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**Editor In Chief
Mr. Arun B. Godam**

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“Freedom of Speech and Expression and Social Media: A Socio-Legal Study”

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Introduction

Social Media has become a vital communications tool through which individuals can exercise their right of freedom of expression & exchange information & ideas. However, the freedom of speech and expression does not confer on the citizens the right to speak or publish without responsibility and the legislature may enact laws to impose restrictions on the right to speech and expression on the several grounds. Social media is open to misuse as well as several cybercrimes can be easily committed through social media. This gives the State a justification to regulate online content in the interests of the public at large, the necessity of which cannot be denied.

India is one of such paradises on earth where you can speak your heart to without the fear of someone gunning you down for that, or, it has been until now. Even if the situation of Indians is a lot better than that of their fellow citizens of other nations, the picture is not really soothing for Indians any more. This observation is being made with regard to the exercise of the right of freedom of speech and expression in the context of social media and the hurdles placed on that by the arbitrary use of the so called cyber laws of the nation, particularly section 66A of the Information Technology Act, 2000.

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

Meaning of Freedom of Speech and Expression and Social Media:

Freedom of Speech and Expression:

Freedom of speech and expression is broadly understood as the notion that every person has the natural right to freely express themselves through any media and frontier without outside interference, such as censorship and without fear of reprisal, such as threats and persecutions.

The term freedom of expression itself had existed since ancient times, dating back at least to the Greek Athenian since ancient times, dating back at least to the Greek Athenian era more than 2400 years ago. The following are some of the most commonly agreed upon definitions of freedom of expression that are considered as valid international standards:

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1. 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.

2. Everyone shall have the right to hold opinions without interference. 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.

Article 19(1)(a) of the Constitution of India also confers on the citizens of India the right to freedom of speech and expression means the right to express on convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode it also includes the right to propagate or publish the views of other people.

Social Media:

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

Social media can be defined as any web or mobile based platform that enables an individual or agency to communicate interactively and enables exchange of user generated content. Andreas Kaplan and Michael Heinelein define social media as a group of internet based applications that build on the ideological and technological foundations of web 2.0, and that allow that the creation and exchange of user-generated content. Web 2.0 refers to 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. The Organization for Economic Cooperation and Development (OECD) specifies three criteria for content to be classified as user generated-

1. It should be available on a publicly accessible website or on a social networking site that is available to a select group.
2. It entails a minimum amount of creative effort.
3. It is created outside of professional routines and practices.

Types of Social Media:

Social Media can be broadly divided into following categories-

1. Social networking:

Social networking is an online service that enables its users to create viral networks with likeminded people. It offers facilities such as chat, instant messaging, photo sharing, video sharing, updates etc.

2. Blogs:

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Blogs are descriptive content created and maintained by individual users and may contain text, photos and links to other websites.

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.

4. Vlogs and video sharing sites:

Vlogs are blogging sites that mainly use vide as the main forms of content supported by text. You Tube is the world's largest video sharing site.

5. Wikis:

Wiki is a collaborative Website that allows multiple users to create and update pages on particular or interlinked subjects. While a single page is referred to as 'wiki page', the entire related content on that topic is caused a 'wiki'.

6. Social Bookmarking:

These services allow one to save, organize and manage links to various websites and resources around the internet.

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.

8. Media Sharing:

These services allow one to upload and share photos or videos. Interaction is by sharing and commenting on user submissions.

Freedom of Speech and Expression and Social Media:

Everybody needs a platform where he needs to express him and which is the fundamental right of every citizen in India in which he has the right to express oneself. Today internet and social media has become important communication tool through which individuals can exercise their right to freedom of speech and expressions and exchange ideas and information with each other. However, freedom of speech and expression does not confer a right on the citizens the right to speak or publish anything and everything without responsibility it is not an unbraided license giving immunity for every possible use of language and prevents punishment for those who abuse this freedom.

The UN Human Rights Committee has also tried to give practical application to freedom of opinion and expression in the radically altered media landscape, the center stage of which is occupied by the internet and mobile communication describing new media as a global network to exchange ideas and opinions that does not necessarily rely on the traditional mass media the committee stated that the states should take all necessary steps to foster the

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independence of these new media and also ensure access to them. Moreover, A. 19 of the UDHR and A. 19(2) of the ICCPR also provides for freedom of speech and expression even in case of internet and social media.

Thus, it is seen that freedom of speech and expression is recognized as fundamental right in whatever medium it is exercised under the constitution of India and other international documents. In the light of the growing use of internet and social media as a medium of exercising this right, access to this medium has also been recognized as a fundamental human right.

The Freedom of Speech and Expression does not confer on the citizens the right to speak or publish without responsibility. It is not an unbraided license giving immunity for every possible use of language and prevents punishment for those who abuse this freedom.

As per A. 19(2) of the Constitution of India, the legislature may enact laws to impose restrictions on the right to speech and expression on the following grounds:

- a. Sovereignty and Integrity of India
- b. Friendly relations with foreign states
- c. Public order
- d. Decency or morality
- e. Contempt of court
- f. Defamation
- g. Incitement to an offence.

Laws Relating to Social Media:

1. Constitution of India under A. 19, it says about the freedom of speech and expression guaranteed to all citizen and state cannot curb them by making laws against them, but these freedoms are under the ambit of some reasonable restriction as mentioned in A. 16(2). So, any person can read, write, comment on any issue but these does not come under the reasonable restrictions which the state impose in internet of citizens and the country as well.

2. Information Technology Act- s. 66A of the IT Act is focused completely on the social media contents and regulates it. It prohibits the any offensive video, audio or text message or any recorded content to be transmitted. This also prohibits the information or any electronic mail which knows to be false but sent with the purpose of causing the annoyance, injury or insulting the others. This is done with the criminal intention and the spreading the hatred among the people. It may also mislead the person. But in 2015, the landmark judgment of *ShreyaSingal vs. Union of India* , the Supreme Court struck down the S. 66A of the IT Act and uphold the right to free speech in the recent times.

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3. Indian Penal Code- any person violative of the above laws should be dealt with the provisions of IPC. Like S. 295A: intentionally insulting religion or religious beliefs, S. 153A: promoting enmity between groups on ground of religion, race etc. S. 506: Criminal intimidation and S. 124A: Sedition etc, the main laws to protect the person from the social media abuse is section - 499 and S. 500. This states that any person to publish any defamatory statement whether oral or write with the intention to harm the character is punishable with these laws.

4. Indecent Representation of women (Prohibition) Act, 1998: the section 3 & 4 of these Acts protect the women from circulating the obscene materials. S. 292-93 of the IPC also gave punishment in obscenity (including the Pornography).

The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 are made by Central Government in exercise of its powers under Section 87(2)(ob) read with S. 43A with regard to the reasonable security practices and procedures and sensitive personal data or information under section 43A.

Role of Judiciary in the area of Freedom of Speech & Expression and Social Media:

A. 19(1)(a) includes the freedom of communication and the right to propagate or publish one's views. The communication of ideas may be through any medium, newspaper, magazine or movie including the electronic and audiovisual media. It is noteworthy here that through the judicial creative approach, a list of different rights has flown from the basic freedom of speech and expression.

Indian Express Newspaper vs. Union of India

It was held that freedom of the press has three elements:

1. Freedom to access to all sources of information.
2. Freedom of publication.
3. Freedom of circulation.

There is no denying that the reach of social media presents unprecedented opportunities for judges and lawyersto stay connected with the community they serve. But there are risks and challenges inherent in the use of social media by the judiciary which highlight issues of integrity and ethics Judges have to be extra vigilant and exercise selective restraint to perform the solemn duty in the 'Temple of Justice'.

LIC vs. Manubhai Shah

The Supreme Court reiterated that the freedom of speech and expression must be broadly construed to include the freedom to circulate one's views by word of mouth or in writing or through audio visual media. This includes the right to propagate one's views through the print or other media.

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RomeshThappar vs. State of Madras

The Supreme Court declaring that freedom of Press is as a part of freedom of speech and expression.

Maneka Gandhi vs. Union of India:

The Supreme Court considered whether A. 19(1)(a) of Indian Constitution was confined to Indian territory and held that the freedom of speech and expression is not confined to National boundaries. So electronic media also has right to expression beyond national boundaries under A. 19(1)(a) of Indian Constitution.

Secretary, Ministry of information and broadcasting, government of India and others vs. Cricket Association of Bengal & Others

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 & a range of opinions on all public issues. A successful democracy posits an aware citizenry. Diversity of opinions, views, ideas & ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This cannot be provided by a medium controlled by a monopoly-whether the monopoly is of the State or any other individual, group organization”.

Mattel Inc. & Others vs. JayantAgarwalla& Others

This case decided by the Delhi High Court on 17 September 2008 is a good example where copies of Facebook pages were used to decide a case on Trademark Infringement.

Conclusion:

Social Media is a very powerful source of expressing the feeling of agitation, happiness and various other human emotions but there should be control on everything and everything has to be done in a regulated manner, since the past few years there has been a constant increase in the ill utilization of the social media which has given the government to regulate social media where it can censor all the illegal acts.

On seeing the present scenario we can say that yes, social media has been a provider of a platform for people to express and present emotions like rage, grief, opinions and feelings. It not only has made citizens more woke and informed but has even helped in shaping the government according to the needs of the public. As there is bane so is been, social media has been blamed at points for forging identities, cyber bullying, intolerant opinions and even on moral grounds such as slut-shaming, fat-shaming. There are few provisions which guide the control of social media in terms of speech and expression but no formal legislation that contributes towards it. In conclusion, it is a gift if used as a means of expression, knowledge and presentation and may turn it way upside down if used otherwise.

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