

INDEX

VOLUME 4 ISSUE 1

S. No.	Name of Author	Name of Co-Author	Topic
1.	Munira Bharmal	-	Restitution of conjugal rights: an analytical study of its constitutionality
2.	Prachi Ajitsaria	-	Making constitutional democracy work in India
3.	Ssamrat Bandopadhyay	Abdur Rahman Mallick	Doctrine of 'res judicata': its ambit and scope of applicability
4.	Dr. Annapoorna Shet	-	Role of social media in protecting the freedom of speech and expression of the people: a critical analysis
5.	Aryan Rao	-	Judicial activism in environment pollution issues in India: whether it should be more frequently used based on its beneficial or detrimental value
6.	Alisha Behera	-	Cyber threats in outer space and infringement of benefit declaration
7.	Kahkashan Jabin	Shruti Kapoor	India's independent judiciary: a struggle of justice for judiciary
8.	Surya Prabhat Pali	-	Right to succession of cohabitants: a study
9.	Rachana Dhar	-	Female genital mutilation and women's right: a critical analysis
10.	Pragya Pushkar	-	Widow's right to property in contemporary Hindu law
11.	Rishav Das	-	Poverty and access of children to clean and safe water- an analysis
12.	Noor Nowaz	-	Freedom of press and its role in a democratic country



ROLE OF SOCIAL MEDIA IN PROTECTING THE FREEDOM OF SPEECH AND EXPRESSION OF THE PEOPLE: A CRITICAL ANALYSIS

Dr. Annapoorna Shet *

ABSTRACT

The concept of social media is of recent origin with unique features. No doubt the concept was practiced in ancient times in different ways with different names. The main aim of these social media is to extract information from the public as well as express their opinion to the public at large, through which the freedom of speech and expression mentioned under Universal Declaration of Human Rights which are further incorporated under Article 19(1)(a) of the Indian Constitution can be achieved. No doubt, the concept of social media has played a prominent role in exercising the right of an individual's freedom of speech and expression. But, at the same time it has undergone various problems like cybercrimes, hacking, spreading of fake news, etc and affected the country at large. It is the duty of every service provider to make sure that the platform of social media is used in a fair manner. Being a good citizen of India, it is the duty of every individual to make use of the facilities in a fair and right manner. The paper tries to reflect the role of social media in protecting the freedom of speech and expression enshrined under the Constitution of India. The paper critically analyzes the effect of social media in the present day.

Key Words: Social Media, freedom of speech, cyber crime, fundamental rights.

* BA Law LLB, L.L.M, K-SET, PhD. Assistant Professor in Law, S.D.M. Law College, Mangalore



INTRODUCTION

"Social media has certainly made fame and attention more democratic, though not always in a good way"

– Jonah Berger.²

Social Media is playing a key role by providing a platform for expressing the opinion of the people as well as dissemination of information to the public at large in the recent day. As it has already secured a place of fourth pillar of a State in a democratic set up, the other three being legislature, executive and the judiciary, it has a prominent role to play in a society.

The concept of freedom of speech and expression explained under Article 19(1)(a)³ of the Constitution of India protect the rights and provide freedom to the people to express their thoughts and opinions without affecting the societal interest or opposing the law. Social media acts as a bridge between people as well as the State in expressing their opinions in a free and fair manner. No doubt even after several advantages gained by the social media in exercising the right of freedom of speech and expression, still due to various reasons these social medias have spoilt the structure to a larger extent in the present day. Due to the interference of politics, bribery etc. the social media is trying to misuse the rights of the people as well as hamper the system. Hence proper yardstick must be provided in order to check the system and protect the freedom of speech and expression of every individual without disturbing the rights of others.

CONCEPT OF SOCIAL MEDIA

The concept of social media is not a new one. From time immemorial the essence of the concept is followed in various ways. In olden days there were certain messengers to pass messages from one place to another place. In the Indian Mythology, there are evidences which speak about the messengers like angel Gabriel etc. who transmitted the message from God to the people. Even there are certain evidences where the animals and birds were used to transmit the messages. With the advancement in technology, several changes were introduced into the social media. There was the introduction of the radio system, television, etc. through which the news and messages were passed and transmitted from one person to another at a large scale at a time. Even there was an opportunity provided to the people for expressing their opinion to the public at large with the help of these medias. People generally started using these social

² A Professor at the Wharton School of the university of Pennsylvania

³ All citizens shall have the right to freedom of speech and expression.



medias as a platform to express their views and opinions and hence tried to exercise their right of speech and expression to the fullest extent.

Social media generally refers to the websites and applications that are designed to enable people to share the content quickly, efficiently, and in real-time manner. Many people define social media as apps on their smart phone or tablet, but the truth is, such type of communication tools started with the advent of the computers and internet. This misconception stems from the fact that most social media users access their tools via apps.¹ Social medias like facebook, twitter, wats app, Instagram etc. are web-based sites that allow people to interact with each other.

There is no precise definition for the term social media. Majority of the users are of the opinion that the term social media is the combination of two terms "Social" and "Media" whereas the 'social' part refers to interacting with others by sharing and receiving information and the 'media' part refers to the instruments of communications like the internet, while TV, radio, and newspapers are examples of more traditional forms of media. These two separate terms can be defined together as "*Social media are web-based communication tools that enable people to interact with each other by both sharing and consuming information*".²

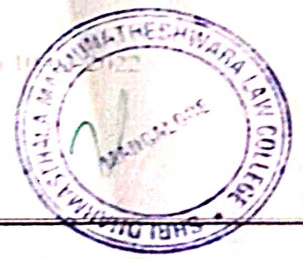
POPULAR SOCIAL MEDIA TOOLS AND PLATFORMS; ITS PROS AND CONS

There are several platforms which are used to spread and transmit messages and news from one person to another in a large scale. Some important of them are listed below.

- **Blogs:** A platform for casual dialogue and discussions on a specific topic or opinion. These blogs have played a major role today not only to express their opinions but even to certain productive purposes like gathering funds, meeting people, etc. But many a times these blogs are misused by several people for their undue advantage which affect the concerned victim to a great extent.
- **Facebook:** The world's largest social network, with more than 1.55 billion monthly active users³. Users create a personal profile, add other users as friends, and exchange messages, including status updates. Even the face book is used for connecting people and meeting their requirements like buying and selling of products, goods, etc. but there

¹ <https://www.thebalancesmb.com/what-is-social-media-289030/> visited on 10-03-2022

² <https://www.lifewire.com/what-is-social-media-explaining-the-big-trend-3486616> visited on 10-03-2022
As of the third quarter of 2015.



are several incidents where due to facebook usage various problems were faced by the people where few even lost their life. Most of the innocent people especially the teenagers will become a victim through wrong usage of facebook. Fake account creation is very easy in the face book app due to which many people use the app to commit certain heinous crimes or sometimes to defraud people. Promise of false marriage, creating enmity between the community by posting controversial messages as well as pictures are most common in the facebook. Still this app if used properly will be advantageous to many users.

- **Twitter:** A social networking micro-blogging platform that allows groups and individuals to stay connected through the exchange of short status messages. This is the platform where you can express your opinion with regard to certain policy decisions framed by the government and also give your opinion which will be spread throughout the globe. Most of the time these platforms help the government to deal with complicated situations well and at the same time it is considered as a platform for verbal war between individuals or groups of people, where many a times it will take a serious stage which will give rise to several complications in a State.
- **YouTube:** YouTube is a platform where people include each and everything they want to share in public. Video hosting and watching websites are of the main concerns where as several other activities are also shared in the YouTube channel through the YouTube app. The most interesting thing with regard to YouTube is with the spreading of the messages and news, it is also a source of income to many people using the app.

As a YouTube page can be created by any, there are a lot of chances where many fake news messages, information is spread through these apps within no time which is circulated throughout the globe. It is a most funny thing that, nowadays most of the people instead of going to hospitals and consulting doctors for their illness comply on YouTube and end up with too much stress due to the YouTube posts by the incompetent people.

- **Flickr:** It is an image and video hosting website and online community. Photos can be shared on Facebook and Twitter and other social networking sites, which will have its own impact on the society either in affirmative or negative accordingly.

¹Rachel Flimké, "How using social media affects teenagers", retrieved from <https://childmind.org/using-social-media-affects-teenagers> visited on 25-04-2022



- **Instagram:** A free photo and video sharing app that allows users to apply digital filters, frames and special effects to their photos and then share them on a variety of social networking sites. It is a sad truth that most of the Instagram posts are used for several wrongful activities which specially effect the young girls to a greater extent
- **Snapchat:** A mobile app that lets users send photos and videos to friends or to their "story." Snaps disappear after viewing or after 24 hours.
- **LinkedIn Groups:** A place where groups of professionals with similar areas of interest can share information and participate in a conversation.

The ultimate aim of all these forms of social media are the transmission of messages as well as it provides a platform to express their opinion on any topic they are interested. No doubt there are certain policies by the service provider where it imposes certain restrictions on the people in the matter of publication of the content which is considered controversial. But as these medias disseminate information in the lightening speed, by the time there is any action taken by the service providers, the controversial posts will turn viral in no point of time which will have adverse impact in the society.

The social media in the present day have become a part of a life of every individual. The phrase "the world has become a global village" is due to the advancement in the social media. The effect of social media is such that even after sitting in one corner of the world, the person can access the information about the whole world and obtain the news in a single click. The social media like face book, twitter, or any other networking system have made the system of seeking and providing information easier. Any important news or happening of an event can be captured live and sent to millions of people at a time without any delay. Recently when the world was seriously affected with pandemic, the social media played an important role and many could survive due to the use of social media. How the social medias were used in a pandemic clearly speaks about the importance of social media in the present days. May be for a medical emergency, or to convey any important message, or to live telecast the marriage ceremony, and the list go on. Even the people are free to express their opinion in a free and fair manner in the various means of social media available to them which can be viewed or accessed by number of people. So, expressing their opinion is very easy in the system of social media. It should not be forgotten that the same social media which played a vital role during the

<https://communications.tufts.edu/marketing-and-branding/social-media/overview> visited on 11/01/2021



pandemic, even under certain circumstances created huge disturbance in the minds of a people for providing and passing fake and false message which affected several people's lives. Care should be taken while dealing with the system of social media. No doubt, social media have played an important role in expressing the opinion of the people, to send information to the people at large and even gave way to exercise the right of freedom of speech and expression enshrined under Article 19(1) (a) of the Indian Constitution, but at the same time these social medias have created havoc under certain circumstances. There are certain fake information's that may be circulated in the social media which will affect the nation at large. Even there are certain anti national elements that use these social media as a platform to conduct anti national activities. There are chances of creating hatredness among the group of people within a country which may ultimately hamper the peace of the nation. The service providers are sometime bribed by the people to spread messages according to the needs and wish of certain people. These medias are the best platform for most of the cyber-crimes that takes place in the society. In order to avoid all these threats, the State has passed certain legislations to reduce the misuse of the social media to the large extent. Information Technology Act, 2008 has played an important role in the reduction of all types of cyber-crimes, including the crimes and problems arising out of the social media.

CONCEPT OF FREEDOM OF SPEECH AND EXPRESSION

The freedom of speech and expression is considered as a fundamental right which is enshrined in the Indian Constitution under Article 19(1) (a) which confers a right of freedom to the individuals to express their opinion without any fear. But the freedom given under the Constitution is not the absolute freedom and it is quite important to note that the rights should be enjoyed in such a manner that it should not hamper the rights of other individuals. Article 19 (2)⁹ of the Indian Constitution imposes certain reasonable restrictions on the freedom granted under Article 19 (1) of the Constitution. The freedom of speech and expression is most suited to the democratic country like India due to which the people can express their views and likings with regard to the administration of a State. In modern time it is mostly accepted that the right to freedom of speech is the essence of free society and it must be safeguarded at all

⁹ Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.



time. It is one of the most important fundamental liberties guaranteed against State suppression or regulation.¹⁰

Freedom of speech and expression has long been a hallmark of a healthy democracy and a free society. Freedom of speech is a principle that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction. The term "freedom of expression" is sometimes used synonymously but includes any act of seeking, receiving, and imparting information or ideas, regardless of the medium used.

Freedom of expression is recognized as a human right under Article 19 of the Universal Declaration of Human Rights (UDHR) and recognized in International Human Rights Law in the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the UDHR states that *"everyone shall have the right to hold opinions without interference" and "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) which guarantees the citizens the right to freedom of speech and expression is the right which is available only to every citizen of India and not available to any person who is not a citizen of India i.e. foreign nationals.¹¹ The freedom of speech and expression has been held to be basic and indivisible for a democratic polity. The freedom of speech and expression means the right to express one's conviction and opinions freely by words of mouth, writing, printing, pictures, photographs, cartoons or any other mode. It means freedom of speech and expression is to express one's convictions and opinions or ideas freely, through any communicable medium or visible representation, such as gesture, signs and the like.¹² It means to freely propagate, communicate or circulate one's opinion or views. In other words, freedom of speech and expression to lay what sentiments, a free citizen pleases, before the public. Freedom of speech is the bulwark of a democratic Government and it attaches great importance to this freedom, because without the freedom of speech appeal to reason, which is the basis of

¹⁰ Dheerendra Patanjali, "Freedom of Speech and Expression, India v America - A Study" Retrieved from http://www.indialawjournal.org/archives/volume3/issue_4/article_by_dheerajendra.html visited on 11-03-2022
¹¹ Hans Muller of Nuremberg v. Supdt. Presidency Jail Calcutta, AIR 1955 SC 367. Also see State v. Ambica Mills Ltd., AIR 1974 SC 1309.
¹² Lovell v. City of Griffin (1937) 303 U.S. 444. Also quoted by Supreme Court in Ramesh Chandra Madras, AIR 1950 SC 124.



democracy, cannot be achieved. Freedom of speech opens up channels of free discussions of issues and play a crucial role in public opinion on social, political and economic matters.¹¹

And these social media play a very important role in the exercising of the right of freedom of speech and expression of every individual and protect the fundamental right of every citizen.

FREEDOM OF SPEECH AND EXPRESSION IN THE CONTEXT OF SOCIAL MEDIA

Social media is playing a role in the exercise of freedom of speech and expression in the present day in various forms and dimensions. It is considered as the most effective media to modern and young generation compared to any other forms used in exercising the right of freedom of speech and expression. Even though in the early days, the work of social media was performed by television, radio, newspapers, still the impact of the present social media towards the people is something unimaginable because of its own unique features. No doubt in the right of exercising of the freedom of speech and expression, care should be taken as not to hamper the right of privacy of others which is adversely affected in the present day due to the intervention of social media. Social media in its present form came into existence in the recent years and more stringent laws are required to cope up with the upcoming situations and new challenges. With the rise of social media, new challenges are being faced, which the old and traditional laws are unable to curb the ill effect of the same. Hence the Parliament, from time to time has enacted certain legislation in order to curb the ill effects of any new system in a society. Information Technology Act, 2000 and Information Technology (Amendment) Act, 2008 play an important role in managing the activities of the social media. The provisions of the Information Technology Act are helpful in managing the social media platform which will reduce the misuse of social media platform to the maximum extent. The Act is amended from time to time due to the need of advanced provisions due to the advanced social media.

Section 66 A of the Information technology Act specially deals with the rules and regulations to deal with the social media which makes it a punishable offence for any person to send grossly offensive or menacing information using a computer resource or device which will in turn help in the regulation of the social media in a better way.

¹¹ Jelis Subhan, "Emerging Rights Under Article 19(1)(a) of the Constitution of India" Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2143117 visited 17-11-2017



Section 69 A deals with the powers to provide directions for blocking information by public access through any computer resources which clearly signifies the role played by the state in regulation of social media which in turn signifies that the right or the freedom given through social media is not an absolute right. The State has made several provisions to check the misuse of social media and even the judiciary from time to time has encountered the issue of misuse of social media in a free and fair manner.

It is quite important to note that social media has both advantages and disadvantages in the promotion of fundamental rights of freedom of speech and expression. If we take the example of children exposed to social media, it has created havoc in the life of a several kids which ultimately led to the death of several kids due to the evil impact of social media on them. It is true fact that the children are the easy victims of the negative impact of the use of social media. Through social media, it is possible to convey one's speech and expression to a large number of people at a time more easily, faster and in a cheaper way into the public domain. This is the only medium through which news and materials can be transmitted from one place to any part of the world within a second. Also in the modern digital world, social media is the most effective medium for expressing one's views to the world. On the other hand, sometimes fake and false news are also transmitted very easily which will again create imbalances in the functioning of a State. News once transmitted in social media will remain forever unless the same is removed and hence it is possible to exercise right of freedom of speech and expression for longer years as it remains in the public domain for longer time with lesser cost.

Since social media is mainly operated through internet which is also called the world wide web (www), any form of news can be transmitted from one country to another country and there is no territorial jurisdiction for the same. Conveying something in one country may be an offence in another country and hence the country in which the offence has been committed from a news transmitted from another country, it is difficult to have a check on the same. For example; a hate speech made against another country or a leader of another country from a different country through social media cannot be curtailed as the two countries differ in their laws and also as it has extra territorial jurisdiction. Also, since the procedures which have to undergo by the one who transmits any form of news through the social media, it is more likely that the freedom of speech and expression is misused by transmitting the same by using fake names and identity. For example; every now and then, the face book, twitter and other social media find lakhs of false and fake user id's being operated and most of them are been



removed after enquiry. Also, since social media is very easily accessible to almost everyone through android and smart phones, there are more chances that the antisocial elements and other people with evil intentions might easily spread any form of news materials freely in the social media. Even the more use of social media has given rise to filing of a greater number of defamatory suits in the courts alleging insult, slander, etc since publishing of defamatory statements in social media constitutes an offence.



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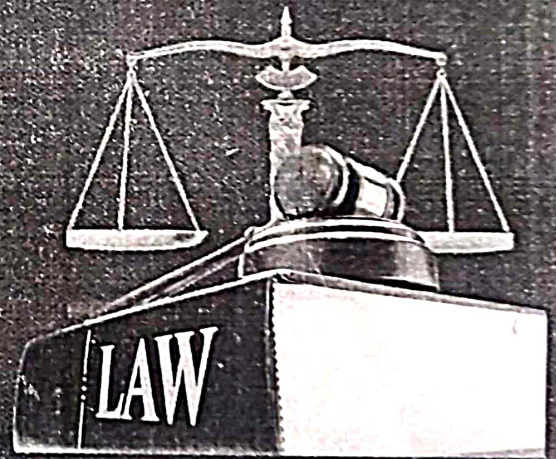
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Siliguri, P.O. Kalbari, Dist. Darjeeling - 734002 (West Bengal), India
Phone: (0353) 2960665, Fax: (0353) 2960668
iils.siliguri@gmail.com, iils.lawreview.8318@gmail.com
Website: www.iilsindia.com



292

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Siliguri, P.O. Salbari, Dist. Darjeeling – 734002 (West Bengal), India

Phone: (0353) 2960665, Fax: (0353) 2960668

iils.siliguri@gmail.com, iils.lawreview.5318@gmail.com

Website: www.iilsindia.com

