BALANCING SOCIAL MEDIA AND FREEDOM OF SPEECH AND RIGHT TO PRIVACY

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ABSTRACT

Despite the clear differences that can be seen between free speech and privacy rights, "social media platforms have proven to be a double-edged sword for constitutional rights", significantly impacting the balance between freedom of expression and the right to privacy. Nonetheless, the emergence of social media platforms has changed the way individuals communicate with one another and express their opinions and thoughts freely online. This paper examines the nuances of freedom of expression and privacy rights in the context of social media platforms, furthermore, the complexities arising from the correlation of "right to freedom and the right to privacy" in the lives of its daily users. These web-based technologies have a profound potential to "facilitate communication, improve the dissemination of information and help other news organizations to reach out to and interact with their audiences. Simultaneously, social media platforms can be a breeding ground for cyber bullying and harassment, which can have negative consequences for individuals and society at large". Freedom of expression and the right to privacy are constitutional rights, often seen and interpreted as intertwined. However, balancing these rights can be challenging particularly in situations where information of public interest and where public figures are involved. Issues such as digital surveillance, data gathering, and the risk of spread of misinformation can pose risks to both the human rights and can lead to significant implications for individual freedoms. This study seeks to examine the challenges of balancing both the constitutional rights, furthermore, the need to prevent and combat the consistent use of hate speech, spread of misinformation, and other harmful content while encouraging users to express themselves without a consistent fear of censorship. Furthermore, this paper dives into the implications of both the favourable and unfavourable aspects of social media in having a huge role in shaping our lives, freedom of expressions and privacy rights.

1. INTRODUCTION:

The Indian subcontinent is one of those places on earth where you can express your thoughts freely without being silenced, or at least it used to be. Although the circumstances for Indians are significantly better than those of citizens in many other countries, the situation is no longer as comforting or appealing for them. This assessment pertains "to the exercise of the right to freedom of speech and expression, especially in the realm of social media, and the obstacles posed by the arbitrary enforcement of so-called cyber laws, notably Section 66A of the Information Technology Act, 20001 ". In the technologically advanced world of today, "social media is essential in forming our lives and fundamental rights. As a result, it has a significant impact on our ability to express ourselves, obtain information, and engage with others in society, increasing our reliance on these platforms. Social media has become an essential part of everyday life, and its growth has drastically altered the way we communicate and share information, raising awareness of privacy and freedom of speech concerns. The growth of free and democratic societies in the digital age" depends on the interdependent rights of privacy and freedom of speech. "These rights are two sides of the same coin, and in order to enjoy one, the other must be enjoyed. The issue of striking a balance between privacy and freedom of expression" has been discussed extensively and is currently a significant topic of discussion in many different controversies. Although these platforms present enormous privacy challenges, they also present previously unheard-of chances for public discourse and self-expression. It is imperative to maintain a healthy digital environment by striking a balance between these two "fundamental rights. The effects of social media on privacy and freedom of speech are still a major worry as it develops and protects individual rights" in this age and time requires an understanding of this balance.[1]

AIMS OF RESEARCH:

1. To look into how social media platforms affect India's freedom of expression and privacy rights in two ways.

2. To examine the constitutional and legal frameworks pertaining to the rights to free speech and privacy, with a focus on recent Supreme Court decisions and Article 19(1)(a).

[1] Jack M. Balkin, Free Speech in the Algorithmic Society, 51 U.C. Davis L. Rev. 1149 (2018).

3. To assess how cyber laws, especially the Information Technology Act of 2000, regulate social media content and safeguard user privacy.

4. To identify the challenges imposed by data exploitation on digital platforms, surveillance, censorship, and content moderation.

5. To suggest a fair strategy for social media regulation that respects civil liberties.

RESEARCH METHODOLOGY:

A qualitative doctrinal research methodology is used in this study, which includes: This study uses a qualitative research method that focuses on examining laws, constitutional principles, and court decisions related to freedom of expression and the right to privacy in India. The main sources are the Constitution of India, especially Articles 19 and 21, the Information Technology Act of 2000, and significant rulings like Justice K.S. Puttaswamy (Retd.) v. Union of India and Shreya Singhal v. Union of India. The secondary sources include peer-reviewed journal articles, scholarly commentaries, legal essays, and online publications from reliable platforms like SSRN, ResearchGate, and legal databases from institutions. Additionally, the research includes a limited comparison by referring to international legal instruments, such as the International Covenant on Civil and Political Rights (ICCPR), and certain democratic regions to provide context on global standards. The emphasis is on legal reasoning and policy analysis to evaluate the influence of social media platforms on constitutional rights within the Indian legal system.

LITERATURE REVIEW:

The overlap of social media, privacy, and freedom of expression has drawn significant interest from academics and legal experts in recent years. Sobia Bashir notes that social media can empower individuals but also poses risks to personal privacy. This situation underscores the need for a balanced legal framework. In a similar vein, Greeshma Govindarajan and Nanditha Ravindar argue that while social media has made communication more democratic, it has also brought about challenges such as hate speech and online harassment. These problems make achieving true freedom of expression more difficult. Legal Service India provides a critical review of the repeal of Section 66A of the Information Technology Act. They view it as a significant step in the progress of digital speech rights in India and a reaction against

government overreach. The landmark ruling in Justice K.S. Puttaswamy v. Union of India further solidified the legal foundation for online privacy by acknowledging the right to privacy as a fundamental right under the Indian Constitution. The Cambridge Analytica scandal is often seen as a global wake-up call regarding the misuse of personal data, stressing the importance of strong regulations focused on privacy. Scholars have also highlighted the weaknesses in the intermediary liability provisions under Section 79 of the IT Act. They call for a complete legal framework specifically aimed at regulating social media in India.

2.1. CONCEPT AND HISTORY OF SOCIAL MEDIA:

Initially, social media has transformed from different places for various activities such as sharing information and communication, public utility and discourse. Evolving into various platforms where a huge portion of the world's population spend a huge portion of their lives on social media. For instance, Facebook, which was developed by Mark Zuckerberg has 2.04 billion daily users as of 2023. The emergence of social media and its rapid expansion over just a few years indicates a significant transformation in the ways humans communicate. Essentially, communication has historically been limited by time and space—such as face-to-face interactions, letter writing, and traditional media. However, the internet and the advent of social media platforms in the late 20th and early 21st centuries have radically altered how people connect, resulting in the immediate and extensive distribution of information that characterizes our current landscape. Founded in 2004, Facebook was pivotal in introducing social media in an unprecedented manner, enabling users to engage with friends and communities online. This innovation contributed to the vibrant social networking environment we experience today, as later platforms like Twitter, Instagram, and Snapchat, each introduced their own distinctive features and functionalities to meet a diverse range of user demands.[2]

2.2. OVERVIEW OF SOCIAL MEDIA CENCORSHIP:

Whenever censorship is enacted in any capacity, it raises questions about individual freedoms. In the present realm of social media platforms, especially relating to the freedom of free speech and expression, although the severity of this threat is open to interpretation. The act of censoring specific information signifies that the overseeing authority prefers the public to remain uninformed about that matter. Censorship typically arises when there are predictions

[2] Anupam Chander & Uyen P., Data Nationalism, 64 Emory L.J. 677 (2015).

of negative consequences or when negative effects have previously occurred due to the dissemination of similar information or content. Proponents of this type of censorship argue that the public's access to such information may jeopardize the cohesion or stability of the state, a specific community, or individual persons. Consequently, social media platforms either restrict their users from sharing content deemed unacceptable (as outlined in their Terms of Service) or governments regulate how social media can be utilized by their citizens. Nevertheless, this censorship becomes increasingly complex given that social media transcends international borders. “When social media serves as a venue for individuals to voice their opinions, a global audience is only a click away". Moreover, content that is permissible in the country of origin may be prohibited in other nations where regulations are more stringent.[3]

3.1. IMPORTANCE OF FREEDOM OF SPEECH AND RIGHT TO PRIVACY IN DEMOCRATIC COUNTRIES:

As outlined in various international human rights agreements, these rights are key components of democratic systems in most nations' constitutions. “The right to free speech encompasses the ability to share opinions, beliefs, and ideas without interference from the government or the threat of punishment, while privacy rights cover personal or confidential information”. Freedom of Expression is essential and necessary in any democracy. It empowers individuals to voice dissenting opinions, and hold their governments accountable to some extent. In contrast, privacy rights are vital as they preserve human dignity and autonomy, and contribute to fostering positive civic relationships.

3.2. RIGHT TO PRIVACY AS FUNDAMENTAL RIGHT:

Privacy, in its most basic definition, “refers to the condition of being protected from public involvement without one’s consent. The acknowledgment of privacy as a fundamental right has been a topic of debate within the Indian judiciary for years. In earlier” rulings such as M.P. Sharma vs Satish Chandra and Kharak Singh vs the State of U.P. , it was determined that the right to privacy does not qualify as a fundamental right guaranteed by the Constitution of India. In a landmark and “historic ruling, the case of Puttaswamy v. Union of India established the right to privacy as a fundamental right, which aligns with Article 14, 19, and 21 of the Constitution of India. This right is particularly embedded within the rights of life and personal

[3] K.S. Park, Digital Surveillance, Privacy and Social Media, 12 Indian J.L. & Tech. 1 (2016).

liberty. It was affirmed that this is an essential and non-negotiable right that safeguards all personal data of individuals against state scrutiny. Consequently, any action by anyone, including the government", that violates an individual's right to privacy is subjected to rigorous judicial review. Nevertheless, the Apex Court also reiterated that while the right to privacy is recognized as a fundamental right under Article 21, it is still subjected to reasonable limitations and restrictions. "For the enforcement of these restrictions, the state must meet a threefold criterion outlined by the Supreme Court".[4]

3.3. ARTICLE 19(1)(a) IN COHERENCE WITH SOCIAL MEDIA:

The "concept of freedom of speech and expression is fundamentally understood as the inherent right of every individual to express themselves openly through any medium and across any boundaries without external interference, such as censorship, and without the fear of retaliation, such as threats or persecution. Freedom of expression is a nuanced right. This complexity arises because it is not an absolute freedom and entails specific duties and responsibilities, therefore it may be subject to certain legal limitations". The phrase freedom of expression dates back over 2400 years to the era of ancient Athens in Greece. The following are some definitions of freedom of expression which align with recognized international standards: Firstly, "Everyone possesses the right to freedom of opinion and expression; this right encompasses the freedom to hold opinions without interference, as well as the right to seek, receive, and share information and ideas through any medium and across all borders." Secondly, "Everyone shall have the right to hold opinions without interference. Additionally, everyone is entitled to freedom of expression; this right encompasses the freedom to seek, receive, and impart information and ideas of all varieties, irrespective of frontiers, whether orally, in writing, in print, through art, or via any other medium of choice." In a similar vein, "Article 19 (1)(a) of the Constitution of India also grants citizens the right to "freedom of speech and expression". Thirdly, Limitations on Freedom of Speech and Expression: The right to freedom of speech and expression does not grant citizens the ability to speak or publish without accountability. It is not an unrestricted authorization that provides protection for every conceivable use of language and shields individuals" from repercussions for the misuse of this freedom. Article 19(3) of the ICCPR outlines restrictions based on the following criteria

[4] Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193 (1890).

1. To uphold the rights and reputations of others

2. To safeguard national security, public order, or public health and morals.

According to Article 19(2) of the Indian Constitution, the legislature can pass laws that place limitations on the right to speech and expression based on the following grounds:

(a) The sovereignty and integrity of India

(b) The security of the State

(c) The maintenance of amicable relations with foreign nations

(d) Public order

(e) Standards of decency or morality

(f) Contempt of court

(g) Defamation

(h) Incitement to criminal acts

The term "freedom of speech and expression" encompasses any act of seeking, receiving, and sharing information or ideas, regardless of the medium employed. Drawing from John Milton's arguments, freedom of speech is recognized as a multifaceted right that not only includes the right to express or disseminate information and ideas but also entails the right to seek, receive, and share information and ideas[5]

4.1. CORRELATION OF IT ACT, 2000 AND SOCIAL MEDIA:

Within Chapter XI of this Act, Sections 65, 66, 66A, 66C, 66D, 66E, 66F, 67, 67A, and 67B define penalties for computer-related offenses that can also be perpetrated via social media. These include tampering with the computer source code, committing offenses listed under Section 43, sending offensive communications, identity theft, impersonation through

[5] Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution*, Oxford University Press, 2nd ed. 2016.

computer resources, breaching privacy, engaging in cyber terrorism, and disseminating or transmitting obscene materials in electronic form, including sexually explicit content and material depicting children in sexually explicit acts. Section 69 of the Act empowers the Central or State Government to issue directives for the interception, monitoring, or decryption of information through any computer resource when it concerns the sovereignty or integrity of India, the defense of the nation, state security, friendly relations with other countries, public order, preventing incitement to commit any cognizable offense, or conducting investigations into any offense. Section 69A allows the Central Government to issue directives to restrict public access to any information through computer resources based on similar grounds. Section 69B grants the Central Government the authority to issue directives that authorize agencies to monitor and collect traffic data or information via any computer resource for the purposes of cybersecurity. Section 79 outlines the liability of intermediaries. An intermediary will not be held liable for any information, data, or communication links made available or hosted by them.[6]

4.2. ADVERSE IMPACT OF SOCIAL MEDIA PLATFORMS ON THE RIGHT TO FREEDOM OF SPEECH AND RIGHT TO PRIVACY:

While "social media has the potential to enhance democratic dialogue and amplify the voices of many who have been silenced, it also brings significant challenges to free expression. Currently, content moderation is at the forefront of some of the most pressing issues that social media platforms face" on a daily basis—becoming the main focus and the foundation for various new technologies aimed at filtering out the harmful content dominated by hate speech5. Moderation, "which involves overseeing and managing user-generated content, is essential for maintaining a safe and inclusive online space" where individuals do not fear retribution. However, the decisions regarding what to remove or restrict are inherently complex and made on an individual basis, causing censorship and the silencing of valid expressions. Furthermore, "the sheer volume and speed of online content moderation present procedural obstacles, complicating platforms' efforts to eliminate harmful content without infringing on free speech". Hate speech, characterized as hostility or violence directed at "individuals or groups based on attributes such as race, ethnicity, religion, or sexual orientation", represents the most challenging issues for social media platforms to address. Generally, it lacks protection under most legal systems, and pinpointing hate speech within the realm of online communication is

[6] <https://prsindia.org> (last visited Apr. 3, 2026).

no simple task, "which makes it exceptionally difficult to enforce policies that adhere to freedom of expression restrictions". Relevant case studies and examples concerning "freedom of speech and privacy rights highlight the pervasive influence of social media". Nonetheless, social media empowered underrepresented voices, provided avenues for grassroots activism, and amplified marginalized perspectives, bringing greater democracy to public discussions and challenging established power dynamics.

The digital realm has consistently facilitated internet engagement across various platforms such as online searches, shopping, consumer behavior, smartphone usage, social networking, and others, leading to the generation of vast data sets. The utilization of "technology has created a certain symbiotic relationship in this context. It enables us to access and share information for our benefit. At the same time, the data we generate holds significant value for organizations and corporations that oversee and regulate our online activities. Although this presents substantial opportunities and can improve societal outcomes, it also endangers our fundamental human rights. The surveillance and collection of large amounts of personal data and metadata, along with the use of advanced analytical tools to manage this information, carry profound implications for the right to privacy. In light of the potential dangers of surveillance, cyberattacks, data theft, unauthorized access to personal information, and international data transfers, the UN has emphasized that individuals' offline rights, including the right to privacy, must also be safeguarded in the digital realm. Nevertheless, the appeal of social media platforms like Facebook, Twitter, and Instagram remains undeniable. Social media represents a method of communication over the internet. Its primary purpose, when established, was to forge a virtual network of relationships across the globe. The main social networking platforms include Instagram, Facebook, WhatsApp, and others. Users of these platforms were generally unbothered until the 1990s", which marked the emergence of cybercrime. Interestingly, it is we who expose our personal data online. Whether intentionally or not, we share "a significant amount of our personal information. This occurs when signing up for services like Amazon Prime, Facebook, Instagram, etc. Among internet users, one-third claim to be unaware of the extent of their personal data available online". A wealth of cyber information circulating online has led to new legal challenges for which sufficient regulations are still in development. Moreover, the issue extends beyond merely refraining from saving passwords online or withholding personal information. Much more is exposed on the internet, including the individuals you connect with on social media, your shopping behaviors, and the websites you frequently visit. Failing to secure your personal data from online hackers can

result in substantial harm. This damage may include the theft of social security benefits, fraudulent compensation claims using your details, using your name for financial transactions, or creating fake identification documents, such as passports or PAN cards.[7]

5. CONCLUSION:

The impact of "social media platforms on privacy rights and free speech is a complicated and contentious topic that has sparked significant debate in recent years. On one side, social media provides a worldwide platform for individuals to express their thoughts and beliefs, thereby enhancing freedom of speech. On the other hand, it has led to unethical behaviors such as arbitrary censorship, deceptive information, and data exploitation that can infringe on privacy rights and restrict freedom of expression". Nevertheless, the interplay between social media, free expression, and privacy rights presents both advantages and drawbacks. It is clear that "social media serves as a powerful tool for individuals to express their freedom of speech and opinion. Nonetheless, it has also been increasingly exploited for unlawful activities, prompting the Government to pursue censorship of social media platforms. While the misuse of social media highlights the necessity for legal oversight, there are also valid concerns regarding the infringement on citizens' civil liberties that could arise from such censorship. What is therefore needed is the regulation of social media rather than outright censorship. However, India's current cyber laws are neither suitable nor sufficient in this regard. A review of the prevailing IT regulations" indicates that there exists a significant and unchecked authority with the Government in managing security within cyberspace. Yet, this is still inadequate to prevent the abuse of social media. Consequently, targeted legislation is necessary to control the use of social media effectively. With all this in consideration, it is proposed that the Government establish a committee comprising technical experts to explore all possible aspects of social media utilization and misuse, and to provide recommendations for its regulation in a way that does not compromise citizens' civil rights.[8]

[7] Neil M. Richards, The Dangers of Surveillance, 126 Harv. L. Rev. 1934 (2013).
[8] M.P. Jain, Indian Constitutional Law, LexisNexis, 8th ed. 2018.

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