



LEGAL CHALLENGES IN REGULATING SOCIAL MEDIA PLATFORMS AND CONTENT MODERATION

AUTHOR – MS. GEETA DINESH WADEKAR, STUDENT AT DES SHRI. NAVALMAL FIRODIA LAW COLLEGE, SAVITRIBAI PHULE PUNE UNIVERSITY, PUNE

BEST CITATION – MS. GEETA DINESH WADEKAR, LEGAL CHALLENGES IN REGULATING SOCIAL MEDIA PLATFORMS AND CONTENT MODERATION, ILE MULTIDISCIPLINARY JOURNAL, 4 (1) OF 2025, PG. 520-532, APIS – 3920-0007 | ISSN – 2583-7230

Abstract

The regulation of social media platforms presents significant legal challenges, particularly concerning content moderation, free speech, and platform accountability. Governments and regulatory bodies worldwide grapple with balancing user rights, preventing harmful content, and ensuring compliance with national laws. Key legal issues include the definition of harmful or illegal content, enforcement mechanisms, and the role of private companies in regulating speech.

One of the primary challenges is the tension between free speech protections and the need to combat misinformation, hate speech, and extremist content. While laws such as the First Amendment in the United States protect speech from government restriction, private platforms implement their own community guidelines, often facing criticism for inconsistent enforcement. The liability of platforms under regulations like Section 230 of the Communications Decency Act in the U.S. and the Digital Services Act in the European Union further complicates the legal landscape.

Another challenge lies in jurisdictional conflicts, as platforms operate globally but must comply with diverse national regulations, such as the General Data Protection Regulation (GDPR) and country-specific censorship laws. Automated content moderation tools, while improving efficiency, raise concerns about biases, transparency, and wrongful content removal.

Legal frameworks continue to evolve, with increasing pressure on platforms to enhance transparency, accountability, and due process in moderation decisions. However, achieving a balance between regulation, platform autonomy, and user rights remains complex. Addressing these legal challenges requires international cooperation, clearer definitions of harmful content, and mechanisms to ensure fair and consistent enforcement.

Keywords: Social media regulation, content moderation, free speech, platform liability, misinformation, hate speech, Section 230, Digital Services Act, GDPR, automated moderation, legal challenges, jurisdictional conflicts, censorship laws.

What is social media?

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

used to turn communication into interactive dialogue.

Social media can be defined as any web or mobile based platform that enables an individual or agency to communicate interactively and enables exchange of user generated content. Andreas Kaplan and Michael Haenlein define social media as “a group of internetbased applications that build



on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of user-generated content." "Web 2.0" refers to Internet platforms that allow for interactive participation by users. "User generated content" is the name for all of the ways in which people may use social media. The Organization for Economic Cooperation and Development (OECD) specifies three criteria for content to be classified as "user generated:" (1) it should be available on a publicly accessible website or on a social networking site that is available to a select group, (2) it entails a minimum amount of creative effort, and (3) it is "created outside of professional routines and practices."

Another variant of social media is mobile social media i.e. when social media is used in combination with mobile devices it is called mobile social media. Due to the fact that mobile social media runs on mobile devices, it differentiates from traditional social media as it incorporates new factors such as the current location of the user (location-sensitivity) or the time delay between sending and receiving messages (time-sensitivity).

Types of Social Media

Social Media can be broadly divided into following categories.

1. Social networking

Social networking is an online service that enables its users to create virtual networks with likeminded people. It offers facilities such as chat, instant messaging, photo sharing, video sharing, updates etc. The most popular are Facebook and LinkedIn.

2. Blogs

Blogs are descriptive content created and maintained by individual users and may contain text, photos and links to other websites. The interactive feature of blogs is the ability of readers to leave comments and the comment trail can be followed.

3. Micro blogs

Micro blogs are similar to blogs with a typical restriction of 140 characters or less, which allows users to write and share content. Twitter is a micro blogging site that enables its users to send and read 'tweets'.

4. Vlogs and Video Sharing sites

Video blogs (Vlogs) are blogging sites that mainly use video as the main form of content supported by text. You Tube is the world's largest video sharing site. You Tube is a video live casting and video sharing site where users can view, upload, share videos and even leave comments.

5. Wikis

Wiki is a collaborative website that allows multiple users to create and update pages on particular or interlinked subjects. While a single page is referred to as 'wiki page', the entire related content on that topic is called a 'Wiki'. These multiple pages are linked through hyperlinks and allow users to interact in a complex and non-linear manner.

6. Social Bookmarking

These services allow one to save, organize and manage links to various websites and resources around the internet. Interaction is by tagging websites and searching through websites bookmarked by other people. The most popular are Delicious and Stumble Upon.

7. Social News

These services allow one to post various news items or links to outside articles. Interaction takes place by voting for the items and commenting on them. Voting is the core aspect as the items that get the most votes are prominently displayed. The most popular are Digg, Reddit and Propeller.

8. Media Sharing

These services allow one to upload and share photos or videos. Interaction is by sharing and commenting on user submissions. The most popular are YouTube and Flickr. There can be



overlap among the above mentioned types of social media. For instance, Facebook has micro blogging features with their 'status update'. Also, Flickr and YouTube have comment systems similar to that of blogs.

Chapter IV.

Regulating the social media

The issue of regulating the social media platform has always been a controversial one for many in the large society. First, because the operation of the social media in a wider scope and involves inter-border form of communication. This is one of the reasons this platform is difficult to regulate. Since different countries have different culture, meaning is likely to be subjective in relation to the culture or norm of the society. But most significantly, while noting that the electronic media is the most difficult medium to regulate, stress that this difficulty arise from the fact that the electronic media are solely dependent on the use of air waves, which are public property. therefore proposed a prototype for social media regulations. The regulations of the social media will be discussed suggesting this prototype for regulation. 1. Presently, media professionals and journalist in practise have ethical code of conducts guiding their actions as journalist. Blake therefore propose that the regulation and monitoring of the social media be left in the hands of media professionals who are capable of ensuring that messages that would disrupt the peace of the nation be avoided. 2. He also noted that Government and Training private tertiary institutions should train media personnel for a fee they will payl to make sure they monitor social media messages to ensure well-being of all and societal peace. In order to get the right persons to do the job of providing different ways of regulating the platform, human resources that are well trained is important. With this purpose or need fulfilled, the ability to provide the proper regulation will be achieved. It is easier for people who own and are comfortable in an environment that is theirs to regulate. 3. Majority of the social media

messages are distributed by international bodies such as the western world are more than we distribute in Africa. As a result of this information imbalance occurs and cultural imperialism increases while the effect of globalization is lost in the process. The first action is for the government to provide a regulatory body to control social media contents that come into Nigeria. (Participatory culture).

Need to Regulate Media

In the system of checks and balances, when every organization is answerable or being regulated by someone, media is claiming self-regulation. Media is considered as the fourth pillar of Indian democracy. As other pillars of democracy, i.e., legislative, executive and judiciary are following the system of checks and balances and working under the constitutional ambit, but it's very difficult with respect to media as there are no specific regulations to govern media. Even in the constitution, while referring to freedom of speech and expression, there is no mention about press/media specifically, hence, giving scope for a wide interpretation with respect to freedom of press.²⁵⁶

One important aspect of freedom of press is that it flows through Article 19(1)(a) of Indian Constitution. And Article 19(1)(a) confers right to freedom of speech and expression to citizens. So, it can be derived from the constitution that media persons enjoy freedom of speech individually and not as an entity. For example, journalist, editor, anchor claims their right to freedom of speech and expression individually as per article 19(1)(a) of Indian Constitution. Media plays an important role in a democratic country in safeguarding the constitution work in the interest of general public.

It is the mirror for the society where members of the society remain updated about the incidents

²⁵⁶ Justice G.N. Ray, *Statutory Regulation: The Indian Experience* (May. 2, 2007), <http://www.presscouncil.nic.in/OldWebsite/speechpdf/Statutory%20Regulation%20the%20Indian%20Experience%20Kenya.pdf>, last seen on 09/12/2023



and developments taking place in the country, hence, media can mould public opinion as it plays an important role in public domain. This is the main reason for the necessity of responsible journalism.²⁵⁷

Especially, when we are living in a technologically advanced world, where information flows in seconds irrespective of distance, it is very important that media play a positive role as one misleading/wrong information can be detrimental to the society and can lead to riots or bring hatred among the citizens. In India, where people from different culture, religion lives together, it is the duty of media to show the truth and at the same time refrain itself from imparting misleading information and sensationalization of the story in order to gain rating.

Regulatory Problems Faced by Media

In India, media is regulated through different codes and statutes. As it is believed to be one of the growing industry and at the same time regulation plays a significant role as its function involves interest of public and nation.

This is quite evident that whenever there is any regulation introduced particularly in a field where influence on public is more, approach taken to regulate it will be mix of social, political and economic concern. In this technologically advanced age where impact of electronic media is far more than print media, that is why regulatory framework for print and electronic media is different. However, there was strong demand raised to bring print and electronic media under one umbrella named Media Council of India.²⁵⁸

The major problem faced by media in India is because of multiple agencies being involved in formulating and implementing policy pertaining to media. In addition to this, the agencies often forget their powers and limitations relating in

intervention and working at crosspurpose. There are many bodies whose functions often overlap when issues regarding regulation of electronic media content come into picture.

Many intellectuals have opined that India lags when it comes to regulate broadcasting content regulation. Even Law Commission of India has raised concerns regarding the same in the consultation paper on media regulation.

Media regulation in India especially electronic media regulations are dealt by official organization in India, some important organizations detail are mentioned below.

i. Union Ministry of Information & Broadcasting
Main function of ministry is to regulate the content and act as a policy-maker. In **Deepak Maini v Star Plus (2009)**²⁵⁹, Court held that Ministry of Information & Broadcasting is in a better position to judge the content of television and court interference is not required. In **Rakhi Sawant v State of U.P.**²⁶⁰, where issue was related to a Reality Show where host of the show designated one participant as impotent which later became the reason for his suicide. Allahabad High Court held in this case that language of the anchor was uncivilized and offensive.²⁶¹

Print media in India is regulated by Press Council of India which has been established by Press Council of India Act, 1978. The Council consists of a Chairman and 28 other members. Committee consists of Chairman of Rajya Sabha, Speaker of the Lok Sabha and a person elected by the members of the Council nominates Chairman of PCI.

Act empowers PCI to take suo motu cognizance against newspaper and journalists accused of violation norms or journalistic conduct. It may summon witnesses, take evidence and has the power to issue warning and admonish the newspaper/journalist. Although Council does

²⁵⁷ Irum Saeed Abbasi and Laila Al-Sharqi, *Media censorship: Freedom versus Responsibility*, 7 JLCR, 21-25, (2015), last seen on 09/12/2023

²⁵⁸ Saumya Ramakrishnan, *Can the watchdog watch itself? Indian media and self-regulation*, First Post (Aug. 27, 2012), <http://www.firstpost.com/politics/can-the-watchdog-watch-itself-indian-media-and-self-regulation431499.html>, last seen 09/12/2023

²⁵⁹ Deepak Maini v Star Plus, 2009 (162) DLT 352

²⁶⁰ Rakhi Sawant v State of U.P., 2010

²⁶¹ Amrita Sarkar, *Regulation of Television Content in India*, 1 IJESLS (2015), <http://www.ijesls.com/REGULATION%20TELEVISION%20CONTENT-%20Amrita%20Sarkar.pdf> 162 (2009), last seen on 09/12/2023



not have any power to penalize for violation of its guidelines.

Presently, Cable TV Networks (Regulation) Act, 1995 applies to Broadcast Media. Although there is no regulatory authority set up under the act but it has Program Code and Advertising code which prohibit broadcast of any program or advertisement not in consonance of the act.

Telecom Regulatory Authority of India (TRAI) regulates Broadcasting sector in India which form rules on issues like streamlining distribution. Also, Ministry of Information & Broadcasting established Electronic Media Monitoring Centre (EMMC) which monitors content of Private FM Radio Channels and checks the violation of Program and Advertisement Code by TV Channels²⁶².

With reference to news and current affair channels, News Broadcasters Association (NBA) is the self-regulatory body which has established News Broadcasting Standards Authority (NBSA) responsible for adjudicating complaints against news channels in relation to broadcast content. Jurisdiction of NBSA is limited to members only. Only organizations that are members of NBSA are abided by the regulations of NBA. NBA also regulates television content by code of ethics and empowered to censure, admonish, fine, warn any broadcasts for violation of the code.

Chapter V.

Government Regulations

Government control over media is an idea which is not supported by many. Even the Constitution makers were aware about the power of press during freedom of struggle, that's why they have preferred freedom of speech and idea of free press which is very important in development of a democracy.

In April 2003, Delhi High Court in a case of *Indraprastha People v UOI*⁸⁸ rejected the idea

of self-regulation and recommended statutory regulation for electronic media. Problems regarding cross-media ownership when many news channels are owned by corporate houses and politicians, concept of statutory regulation by government can be used as a tool to fulfill their political interest, thereby undermining democracy.

Deputy Commissioner of Police, Mumbai, passed an order under Section 19 of Cable Act during Mumbai Terror Attack due to which many news channels went off air for short duration. However, government intervened and cancelled the order. After Mumbai Attack, Maharashtra Government decided that to protect national security, it would bring laws to regulate the content of news channels which created controversy and declaration was seen as attack on independence of media.

After Mumbai Terror Attack in 2008, NBA again issued fresh guidelines pertaining to fairness, privacy, decency and impartiality. Also, guidelines covered areas like coverage of law and order issue, sting operation, national security, depiction of women and children and supernatural matters. These developments show that name-sake self-regulatory body has its own shortcomings which lack punitive powers and it failed to serve the purpose for it failed to serve the purpose for its establishment. Arguments which favor state-regulation for media are to ensure media is unbiased, to curb the menace of paid news and to ensure professional and ethical standards of media. However, idea of state regulation is not supported by media persons, intellectual as it may have adverse effect if the power has been misused and can create emergency like situation and can dilute the idea of free democracy.

In 2001, Government attempted to introduce Communication Convergence Bill which did not get passed. This bill was opposed by saying that Government trying to control media through this bill which can affect independence and

²⁶² Government of India Law Commission of India, *Consultation Paper on Media Law* (May, 2014), <https://www.lawcommissionofindia.nic.in/.../Consultation%20paper%20on%20media%20law>, last seen on 09/12/2023



autonomy of Media. This Bill is in lapsed stage presently.

GOVERNMENT'S EMPHASIS ON REGULATIONS FOR SOCIAL MEDIA

Considering such situations, the Indian Government has emphasized the need to provide a regulatory framework for social media. The issue of content regulation has always been important considering the diversity of our society—in all aspects—caste, religion, economic status and language. This all makes up of a very sensitive environment.

There is a concern that social media could disrupt the democratic machinery of India due to unregulated content posted regularly on social media. This makes it very easy to attack the government, or anyone for that matter. The government aims to create a more transparent and accountable space with regards to social media platforms.

There is a unanimous opinion that the objectionable content needs to be regulated, e.g., child pornography, threats or violent videos, extremist content, etc. It is believed that social media promotes misinformation, hate speech, defamation, bullying, etc. It is argued that there has been an influx of fake news items especially on WhatsApp and Facebook. There is no editorial control over such content which makes it easy to circulate the same to a large number of people. For instance, in 2018, there was a fake news spread that there had been an incident of mob lynching of five men in Maharashtra—which was not true and still led to a lot of public unrest.

Moreover, India is a target for hostile nations like China and Pakistan—and social media is easily weaponized in such sensitive matters.

Anyways, the Government provides that for electronic media, there are regulatory guidelines under the Cable Television Networks (Regulations) Act, 1995. But there is no such law when it comes to social media and a lot of people or organisations take undue advantage of this loophole.

On the basis of the above-mentioned arguments, the Government has introduced some regulations:

- Information Technology Act, 2000 and its Amendments

This Act governs a number of aspects of online content and social media platforms.

Section 69A– The government is empowered to block online content that threatens national security, public order or incites violence. It can issue directions to block access to a specific website or content.

Section 79– This provision creates a liability of intermediaries which includes social media platforms. These intermediaries are to observe and supervise the content to remove or disable any illegal content upon receiving notice from appropriate authority.

Section 505(2)– Sharing or spreading any content that promotes hatred, enmity or malice among religions or social groups is punishable.

- Intermediary Guidelines and Digital Media Ethics Code (2021)

This was the first time the government ever provided detailed guidelines for digital content and OTT (Over the Top) platforms. The aim of this code was to regulate social media intermediaries and digital media platforms. These guidelines impose certain obligations on intermediaries including social media platforms such as:

- a. Appointment of a Chief Compliance Officer, Grievance Redressal Officer and Nodal Contact Person.
- b. Implementing a content moderation mechanism which would work to remove any prohibited content within 36 hours of receiving a court order or notification from appropriate authorities.
- c. Establishment of a grievance redressal mechanism to address user complains within a specified timeframe.



As per these rules, the publishers are to abide by the 'Norms of Journalistic Conduct' of the Press Council of India and 'Programme Code' under the Cable Television Networks Regulations Act.

In 2021, there was a plea filed before the Supreme Court against the 2021 Rules by the Jamiat Ulema-e-Hind. The Chief Justice of India expressed that the web platforms like YouTube run fake news and slander reputations possible due to an absence of regulatory mechanism. There is no accountability for such matters. So social media, due to the lack of any self-regulatory framework and legislative restrictions, becomes a little bit of a blind spot and is able to evade responsibility.

Chapter VI.

Legal challenges to the regulations

The regulations on social media and the online content moderation on various platforms is not openly accepted by various stakeholders. It has been argued that such regulations to control online speech are unsustainable.

Social media platforms are integral to modern communication. It enables expression of opinions and increases public participation. This intersection of social media and freedom of speech raises some legal issues.

- **Freedom of Speech and Hateful Speech**

Article 19(1)(a) of the Constitution of India provides every citizen a right to freedom of speech and expression. This right, however, not an absolute right. There are some reasonable restrictions²⁶³ on the said right when related to sovereignty and integrity of India, security of the nation, public order, etc.

It is provided that the regulations on social media aim to combat hateful speech. But there is no clear standard of what hateful speech/content is. There is a need to have clear

guidelines laid down for the same. It is also to be made sure that such guidelines are in proportion to the harmful speech whilst being uniform to avoid allegation of bias.

These considerations are pertinent to the subject matter and pose a legal challenge as it is a tedious task to lay down such legislations.

- **Contextual Nuances**

When it is said that there is a need to clarify the difference between legitimate speech and harmful speech, it makes it important to understand context, culture, intent, etc. in different parts of the nation. This is a meticulous job but has to be considered for a consistent and uniform regulatory framework. If not done properly, there will be, misunderstanding leading to curbing a person's right to freedom of speech by removal of their legitimate thoughts in the name of regulations.

Talking about hate speech, brings in the question of who defines it? Or what is it exactly? If we take example of the movies like Padmavat, Lipstick Under My Burkha and Article 15, it seems that what is understood to be hate speech, the standards of the same are not very reasonable. And such examples serve a testimony to the fact.

The same goes when one considers the need of such regulations on social media for the security of the nation. Whatever constitutes extremist or anti-national content is not clearly defined. There are no guidelines to judge the same. Allowing such regulations, it is argued, would make it very easy to remove any content at one's own inconvenience. The hypersensitivity of one stratum should not serve as a reason to curb another's fundamental right to freedom of speech and expression.

- **Scale and Volume of the Content**

There is an enormous amount of content on social media platforms. In a short span of time, there are countless images, videos, messages, etc. on online platforms. This content reaches

²⁶³ Regulations on Social Media, <https://www.insightsonindia.com/security-issues/role-of-media-and-social-networking-sites-in-internal-security-challenges/regulations-on-social-media/> (Last Seen on 3rd December, 2023)



the masses with one click. It takes less time to send messages than snapping our fingers.²⁶⁴

Thus, it is very difficult to keep track of such content. It would require a lot of effort to build a robust system efficient enough to keep track of the enormous content. Only then would it be possible to monitor it and apply the regulations laid down to keep a check of the same.

However, India does not have technology or tools advanced enough to take on such a tedious task. It is intimidating to even think about it. In absence of the same, even the laws cannot achieve their objective, no matter how detailed these laws are.

There are multiple agencies involved in formulating and implementing policies regarding regulations on social media. This leads to a lot of overlapping.

India lags in regulating social media due to the volume—a concern raised even in *the Law Commission's Consultation Paper on Media Regulation* ²⁶⁵.

• Diverse Legal Systems

Social media platforms work across the globe. Even if a person is within the territory of one nation, the content consumed or produced goes beyond territorial boundaries. Different nations have different cultural background leading to different legal systems altogether. There may be some similarities but the interpretation and application of laws differ from nation to nation.

Formulating legal regulations which would comply with norms from all across the world whilst also being acceptable culturally around the world is almost impossible. This is to say that India can make guidelines for within its territory but it still won't be able to monitor all the social media content. This is one of the

biggest challenges of lying down such regulations.²⁶⁶

As it is said that social media has made the world very small but this has made the process of formulation of laws to the online arena very difficult. There always exists one loophole or the other which allows a person to evade any accountability on their part.

• Balance between Automated review System and Human Review

Almost every established social media platform has a system of automated review which would oversee the content on the said platform. In case of any deviance from the guidelines laid down by the social media platform, the system is able to pick out such content, remove it and report it.

But such system is not necessarily reliable as it often removes legitimate content while keeping the objectionable content. So, it is necessary to have a balance between automated review and human review.

This again is another challenge. The legal framework for regulation and moderation of online content needs to have guidelines for both of them in such a manner as to strike a balance between them, all the while, making sure that their functioning is smooth, coordinated and efficient. The standards to supervise must make sure that there is no discrepancy which might end up working in favour of the objectionable content put out there.

• Trigger Criticism from the Public

Another legal challenge would be the opposition from various stakeholders (the companies, digital industry, public). The reason is that any industry with government regulations—banking, healthcare, insurance, oil, etc. has created monopolies and stifled competition. This harms startups or smaller businesses. India needs more startups, innovation, entrepreneurships. Social media

²⁶⁴ Social Media in India, <https://oosga.com/social-media/ind/#:~:text=How%20are%20users%20distributed%20in,33.4%20%25%20of%20the%20total%20population> (Last Visited on 5th December, 2023)

²⁶⁵ *Social Media and Freedom of Speech: Legal Boundaries in India*, <https://primelegal.in/2023/06/17/social-media-and-freedom-of-speech-the-legal-boundaries-in-india/> (Last Visited on 5th December, 2023)

²⁶⁶ *Government Should Not Regulate Social Media*, <https://www.orfonline.org/expert-speak/government-should-not-regulate-social-media-57786/> (Last Visited on 5th December, 2023)



regulations will trigger exits and discourage new investments.²⁶⁷

Most businesses function on end-to-end encryption. A vast number of them would prefer to exit the Indian market rather than letting government oversee every detail and violates privacy.

Moreover, weakening such encryption is in contradiction to the principle of data minimization which was endorsed in the data protection bill promoting privacy.

Moreover, as said earlier, such regulations would curb the freedom of speech and expression—which is more harmful to our democracy than anything.

Chapter VII.

Self-regulation and it's advantages

Formal and compulsory directions regarding content, structure and conduct of media forms part of media regulation. As we all know that freedom of expression is an important component in a democratic society. This freedom is important in itself but also protects other freedoms and rights.

Freedom of expression requires a public dimension and the need was felt to include the same at international level. Importance of their freedom is reflected by its extensive protection in International Convention and Treaties. For example, it is protected under Article 19 of International Covenant on Civil and Political Rights (ICCPR), Article 19 of Universal Declaration of Human Right (UDHR), Article 13 of American Convention on Human Rights, Article 9 of African Charter and Article 11 of European Convention on Human Rights (ECHR).²⁶⁸

Basically, self-regulation is not censorship or self-censorship rather than setting up minimal

standard of accuracy, ethics etc. while preserving the right to freedom of speech and expression. Although, there are several incidents after which demands are being raised for specific framework with respect to media in India. In 2013, Delhi High Court rejected idea of self-regulation in a case related to reality television and recommended Central Government to make regulations for electronic media.²⁶⁹

Indian media is however opposed to the idea of any statutory regulations and justifying it by saying it is capable of self-regulation which is also important for the independence and autonomy of media. But, on the other side, head of regulatory bodies especially electronic media are of the opinion that many channels opt out of the association if they do not want to pay fines or follows its rules which ultimately dilute the intention of self-regulation for media.

Self-regulation refers to setting out certain standards or codes of behaviour for media which uplift freedom of expression and at the same time monitor the behaviour as per the standards. Argument which goes in favor of self-regulation of media is that media plays a vital role in aiding democracy, so it is important to preserve independence and autonomy of media for which self-regulation is necessary which will also protect media from government interference. Another point which is often raised by media is that in this global environment where jurisdiction issues are complex, self-regulation is better way to handle the situation.²⁷⁰

Also, concept of self-regulation is less costly and it can also raise professional standards as organization needs to analyze and develop their own code of conduct.

²⁶⁷ Giving communal color to news a big problem on social media, says Supreme Court, <https://www.indiatoday.in/law/story/cji-transfers-all-cases-against-it-rules-to-supreme-court-1848297-2021-09-02> (Last Visited on 5th December, 2023)

²⁶⁸ Andrew Puddephatt, *The Importance of Self regulation of the Media in upholding Freedom of Expression*(Feb. 2011, <http://unesdoc.unesco.org/images/0019/001916/191624e.pdf>, last seen on 02/12/2023

²⁶⁹ Saumya Ramakrishnan, *Can the watchdog watch itself? Indian media and self-regulation* F.POLITICS (Aug. 27, 2012, 11:27 AM), <http://www.firstpost.com/politics/can-the-watchdog-watch-itself-indian-media-and-selfregulation-431499.html>, last seen on 01/12/2023

²⁷⁰ Mehta, Bhashkar, *A Critical Evaluation of Social Media Regulation in India* (November 29, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3973556, last seen on 07/12/2023



Chapter VIII.

Conclusion And Suggestions

In conclusive remarks, the researcher seeks liberty to reiterate the position suggested at the beginning of this Article: media regulations suffer from grave lacunae's and the legislative branch of the Country is not well equipped with laws in its repertoire to curb the menace of excessive and selective control on media agencies and free independent flow of information through media. As written in the earlier part of the paper, the three types of media agencies overlap and there is no single institution to effectively govern them collectively with penal sanction for non compliance of its orders or directions.

Regulating media effectively, subject to my limits of comprehension, is perhaps the most vital and important topic concerning the nation today. The tension lies between the factum that media must remain independent and the state must not have a control over it in such a nature that the freedom of expression is compelled to favour a particular ruling establishment or its allies. On the other hand, media must be answerable and accountable to another independent agency with which, a power to pull up the strings wherever necessary lies. It is equally important to protect media agencies from getting concentrated in the hands of selected corporate giants with frequently changing affiliations with the political superiors. The corporate control on media agencies makes it suffer from the problem of curtailment when practitioners of power deem it fit to do so.

In a slugfest between contours of free speech and regulated media, the prized possession in the hands of mooters of absolutely free media is Article 19(1)(a) of the Constitution while the advocates of regulated media fight with its collegiate accessories in Article 19(2). The menace created by non-regulation of media is slowly reaching epidemic proportions in India. It is here where the dilemma between justice and power as pointed out by Blaise Pascal becomes even more relevant. Pascal famously wrote –

“Justice without power is inefficient; power without justice is tyranny. Justice without power is opposed, because there are always wicked men. Power without justice is soon questioned. Justice and power must therefore be brought together, so that whatever is just may be powerful, and whatever is powerful may be just.”

Regulate the electronic media in India, News Broadcaster Association is the self regulatory body but its decision is binding on members of organization only. From many years it is seen as a body with lack of enforcement powers as the Association fined India TV for violation of norms but then the channel walked out from the organization. Later the decision was withdrawn by association and then channel joined the association. This instance points out serious concern and can be sorted out by making it mandatory for the entire news channels to be part of new independent regulator and a reference can be drawn from UK where newspapers which are not part of IPSO has to be governed by Office of Communication. It will help in regulating news channel so as to curb the unethical and illegal practice.

Following are the suggestions and recommendations to improve media regulations in India:-

- There should be different regulatory bodies for each medium of media i.e. print, television or radio as there cannot be uniformity of regulation if the form itself can be distinguished.
- Press Council of India composition should be amended under section 5 of Press Council of India Act, 1978 where working editor/journalist and Members of Parliament should not be allowed to be part of Council to avoid conflict of interest and government interference. Former journalists/editors and eminent scholars of media law should be part of Council which should be selected from a panel elected by Press organizations.
- Section 14 Press Council of India Act, 1978 should be amended and Power to suspend license and impose heavy fines should be



added other than power to censure on the lines of Advocates Act, 1961.

- Press Council of India should be given sufficient powers and inference can be drawn from Insurance Regulatory Authority of India and Security Exchange Board of India which are standard authority in their field and are effective as well.

- News Channels should be made mandatory to be a part of News Broadcaster Association and Power to suspend license and impose heavy fines should be given to the same.

- Section 4 and 10 of Prasar Bharti Act should be amended to restrict members of Government to be a part of Corporation and Board in order to provide autonomy to Prasar Bharti in true sense.

- Whistle blowing hotline for journalists and submission of annual statement about the details of compliance of code of ethics to the regulator should be made mandatory as in UK as to bring safety and uphold responsible journalism.

- There are no specific rules with respect to Cross-Media Ownership and the same should not be made although recommended by TRAI as media houses are owned by many corporate houses, it will not be fair to say that other organization i.e. religious/ political organization will impart their own views because same can be the case for corporate houses also as they are profit making organization.

- There should be a qualifying exam to work as a journalist/media person and same should cover the legal framework of media in India including guidelines, norms and ethics to be followed by media professionals to get the license for journalism. An inference can be drawn from open book All India Bar Examination to practice in Court for Advocates.

Social media poses some problems for the society but it is has been argued that even in the absence of social media, fake news still was in play and would remain so forever, because it is unfortunately a part of human nature. It is difficult to predict it most of the times. Yes,

social media has increased the speed of spread of such misinformation but it is not the root cause of the same.

It is said that such social media regulations must be left in the hands of social media platforms themselves. Self-regulation is not censorship but a way of laying down minimum standard of decency, ethics and accuracy while making sure to protect the rights of the individuals (users).

- These platforms have an obligation to oversee the content being put out on their platforms or the purpose for which it is being used.
- Moreover, survival in the market is important for any business out there. The more objectionable the content is, the more customers would leave the platform. No business would want to continue losing their consumers so in order to survive, these platforms would have no problem laying down a strict code and regulatory guidelines or adhering to the same.
- For example, YouTube employed 10,000 employees globally to monitor and remove objectionable content. Around 8 million videos were taken down in 2018 in 3 months alone. About three-fourth of these videos were never even viewed. 81% of these videos were taken down instantly.
- Another platform named Facebook has 30,000 employees for the detection and removal. 15 million pieces of violent content in 3 months in 2018. Over 99% of such content was removed automatically.

So, the social media platforms to provide content standards and regulatory guidelines to promote transparency,

- To make these platforms liable in case of any failure to do so.



- To provide an independent redressal mechanism to clearly lay down whether a content with respect to its context is objectionable. But in such cases, the burden of proof would be upon the government.

Case Laws:

Some of the case laws that provide important legal precedents and interpretations in the context of social media and freedom of speech in India include:

Indian National Congress (I) v. Union of India (2014): In this case, the Supreme Court upheld the validity of Section 66A but clarified its interpretation. The court held that online speech could only be restricted if it posed an actual threat to public order or had the potential to incite violence. It emphasized the importance of striking a balance between free speech and maintaining public order²⁷¹.

Kamlesh Vaswani v. Union of India (2015): This case dealt with the issue of blocking websites hosting objectionable content, particularly child pornography. The Supreme Court held that intermediaries like social media platforms have a responsibility to proactively identify and block access to such content to protect children from exploitation.²⁷²

Faheema Shirin R.K. v. State of Kerala (2019): The Kerala High Court ruled in this case that the freedom of choice and expression of an individual cannot be curtailed merely based on objections raised by others on social media. It emphasized the importance of allowing individuals to express their opinions freely without fear of retaliation or censorship.²⁷³

Maheshwari v. Union of India (2020):

This case involved a plea seeking quashing of an FIR filed against a social media user for allegedly posting objectionable content. The Supreme Court emphasized that social media users cannot be held liable for the mere forwarding or sharing of content unless there is a clear intent to promote hate speech or incite violence.²⁷⁴

CONCLUSION

Social media has become an integral and inseparable part of our lives in recent times. It affects almost everyone—whether directly or indirectly. As with all the technological advancements, there are both the positive and negative sides to it. Recently, there has been a lot of discussion regarding the need for a regulatory framework on the social media platforms and online content. This discussion also highlights the legal challenges of doing the same.

It is not as easy to put regulations on the social media platforms because of the scale and the volume of online content. These platforms operate globally making it all the more difficult to monitor them. Moreover, the lack of any definitive character of what objectionable content is makes it much more difficult to provide such standards to regulate. Who decides what such definitions are, especially in a country like India with immense diversity in every aspect possible. Also, there is an argument that online discussions simply mirror the society and are not the root cause of evil in the world.

However, it cannot be disregarded that social media does play a role in speeding up the circulation of any fake news, violent content, etc. So, the need for a regulatory framework is not being dismissed altogether but it is believed that it would be possible to supervise such content by making sure the social media

²⁷¹ Indian National Congress (I) v. Union of India (2014)

²⁷² Kamlesh Vaswani v. Union of India (2015)

²⁷³ Faheema Shirin R.K. v. State of Kerala (2019)

²⁷⁴ Maheshwari v. Union of India (2020)



platforms themselves mandatorily lay down the guidelines for the same.

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