



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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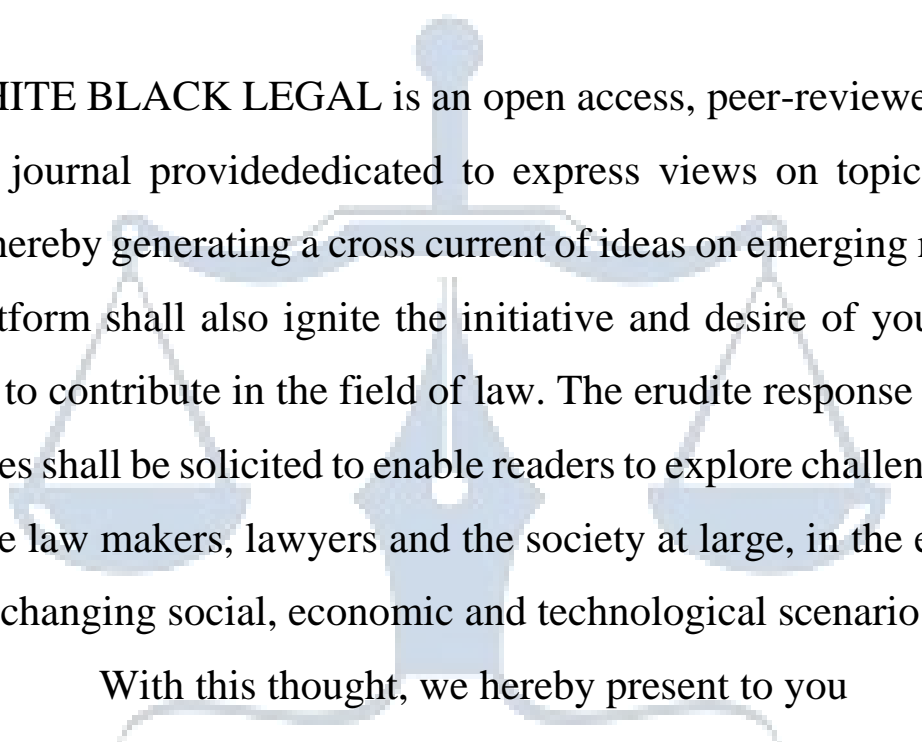


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

A STUDY ON THE NECESSITY OF REGULATING SOCIAL MEDIA DURING PERIODS MARKED BY SOCIAL UNREST AND SAFEGUARDING FREEDOMS OF EXPRESSION IN INDIA - A CONSTITUTIONAL PERSPECTIVE

AUTHORED BY - DR. C. USHA

ABSTRACT

In this paper, we explore the intricate connection between the need to regulate social media platforms during times of political turmoil and the constitutional protection guarantee. The rise of social media as a powerful tool for mobilization and communication during times of turmoil has led to calls for regulatory action due to concerns about misinformation, hate speech, and violence. However, any regulatory scheme must be carefully regulated in accordance with the fundamental right to freedom of speech guaranteed in the Indian Constitution.

This paper aims to provide insights into how India can navigate this complex equilibrium by critically analyzing constitutional provisions, key judicial pronouncements, and recent legislative developments while maintaining democratic principles and human rights. The article examines the subtle aspects of free speech, recognizing its crucial role in encouraging open discussion and opposition, but also acknowledging the valid challenges of using these freedoms to spread lies or foment discord. In elaborating on this discourse, the paper emphasizes that the judiciary has a crucial role in deciding whether to prioritize freedom of speech or allow certain restrictions. It examines significant legal rulings that have established the boundaries of acceptable speech and expression, arguing that any regulations must be consistent with constitutional principles and the rule of law.

Furthermore, the paper scrutinizes recent legislative initiatives aimed at controlling social networking sites and evaluates their ability to tackle complex issues related to content moderation while upholding constitutional rights. The report proposes that a comprehensive approach should be

taken to regulate social media platforms while emphasizing the need for accountability, transparency, and stakeholder involvement.

This paper emphasizes the importance of maintaining a balance between social media regulation to minimize harm and freedoms of expression as fundamental components of India's democratic values. It aims to offer thoughtful viewpoints and policy guidance to help policymakers, jurists, and stakeholders navigate a path that balances these conflicting priorities while upholding the values of pluralism, tolerance, undivided freedom.

INTRODUCTION

The impact of social media on public discourse and community mobilization has become widespread, particularly during times of political instability. Across the globe, including India, events have highlighted how social media can bring about positive change within society but also its potential to create division and discord. Social media platforms have been instrumental in organizing protests, spreading awareness, and amplifying voices that may not be heard elsewhere, including the Arab Spring and the Black Lives Matter movement. In addition to these positive aspects, the widespread use of social media has led to a rise in disinformation, violence, and hate speech, raising concerns about its regulation and governance. As concerns grow about the misuse of social networking sites, there has been a surge in calls for regulators to take action against these practices. Such actions are especially crucial during times of social turmoil, where misinformation and inflammatory content can lead to discord and undermine social harmony. Social media rumors have caused communal violence in various regions of India, emphasizing the need to address these issues urgently.

Even so, when attempting to regulate social media, it is crucial to exercise extreme caution and consideration of the essential concepts contained in India's Constitution, including the protected right to freedom of speech. It is not just a legal guarantee, it is the cornerstone of democratic governance and embedded deeply in India's constitutional structure; this right is fundamental to pluralism, plurality -- and to the full expression of public debate. The regulation of social media to limit its excessiveness must be carefully weighed against the preservation of freedoms that India values. In this paper, we will explore the intricate relationship between the need for regulation of social networking sites in times of popular unrest and the constitutional protection of freedom of speech in

India. The goal is to carry out a thorough examination of the various difficulties that arise from the unrestrained impact of social media, scrutinizing the different types of harmful content disseminated on these platforms and their effects on public order and social cohesion. Moreover, this paper seeks to critically evaluate the current regulatory frameworks and legislative bodies that govern social media in India, ascertaining their ability to address various difficulties associated with online content moderation while upholding constitutional principles. By utilizing legal precedents and constitutional principles, it endeavors to define acceptable limitations on freedom of expression in the 21st century world.

This paper intends to present distinct viewpoints and policy guidance that can assist policymakers, legislators & interested parties in dealing with the complex issues of social media regulation while respecting democratic values and human rights. Its aim is to promote informed debate and dialogue on this important issue, while also creating a regulatory framework that balances the importance of social stability with the respect for constitutional freedoms, thus guaranteeing 'a dynamic and resilient digital public space' in India.

CONSTITUTIONAL FRAMEWORK

The Indian Constitution represents democracy and a comprehensive set of fundamental rights that are necessary for the advancement of society and the protection of individual freedoms. Article 19(1)(a) of the Constitution guarantees a fundamental right that every citizen should have the freedom to express themselves freely and participate in democratic processes, with Freedom of Speech and Expression being particularly prominent.

The fact remains that the right to freedom of speech and expression is protected by Article 19(1)(a), but it is not absolute and is subject to reasonable limitations outlined in Article 19,(2) of the Constitution. Such constraints include concerns for public order and ethics, highlighting the delicate relationship between individual rights and social cohesion. The Constitution's authors acknowledged the necessity of preserving social harmony and public order, and therefore placed reasonable restrictions on freedom of expression to prevent its misuse or abuse.

The Indian Constitution's free expression outlines and restrictions have been determined through judicial interpretation. The judiciary has always stressed the need to strike a balance between

individual liberty and society, emphasizing that freedom of speech should be in line with principles of democratic governance and social harmony. Significant rulings, including *Maneka Gandhi v. Union of India* and *S. Rangarajan versus. I. According to Jagjivan Ram*, any restrictions on freedom of expression must be reasonable, proportionate, and in line with the state's interests. Additionally, the Constitution protects other basic rights that may conflict with social media regulation. Personal autonomy and dignity are closely linked to the right to privacy, which is gaining importance in the digital age due to social media's ability to misuse and exploit personal information. The significant ruling in *Justice K. S. Puttaswami (Retd.) v. The Union of India*'s affirmation of the right to privacy as a fundamental right, which is derived from the basic right under Article 21, has significant implications for the regulation of social media and safeguarding digital privacy.

The constitutional right to equality, as stated in Articles 14 to 18, is intertwined with concerns about social media regulation, particularly regarding online discrimination and hate speech. The Constitution's emphasis on equality extends to all ages, and it prohibits discrimination based on religion, race, caste, sex, or origin, while also emphasizing the importance of fighting hate speech and maintaining inclusivity in online communication. Ultimately, the Indian constitution presents a solid foundation for managing the intricate issues of social media regulation while upholding democratic values and basic rights. By balancing the challenges of social media platforms and safeguarding freedoms of expression, privacy, and equality in the digital age through the implementation of constitutional values and principles of rule of law, accountability.

CHALLENGES AND CONCERNS

Social media have become ubiquitous in recent years, transforming the distribution of information, communication, and community engagement. These platforms, while providing unprecedented opportunities for communication and networking, can also be problematic, particularly when faced with social unrest. Misinformation, fake news and the spread of inflammatory content have become major threats to public order, communal harmony and individual rights. Furthermore, anonymity on social media platforms makes it a good place for hate speech and targeted harassment, which can increase existing societal tensions and undermine the rights and dignity of people.

The rise of misinformation and fake news on social media platforms is a significant challenge in times of social unrest. With the ability to rapidly transmit information to a global audience, social

media has become rife with the dissemination of false or misleading information. When faced with crises or social turmoil, misinformation campaigns can create confusion and distrust among the public, resulting in tensions that prevent solutions from emerging. Misinformation spread on social media can have negative effects on public safety and society, whether it's false news about impending violence, the motivations or actions of certain groups, or a variety of fabricated images and videos intended to provoke outrage.

The dissemination of inflammatory content on social media platforms can contribute to the exacerbation and increase social tensions, as well as the generation of violence. Social media's ability to spread malicious or provocative content can lead to animosity and hostility between social groups. The use of inflammatory language, threats to violence against perceived foes, and graphic content intended to provoke strong emotional reactions can lead to intense conflicts between parties, which can be problematic for law enforcement agencies and policymakers who strive to maintain public order and unity. Furthermore, social networking sites' anonymity makes it difficult to fight against hate speech and filtered bullying. Social media, unlike traditional channels and email, allows users to hide their true identity or keep an eye on the public's profile. The lack of anonymity empowers individuals to engage in hateful or abusive behavior without fear of consequences, resulting in the creation of online hate groups and targeted individuals based on their race, gender, religion, or other attributes. Online hate speech and targeted harassment not only undermines individual rights and dignity but also fosters a climate of fear and intimidation that hinders free speech, democratic participation.

The need for regulatory measures to address negative externalities linked to social media platforms is increasingly being recognized as a response to these challenges. Although social media has taken steps to curb the spread of misinformation and hate speech, opponents argue that self-regulation is insufficient to address the magnitude and reach of the issue. Government intervention is necessary to establish clear standards and guidelines for content moderation, enforce accountability for platform operators, and provide recourse for victims of online abuse and harassment. The regulation of social media raises a range of intricate legal, ethical, and practical issues. The Indian Constitution's right to freedom of expression is a key concern that must be addressed through government regulation. Article 19(1)(a) of the Constitution acknowledges freedom of speech and expression, but also allows for reasonable limitations to be placed on matters that are in the best interest of public

order, decency, or morality. Maintaining a balance between the suppression of bad speech and the protection of free expression, including measures that limit regulatory regulation to serve state interests and avoid unduly restricting information dissemination or suppressing voices of dissidents. In addition, there are practical problems with regulating social media sites due to their global and decentralized nature. Social media outlets are not limited to a specific country and subject to national laws and regulations, unlike traditional media channels that operate within different jurisdictions. Regulatory policymakers face obstacles in creating uniform regulatory guidelines that can address the transnational nature of online content and hold platform operators accountable. Furthermore, the fast-paced technological advancements and ever-evolving online behavior make it difficult to anticipate and respond to emerging risks in real-time, necessitating agile and adaptable regulatory approaches that can handle the dynamic nature of social media. Given the difficulties, there is a growing recognition of the need for addressing social media platforms in broader contexts through multi-stakeholder efforts. Governments, civil society organizations, technology companies and other actors would work together to create comprehensive strategies that balance the competing interests of freedom of expression, public safety, and individual rights. These strategies may involve a combination of legislative changes, industry autonomy, public education initiatives, and the use of technology to detect and control harmful online content. In addition, regulations of social media platforms should be accompanied by measures to promote digital and media literacy among the general population so that individuals can evaluate what they are exposed to online critically and ascertain whether it is true or false. By providing citizens with the necessary tools and knowledge to navigate the digital world in a responsible manner, we can prevent widespread dissemination of misinformation and foster broader citizen engagement.

To sum up, the rise of social media platforms poses several difficulties in the midst of community turmoil, such as disseminating false information, encouraging inflammatory messages, and spreading hate speech and targeted attacks. While regulatory actions may be necessary to address these challenges, they should also safeguard freedom of expression and other fundamental rights enshrined in the Indian Constitution. To ensure the effective use of social media and protect individual rights and democratic values, a multi-stakeholder approach is required that involves governments, civil society, technology companies, and other stakeholders. Through the use of social media platforms, we can bring about positive change through innovative approaches that promote democratic principles, inclusiveness, and social cohesion.

REGULATORY MEASURES

In light of social unrest, a range of regulatory actions have been suggested or initiated to mitigate the negative effects of online content. These include a variety of measures, including content moderation policies, taking down offensive posts and postings, and charging social media companies to pay their legal fees. Moreover, the Indian government has implemented regulations such as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, to govern digital content and social media platforms.

Social media platforms rely heavily on content moderation policies as they establish guidelines and standards for what content is acceptable. The rules usually forbid activities that go against local laws and regulations, such as hate speech, incitement to violence, and harassment. Despite ongoing debates about the effectiveness of these methods, social media companies still rely on automated tools and human moderators to detect and remove objectionable content. By using takedown procedures, individuals or authorities can request the removal of content that goes against community standards or legal requirements and report it. The process of removing content on social media sites is routinely managed, and this may involve reviewing reported content to ensure it meets legal requirements. However, the effectiveness of such procedures can be compromised by jurisdictional challenges, varying legal standards, and the sheer volume of content shared on social media platforms every day.

The legal obligations imposed on social media intermediaries aim to penalize platform owners for publishing content that is considered offensive and motivate them to take proactive steps to address it. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in India mandate that social media intermediaries must use automated tools for content moderation, appoint grievance officers to handle user complaints, and comply with takedown orders issued by government authorities. Even so, civil society groups and technology companies have expressed disapproval of these regulations, citing their potential to suppress free expression, subvert privacy rights, and burden smaller platforms.

The efficacy and constitutionality of these regulatory measures are still a matter of debate, with stakeholders holding differing opinions on whether they should prioritize regulating harmful content or protecting freedom of expression. Critics contend that excessively restrictive rules could hinder

free speech, suppress opposition, and weaken democratic norms on social media platforms. On the other hand, advocates maintain that a robust control of online misinformation, hate speech and incitement to violence is critical for social cohesion and public safety.

The challenge is to create regulatory mechanisms that strike a delicate balance between countering the adverse effects of social media during times of political instability and safeguarding fundamental rights and democratic ideals. This requires a complex balance of freedom of speech, public order and individual rights, with the need to promote transparency, accountability and participation in digital space governance. Governments, civil society, technology companies, and other stakeholders must work in unison to find effective and fairways to address the challenges posed by social media in the digital age.



CONSTITUTIONAL SAFEGUARDS

.Regulating social media platforms to address specific issues is not without precedent, and it should be done in accordance with constitutional principles and fundamental rights. The judiciary's rigorous standards of legality, necessity, and proportionality must be met if there are restrictions on freedom of expression. Moreover, regulatory policies must be open, transparent, and subject to judicial review to prevent power abuses and protect against censorship. Moreover, it is imperative to encourage digital and media literacy in order to educate citizens on how to navigate the online world responsibly. These constitutional safeguards are necessary both to protect democracy and to balance regulatory activities in the digital realm against violations of rule of law, transparency, and human rights.

CONCLUSION

To sum up, the management of social media platforms during periods of political turmoil presents a complex issue that requires adherence to nuanced and rights-based approaches. Although social media may have the potential to increase tensions and promote violence, any regulatory policies must be carefully monitored to ensure compliance with constitutional principles, democratic values, and human rights.

Fundamental rights in the Indian Constitution include freedom of speech which is essential for

democratic discourse and public engagement. Thus, any limitations on freedom of expression must comply with the rigorous standards of legality, necessity and proportionality established by the courts. To prevent censorship and prevent power abuse, regulatory measures must be transparent, accountable, and subject to judicial review. In addition to regulating social media platforms, there should be steps taken to promote digital and media literacy among the general public. The positive outcomes of social media can be achieved by empowering individuals to evaluate their online experiences and navigate the digital world with greater awareness and care. The regulation of social media should aim to balance the challenges posed by online content with respect to constitutional freedoms and rights. India can tackle the challenges of social media regulation while maintaining democratic values and individual rights through a humane approach that emphasizes transparency, accountability, and judicial oversight. Social media has the potential to revolutionize the social world and its impact by fostering democratic practices, openness, and cohesion.

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