

**JURISDICTIONAL PARADIGM IN CONJUNCTION WITH SOCIAL NETWORKING AND RIGHT
TO FREE SPEECH AND EXPRESSION**

**SURYA KULATHOOR, RESEARCH SCHOLAR, SYMBIOSIS LAW SCHOOL, SYMBIOSIS
INTERNATIONAL UNIVERSITY, PUNE, INDIA**

&

**SHASHIKALA GURPUR, PH.D., FULBRIGHT SCHOLAR, DIRECTOR & DEAN, SYMBIOSIS LAW
SCHOOL, SYMBIOSIS INTERNATIONAL UNIVERSITY, PUNE, INDIA**

Abstract: Cybercrime is a growing threat globally and social networking sites being one of the most trending activities in our lives is the main medium inclining the cybercrime rate and thus needs to be specifically regulated. Under the protection of Right to freedom of speech and expression, social networking sites are being used by the perpetrators to connect to their networks, spread messages and cause violence and hatred amongst the targeted society. Despite the IT Act 2000 the Law enforcement agencies lack proper guidelines and efficient mechanism to trace such crime as most of the cybercrimes being cross border involves jurisdictional challenges. With thorough review and analysis of the literature, this study will define and interpret various dimensions of the jurisdictional facets addressing its scope and limit with that of social networking. The researcher with this study scrutinize the best practices that have been followed in some nation for legal/administrative reforms, in order to strike a balance between sovereignty of state and international co-operation on jurisdictional issues in the cyberspace so as to protect the victims and vulnerable without affecting ones freedom of speech and expression.

Keywords: Cybercrime, Freedom of speech and expression, Jurisdiction, National security, Social media, Social networking sites

Introduction

“Man is by nature a social animal; an individual who is unsocial naturally and not accidentally is either beneath our notice or more than human. Society is something that precedes the individual. Anyone who either cannot lead the common life or is so self-sufficient as not to need to, and therefore does not partake of society, is either a beast or a god. ”

-Aristotle (Ortiz, 2015).

Human beings' being the social animal needs to get connected to the society. Right from the conception of life till the death, one is involved in social networking. Networking is important not only to shape our life but also for our happiness. In today's modern world internet has become one of the most important platforms for social networking. Online social networking is a form of virtual communication. Social networking over the internet facilitates people to connect worldwide to exchange and share their views, opinions, ideas, interest and information. Statistics shows that there are flocks of the social networking sites with millions and billions of registered users. In the year 2005 only 5% of the population were using social networking sites which enhanced to half of the population in the year 2011 and currently its more than 3 quarters of the population (PEW, 2019). Out of all the reported internet crimes majority of it involves social networking sites. as it is the easiest source to obtain personal information of the users. Thousands of people become victim of cybercrimes everyday although most of the cases are never reported or not investigated due to lack of guidelines, no authorised officer or lack of jurisdiction. With the revolution of Information Technologies, computers, laptops, smart phones are leading the societies and have impacted change into the criminal law modules and the initiatives are focused more at the regulation of the cyber world. Developments are being made in the legal arena so as to protect the world in the cyberspace as per the changing trends, but it still is not able to find a solution for the jurisdictional challenges that arise due to sovereignty of state. Cyberspace being not limited to territorial boundaries enables one to engage with number of people across the world in any unmediated communication and this makes it easy for the criminals to manipulate and influence people to join their groups to spread violence, terrorism and disturbance and hatred in the society. Dissemination of information over the social media and networking sites are for optimistic purpose but the collateral damage to the positive approach is endangering the lives of many and jeopardizes the security of the State. Every state is trying to come up with an effective and practical legal remedy for regulating the cyber crimes and signing up international agreements and treaties for international peace. However there are certain factors which cannot be jeopardized while making any laws and thus it becomes a challenging task for the law enforcement agencies to come up with absolute and definitive solution to eradicate the threat caused over the digital world. First Amendment restricts the Congress from making any law that abridges the freedom of speech. Likewise all the nations that pledge for freedom of speech has certain prohibitions prescribed to its law agencies to make any law protecting and in consistent with the freedom. With Sovereignty of State no

nation wants to be subjugated by any other State thus various unsettled jurisdictional paradigms arise over the cyber crime. The criminal minds behind the crime benefit out of this situation and are encouraged to commit crimes using social networking sites across all the seven continents.

Objective of the study:

To analyse the scope of freedom of speech and expression over the Social networking sites

To evaluate the existing laws and legal developments addressing the jurisdictional paradigms over social networking sites

To suggest legislative/ administrative reforms in the light of comparative study in order to strike a balance between sovereignty of state and international co-operation on jurisdictional issues in the cyberspace so as to protect the victims without affecting ones freedom of speech and expression.

Research Methodology:

The method of study will be doctrinal based on both primary and secondary sources of data.

During the course the study will take note of the best practices, legal developments and trends in the field of study through different literary sources available.

Social Networking: A Global Networking

Social networking has become an integral part of our life and a vital mechanism for communication. Internet has become a Global network where we can get connected to people across this globe and hence internet has become a very vital mechanism for social networking. Social networking sites have become a platform to exercise ones right to freedom of speech and expression as well as a system to seek and impart information. Being a web-based service, social networking sites enables people to register as its users by creating their profile so as to connect to people and start networking. The connectivity and the privacy to the profiles diverge from site to site (Taylor, 2014). The personal information on social networking sites that we provide are not absolutely protected and is often used by the companies for business dealings, job search, matrimonial purposes etc. Thus the arena of social networking is far beyond imagination and national boundaries hence it needs to be

regulated globally so as to maintain order in the society and to reap the benefit of the manmade technology amicably and legally. The PEW Research report based on its empirical survey analysed that in 2017, about 71% of internet users were social networking users. PEW Research report of 2019 have examined that more than 81% of the US population are Social networking users. Survey shows that people spend about 215 weekly minutes of their time on social media using smart phones, 61 minutes per week on personal computers and desktops, and more than 47 minutes per week on tablets and other devices (Clement, 2019). Social networking sites provide as the best platform for its users to connect and exercise ones Right to free speech and expression globally.

Global Right to speech and expression via Internet beyond the territorial limits

In a democratic nation, for its proper function the right to freedom of speech and expression plays a very crucial role. The right to freedom of speech and expression enables one to hold and express ones opinion which also includes right to seek, receive and impart information through any available means of communication (Marsoof, 2011). The right to freedom of speech and expression has its origin from the international law and is a recognised fundamental right across the globe. The United Nations agency known as UNESCO is the lead agency that mandates and promotes this right. It also monitors and advocates the right to free speech and expression with that of the Right to Press. Article 19 of the Universal Declaration of Human Rights, 1948 reads as *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless frontiers”* (Roosevelt, 1995). Likewise Article 19(2) of the ICCPR (McBeth et al., 2011). i.e., the International Covenant on Civil and Political rights provides for the right to freedom of expression either orally or in writing or in any form and medium of his choice. Article 19(i)(a) of the Constitution of India guarantees every citizen of India with the right *“to freedom of speech and expression”* (Jain, 2010).

Thus it is clear that we can speak or express our views, opinion ideas in any form either orally, in writing, signs, symbols, printed form or in any other manner without any interference or fear. But this right is not an absolute right as it is made subject to reasonable restrictions as is mentioned under Article 19(2) of the Constitution of India. There have been numerous interpretations made as to which all elements are included and protected under this

right and also the restrictions have been given wide scope as per the issues raised and changing need of the society. The biggest challenge that arises with respect to this area is the interpretation of the associated restrictions dotted down (Shukla, 1964). Originally there were few restrictions but with passing time few more restrictions were added with the amendments. Based on the evaluation of the literary work this study emphasize that's with the growing technology internet seeks to get some kind of clarification and special provision specifying its scope, limitations and extend of protection within the ambit of right to freedom of speech and expression. If a person is restrained from social interactions then it seems to have infringed the right to free speech and expression. Thus the value of this right lies between the social connectivity and interactions amongst the people and Internet is the only source where people can stay connected with each other across the globe to interact, share and talk to each other without any encumbrances. Hence interaction and communication has become immaculately feasible without any glitches in virtual world. Internet has become a place where people can collectively come together and raise their voice for justice. There have been many good examples of the cases where the demand of the society through the virtual world has helped people to attain not only justice but also transparency and accountability by the administrative bodies. For instance the invitation for candle march protest through social networking where people come forward and fight for justice. In this manner people exercise their Right to freedom of speech and expression by posting their views, ideas through social networking which becomes public information. However it might also result into public nuisance, disturbance of international peace, communal violence and riots etc due to lack of proper regulation and guidance.

Widespread initiatives have been taken by most of the developed countries for the adoption of specific internet laws with specific provisions in the area of social networking for the procurement of internet justice. Various attempts have been made by the International and National legal agencies and have proposed several mechanisms and policies to solve the disputes that arise in the internet world. ICANN with its initiatives developed a mandatory mechanism with the policies provided under Uniform Dispute Resolution Policy (UDRP) that requires that the disputes be heard by the authorised administrative board and deals with the issues relating to the personal jurisdiction. ICANN, UDRP is a forum for the resolution of disputes unique to the Internet (Walker, 2000).

The restrictions provided under article 19(3) of the ICCPR (Goldsmith, 2000). are twofold:

(a) For respect of the rights of reputations of others

(b) For protection of national security, or public order, or public health or morals.

It is utmost important to have a specific guideline or provision specifying the restrictions on social media and have a treaty on jurisdictional cooperation.

As highlighted above article 19(1) (a) of the Indian Constitution guarantees Right to freedom of speech and expression. As social networking sites are one of the most important platform in this technology oriented generation where one can exercise his right to freedom of speech and expression thus access to internet is needs to be associated with the right to freedom of speech and expression as a fundamental right but subject to the restrictions imposed under article 19 (2) of the Constitution of India. Information once posted online even if found callous is difficult to be erased off permanently. Hence necessary care has to be taken before posting anything while exercising the right to freedom of speech and expression.

Laws governing Social Networking in India

In this modern era of Liquidisation, Privatisation and globalisation where trade, business, commerce, politics, human behaviour, public relations, etc are emerging at a rapid pace, Social networking websites are playing a very cardinal role in promoting and propagating them. Being the easiest and the most convenient way to reach the masses certain social networking websites like Facebook, Twitter, LinkedIn etc. have gained immense global magnitude (Skeels & Grudin, 2009). Just like other modern and developed countries the majority of the population in India are also attached to various social networking websites and social media. The worldwide increasing demand of social networking websites has given rise to a serious need for unique law to enforce and regulate the same globally, however as most of this social networking websites are located within the territorial and legal jurisdiction of United States, it has got the upper hand in controlling and managing the activities related to the abuse of this social networking websites (Balkin, 2008).

The websites being located beyond the territorial jurisdiction of India it becomes almost next to impossible for law enforcement agencies of India viz. Indian cyber-crime branch to track and prosecute those cyber criminals and perpetrators. There are many cases which portrays the incompetency of Indian cyber law in protecting the rights of Indian citizens against the abuse by social networking websites. Amrita Rai e-mail hacking, Shreya Singal case (SCC,

2015). are some of the best examples where there the law enforcement agencies were clueless on the investigation procedure and regulatory guidelines. Like many developed nation, even India in the year 2000 has delivered its maiden cyber law “The Information Technology Act, 2000”, which offers the legal framework for electronic commerce and regulate some of the cyber crimes like cyber terrorism, cyber bullying, child pornography. (Blythe 2006) The cardinal function of Information Technology Act is to provide a customer oriented, advanced and stout foundation for information technology solutions that will enable the community to socialize and achieve overall development without risking their privacy. It also strives to create fiduciary relationship with customers through high quality customer service, professionalism and a commitment to maintain decorum, but as it is a multi-faceted law it doesn't have the efficacy to deal meticulously even with most of the crimes related to cyber space.

The Information Technology Act 2000 is the dedicated cyber law that governs and regulates cyber-crimes in India. It is a very wide-ranging law which includes all the legal issues relating to e-commerce, e-governance, cyber contravention and cyber-crimes (Roy, 2005), as it is a multi-faceted law it doesn't have the efficacy to deal meticulously even with a single crime related to cyber space. India doesn't have the privacy and data protection law that is why the privacy of Indians in cyberspace is always at risk. The use of MLAT (Mutual Legal Assistance Treaty) by India is not a success because most of the times the country to which such a request is made might refuse cooperation if the act committed by accused is not an offence as per the law of that land. Companies Act of 2013 holds the director of the company liable for any acts in context of cyber law and security. The IT Act 2000 necessitates director of the company to observe cyber law due diligence. It is also suggested that a server should be established by foreign social networking websites in India and even India should have its own social networking server. Thus in order to manage and amicably regulate crimes related to cyber world India must and should have a completely new set of ascetic and concise law to deal with different types of crime related to cyber security.

Jurisdictional challenges involved in Social Networking

The estimated number of social networking users in the world is 2.77 billion which has inclined from 2.46 billion as reported in 2017 (Clement, 2019). With the creation of Internet, national boundaries and spatial connectivity have become immaterial in the expansion of

business transaction across the national borders. Thus at the same time, internet allows a person to be everywhere in virtual sense and can deal with anyone at anywhere without the encumbrances of the trans-border issues and difficulties. With this advantage blessed by the internet, the question arise is whether a person who is virtually dealing everywhere across the globe also liable and accountable to all the laws of every nation he transacts with? When a dispute arises out of the internet, many technical and practical problems are required to be considered by the court but again which court will even decide this technical and relevant issue for the proceedings of the dispute becomes a challenging question. Most of the conflicts arise due to the reason of citizenship and geographical boundaries that gives rise to multiple jurisdictions. And for such cross border disputes between multiple nations becomes more problematic when the laws of such sovereign nations are inconsistent with each other. In case where the place of occurrence of cybercrime becomes uncertain and when the effect of such internet activity is accessible across the globe, creates difficulty for the border centric cyber laws to settle the conflicts that arise in the cyberspace. The law of every nation has provided the provision in relation to the limited jurisdiction and interprets it based on the principles of the jurisdiction on several occasion of international conflicts. But there is an implied obligation on every nation to respect the sovereignty of each nation and shall not exercise any right that results in undue encroachment on the jurisdiction of other States. While the nations have the discretionary power to determine their jurisdiction over the conduct in other countries, the principles of the International law embodies that such power contravenes with the international law as well as affects the international order, peace, security and foreign policies. When any nation is affected by any internal or external activity like terrorist attacks, sedition, hate crimes, trafficking, etc such nation would want to take the charge of it by imposing its laws and exercise its sovereign power for uninterrupted governance (Reidenberg et al., 2013). However internet activity involves computer devices, networks and persons from various territories and thus gives rise to multiple jurisdictions when a dispute arises and it becomes difficult to trace the crime and the criminals in such cases while it is more difficult to prosecute such criminals even though traced. These difficulties are becoming a global challenge due to the inconsistent laws, contradicting legal policies and principles of the territories involved with such cross border disputes. Each nation interested or affected would want to govern and implement its law that may not be substantively compatible. Also there arise situation where the laws are not only inconsistent but also incompatible as they might have contradicting laws or policies; for instance, an act may be illegal in one nation while it

may be considered legal and may be protected by law in another nation. For instance: A user of a state where marijuana is legal may promote its use on his facebook page but the promotion is not limited within the boundaries of that state as he may be connected to social networking users across the globe. Cyberspace has eased the cross border transaction more than transacting in person with local person around us. Social networking too has become a platform for the business transaction and networking with which people across the globe comes under one umbrella of this virtual world and can discuss, opine, deal and transact with each other. The number of users of the social networking sites are multiplying day by day and with its incredible advantages, the threat to the people (including both the users and non users of the internet), society and the economy are also escalating causing heinous danger to the world peace and security. There are several principles which aid the court and the governing bodies to decide the applicability of law where two or more nations are involved and cognizance has to be taken by any one state. For instance in US, the court ruled the law of the state in which the dispute arose based on the principle of “Lex loci delicti” (place of the wrong). However in the transnational cyberspace, it is not always possible to determine the place of the wrong, and the “lex loci delicti” might be several nations that has access and have been effected by any post or internet activity that took place in the cyberspace. Thus there lies no specific “lex loci delicti” in the transnational cyberspace (Rosenblatt, n.d.).

International and cross border cyber crimes:

With growing popularity of social networking sites, the cyber attackers and criminals use this platform as a tool to target its victim and are moving from conventional method to highly skilled, tricky and digitalised form of attacks (Katyal, 2003). With advancement and accessibility of technology, criminals are shifting their trend and are making their move through the social media as it becomes easy for them to connect to anybody across the world. With digitalization the computer technology has expanded its platforms from personal computers to smart phones. The social networking users are more active over social media with smart phones and internet over their finger tips and they keep updating their status. With this the predators are able to track all the personal information and data of their targeted victims from social networking sites in no time. Cyber crime is getting wider and encompasses extensive range of illegal activities. To point out some of the common international cyber crimes involving multiple jurisdictions are:

Child pornography: Child pornography is one of the most serious cyber threats against children and humanity. The perpetrators use social media platform to gather information, pictures and the same platform is used to victimize. There are many international and national laws setting out rules and regulations on child pornography but have not been able to eradicate this serious threat against children and humanity due to the efficient nature of cyberspace and lightning speed of the internet.

Cyber terrorism: The rise in popularity and access of the “World Wide Web” or the “Internet” has been a “Boon” and a “Bane” to the society at large. We are all aware of the “Boon” or the advantages of having access to such plethora of information. The greatest example being the inception and rise of the company “Google”. The word Google is now synonymous with searching for “Anything” on the internet. The phrase “Let’s Google it” has the same meaning of searching for information on the internet.

Now, with such advancements in access, it was ideal time for perpetrators with agenda to quickly get on the band-wagon and milk the moolah around the “Internet”. This now brings to the “Bane” of internet, and rise of the term “Cyber-Terrorism”. Public and law enforcement interest worldwide in “Cyberterrorism” began in the late 1990s, with Barry C. Collin coining the “Cyber-terror”. With the rise of Social media, it has become a common breeding ground for cyber-terrorist. With the constant inflow of information, accessibility and affordability, terrorist groups are now increasingly relying on use of social media to spread, monetize and realize their objectives.

Cyber warfare: Cyber warfare is the cyber attack on national infrastructure to persistently disrupt the social activities of the targeted nations. It poses national threat to the economy by the attackers through cyberspace. Cyberwarfare shows the transition of the conventional domains of territories to virtual world where the cyberspace is the battlefield with no borders and limits (Hurley, 2017). Information technology enables the transition of the battlefield to the cyberspace which makes it difficult to trace and determine the conflicts, threats and the source of attack within sufficient timeframe in order to prevent it. With limited jurisdictional authorities and lack of sufficient information on source of attacks it becomes difficult for the law enforcement agencies to tackle the attack and trace criminal minds behind it. The conflicts have reached all potential level from targeted victims to perpetrators.

Religious offence, Hate speech and Racism: These are other forms of international cyber crimes that cause violence in the society as well as threat to national security. In country like India where there's diversity it becomes easy for the external as well as internal source of attackers to spread message targeting the religious values, propagation of injustice and incite people against each other or targeted class of people. The issue of killing people 11 people in Pittsburgh is the best example of hate speech over social media where the accused man had posted on the social networking site about his hatred of Jews. Such kind of attacks cause violence and disturbance in the society and affects the public tranquillity and peace (Gray, 2016).

Preserving national security without affecting the individual liberty in the age of digitalisation and to maintain balance between the two while regulating social media is challenging. It is very unlikely to scrutinize each and every post and identify the hate speech, pro terrorist posts, obscene material etc from the social media to eradicate and prevent the occurrence of cyber crime. Although the self regulating mechanism helps but is not effective and efficient hence the law enforcement agencies need to find an alternative solution preserving the national security as well as individual liberty. To combat these endangering international cyber crimes which not only cause threat to the security of state but humanity as well, it is important for all the nations to cooperate and find an common international law on cyber security to prevent or settle these cross border cybercrimes amicably. One of the best initiatives may be to address the pro terrorist, anti national posts by the service providers and protect users' privacy and prevent data security risks. Proper guidelines may be provided to the users on how to deter anti national and pro terrorist post from being circulated without affecting the freedom of free speech and liberty of others.

Findings and Conclusion

Thus the need of the hour is to define and interpret Article 19(1)(a) and the restrictions provided under Article 19(2) of the Constitution of India in line of the social networking and online speech and expression and have a uniform international agreement on the jurisdictional challenges addressing this issues for every state to have a standardised framework for social networking in alignment with the right to freedom of speech and expression and other legal rights.

In this era of modernization, globalization and technology, Internet have become one of the basic human needs as it helps us in our daily activities right from paying off the electricity bill, mobile recharges, to carrying on business online, searching for life partner through the ,matrimonial sites etc., just by sitting in one place with one click. The astute union of computer and internet has given birth to the exceedingly cherished space called cyber space. With copious advantages in the fields of commerce, trade, business, entertainment etc. internet have also got some really precarious detriments viz. infringement of privacy, restriction on right to freedom of speech and expression, human and prohibited drugs trafficking, money laundering, scams, frauds, infringement of patents, copyrights and trademarks, pornography, gambling, smuggling, hacking, terrorism and many more. This rapid evolution of internet over the time has given rise to the tremendous legal issues and in order to fight this problem all the countries across the globe are restoring to different methodologies for controlling, regulating and eradicating the menace caused due to illegitimate use of internet.

Criminals and terror group use social networking sites to target their victims and form groups with vulnerable by propagating hate speech and manipulating the instance of injustice and humiliation. On the other hand the Right to Freedom of Speech and Expression is a guaranteed right to every citizen in our nation and social networking sites are the best place to exercise this Right, however it might cause disruption, hate speech in the society as well as endanger the national security both by internal and external sources due to limited restrictions. Freedom of speech and expression is an essential basic human freedom while unprotected freedom may result into violence, hatred, violation of legal rights, infringement of privacy, disturbances in the society and threats to national security. So now there is a dire need for India to either frame a comprehensive and a universal legal Charter or it must espouse explicit and dedicated laws for different turfs in cyber space. Looking at the present erroneous condition of cyber laws in India, it certainly needs more vibrant and authoritative new cyber law to deal with the problem related to cyber crimes and social networking sites. The restrictions on freedom of speech and expression needs more exposition on internet and thus needs to be addressed specifically for better interpretation. Moreover there is need for an international cooperation and agreement between nations to amicably deal with the cybercrime cases with multiple jurisdictions. Cyber security is a way to national and international security and should be the topmost agenda for regulation to protect the world

from violence, hate speech, disturbance and to maintain order and peace in the society. It's time to unite and make world a better with a safe and prosperous cyberspace.

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