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“QUALITY AND DIVERSITY”

‘Freedom’ and ‘Social Responsibility’ of Social Media: Emerging Issues in the Indian Legal System

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Abstract

The paper seeks to highlight the performance of social responsibility as regards the online social sites. The role of social networking sites as a replacement to the erstwhile ‘open access’ platforms of deliberations will also be addressed. This paper also analyses various laws regulating the freedom of speech and expression in this open, wide cyberspace. It advocates the need for redefining the basic concepts of ethics, morality, freedom, liberty, and responsibility, which form the basis of legal framework regulating this large contiguous cyberspace.

Introduction

In the words of Thomas L. Friedman³, ‘The more time you spend in India the more you realize that this teeming, multiethnic, multi-religious, multilingual country is one of the worlds’ great wonders- a miracle with a message. And the message is - the democracy matters’⁴.

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³ Thomas L. Friedman, ‘Where freedom Reigns’, New York Times, 14 August 2002.

⁴ Thomas L. Friedman cited in Doris Sommer, *Bilingual Aesthetics: A new sentimental Education*, Duke University Press, 2004, p. 227.

The word 'democracy' or *demokratia*, was coined from the Greek words - 'demos', meaning 'the people' and 'kratos', meaning 'to rule'⁵. Literally, democracy means 'people power' or 'rule by the common people'⁶. India on attaining freedom, firmly gave shape to the values it has always cherished for so long⁷, and as a result the Constitution of India declares in a profound voice that India is a democratic republic. Further, the Indian Constitution in its preamble expresses the guarantee of social, economic and political justice: liberty of thought, expression, belief, faith and worship; equality of status and opportunity and to promote among them all fraternity, assuring the dignity of the individual.

Freedom of speech is the bulwark of democratic government. The freedom is essential for the proper functioning of democratic process⁸. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties⁹.

In a democracy, freedom of speech and expression opens up channels of free discussion on various issues. Freedom of speech plays a crucial role in the

⁵ Majid Behrouzi (ed.), *Democracy as the political empowerment of the people: The betrayal of an ideal*, Lexington Books, 2006.

⁶ The term 'demos' in ancient Athens usually referred to the entire ...people and sometimes...only (to) the common people or even just the poor; *Ibid*.

⁷ Democracy in some of its forms has been known and practiced in India throughout the ages. Records of Hindu literature –*Vedic*, classical and *prakrit*, have shown that popular assemblies and institutions existed in ancient India and exercised legislative, judicial and administrative functions. Republican form of government existed in the country of the Buddha, and even under the regime of *Mauryans*, and continued to flourish. It became extinct only when the imperial power of the Hindus began to disintegrate. Spirit of democracy is not utterly alien to Hindus who form the majority of population in India. Democracy, however, in its modern western form has been introduced in India by the British. It is true that self-government has been granted to India slowly and in small measures, but now after years of political struggle India has come to enjoy quite an adequate measure of self rule. All the various installments of reforms in India have made the people democratically minded and have introduced them to the methods and procedures of democratic government; See Diwan Chand Sharma, 'Education for democracy in India' in C. Roberts(ed.), *What India thinks*, Asian educational Services, New Delhi, 2004, pp. 126-132.

⁸ Article 19 of Universal Declaration of Human Rights (UDHR) 1948, provides- 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'.

⁹ *Report of the Second Press Comm*, vol.1, pp. 34-35.

formation of public opinion on social, political and economic matters¹⁰. Supreme Court of India, in *Maneka Gandhi v. Union of India*¹¹, has emphasized the significance of the freedom of speech and expression as:

Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people, by the people it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligibly exercise his right of making a choice, free and general discussion of public matters is absolutely essential.

Article 19(1) (a) of the Indian Constitution, which corresponds to Amendment 1 of the US' Constitution¹², includes the right to express one's views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie, etc. It includes the freedom of communication and the right to propagate or publish opinion. Unlike the US Constitution¹³,

¹⁰ Article 19(2) of the *International Covenant on Civil and Political Rights* states that 'Every one shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [their] choice.'

¹¹ *Maneka Gandhi v. Union of India*, Supreme Court, India, AIR 1978 SC 597; (1978)1 SCC 248; Louis Brandeis J. has made a classic statement on the freedom of speech in the context of the US. Constitution saying, 'Those who won our independence believed that the final end of the state was to make men free to develop their faculties...They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that the freedom to think as you will and to speak as you think is means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile...that public discussion is a political duty, and that this should be a fundamental principle of the American Government.' *Whitney v. California*, Supreme Court, the US, 247 US 214.

¹² The First Amendment to the US Constitution codifies the freedom of speech as a constitutional right. The Amendment was adopted on 15 December 1791. The Amendment states, 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances'. Although the text of the Amendment prohibits only the US Congress from enacting laws that abridge the freedom of speech, the Supreme Court has used the Incorporation Doctrine in *Gitlow v. New York* (1925) to also prohibit state legislatures from enacting such laws; See M.P. Jain, *Indian Constitutional Law*, Wadhwa and Co., Nagpur, 1986, p. 1153.

¹³ U.S Constitution has two notable features, viz, 1) freedom of press is specifically mentioned therein; 2) No restrictions are mentioned on the freedom of speech unlike article 19(2) of the Indian Constitution, which spells out the restrictions on article 19(1).

freedom of press is implied from the freedom of speech and expression guaranteed by article 19 (1) of the Indian Constitution. There is no specific provision ensuring freedom of the press as such. The freedom of press is regarded as a 'species of which freedom of expression is a genus'¹⁴. Thus, being only a right flowing from the freedom of speech, the freedom of the press in India stands on no higher footing than the freedom of speech of a citizen, and the press enjoys no privilege as such distinct from the freedom of the citizen.

The Supreme Court of India has laid emphasis, in several cases¹⁵, on the importance of maintaining freedom of press in a democratic society. The press seeks to advance public interest by publishing facts and opinions, without which a democratic electorate cannot make responsible judgments. Articles and news are published in the press from time to time to expose the weaknesses of the government. This leads at times to the suppression of the freedom of the press by the government.

Free and healthy media have always influenced human life. In a democratic set-up, it is often considered indispensable, and is therefore regarded as the ubiquitous fourth estate in various judicial pronouncements. In an empowered democracy, there is a pertinent need to have an active, intelligent and informed participation of people in affairs of their community, as well as that of the State. Print media, along with electronic media as a competitor, has always played a vital role in shaping and reshaping social responses over a considerably long period of time. Though both the forms of media played their respective roles in the sphere of information dissemination, in the past two decades or more, they have started getting eroded with the medium of public debate getting transformed into mediums for expressing particular interests of a comparatively smaller group, rather than general interests of society at large. Also, the electronic media has been severely marred by the hop-skip and jump syndrome of news marketing in the era of 'Target Rating Point (TRP)'. Along

Therefore, the Courts in the US have to spell out the restrictions on this right from case to case ; See *Secretary, Ministry of Information & Broadcasting v. Cricket Association, Bengal*, Supreme Court, India, AIR 1995 SC 1236.

¹⁴ *Sakal Papers v. Union of India*, Supreme Court, India, AIR 1962 SC 305.

¹⁵ *Brij Bhushan v. Delhi*, Supreme Court, India, AIR 1950 SC 129; *Romesh Thapar v. State of Madras*, Supreme Court, India, AIR 1950 SC 124; *Virendra v. State of Punjab*, Supreme Court, India, AIR 1957 SC 896; *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, Supreme Court, India, AIR 1986 SC 515; *Reliance Petrochemicals Ltd. v. Indian Express*, Supreme Court, India, AIR 1989 SC 190; *Printers (Mysore) Ltd v. Assistant Commercial Tax Officer*, Supreme Court, India, (1994)2 SCC 434; *State v. Charulata Joshi*, Supreme Court, India, AIR 1999SC 1379.

with this (although not associated), the social spaces for informed discussion and discourse, especially in urban India, have been shrinking, crumbling/restricting. Open accessible spaces like coffee houses and parks are being replaced by restricted participation in the form of seminar halls, conference auditoriums etc. Therefore, there is a necessity to create open platforms for diverse mediums and credible voices to thrive and deliberate, which should be close, in essence, to the concept of public sphere where rational public debates and discourses are given their rightful importance. People can freely discuss issues of their common concern.

Social media emerged as the flag bearer by making the dissemination of not only information, but also ideas in real time across the globe instantly. In contemporary times, the social media, in particular, has become a potent tool for political and public participation. It has become an efficient tool in expanding, enhancing and augmenting one of the fundamental tenets of a democratic system- the freedom of speech and expression. This shift has been made possible due to online sites like Facebook, Twitter, and WhatsApp etc. They have not only crossed the national barriers but have turned the world into a global village.

As computer networks have spread across the globe and computers have acquired increasing visualization capacities, it has become clear that the ability of human beings and machines to imagine the world (and each other) has been extended in significant ways.¹⁶ Both, social construction¹⁷ and social space¹⁸ has been redefined. The distinction between real and virtual has been blurred. Often, the extremes of a hyperbole imaginative and personal are indistinguishable. 'Space', geographical and social, so integral to a geographer has become virtual. Since, space has become virtual, social organizations, social relations and social groups have become virtual. Social communications have undergone a drastic change, from personal face to face to virtual on facebook.

¹⁶ R.J. Johnston, et al. (eds), *The Dictionary of Human Geography*, 4th edn, Blackwell Publishing, 2005.

¹⁷ The idea that the social context of inquiry, rather than the world which is investigated, determines – constructs, is knowledge. Knowledge, therefore, is always relative to its social setting (there are no absolutes), and the outcome of an active process of fabrication, rather than the discovery of a reality pre-existent.

¹⁸ 'Space' as it is perceived and used by social groups. The term was introduced by Buttimer in the year 1969.

Communication and Social Media

All living things communicate to each other in some way or another, but humans leave lasting impressions intentionally. Communication and networking (network in the sense of the word to purposefully interact with others) are vital to our survival and our history. Social media has been around since humans began to talk. One of the first signs of human social media was cave wall paintings. Some of the earliest forms of social media were not digital. According to the Merriam-Webster dictionary, the word social is

of or relating to human society, the interaction of the individual and the group, or the welfare of human beings as members of society. The word media means a medium of cultivation, conveyance, or expression. Media is also a plural form of medium and a medium is a particular form or system of communication.

Some of the earliest forms of social media were primitive, and did not involve a computer, but did involve some type of technology to convey the message. Thus, it has been and still is a means of communication.

Social media has drastically changed how we communicate. Not too long ago, we communicated through the mail, on a land-line telephone, and in person. Today, we send text messages; leave voice messages; use instant messenger; send emails; talk through headphones, cell phones, and online video phones; and, of course, interact through the Internet where a plethora of social media tools has redefined communication. Social media's greatest change to the way people communicate is user-produced content and the fast and flexible sharing of this content. Fox (2011)¹⁹ identifies eight key changes that social media has constructed to the way we communicate:

- i. The first change specific to social media, is the anonymity of its agents, which means that those who write and comment often use nicknames or aliases.
- ii. The second change is the richness and diversity of information social media provide. Users are no longer dependent on a single source for

¹⁹ RL Gangl A Fox, 'News You Can't Use- Politics and Democracy in the New Media Environment' in Le Cheminant (ed.): *Manipulating Democracy - Democratic Theory, Political Psychology, and Mass Media*, Routledge, 2011.

their news and other data any more, but can flexibly use several different media side by side.

- iii. The third change is omnipresence – there are no longer any isolated places or hiding holes. The private and public lives of society’s most influential figures have merged and become public space.
- iv. The fourth change is speed. News and information are spread more quickly than ever before, and the demand for speed can also lead to reports without any confirmation. William Davidow²⁰, an engineer and technology investor, describes the current era using the term “overconnected”: we are too often and too quickly in contact and can’t process new information adequately due to haste.
- v. The fifth change is the multitude of roles that users assume, and their relationships to each other. The lack of a clear hierarchy is characteristic of social media.
- vi. The sixth change is the move from objectivity to subjectivity.
- vii. The seventh change is the new ability to combine different kinds of recorded information in very flexible ways. Social media isn’t just text, pictures, audio, video, and animation, but all of these combined.
- viii. The eighth change is the near absence of traditional methods of regulation. A government can attempt to restrict the content of social media, but traditional censorship cannot keep up with ever-changing web pages.

While the tools and kinds of social media are many and their implementations seemingly boundless, they all share a common set of characteristics. There are the five C’s of social media: Conversation, Contribution, Collaboration, Connection and Community.²¹ Social media is part of the whole body of

²⁰ William Davidow, *Overconnected - The Promise and Threat of the Internet*, Delphinium, 2011.

²¹ **Conversation:** No longer is the communication one-way, broadcast or somehow sent to a passive audience. Social media is at least a two-way conversation, and often a multidimensional conversation. **Contribution:** Social media encourages contributions and reactions from anyone who is interested. ‘Encourage’ is the key here; social media

activity consisting of Internet communications and online interaction. Social media are new information network and information technology using a form of communication utilizing interactive and user-produced content, and interpersonal relationships are created and maintained. Typical social media network services could be content sharing, web communities and Internet forums.²² At least five major features of such social media are easy to identify:

- a) Social networking and social interaction
- b) Participation
- c) The use of different providers (e.g. search engines, blog spaces, etc.)
- d) Openness
- e) Collaboration (between both users and user groups).²³

Social Responsibility of Social Media

The emergence of the social media phenomenon has been one of the most remarkable developments in the Internet world during the last few years. Communities formed around Facebook, MySpace, Reunion, and their less known counterparts like Orkut, hi5, gather tens of millions of users on a daily basis. YouTube offers a platform for basically anyone to publish their videos, including critical views on societal problems. Wikipedia has all but made traditional encyclopedias obsolete. Also mobile and ubiquitous location aware social media applications like Twitter and Jaiku are gaining ground, and are becoming part of everyday communication. The power of social media to affect society is based exclusively on its social aspects: interaction and participation. The emergence of Web 2.0 has driven the excitement about the new qualities of the Web as a platform. The second stage of Internet

solicits an interaction, positive and negative, by making it easy to contribute. **Collaboration:** Social media promotes an exchange of information between you and your audience, and among audience members, by inviting participation. **Connection:** Accessing information on the Internet only takes a click. Social media thrives on connections, within its own Web vehicles and through links to other sites, resources, people, and automatic feeds. **Community:** The fundamental characteristic of social media is the creation of community: a fellowship and relationship with others who share common attitudes, interests, and goals (such as friendship, professionalism, and politics) Communities form quickly and communicate effectively. While these communities are only virtual, with members seldom meeting each other in person, they are no less robust than the physical communities in which we live, and in many ways more robust from the simple fact that barriers are removed.

²² Sanastokeskus TSK, *Sosiaalisen median sanasto*, Helsinki, 2010.

²³ Eysenbach, '2.0: Social Networking, Collaboration, Participation, Apomediation, and Openness', vol 10, no. 3, *Journal of Medical Internet Research*, 2008, p. 22.

development has given rise to a plethora of web-based applications that are characterized by interactivity, collaboration and information sharing. Moreover, these applications have enabled Internet users to produce and publish so-called user-generated content with great ease. Users have become 'producers', which means that they simultaneously consume and produce information.²⁴ Web 2.0, platforms which facilitate the production and dissemination of information, have been growing tremendously over the past few years. They allow for the involvement in participatory cultures to share individual expressions or creations. Furthermore, people with similar interests and goals are enabled to connect with each other on blogs and social networking sites. Collaborative social media services are widely utilized in societal activities, companies, local environment and private life. This creates increasing transparency in all the spheres of society. Virtual and real worlds will be more integrated into a ubiquitous, communicative media supporting participation and new forms of work and co-creation.

The basis of social media is inherently mediated, yet democratic by nature. The defining characteristics of social media like openness, participation, discussion, communication are signature signs of a healthy, capacitative democracy. The power of social media to affect society is exclusively based on its social aspects: interaction and participation. For the purpose of the current paper, this social / democratic role of social media will be understood through :

- i. The role of Information and Communication Technologies (ICTs) especially social media in different social movements – Cyber protests.
- ii. The Emerging Role of Social Media in Regime Change
- iii. The role of Social Media in Politics

Cyber Protests

Internal and external communication of social movements was, and is, heavily based on direct interaction among physically present people. However, for at least two hundred years, direct interaction has been complemented by various media such as leaflets, brochures and newsletters, to reach large numbers of people both within and outside the movements. Moreover, newspapers and, in later periods, radio and television have covered major movement activities. Internal, as well as external communication of social movements was

²⁴ Axel Bruns, *Blogs, Wikipedia, Second Life, and Beyond: From Production to Producership*, Peter Lang, New York, 2008.

facilitated, but certainly not revolutionized, by telephones, copy machines and fax machines. With the most recent information and communication technologies (particularly portable computers, now morphing with mobile phones to give easy access information) and their links via the world wide web (internet), citizen groups and social movements, like many other organizations and institutions, are likely to reach a new level in the ways in which they mobilize, build coalitions, inform, lobby, communicate, and campaign.²⁵ Since the anti-globalization protests in late 1990s, the adoption of new information and communications technologies (ICTs) by social movement activists has offered the prospect of a serious challenge to traditional forms of political participation. With its transnational many-to-many communication facility, the internet offers revolutionary potential for social movements to speak directly to the citizens of the world, circumventing the official messages of political organizations and traditional media. Furthermore, electronic mail, mailing lists, websites, electronic forums and other online applications provide powerful tools for coordinating activity among geographically dispersed individuals, and for shaping collective identity.

Among citizens both in the West as well as in developing countries, the arena of official politics has witnessed a decline in support and participation. Voter turnouts are decreasing and party loyalty is in decline, especially among the young. One can see signs of contempt for the political class, with a climate of cynicism emerging in some places. The extensive disenchantment with formal politics and the crisis of citizenship are themes needed to be addressed by the political class. Economic insecurity, unemployment, low wages, declining social services, growing class cleavages, ecological dilemmas, and a sense of powerlessness among many citizens are all part of the picture. One can speak of a retreat from public culture, with an ever-increasing emphasis on private consumption and life style. The *cyber* organizing of global protests and campaigns is making a strong contrast to declining party membership and falling electoral turnouts in many countries.

However, we also have evidence of alternative developments, a more optimistic renewal of democracy, largely outside the parliamentary context, that can be said to represent forms of alternative or new politics, life politics, lifestyle politics, or sub-politics. There are a variety of labels and many variations in the way these alternatives manifest themselves. There are many kinds of social movements, special interest organizations, activist groups, single issue coalitions and civic networks. These all suggest that if we look

²⁵ P.I. Hajnal (ed.), *Civil society in the information age*, Aldershot, Ashgate, 2002.

beyond the formal political arena, we can see clear signs that many people have decidedly not retreated from the arena of common concerns and abandoned political engagement. Rather, they have refocused their political attention in other arenas, developed other political targets, and developed other modes of political engagement. In addition, there is the rise of the subaltern as described by Antonio Gramsci. Giving voice to the voiceless is the buzzword. In his book, *Toward a New Legal Common Sense* (2002), the sociologist Boaventura de Sousa Santos applies the term *subaltern cosmopolitanism* to describe the counter-hegemonic practice, social movement, resistance and struggle against neo-liberal globalization, especially the struggle against social exclusion.

This type of political activity tends to be more *ad hoc*, less dependent on traditional organizations and on elites mobilizing standing cadres of supporters. Some activists are even in the process of redefining just what constitutes politics, guided more by personal values than traditional ideologies; often the focus is on single issues rather than across the board social change. The boundaries between politics, cultural values, identity processes and collective self-reliance become fluid; politics becomes not only an instrumental activity for achieving concrete goals, but even at times an expressive and performative activity, entwined with the development of the self.

Just about concurrent with the growing crisis of democracy in the late 1990s and 2000s, we witnessed the emergence of the internet and other digital information and communication technologies (ICTs) first followed by the second internet revolution, in the name of social networks. Armchair academic theorizing became the order of the day when discussions veered towards how internet would promote democratic participation amongst citizens and in cases may even save democracy. The internet and social media has truly constituted an impressive, even if globally a highly uneven, revolution in communication, and has had an impact on just about all spheres of society and culture. It certainly seemed reasonable to expect that even the dynamics of democracy would experience an impact.

Theories of democracy have generally treated the communicative interaction among citizens as vital. Talk among citizens is seen as basic to their political participation, to the functioning of the public sphere. Today, a good deal of civic discussion takes place on the internet on social media sites, not only in explicit public forums and within varieties of online journalism, but also within the vast networking of activist organizations and social movements. Though

the internet is threatened by both government control and commercialization via market forces, it still offers an incomparable communicative civic space.

Not least, we see how the internet helps promote what are called alternative or counter public spheres that can offer a new, empowering sense of what it means to be a citizen. In the context of social movements and activist networks, this is taken one step further via mobilization and the various forms of political practices that they embody. We would do well, however, to avoid idealizing these developments. For one thing, the activists one finds on the net are not all necessarily democratic in character: there are also racists, neo-Nazis, and other unsavoury types. Also, given the fluid character of many of these net based movements, and the ease of joining and withdrawing, it is really difficult to estimate what portion of the citizenry is actually involved. Yet, contemporary social movements and their use of ICTs constitute a major element in the landscape of late modern democracy.

It appears that the research community has particularly neglected the role of social media in the extra-institutional sphere of politics, in which loosely structured groups and social movements play a prominent role. Informal citizen groups and internet based social movements are integral components of extra-institutionalized sphere of politics. Compared to the clearly identifiable and well-established actors such as major political parties and interest groups, the use of social media by social movements is difficult to study because of the very nature of social movements. As stated time and again these tend to be fuzzy and fluid phenomena often without clear boundaries. Although, they may include formal organizations as components, on the whole they are not an organization. A social movement typically lacks membership forms, statutes, chairpersons, and the like. It may expand or shrink considerably over relatively short periods of time, and exhibit phases of visibility and latency. Also, unlike political parties, social movements may have significant overlaps with other movements. Moreover, a social movement may quickly change its forms, strategy, tactics, and even some of its goals. Social movements are 'moving targets' difficult to study.

Whereas the more traditional social movements, for example those of peasants and workers, were essentially based on closely-knit and relatively homogeneous milieu bound to particular territories and social locations, this seems to be less true for the more recent social movements, including the so-called new social movements. Some of the latter, for example, the environmental movements, the women's movement, and the 'global justice' movements, have a relatively heterogeneous constituency that is only loosely

coupled but easily stretches beyond national borders. Moreover, these new movements tend to embrace concepts such as diversity, decentralization, informality and grassroots democracy rather than unity, centralization, formality and strong leadership.²⁶ Therefore, we would speculate that new social movements are particularly keen to adopt ICTs and social media because these fit their ideological and organizational needs.

After having established the usage of social media in propagating the new social movements across national boundaries, across communities, we should also integrate the rights of the smaller internet communities and their resistance movements. The role that social media has played in voicing their concerns are no less significant. In this sense, social movements are ‘transnational social movements’ and depending on their geographically diverse memberships, social media adopts an important role. This concept refers to a network of organizations that are not bound by state barriers, and that connect people and places ‘that were formerly seen as distant or separate’.²⁷ Tarrow, who uses a typology to indicate different forms of transnational collective action, argues that the conditions for a sustained transnational social movement ‘that is, at once, integrated within several societies, unified in its goals and organization, and capable of mounting contention against a variety of targets’ are hard to fulfil.²⁸

In this section, following examples of social movements based on social media will be discussed: anti-globalization movements, the Dutch Women movements online, Disabled people and new age activism, Queer sisters and their Electronic Bulletin Board.

Social Media, Politics, Elections and Regime Change, Digital Democracy (A special reference to Asia and the Middle East)

What do demonstrations on city streets in the Philippines in 2001, the election of Barack Obama as President of the United States in 2008, revocation of the results of the fraudulent elections in Moldavia in 2009, the M-15 movement

²⁶ P Gundelach, ‘Social transformation and new forms of voluntary associations’, vol. 23, *Social Science Information*, 1984, pp. 1049–1081.

²⁷ R. O’Brien et al., *Contesting global governance. Multilateral economic institutions and global social movements*, Cambridge University Press, Cambridge, 2000.

²⁸ S. Tarrow, *Power in movement—social movements and contentious politics*, Cambridge University Press, Cambridge, 1998.

with their camps and demonstrations in Spain in 2011, the so-called ‘Arab Spring’ in the Middle East in early 2011, and the ‘Occupy Wall Street’ movement that started in New York, also in 2011, all have in common?²⁹

They have all used social media to help organize such protests and mobilize their responsible agents. Yet, these were much more than just about arranging a party; they all greatly exploited social media to establish communication networks and move towards their objectives. Today’s social media have helped make real the idea of a ‘global village’, first put forward by communications theorist Marshall McLuhan in the 1960s, and suggests the claims of a ‘flat world’ by twenty-first century essayist Thomas L. Friedman are true.³⁰ According to Friedman, personal computers and the speed of the optic cable in the transfer of information have marked the modern revolution and almost removed the limitations of time and space.

Social media’s quick development into an important way to influence society is part of the advancement of information and communication technologies.

Barack Obama’s 2008 US presidential campaign has often been described as the first electoral campaign in which the use of social media had a decisive impact.³¹ The core of the web-based campaign was a well-designed, versatile and dynamic website, ‘my.barackobama.com’. Obama’s inspiration for ‘smart power’ came from the former United States diplomat, Joseph Nye’s 1991 term, ‘soft power’.³²

The discussion amongst Social scientists generally veers towards the impacts and possibilities of social media and social networking. Not only since Barack Obama’s successful use of online communication, but also among other politicians of different regions and ideologies. Although, there is still a wide range of different opinions about the right use of these tools and their real impacts, one thing is clear: ‘why’ is no longer the question. It’s just ‘how’! Social media is here to stay. Facebook, with more than 500 million users, is the

²⁹ C. Shirky, ‘The political Power of Social Media’, vol. 1, no. 1, *Foreign Affairs* 28, 2011, pp. 28-41.

³⁰ T. Friedman, *The World Is Flat 3.0: A brief History of the Twenty-first Century*, Picador, 2007.

³¹ R Harfous, *Yes We Did - An Inside Look at How Social Media Built the Obama Brand, new Riders 2009 and Pew Internet. The Internet’s Role in Campaign 2008*, Pew Internet and American Life Project, April 2009.

³² ‘Soft power’, as defined by Nye, is the ability to get what you want through attraction rather than coercion or payments. It arises from the attractiveness of a country’s culture, political ideals, and policies.

third biggest 'country' in the world! A look at the pure numbers and facts about social media baffles the researchers: 90 per cent of Malaysia's youth are on Facebook, Indonesia has some 22 million people using social networking on a daily basis, and the Philippines is rightly known as 'the social networking capital of the world'. Not to mention China and India, with low penetration rates so far, but with impressively enormous growth rates.

Asia is too diverse, especially when it comes to politics. Furthermore, we have different political agendas in the countries: Elections in the Philippines, and South Korea; revolts and revolution in Thailand; plus the usual re-orientation and reorganization of political parties in between general elections. The continent of Asia also depicts the two extremes of a hyperbole: on one hand, we have the Philippines, also called the social networking capital of the world, and on the other hand, we have counties like Pakistan, where social media has just made its initial forays.

The historic elections of Senator Noynoy Aquino in 2010 provides the classic example of the positive role that social media can play in politics. Aquino's decision to vie for presidential candidature had been buoyed by supporters, shortly after the death of his mother, the former President Corazon C. Aquino, on 1 August 2009. The site started with slightly more than 11,000 followers in September 2009, when the page was first commissioned by the New Media Bureau to be Aquino's official Facebook fan page. The site began running shortly after Aquino decided to run for the presidency, and exceeded one million fans on 25 March 2010. Aquino personally posted his appreciation to his almost 40,000 followers, on Twitter, which the campaign had also tapped into for communicating with supporters. Such was Aquino's popularity with Filipinos online, that administrators also set up other accredited fan pages on Facebook, 'to host discussions, answer questions by supporters, and even help supporters' personal messages get to Sen. Aquino'. With over 78,000 interactions a week, Aquino's team claimed they defeated all other presidential aspirants who were waging a popularity game on Facebook, which became the social medium of choice for candidates in the May 2010 presidential contest.

A 2009 Universal McCann study noted that social networking is a popular way of connecting people globally, especially in countries like the Philippines, which has close to two million Filipinos working overseas. Loyalties were evidently changing, as the same surveys showed Facebook, which had four per cent of users in 2009, jumping to a huge 83 per cent in 2010. Facebook's members come mainly from the 18-24 age bracket, followed by the 25-34 age

group. However, those over 35 years are said to be the social networking site's fastest growing demographic. Thus, two conditions for social media to develop as a successful instrument of change (at least in Philippines) in political communication are a sizeable young population (often disenchanting with the traditional political participation and discourse) and a sizeable overseas population.

It is not surprising, then, that India which fulfils both the pre-requisites is slated to encounter what the web bloggers are calling 'the first big social media election'. The number of social media users in India will reach 80m by the middle of this year, according to industry estimates. That may not sound like much compared with an electorate estimated at 800m, but the reach of social media goes far beyond the users themselves. 'That is really what happened in Delhi, which is how the AAP (*Aam Admi Party*) came into power.'³³ Murthy estimates that each social media user influences three more people in their household.

In fact, the outcome of the polls in at least 150 of India's 543 constituencies will be determined by Facebook users, according to a study by the Internet and Mobile Association of India and the independent Iris Knowledge Foundation. Even the Election Commission has recognised the importance of new media, asking candidates to declare their accounts and spending online. There has been a sea change in both the attitudes of the political class as well as the voters since the 2009 elections. Political parties in India have borrowed some ideas from the US Democrats like AAP's 'Call Delhi Campaign' ahead of State elections in December. But, there are obvious socio-cultural distinctions and lower internet penetration. Social media is also a leveller – it can be the cheapest marketing tool around. Some hope it could help India move away from the current situation, where money means success in political campaigning. As well as levelling the political playing field, use of the internet for communication and organisation has the potential to stop undeclared wealth – known as 'black money' – filtering into election funding.

For the paper, only one example, that is, the impeachment trial of Philippine President Joseph Estrada in 2001 is elaborated. On January 17, 2001, during the impeachment trial of Philippine President Joseph Estrada, loyalists in the Philippine Congress voted to set aside key evidence against him. Less than two hours after the decision, activists, with the help of forwarded text messages,

³³ Mahesh Murthy, founder of Pinstorm, a digital marketing group that works with large companies and leading political parties.

were able to organize a protest at a major crossroads in Manila. Over the next few days, over a million people arrived. The public's ability to coordinate such a massive and rapid response (close to seven million text messages were sent that week) alarmed the country's legislators so much that they reversed course and allowed the evidence to be presented. The event marked the first time that social media had helped force out a national leader".³⁴ On January 20, 2011, Estrada resigned.

The Middle East Regime Change

In the spring of 2011, the world watched as revolutionary fervor swept the Middle East, from Tunisia, to Egypt, to Syria and beyond. Startling images captured by civilians on the scene were viewed by people around the world, courtesy of distribution via Facebook, Twitter, YouTube.

There can be no doubt that information and communication technologies, in particular burgeoning social media, played a part in the upheavals. The Internet, YouTube, Twitter, and Facebook have re-constituted, especially among young people, how social relationships are constructed and how communication is produced, mediated, and received. They have also ushered in a new regime of visual imagery, in which screen culture creates spectacular events just as much as they record them. Under such circumstances, state power becomes more porous and there is less control. Text messaging, Facebook, Twitter, YouTube and the Internet have given rise to a reservoir of political energy that posits a new relationship between the new media technologies, politics, and public life".³⁵

The Middle East and North Africa region has one of the most youthful populations in the world, with people under 25 making up between 35-45% of the population in each country. They make up the majority of social media users, including about 17 million Facebook users, 25,000 Twitter accounts and 40,000 active blogs, according to the Arab Advisors Group.

There are several other cases like following the dubious elections, protests broke out in Moldova a former Soviet republic which brought the attention of

³⁴ Clay Shirky, 'The Political Power of Social Media: Technology, the Public Sphere, and Political Change', vol. 90, no. 1, *Foreign Affairs*, 2011, pp. 28-I.

³⁵ Henry A. Giroux, 'The Iranian Uprisings and the Challenge of the New Media: Rethinking the Politics of Representation', *Fast Capitalism* 5.2, 2009.

the world to a small country and its political problems. Tunisian ‘Jasmine’ revolution, where Tunisian president Zine al-Abidine Ben Ali responded to large scale protests initiated by the self-immolation of a street vendor, by ordering in the army and imposing a night-time curfew is another classic example of role of social media in political regime change. Here, the President who had installed a heavy censorship on internet had to flee the country. These are some examples of social media fulfilling its ‘social responsibility’.

The Critiques of Social Media ‘Revolution’

The importance of social media in this latest wave of political upheaval has political theorists and social scientists divided in opposing camps. Christian Christensen opines that

while techno-utopians overstate the affordances of new technologies (what these technologies can give us) and understate the material conditions of their use (e.g., how factors such as gender or economics can affect access), techno-dystopians do the reverse, misinterpreting a lack of results with the impotence of technology; and also, forgetting how shifts within the realm of mediated political communication can be incremental rather than a seismic in nature.³⁶

New Yorker writer Malcolm Gladwell, the author of *The Tipping Point*, has been one of the most vocal critics in the US³⁷. He points out that ‘the platforms of social media are built around weak ties. Social networks are effective at increasing participation by lessening the level of motivation that participation requires.’ He further argues that these types of relationships are not conducive to the sustained, hierarchical, and high-risk behavior needed to make real social change as seen in the US civil rights movement in the 1960s.

India: Freedom and liberty in Social Media v/s Indian Legal Framework

In India, the social networking sites have been playing an active role of a platform in abridging the gap between the people and their awareness cum

³⁶ Christian Christensen, ‘Discourses of Technology and Liberation: State Aid to Net Activists in an Era of Twitter Revolutions’, vol. 14, no. 3, *Communication Review*, 2011, pp. 233-253.

³⁷ Malcolm Gladwell, ‘Small Change’, *The New Yorker*, 4 October 2010.

participation. The huge success of AAP, which brought it to power in New Delhi and now is a third option in the National politics, have all been made possible due to their propaganda on Social Media. The awareness, may it be in terms of political campaigning, making people aware about the dreadful night of Bhopal Disaster on 16th December, LGBT Rights, sports, so on and so forth. Cricket, a religion in India has been a boom on Social media. As stated earlier in the paper, The Youth today is disenchanted with the traditional forms of opinion generators like Newspapers, News on televisions, but, will surely log on to their internet accounts every day. Social Media acts as a medium of awareness for them. It further allows them to participate in discussions and debate. It acts as a firm pressure group affecting the policy making of the Nation. Though Social Media have a number of criticisms at its credit but its pros overshadow its cons. Social media spark a revelation that we, the people, have a voice, and through the democratization of content and ideas we can once again unite around common passions, inspire movements, and ignite change.

But, contrary to this, the criminalisation of online speech in India is of concern as the authorities have prosecuted legitimate political comment online and personal views expressed on social media. New free speech opportunities offered by social media usage in India have been diminished after the introduction of provision 66A of the *Information Technology Act*³⁸, and the arrest of a number of Indian citizens for posting harmless content. Section 66A of the IT Act is both overly broad and also carries a disproportionate punishment³⁹.

³⁸ Although the *Information Technology Act* was in force since 2000, India did not police the cyber space with much vigour before the 2008 terrorist attack on Mumbai. After the attacks, the *Information Technology Act*, 2000 was amended to expand and strengthen the monitoring and censoring capacity of the government. The *Information Technology (Amendment) Act*, 2008, was passed in an eventful parliamentary session on 23rd of December 2008 with no discussion in the House.

³⁹ The provision reads: **Punishment for sending offensive messages through communication service, etc.**—Any person who sends, by means of a computer resource or a communication device—(a) any information that is grossly offensive or has menacing character; or (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

A minute perusal of the provision clearly indicates that there is an inherent inconsistency between the phraseology of Section 66A and Article 19 (1) (a) of the Constitution, which guarantees freedom of speech and expression to every citizen. Under Article 19(2), restrictions on freedom of speech and expression are reasonable if they pertain to any of the listed grounds, such as sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. But under Section 66A, restrictions have been placed on freedom of speech and expression on several other grounds, apart from those mentioned in the Constitution.

There are several anomalies in the provision, which are inconsistent with free speech requirements. Words like ‘grossly offensive’, ‘menacing character’, ‘annoyance’, ‘danger’, ‘obstruction’, ‘insult’ and ‘injury’ do not have any precise definition. A prominent question that has been left unanswered is whether these words are to be construed with regard to the sensibilities of the particular person the words are addressed to or as per that of a reasonable man. Going by the sensibilities of particular individuals, it is most likely that even authors of innocent communication through e-mail could be accused of having violated the law.

To add to the fear that this provision could be hugely misused, several incidents in the recent past bear testimony to the same. In April 2012, Ambikesh Mahapatra, a professor of chemistry in Jadavpur University in West Bengal, was arrested for posting a cartoon on West Bengal Chief Minister Mamata Banerjee on social networking sites. In May 2012, two Air India employees were arrested by the Mumbai police for putting up content on Facebook and orkut that was against a trade union leader and some politicians. They were in custody for 12 days. Again, in October 2012, Ravi Srinivasan, a businessman, was arrested by the Puducherry Police for tweeting that Kartik Chidambaram (son of Union Finance Minister P.Chidambaram) appears to have amassed more wealth than Robert Vadra, son-in-law of Congress president Sonia Gandhi. In November 2012, Shaheen Dhada was arrested for questioning the shutdown of Mumbai following the death of Shiv Sena supremo Bal Thackeray in her Facebook post, which was liked and shared by her friend, Renu, who was also arrested by the Thane Police in Maharashtra.

If news stories are any indication, then the Indian police since March 2012 stepped up enforcement actions against speakers under umbrella of many criminal statutory provisions prohibiting defiling of sacred objects (*Indian Penal Code* of 1860, section 295), criminal intimidation (section 506) and

annoyance or inconvenience in online posts (Information Technology Act of 2000, section 66A). Public perception of such police actions, as reported in the news media, was overwhelmingly and strongly negative. The police actions evoked important policy questions: were they consistent with the letter and intent of the statutes on which they were based? Further, were the police actions, and the respective statutes, congruous with the reasonable restrictions of established law?

In the face of widespread abuse of Section 66A, a writ petition filed in November 2012, in the form of a public interest litigation in the Supreme Court⁴⁰ challenging the section's constitutionality, wherein it has been submitted that the phraseology of impugned Section is so wide and vague and incapable of being judged on objective standards, that it is susceptible to wanton abuse and hence falls foul of Article 14, 19 (1) (a) and Article 21 of the Constitution. Admitting the writ petition, the Division Bench of Supreme Court of India, comprising of Chief Justice Altamas Kabir and Justice J. Chelameswar, noted that the 'wording of Section 66A is not satisfactory. It is made very wide and can apply to all kinds of comments'. In addition to this, in January 2013, Rajeev Chandrasekhar, member of the upper house of the Indian Parliament, filed a petition to the Indian Supreme Court⁴¹ challenging Section 66A and the *Information Technology [Intermediaries Guidelines] Rules* for being arbitrary and uncanalized. Petitions on the similar grounds against the said provision are also currently under review by the Supreme Court⁴².

Meanwhile, to prevent the misuse of Section 66A, the Ministry of Communications and Information Technology, Government of India has issued Advisory to State/UT Governments on implementation of Section 66A. They have been advised that with regard to the arrest of any person in connection with a complaint registered under Section 66A, the concerned police officer of a police station under the State's jurisdiction may arrest any person only with prior approval of such arrest from an officer not below the rank of the Inspector General of Police in the Metropolitan cities or an officer not below the rank of Deputy Commissioner of Police or Superintendent of police at the district

⁴⁰ *Shreya Singhal v. Union of India*, India, WP (Cri) no. 167 of 2012.

⁴¹ *Rajeev Chandrashekhar v. Union of India*, India, W P (C) no. 23 of 2013.

⁴² The Supreme Court of India has decided to bunch together all petitions related to the regulation of free speech online. Parties who have filed petitions include Shreya Singhal, Mouthshut.com, Dilipkumar Tulsidas, Common Cause and Rajeev Chandrashekhar.

level, as the case may be⁴³. It is contended by the Government that the amended guidelines require the clearance of senior police officers for cases to be registered under the section are sufficient so strike the balance. However, the governments' guidelines fall far short of expectations from civil society and writ petitions are filed for holding the provisions unconstitutional. What is expected is either deletion or amendment of existing impugned provisions of IT Act and ancillary regulations.

Conclusions

It is clearly evident that social media is a very powerful means of exercising one's freedom of speech and expression. However, it is also been increasingly used for illegal acts which has given force to the Government's attempts at censoring social media. Where on the one hand, the misuse of social media entails the need for legal censorship, on the other hand, there are legitimate fears of violation of civil rights of people as an inevitable consequence of censorship. What is, therefore, desirable is regulation of social media, not its censorship.

The present cyber laws of India are neither appropriate nor adequate in this respect. An analysis of the existing IT laws shows that there is unaccountable and immense power in the hands of the Government while dealing with security in the cyber space. Even then, it is not sufficient to check the misuse of social media. Hence, a specific legislation is desirable to regulate social media.

However, there are many practical difficulties which may arise while doing so. There is a very thin line which demarcates the enjoyment of one's right and the violation of the enjoyment of else's right in the process. In social media, the exercise of freedom of speech and expression by one may result in the invasion of privacy and defamation. Again, the idea of objectionable content varies from one person to another. A cartoon is a harmless way of having fun but offence may be taken by the person concerned. Similarly, hate speech, racist remarks, religious sentiments have different meanings for different people.

Meanwhile, the concern that Supreme Court of India showed while admitting the Writ petitions filed, challenging the legal framework regulating cyberspace

⁴³ Department of Electronics and Information Technology, Government of India, 'Advisory on Implementation of Section 66A of the Information Technology Act, 2000', 9 January 2013 available at http://meghpol.nic.in/notification/Advisoryonsection_66A.pdf, accessed on 12 March 2014.

as unconstitutional, is a welcome step. The scheduled hearing will be interesting, to say the least, since several substantial questions of law have been raised in the collective, the answers to which will have far reaching implications in Indian technology law and the civil liberties of its citizens. What best can be done now is to wait with a hope for the Apex court decide in way which carefully balances the interests of all stakeholders involved in India's technology regulatory framework. But, even in the case of success for the petitions, these decisions will require political will to be implemented.

Keeping all this in mind, it is suggested that the Government should reform the legal framework by looking into all the possible facets of the use and misuse of social media which can regulate this virtual space without hindering the civil rights of citizens.

Finally, the critiques of social media often belittle the role and scope of social media by stating that the inventors and promoters of social networking have struck a responsive chord or touched a raw and tense nerve which has long waited for the right kind of stimulus. At the heart of social networking is an exchange of personal information. Users are happy to reveal intimate details of their personal lives, to post accurate information to socialize online.

Even though the authors do not agree with this discourse, they would like to position themselves by stating that in a society where restrictions are imposed on varied and every conceivable basis of caste, gender, race, colour, rural/urban, even this purpose of letting one's innermost feelings getting a platform and voice is of no small relevance.