



CONSTITUTIONAL RIGHT TO FREEDOM OF SPEECH AND USE OF SOCIAL MEDIA BY POLITICAL PARTIES

Vyankatesh Vilasrao Kahale, Dr. Vikas K Jambhulkar

Research Scholar, Guide and Head of Department Political Science

Department of Political Science

Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur, India

Abstract: In today's digital era, social and digital media are highly useful tools to communicate information. In present study researcher will examine role of social and digital media in Indian constitution and its correlation in terms of the articles in the constitution and ways through which political parties have been misusing the social and digital media platform to misguide the voters. Digital media is changing the way political parties interact with voters bridging the gap like never before. Given today's era of increasing social media usage. and growing internet penetration due to increased usage of smartphones on the one hand and saturation of traditional mediums on the other, digital media offers the perfect platform for political parties to reach audiences worldwide. The use of digital and social media increases the reach of communication efforts and allows targeting the advocacy and tailoring it as per the audiences' marketers/campaigners are trying to reach. The present research is to give an attention is to how political parties use digital and social media violating the constitution and affecting the basic fundamental right in our country and rise of social media in the arena of politics and its impact in general and political participation by the general public. The present study is to propose to analyse co-relation of different article of the constitution and violation of fundamental rights.

Key words: Social media, digital media, Propaganda, misinformation, Election campaign, political parties, freedom of expression, Indian constitution, fake news, trolling, India

I. INTRODUCTION

As the world hails the maturity of democracy in India, the noticeable presence of social media in influencing the voters and the ability of that medium to give a space to unknown individuals of the country to express their opinions, by has now become a reality. But the machinery of several political fractions affects the democratic rights by violating the constitution. Social media are the most recent and rapidly growing phenomenon in the context of Internet Communication. Social Media has rapidly grown in importance as a forum for political activism in its different forms. Social media platforms, such as Twitter, Facebook and YouTube provide new ways to stimulate citizen engagement in political life, where elections and electoral campaigns have a central role. Personal communication via social media brings politicians and parties closer to their potential voters. Reactions, feedback, conversations and debates are generated online as well as support and participation for offline events. However, the propaganda, Harassment, Misinformation, Obscenity, hate speech Messages posted to personal networks are multiplied when shared violates the basic human right to express their opinion. The preamble of the constitution of India assures all citizens assures provides freedom of speech which is the right to express one's opinion freely without any fear through oral/written/electronic/broadcasting /press. But in reality, the social and digital platforms are misused by the political parties to dominate the voters and violating the constitution. India has had many prime incidents to celebrate the rise of social media in its horizon:

where it was the anti-corruption campaign, which was fuelled online, citizens against rapists, molesters and atrocities, the national outrage against the Guwahati mob molestation of a girl, which ultimately led to conviction and the arrest, and many more incidents are the rise of social media in its horizon in India. A huge political controversy has erupted in India over alleged misuse of social media platforms like Facebook and WhatsApp with the ruling and the opposition parties blaming each other for manipulating the medium. There are such a big number of acts and laws within the constitution of India that talks about the rights and duties of a citizen for his or her social media and towards their social media. I wish to further portray my finding on the effect of social and digital platforms on the basic fundamental right of the voters and the violation of the constitution of India.

I. RESEARCH METHODOLOGY

This paper is a descriptive and analytical one. Attempt has been made to include the details of the facts on the basis of secondary sources like books, articles published in different journals and newspaper.

RIGHT TO FREEDOM OF SPEECH UNDER INDIAN CONSTITUTION:

Article 19(1) (a) of the Constitution of India states that, all citizens shall have the proper to freedom of speech and expression. The philosophy behind this text lies within the Preamble of the Constitution, where a solemn resolve is formed to secure to any or all its citizen, liberty of thought and expression. The exercise of this right is, however, subject to reasonable restrictions certainly purposes being imposed under Article 19(2) of the Constitution of India. This right is roofed under article 19(1) (a) of the constitution of India. It absolutely was conferring the citizens of India the proper **to freedom of speech and expression**. The liberty of speech and expression means the proper to precise one's convictions and opinions freely by word of mouth, writing, printing, pictures or the other mode. It also includes the proper to propagate or publish the views of people.

Violation of Freedom of Speech and Expression:

Social media platforms have become integral to modern communication, enabling people to express their opinions and engage in public discourse. However, the intersection of social media and freedom of speech raises important legal considerations. The political parties and their warfare online machinery tend to ignore the rules and regulations by targeting a set of audience in order to create uncertainty amongst the voters by creating a fake news, trolling the citizens who speak or write against a particular party, misinformation on several issues, harassment and obscenity. It is important to understand legal boundaries of free speech on social media platforms, the challenges of content moderation, and the delicate balance between freedom of expression and harmful speech in India.

Internet trolling Trolling refers to the creation of discord on the web by using inappropriate abusive language, with intention to quarrel or criticize others only just to seek cheap publicity. A social media troller could be a one who purposely speaks one thing contentious and tries to induce the eye of alternative user. The hunger for attention is such in these cases that the troll usually uses terribly vulgar language, abuses in their comments. Most of the times these comments that were created usually were unrelated to the subject.

Case Law: [Swati Chaturvedi vs The State Of Bihar February 2020](#)

Hate speech is speech that offends, or attacks people based on their identity or characteristics such as race, ethnicity, national origin, religion, gender, sexual orientation, disability or disease.

Case Law: *Shreya Singhal v. Union of India*, (2013) 12 S.C.C. 73

Harassment refers to unwanted behaviour that makes someone feel degraded, humiliated or offended. We do not define it to include true threats of violence, which are banned by all these platforms and are not protected by the First Amendment.

Case Law: *Surjeet Khanna v. State of Haryana and other*, (2023)

Misinformation is false or inaccurate information. Examples of misinformation include false rumors, insults and pranks. Examples of more deliberate disinformation include malicious content such as hoaxes and propaganda.

Case Law: Supreme Court ruling on Curbing Fake News, 18 Nov 2020

Obscenity is generally used to refer to sexual content that strongly offends the prevalent morality of the time.

Case Law: Suhas Katti v. the State of Tamil Nadu (2004)

Politicization: The Misuse of social media by Indian Political Parties

Indian political parties are using social and digital media aggressively to propagate their ideology, mobilise public opinion, set policy agendas, and discredit detractors. Since the 2014 general election, India's two major political parties – Ruling party, which currently leads the coalition government, and the main opposition party – have invested heavily in digital political campaigning. Political parties use social media to directly and continuously engage with voters. More so than traditional media, social media can amplify and mobilize political opinions and reach out to even the remotest geographical areas.

People are constantly exposed to online sources of information, such as social networking sites, which allow anyone to post content without the need for fact-checking or editorial judgment. This is contradictory as compared with the way people consume news and information in the past. Consumers previously focused on mass media such as radio and television, featured less and more well-established news outlets. Since users will have full responsibility on their usage of social media, they tend to spread fake news with or without conscious. Moreover, too much information flooding the internet, **fake news** seems to be an unavoidable part of the online news network, hence, the spread of fake news on social media has become the latest concern for online news communities. Furthermore, parody accounts are one of the ways of delivering fake news to the consumers. There are several categories of online fake news content. It includes satire and parody content. Satire content is fun and entertaining; it contains sarcasm, false news, and humour to deliver news or information; it is intended to insult an individual, group, community, or religion; and it can be difficult for some readers to interpret the actual content of the message, leading them to believe it is true.

RESTRICTIONS AND LAWS ON FREEDOM OF SPEECH AND EXPRESSION:

Freedom of expression doesn't give residents a permit to talk or distribute without outcomes. It's anything but a wide open that safeguards everybody from repercussions regardless of how they decide to utilize words. For the accompanying reasons.

- For the purpose of others' freedoms and notorieties
- To shield public safety, or public request, or general wellbeing or ethical quality

Legal Boundaries on social media:

While individuals enjoy the right to express their opinions on social media, certain restrictions exist within the legal framework. The Information Technology Act, 2000, and its subsequent amendments regulate online activities, including social media platforms.

The legal boundaries on social media platforms involve a combination of legislation, regulations, and court interpretations. Here are some key aspects that define the legal boundaries on social media:

1. Information Technology Act, 2000, and its Amendments:

The Information Technology Act (IT Act) in India governs various aspects of online activities, including those related to social media. Some key provisions within the IT Act that set the legal boundaries include:

1. Section 69A: Under this section, the government has the power to block online content that threatens national security, public order, or incites violence. It empowers the government to issue directions to block access to specific content or websites.
2. Section 79: This section deals with the liability of intermediaries, including social media platforms. It requires intermediaries to observe due diligence and promptly remove or disable access to illegal content upon receiving notice from appropriate authorities.

3. Section 505(2): Sharing or spreading content that promotes hatred, enmity, or ill-will among religious or social groups is punishable under this section.

Case Laws:

- [Chitra Ramkrishna vs Assistant Director, Enforcement, on 9 February, 2023](#)
- [M/Sundaram B.N.P. Paribas Home ... vs State Of Tamil Nadu on 26 August, 2011](#)
- [Smt. Amrita Choudhary vs The State Of Madhya Pradesh on 26 October, 2015](#)
- [The State Of Uttar Pradesh vs Aman Mittal on 4 September, 2019](#)
- [Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal on 14 July, 2020](#)

4. Intermediary Guidelines and Digital Media Ethics Code (2021):

The Intermediary Guidelines and Digital Media Ethics Code were introduced by the government of India in 2021 to regulate social media intermediaries and digital media platforms. These guidelines impose certain obligations on intermediaries, including social media platforms, such as:

1. Appointment of a Chief Compliance Officer, Grievance Redressal Officer, and Nodal Contact Person.
2. Implementation of a robust content moderation mechanism, including the removal of specific categories of prohibited content within 36 hours of receiving a court order or notification from appropriate authorities.
3. Establishment of a grievance redressal mechanism to address user complaints within a specified timeframe.

Balancing Freedom of Expression and Harmful Speech:

Balancing freedom of expression and the need to combat harmful speech is crucial. Striking the right balance involves creating transparent content moderation policies, considering contextual factors while assessing content, and promoting public awareness about responsible digital citizenship.

Here are some key considerations in balancing freedom of expression and harmful speech:

1. **Legal Framework and Restrictions:** Freedom of expression is not an absolute right and is subject to reasonable restrictions. Legal frameworks, including national constitutions, human rights conventions, and local laws, define the boundaries within which freedom of expression operates. These restrictions are typically aimed at protecting public order, national security, the rights and reputations of others, and preventing harm. Identifying and enforcing these restrictions effectively is essential to maintain the delicate balance between free expression and preventing harm.
2. **Clear Definitions and Standards:** One of the challenges in balancing freedom of expression and harmful speech lies in defining and interpreting what constitutes harmful content. Vague or ambiguous definitions can lead to inconsistencies and subjective decision-making in content moderation. It is crucial to establish clear standards and guidelines that provide clarity on the types of speech that are considered harmful and warrant intervention.
3. **Contextual Evaluation:** Context plays a vital role in determining the potential harm caused by speech. The intention behind the speech, its social and cultural context, and the potential impact on individuals or marginalized groups must be carefully considered. Contextual evaluation helps distinguish between legitimate expressions of opinion and speech that incites violence, promotes hate, or targets individuals or communities. Platforms need to develop sophisticated moderation mechanisms that account for contextual factors while assessing and handling content.
4. **Proportionality and Consistency:** Ensuring proportionate responses to harmful speech is crucial. The severity of the harm caused, the intent of the speaker, and the potential impact on society should be taken into account when determining appropriate measures. Responses to harmful speech should be consistent and applied uniformly to avoid allegations of bias or unfair treatment.

Finding the right balance between freedom of expression and harmful speech on social media platforms is an ongoing challenge. It requires continuous evaluation, refinement of policies and practices, and an understanding that the digital landscape is constantly evolving. By incorporating legal frameworks, clear definitions and contextual evaluation, a more inclusive and responsible digital environment can be fostered.

IV. CONCLUSION

It goes without saying that using social media as a means to exercise one's right to free expression and expression is a good idea. Due to the growing number of instances of social media platforms being exploited for illegal reasons, governments all over the globe have moved to tighten their controls over what individuals may say on them. Despite widespread support for legislative control over social media, legitimate concerns have been raised about the possibility of human rights violations as a result of such restrictions. In order to prevent social media from becoming a source of conflict, regulation rather than restriction should be implemented. However, India's present cyber law is neither appropriate nor sufficient. When it comes to cyberspace security, an assessment of current IT rules indicates that the government has unaccountable and tremendous jurisdiction, according to the findings. However, simply monitoring social media abuse isn't enough to prevent it from occurring. As a result, a specific piece of legislation is required to regulate social media. With this in mind, the government should establish a committee of technical professionals to investigate all of the many aspects of social media usage and misuse in order to provide recommendations on how to regulate it without jeopardizing individuals' civil rights. In India, the government has a real reason to be concerned about the effect of social media on the country's society. Social media platforms should also be held accountable for the harms they produce, and rules should be established for how they should conduct themselves on the internet. There is a narrow line to walk between adhering to one's values and being shunned from the lucrative markets through which private firms must venture. While it is possible to assume that today's social media site CEOs are apolitical for the sake of argument, this cannot be assumed of future CEOs. Furthermore, any action done by social media platforms during a political disagreement between the government and opposition parties would be viewed as partisan by the public at large.

Social media platforms have transformed the way people communicate, making freedom of speech a critical issue in the digital age. While India recognizes freedom of speech as a fundamental right, it also imposes reasonable restrictions to protect public order and harmony. The legal boundaries of free speech on social media platforms must be navigated carefully, ensuring a balance between the right to express opinions and the prevention of harmful speech. Ongoing discussions, regulatory developments, and judicial interventions contribute to shaping the legal landscape and finding this delicate balance in India.