
THE CONSTITUTIONAL IMPLICATIONS OF MEME CULTURE: FREEDOM OF EXPRESSION IN THE DIGITAL AGE

Riya Sinha, UPES (School of Law), Dehradun

ABSTRACT

Memes, which are frequently amusing pictures or videos with text added, have proliferated as a means of communication on the internet, influencing conversation and expressing sentiments in society. With the rise of meme culture in this tech-savvy age, a new era of communication has entered the picture, which in turn provides a brand-new perspective on the freedom of expression in the framework of the Constitution of India. Article 19(1)(a) of the Constitution of India secures the fundamental right to freedom of expression. This right is not absolute but is subject to certain restrictions and such restrictions comprise refraining from expressing in a way that is derogatory or harmful to India's integrity, sovereignty, relations with foreign states, decency, moral values, public order, etc.

The interaction between these provisions and the irrelevancy of the meme culture is something that needs to be deeply examined as memes have prominently been an instrument to convey not just entertaining satirical limericks but also a medium for people, in general, to indulge in hate speech, misinformation or shaming someone based on their colour, gender, sexual orientations, religion, etc, in the name of freedom of expression.

The Memeverse: Understanding the Meme Culture

Having anthropological knowledge about humour and linguistics, Mackenzie Finklea talks about how memes are the new digital artistic expression, be it a funny Simpson meme or a funny cat, memes are the new language. The concept of "meme," which was introduced by Richard Dawkins¹, a prominent evolutionary scientist, in 1976, establishes a comparison between the propagation of cultural ideas and the transmission of genetic features from one generation to another. Cultural conceptions, similar to genetic transmission, disseminate whether it is information on bicycle riding or the deliberate use of fire. The development of their construction necessitates a more profound comprehension of contemporary events, intricate design instruments, and dynamic online patterns. Remaining abreast of prevailing internet memes is vital, akin to engaging in the study of canonical literary works or consuming popular forms of entertainment. The underlying rationale for individuals' involvement with memes is rooted in their pursuit of affirmation, the establishment of communal bonds, and the aspiration to create a lasting impact. Nevertheless, the process of generating and disseminating memes is accompanied by an "online disinhibition effect," which can result in the production of content that is occasionally contentious or objectionable. Memes assume a crucial function in the establishment of virtual communities, serving as a means to mirror urban events, disseminate university-related information, and manifest cultural competitions. The influence of memes on intergenerational communication is emphasised by communities situated both within and beyond the realm of cyberculture. Although online memes are often regarded as humorous content, it is important to note that scepticism towards technological advancements, such as the internet, Facebook, and cell phones, has been observed throughout history. Memes, a contemporary cultural phenomenon, could perhaps acquire significance as a crucial competency in forthcoming interpersonal connections and professional arenas.

In the book, "Virus of the Mind"² by Richard Brodie, he discusses how memes of various types affect the mind of people and then their behaviour as well. We are greatly impacted by memes in terms of how we act within the meme culture. Memes that appeal to people's baser instincts are more likely to gain traction and propagate rapidly. As a result of this training, you frequently

¹ Garry Chick, *What's in a Meme? The Development of Memes as a Unit of Culture*, Academia (2016), https://www.academia.edu/30276791/Whats_in_a_Meme_The_Development_of_the_Meme_as_a_Unit_of_Culture (Last visited on Nov 15, 2023)

² Kim Hartman, *A Summary of the Book Virus of Mind: The New Science of the Meme by Richard Brodie*, Kimhartman.se (2013), <https://www.kimhartman.se/wp-content/uploads/2013/09/Virus-of-the-mindsummary.pdf> (Last visited on Nov 15, 2023)

act in ways that go against your instincts. In essence, these memes mold you. Infecting our thoughts and lives through their programming, most of these significant memes are adopted without a purposeful aim. The religious or atheistic views inculcated during childhood, the relationship dynamics modelled by parents, and the impact of media such as television shows and ads are all parts of this programming.

Types of Memes³ - Distinction meme

One type of meme known as the Distinctions meme influences how we see the world. They are essentially made by humans and are not fundamentally true. These distinction memes can be used to look up frontiers, reframe cultural divisions and perceptions, and stir up debate or anger by pushing against conventional classifications to undermine established norms and cause disagreement. A well-known instance of a meme that manipulates classifications and differences is the "NPC meme." A term adopted from the world of video games; "NPC" denotes characters that are controlled by the game itself rather than by human players. The NPC meme, which likens real-life people to mindless, programmed avatars in video games, first appeared on the internet and quickly gained traction, particularly among certain political groups. The main idea was that some people don't think for themselves and just repeat predetermined answers or opinions without giving them any thought. What began as a light-hearted remark swiftly became a meme that people exploited to delegitimize or denigrate other people's thoughts and beliefs by calling them "NPCs." The idea behind this meme was to highlight the difference between people who think for themselves and others who supposedly mindlessly follow the herd or opposite opinions. The usage of NPC memes sparked controversy since they dehumanised people, simplified complicated ideas or political viewpoints, and contributed to divisiveness by treating people like robots. It brought attention to how certain online communities utilise distinction memes to make divisions that could be hurtful or polarising.

Strategy Meme

In the world of meme culture, there's another kind of meme called a "strategy." These are like general principles that can be applied in certain contexts to achieve specific goals. Memes about strategies are based on approximations, which imply that certain actions have particular

³ Kim Hartman, *A Summary of the Book Virus of Mind: The New Science of the Meme* by Richard Broodie, Kimhartman.se (2013), <https://www.kimhartman.se/wp-content/uploads/2013/09/Virus-of-the-mindsummary.pdf> (Last visited on Nov 15, 2023)

outcomes. A strategic meme subtly convinces its target that a certain course of action is likely to produce a predetermined result. This action might trigger a chain reaction that spreads the strategy meme to the thoughts of another person. One illustrative instance of a meme strategically utilising elements in a potentially offensive manner can be observed in the "gaslighting" meme. Gaslighting, a psychological manipulation tactic characterised by the deliberate attempt to sow seeds of doubt within an individual's psyche, thereby causing them to question their reality or perceptions, has gained significant traction as a meme within diverse spheres, encompassing political discourse and interpersonal dynamics. In the realm of politics, it is not uncommon for individuals or collectives to strategically employ the gaslighting meme as a means to undermine adversaries or detractors, thereby casting doubt on their credibility through allegations of gaslighting. Through the strategic portrayal of their adversaries' actions or assertions as endeavours to manipulate or deceive, this tactic is employed to undermine the legitimacy of their perspectives or impugn their trustworthiness. Notwithstanding the potential for subjective interpretation, the utilisation of the gaslighting meme in such a manner may give rise to offence and inflict harm upon individuals.

Association Meme⁴

One last type of meme is the "association." These are the memes that, in your mind, connect to other memes. The purpose of these associations is to link memes so that when you encounter one, it activates another. What they are is links between memes. When we're impacted by an association meme, we experience feelings or thoughts connected to another object whenever we come into contact with one. This may cause someone to alter their behaviour, which could result in the meme being transmitted to another person's mind. "Pepe the Frog" is a meme that exemplifies the harmful use of association memes. Pepe, made by Matt Furie, started as an innocent cartoon character but quickly became a viral online sensation. But some people took it and used it to promote their own radical or insulting ideas. Pepe the Frog went from being a harmless meme to being associated with racist, extremist, and hateful messages and symbols. People who held extreme ideologies associated the character Pepe with their beliefs when they utilised modified versions of Pepe alongside hateful and insulting remarks. Because of its affiliation with hate speech and other inappropriate content, Pepe went from being a harmless

⁴ Kim Hartman, *A Summary of the Book Virus of Mind: The New Science of the Meme* by Richard Broodie, Kimhartman.se (2013), <https://www.kimhartman.se/wp-content/uploads/2013/09/Virus-of-the-mindsummary.pdf> (Last visited on Nov 15, 2023)

meme to a symbol for the spread of hate speech and ideology, diluting its original purpose and prompting some groups to label it as a hate symbol. The character's reputation took a hit due to this associated meme, which also showed how inappropriate or divisive themes may be conveyed by appropriating memes. This serves as a poignant reminder of the immense power and responsibility that meme makers and users have when it comes to moulding the story and consequences of memes in cyberspace.

Impact of Memes on Society and Politics

Within the domain of mass communication, the theory of the public sphere has frequently been construed as positing that media can mould or establish a domain for public deliberation through the act of questioning authority, providing information to individuals, and cultivating rational exchanges. Nevertheless, Habermas⁵ ascribed the deterioration of this public sphere to a certain extent to the advent of contemporary audio-visual mass media, which resulted in a shift of emphasis from rational discourse to cultural consumption. Discussions on the relevance of the public sphere in mediated communication have been rekindled due to societal and media dynamics, such as the convergence of state and society and the advent of the internet. The emergence of the internet has generated a resurgence of attention towards the public sphere, as it provides novel opportunities for citizen participation that extend beyond conventional mass media platforms. According to Papacharissi's observations in 2002, the internet presented new avenues for communication and expanded areas for interaction. However, it did not fully embody a true virtual public sphere due to the absence of a platform that facilitated reasoned debate. Contemporary academic endeavours have deviated from strict adherence to Habermas' standards for rational discourse, and have instead turned their attention towards comprehending public dialogues influenced by the prevalent media of our time, as well as their intricate interplay with politics and democracy.

In the Indian context, memes have emerged as powerful components within the realm of mediated public discourse. The influence of memes on societal narratives has been significant, owing to their viral characteristics and their circulation on many social media platforms. Memes play a significant role in fostering awareness and garnering support for the “#MeToo

⁵ Heidi E. Huntington, *The Affect and Effect of Internet Memes: Assessing Perceptions and Influence of Online User Generated Political Discourse as Media*, Colorado State University (2017) <https://api.mountainscholar.org/server/api/core/bitstreams/a480a659-f8c7-4f43-a399-c2a97f4497d4/content> (Last visited on Nov 15, 2023)

Movement” within the context of India. The dissemination of memes on social media platforms served to amplify the perspectives of survivors, critique individuals responsible for misconduct, and stimulate dialogues surrounding issues of harassment and abuse. In doing so, these memes effectively challenged prevailing societal norms and preconceptions. Memes frequently serve as a medium for the reflection and critique of prevailing cultural norms and prejudices. Memes on societal expectations, gender roles, regional biases, and social injustices provide a platform for articulating opposition and fostering dialogues surrounding delicate subjects.

The phenomenon of political entertainment⁶ in India possesses the capacity to shape individuals' perceptions of politics. The construction of mental models, which are cognitive representations of humans' understanding of the functioning of specific phenomena, is subject to the effect of the information they are exposed to. The mental models mentioned bear a resemblance to cognitive schemas or cognitive shortcuts employed in the cognitive processing of information. Existing research indicates that media content, encompassing memes, exerts influence in the formation of mental frameworks about political events, prominent individuals, and engagement in political activities. For example, the utilisation of memes that portray political characters or provide commentary on contemporary political matters has the potential to influence individuals' cognitive frameworks of these particular subjects. Therefore, memes can influence political viewpoints or behaviours by shaping individuals' cognitive frameworks of Indian politics. One such meme is the "Pappu" meme, which specifically targets Rahul Gandhi, a key figure within the Indian National Congress party. The word "Pappu" was employed in a derogatory fashion to insult Gandhi's perceived deficiency of political acumen and leadership capabilities. This meme has garnered substantial attention and has emerged as a prominent phrase employed in political deliberations, exerting an impact on public opinion and conversation about Rahul Gandhi and the Indian National Congress. This illustration exemplifies the influence of memes on popular perception and discourse on political personalities in India, owing to their comical or critical attributes. Another noteworthy meme within the realm of Indian political discourse is the "Chowkidar Chor Hai"⁷ (The Watchman is a Thief) meme, which surfaced during the political campaigns leading up to the 2019 general

⁶ Heidi E. Huntington, *The Affect and Effect of Internet Memes: Assessing Perceptions and Influence of Online User Generated Political Discourse as Media*, Colorado State University (2017)
<https://api.mountainscholar.org/server/api/core/bitstreams/a480a659-f8c7-4f43-a399-c2a97f4497d4/content>
(Last visited on Nov 15, 2023)

⁷ Scroll Staff, *BJP Leaders prefix their Twitter Handles with "Chowkidar"*, Scrollin (2019),
<https://scroll.in/article/917052/bjp-leaders-prefix-their-twitter-handles-with-the-word-chowkidar-users-areamused> (Last visited Nov 16, 2023)

elections. The meme in question was specifically directed towards Prime Minister Narendra Modi and the governing Bharatiya Janata Party (BJP). The meme emerged as a reaction to the "Main Bhi Chowkidar" (I too am a watchman) campaign launched by Narendra Modi and other members of the Bharatiya Janata Party (BJP), in which they portrayed themselves as protectors of the nation's welfare. Nevertheless, the phrase "Chowkidar Chor Hai" was adopted by opposition parties and opponents as a means to assert allegations of corruption and misconduct within the government, specifically implicating Modi in acts of corruption. This internet phenomenon garnered substantial traction on many social media platforms and within the context of political rallies, hence fuelling fervent deliberations and dialogues on the notions of political probity and moral principles. The expression "Chowkidar Chor Hai" emerged as a mobilising slogan among those who were critical of the Bhartiya Janata Party (BJP), exerting influence on public opinions and shaping political discourses throughout the electoral period.

Interplay between Article 19 of the Constitution of India and Memes

Article 19(1)(a) endorses all citizens' right to free speech and expression, embracing all means of communication such as words, writings, images, and activities such as sports participation or flying the national flag. It involves the freedom not to speak and access information, as evidenced by the acknowledgment of the Right to Information (RTI) as a basic right. The Supreme Court considers freedom of expression to be an essential component of the right to life (Article 21), emphasising the interdependence of the two rights. State acts or inactions that restrict this freedom breach fundamental rights, emphasising the need to preserve this right for all citizen classes. Furthermore, this right encompasses communication, printing, and advertising, as well as commercial and artistic expression.⁸

In the Indian jurisdiction, it has been observed that the constitutional guarantee of freedom of speech and expression, enshrined in Article 19(1)(a), has occasionally been subject to potential misuse through the medium of memes. Memes, although frequently employed as vehicles for humour, cultural analysis, or political caricature, have at times been employed to disseminate false information, promote hate speech, and propagate derogatory material. Certain instances pertain to the production and dissemination of memes that propagate inaccurate information, manipulate visual content or statements, and provoke animosity or discord within diverse

⁸ *Freedom of Speech- Article 19(1)(a)*, Byjus (2019), <https://byjus.com/free-ias-prep/freedom-of-speech/> (Last visited on Nov 16, 2023)

communities. The dissemination of these potentially deceptive or incendiary memes, when widely propagated across social media platforms, has the potential to foster an environment characterised by the dissemination of false information and the exacerbation of societal divisions. Consequently, such actions may be seen as an infringement upon the boundaries of the right to freedom of expression. Moreover, it is imperative to acknowledge that there have been occurrences wherein memes have surpassed the boundaries of amusement or parody, thereby singling out particular individuals or collectives, leading to the pernicious acts of cyberbullying, harassment, or the dissemination of defamatory material. The aforementioned conduct not only encroaches upon an individual's entitlement to dignity but also misappropriates the constitutionally protected freedom of expression as enshrined in Article 19(1)(a), through the dissemination of harmful or deceitful narratives. Memes, as a form of artistic expression and means of communication, can be subject to misuse when employed to distribute content that is harmful or misleading, thus making it imperative to uphold ethical standards and foster respectful dialogue within the digital realm.

In a fascinating trend, memes are gaining traction in India as a powerful tool for social commentary, effectively capturing the nation's distinctive cultural, social, and political landscape. In a world where social problems often go unnoticed and dominant narratives remain unchallenged, memes have emerged as a powerful tool for shedding light on these issues. With their unique blend of humour and satire, memes can captivate audiences and provoke thought, ultimately catalysing social change. By cleverly subverting established beliefs and questioning prevailing narratives, memes have become a formidable force in the realm of social commentary. In India, memes, like any other form of social commentary, have the potential to perpetuate harmful attitudes and reinforce stereotypes. Certain memes, it has been observed, heavily depend on offensive or derogatory humour, thus potentially causing harm and perpetuating negative attitudes toward specific groups. In today's digital age, the significance of memes cannot be underestimated. Individuals must remain cognizant of the potential ramifications that these seemingly harmless images can have. Responsible usage of memes necessitates a comprehensive comprehension of the context in which they are employed, as well as an awareness of the potential consequences that may arise.

Reasonable Restrictions⁹: Balancing the World of Memes-

According to the Indian Constitution, Article 19(1)(a) ensures the fundamental right to freedom of speech and expression, while simultaneously allowing for the imposition of reasonable restrictions given under Article 19(2) to safeguard the interests delineated within Article 19 itself. The aforementioned restrictions are as follows:

1. **Integrity and Sovereignty of India-** Restrictions may be judiciously imposed to safeguard the sacrosanct principles of sovereignty and integrity, thereby fortifying the impregnable bastions of India's national security and fostering an indomitable sense of unity.
2. **State's Security-** The preservation of the state's security necessitates the implementation of strategic restrictions aimed at fortifying its defences, neutralising the threat of terrorism, and upholding societal harmony.
3. **Relations with Foreign States-** Implementing restrictions to uphold amicable relations with foreign states and avert any actions that may jeopardise the delicate fabric of diplomatic ties.
4. **Maintenance of Public order-** It is imperative to implement restrictions aimed at preserving the harmonious functioning of society, mitigating the risk of incitement to unlawful activities, and curtailing any actions that have the potential to disrupt the overall tranquillity and stability of the community.
5. **Morality or Decency-** Certain restrictions can be implemented to uphold principles of propriety, and ethics, and curtail the dissemination of lewd or objectionable material.
6. **Contempt of Court-** To safeguard the integrity and supremacy of the judiciary, it becomes imperative to adopt restrictions aimed at averting instances of contempt of court.

⁹ Disha Mohanty, *Article 19(2) and 'Public Order'*, vidhilegalpolicy.in (2023), <https://vidhilegalpolicy.in/blog/article-192-and-publicorder/#:~:text='Reasonable%20restrictions'%20as%20outlined%20in,or%20incitement%20to%20an%20offence>. (Last visited on Nov 16, 2023)

7. **Defamation-** Restrictions may be instituted to proactively curtail instances of defamation or slander directed towards individuals, thereby safeguarding their esteemed reputation and cherished privacy.
8. **Offence Incitement-** It is important to enforce restrictions aimed at pre-emptively curbing any form of verbal or behavioural expression that has the potential to instigate an offence or disrupt the established legal and societal order.
9. **Maintaining good relations with Tribes-** The establishment of amicable relations with indigenous tribes necessitates the implementation of certain restrictions aimed at safeguarding the welfare of Scheduled Tribes, encompassing their social, cultural, and economic spheres.¹⁰

The aforementioned limitations seek to strike a delicate equilibrium between the entitlement to unfettered speech and the encompassing communal and national concerns, guaranteeing that these liberties are wielded judiciously and in consonance with the collective welfare. Thus, in light of the above Reasonable restrictions, the establishment of accountability for offensive memes can be incidentally achieved and the following restrictions could be imposed:

1. **Decency or morality-** This clause pertains to offensive memes that transgress the established societal norms of decency or morality, potentially subjecting them to certain limitations. The governing bodies possess the prerogative to initiate measures against memes that encompass material of an obscene, vulgar, or offensive nature.

In 2017, a university student hailing from Kolkata was apprehended on charges of purportedly managing a social media platform that constantly propagated explicit memes targeting prominent individuals in the public sphere. The individual's apprehension arose after the circulation of disrespectful memes about esteemed figures such as Netaji Subhas Chandra Bose, Rabindranath Tagore, and Prime Minister Narendra Modi on the Facebook platform known as 'Specified Tarkata'. The material received extensive criticism and resulted in numerous complaints being filed with law enforcement authorities. The aforementioned occurrence underscores the

¹⁰ Disha Mohanty, *Article 19(2) and 'Public Order'*, vidhilegalpolicy.in (2023), <https://vidhilegalpolicy.in/blog/article-192-and-publicorder/#:~:text='Reasonable%20restrictions'%20as%20outlined%20in,or%20incitement%20to%20an%20offence>, (Last visited on Nov 16, 2023)

implementation of reasonable restrictions on the utilisation of memes, underscoring the imperative of upholding ethical parameters during the process of creating and sharing online content. The intervention by authorities was prompted by the offensive content of the memes, which contravened established social norms of decency and humility towards individuals in positions of public prominence. This instance exemplifies the implementation of restrictions on the generation and circulation of memes to promote responsible and respectful conduct on the internet.¹¹

2. **Maintenance of Public Order-** In the interest of upholding public order, it may be deemed necessary to impose restrictions on the dissemination of memes that propagate sentiments of animosity, aggression, or societal upheaval. The intervention of authorities becomes necessary in instances where the proliferation of offensive memes poses a potential threat to the delicate equilibrium of societal cohesion or has the potential to incite unrest.

In recent times, the rise of memes has led to contentious debates due to the rapid spread of misinformation and the propagation of false narratives on diverse online platforms, thereby inciting instances of social turmoil and aggravating societal tensions. In response, various platforms are adopting strategies similar to those employed by WhatsApp. For instance, certain social media platforms have granted administrators the authority to regulate the distribution of memes within groups, impose restrictions on the number of individuals with whom a meme can be shared, and introduce labelling mechanisms such as "suspicious content" to identify and highlight problematic memes or content. The objective of these measures is to effectively minimise the widespread dissemination of deceptive or detrimental memes, so harmonising with endeavours to foster responsible sharing of memes and minimise the adverse effects of disinformation inside online platforms. In the context of social media, there is a growing emphasis on the need for administrators in group settings to exercise due diligence to effectively carry out their duties. The due diligence criteria, which aim to prohibit the circulation of illegal content on internet platforms, are delineated in the Information Technology (Intermediaries guidelines) Rules of 2011. Advocate and cyber expert Pawan Duggal

¹¹ *Bengal Youth Arrested for Posting Obscene memes on Facebook*, Business Standard (2017), https://www.business-standard.com/article/news-ians/bengal-youth-arrested-for-posting-obscene-memes-onfacebook-117122001345_1.html (Last visited on Nov 17, 2023)

also stated that Non-compliance with these standards by administrators of WhatsApp may lead to legal consequences, since they may be held responsible for the content posted and be subject to equivalent legal charges. This is in line with the reasonable limitations outlined in Article 19 of the Indian Constitution, which underscores the importance of responsible conduct and the need for individuals to be held accountable when sharing content.¹²

3. **Defamation-** Defamation entails the sharing of offensive memes that specifically target individuals or collectives, thereby propagating defamatory content. Such egregious conduct, if left unchecked, may necessitate the initiation of legal proceedings, aimed at safeguarding an individual's esteemed reputation or inviolable right to privacy.

The case commonly referred to as the "Mamata Meme case" commenced under the jurisdiction of a trial court in West Bengal. This legal proceeding culminated in a verdict that imposed 14 days of judicial imprisonment as a consequence of the act of disseminating a manipulated image of Chief Minister Mamata Banerjee over various social media platforms. Priyanka Sharma, a prominent representative of the Bharatiya Janata Party (BJP) Youth Wing, has been accused of disseminating a post, wherein she asserts that she did not originate the content but rather shared an already popularised meme. The bail request in question was brought before the Supreme Court, where the court emphasised the significance of maintaining a delicate equilibrium between individual rights. Although the principle of freedom of speech and expression is considered vital, its boundaries are reached when it infringes upon the rights of others. The Court underscored the principle that engaging in wrongful conduct while claiming the protection of free expression cannot be endorsed. The aforementioned occurrence illuminates the phenomenon of defamatory content disseminated via memes and underscores the potential consequences of imposing reasonable limitations on the right to freedom of speech. The Court's instruction for Sharma to issue an apology upon being released highlights the delicate equilibrium between the right to free expression

¹² Ashwaq Masoodi, Prisoner of Memes, social media victims, Internet Democracy project.in (2018), <https://internetdemocracy.in/media/prisoners-of-memes-social-media-victims> (Last visited on Nov 17 2023)

and the need for responsible conduct. This directive seeks to discourage the inappropriate use of online forums to libel or belittle persons.¹³

Through the implementation of these reasonable restrictions, governing bodies can effectively ensure the culpability of individuals involved in the production or propagation of objectionable memes that contravene these constitutional tenets. Accountability manifests itself when these restrictions are invoked to redress the misappropriation of the liberty of speech and expression within the cultural milieu of memes, thereby guaranteeing judicious and principled employment of memes.

Exploring the Boundaries of Law and Ethics in the Meme Era

Memes and Ethics

The increasing use of memes has emerged as a prevalent medium in India for satirising and criticizing various persons, encompassing public figures such as celebrities and politicians, as well as everyday citizens. Frequently, these memes encompass expressions of hate speech, divisive remarks, and critical evaluations, occasionally directed toward racial, religious, or gender-related elements. The absence of limitations on self-expression poses a potential risk to the privacy of certain individuals, while simultaneously allowing others to freely articulate their viewpoints. Oftentimes, these memes are veiled with sarcasm or accompanied by hashtags such as “#nooffence” or “#justforfun”, which frequently undermine their intended purpose by eliciting offence and failing to convey the intended humour. The absence of ethical underpinnings is evident in these behaviours, as the production and circulation of these memes frequently stem from harmful intentions, leading to detrimental outcomes. The improper utilisation of freedom of expression via memes not only undermines ethical principles but also encroaches upon the rights and identities of broader communities impacted by these memes. Memes have emerged as a means for individuals to attain rapid recognition devoid of dependence on skill, diligent effort, or constructive contributions, hence resulting in transient disgrace. The utilisation of memes as a means to engage in trolling or propagate hate speech to attain temporary recognition is inherently indefensible and violates ethical norms.¹⁴

¹³ Memes: A Study Under Defamation, blog.ipleaders (2020), <https://blog.ipleaders.in/memes-study-defamation/> (Last visited on Nov 17, 2023)

¹⁴ Udit Kapadia, *Social Media Memes: Ethical Quandary*, researchgate.net (2020), https://www.researchgate.net/publication/341150206_SOCIAL_MEDIA_MEMES_ETHICAL_QUANDARY_

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021¹⁵ have been enforced by the Government of India, with a focus on ensuring that social media platforms adhere to the constitutional and legal framework of India. Although these platforms offer opportunities for individuals to express themselves, engage in discussion, and voice critique, it is imperative to establish measures to mitigate potential exploitation and abuse. The objective of these regulations is to enhance the agency of regular users by offering them avenues for seeking redress and prompt resolution of complaints about online content. The formulation of these guidelines was influenced by several notable factors. Specifically, the Supreme Court's observations in the Prajwalla case catalysed the government's decision to address the issue of harmful content, such as child pornography, rape imagery, and related materials, on internet platforms. Furthermore, deliberations in the Rajya Sabha brought attention to apprehensions regarding the potential exploitation of social media platforms, the dissemination of false information, and the detrimental effects of explicit content on both the younger generation and society as a whole. Consequently, there were suggestions put out to facilitate the attribution of authorship for said content. The aforementioned regulations serve to provide a framework of ethical and legal principles governing the use of memes, delineating parameters, and implementing mechanisms of responsibility for online content. The objective is to achieve a harmonious equilibrium between the liberty of expression and responsible utilisation, thereby guaranteeing that meme and other forms of digital information conform to ethical norms and legal principles, all the while protecting the interests and rights of individuals and the community as a whole.

Intermediary Guidelines and Digital Media Ethics Code¹⁶ (2021)-

1. **Due Diligence-** The regulations stipulate the necessary due diligence procedures that intermediaries, including social media intermediaries, are required to adhere to. If the intermediary fails to adhere to due diligence, the safe harbour laws will not apply to them.

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¹⁵ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, Press Information Bureau GOI (2023), <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1700749> (Last visited on Nov 18, 2023)

¹⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, Press Information Bureau GOI (2023), <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1700749> (Last visited on Nov 18, 2023)

2. **GRM (Grievance Redressal Mechanism)-** The implementation of the Grievance Redressal Mechanism is intended to grant users greater authority by requiring intermediaries, such as social media platforms, to establish a system for addressing and resolving grievances submitted by users or victims. Intermediaries are required to designate a Grievance Officer who will be responsible for addressing and managing complaints. Additionally, intermediaries must disclose the identity and contact information of this designated officer. The Grievance Officer is required to promptly acknowledge the complaint within a period of twenty-four hours and then address and resolve it within a maximum of fifteen days from the time of its receipt.
3. **Promoting the Protection of Online Safety and Dignity, with a Focus on Women Users-** Intermediaries are required to expeditiously remove or block access to content upon receiving complaints within a 24-hour timeframe. This content pertains to the exposure of private parts of individuals, depiction of individuals in a state of complete or partial nudity, engagement in sexual acts, or involves impersonation, including the use of morphed photographs. The lodging of such a complaint can be initiated by either the affected individual or by a representative acting on their behalf.
4. **Providing Users with a Platform for Expression-** In situations where prominent social media intermediaries independently remove or restrict access to certain content, it is necessary to inform the user who originally shared that content in advance. This notification should include a detailed explanation of the justifications and rationale behind such actions. It is imperative to ensure that users are afforded a sufficient and justifiable opportunity to raise concerns about the action undertaken by the intermediary.
5. **The act of eliminating illicit information-** When an intermediary becomes aware, either through a court order or notification from the Appropriate Government or its authorised officer, they should refrain from hosting or publishing any information that is prohibited by law. This prohibition pertains to matters concerning the sovereignty and integrity of India, public order, friendly relations with foreign countries, and other related interests.

6. **Implementation of a Voluntary User Verification Mechanism-** This will allow users to voluntarily verify their accounts. This mechanism will offer users an acceptable means to verify their accounts and will result in the display of a tangible and visible mark of verification.

Drawbacks and Suggestions

The IT Rules 2021 encompass various drawbacks¹⁷, including their approach towards the regulation of offensive memes. The absence of concrete delineations, particularly with the term "fake news," confers unrestricted authority upon the government's fact-check unit to determine the scope of content encompassed by the category of "any business" associated with the state. The utilisation of imprecise terminology may potentially lead to the exercise of unrestrained authority by governing bodies over online content, so affecting the availability of diverse forms of internet humour, such as memes.

Furthermore, it is worth noting that these regulations deviate from established norms observed in other countries, hence lacking congruence with fundamental constitutional concepts. A potentially more legally sound approach, similar to parliamentary legislation based on the principles outlined in Article 19(2), could have offered a more coherent framework for the regulation of objectionable memes. For example, nations such as France depend on impartial judiciary officials to counteract the spread of misinformation in crucial periods such as electoral campaigns, thereby showcasing a more equitable and open procedure.

The regulations stipulate that intermediaries are required to eliminate content that has been identified as false by the Fact Check Unit, thereby conferring exclusive jurisdiction onto the state to ascertain veracity. The exercise of unilateral authority in this context may result in the implementation of censoring measures when platforms are compelled to remove memes that are considered to be false or offensive according to official evaluations. The constraints present in the IT Rules 2021 constitute a potential challenge to the effective regulation of offensive memes. The absence of clear and specific delineations, coupled with the dominant authority of the state in deciding the parameters of offensive material, could potentially impede the

¹⁷ New IT Rules and Social Media, Drishtiiias (2023), <https://www.drishtiiias.com/daily-updates/daily-newseditorials/new-it-rules-and-social-media> (Last visited on Nov 18, 2023)

unrestricted articulation of varied perspectives and limit the capacity to contest offensive memes without encountering potential acts of censorship or constraints.

To govern the spreading of harmful memes, the Information Technology¹⁸ (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 may consider the inclusion of targeted restrictions:

1. **Rigorous Content Moderation-** Enforcing more rigorous content moderation procedures on social media platforms, to identify and eliminate memes that disseminate hate speech, incite violence, or disseminate misleading information. It is imperative to establish unambiguous criteria that delineate the parameters of unconstitutional content when presented in the form of memes.
2. **Efficient Reporting Portals-** Establishing an effective and inclusive user reporting mechanism is crucial to facilitate the identification and reporting of offensive or constitutionally problematic memes. It is imperative for platforms to swiftly address such allegations and implement appropriate measures, such as the removal of content and suspension of accounts.
3. **Algorithmic Oversight:** It is imperative to mandate that platforms improve their algorithms to actively identify and mitigate the dissemination of memes that violate constitutional principles. Utilise artificial intelligence (AI) capabilities to identify and implement measures to limit the dissemination of inflammatory or discriminating content.
4. **Accountability and Transparency-** The promotion of transparency and accountability is crucial in ensuring platforms adhere to disclosure requirements on their content moderation practises, with particular emphasis on the handling of memes. It is imperative to ensure that individuals are held responsible for the distribution of content that is deemed unconstitutional.

¹⁸ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, Press Information Bureau GOI (2023), <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1700749> (Last visited on Nov 18, 2023)

5. **Effective Collaborations-** establishment of a collaborative effort between social media companies and law enforcement authorities to effectively and expeditiously address the dissemination of memes that infringe upon constitutional values. Promote collaboration in conducting inquiries and implementing measures to address individuals accountable for disseminating such material.
6. **Public Knowledge and Education-** Implement initiatives aimed at raising public knowledge regarding the potential ramifications associated with the dissemination of memes that violate constitutional principles. Promote the practise of responsible sharing and provide education regarding the consequences of disseminating content on societal cohesion and adherence to constitutional principles.
7. **Penalties and Fines -** Enforce significant monetary fines or penalties onto platforms that demonstrate non-compliance with regulations, disregard their obligations for content moderation, or permit the dissemination of memes that violate constitutional principles.

Through the integration of these amendments into the Information Technology Rules, the Indian government can establish a more resilient structure to address the proliferation of unconstitutional memes. This would entail social media platforms operating responsibly, upholding constitutional principles, and preserving the integrity of public discourse.

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