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NAVIGATING THE ROLE OF SOCIAL MEDIA- FROM A LEGAL PERSPECTIVE

“What are social media's central functions in the public sphere? What is social media's appropriate role? I argue that social media have three central functions:

First, social media facilitate public participation in art, politics, and culture.

Second, social media organize public conversation so people can easily find and communicate with each other.

Third, social media curate public opinion, not only through individualized search results and feeds, but also through enforcing community standards and terms of service. Social media curate not only by taking down or rearranging content, but also by regulating the speed of propagation and the reach of content”¹.

INTRODUCTION:

In *Marco Ltd vs Abhijeet Bhansali* it was observed that “ Today, social media influencing is one of the most impactful and effective ways of marketing and advertising. A social media influencer who has or claims to have a sound knowledge on what they claim their niche is and uses that knowledge to influence people in believing and subscribing to the same set of ideas or thoughts they are trying to propagate on social media, have the power to influence people, to change attitudes and mindset. This mindset can be changed for the better, and scarily, even for the worse. This is a responsibility that should be assumed carefully. But first of all, there needs to be a deep awareness about the basic fact that this indeed is a responsibility.”²

¹ Jack M. Balkin, How to Regulate (and Not Regulate) Social Media, 1 J. FREE SPEECH L. 71 (2021).

² Marico Limited vs Abhijeet Bhansali, AIRONLINE 2020 BOM 3109

The Internet governance and Science and Technology Studies examined the extent to which social media platforms promotes and constraints rights in 3 main areas:

- Anonymous speech and individual privacy; The prospect of relatively private and anonymous communication has been considered a hallmark of democratic expression and deliberation.³
- Ability to express ideas, or stated as a negative liberty, freedom from censorship;
- Technical affordances of interoperability and permissionless innovation.⁴

In *X vs Union of India And Ors*⁵ the court observed that due diligence must be observed by the social media intermediary. It must publish on its website, apps or both the rules, regulations, privacy policy and user agreement for usage by any person. It also held that any serious offence that impacts the sovereignty, security and integrity of India , the social media intermediary is mandated to enable the identification of ‘first originator of the information on its computer resources’.

IT ACT, 2000 AND SOCIAL MEDIA REGULATION:

Section 79 of the Information Technology Act, 2000 ensures that the social media intermediaries will be held liable when due diligence is not observed and it conspires, abets, aids or induces the commission of unlawful act. This also applies when the intermediary receives knowledge of unlawful act and fails to remove or disable access to that material. In *Google India Private Limited vs M/S Visaka Industries Limited And 2 others*⁶, the court observed that the legislature has to take necessary steps to safeguard the public from defamatory content, sexually explicit material or pornography displayed by creating fake accounts and the users of such accounts needs to be given stringent punishment by making necessary amendments. In *Nirmaljit Singh Narula vs Indijobs At Hubpages. Com and Ors*⁷ the court held that U/S 79 of the IT Act, 2000 the intermediary is obligated to remove unlawful content if it receives actual notice from the aggrieved party of any illegal content being published through the intermediary. It is bound to comply with IT (Intermediary Guidelines) Rules 2011. Rule 3(3) read with 3(2) of the said rules demands the intermediary to

³ J Zittrain, *The Future of the Internet and how to stop it*, Yale University Press, New Haven, CT (2008)

⁴ DeNardis, L., & Hackl, A. (2015). Internet governance by social media platforms. *Telecommunications Policy*, 39(9), 761-770.

⁵ *X vs Union Of India and Ors*, AIR ONLINE 2021 DEL 527

⁶ *Google India Private Limited vs M/S Visaka Industries Limited and 2 Ors*, AIR 2017 (NOC) 582 (HYD.)

⁷ *Nirmaljit Singh Narula vs Indijobs at Hubpages. Com and Ors*, CS (OS) No. 871/2012

observe due diligence and not knowingly publish or host any information that is harmful, disparaging or defamatory or otherwise illegal.

CONTEMPT OF COURT AND SOCIAL MEDIA REGULATION:

Contempt of Court refers to behaviour that will affect badly the court proceedings disturbing the administration of justice. It also applies to the public when posting in social media. The following might amount to contempt of court:

- Comments on facts or evidence that will be heard during the trial.
- Mentions the defendant's previous convictions or character.
- Names someone in breach of an injunction or court order.
- Names victims, witnesses, and offenders under the age of 18
- Names a victim of a sex crime.
- Shares any information about a case that the judge has ordered to be kept private.
- Records and/or shares images, video content, or sound clips from the trial.
- Publishes a court judgment in breach of an embargo.⁸

In *B.K.Lala vs R.C.Dutt*⁹ the court held that publishing scandalous matter with regards to respecting the court after adjudication amounts to contempt of court. In *E.M.S. Namboodripad vs T.Narayanan Nambiar*¹⁰ the court held that accusing the judiciary of being an oppressive tool and labeling judges as biased towards the rich while showing hostility towards the poor undermines trust in the legal system and weakens the authority of courts by fostering disrespect and distrust towards judicial decisions.

IPC, POCSO AND SOCIAL MEDIA REGULATION:

The Sections 124A, 153A, 295A, 499, 505, 506 and 509 of the Indian Penal Code deal with crimes related to social media.¹¹ These provisions deals with the following respectively:

- Sedition
- Attack against religion, place of birth, language, and race
- Defamation of religion or religious beliefs

⁸ https://assets.publishing.service.gov.uk/media/60d4a59dd3bf7f7c3716c60d/Contempt_of_court_-_fact_sheet.pdf

⁹ *B.K.Lala vs R.C.Dutt*, AIR 1967 Cal 153 Cr LJ 350

¹⁰ *E.M.S.Namboodripad vs T.Narayanan Nambiar*, AIR 1970 SC 2015

¹¹ <https://www.freelaw.in/legalarticles/Social-Media-Laws-and-its-Implications>

- Individual facing legal consequences for making defamatory comment with a motive to destroy someone else's reputation
- Statements made to promote public annoyance
- Intimidating a person physically or via electronic means
- Disrespecting women's modesty

In *Nipun Saxena vs Union of India Ministry of Home Affairs*¹² the court issued a direction stating that the name of the victim must not be disclosed even in a remote manner. Even the facts that lead to the identification of the victim's must not be disclosed in social media or any platform. The case also observed that U/S 33 of the POCSO the cases must be heard by a special court which is child friendly, prohibits character assassination and ensures the identity of the child is not disclosed anywhere. But it can be disclosed only in the interest of the child. U/S 23 of the POCSO, when the publisher of the child's identity is found, he/she shall be jointly and severally liable. A similar stance was also taken in the case *Aju Varghese vs State of Kerala* where the court observed the following:

*"Society has a duty to support the victims of sexual violence and to ensure that they come back to normalcy and start leading a normal life. Victims of such violence are not denuded of their fundamental right to privacy and are liable to be insulated against unnecessary public comments. Section is so clear, unambiguous and the consequence of breach of it is inescapable and the question whether the disclosure was intended, bonafide or without knowledge of law has not relevance. Hence, the provision of section 228A IPC prohibiting the disclosure of the name by an accused is absolute and cannot be diluted"*¹³

CONCLUSION:

In conclusion, the role of social media in the public sphere encompasses facilitating participation, organizing conversations, and curating public opinion. However, with great power comes great responsibility, as highlighted in various legal cases and observations. Social media influencers must recognize the significant impact they wield and exercise their influence responsibly. Meanwhile, internet governance and legal frameworks emphasize the importance of upholding rights such as anonymity, freedom of expression, and privacy. Courts and legislative bodies have intervened to

¹² Nipun Saxena vs Union of India Ministry of Home Affairs, AIR ONLINE 2018 SC 826

¹³ Aju Varghese vs State of Karnataka, AIR ONLINE 2018 KER 837

ensure that social media intermediaries adhere to due diligence standards and enforce regulations to safeguard against unlawful activities, including defamation and contempt of court. Additionally, there's a crucial emphasis on protecting the privacy and dignity of victims, especially in cases of sexual violence, demonstrating the imperative for ethical conduct and respect for individual rights within the realm of social media.