeed, it is evident that the phenomenon of social media overtakes national boundaries, constantly evolves and creates new threats for our fundamental rights. Is the existing constitutional law able to cope with that? Do we need a specific constitution for the global environment of social media? The answer, in line with jurists' tradition, is: it depends. In this case, it depends on the strength of existing constitutional law. If this law, which represents the pillar of our society, will be able, once again, to evolve, following the incessant development of technology, the answer is: no, we do not need a constitution for social media. However, there is no doubt that this time the route ahead for constitutional law is rising, and very fast. Therefore, in the meantime one cannot exclude an intermediary solution, a multilevel constitutional mechanism where innovative constitutional instruments flank existing constitutional law.


