

ROLE OF GOVERNMENT AND THE JUDICIARY TO PREVENT SOCIAL MEDIA VIOLATIONS IN INDIA

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ABSTRACT

Online social media platforms set the agenda and structure for public and private communication in our age. Their influence and power is beyond any traditional media empire. Their legal regulation is a pressing challenge, but currently, they are mainly governed by economic pressures. There are now diverse legislative attempts to regulate platforms in various parts of the world. This paper reviews the challenges faced by fake news, free speech and disinformation disseminated through social media platforms in India, and the present government policies for effective legislation and robust regulatory mechanism to deal with the said challenges.

Keywords: social media, Fake news, Free speech, Restrictions, Violations, Government regulations

I. INTRODUCTION

The ascent of social media, correspondence and the dispersal of data are going through revolutionary change. Conventional media like print, radio, and TV are in a general sense modified by the "viral" nature of virtual entertainment, which can possibly spread data dramatically through informal exchange and the interlinking of different online entertainment stages, essentially decreasing how much control a substance has over how rapidly something spreads. A worldview changes from Web 1.0 advancements that took into consideration straightforward data sharing and fundamental two-way exchanges to Web 2.0 - where without question, everybody is/can be a client as well as a substance maker, as these characteristics demonstrate. When it comes to how we associate with each other, web-based entertainment is making a huge difference.

WhatsApp, Twitter, Facebook, YouTube, Instagram, and TikTok are just a few of the many social media platforms that people use to share information and voice their opinions. More than a million people in India have access to the internet, and roughly 250 million of those are active social media users. Social media has turned into a deadly tool for spreading false information that undermines the country's security, sovereignty, and social fabric (Jones, 2021).

In India, the issue of social media-fueled rumours is not new, but the obstacles brought by it are. Disinformation, bigotry, and propaganda are being conveyed on social media platforms that were once popular for distributing information and expertise (Shafi & Ravikumar, 2018).

There have been several occurrences in India in the previous decade when rumours circulated on social media platforms hosted by intermediaries have sparked violence. Exodus of northeasterners from Bengaluru to Guwahati after social media posts suggested violent assaults on them (2012), Muzaffarnagar riots (2013), and Delhi riots (2020) enlighten our eyes to the reality of the bloodshed and mayhem produced by misinformation circulated on social media in the ground (Gupta, 2021).

An effort to contain the problem was made by the government, which issued advisories to intermediaries, blocked the internet (in Kashmir during the revocation of Article 370 and in Delhi during the Anti-CAA protests) and encouraged Fact-check websites to inform people about how reliable information received via social media was. As rumor-mongers frequently accuse fact-checkers of prejudice and internet blockades harm India's worldwide image of its thriving democracy, the government's attempt to combat the fake news threat is failing miserably. It has been impossible for the government or social media sites to put a stop to the spread of false news on social media since there is no legal framework in place. It has been difficult to come up with a solution to this serious problem since law enforcement agencies have not included the capacity to track down the "true" identity of social media users and have restricted the use of end-to-end encryption technology given by intermediaries (Yasmeen & Alastair, 2021).

Fake news has been around since the advent of the printing press, but the internet and social media have given it a whole new meaning. A current global trend involves the sly manipulation of search engine and social media algorithmic results in order to reach a wide audience and mislead news consumers. As a result of the rise of the "troll farm," fake videos and news items with morphing media logos, bots, and paid commenters have become prevalent. In order to curtail free expression, governments are using the fear of false information spread through social media.

The Supreme Court's recent rulings and Parliament's recent debates show the immensity of the problem caused by the proliferation of false news. The Supreme Court requested the government to consider a petition for publicising the goals, objectives, and advantages of the Citizenship Amendment Act (CAA) in order to combat the spread of false information on social media. Fake news during the COVID 19 epidemic led to more deaths than the virus itself, according to the Supreme Court. To combat the transmission of false information, the Supreme Court requested that the Central Government put up a site within 24 hours to disseminate real-time information on the coronavirus epidemic (Yasmeen & Alastair, 2021).

II. GOVERNMENT NEW SOCIAL MEDIA REGULATIONS TO CURB ITS VIOLATION

"Violation of Social Media Platforms and Spreading of Fake News and Free Speech" was raised in the Rajya Sabha's storm meeting in 2018. Serve for Electronics and I.T. while answering the previously mentioned movement on 26th July 2018, demonstrated to the parliament, that the public authority has resolved to work on the legitimate system by making the web-based entertainment stages capable under the law (Singh, 2019).

Draft Information Technology (Intermediaries Guidelines) Rules, 2018 were put together by the Ministry for Electronics and Information Technology (MeitY) in light of the 'misuse of virtual entertainment stages and spread of phony news' call for consideration movement. Draft Rules, 2018 falls under the class of designated or subordinate regulation made under the empowering arrangements of Section 79 of the I.T Act, 2000 and is currently being talked about stage subsequent to getting remarks and proposals from every one of the partners (Al-Rawi, 2019).

According to Gupta (2021b), defying established legal precedent, the Draft Rule also infringes on basic rights protected by the Constitution. Additional examples are provided by the Draft Rules, 2018 extending and supporting arbitrary and unconstrained censorship by imposing limits on the basic rights of speech and expression protected by the Constitution, which are further proven in the following ways:

1. 'Any government agencies', as defined in Rule 3(5), may compel the intermediaries to facilitate the tracing out of the originator of anything uploaded on their platform, as long as they are lawfully authorised.

- Most intermediaries that provide encrypted services to their consumers will be forced to ban end-to-end encryption in order to meet the obligations imposed by this legislation, putting the privacy of their users at risk. Is there any doubt that this Rule violates the right to privacy established by our Supreme Court in *K.S. Puttaswamy v. U.O.I* as an essential fundamental right guaranteed under Article 21 of the Constitution? (privacy 9j)
- People use social media to share information and knowledge, express their opinions, expose corruption and organise social or political movements. This is not an exaggeration. By authorising the government to silence an individual on social media by executive action rather than through the Constitution's Article 19(1), end-to-end encryption will give rise to an Orwellian state (a).
- A subsequent arrangement, Section 69 of the I.T. Act, 2000, as of now accommodates the capacity to break encryption or look for the decoding of material from middle people. Segment 79 of the I.T. Act, 2000, states that the extent of decoding can't be extended through subordinate regulation.
- The I.T. Act's Section 69B approves specialists to screen and gather traffic information or data through any PC asset to upgrade Cyber Security, too. Any data that distinguishes or implies to recognize any individual, PC framework or PC organization or spot to or from which the correspondence is or might be conveyed as indicated in Section 69B (4) (ii) is

viewed as traffic information. As per Section 69B of the Information Technology (Procedure and Safeguard) Rules, 2009, MeitY has the position to give a request for traffic information checking. It is recommended in Rule 3(5) of the Draft Rules, 2018, that an equivalent arrangement in regards to 'defensive or network protection and things associated with and related thereto', supersede and grow the extent of Section 69B and its guidelines.

- By evolving "government organizations who are legally approved" to "any administration office," the proposed rules expect to widen the parent act's meaning of government authority.

2. "Middle people ought to keep data concerning unlawful exercises connected with Article 19(2) for something like 180 days for insightful purposes or for such longer time as might be important by the court or by government specialists who are legally approved," says Rule 3(8). To start, the Supreme Court controlled in *K.S. Puttaswamy* that such an open-finished information maintenance condition was irrational and illegal (*Aadhar 5j*) 10. Rule regardless, the Supreme Court's *Shreya Singhal v. Association of India* decision¹¹ states that delegates just have genuine information on court requests or demands to erase data when they are recounted them.

3. Recommendations under Rule 3(9) call for mediators to utilize innovation based mechanized apparatuses or strategies, alongside proper controls, to identify and erase or hinder free to unlawful data or material proactively. As indicated by the proposition, delegates would be given finished prudence over figuring out what establishes unlawful material or content and what measures are required. The Constitution's crucial privileges will be disregarded assuming middle people are provided the capacity to determine these issues.

Draft rules 3(2) (b), 3(8) and 3(9) don't determine the significance of the expression "unlawful" to recognize acts or expressions, and it is utilized conflictingly all through the Rules, which might prompt a broadly understood translation. An "unlawful direct" as characterized in Section 79(3)b of India's Information Technology Act would need to consent to Article 19(2) prerequisites, as expressed by the Supreme Court in *Shreya Singhal v. Association of India* (above). Notwithstanding, this limitation isn't reflected in the proposed Rule 3(9), which urges Internet go-betweens to screen their foundation for illicit substance effectively (*Nazmi, 2019*).

For the reasons stated above, the Draft Rules, 2018 violate both the right to privacy and the freedom of expression by imposing arbitrary and indiscriminate censorship. All of the aforementioned limitations run counter to the State's constitutional duty to its people. It is because of this lack of compliance with subordinate legislation principles that Draft Rules, 2018, fails to instil trust in the government's actions.

Even if social media can be criticised for some of its problems, we must equally recognise its beneficial benefits, such as providing a ubiquitous arena for the distribution of information and the expression of political opinions. In accordance with Article 19 (1) of the Universal Declaration of Human Rights, the right to freedom of expression and expression must be protected (a). Nevertheless, as the Supreme Court stated in the case of *Shreya Singhal* (above), "What may be unpleasant to one person may not be repugnant to another." "What may annoy or discomfort one individual may not annoy or inconvenience another," says the author (*Gupta, 2021b*).

There is a distinction between "free speech," which is protected by the First Amendment, and "disinformation," which is governed by the laws of the land. It is possible to distinguish between "free speech," "disinformation," and "propaganda," despite the fact that doing so may be difficult at times. Social controls that distinguish between true information and false information are explicitly exempted from the definition in Article 19 since they differentiate between factual information and false information. 2(a). Among the social rules mentioned in Article 19(2) to 19(6) are those that allow the government to impose "reasonable constraints" on the rights guaranteed by Article 19(1) (a) to (c) (g) (*Gupta, 2021b*).

Because of the present proliferation of fake news and disinformation spread on social media platforms hosted by third-party intermediaries, all social control lines have been breached (Article 19). India's sovereignty and integrity are under jeopardy as a result of fake news spreading throughout the country.

III. PROTECTION OF RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

Article 19 (1) (a) of the Indian constitution ensures that all people have the right to freedom of expression and expression of thought. The Constitution prohibits the suppression of free expression under the pretence of an Anti-Fake News Bill, and any effort to do so would be a violation of the Constitution. It is vital to have a deeper understanding of the government's role in preventing the spread of misleading information in order to guarantee that even the tiniest voices are heard. Ineffectively executed laws result in duplication of regulations that are already in existence, according to the World Bank. A provision in India's constitution, Article 19(2), already provides that no law — existing or future — would be affected or prohibited from being enacted if it places reasonable restrictions on the enjoyment of Article 19's rights (1). Such limits will be imposed in order to defend India's sovereignty and integrity, its security, cordial relations with other nations, public order, decency, or morality, as well as to prevent contempt of court, defamation, or incitement to a crime from occurring or being encouraged (Tiwari & Ghosh, 2018).

Despite the condemnation of Human Rights Watch Germany, the country's new law has received widespread appreciation from the international community as a whole. In the opinion of Human Rights Watch, assessing which content on social media platforms is questionable has grown more difficult as a result of the need for a more deep understanding of cultural context. Someone who believes his or her right to free speech has been violated unjustly by one of these social media businesses will have no legal recourse against that company (Graciyal & Viswam, 2018).

An additional tool in the battle against the spread of misleading information is the establishment of the Digital News Publishers Association (DNPA), which will serve as a regulating body for the industry. The DNPA was founded in response to the I&B Ministry's heightened demands for the growth of India's digital arena, which prompted ten of the country's largest media businesses to join forces. In addition to self-regulation methods, it accepted the notion of cooperating with the government and other such organisations. A clean digital information network, according to the PCI and the NBA, is what this digital media regulatory organisation was created to achieve. It was founded to follow in the footsteps of its equivalent predecessors in print media and television news, respectively (Yasmeen & Alastair, 2021).

IV. CONCLUSION

When social media is used in a non-discriminatory manner, it allows people from all walks of life to exchange knowledge and expertise; express their opinions; expose corruption; and organise social and political dialogues online. This is accomplished while maintaining user confidentiality. With technological improvements, social media has emerged as a primary source for propagating incorrect information. The mainstream media (print, television, and radio), which serves as the fourth pillar of democracy in an age of fake news and disinformation, is in grave danger of becoming obsolete. Perhaps the next aim will be India's territorial integrity and independence. It is certain that comprehensive legislation to prevent the spread of fake news is required now, more than ever, to protect the public interest. Because of the Draft Rules' effect on intellectual society and stakeholders, there is a legitimate concern about the rise of an Orwellian government in the world. It is now drafted in such a way that it gives the state the option to silence free-thinkers on social media with an executive order. While restricting these rights, basic rules must be observed. Any law dealing with fake news should only be approved through Parliamentary procedures and debate on the floor of the House in order to avoid infringing constitutional protections against such information. Similarly, in order to prevent the undermining of India's democratic ideals, the government should be mindful of imposing restrictions on the fundamental rights of Indian citizens by executive action.

Platforms such as Facebook and Twitter are welcome to operate in India, but only provided they conform to the country's Constitution and laws, which they have accomplished by establishing these restrictions. Even though these technologies have unquestionably given the typical user more power, those who misuse or abuse them must be held accountable. Social media users will have greater authority and control over their online experience as a result of the new Rules, which include a structure for grievance redress and rapid resolution. As a result of the new restrictions on digital media and over-the-top (OTT), a thorough grievance resolution mechanism has been established, while still maintaining journalistic and creative freedoms. The basis for the proposal is progressive, liberal, and current. It tries to address a wide variety of problems that citizens are concerned about in order to assuage concerns that free speech and expression would be hampered.

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