



Freedom Of Speech And Expression Through Social Media- Issues And Challenges

M. Muthukumar

Abstract

The technological advancement has provided numerous benefits including improved connectivity and information availability. The media is frequently referred to as the fourth pillar of democracy, with a key role in shaping public opinion, driving development and holding power accountable. One among the media, Social media has developed into an essential communication tool that allows people to share information and ideas and exercise their right to free speech. The media derives this right from the right to freedom of speech and expression in Article 19(1) (a) of the Constitution of India. However this right is subject to reasonable restrictions provided under Indian Constitution Article 19(2). The Information Technology Act, 2000 serves as the foundation for online regulation in India as it provides a legal framework for addressing the issues related to electronic communications. The Information Technology Act has been amended to address various aspects of online activity including social media. The regulation of social media platforms in India has recently become a main focus of discussion, as the digital world continues to grow and expand. In fact striking a balance between protecting freedom of speech and expression and enforcing regulation is a delicate task in the context of social media. Due to the anonymity and dishonest practices of some social media users, there is an increase in online violence that affects people of all ages. The main legal issues are online defamation, privacy infringement, spreading false information, Cyberbullying, Obscenity contents and trial by media. Social media laws are necessary to deal with the crimes emerging today due to the excessive use of the social media platforms. This research article is analyse the main issues and challenges involving while using the social media and examine the effectiveness of existing legal provisions with judicial decisions.

Key words: *Freedom of speech, Social media, online defamation, Cyberbullying, Trial by media*

I. Introduction

Speech forms an important tool of communication that allows him to express or communicate his thoughts, sentiments and feeling to others.¹ The freedom to be able to express in any form is a natural right, which a human being acquires on birth. It is therefore a basic right². Right to freedom of speech and expression is very comprehensive. Article 19(1) (a) does not expressly mention the freedom of press. The Courts have extended the horizons of this right by judicial interpretation. This right includes the right to express one's view and opinion by words of mouth, picture, symbols, printing, and writing or through audio- visual instrumentalities, radio and television.³ Social media are computer mediated technologies that facilitate the creation and sharing of information and ideas via virtual communities and networks. The users of social media typically access social media service via web based technologies on their personal computers or smart phones. Social media encompasses various platforms such as blogs, micro blogs, wikis, social networking sites, photo and video sharing websites, instant messaging, podcasts, widgets and virtual worlds. Social media enables billions to connect and share information globally. Role of Social media in social activities like education, social awareness, business, and sports in India cannot be undermined. Information and Communication technology has changed rapidly in the past two decades. Science and technology came to rescue of man in many areas. With the emergence social media, the world is changing at an unbelievable speed. With repeated cases of fake news and trolling, the laws governing social media need to be understood.

II. Social Media

Media is being considered as the fourth estate and the fourth pillar of our democratic society after the executive, legislature and judiciary. It has got enormous responsibility so far as establishing a relationship between the Government and the governed.⁴ In the last few years we have witnessed an enhanced interface between the media and common man. It is the media, is it print or electronic has become a part of our life and we, the people of India are heavily

¹ SHEETAL KANWAL, INDIAN CONSTITUTIONAL LAW: THE NEW CHALLENGES 174 (3rd ed. 2023)

² *Id.*

³ JOSHI K C, THE CONSTITUTIONAL LAW OF INDIA 196 (2nd ed. 2013)

⁴ SUKANTA K. NANDA, MEDIA LAW 1(Central Law Publications 2014)

dependent on the media coverage. Media keeps the people awakened and there is not denying the fact that it has become one of the major instruments of social change. In a democratic set up, it is the media which strengthens the democratic norms and values and also accelerates the pace of development.

The term social media refers to variety of web based platforms, applications and technologies that enable people to socially interact with one another. Some examples of social media sites and applications include Facebook, YouTube, Twitter, blogs and WhatsApp etc. A Social network is an online service, platform or website which is focused largely around uniting individuals, allowing them to communicate and interact. Facebook is currently the world largest and most popular social networking website and connecting individuals.

III. Freedom of Speech and Expression

Freedom of Speech and Expression is provided under Article 19(1) (a) of the Constitution of India which states that all the citizens of India have a right to freedom of speech and expression. It is to be noted that the freedom of speech and expression includes freedom of Press also. Not only does freedom of speech and expression allow people to communicate freely with others about their feelings, thoughts, perspectives, opinions etc. but it also serves a broader objective. The necessity and objective of freedom of speech and expression are classified into the following:

1. It assists a person in achieving self- fulfillment;
2. It facilitates the understanding of truth;⁵
3. It strengthens the capacity of an individual to participate in the decision-making process;
4. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

Freedom of Speech is a cornerstone of democratic society. Freedom of press with free discussion is essential for democracy. In *Maneka Gandhi v. Union of India*,⁶ the Supreme Court

⁵ Tejaswini Kaushal, *A Bird's Eye view of the Right to Freedom of Speech and Expression in India*, MANUPATRA (Mar.22,2025,8:25 PM), <https://articles.manupatra.com/article-details/A-Bird-s-Eye-View-of-the-Right-to-Freedom-of-Speech-and-Expression-in-India>

⁶ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

highlighted the nature and extent of freedom of speech and expression has not geographical limitation and this freedom is exercisable not only in India but also outside India. Consequently, if the State action sets up barriers to its citizens' freedom of speech and expression in any country in the world, it will be taken as the infringement or violation of the freedom of speech and expression, guaranteed by Article 19(1) (a).⁷

In *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*,⁸ the Supreme Court held that broadcasting is a means of communication and a medium of speech and expression within the framework of Article 19(1) (a). This case involved the rights of a Cricket Association to grant telecast rights to an agency of its choice. It was held that the right to entertain and to be entertained through broadcasting media is an integral part of the freedom under Article 19(1) (a).

In *Bijoe Emmanuel v. State of Kerala*,⁹ The three children were expelled from the school for refusing to sing national anthem as according to them it was against the religious faith which does not allow them to join in any rituals other than the prayer to their God, Jehovah. They were so expelled on the basis of the circular issued by the Director of Public Instructions, Kerala which had made it obligatory for students in the schools to sing national anthem. The Supreme Court held that the expulsion was invalid on the ground that the fundamental right guaranteed by Article 19 (1) (a) could not be curtailed by the said circular. The Supreme Court has made it clear that the right guaranteed by Article 19(1) (a) can be restricted only by law and not by executive instructions.¹⁰ The Supreme Court further held that the said children did not commit any offence under the Prevention of Insults to National Honour Act, 1971 because they stood up respectfully when the national anthem was being sung at their school. The Court also observed that freedom of speech and expression includes the right to be silent.¹¹ In the above cases the Supreme Court extended the scope of freedom of speech and expression.

IV. Freedom of Press

⁷KAILASH RAI, THE CONSTITUTIONAL LAW OF INDIA 182 (9th ed. 2010)

⁸ Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal, (1995) SCC (2) 161

⁹ Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615

¹⁰ PANDEY J N, THE CONSTITUTIONAL LAW OF INDIA 188 (48th ed. 2011)

¹¹ *Id.*

Constitution is said to be the basic or the fundamental document of a country and is a living document. The Indian Constitution which is considered to be lengthiest Constitution in the world confers certain rights on its individuals. Indian citizens are entitled to certain rights, including freedom of speech and expression. In a broader sense, freedom of speech and expression also includes freedom of Press. Freedom of the Press includes both Print and Electronic media also. Thus, the press is bound by the restrictions established in Article 19(2) of the Indian Constitution. The Preamble of Indian Constitution, guarantees freedom of expression for all citizens. Article 19 of the Universal Declaration of Human Rights includes freedom of the press as a component of free speech and expression.¹²

The Supreme Court through its various judgments have signified the importance of freedom of speech and expression both from the point of view of liberty of the individual and from our democratic form of Government.¹³ In *Romesh Thappar v. State of Madras*,¹⁴ Honourable Justice Patanjali Shastri, C.J. Observed: “Freedom of speech and Press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible”.¹⁵ The real fact of the case is entry and circulation of the English Journal “Cross Road”, printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression.

In *Life Insurance Corporation of India v. Manubhai D. Shah*,¹⁶ the Supreme Court observed that the right to propagate one’s view through print media or through any other communication channel e.g., radio or television is included within the expression of the freedom of speech and expression. Again in *Brij Bhushan v. State of Delhi*¹⁷ the Supreme Court held that imposition of pre-censorship on publication is violative of freedom of speech and expression unless justified under clause (2) of Article 19 of the Constitution.

The right to free expression would be violated if any matter relevant to a certain subject or class of subjects was prohibited from being published in any newspaper.¹⁸ “It is certainly a

¹² Manoj Kumar Sadual, *Freedom of Press in Indian Constitution: A Brief Analysis*, 1(8) IJAR, 194(2015) <https://www.allresearchjournal.com/archives/2015/vol1issue8/PartD/1-7-160-775.pdf>

¹³ TRIPATHI G P, CONSTITUTIONAL LAW- NEW CHALLENGES, 577 (2nd ed. 2018)

¹⁴ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124

¹⁵ PANDEY J N, *Supra* note 10, at 183

¹⁶ *Life Insurance Corporation of India v. Manubhai D. Shah*, (1992) 3 SCC 637

¹⁷ *Brij Bhushan v. State of Delhi* (AIR 1950 SC 129)

¹⁸ SHUKLA V N, CONSTITUTION OF INDIA 129 (14th ed. 2022)

serious encroachment on the valuable and cherished right to freedom of speech”, said Das CJ in *Virendra v. State of Punjab*,¹⁹ “if a newspaper is prevented from publishing its own view or the views of its correspondents”. In *Sakal Papers (P) Ltd v. Union of India*,²⁰ the Supreme Court held that the State Could not make laws which directly affect the circulation of a newspaper for that would amount to a violation of the freedom of speech.

In *Prabha Dutt v. Union of India*²¹, the question was whether prisoners condemned to death could be interviewed. It was held that the newspaper reporters can interview the prisoners condemned to death if they are willing to be interviewed. Unless, in a given case there are weighty reasons for denying the opportunity to interview, the reasons for denying the interview should be recorded in writing.

In *Hamdard Dawakhana v. Union of India*²² the question was raised that restriction on the advertisements of drugs in certain cases and prohibited advertisements of drugs having magic qualities for curing diseases under Drug and Magic Remedies (Objectionable Advertisement) Act is the violation of the fundamental right of freedom of speech and expression. The Supreme Court held that an advertisement is no doubt a form of speech but every advertisement was held to be dealing with commerce or trade and not for propagating ideas. Thus, advertisement of prohibited drugs would, therefore, not fall within the scope of Article 19(1) (a). In *Tata Press Ltd v. MTNL*²³ the Supreme Court interpreted the fundamental right to freedom of speech and expression under Article 19(1) (a) as including the right to advertised or the right of commercial speech.

The Supreme Court affirmed the Constitutionality of pre-censorship under the Cinematograph Act, recognizing it as a reasonable restriction on the right to free expression.²⁴ The Indian Judiciary has recognized that freedom of speech and expression is not a mechanical formula that must be applied uniformly in all cases. The Judiciary is tasked with applying the principle of freedom of speech and expression to different situations and media in a creative and dynamic manner, covering all aspects of the media.²⁵

¹⁹ *Virendra v. State of Punjab*, AIR 1957 SC 896

²⁰ *Sakal Papers (P) Ltd v. Union of India*, AIR 1962 SC 305

²¹ *Prabha Dutt v. Union of India*, AIR 1982 SC 6

²² *Hamdard Dawakhana v. Union of India*, AIR 1960 SC 554

²³ *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.* (AIR 1995 SC 2438)

²⁴ *K.A. Abbas v. Union of India*, AIR 1971 SC 481

²⁵ Tripura Sundari , *Television in India Balancing Freedom and Regulation*, 7(2) IJFMR 1, 5 (2025), <https://www.ijfmr.com/papers/2025/2/40119.pdf>

V. Reasonable Restrictions

The freedom of speech and expression does not confer on the citizens the right to speak or publish without responsibility.²⁶ The exercise of this right is, however, subjected to reasonable restrictions for some purposes being imposed under Article 19(2) of the Constitution of India. First amendment added public order, friendly relations with foreign states and incitement to an offence in Article 19(2).²⁷ The word 'reasonable' was added before restriction.²⁸ The reasonable restrictions are the following:

- a. Security of the State
- b. Friendly relations with foreign States
- c. Public order
- d. Decency and Morality
- e. Contempt of court
- f. Defamation
- g. Incitement to an offence, and
- h. Sovereignty and integrity of India.

In *Virendra v. State of Punjab*,²⁹ The State authorities prohibited the entry or publications of material for limited period because they believed that they were prejudicial to the maintenance of communal harmony during the then existing tense communal situation. The Court observed that under such circumstances the imposition of the said prohibition was reasonable and valid. However the Court also held that the restriction must specify the materials not to be printed, the reasons and duration of the restriction, and there must be provision for representation to the Government against the order imposing such restriction. In another case the Supreme Court observed that the Newsprint Control Order which fixed ten pages maximum for every newspaper

²⁶ Shishir Tiwari and Githanjali Ghosh, *Social Media and Freedom of Speech and Expression: Challenges before the Indian Law*, SSRN (Apr. 02, 2025, 09:20 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2892537

²⁷ TRIPATHI G P, INDIAN CONSTITUTION, 160 (2nd ed. 2013)

²⁸ *Id.*

²⁹ *Virendra v. State of Punjab*, (AIR 1958 SC 986)

is void under Article 19(1) (a) and not saved by Article 19(2).³⁰The Court held that freedom of press is qualitative and also quantitative, freedom lies both in circulation and in content.³¹

VI. Legal provisions in India

India has enacted the Information Technology Act in the year 2000 based on the Modern Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law.³² In India, the legal implications viewed in accordance with the law of land e.g. Information Technology Act, 2000 as also rules and regulations made there under. The Information Technology Act, 2000 provides for exemption from liability of an intermediary for any third party information, data, or communication link made available or hosted by him.³³ However, this exemption from liability can only be applicable if the said the intermediary complies with various conditions of law as prescribed under section 79 of the Information Technology Act, 2000. The Information Technology Act widely regulates the interception, monitoring, decryption and collection of information of digital communications in India. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 provides the Grievance Redressal Mechanism, Complaint officers, Traceability of messages, Content removal.

Section 67 of the Information Technology Act provides punishment for publishing or transmitting obscene material in electronic form. The Supreme Court Struck down section 66- A of Information Technology Act, 2000 which led to arrest of user for posting allegedly objectionable content on the internet.³⁴ The Court also rejected the Centre's plea that it was committed to free speech and would ensure the provision was administered in a reasonable manner. While the need of the hour might be to have effective and robust mechanism to govern the content over social media and networking sites, the Government must not forget that they cannot curb the constitutional and fundamental rights and prevent people from expressing their views over the issues concerning the country, including expressing their appreciation or displeasure on the functioning of the Government. The Content writer and forwarder must act as a responsible citizen and ensure that such transmission of content does not lead to loss of life, reputation or dignity of any citizen.³⁵ The repeal of section 66-A does not however result in an

³⁰ Bennet Coleman & Co. v. Union of India, (AIR 1973 SC 106)

³¹ TRIPATHI G P, Supra note 27, at 158

³² DIVYA ROHATGI, SHRUTI KARKARE, GUIDE TO CYBER LAW & CRIME 69 (Whytes &Co. 2018)

³³ The Information Technology Act, 2000, §79, No.21, Acts of Parliament, 2000 (India)

³⁴ Shreya Singhal v. Union of India, (AIR 2015 SC 1523)

³⁵ Sumit Batra, *Social Media Law: Knowing the rights of privacy*, THE PIONEER (Apr. 04, 2025, 08:25 PM), <https://www.dailypioneer.com/2018/sunday-edition/social-media-law--knowing-the-rights-of-privacy.html>

unrestricted right to free speech since analogous provisions of the Indian Penal Code will continue to apply to social media online viz. Intentionally insulting Religion or Religious beliefs (Section 295- A), Promoting Enmity between Groups on grounds of religion, Race etc.(Section 153- A), Defamation (Section 499), Statements conducting to public mischief (Section 505), Insulting the modesty of a women (Section 509), Criminal Intimidation (Section 506), Sedition (Section 124-A), etc.

The law dealing with obscenity in India is contained in sections 292-294 of the Indian Penal Code. Section 292 of the Indian Penal Code prohibits sale, letting on hire, distribution, public exhibition and circulation etc., obscene material. Section 293 provides enhanced punishment for sale etc. of obscene material to any person under the age of twenty years. Publishing as well as circulating of obscene photographs of women is also punishable under sections 3 and 4 of the Indecent Representation of Women (Prohibition) Act, 1986. These provisions can also be used for punishing people who circulate obscene material in electronic form.³⁶

The Indian Penal Code (IPC) has been replaced by the Bharatiya Nyaya Sanhita(BNS). The BNS penalizes on Statements conducing to public mischief criminalises making, publishing, or circulating statements, false information, rumors, reports, including through electronic means, with the intent or likelihood of causing various harmful outcomes.³⁷ Section 197(1) (d) deals anyone who makes or publishes false or misleading information, whether it is in the form of spoken words, written, by signs, in visible representations, or through electronic communication, therefore, results in jeopardizing the sovereignty, unity, integrity or security of India is liable to face punishment in the form of imprisonment for up to three years or with fine or both and if it occurs in a place of worship or during religious ceremonies, the quantum of punishment is increased to imprisonment for up to five years and may include a fine.³⁸ If a person who is legally obligated to provide information to a public servant, knowingly or reasonably believes that the information is false, and still furnishes it, they now face a punishment of six months imprisonment or a fine up to five thousand rupees or both.³⁹ However, if the false information

³⁶ Debmalya Banerjee, *Legal implications regarding offensive messages on social media and on SMS*, IPLEADERS (Apr. 03, 2025, 06:55 AM), <https://blog.ipleaders.in/social-media-offence/>

³⁷ The Bharatiya Nyaya Sanhita, 2023, §353, No.45, Acts of Parliament, 2023 (India)

³⁸ The Bharatiya Nyaya Sanhita, 2023, §197(2), No.45, Acts of Parliament, 2023 (India)

³⁹ The Bharatiya Nyaya Sanhita, 2023, §212(a), No.45, Acts of Parliament, 2023 (India)

pertains to the commission or prevention of an offence, or the apprehension of an offender, the punishment increases to imprisonment for up to two years, a fine, or both.⁴⁰

VII. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

In exercise of the powers conferred by sub-section (1), clauses (z) and (zg) of sub-section (2) of section 87 of the Information Technology Act, 2000, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were framed by the Central Government. These Rules replaced the Information Technology (Intermediaries Guidelines) Rules, 2011 and it has been now further amended by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023. These Rules significantly empower frequent users of digital platforms to seek redress for their grievances and require accountability in the instance of a violation of their rights.⁴¹ The Rules require due diligence that must be followed by intermediaries including social media intermediaries. The safe harbor provisions will not apply to the intermediary if they fail to exercise due diligence.

The Rules aim to empower users by requiring intermediaries, including social media intermediaries to develop a grievance redressal framework to receive and resolve complaints from users or victims. Intermediaries shall appoint a Grievance Officer to handle such complaints and provide the officer's name and contact information. The Grievance Officer shall acknowledge the complaint within 24 hours and resolve it within 15 days of receipt. Intermediaries must remove or disable access to content that exposes individual private areas, depicts such individuals in full or partial nudity or sexual act, or is impersonation in nature, including morphed images, within 24 hours of receiving complaint. Such a complaint can be submitted by the individual or by someone acting on his or her behalf. The significant social media intermediary must appoint a nodal contact person who will be available 24x7 and he will be contact person for law enforcement agencies and officers to ensure compliance to their orders or requisitions made in accordance with the provisions of law or rules enacted there under. Social media, as an example of user- generated platforms on the internet, provide unprecedented

⁴⁰ The Bharatiya Nyaya Sanhita, 2023, §212(b), No.45, Acts of Parliament, 2023 (India)

⁴¹ PRESS INFORMATION BUREAU, <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1700749®=3&lang=1> (last visited Apr. 05, 2025)

scope for expression, connection and selection.⁴² Through, social media, the individual has instant access to a vehicle for self- expression and to an audience unrestricted by geography. However, social media issues are boundless, permeating distinct legal disciplines.⁴³

VIII. Online Defamation

The law of defamation is recognition of the inherent right of every individual to the preservation of his honour and the esteem in which he is held by society.⁴⁴ Reputation has an important aspect of the dignity of an individual. The wrong of defamation consists in the publication of a false and defamatory statement about another person without lawful justification or excuse. Defamation could take one of two forms: libel or slander. Libel consists in the publication of a defamatory statement expressed in some permanent form, for instance by writing, printing, pictures, statue, effigy etc. where on the other hand defamation is oral, or by gestures or in some other transient form, it constitutes the tort of slander. Under Indian law, both libel and slander constitute criminal offences under BNS.⁴⁵

Online defamation is now developing system in social media by users. In fact, the social media it has not verify the contents of the information shared by the user. It is to be noted that the many users are spreading wrong information through social media like personal information, and Social events. But in India the laws are inadequate to combat the online defamation in social media. Especially the social media it don't have boundaries. The users can access the social media everywhere in the world. A defamatory statement may be developed by foreigners to target other nationals and spread out the information through online media. This is also big legal issue in International scenario. It mainly affects the friendly relationship among the countries. In India, through the social media the users are defaming many persons without verifying contents of the messages. They are spoiling the reputation of some persons without correct information provided by other social media users. It should be avoided.

IX. Privacy infringement

⁴² DAVID MANGAN, LORNA E. GILLIES, THE LEGAL CHALLENGES OF SOCIAL MEDIA, 2 (Edward Elgar Publishing Ltd. 2017)

⁴³ *Id.*

⁴⁴ MADHAVI GORADIA DIVAN, FACETS OF MEDIA LAW 123(2nd ed. 2021)

⁴⁵ The Bharatiya Nyaya Sanhita, 2023, §356, No.45, Acts of Parliament, 2023 (India)

A person's right to privacy is one of our most important human rights and is protected by our Constitution. But, our right to privacy is not unlimited and can be limited where this is fair and justifiable in an open and democratic society. Under Constitutional Law, the right to privacy is implicit in the fundamental right to life and liberty guaranteed by Article 21 of the Constitution. The term 'privacy' has been described as 'the rightful claim of the individual to determine the extent to which he wishes to share himself with others and his control over the time, place and circumstances to communicate with others. It means his right to withdraw or to participate as he sees fit.'⁴⁶ It also means the individual's right to control dissemination of information about himself; it is his own personal possession.⁴⁷

In fact, the social media crossed the limit on individual right to privacy in many ways. The user of the social media, without knowing the correct information, they spread many messages. In fact, the users of social media, without knowledge of the concern person they are sharing information. Some individuals are harassed and blackmailed on social networking sites. Their photos are downloaded, morphed and misused. Privacy is not mentioned amongst the various reasonable restrictions to the right to freedom of speech and expression enlisted under Article 19(2). However, this lacuna has not prevented the judiciary from establishing a Constitutional right to privacy by a creative interpretation of the right to life under Article 21.

The Court has recognized the right to privacy in many cases. In *People's Union for Civil Liberties v. Union of India*,⁴⁸ was a challenge to Section 5(2) of the Telegraph Act, 1885 which permits the interception of messages in cases of public emergency or in the interest of public safety. The Supreme Court held that the right to privacy included the right to hold a telephone conversation in the privacy of one's home or office and that telephone tapping, a form of 'technological eavesdropping' infringed the right to privacy. The Court found that the Government had failed to lay down a proper procedure under Section 7 (2) (b) of the Act to ensure procedural safeguards against the misuse of the power under Section 5 (2). In India, there is no specific legislation to deal with issues of privacy. However, the Information Technology Act, 2000 provides civil liability on body corporate dealing with sensitive personal data, to provide for damages in case of failure to protect data.⁴⁹

⁴⁶ MADHAVI GORADIA DIVAN, *Supra* note 44, at 165

⁴⁷ *Id.*

⁴⁸ *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301

⁴⁹ The Information Technology Act, 2000, §43-A, No.21, Acts of Parliament, 2000 (India)

X. Spreading false information

False information is defined as inaccurate or misleading information which may or may not contain specific malicious intent. It also includes selective or half truths as well as inaccurate, incomplete, misleading or false information.⁵⁰ The spread of false information on social media can have serious consequences, influencing public opinion and potentially jeopardizing legal proceedings.⁵¹ One inaccurate or false piece of information posted by an individual on social media can have a negative impact on society.⁵² People complain that the media spend too much time reporting bad news. In fact, people have been complaining about that for centuries.⁵³ While posts shared on social media is its most visible aspect, there is so much more to fake news than exaggerated article titles on social media feeds. Fake news is news, stories created to deliberately misinform or deceive readers. There are differing opinions when it comes to identifying types of fake news. However, when it comes to evaluating content online there are various types of fake or misleading news we need to be aware of. It is to be noted that fake news that are deliberately fabricated to gain more website visitors and increase advertising revenue for websites. Under this fake news the paid news also including. Paid news may be defined as “any news or analysis appearing in any media - print or electronic, for a price in cash or kind as consideration”.⁵⁴ Many social media users they have not verify the contents of the message. In recent order by the Division bench of the Andhra Pradesh High Court remarked that social media users who spread hate, false information cannot be called activists. The Court further observed that a social media platform does not give any immunity to a person from whatever is said in the social media which otherwise constitutes an offence in law. The Court dismissed the public interest litigation with costs of Rs.50000/- to be deposited with the A.P. State Legal Services Authority within one

⁵⁰ Aditi Pangotra, *Countering Misinformation; Provisions under the Bharatiya Nyaya Sanhita*, 2023, CYBERPEACE (Apr.06,2025, 06:40 AM), <https://www.cyberpeace.org/resources/blogs/countering-misinformation-provisions-under-the-bharatiya-nyaya-sanhita>

2023#:~:text=Under%20this%20provision%2C%20anyone%20who,India%20is%20liable%20to%20face
⁵¹ Sumeet Basu, *Social Media on Trial: Can the Law keep up with the times?*, DE PENNING & DE PENNING (Apr. 10, 2025, 07:50 PM), <https://depenning.com/blog/social-media-on-trial-can-the-law-keep-up-with-the-times/>

⁵² *Social Media Laws and its Implications*, FREE LAW (Apr.10,2025,08:30PM), <https://www.freelaw.in/legalarticles/Social-Media-Laws-and-its-Implications>

⁵³ RAMESH CHANDRA, *COMMUNICATION MEDIA & SOCIAL CHANGE*, 203 (1st ed. 2004)

⁵⁴ JOSHI K C, *Supra* note 3, at 197

month, who shall utilize the same for the benefit of children, who are suffering from visual or hearing impairment.⁵⁵

XI. Cyberbullying

Cyberbullying is bullying that takes place on digital devices such as phones or computers. It frequently occurs through social media, text, instant messages, email and gaming.⁵⁶ Cyberbullying frequently takes the form of sending or sharing harmful or derogatory content about someone in order to embarrass them. Sometimes this content is shared anonymously, making cyberbullying feel even more threatening. According to statistics show that as many children have experienced cyberbullying. Victims of cyberbullying may experience a wide range of consequences, including mental health issues, poor academic performance, a desire to drop out of school and even suicidal ideation.

Despite the existing legal structure, prosecuting cyberbullying instances in India poses significant obstacles. The anonymous nature of online platforms frequently hampers the identification and apprehension of offenders. Furthermore, a lack of knowledge about legal remedies and the stigma associated with being a victim of cyberbullying contribute to underreporting.⁵⁷ Social media platforms have a responsibility to keep their users safe from cyberbullying. This includes establishing policies and procedures to prevent and combat cyberbullying. Social media networks should also have reporting tools that allow users to report cyberbullying instances. In addition to regulations and procedures, social media platforms should educate users about cyberbullying and its consequences.⁵⁸

XII. Obscenity contents

In dictionary obscenity means, offensive to chastity, filthy, inauspicious and by definition, vulgarity involves words or behaviour that violates good taste, usually involving slang for body functions or body parts. The Information Technology Act⁵⁹ punishes any individual who

⁵⁵ Pola Vijaya Babu v. The State of Andhra Pradesh and Others, WP(PIL) No: 187 of 2024

⁵⁶ Aliza Vigderman, *Cyberbullying: Twenty Crucial Statistics for 2024*, SECURITY.ORG (Apr.11, 2025, 06:30 AM), <https://www.security.org/resources/cyberbullying-facts-statistics/>

⁵⁷ Aditi Sharma, *Cyberbullying and Legal Remedies in the Indian Context: A Comprehensive Case Study*, JOTWANI ASSOCIATES (Apr. 12, 2025, 08:10 PM), <https://jotwani.com/cyberbullying-and-legal-remedies-in-the-indian-context-a-comprehensive-case-study-by-aditi-sharma/>

⁵⁸ Aditya Sharan, *Cyberbullying and Social Media: Legal Remedies and Responsibilities*, JLRJS(Apr.12, 2025, 09:30 PM), <https://jlrjs.com/cyberbullying-and-social-media/>

⁵⁹ The Information Technology Act, 2000, §67, No.21, Acts of Parliament, 2000 (India)

publishes or transmits or causes to be published in the electronic form any obscene material. This includes both the publication and transmission of any obscene material.⁶⁰ Any person who posts any obscene material on the website to be viewed by others will be held liable for making publication.⁶¹ If a person hires a third party to publish or transmit obscene material, the hirer will be liable for causing its publication or transmission. The information Technology Act also punishes the publication or transmission of material involving sexually explicit acts,⁶² as well as the publication or transmission of material depicting children in sexually explicit acts via electronic means.⁶³

The Supreme Court ruled that Section 292 of the IPC does not constitute the book-seller's knowledge of obscenity an element of the offence, and the prosecution does not need to prove it.⁶⁴ The Supreme Court has recognized that there can be no uniform test of obscenity and that each case would have to be judged on its own facts. The Court has, however, through various judgments laid down the broad parameters to be followed in judging whether a particular content is obscene. To evaluate the standard of obscenity, the Court employed the Community Standard Test rather than the Hicklin test, which had previously been used to determine the application of obscenity laws in India.⁶⁵

XIII. Trial by media

The term 'trial by media' describes how media coverage on television, newspapers and social media can affect a person's reputation through creating a widespread impression of guilt or innocence either before or after a court of law delivers a decision.⁶⁶ The Supreme Court observed that the media and the judiciary are institutions inhabiting separate spheres and their functions do not overlap.⁶⁷ The media plays significant role in imparting information to the citizens. Well informed citizens are necessary for the successful democracy and media's contribution in this

⁶⁰ FAROOQ AHMAD MIR, CYBER LAW IN INDIA 514 (6th ed. 2024)

⁶¹ *Id.*

⁶² The Information Technology Act, 2000, §67-A, No.21, Acts of Parliament, 2000 (India)

⁶³ The Information Technology Act, 2000, §67-B, No.21, Acts of Parliament, 2000 (India)

⁶⁴ Ranjit D. Udeshi v. State of Maharashtra, (AIR 1965 SC 881)

⁶⁵ Ayeek Sarkar v. State of West Bengal, (2014) 4 SCC 257

⁶⁶ Megha Mishra, *Media Trial in India*, 4(3) IJLSI 107, 111 (2022), <https://www.ijlsi.com/wp-content/uploads/Media-Trial-in-India.pdf>

⁶⁷ Nikitha Suresh, Lucy Sara George, *Trial by Media : An overview*, 4(2) IJLMH 267(2021), <https://ijlmh.com/paper/trial-by-media-an-overview/>

respect has been commendable.⁶⁸ However, a balance is required to be made between Media and Press right to freedom of speech and expression and the due administration of justice. There should not be injury to the due course of justice in pending cases. Public interest demands that there should be no interference with judicial process.⁶⁹

When the matter is sub-judice, trial by Media is not permissible as held by the Apex Court. The Supreme Court in a recent case namely in *Sidhartha Vashist @ Manu Sharma v. State (NCT of Delhi)*,⁷⁰ the Court held that Article 19(1) (a) did not permit the media interfering in the administration of justice in matter sub-judice. A trial by press or electronic media or public agitation is the very antithesis of the rule of law. A judge has to guard himself against any such pressure and he is to be guided strictly by the rule of law.⁷¹

XIV. Legal issues and challenges

The right to freedom of speech and expression is valuable and therefore inalienable.⁷² It is the well spring of civilization and without it freedom of thought would shrivel.⁷³ Under the framework of our Constitution, opinions and news can be disseminated for public consumption. The different opinions are allowed to be expressed by the proponents and opponents.⁷⁴ There are many advantages in Social media like information sharing among the people. Indeed, many legal problems are also involved in social media while the user sharing information through social media. Social media allows a user power to share anything on any social media platform without realizing the consequences of posting it. This post may ignore other people's feelings, and the user may be unaware of the potential consequences. Depending on the nature of the content, it may harm the feelings of a specific group of individuals.⁷⁵

⁶⁸ KAILASH RAI, *Supra* note 7, at 186

⁶⁹ *Id.*

⁷⁰ *Sidhartha Vashist @ Manu Sharma v. State (NCT of Delhi)*, AIR 2010 SC 2352

⁷¹ Justice Chauhan R S, *Trial by Media – An International Perspective*, SCC ONLINE (Apr.13, 2025, 09:10 PM) <https://www.scconline.com/blog/post/2020/09/13/trial-by-media-an-international-perspective/>

⁷² TRIPATHI G P, *Supra* note 13, at 576

⁷³ DURGA DAS BASU, *INTRODUCTION TO THE CONSTITUTION OF INDIA*, 111 (22nd ed. 2015)

⁷⁴ TAKWANI C K, *CONSTITUTIONAL LAW OF INDIA*, 241 (3rd ed. 2023)

⁷⁵ Raashish Rana and Rohit Kumar Solanki, *Social Media Regulation: A comparison of Legal frameworks in India and the US*, 8(6) IJAR 115, 116(2022), <https://www.allresearchjournal.com/archives/2022/vol8issue6/PartB/8-6-10-623.pdf>

Section 79 of the Information Technology Act which would require internet companies to take down content deemed inappropriate by authorities. If a company receives a complaint from a law enforcement agency, the firm would be required to trace and report within 72 hours the origin of that content and to disable that user's access within 24 hours. However the obligation to trace the originator of information is in direct conflict with the right to privacy rules which might disrupt existing mechanisms for protecting user's end-to-end encryption services by platforms like WhatsApp.⁷⁶ In addition, Rule 4 of the 2021 Rules provides certain due diligence guidelines that Indian intermediaries must adhere to. Failure to follow these strict norms could result in the intermediary losing the protection provided by the "Safe Harbour" principle. In particular, intermediary officer's personal liability for criminal and civil action arising from third-party content.⁷⁷

The Delhi High Court in *Indraprastha People v. Union of India*⁷⁸ has recommended to the Government to establish an Independent statutory body to regulate the broadcast media. The Court further observed: "*Absence of state intervention on its own is no guarantee of a rich media environment. On the contrary to promote a media environment characterized by pluralism and diversity, State intervention is necessary*".

As internet has led to disappearance of the boundaries, sometimes a citizen is not aware to whom he is chatting and where the person is located.⁷⁹ Because obscenity content can be accessed from anywhere in the world, the question of which country's standard should be applied in a given case arises, as obscenity standards vary from country to country.⁸⁰ Another question arises as to who is liable for the dissemination of obscenity material. Is the service provider responsible for allowing others to use his system to upload obscene content or is the individual who posted it? Information Technology Act, 2000 has to be widened, explained in greater detail, above issues related to social media. The Information Technology Act, 2000 is a landmark

⁷⁶ Megha Bahree, *India's New Rules to Govern Social Media Raise fears of more Censorship*, FORBES (Apr. 15, 2025, 09:40 PM), <https://www.forbes.com/sites/meghabahree/2019/01/22/indias-new-rules-to-govern-social-media-raise-fears-of-more-censorship/#3525fc506759>

⁷⁷ Ravi Shankar and Tabrez Ahmad, *Information Technology Laws: Mapping the Evolution and Impact of Social Media Regulation in India*, 41(4) DJLIT, 295, 298 (2021), <https://manuu.edu.in/sites/default/files/School-of-Law/Publication/Tabrez-Ahmad/16966-Article%20Text-61409-4-10-20210806.pdf>

⁷⁸ *Indraprastha People v. Union of India*, (2015) (1) RCR (Civil) 24

⁷⁹ BHAGYASHREE A. DESHPANDE, TEXTBOOK ON CYBER LAW, 192 (Central Law Publications 2019)

⁸⁰ FAROOQ AHMAD MIR, *Supra* note 60, at 518

development in India's cyberspace history. An examination of the Information Technology Act's Provisions makes it clear evident that, to some extent met public expectations on cybercrimes.⁸¹ However, there are still lacunas that allow cyber criminals to evade punishment. So, the lacunae should be filled up by making necessary amendments in the present Act to combat cyber crimes.⁸²

XV. Conclusion

A real participatory democracy today simply cannot survive without a free, independent and professionally and socially responsible media. The media's role is to provide the raw material for the public dialogue. It means the media have an enormous responsibility because a nation's vibrancy and confidence depend on its awareness of what's happening and what's changing. The legal regime under International law as it has developed with respect to trans-border telecommunications is, however not uniform. The fixed type installation services in all cases subject to the sovereign rights of states, whereas broadcasting services are generally governed by the so-called principle of freedom of broadcasting. It is to be noted that, trans-border broadcasting services do not require prior agreement between the States concerned.

In India so far, the recent enactments on right to privacy do make some limited provisions for the individual privacy, but these are inadequate. While in many other countries, there are now a variety of statutes in place that seeks to protect these rights, Indian laws on the subject lag far behind. The main problem in social media is who has been responsible for content checking. It may be with in a country or from other foreign countries. Because the social media it does not have boundaries. In modern communication era, it is a big hurdle to discover who has developed the content and published. So, in this regard India has need strong content certifying authority or institution. In International level for the content checking and regulate the social media, a strong international agreement as well as institution highly needed. The new statutory institution must be created to control specifically for electronic media in India.

⁸¹ DIVYA ROHATGI, SHRUTI KARKARE, *Supra* note 32, at 70

⁸² *Id.*