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Violation of Human Rights: Responsibility of Social Media Platforms under Domestic Law

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ABSTRACT

The human rights challenges created by the use of online social media for political activism are the topic of this paper. Blogs, video, and social networking sites have all become important venues for political debate and organization, prompting retaliation from certain authoritarian nations. In an attempt to limit users' liberties, some authorities have implemented Internet blocking, filtering, or takedown procedures, as well as Internet monitoring (including mandatory data retention) or even shut down national networks. In many otherwise democratic countries, however, the employment of measures like blocking and monitoring still leaves a lot to be desired in terms of human rights.

The body of principles that tries to guide legislation in Council of Europe member states is described. The European Convention on Human Rights (ECHR) and accompanying case law, which were designed primarily for the offline world; additional conventions and resolutions, such as the Council of Europe Convention on Cybercrime; and a developing set of Internet governance principles are among its origins. Our findings point to three areas where solutions are needed: What are the Violations on Human Rights, Is the amendment on Information Technology Act is sufficient enough to curb the violations?

Keyword: Human Rights, Internet monitoring, Cybercrime, Information Technology Act

I. INTRODUCTION

Politics has become increasingly reliant on the Internet and social media in the last decade. When it came to the elections in 2011, blogging, video-sharing and tweeting were essential tools. Human rights defenders around the world rely on them to do their jobs effectively and efficiently. A few countries, however, have repressed the use

of this new technology in order to assert traditional rights.² According to the International Telecommunications Union (ITU), India has one of the world's fastest growing markets for Internet access. Despite this, India's Internet penetration rate is still high. People often accuse elitism when discussing privacy in India and the

¹ Author is a LLM Student in India.

² CommDH (2012)8 Original version <https://rm.coe.int/16806da579>

absence of protection for it.³ Politically motivated parties in India and other anti-secularism organizations are using social media platforms to spread systematic disinformation in order to garner votes during elections and preach the idea of a "Hindu Rashtra" (a Hindu state administered by Hindus) in order to disturb the country's secular make-up. Not only is the Indian government spreading pro-government narratives on social media, many of which are false, but it is also disparaging, intimidating, and harassing its critics, whether they are independent journalists, activists, Civil Society Groups, or Opposition figures who use these platforms.

Clearly, these trends predate the major international human rights treaties that contain standards relating to freedom of expression in the United States and around the world. These regulations, on the other hand, are often very broad in scope. Everyone has a right to freedom of expression, as stated in Article 10(1) of the European Convention on Human Rights (ECHR). "This right must encompass the freedom to express one's thoughts, receive and transmit information and ideas without interference from governmental authorities, and without respect to national boundaries. As a result, it encompasses a wide range of ways to

manifest, convey, and receive information.⁴ Only a few aspects of online communications have been dealt with by the European Court on Human Rights.⁵ When it comes to SNS regulation, even if the ECtHR deems some social media expression of little value, it will still have to conform to Article 10(2) of the ECHR.⁶

Facebook relies heavily on its users' self-policing to maintain its integrity. A free speech policy on Twitter prohibits it from interfering in disputes or limiting 'controversial content. It's also worth noting that the sheer nature of internet-based communications creates issues for legal systems when it comes to applying legislation and interacting with territorially limited authorities.

II. HUMAN RIGHTS VIOLATIONS

All people have a right to privacy under the Universal Declaration of Human Rights (UDHR). It applies to every social media user on every social media network today, regardless of whether they use computers or not. All users have a right to privacy, regardless of how they use the Internet. It turns out, however, that the right to privacy is abused more often than people realize. If someone keeps their personal information secret, many people believe that it will remain secret. This is not the case.

³ Chaudhary Nupur *PRIVACY AND CITIZENSHIP IN INDIA: EXPLORING CONSTITUTIONAL MORALITY AND DATA PRIVACY* November 2018

⁴ See Vajic and Voyatis, 'The Internet and Freedom of Expression: A "Brave New World" and the ECtHR's Evolving Case Law', in Casadevall et al. (eds), *Freedom of Expression* (Oisterwijk: Wolf, 2012) 391; and Ahmet Yildirim v Turkey Application No 3111/10, 18 December 2012 (restriction of internet access without a strict legal framework regulating the

scope of the ban and affording the guarantee of judicial review to prevent possible abuses violated Article 10 ECHR)

⁵ Von Hannover v Germany 40 EHRR 1; Standard Verlags GmbH v Austria (No2) Application No 21277/05, Merits, 4 June 2009, at paras 42 to 56. Cf Campbell v MGN [2004] UKHL 22 at 149.

⁶ See Rowbottom, 'To Rant, Vent and Converse: Protecting Low Level Digital Speech' (2012) 71 *Cambridge Law Journal* 355.

In order to make information more public, social media networks will allow advertisers and others to access users' private information without their agreement, which is technically a breach of people's right to privacy. Cyber bullying is another way consumers' rights are infringed. Article five of the Declaration of Human Rights, which states that "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment," is broken when people are sent nasty and vicious things online. Cyber bullying is a problem that social media networks have strategies to deal with. If a user's account has been suspended, they can revoke it. They merely need to be able to prove that they are legitimate reason to do so.⁷ Social media scandals have a variety of causes. When a user creates a profile, everything begins. This is the time when kids determine how much of their personal information they want to share with others. Irrespective of whether or not they have a private account set up, the network has access to it, and whatever's posted online is permanently published online. As well as the fact that social networking sites are making their members' information more accessible, people are also tracking others' information.

Many individuals have become more conscious of how things propagate on social media, and how even if something is put to private, others can still view it. In order to protect users' privacy, laws have been enacted, but the social network still has a lot of power. What they do with the information they have is up to them, and no one else has to give them permission. Not social

media, but kid sites like Club Penguin are subject to the limited rules that exist. Despite the fact that social media and the violation of a user's rights are important, they are often overlooked.

RIGHTS'S VIOLATIONS: Whenever social media information poses a threat to society, there is a need for regulation, as well as a need for individuals to take responsibility. Whatsapp and Facebook are used by more than 20 million people in India. This makes it easy to distribute bogus news rumors. Many innocent people have been killed as a result of real-life occurrences that have been reported on social media. Earlier last week, a 26 year old guy was brutally lynched on suspicion of kidnapping. The victim was pulled by two males in Bangalore's Chamrajpet area on May 25, 2018 in Karnataka. On June 19, 2018, a video purporting to show a crowd beating up a man and forcing him to admit cow slaughter surfaced online, according to the Associated Press. It took two months to lynch 16 people. What's the latest serial killer? In IndiaToday.in, Prabhash K Dutta, July 2, 2018. An administration that is indifferent to human rights violations is exemplified by those who commit atrocities and blatantly upload them to social media. This legendary lynching of Pehlu Khan has been widely circulated on social media sites. As a result of this, there have been abuses of human rights.

APPLYING HUMAN RIGHTS AND EMERGING INTERNET GOVERNANCE STANDARDS TO POLITICAL ACTIVISM AND COUNTER-MEASURES ON THE

⁷ Human Rights Violations <https://sites.google.com>

</site/rightswithsocialmedia/human-rights-violations>

INTERNET:⁸ "Due process" is addressed in two places in the ECHR. States are required to provide a "fair trial", with many specific guarantees, to anyone whose "civil rights and obligations" are "determined" in some forum, or face a "criminal charge"; in Article 13, states must provide an "effective remedy" to anyone whose ECHR rights and freedoms have been violated.⁹ In the author's opinion, the legality and validity of political activism on the Internet should be assessed by a comprehensive and fair judicial proceeding fully adhering to the criteria of Article 6 ECHR.

HUMAN'S RIGHTS ARE AT STAKE:

Online, the first right that springs to mind is freedom of speech and information. These rights are intrinsically intertwined with the internet today: it is crucial that people have the freedom to express themselves and access content on the web that has been shared by other people. Additionally, freedom of thought, conscience and religion are protected as well as freedom of assembly and association in this context. In the

end, however, the practice of these freedoms in cyberspace is entwined with the right to free expression and unfettered access to information. It is necessary to ensure that everyone has internet connection in order for them to fully enjoy their rights. It is also vital to ensure that the internet maintains an open ecosystem. Two principles underlie this concept: Internet access providers (IAPs) are required to treat all web information equally, and internet users have the option of viewing and freely disseminating web content. But at the same time, it's important to defend the user's right to privacy and security, particularly in terms of personal data protection.¹⁰

III. RESTRICTION ON FREEDOM OF SPEECH AND EXPRESSION

While citizens have the right to free speech and expression, they do not have the right to speak or publish without repercussions. If you abuse this freedom, you won't be punished. It's not an open-ended licence that grants immunity for every

⁸ See: Harris D. et al. (2009), *Law of the European Convention on Human Rights*, (2nd edn), Chapter 8 (Articles 8-11: General Considerations), Chapter 14 (Article 13: The Right to an Effective Remedy) and Chapter 6 (Article 6: The Right to a Fair Trial). For a simpler overview of these standards, see Korff D., "The standard approach under Articles 8-11 ECHR and Article 2 ECHR", available from: www.coehelp.org/mod/resource/view.php?inpopup=true&id=2130. For details of the application of these principles in the field of freedom of expression, see the Council of Europe Human Rights Handbook on Article 10, available from: www.coehelp.org/file.php/54/resources/Handbooks/art_10_eng.pdf.

⁹ Much case law, and academic debate on the Convention, has focused on the definition of "civil rights and obligations" and "criminal charge" – the qualifying factors for "fair trial" under Article 6 (if the issue is outside them, the person can rely only on the "effective remedy" of Article 13). We do not go into

this distinction here, because in practice most cases related to political activism clearly fall within Article 6: they result from (criminal) investigation, prosecution, imprisonment or harassment; because the European Court of Human Rights increasingly reads elements of the judicial protection under Article 6 into the requirements of Article 13; and because we see the distinction as anachronistic – drafted in the 1950s when many states' due process in administrative (e.g. tax) law fell short of the "fair trial" requirements. Today, the ICCPR simply says that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law" in determining any rights arising in any "suit at law" (criminal or not).

¹⁰ Committee on Culture, Science, Education and Media Mr. Andres HERKEL, Estonia, Group of the European People's Party Rapporteur <https://www.ebu.ch/files/live/sites/ebu/files/News/2019/01/Herke%20REP%20-%20ENG%20-%20IG%20and%20Human%20Rights.pdf>:

imaginable use of language. (1) To defend reputational rights of others (2) To protect national security, public order, public health or morals (3) To protect national security, public order, public health or morals.

LAWS IN INDIA: The Information Technology Act, which was enacted in the year 2000 to regulate, control, and deal with concerns resulting from IT, governs social media legislation in India. The Indian information technology legislation of 2000 defines social networking medium as an "intermediary" (IT Act 2000). As a result, social networking sites in India are responsible for a variety of conduct and omissions that are illegal under Indian law.

Section 66A of the IT Act was enacted to regulate social media law in India, and it is significant since it controls and regulates all legal concerns concerning social media law in India. This section expressly prohibits the transmission, publication, or distribution of offensive or unwarranted messages, mails, or comments. Text, image, music, video, or any other electronic record capable of being communicated can be used as the offending message. In the current situation, such broad powers under the IT Act equip the government with a tool to combat any misuse of the Social Media Law India in any form.

The IT Rules 2021 intend to provide ordinary users of social media platforms and over-the-top (OTT) platforms with a system for grievance redress and speedy resolution through the employment of a Grievance Redressal Officer

(GRO) who must be a resident of India. Special attention has been paid to protecting women and children from sexual assaults, fake news, and other forms of social media abuse.¹¹

IV. CONCLUSION

There is currently no explicit legislation in India addressing data protection or privacy. The Information Technology Act of 2000 and the (Indian) Contract Act of 1872 are the important data protection regulations in India. We have laws for everything, which is ironic. We don't need any new legislation on the subject. The issue is with how they are implemented. If you use the internet, you've probably heard about how some random techie hacked the aadhar details of a large number of people as part of a challenge. What made it a challenge in the first place? They had the audacity to take on something so serious and delicate. Why did the technician take the risk? And why was he unconcerned about the consequences? The only reasonable explanation is the Indian legal system's flaws.

Yes, there is a clear need for strong regulations to protect data privacy, but those rules must be followed by "stricter implementation methods." That is the only way we will ever get close to becoming developed; else, we will always be a developing country.

¹¹ The Information Technology Act, 2021 <https://www.idsa.in/idsacomments/it-rules-2021->