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Dr. Jorawar Singh Ranawat
Assistant Professor cum
Assistant Dean, Department of
Political Science and Public
Administration, Sangam
University, Bhilwara,
Rajasthan, India

Corresponding Author:
Dr. Jorawar Singh Ranawat
Assistant Professor cum
Assistant Dean, Department of
Political Science and Public
Administration, Sangam
University, Bhilwara,
Rajasthan, India

Perversion of freedom of expression as a hate speech on social media: Condition and solution

Dr. Jorawar Singh Ranawat

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Abstract

Every living being has a natural tendency to communicate and express his or her feeling and emotions in any way. Humans also have that kind of tendency that's why he created many ways of communication and expression. After the invention of Information Technology communication and expression got more easy and convenient. Social media is a part of IT and it gives maximum opportunity to every member of the platform to express his or her feelings and on the other hand, it has easy accessibility to everyone. On one hand, it is a boon for communication and expression but on the other hand, it is a curse that creates violence and other evils in the whole world.

Present writing, firstly, clears the terminology related to the heading and presents an actual picture of the situation in India through various data. This writing analyzes various legal provisions about hate speech on social media around the world along with India. In the end, the article recommends some legal and behavioral provisions to control hate speech on social media and to make society a better place to live.

Keywords: Hate speech, social media, freedom of expression, freedom of speech, etc

1. Introduction

"Your personal liberty to swing your arm ends where my nose begins."

Prof. Jonathan Lighter, University of Tennessee.

Expression is a basic nature of every living being. Every living being that exists on the earth has its own way to express itself. Human beings are more ahead in it. We have lots of means to express ourselves. In those means, communication is the most prominent source of expression for human beings. Most of the activities of human life are based on communication. Humans have developed so many techniques and means of communication to accrete the development of the society in which expression with notion and gesture was probably the first one and maybe after that humans developed the other techniques and ways of expression like, painting, script, language, etc. Naturally, there are some channels of communication which can be visual, auditory, tactile/haptic (e.g. Braille script or other physical means of reading), olfactory, electromagnetic mode or biochemical mode but between all of the above-mentioned human's communication is very special for its extensive use of abstract language. Organizational behavior thinker Fred Luthans mentioned the importance of communication in his words that "According to an estimate there is a communication in three fourth part of every human life."

Expression is a part of human personality and free expression or freedom of expression is essential for the development of human personality and dignity. That's why freedom of expression is recognized as a human right under Article 19 of the Universal Declaration of Human Rights, which is an international document adopted by the United Nations General Assembly in 1948 to enshrine the rights and freedoms of all human beings. Article 19 of the UDHR states that "everyone shall have the right to hold opinions without interference and everyone shall have the right to freedom of expressions; those rights shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice" [1]. Freedom of expression is considered to be one of the most significant rights as it allows a person to attain self-fulfillment and strengthen the capacity to fully enjoy freedom.

To follow the UDHR and to provide that kind of right and freedom to citizens of India, the Constitutional Assembly included Article 19(1)(a) as freedom of speech and expression in the Indian Constitution. This article provides freedom of expression in any form. The Constitution acknowledges that liberty cannot be absolute or uncontrolled and makes provisions in clauses (2) of article 19 authorizing the State to restrict the exercise of the freedom guaranteed under that article within the limits specified in those clauses. Thus, clause (2) of Article 19, as subsequently amended by the Constitution (First Amendment) Act, 1951 and the Constitution (Sixteenth Amendment) Act, 1963, enabled the legislature to impose reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of (i) the security of the State and sovereignty and integrity of India, (ii) friendly relations with foreign States, (iii) public order, (iv) decency or morality, or concerning contempt of court, defamation or incitement to an offense^[2].

In the 21st century, the development of information technology accelerates the speed of communication and also improved the importance of communication. Information Communication Technologies (ICTs) is a modern form of information technology that includes internet and mobile-based communications. It is more and more turning into pervasive and integral to the daily functioning of our life—whether or not personal or official. ICTs provide a chance of connecting to each individual and format the communication structure consequently to every person. Such a structure is often outlined and re-defined by each instigator and receiver of communication. Such a medium of communication is referred to as Social Media and it is transforming how people connect with each other and how information is shared and distributed. According to the Ministry of Communication and Information Technology, GOI “very broadly social media can be defined as any web or mobile-based platform that enables an individual or agency to communicate interactively and enables the exchange of user-generated content”^[3].

Generally, people consider Social Networking sites such as Facebook or microblogging sites such as Twitter as social media but actually, they are just an example of Social media. According to Kaplan & Haenlein “Social media, is a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0 and that allow the creation and exchange of user-generated content”^[4]. They have classified social media into 6 forms like social networking e.g. Facebook, Blog and Microblogs e.g. Twitter, Content Communities e.g. WhatsApp, Vlog or Video Sharing Site e.g. YouTube, Wiki e.g. Wikipedia and Virtual Gaming World e.g. PUBG.

2. Social Media and Violation of Freedom of Expression

Two significant ways of social media transform how people connect with each other and how information is shared and distributed and make it more popular—first, the amount of content that can be generated by the users themselves far exceeds the content generated by news/opinion-makers and second, its “viral” ability for potential exponential unfold of data by word of mouth and interlinking of the assorted social media platforms. In this way, social media has positive results like, making platforms for talents and providing then identity, on the other hand, it creates universal support for revolution in the contemporary world, like, Arab Spring, Orange Revolution (Ukraine), Rose

Revolution (Georgia), etc. and negative results like, spreading wrong information in form of ‘Hate Speech’, which spoils social and religious harmony and introducing ‘Mob Lynching’ kind of crime who are taking thousands of lives.

Hate Speech is not described in any Indian law yet but some of the sections of IPC have a description of that kind of act. According to IPC Section 153A, 295A & 298 hate speech is “Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. Whoever, by words, either spoken or written or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities”^[5].

21st Law Commission of India Defined hate speech as “Hate speech is an expression which is likely to cause distress or offend other individuals based on their association with a particular group or incite hostility towards them. The issue of hate speech has assumed greater significance in the era of the internet since the accessibility of internet allows offensive speeches to affect a larger audience in a short period”^[6]. On the other hand, The European Union (EU) defines hate speech as public incitement to violence or hatred or targeting groups or individuals based on certain characteristics, including caste, race, birth, color, religion, region, descent, and national or ethnic origin.

In conclusion, we can define hate speech as “Promotion or attempt to the promotion of discrimination on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever by any form of expression like written, visual, oral, photo, cartoon, etc. and have intension to provoke, promote, encourage or support violence or counter-violence which causes a communal riot, enmity in community, a chain of conflict, breach of law and order and may cause physical or mental damage.”

In democratic countries like India, where citizens have freedom of expression but due to lack of awareness and strict legal provisions, they fail to identify the thin line between freedom of expression and hate speech and on the other hand diversity of society, culture, religion, creed, color, etc. which have unique identities and that identities may increase the probability to discrimination. Sometimes based on fake news or rumors people target any person or group of people for his or her different identity and have physical violence or sometimes it also causes death. Just because social media has more access to the common man and it has more capacity to spread information quickly so that it can spread misleading and inflammatory information more easily and quickly. Sometimes people use social media as a tool of quick publicity and they produce hate speech type of content to get the publicity. This type of hate speech provokes, promotes, and encourages mob lynching, communal riots, disgusting murders, unreasonable conflicts and enmity, racial conflicts, etc. types of crime.

The seriousness of the situation can be measured by the post of Geoffrey and Harwell in The Washington Post on Dec. 28, 2018, in which they declared the year as a “Year of Online Hate”^[7]. They have mentioned that for transparency Facebook declared that they have removed nearly 3 million pieces of hate speech between July and September 2018 which increased to 7 million till July-September, 2019. On

the other hand, YouTube also removed 1 lac videos and 17 thousand hate speech channels till June 2019 that broke its rules against harassment, cyberbullying, and hateful or abusive content.

Amnesty International mentioned that from September 2015 to June 2019 there were 902 cases registered for the hate crime of which 181 cases were alone from the year 2019. There were 37 casualties in those cases^[8]. According to the Statista website, there were 275 cases of hate crime registered from 2010 to 2018 in India of which the highest 92 cases were in the year 2018^[9]. On the other hand, during the first Lockdown in India (from 22nd March to 16th April) there were 113 cases registered for hate speech, and 99 people get arrested in Rajasthan only. From the above-mentioned data, we can summarize the condition of the whole country.

In March 2020, Andhra Pradesh-based social activist Mr. K. N. Govindacharya filed a PIL before the High Court of Delhi accusing various social media firms of misusing the concept of free speech. He stated that hate speech and fake news result in a divisive society and riots-like situation in the country. According to Govindacharya social media companies are not following Indian law. They haven't appointed a mediatory officer according to the IT Act, 2000, who is responsible for the removal of fake news and hate speech from such platforms. His PIL also mentioned how despite several steps taken by the police, the growing trend of hate speech on social media, has increased the burden of courts and how in the absence of any action, hate speech continues to grow on social media. The outcome of the same is rioting and divisive society. In March 2020 Supreme Court of India authorized Delhi High Court to hear cases of hate speech on behalf of himself. Other than it, in February 2020 social media companies including Facebook, Google, Twitter, share chat, etc. are explored an industrywide alliance to fake news on their platform in India, even as the government finalizes regulations aimed at censoring content. The proposed alliance is to be named the Information Trust Alliance (ITA). In conclusion, we can say that regarding controlling hate speech on social media there are many activities and steps taking place but there is an absence of strict regulation on hate speech on social media. The debate on this topic is more relevant in the current sphere because there are some countries around the world taking steps ahead for the solution, agreed with Facebook, Twitter, Microsoft, and YouTube. Till September 2020, other major social media platforms like, Instagram, Snapchat, Dailymotion, TikTok, etc. also announced their participation in the code.

In April 2020, the German Federal government introduced a draft bill to amend the German Hate Speech Act, 2017. In the previous law, social media networks with more than 2 million users must act within 24 hours of and failure to comply can attract fines of up to €50 million. While the 2017 law requires internet companies to delete or block posts that include certain kinds of hate speech from the platform, the new draft law obliges these companies to not only remove certain types of hate speech from media platforms but to also immediately report such content to the Office of the Federal Criminal Police (BKA). According to Germany's legal code, only a death threat is against the law and it is punishable. The draft law proposes that threats against sexual self-determination, physical integrity, personal freedom, or "against objects of the serious price that are directed against the person involved or persons

close to the" ought to even be punishable. The penalization for a threat created online is provisioned to be up to 2 years, and for one created in person, up to 3 years, alongside a fine. Underneath the draft law, "loud and aggressive" insults that quantity to "psychological violence" is punishable. It also proposes to punish defamation of people in political life, the disruption of the public peace, and anti-Semitism. Social media websites will be required to report to the BKA the following criminal offenses: dissemination of propaganda, preparation of serious acts of violence, incitement and depictions of violence, rewarding and approving crimes, and distribution of child pornography recordings^[10].

In March 2020, French Parliament also passed a hate speech law which has provisions for the tech platforms to remove hateful comments based on race, religion, sexual orientation, gender, or disability, as well as sexual harassment within 24 hours after they are flagged by users. Terrorist and child pornography contents must be removed within one hour of being flagged. The law has a provision that if the Platforms fail to follow the regulations they could face fines of up to €1.25 million (\$1.36 million). Many other countries around the world also have similar steps and activities according to their ecology.

3. Legislations in India around Hate speech^[11]

According to 21st Law Commission, hate speech has not been defined in any law in India. However, legal provisions in certain legislations prohibit selected forms of speech as an exception to freedom of speech. Presently, in our country, the following legislations have bearing efforts on hate speech, namely.

3.1 The Indian Penal Code, 1860

- Section 124A IPC penalizes seditious
- Section 153A of IPC penalizes 'promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.'
- Section 153B of IPC penalizes 'imputations, assertions prejudicial to national integration.'
- Section 295A of IPC penalizes 'deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.'
- Section 298 of IPC penalizes 'uttering, words, etc., with deliberate intent to wound the religious feelings of any person'.
- Section 505(1) and (2) of IPC penalizes publication or circulation of any statement, rumor, or report causing public mischief and enmity, hatred, or ill-will between classes.

1. The Representation of the People Act, 1951
2. The Protection of Civil Rights Act, 1955
3. The Religious Institutions (Prevention of Misuse) Act, 1988
4. The Cable Television Network Regulation Act, 1995
5. The Cinematograph Act, 1952
6. The Code of Criminal Procedure, 1973
7. Section 95,107, 144.

Apart from the above, Information Technology Act, 2000, Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data and Information) Rules, 2011, Information Technology (Intermediaries

Guidelines) Rules, 2011 are also for the control and regulation of IT but none of the above legislation has any definition and provision to control and regulate hate speech, hate speech on social media and discriminatory or harmful content on the internet.

4. Recommendations

Legislation of every country has an ecological effect and it is also applicable to Indian legislation. Any country can use another country's legislation as a reference but the legislation for the country should be framed according to the ecology, social structure, constitutional provision, existing law, and the efficiency to regulate the law. 21st Law Commission of India recommended that there is no specific legislation for hate speech in India, yet but this type of case can be proceeded by interpreting some existing law. The commission also recommended to insertion of Sub-Section 'C' in Section 153 of IPC to define the hate speech and Sub-Section 'A' in Section 505 of IPC to describe punishment with imprisonment for a term which may extend to one year or fine up to Rs. 5000, or both. The recommendation was for hate speech only but the judiciary can interpret it and use it for the cases of hate speech on social media also.

Government should make sure the appointment of a mediatory officer on every social platform. This officer should be responsible to remove hater content from the platform and should immediately inform the police so that appropriate action can be taken.

Before making any provision for hate speech on social media Government should consult with law specialists to decide that there is any need to form new legislation or amendment in existing law is enough. For this type of criminal punishment should be equal to IPC crime but their regulation should be stricter.

If anybody spread, provoke, or encourage any content on social media or any internet platform that produce any kind of discrimination, hate, violence based on caste, creed, religion, birthplace, region, language, community, sexual representation or individual belief should be considered as a breach of the right to equality. On the other hand, if somebody gets murdered or attempt to murder or injured due to the content on social media should be considered as a breach of the right to life and should be treated as a violation of the fundamental right and should have punishment accordingly.

If any content on social media damage the sovereignty and integrity of India, the safety of the State, friendly relations with foreign states, and public order ought to be considered as a matter of treason.

If any content on social media provokes, invokes, encourages any type of violence should be treated as an offense against the public tranquility according to chapter VIII of IPC. If somebody supports or encourages such content should be considered as an inciter to an offense.

If any person gets murdered due to such content on social media, then the producer of such content should be treated as accused of murder according to Section 302 of IPC. On the other hand, if somebody supports such content should also be treated as a helper of the accused. If there is any attempt to murder, hurt, grievous hurt voluntarily causes grievous hurt or rape or attempt to rape or any crime takes place due to the hate speech on social media or any content of any internet platform then the producer and supporter of such content should be treated as IPC crime.

If any riot broke or occurred any harm to life and property

due to such content on social media, then the producer and supporter of such content should be treated as rioter and murderer and should quittance of such property from such person and supporter.

Above mentioned recommendations are for the legal provision to control and prohibit such activities and it is a need of the hour to implement strict provision and take strong steps for it. It is also needed that law enforcement agencies should get advanced training to deal with such kinds of activities. Effective action may be minimizing or control such kind of trend.

Removal of such kinds of trends from roots is very essential for a healthy environment of the society. It can bring only by behavioral change at the society level. Moral control is necessary to prohibit or control such type of expression. It is a moral duty of society and family to create such a type of environment that nourishes the generation with communal and racial harmony. It is expected from the leaders of various religions, caste, society, and politics to present healthy examples of communal harmony and balanced speech and expression which encourage common people to follow such behavior.

It is a prime responsibility of the government to be aware citizen about the rational use of social media and expression. Government should plan any activity like, mission or program to promote such awareness. It is very important to notice that Government personnel should not support that kind of activity and should follow a code of conduct in expression also. If any person found involved in such activity should be immediately terminated from the service.

5. Conclusion

In conclusion, it can be said that on one hand, information technology turned the world into a global village where everything is accessible to everyone, but on another hand, it dragged the world on a heap of gunpowder where a single spark can turn the world into ashes. With the development of communication mediums, where socialism has received a new medium in the form of 'Social Media', which has connected the whole world as one society, on the other hand, this social media has spread disharmony among unknown people and unknowingly created differences between each other and has made an enemy of each other. In such a situation, it has become an essential requirement of the present time that a reasonable restriction should be established on these mediums, which would ensure only their positive use and by taking proper action against the misusers, an example should be set against those who harm the social harmony.

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