

Regulating Social Media – legal issues

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Defining Social Media

- Social Media (*noun*):
- An umbrella term referring to internet-based services that permit users to create, share, re-purpose and publish informational content.
- Social media websites require users to affirmatively join, and typically require users to create a uniquely identifiable profile.
- Examples include, but are not limited to, Facebook, Twitter, LinkedIn, Wikis, and Google+.

Jargonomics

- **Troll**-(verb), as it relates to internet, is the deliberate act, (by a Troll – noun or adjective), of making random unsolicited and/or controversial comments on various internet forums with the intent to provoke an emotional knee jerk reaction from unsuspecting readers to engage in a fight or argument - <https://www.urbandictionary.com/define.php?term=Trolling>
- **Forward**– forwarding a message as received to others in the group
- **Group Admin**- One who creates a group is a Group admin-Any admin in the group can make a participant an admin. A group can have an unlimited number of admins
- **Moderator**-Moderators can help admins with managing membership, reviewing posts and have most of the admin privileges with a few exceptions such as changing Group Settings, and removing/blocking another admin or moderator

Important Characteristics of Social Media Technology

- Communicative in Nature
- Easy to Generate Content
- Easy to Share & Re-share Information
- High Speed
- Widely Accessible
- Low Resource/Cost Investment
- Multimedia (photographic, text, video)
- Long Data-Retention
- Informal/Conversational



Communication Style & Characteristics

◦ Traditional Written

- Permanent or Semi-permanent
- Formal
- Lacks responsiveness
- Less emotional
- Costly in time and resources to create
- Rigid
- Unlikely to be distorted

Social Media

- Permanent or Semi-permanent
- Informal
- Responsive
- Can include emotional appeal
- Low cost in time and resources
- Somewhat flexible
- Potential for distortion

Traditional Verbal

- Not Permanent
- Informal
- Highly Responsive
- Can Include emotional appeal
- Low cost in time and resources
- Flexible
- Potential for distortion

What one does in Social Media

- Posting information of text/pictures/videos of
- Personal
- Political
- Health
- Humour
- Spiritual
- Educational

Legal issues

- Defamation-
- False News- IP infringement
- Trolling
- Obscene
- Stalking
- Instigation of Riots
- Coordination of Criminal Activities

CONNECTED LEGISLATIONS

- Constitution of India Art.19(2)
- Intermediary Liability (Sec.79 of IT Act)
Baazee.com, Due Diligence, aiding abetting
- Provisions under License agreement and IT (Intermediary Guidelines) Rules, 2011
- Blocking access (Section. 69A),Emergency provisions Rule 9(2),
- IT (Blocking for Access) Rules, 2009
- IPC-

US APPROACH

- Blocking/Taking Down
- Preservation Letter
- Emergency Disclosure Letter
- Letters Rogatory /MLAT

NOTICE

- **Notice and take down** is a process operated by online hosts in response to court orders or allegations that content is illegal.
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Preservation letter

- Due to the dynamic and temporary nature of [digital records](#), and because of the variability in the duration of time that records are retained by [service providers](#), law enforcement agencies may issue a **preservation letter**
- Data retained for 90 Days (with addl. 90 days)
- Done upon request of Govt. Entity
- Required disclosure of customer communications or records - Title 18USC, Sec 2703 (f)

Emergency letter

- Providers can disclose information to government entities if: “.... The provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.” - 18 U.S.C. Sec. 2702 (b) (8))

Emergency Disclosure letter

- Immediate action is needed to prevent death or serious injury
- Clearly articulate immediacy in writing to provider
- Provider not bound by law to cooperate
- Up to provider to decide if good faith std. satisfied

Letters Rogatory

- **Letters rogatory** or **letters** of request are a formal request from a court to a foreign court for some type of judicial assistance. The most common remedies sought by **letters rogatory** are service of process and taking of evidence

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MLAT

- A mutual legal assistance treaty (**MLAT**) is an agreement between two or more countries for the purpose of gathering and exchanging information in an effort to enforce public or criminal laws. Modern states have developed mechanisms for requesting and obtaining evidence for criminal investigations and prosecutions.

IPC ROUTE

- **Sexual harassment:** When a person posts lewd comments on social media, they are liable under Section 354A IPC and can be punished with one year imprisonment and fine. The provision also covers posting or messaging content related to pornography against the will of a woman and demand or request of sexual favours which, are punishable with three years imprisonment and fine.
- With the intent to outrage the modesty of a woman, a person posting overtly sexual remarks or pictures or videos filled with sexual innuendos on social media or any gesture or object that a woman can see is covered by Section 509 IPC. The recent amendment made to IPC increased the punishment to three years jail along with fine.

IPC AND IT ACT

- **Voyeurism:** Both IPC and IT Act list voyeurism as an offence. If a man captures an image of a woman engaged in a private act without her consent, he will be punishable under Section 354C IPC which, holds the man liable to a minimum one year imprisonment extending to maximum three years along with fine.
- The law can be invoked in circumstances where a woman would not usually have the expectation to be observed by the perpetrator. For the sake of clarity, the provision under IPC also defines “private act” as an act of watching over a woman carrying out activity that are reasonably considered private.

IT ACT

- Similar law related to voyeurism and defamation, Section 66E of IT Act specifies each term giving a detailed meaning to voyeurism in relation to the internet. Publishing a visual image of a person in print or electronic form that which violates privacy of another person is held punishable for three years imprisonment or Rs. 2 lakh fine.
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IT ACT

- **Sexually explicit content:** The IT Act goes a step ahead and holds persons liable for publishing or transmitting sexually explicit material in electronic form.
- The first conviction would result in three years imprisonment along with fine extending to Rs. 10 lakh and upon second conviction, a person would be held for seven years jail term along with a similar fine.

IPC

- **Online Stalking:** An attempt to contact a woman to foster personal interaction despite her clear disinterest and monitoring her through Internet, email or through any other electronic communication is stated as an offence under Section 354D IPC. Commit the offence once and one would be punishable for three years, commit the offence twice and one would be punishable for five years. A harasser would be liable to pay fine in both the cases

IT ACT AND IPC

- **Obscene content on Internet:** Using words like “lascivious” and “prurient”, Section 292 of the IPC defines a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object as obscene if it proves to have lascivious content or appeals to be of prurient interest. Defining obscene content in electronic form, Section 67 IT Act reiterates the IPC provision adding the term “electronic form” to the law.

IPC

- **Defamation:** The law of defamation is mostly used by high-profile persons but in fact it can be used as a shield if a person by visible representations publicises an imputation of a woman with the intention to harm.
- Section 499 IPC would cover, remarks on social media, obscene images or videos posted for public view. Whoever defames a woman online is liable to two years in jail.

IPC

- **Criminal intimidation:** If a woman is being threatened by a person who has the intention to harm her reputation or alarm her, the latter would be punished with two years under Section 503 IPC. Similar to Section 503, another provision mentioned in IPC is Section 507 IPC which punishes a person for two years if the person intimidates or threatens a woman by anonymous communication.

SOCIAL MEDIA IN PROSECUTION

- Private Vs. Public Postings
- TORT Law
- Family Law
- Criminal Law

- Family Law

- A father's negative comments on Facebook regarding the mother led the court to conclude that "he has a hard time separating [parents'] issues from children's issues," and were partially responsible for the award of custody to the mother in Hassan v. Mufti.

- Family Law

- In several decisions, Facebook evidence has been accepted by courts in support of allegations of adultery or bad judgment. In C. (E.L.) v. B. (E.S.), the plaintiff in a divorce action posted two pictures of herself on Facebook “with an unidentified male holding the plaintiff around the waist in a form of an embrace.”
- Such evidence was accepted by the court in support of the defendant’s assertion that the plaintiff committed adultery.

- Family Law

- Much weight was assigned to the opening “Hey son,” used by the respondent in a Facebook conversation with the applicant’s child in *Nabigon v. Lavallee*.
- The phrase was cited by the court in support of its finding that the man was in loco parentis of the child and subject to child support payment obligations.

- Tort Law

- In *Bagasbas v. Atwal*, the plaintiff claimed to have sustained lasting injuries as a result of the defendant's negligence.
- The plaintiff claimed to no longer be able to kayak, hike, or cycle; however, the defendant produced photographs posted on the plaintiff's Facebook profile which showed the plaintiff engaged in precisely these activities.
- The court thus held that the plaintiff suffered no lasting injuries.

- Tort Law

- In Cikojevic v. Timm, a personal injury case, the defendant admitted liability and the plaintiff applied for an advance of damages.
- The judge, in light of the plaintiff's Facebook photographs, which portrayed her engaged in activities that require funds to sustain, such as golfing and snowboarding, held that she was in no need of an advance of damages.

- Tort Law

- In contrast, in T.(K.) v. S.(A.), Facebook postings showing the plaintiff enjoying various activities were held not be probative. The court stated that at issue in a personal injury action is the plaintiff's ability to enjoy various activities, rather than the ability to engage in them at all. Accordingly, the mere fact that the plaintiff engaged in sports did not mean that she was not entitled to damages:

- Criminal law

- In *Kinloch (Guardian ad litem of) v. Edmonds*, a young offender sued police for mistreatment while in custody. Police sought to introduce photographs posted on Facebook as evidence of the plaintiff's drug use. The court questioned the manner in which the police came into possession of the Facebook evidence and refused to ascribe any significance to it.
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- criminal law

- Similarly, in R. v. Anderson, a female soccer coach was accused of having a sexual relationship with the minor complainant. Despite the introduction of Facebook transcripts of such conversations, the court refused to ascribe any significance to them on the basis of similar conversations the complainant held on Facebook with another soccer coach. The court held that the messages to another coach contained “some of the same language as the messages exchanged between the complainant and the appellant, further lending credibility to ... the assessment that the messages were nothing more than adolescent chatter.”
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Criminal Law

- In R. v. Brickman, a Facebook log-in assisted the court in retracing the victim's location shortly before the murder, while in R. v. Brown, the accused attempted to conceal his drinking prior to the drunk driving arrest by contacting the bartender who had served him on Facebook and urging her not to reveal his alcohol consumption to the police.

- <https://www.oge.gov/web/OGE.nsf/.../Social%20Media%20Presentation%20Slides.ppt>
- <https://www.livelaw.in/forwarding-social-media-posts-equal-to-endorsing-it-madras-hc-denies-anticipatory-bail-to-bjp-leader-s-ve-shekher/>
- <http://cbi.gov.in/events/dgp-igp-cof-2013.pdf>
- <https://indianexpress.com/article/india/online-trolls-beware-these-are-the-laws-that-could-be-used-against-you-5008637/>