CHAPTER 7

CONCLUSIONS AND SUGGESTIONS

The present research study was conceptualized in wake of challenges posed by social media in late twenties. Various countries along with India have witnessed a number of social media mischief and inability of respective regulatory mechanism in effective handling of the situation. The compelling circumstances after mischief have guided this research in framing and conceptualizing contemporary challenges posed by social media. The perennial failure and overthrowing/suppressive response of regulatory mechanisms have been central point of this research.

The research for the sake of simplicity was broadly divided under the various heads/chapters. Firstly, regulatory challenges of social media has been discussed and analyzed in the perspective of legal and regulatory measures. While doing so, the role and responsibilities of authorities concerned have also been discussed. Secondly, extra territorial jurisdictional issues in social media offences have been discussed. This part of thesis has covered the basic issues and principles of jurisdiction and attempts to make an analysis of viable international jurisdiction mechanism. Thirdly, a comparative analysis has been made with regulatory systems of UK and US in order to find out the functioning of mischief addressing machinery in these countries. Fourthly, a study has been done of global internet governance regime and its implications for social media. This part of the thesis has covered in its ambit the working of international bodies which are instrumental in handling the internet affairs. In the last, few case studies have been selected (particularly those which made headlines in Indian media) and it has been analyzed to put forth the deficiencies and inconsistencies in the rules and regulations governing social media behavior in India.

The examination of legal and regulatory issues in chapter 2 indicates that the challenges posed by the social media are unlikely to be solved merely by adapting and extending existing legal concepts. The new ways of communicating via the social media raised legal questions which are fundamentally different for one of the two reasons. Firstly, the concept of freedom of speech and expression in online era is entirely different in contrast
to offline world. Secondly, the online world demands new set of rules to be governed. Both of these propositions have been highlighted in the Shreya Singhal Case. It can also be concluded that India's Information Technology Act, hurriedly amended in 2008 and updated with rules for Internet intermediaries in 2011, is ill suited to deal with ICT innovations such as social media and user-generated content, with negative consequences for intermediaries and users alike.

This is also noted in the thesis that hate speeches on social media platforms are the biggest problem for social unrest and it need to be addressed on priority basis. However, till date there are no effective mechanisms to deal with it neither at international level nor at national level. Though, few mechanisms are working very hard but in the absence of a proper institutional setup and funding, they are facing problems in implementing their policies. In view of above conclusions, following suggestions are being made-

- There is a strong need to protect the freedom of expression online the consonance of International Human Rights regime.
- There is a need to enact a law covering the rights, duties & responsibilities of social media agencies/users/ISPs. This law should be drafted keeping in view the international scenario of the related laws. The law should also make harmony with the existing laws which are presently governing the various issues of social media in India.
- There is a need to have a designated body which is totally devoted to regulate the functioning of social media. Social media labs, which have been established in few Indian cities, can be a viable option to monitor the online activities.
- A legal, moral and ethical code should be devised for social media application developers and there should be a body for grating approval to properly devised social media applications.
- The organizations such as International Network Against Cyber Hate (INACH) and Governments across the world should unite to work against cyber hate. The problem of cyber hate can only be tackled by private public partnership.
In the matters of extra territorial jurisdiction, it can be concluded that the transnational character of social media behaviour has resulted in mainly following things:

Firstly, national law controls on dealings in information, such as information assets and personal data, become less meaningful and in particular hard (or impossible) to enforce. Secondly, the multiplicity of overlapping applicable law and jurisdictions can lead to situations where an activity is subject to multiple and contradictory regulation, or to no regulation at all. In the last, the absence of an international understanding on jurisdiction is causing a serious harm to the otherwise potentially beneficial communication medium. Thirdly, in India the provisions under Criminal Procedure Code for investigation of a crime in foreign countries under Section 166 A & 166 B are not easy and are hopelessly out of tune with the scope of computer crime.

Because of the complex nature of cross border jurisdiction, this issue is being left open ended. Suggestions are being made to strengthen the existing mechanism till the time international community come at an understanding.

- To meet extra territorial challenges the global system of laws has to develop new legal concepts and devise techniques for eliminating cross-border conflicts.
- Till the time the scholars may reach at some mutually accepted terms, they may formulate principles-like-Common Concerns of Freedom and Liberty Principle (CCFLP) - on the suggestive lines of CHM principle- so that a common agreement on the protection of basic freedoms and liberties may be argued for the coming times.
- An international committee could be created with the sole purpose of implementing universal standards created by the Treaty designed to bring order to and create jurisdictional rules for the social media.
- There is necessity that India should sign Mutual Legal Assistance Treaties (MLTs) with more number of countries till necessary amendments are made in the Criminal Procedure Code.

The developed system like U.K. & U.S.A. are providing/devising new mechanism to address the issue primarily at their territorial level, but there is a pressing need for
immolating these legislative measures effectively at international level. It can also be concluded that ISPs liability for the content on their server is not protected well in many countries. Various countries have imposed liability on Internet Service Providers if they do not filter, remove or block content generated by users that is deemed illegal. Others have imposed notice-and-takedown policies that often lead to the removal of content from the Internet and which are "subject to abuse by both State and private actors."

The basic restructuring and reorganization of social media/internet governance need to be done as per following principles:

- A common global commitment which may be incorporated in the form of a treaty/protocol or convention.
- Effective legislative measures to be devised at domestic level to better support and enforce the global commitment.
- Devising and developing the authorities/organization and other similar mechanism both at national and international level so that the watchdogs may be effective and vigilant for ensuring better global commitment for protecting common freedoms and liberties of mankind.
- Devising the models for better international coordination among different authorities, organizations and institutions both national and international level.

On the basis of the research it can be concluded that multi stakeholder approach of governing the internet is very effective. These bodies with the help of private organizations, civil society, governments and others have been able achieve their respective goals. However, in the absence of any power to implement their policies these bodies are facing failures. The internet governance provides a fertile ground for the states to respond with positive national and international commitments to address the mischief which is increasing by leaps and bounds day by day.

The concept of net neutrality is essential for the survival of fair and competitive internet environment. Though practically, it is followed by every internet service provider but there have been many attempts to violate this principle in many countries including India. Simultaneously, the principle of ‘right to be forgotten’ is not guaranteed by social media
websites in many countries. This behavior of social media agencies is violating the privacy rights of users. In this regard following suggestions are being made-

- There is a need for an international agreement that when international bodies involved in governance of internet arrive at certain conclusion after due consultation, it should be made compulsory for the participating nations to follow the conclusion.
- Concept of net neutrality should receive an international legal recognition.
- Principle of ‘right to be forgotten’ should also be implemented worldwide in order to protect the privacy of the users.

This is also clear that any attempt by the Government to filter online content before it is posted, will not only be against the principles of free speech but also impractical to implement. Pre-publication crackdown is difficult, even unwarranted and, instead, efforts should be made to strengthen the existing IT laws. That includes making majority of the cyber crimes non-bailable and amending and tweaking the legislation to keep pace with emerging platforms and newer devices. The approach towards greater regulation of social media has to give way to a more balanced realization that lets us look at the IT Act which is outdated. It was last amended in 2008. In the case of social media, players need to be given a clear picture of examples of online defamation & other crimes. The issue is not to give the discretion to the service provider to determine whether or not something is an offence, but to let the government come up with illustrations. Where the Indian Penal Code defines an offence, it also gives illustrations. If those illustrations could be given, they'll be a guiding principle.