



## LEGAL IMPLICATIONS OF SOCIAL NETWORKING SITES

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### Abstract

*Social Networking Sites provided us the facility to be in touch with our friends and relatives around the world in just one-click. These sites have indeed made the world a very small place to live. The concept of “Global Village” introduced by McLuhan is now come to reality. The 'Virtual world' of Social Networking Sites has opened doors for organizations or individuals to communicate their key messages to a new audience. The nature of communication has undergone a substantial change in the past twenty years and everyday new media allows us to communicate in a different way, with a diverse audience. It all started with email, which had a profound effect on the way people keep in touch. When some people are still getting used to email effectively, the nature of communication continues to change. It is cost effective and easily implemented into a greater communications strategy. However, there is a necessity of awareness among users to share, comment or like only those messages which don't affect the harmony of the country.*

**Key Words:**-SNSs, Legal issue, Harmony, Virtual World, Global Village

The nature of communication has undergone a substantial change in the past twenty years and everyday new media allows us to communicate in a different way, with a diverse audience. It all started with email, which had a profound effect on the way people keep in touch. When some people still getting used to using email effectively, the nature of communication continues to change. The 'Virtual world' of Social Networking Sites has opened doors for organizations or individuals to communicate their key messages to a new audience. It is cost effective and easily implemented into a greater communications strategy. So we can say that this is the era of Internet mediated communication.

### **Social Networking Sites**

A social network is a social structure made up of individuals (or organizations) called "nodes", which are tied (connected) by one or more specific types of interdependency, such as friendship, kinship, common interest, financial exchange, dislike, sexual relationships, or relationships of beliefs, knowledge or prestige. Social networking is defined as the bringing individuals together into a specific group, often like a small community or a neighborhood. Although social networking is possible in person, especially in schools or in the workplace, it is most popular on the internet. Social networks are online service platforms or site that focuses on building and reflecting of social networks or social relations among people who share common interest or activities. It is a new means of communication and sharing information between two or more individuals on a virtual community called as 'online community'.

In 1954, J.A. Barnes started using the term systematically to denote patterns of ties, encompassing concepts traditionally used by the public and those used by social scientists: bounded groups (e.g., tribes, families) and social categories (e.g., gender, youth). The websites offer people a new and varied ways to communicate via Internet through computer or mobile phone. The sites allow people to create their own profile and online network contacts. In an online social networking, websites are commonly used. These are called as 'Social sites', or 'Social Media'. Some of the social networking sites

ISSN : 2348-5612 © URR



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are My Space, Friend Finder, YouTube, Facebook, Linkden, Whatsapp, Twitter etc. Social networking sites lets connect people with friends, relatives and share idea, thoughts, photos, videos etc. SNS sites users in India are 185.2 million users up to September 2016.

SNS were developed by the end of 1999. The social networking site Friend star was started in 2002, My Space, LinkedIn in 2003, Bebo, Google 360, Facebook in 2004. Facebook has emerged as the largest social networking site in the world. Social networking sites use web-based technologies to turn communication into interactive dialogues. Hence, social media can be described as a group of internet-based applications that build on the ideological and technological foundation of Web2.0, which allows the creation and exchange of user generated content. Social media is called as computer generated media as it blends technology with social interaction.

#### ***Merits of Social Networking Sites***

- People with common interests, activities, across the political, economic and geographical borders can inter communicate with each other and form online communities.
- Small organizations, fragmented industries can connect with each other and with a broad range of audience for their business transactions.
- Social networking sites have become great tools for creating brand awareness and brand image.
- Social networking sites are used as platforms for discussion and exchange of scientific knowledge.
- Social Networking Sites are actively used by students' for educational discussions.
- At present social networking is used as a tool for social activism, to build campaigns, influence opinions and for organizing mega events.
- The sites are being increasingly used for finding internships and interviewing and recruitment.
- Messaging is cheaper in social networking sites.
- Today Social networking sites are used not only for socializing but also for meeting new business partners and clients and increase business relations.
- Social media develop social authority i.e. an individual using the network and expressing opinion in a given field of area can become popular and can turn into an expert.

#### ***Social Networking Strategy***

In recent months, there has been many webinars and websites discussing the value added reasons in combining communications, a key social strategy for your online presence. Social networking is a key tool to build your resources and promote your expertise or marketing ideas in easy and effortless way.

#### ***Article 19 (1) (A) Meaning and Scope***

Indian Constitution says that all citizens have the right to freedom of speech and expression. Freedom of Speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's idea through any communicable medium or visible representation, such as gesture, signs, and the like. This expression connotes also publication and thus the freedom of press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press. This propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value.



The freedom of speech and expression includes liberty to propagate not one's views only. It also includes the right to propagate or publish the views of other people; otherwise, this freedom would not include the freedom of press.

Freedom of expression has four broad special purposes to serve: It helps an individual to attain self-fulfillment, it assists in the discovery of truth, it strengthens the capacity of an individual in participating in decision-making, it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change, all members of society would be able to form their own beliefs and communicate them freely to others. Freedom of speech and expression should, therefore, receive generous support from all those who believe in the participation of people in the administration. Explaining the scope of freedom of speech and expression Supreme Court has said that the words "freedom of speech and expression" must be broadly constructed to include the freedom to circulate one's views by words of mouth or in writing or through audiovisual instrumentalities. It therefore includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this country therefore has the right to air his or their views through the printing and or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution.

Freedom to air one's view is the lifeline of any democratic institution. The modern communication mediums advance public interest by informing the public of the events and development that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy.

The various communication channels are great purveyors of news and views and make considerable impact on the minds of readers and viewers and our known to mould public opinion on vitals issues of national importance. The freedom of speech and expression includes freedom of circulation and propagation of ideas and therefore the right extends to the citizen to use the media to answer the criticism leveled against the views propagated by him.

### ***Legal Implications - Commercial Advertisements***

The court held that commercial speech (advertisement) is a part of the freedom of speech and expression. The court however made it clear that the government could regulate the commercial advertisements, which are deceptive, unfair, misleading and untruthful. Examined from another angle the Court said that the public at large has a right to receive the "Commercial Speech".

Art. 19(1)(a) of the constitution not only guaranteed freedom of speech and expression, it also protects the right of an individual to listen, read, and receive the said speech.

### ***Right to Information***

The right to know, 'receive and impart information has been recognized within the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. The right to know has, however, not yet extended to the extent of invalidating Section 5 of the Official Secrets Act, 1923 that prohibits disclosure of certain official documents. One can conclude that 'right to information is nothing but one small limb of right of speech and expression'.

### ***New Dimensions of Freedom of Speech and Expression***



Government has no monopoly on electronic media. The Supreme Court widened the scope and extent of the right to freedom of speech and expression and held that the government has no monopoly on electronic media and a citizen has under Art. 19(1)(a) a right to telecast and broadcast to the viewers/listeners through electronic media television and radio any important event. The government can impose restrictions on such a right only on grounds specified in clause (2) of Art. 19 and not on any other ground. A citizen has fundamental right to use the best means of imparting and receiving communication and as such have an access to telecasting for the purpose.

### *Grounds of Restrictions*

Clause (2) of Article 19 contains the grounds on which restrictions on the freedom of speech and expression can be imposed:

- **Security of State:** Under Article 19(2), reasonable restrictions can be imposed on freedom of speech and expression in the interest of security of State. The term "security of state" refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. Thus, speeches or expressions on the part of an individual, which incite to or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of State.
- **Friendly Relations with Foreign States:** This ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardize the maintenance of good relations between India, and that state. No similar provision is present in any other Constitution of the world. In India, the Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against foreign dignitaries. Interest of friendly relations with foreign States, would not justify the suppression of fair criticism of foreign policy of the Government. It is to be noted that member of the commonwealth including Pakistan is not a "foreign state" for the purposes of this Constitution. The result is that freedom of speech and expression cannot be restricted on the ground that the matter is adverse to Pakistan.
- **Public Order:** The test for determining whether an act affects law and order or public order is to see whether the act leads to the disturbances of the current of life of the community to amount to a disturbance of the public order or whether it affects merely an individual being the tranquility of the society undisturbed. Anything that disturbs public tranquility or public peace disturbs public order. Thus, communal disturbances and strikes promoted with the sole object of causing unrest among workers are offences against public order. Public order thus implies absence of violence and an orderly state of affairs in which citizens can peacefully pursue their normal avocation of life. Public order also includes public safety. Thus creating internal disorder or rebellion would affect public order and public safety. However, mere criticism of government does not necessarily disturb public order. In its external aspect, 'public safety' means protection of the country from foreign aggression. Under public order, the State would be entitled to prevent propaganda for a state of war with India. The words 'in the interest of public order' includes not only such utterances as are directly intended to lead to disorder but also those that have the



tendency to lead to disorder. Thus a law punishing utterances made with the deliberate intention to hurt the religious feelings of any class of persons is valid because it imposes a restriction on the right of free speech in the interest of public order since such speech or writing has the tendency to create public disorder even if in some case those activities may not actually lead to a breach of peace. However, there must be reasonable and proper nexus or relationship between the restrictions and the achievements of public order.

- **Decency or Morality:** The words 'morality or decency' are words of wide meaning. Sections 292 to 294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. No fix standard is laid down until now as to what is moral and indecent. The standard of morality varies from time to time and from place to place.
- **Contempt of Court:** Restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. According to the Section 2 'Contempt of court' may be either 'civil contempt' or 'criminal contempt.'
- **Defamation:** A statement, which injures a man's reputation, amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt. The civil law in relating to defamation is still un-codified in India and subject to certain exceptions.
- **Incitement to an Offence:** This ground was also added by the constitution (First Amendment) Act, 1951. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offence. The word 'offence' is defined as any act or omission made punishable by law for the time being in force.
- **Sedition:** As understood by English law, sedition embraces all those practices whether by words, or writing which are calculated to disturb the tranquility of the State and lead ignorant person to subvert the government. It should be noted that the sedition is not mentioned in clause (2) of Art. 19 as one of the grounds on which restrictions on freedom of speech and expression may be imposed.

Freedom of speech and expression is one of the most important fundamental rights. It includes circulating one's views by words, in writing, or through audiovisual instrumentalities, through advertisements and through any other communication channel. It also comprises of right to information, freedom of press etc. From the above case law analysis it is evident that the Court has always placed a broad interpretation on the value and content of Article 19(1)(a), making it subjective only to the restrictions permissible under Article 19(2). It can also be comprehended that public order holds a lot of significance as a ground of restriction on this fundamental right. However, there should be reasonable and proper nexus or relationship between the restriction and achievement of public order.



## ***IMPORTANT CASES ON FREEDOM OF SPEECH & EXPRESSION AND SOCIAL NETWORKING SITES***

**Romesh Thapper vs. State of Madras AIR 1950 SC** Freedom of speech and expression is the most basic of all freedoms granted to the citizens of India. Justice Patanjali Shastri has said in this case that freedom of speech and that of the press lay at the foundation of a democratic society, for without free political discussions, no public education is possible, which is so important for the proper functioning of the govt. It allows us to freely express our ideas and thoughts through any medium such as print, visual, and voice. One can use any communication medium of visual representation such as signs, pictures, or movies. Freedom of speech would amount to nothing if it were not possible to propagate the ideas. Thus, the freedom of publication is also covered under freedom of speech. Freedom of speech serves 4 purposes - allows an individual to attain self-fulfillment, assists in the discovery of truth, it strengthens the capacity of a person to make decisions, and it facilitates a balance between stability and social change. This right is not only about communicating your ideas to others but also about being able to publish and propagate other people's views as well. Thus, freedom of speech and expression is linked to the people's right to know. Freedom of speech and expression is a broad term and encompasses several things. The following are important cases that have determined the extent of this right from time to time.

**SNS-Case: Professor Ambikesh Mahapatra vs. State of West Bengal** arrested because of forwarding of cartoons of Ms. Mamata Banerjee and Mukul Roy. Cartoon shows a spoof which is being widely circulated on the internet, has lines from the film, in which a boy called Mukul is duped by two criminals into believing that they caused a wicked man who is actually a good person to vanish. In the spoof, the wicked man who has vanished is former Railway minister Dinesh Trivedi, forced out of the office by Ms. Banerjee in March. He was released on bail later, but only after a written statement, which the Professor said, he was forced to write, that he was an active member of the Communist Party of India (Marxist). The West Bengal Human Rights Commission, headed by former Supreme Court judge, Justice Ashok Kumar Ganguly, has recommended that the State Govt. should pay Rs. 50,000 each to former Jadavpur University Prof. Ambikesh Mahapatra and his neighbor Subroto Roy for their arrest in the middle of the night for circulating a cartoon of CM -Ms. Banerjee. The state government has contended that the police rescued Prof Mahapatra and his neighbor from being assaulted by a mob and took them to a police station for their own safety.

**SNS-Case:** Police has arrested two girls for their statements on Social Networking sites against Late Bal Thakery's death Bandh in Mumbai. Later Press council of India Chairman Justice Markandeya Katju has ordered to suspend two police officers who arrested the girls, as it is a violation of Freedom of Expression.

**Case: Maneka Gandhi Vs. Union of India 1978:** The CBI took the Passport of Mrs. Maneka Gandhi. In the Land Mark Judgment the Honorable Supreme Court held that the Freedom of Speech and Expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also and asked the CBI to return her passport back.

**SNS-Case: Ravi Srinivas Twitter SNS-Case:** Posted a tweet to his 16 followers saying that Karti Chidambaram a politician belonging to India's ruling party congress and Son of India's finance minister had "A massed more wealth than Vadra". Later Karti tweeted "free speech is subject to reasonable restrictions. I have a right to seek constitutional remedies over defamatory tweets". Mr. Srinivasan did



make an unverified allegation. Mr. Chidambaram could have used the libel and defamation laws. However, Indians libel laws are complex. The plaintiffs have to prove that you were defamed. The Burden of proof is responsibility of the person who filed a case.

**SNS-Case: Hennas Bakshi:** Hennas Bakshi's SUV was stolen from Chandigarh and after a month, police still had not registered a case. Frustrated Ms. Bakshi posted a strongly worded note on city polices Facebook page in September. Police slapped a case against Henna. Ms. Bakshi as a 10-year-old received bravery award from the Prime Minister.

**SNS-Case: Ms. Chinmaya Sripada:** She ignored years of trolling and online harassment. Finally files a complaint for vulgar tweets. An Associate Professor in a private fashion institute and a government employee were arrested. However, here Ms. Chinmayis status helped her but in case of ordinary citizen is it possible?

**SNS-Case: Azad Maidan Clashes (2012):** Circulation of a fake video (with origins in Myanmar) showing how 'Muslims' were 'ill-treated' by Bodos in Assam lead to the clash in Mumbai.

**SNS-Case: North East Exodus (2012):** Fake online video egged a community to attack people from Northeast, leading to mass exodus from Mumbai, Bangalore, Pune, Hyderabad and Chennai. Special trains were arranged to move people to North East safely. This is because of Fake online video on Social Networking Sites.

**SNS-Case: Muzaffarnagar mayhem (2013)** Morphed video on the Internet showed how Hindus were being ill-treated by Muslims. Around 50 people were killed in the riots. BJP MLA under scanner for uploading the video, arrested. Other MLAs also arrested.

**Case: Advertising Case- Tata Press Ltd. vs. MTNL SCC 1995 SC:** In this case, Supreme Court held that commercial advertisement is protected under freedom of speech.

**Case: Ranjit Udeshi vs. State of Maharashtra AIR 1965 SC:** In this case, a bookseller was prohibited from selling book containing obscene material.

**Case: Hamdard Dawakhana vs. Union of India AIR 1960 SC:** In this case, SC held that obnoxious and fraudulent advertising is not protected under freedom of speech.

**Test of reasonable restrictions:** Spanning several cases, SC has laid down the following guidelines:

- It is the courts and not the legislature that will decide whether a law is reasonable or not.
- Reasonable means that the law is not arbitrary and the restriction is not beyond what is required in public interest. The time and duration of the restriction cannot be unlimited.
- There is no fixed standard for reasonableness. Each case must be decided on its own merits.
- The restriction must be reasonable from substantive as well as procedural standpoint.
- Restrictions imposed due to implementation of Directive Principles may deemed to be reasonable.
- The test of reasonability must be objective in the sense that it does not matter what a Judge or Court thinks what is reasonable but what a normal reasonable person would think.
- The restriction must have a relation to the object that is sought through the law and must not be excessive.
- It is the reasonableness of the restriction that a court has to determine and not the reasonableness of the law itself.
- Restriction may amount to prohibition.



### *Critical Analysis*

Freedom of speech and expression is indeed the most important of all freedoms. However, today, this right is being routinely suppressed under the guise of morality and decency or public order. Any book that talks about problems in a religion is banned in the name of public order. It is extremely unfortunate that the executive, instead of the upholding peoples' right to speech and expression by preventing unscrupulous element from hurting the author, is more interested in stifling the voice by banning their works. The spirit of free speech is the ability to think and speak freely and to obtain information from others through publication and public discourse without fear of retribution, or repression by the government. It is through free speech, people could come together to achieve political influence, to strengthen their morality, and to help others to become moral and enlightened citizens.

Revelations about global surveillance by the US National Security Agency (NSA) has made other governments think about their national security. It is now well known that the critical internet resources like domain name servers, global routers, and the control of ICANN for internet governance give a natural advantage to the US in global cyber surveillance. These platforms are used by all countries, and their traffic largely passes through the US, thereby exposing it to surveillance. Social media platforms further expose the nationals of other countries to the risks of such surveillance by the US government. Most are American, but it is the citizens of other countries whose personal data, under NSA scrutiny, is at risk of US surveillance. At the same time, the law enforcement agencies (LEAs) of India, for example, cannot access content or the coordinates of suspects, even in terrorist and serious crime cases, because these may not be considered crimes under US law.

What are the lessons we learned. Every nation has to fend for itself. We have to make indigenous capabilities in chip design, telecom equipment, operating systems and databases, along with preferential market access for these products and systems for reasons of security. Anonymity in cyberspace gives everyone a chance to air their views. It can promote harmony or disharmony. Since this medium is going to expand, it is important that India create its own platforms, much like our newspapers and magazines. The content will remain within the territorial jurisdiction of India and be subject to national laws. Likewise, search engine data about Indians will also remain in India. Advertising revenue from these platforms will increase. The potential of increased revenue from social media platforms is obvious. Facebook and Google + are the top two social networks. This is important for our own national security and to protect the privacy of Indian citizens. Even European countries are seized of the issue now. Encouraging Indian companies to set up social media sites and launch a search engine will go a long way to enhancing cyber and national security.

Former Minister of Communication and IT Mr. Kapil Sibal said if SNS do not cooperate then it is the duty of the government to think of other steps. We have to take care of the sensibilities of our people. He advocated for self-regulation to solve such problems. Most of the experts are against of defamatory, offensive and dangerous content on SNS but they also forcedly opposed the idea of censorship.

It has become most powerful medium of expression especially for youth. Some of the major issues in SNS are Dictating terms, Negativity, Avoidance, Censoring, Abusive and vulgar comments, Emotional manipulation, Digression (posts were independent of the posts), Aggression than discussion. On the one hand, SNS is enormously empowering because it is the source of information. On the other hand the very same medium is bigoted, is full of prejudice. It is a medium, which can destroy. A medium can speed anarchy. Therefore, it is constructive and destructive at the same time, evocative and depressing at the



same time. We cannot discipline the technology. We have to go along with it. It is a reality with which we have to live it. It is a great instrument of expression and at the same time irresponsible character in this social media. It is up to the users to understand what to exclude and what to include within their own system. The SNS today is perhaps the largest ungovernable space in the world. Now within this space everybody is learning to try to live with this new phenomenon.

It is the amplifier of your mainstream media if you want to use it properly. It is providing you a two-way communication which usually we will never have with our readers. Still the conventional media is not taking back seat still people have confidence in the conventional media and they believe in it. There is conflict of opinion between national security and social media. It has very fast self-correcting mechanism. There is a completely new relationship out there between two citizens. One who is a victim, the other who is actually spreading the information? Where is the justice for the victim? Unless the anonymity factor is dealt with, we cannot really have an evolved media. Legally we have Freedom of Speech at the same time so many other factors also we have to consider before we write in social media.

How can we leave Social Networking Sites above the law of the country because mainstream media operates within the law? That is the question to be discussed. Government also knows how to control social media to some extent. Sometimes it helps the terrorists' links also. Right, netiquette is important not censorship. SNS is like a wild fire sometimes rumors spread very fast on SNS there are several cases and recent case of communal violence on these sites fabricated photos that led to riots. The users of SNS must be aware of the legal implications and they must know the strong impact on the society of the messages and must be careful when they are posting.

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