CHAPTER 6

INDIAN CASE STUDIES

India has witnessed a series of social media mischief which has created unrest in the society. Ranging from a diversity of issues, these incidences, points out the legislative and regulatory gaps in India. Few incidences/cases which have made headlines have been selected for the purpose of the analysis. This chapter discusses the facts/reasons of incidences and role of social media in exaggerating these incidences. The chapter attempts to analyze every incidence on the basis of its facts and suggests the possible measure which could be taken to avoid such happenings in future. For the purpose of better understanding and clarity these incidences have been divided into various categories. The incidences are as follows:

6.1 INCIDENCES INVOLVING BRUTAL CRIMINALITY (MURDER ETC.)

6.1.1 Murder of a Techie in Pune

Fact- In June 2014 an IT professional was killed in an attack allegedly by right wing mob in Pune, Maharashtra. The prime reason behind the assault was a Facebook page, which had around 50k followers and contained morphed pictures of the head of a regional political party and idols of a particular community. These pictures were later re circulated several times by Watsapp. The Cyber Crime Investigating Cell (CCIC) has claimed that fake identity has been used to create the page. A paper has also claimed that the clear motive of this page was to create riots in the society.\(^{320}\)

Analysis- This incident depicts sheer violation of human rights and inability of laws to deal with such situations. Social media has been continuously posing challenge to peace in society yet there has been little effective regulation of it by the authorities. The incident also highlights the need to act against the flawed social media pages. A

\(^{320}\) FP Staff, ‘Pune: Muslim techie killed by rightwing mob over morphed FB posts’ (First Post, 04 June 2014) <http://www.firstpost.com/india/pune-muslim-techie-killed-by-rightwing-mob-over-morphed-fb-posts-1555709.html> accessed on 05 June 2015
Facebook page (which has no limitation of followers) has tremendous opportunity to communicate biased and inflammatory materials needs censorship.

This is also worth noting that no steps have been taken either by the social networks himself or by regulatory authorities to introduce effective filtering mechanism. There are still thousands of pages available on Facebook which possess inflammatory materials of equal depth. New pages are also added on day to day basis by the mischief creators.

### 6.1.2 Journalist Burnt Alive in UP

Fact- A journalist from Shahjahanpur in Uttar Pradesh was burnt alive to death for his campaign against corruption. The incident took place when he blamed a minister of the ruling party of rape, corruption and land grabs in his Facebook post. The journalist had two Facebook account, one in his own name and another carried his picture under the title ‘Shahjahapur Samachar’. That account had more than 1,500 followers and 5,000 friends, while his personal page had almost 3,000 friends. In a series of posts he accused the minister of illegally acquiring valuable land and property, illegal mining and forced occupation. A FIR was lodged against the minister and five other persons including the police personnel who were alleged set the journalist on fire. FIR has been lodged under IPC Sec. 302 (murder), Sec. 120 B (criminal conspiracy), Sec. 504 (intentional insult with intent to provoke breach of the peace) and Sec. 506 (criminal intimidation).

Analysis- the rise of social media has given people a power to have their say on its platforms. The allegations made by the victim may or may not have been true but that could have been dealt with by appropriate legislations, if proved false. The act of the accused is a serious blot to the democracy and fundamental right to freedom of speech and expression. The investigative journalism at any platform need to be encouraged and appreciated, in so far as this is for the greater good of people. There should be some exemplary action/punishment against all the accused in order to send a message to all those who keep intention the shut the dissent voices. As the Supreme Court itself has said in a series of cases that India need to tolerate the unpopular views also. Social media
which is the market place of various ideas is the place where unpopular voices also can make their point.

6.1.3 Death of Sunanda Pushkar

Fact- Sunanda Pushkar was an Indian businesswomen and wife of a high profile politician of the country. She was a sales manager in the Dubai-based TECOM Investments, and a co-owner of the India-based Rendezvous Sports World. On 15 January 2014, a series of intimate messages were exchanged between her husband and a Pakistan based female journalist which were posted on former’s Twitter account. The messages proclaimed journalist’s love for victim’s husband. However, both journalist and victim’s husband have claimed that their twitter account was hacked. This claim was later refuted by the deceased who was emotionally shocked and has angrily reacted over the incident. There has been a considerable amount of jokes on her relationship with her husband due to journalist angle in the social media. After few days of the incident, victim was found dead in a hotel room which has created a headline and media trial in the society. In the process of debates and discussions over her untimely death, role of twitter in her death was also analyzed. Various renowned filmmakers and other celebrities have taken up the issue and criticized the role of social media in sneaking into someone’s private life.321

With forensic evidence not providing much headway in the probe into the victim’s death, Police had written to Yahoo and Google, two platforms on which she had her email accounts, and also to Twitter and Facebook for details of her social networking pages.322


Analysis- till the time of writing of this thesis, the case probing the reasons of her death was still pending and nothing conclusive has been found. The reasons may be anything but what cannot be ignored is that the deceased who was already in shock and emotionally down was made more saddened by the cruel jokes and remarks over her relationship in the social media. This is also worth mention that she had twitter war with the journalist. The question has aroused if social media is really to blame or it’s just a situation blown out of proportion. It could really be anything but the incident has triggered a debate over free-flowing adoption and use of social networks. The excessive use of social media as well as Internet is making people’s life more public and many a times a person is illegitimately or naively exposed for something he is desperate to keep under the carpet.

6.2 INCIDENCES OF SOCIAL & COMMUNAL UNREST

6.2.1 Muzaffarnagar Riots Incident

Fact- In Muzaffarnagar Riots, clash between two communities has taken place which resulted in at least sixty two deaths, ninety three bodily injuries and left more than fifty thousand displaced. The intensity of riots was so extensive that the Supreme Court had intervened in the matter and held the State Govt. prima facie negligent in preventing the violence. The court also blamed the Central Govt. for its inability to provide intelligence input to the Stage Govt. The Special Investigation Team probing the Muzaffarnagar riots had found the involvement of 1550 accused in different cases.

Role of Social Media- There were reports that a fake video of two boys being beaten up by a mob did the rounds on WhatsApp, social media pages before the riots broke out. The video was actually two years old and from Afghanistan but it has already spread on social media like wild-fire and added fuel to the already prevailing communal tensions.

Analysis- This case is a classic example of uneducated society we have. The communities which were already at stand still position were easily driven to riots by political leaders who made them believe about the genuineness of the video. Rest has been done by social media which circulated the video to many in no time. With regard to the impact of riots, there is a pressing need to regulate the social media behavior and the way it works keeping in mind the safeguards available in the constitution. This case highlighted the inefficiency of preventive mechanism of regulatory authorities at initial level. Till the time the regulatory authorities would be able to know, the video/morphed images were viral.

6.2.2  North Eastern Mass Exodus

Fact- In July 2012, riots broke out in Assam, between two communities which led to death of seventy seven people and over four lakh taking shelter in relief camps. There have been various accusations and reasons for the violence. Following the violence in Assam, several north eastern peoples had been targeted in other parts of India.

Reason- Threatening text messages sent in bulk were the main vehicle of the insidious rumours, which created panic into the hearts of the tens of thousands of people from the north-eastern region. The federal government has panicked and banned bulk text messages for a fortnight to stop rumours. The second wave of rumour-mongering possibly happened through Facebook and Twitter.

Analysis- This cycle of violence unleashed a collective insecurity as the fear of retaliation gripped the psyche of North-East people, especially people with Mongoloid features residing in South and West Indian cities. The outcome is the mass exodus to North-East India. While the Centre and Indian media squarely blames technology-driven rumours, propaganda and social media, we cannot deny the truthfulness. New communication technologies circulated threatening messages so fast that it created a sense of fear in the minds of people from north east. In this case the govt. found itself helpless in dealing with the situation. The incident also highlighted the need to have an effective computer
emergency response team to work. Rather than banning the whole social media platform, some preventive mechanism should be devised.

6.2.3 Vadodara Riots

Fact- Rioting in Vadodara is also a classic example of social media mischief. Violence erupted when a person posted on Facebook morphed image of a Hindu goddess superimposed on an image of the Kaba. The accused claimed ignorance about the issue and inculpated his minor son for the mischief. As the violence could not be quelled for a week, administration blocked all social media sites to curb it.\(^\text{324}\) The police claimed that it was a morphed video on social media showing Muslims being massacred in Burma, which went viral in the city in October 2012.

Analysis- In this case also, regulatory authorities were in helpless situation and took a very disastrous way to handle the mischief. Blocking all the social media platforms is certainly not an evidence of effective handling of a sensitive situation. The incident highlights the inability of existing laws to deal with such situations. There is a pressing need for a comprehensive legislation which can take control of these situations.

6.3 ILLEGAL ARREST & DETENTION

6.3.1 Arrest of Dalit Writer for Facebook Comment

Fact- A Dalit writer was arrested over a Facebook status that was critical of the Uttar Pradesh government and few political leaders over the suspension of an IAS officer.\(^\text{325}\) The victim has been charged under Sections 153/295 A of the IPC, which deal with


“provocation with intent to cause riot” and “deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.” The victim was granted bail by the court later.

Analysis- The case presents the political misuse of social media. The statement of the victim was more in the nature of political allegation rather than those grounds mentioned under section 153/295 A of IPC. In this case, though social media has played no role but it shows the luster provisions of the laws that govern the social media. These provisions have been misused by the authorities many times to suppress the fundamental right to freedom of expression. Therefore, there is a need to update/replace these laws in order to combat the challenges of online era.

6.3.2 Arrest of Teen for Facebook Post

Fact- The Uttar Pradesh police arrested a 19-year-old boy from Bareilly, for posting on Facebook an 'objectionable' statement, attributing it to a political leader. The victim was booked under section 66-A of the Information Technology Act and sections 153A (promoting enmity between different groups on grounds of religion, race, etc), 504 (intentional insult with intent to provoke breach of peace) and 505 (public mischief) of the Indian Penal Code. The court of additional chief judicial magistrate granted bail on two sureties of Rs. 20,000 each. It was clarified by the boy's parents that he had only shared the post and didn't upload it on the social media platform.

Analysis- this case is also a prominent example of misuse of social media by the authorities. The police without even considering the genuineness and nature of the post had registered a case against the victim. The case could have been settled from human rights perspectives. The victim has claimed that he did not understand much about the post and merely shared it carelessly.

It may be pointed out that victim was not the person who created that particular content and it also cannot be expected from every social media users to be educated and careful given the lower educated Indian society. Therefore there is a pressing need for a new law (not a rigid one) which can address such situations.

6.3.3  Arrest of Two Girls in Mumbai

Fact- An Indian medical student was arrested in 2012 over a Facebook post questioning why her city of Mumbai should come to a standstill to mark the death of a prominent politician. Her friend was also arrested for liking the post. Both were charged with engaging in speech that was offensive and hateful. Both the girls were arrested under Section 295 (a) of the IPC (for hurting religious sentiments) and Section 66 (a) of the Information Technology Act, 2000. However, they have been granted bail immediately after furnishing a bond of Rs. 15000/- each.

The case has drawn severe criticism from the civil society citing blatant violation freedom of expression and opinion. The centre in the wake of huge outcry was forced to issue advisory in relation to implementation of section 66A of the IT Act. Citing the arrests made under the abovementioned petitioner Shreya Singhal, making a case on behalf of the girls, contended that the arrests amounted to curtailment of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution.\(^{327}\)

Analysis- this case is the clear example of abuse of power by the regulatory authorities. Arrest has been made to satisfy the political aspirations of a party which made the complaint against the girls. It was res ipsa loquitor in this incident that police was at fault. That is why Sec. 66-A was held unconstitutional by the Supreme Court in the case of Shreya Singhal vs. Union of India. Interestingly, after sec. 66A, the authorities have found new avenues in IPC to curtail the basic freedoms given by social media. Therefore, in order to bring harmony and consistency in the rules, regulations and laws governing social media, it is needed to have a dedicated law.

\(^{327}\) Shreya Singhal vs. Union of India; (2015) 5 SCC 1; the case has been discussed in detail further in this chapter.
6.3.4 Arrest For Offensive Tweet

Fact- An industrialist was arrested on charges of posting "offensive remarks" against the then Union finance minister`s son on micro-blogging site Twitter. He made an accusation in his tweet that son of the finance minister has amassed heavy wealth due to the position of his father. He was charged under section 66A of the IT Act. In this case also the victim was arrested and later released on bail by the court.

Analysis- This case is also an example of abuse of power by the regulatory authorities who booked the victim only for a common tweet. The tenor and tone of the tweet was in fact more in the nature of accusation which does not attract any serious criminal charge. It is also worth noting that the victim`s tweet were based on few media news reports. There is no equivalent law for any offline communication, whether in verbal or printed format i.e. a book that annoys or inconveniences other; even deliberately there is no criminal recourse. But if someone send an e-mail message, or post a tweet, he could face three years in jail.

6.3.5 Arrest of Lawyer for Criticizing Religion

Fact- A complaint was filed against a lawyer for allegedly posting offensive remarks against Prophet Mohammed. Following the protest outside the police station, the lawyer was booked under various sections of the IPC, including Section 295 (A) (deliberate and malicious acts), 153 (A) (promoting enmity between different groups on grounds of religion), 504 (intentional insult with intent to provoke breach of peace) and 500 (punishment for defamation), along with sections 66(A) and 67 of the Information and Technology Act, 2000.\(^\text{328}\)

Analysis—though the actions of the lawyer could not be said to be in accordance with the law but many charges that has been leveled against him would give him an opportunity to counter the genuine ones. The content of the post could have attract Sections 295 (A), 153 (A) and 504 of IPC but it doesn’t attract section 66A and 67 of the IT Act. Multiplicity of charges and use of many laws complicates the procedure in carrying out a proper trial. Therefore there is a need to have a dedicated law which covers all these actions in its ambit.

6.3.6 Arrest of a Professor in West Bengal

Fact—the West Bengal government arrested a teacher and his friend who had emailed to his friends a cartoon that was critical of Chief Minister. This is worth noting that the cartoon was based on a popular movie. Both the victims had been arrested. A single bench of Kolkata high court had ordered the government to pay Rs. 50,000 to the victims for the illegal arrest. It had also directed the government to make an additional payment of Rs. 25,000 each to cover the legal costs.329

Analysis—this case is the clear example of suppression of fundamental right to freedom of expression by the state machinery. It was also one the greatest irony of the authorities that they have submitted a 93 page charge sheet against both the victims. Making a cartoon is justified and is a medium of expression safeguarded by the Art 19 (2) of the Constitution. The application of IPC and IT Act in this case was totally uncalled for by the authorities. The absence of any clear authority and a dedicated law to look after such situations, these things are bound to happen.

6.3.7  Arrest of Man for Handling ISIS Twitter Account

Fact- the police has arrested a 24-year-old man who is believed to be behind an influential pro-Islamic State Twitter account followed by many jihadist fighters. The Twitter account @ShamiWitness, which had 17,700 followers before it was shut down following a report by Channel 4 News.  

Analysis- the case throws light on a topic of cyber terrorism which is outside the scope of this thesis. It has been noted across the world that terrorist organizations are operating through social media networking. It is also believed that few terrorist organizations are doing recruitment drive in their cadre through social media. At this digital age, when people are becoming virtually social and less active in their physical life are prone to get easily brainwashed and involved with terrorists. Therefore, there is a need to regularly check such social media accounts which are being used by the terrorist organizations in implementing and extending their messages.

6.3.8  Arrest of a Cartoonist

Fact- Free speech campaigner Aseem Trivedi was arrested by Mumbai police for displaying cartoons on his website and Facebook page that mocked parliament and corruption in high places. The caricatures were shared on other social media webs also. The cartoons purportedly depicted the parliament as a giant commode and showed the national emblem with wolves instead of lions. The Cartoonist was charged with sedition under section 124 A of the Indian Penal Code, the Prevention of Insults to National Honour Act and section 66(A) of the IT Act. The cartoons were a part of his programme to awake India against corruption.


While hearing the cartoonist case the Bombay High Court remarked heavily on the police and asked to clarify as to what prompted them to detain a cartoonist under the sedition charges? Dubbing the arrest of cartoonist on the charge of sedition as "arbitrary" and on "frivolous" grounds, the Court said it breached his freedom of speech and expression.

Analysis— the victim through his cartoons has expressed his anguish at the deplorable state of affairs in the country. There are millions who feel the same as the victim does but unfortunately, they cannot draw as well as him. As for the charges of sedition, this is to wonder who deserve to be charged for sedition - the corrupt, inept and deplorable politicians or the limp, lethargic and compromising bureaucracy. The High Court noted that that the sedition law was a pre- Independence provision in the statute book when government wanted protection from citizens, it intended to lay "parameters" for its application to check misuse.

6.3.9 Arrest of Political Worker

Fact— In Aug. 2012, Police arrested a CPI-M worker for posting “abusive” comments and photos on Facebook about Prime Minister. According to police, Prime Minister was depicted in a picture with an imprint of a shoe on his face. They claimed the posts had abusive comments and a comment in one post could have sparked communal tensions.

Analysis— just like other cases this case also shows that sensitiveness of the comments on social media pages. This is also worth mention that sometimes it is hard to detect the inflammatory materials. While it is too hard to filter each and every comment by social media companies, they should devise mechanisms which can immediately response to abusive posts or comments once it is notified by other users.

6.3.10 Arrest of Two Crew Members

Fact— Two Air India employees have been arrested under Section 66 (A) and 67 (A) of the Information Technology (IT) Act and jailed for 12 days. Police accused the two of uploading lascivious and defamatory content on social networking sites Facebook and
Orkut against the complainant and politicians. They were charged with Section 506(2) of the Indian Penal Code and Section 66 A and 67, of the IT Act, apart from Section two of the Prevention of Insults to National Honour Act 1971 by the police. The duo had allegedly shared lewd jokes about politicians, made derogatory comments against the Prime Minister and insulted the national flag in their posts. But they contended that they had merely shared the contents which were already running on the social media platforms. After facing flak over the arrests for their posts on Facebook, the Mumbai Police, in a surprise move, has booked the man who had filed a complaint.

Analysis— Being a citizen of a democratic country, a person has the rights to question a decision or share his thoughts which may not be liked by other group but that must not result into police custody. A man is also free to write his dissent opinion on a politically motivated post. Though, hate speech can not be supported but it should be established that who draws the line between freedom of speech and hate speech.

6.3.11 Arrest of Boy for Criticizing Political Leader

Fact— A 19-year-old boy has been detained by the police in Palghar near Mumbai for allegedly writing an "abusive" Facebook post against the chief of a regional political party. However the boy has claimed that his Facebook account was hacked and that the abusive post was uploaded by the hacker who created a false account in his name. The incident has taken place in palghar where the police have arrested two girls for their Facebook post. In this case, police has not arrested the boy and merely questioned him. The police have been careful after running into trouble over the arrest of two girls in the same area.

332 Meena Menon, ‘In midnight drama, two AI crew members were held under IT Act’ (The Hindu, 25 Nov. 2012) <http://www.thehindu.com/news/national/in-midnight-drama-two-ai-crew-members-were-held-under-it-act/article4130804.ece> accessed on 17 Feb. 2015


334 Staff Reporter, ‘My FB account was hacked, says youth’ (The Hindu, 29 Nov. 2012) <http://www.thehindu.com/news/national/my-fb-account-was-hacked-says-youth/article4144141.ece> accessed on 13 Feb. 2014
Analysis— the term abusive has broad meaning. What a man can take as ‘offensive’ may not be ‘offensive for other’. The ambiguity of definition has always given a police highhandedness in dealing these cases. Though, it is almost impossible to draw a line between what is offensive and what is not but there can be guidelines for the investigative authorities which they can follow in these matters.

6.3.12 **Professor Arrested for Blogging**

Fact— An Indian university lecturer has been arrested in Dubai for blogging in India against a private university based in Dubai. The lecturer, who taught in Dubai campus of University and finished his term, had his contract terminated without reason. Dubai courts acted in his favour and he received his end-of-service- benefits. However, after returning to India he wrote on his blog about what happened to him at the Dubai-based institution. A university employee filed a case against the lecturer accusing him of defamation due to publishing his story on his blog.335

Analysis- the case clearly falls within the basic elements of defamation jurisprudence and as such real facts forms an exception to the defamation charge. Such moves are totally suppressive of fundamental rights of expression of the bloggers who independently write their opinions.

### 6.4 CASES OF SOCIAL MEDIA MISHANDLING

#### 6.4.1 Morphed Pictures of Congress leaders

Fact— The congress govt. was outraged over the morphed photos of Prime Minister and Congress President, as well as images of pigs in Islam’s holy city of Mecca in social

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335 Bobby Naqvi, ‘Lecturer Who Took on A University in Dubai’ (Gulf news, 29 May 2013) <http://gulfnews.com/culture/education/lecturer-who-took-on-a-university-in-dubai-1.1190404> accessed on 30 Nov. 2014
media. The then IT minister has asked for regulation of social media in order to keep such things away.336

Analysis- There is a lot of filthy materials on social media pages which are inherently abusive and obscene. The need for regulation of social media cannot be denied but there has to be some check and balance mechanism. Political leaders are human too and they also have the same fundamental rights like others and they also have the same rights to seek prosecution of others who abuse & defame them.

6.4.2 Students Suspended For Rude Facebook Messages337

Fact- a student initiated the online "thread" by posting images of his test scores alongside "rude and abusive" remarks. The "abusive" thread soon became a regular forum for the school's students to indulge in teacher-bashing. Citing indiscipline and disrespect towards teachers the school authorities suspended sixteen students. The suspended students claimed that the management's action infringed their privacy and right to free expression.

Analysis- First of all, the school has no business to peep into personal and online lives of the students. The claim of the students that the management’s action infringed their privacy and right to free expression appears to be true. A closed group which becomes like a room talk is certainly not something that has been said in the public. The comments which were obscene and offensive could have attracted suspension of the student concerned who wrote but in this case the school management has suspended all the students associated with the group. The action of the school authorities cannot be justified as the mere association with a group cannot be a ground for suspension.


6.4.2 Case Against a Political Leader

Fact- a female member of a regional party had lodged a police complaint against legislator of her own party and twenty one others for alleging on a social media website that she was running a sex trade in her house. The legislator, however, refuted the charges saying someone created a fake account in his name to malign his image. It was also mentioned by the accused that he has already brought the fake profile matter into the knowledge of police long ago but no action has been taken so far.

Analysis- Apart from the political conflict, what is to be noticed in this case is the concern of fake profiles on the social media pages. Few fake profiles of the film start/politicians have a large following and it is not easy to differentiate between original and false one. Therefore, if something hatred is posted from the profile, it always creates problem.

6.4.3 Case Registered for Posting Offensive Tweets

Fact- A criminal case has been registered against unknown persons under various sections of the Indian Penal Code (IPC) and the Information Technology (IT) Act for allegedly posting offensive and malicious tweets against a community on the popular social networking website Twitter. The case was registered following a complaint by a South Delhi-based entrepreneur alleging that a derogatory hash-tag outraging the religious sentiments was being continuously circulated in Delhi on Twitter. Some of the tweets, according to the complainant, violated Section 153 (A) of the IPC for promoting enmity between different groups on grounds of religion and 153 (B) for making imputations and assertions prejudicial to national integration. According to the complaint certain tweets were directed at causing public mischief and promoting enmity, hatred and ill-will and thus attracted Sections 505 (1) (b) and (c) and 505 (2) of the IPC.

Analysis- these types of pages are frequently available at social media networks which are affecting the minds of users. At every communal page there are heated debates and abusive arguments/comments between the users. It sometimes led to violence or riots in physical world. There is a need to identify & remove such pages and materials.
6.5 SHREYA SINGHAL vs. UNION OF INDIA

Fact- After the arrest of two girls in Palghar in Mumbai for their Facebook post the Petitioner has filed a case before the Supreme Court challenging the constitutionality of Sec. 66 A of the Information Technology Act. Section 66A of the IT Act was introduced by amendment Act of 2008. A related challenge has also been made to section 69A introduced by the same amendment. Along with these two sections, Sec. 79 and the Information Technology (Intermediary Guidelines) Rules, 2011 were also challenged.

Arguments of the Petitioner-

The petitioner raised a large number of points as to the constitutionality of Sec. 66A. According to them, this section violates the basic freedom of speech and expression guaranteed by Art. 19 and is not saved by any of its exception mentioned under Art. 19 (2). The petitioners have also contended that Section 66 A suffers from the vice of vagueness because unlike the offence created by Section 66 of the same Act, none of the terms mentioned in Section 66 A have been defined in the IT Act. It has also been contended that it is not possible to define these terms in comprehensive manner.

The petitioners have further argued that Article 14 is also infringed in that offence whose ingredients are vague in nature is arbitrary and unreasonable and would result in arbitrary and discriminatory application of the criminal law. Further, there is no intelligible differentia between the medium of print, broadcast, and real live speech as opposed to speech on the internet and, therefore, new categories of criminal offences cannot be made on this ground. Similar offences which are committed on the internet have a three year maximum sentence under section 66 A as opposed to defamation under Indian Penal Code which has a two year maximum sentence. Also defamation is a non-cognizable offence whereas under Section 66 A the offence is cognizable.

Further, the petitioners argued that the right of viewers is infringed as such chilling effect would not give the benefit of many shades of grey in terms of various points of view that could be viewed over the internet. Petitioners have also assailed Rules 3 (2) and 3(4) of

338 (2015) 5 SCC 1
the Information Technology (Intermediary Guidelines) Rules, 2011 on two basic grounds. Firstly, the intermediary is called upon to exercise its own judgment under sub-rule (4) and then disable information that is in contravention of sub-rule (2), when intermediaries by their very definition are only persons who offer a neutral platform through which persons may interact with each other over the internet. Petitioners also assailed Section 79 (3) (b) to the extent that it makes the intermediary exercise its own judgment upon receiving actual knowledge that any information is being used to commit unlawful acts. Further, the expression “unlawful acts” also goes beyond the specified subjects delineated in Article 19(2).

Decision- The Supreme Court has struck down Section 66A in its entirety holding that it was not saved by Article 19 (2) of the Constitution on account of the expressions used in the section, such as ‘annoying’ ‘grossly offensive’ ‘menacing’ ‘causing annoyance’. The court justified this by going through the reasonable restrictions that is considered relevant to the arguments and testing them against section 66A. The court has also taken the ground the vagueness, over-breadth and chilling effect in holding the section unconstitutional. The court considered whether some parts of the section could be saved, and then concluded that no part of Sec. 66A was severable and declared the entire section unconstitutional. When it comes to regulating speech in the interest of public order, the Court distinguished between discussion, advocacy and incitement.

Taking into account the differences made by defendant between print media and electronic media, the court accepted the argument that legislature may provide for separate offences so far as free speech over the internet is concerned. There is, therefore, an intelligible differentia having a rational relation to the object sought to be achieved—that there can be creation of offences which are applied to free speech over the internet alone as opposed to other mediums of communication. Thus, an Article 14 challenge has been repelled by the court.

Considering the definition of ‘information’ as mentioned in the IT Act, the court observed two things. First, the definition is an inclusive one. Second, the definition does not refer to what the content of information can be. In fact, it refers only to the medium
through which such information is disseminated. The court observed that petitioners are right in claiming that public’s right to know is directly affected by Section 66 A.

The court upheld Section 69 A which deals with website blocking, and found that it was a narrowly drawn provision with adequate safeguards, and hence, not constitutionally infirm. These safeguards are as follows:

First and foremost, blocking can only be resorted to where the Central Govt. is satisfied that it is necessary so to do. Secondly, such necessity is relatable only to some of the subjects set out in Article 19 (2). Thirdly, reasons have to be recorded in writing in such blocking order so that they may be assailed in a writ petition under Article 226 of the Constitution.

The court held that Section 79 is valid subject to Section 79 (3) (b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relatable to Article 19 (2) are going to be committed and fails to expeditiously remove or disable access to such material. Similarly, the Information Technology (Intermediary Guidelines) Rules, 2011 was also held valid. The court observed that it is a common practice worldwide for intermediaries to have user agreements containing what is stated in Rule 3 (2), therefore, it is valid. The court said that Rule 3(4) needs to be read down in the same manner as Section 79 (3) (b).

Analysis- It is important to note that this is probably the first judgment in which the Supreme Court has struck down a legal provision for violating freedom of speech on the internet. In doing so, The Court simultaneously builds upon a rich body of free speech cases in India and paves the way for jurisprudence of free speech in the 21st century, the era of the Internet and social media. It explicitly acknowledges that the Internet has radically democratised communication that allows for people to participate in the ‘marketplace of ideas’ and this ecology of communication has to be safeguarded from any inhibition by arbitrary laws.
While this judgement can be celebrate for the aforesaid reasons, it is important to remember that cases under Sec.66A have rarely ever been filed in isolation, and they are often accompanied by charges under sedition and hate speech laws (Sec.153A and 295A of the IPC). Further, even when the Supreme Court lays down good principles in its interpretation of substantive laws, these constitutional protections are undone by the criminal justice systems, which allow for mala-fide complaints to be filed and acted upon in a manner that makes the procedure and the process the real punishment.

6.6 CONCLUSIONS

In the light of so many controversies and panics created by social media in society it has become necessary to regulate it effectively. There is need to draw a clear line between ‘Freedom of Speech’ and ‘Hate Speech’. The existing regulatory regime, as discussed, is more suppressive of the freedom of expression. Studies of the incidences, highlights that there is legislative and regulatory gaps while dealing with cyber world in Indian legal system. There is pressing need for a comprehensive and dedicated law to deal with social media. The legislative efforts should also be matched with the creation and establishment of infrastructure (social media labs) which can effectively monitor the social media mischief. The infrastructural support should also be seen in the light of mechanism for coordination of different agencies like cyber cells, media labs, intelligence agencies etc. the frequent coordination among different functionaries/class of regulatory infrastructure will result into smoother and better regulation of the mischief.

India is currently in the midst of a debate to set up mechanisms to monitor content but the main problem involved is who will be the final authority? Govt. as regulator or Social Media Companies as regulator, both have their own merits and demerits. There is a third way out which is multidimensional approach. Under this, the monitoring and regulation of social media should be through state agencies as well as through internet service providers/social media companies etc. This comprehensive mode of monitoring and regulation will ensure a competing field that will ultimately result in better social media services.