HUMAN RIGHTS AND DIGITAL MEDIA: A STUDY ON THE STATUS OF FREE SPEECH IN VIRTUAL WORLD WITH RESPECT TO US, UK & INDIAN OUTLOOK

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ABSTRACT

Digital Media heralded as the best ever invention in the last two decades became the essential facet of every individual. Today's world is therefore a virtual world. Where in the real world every individual is safeguarded with a flock of basic rights including free speech and expression, it can then hardly be believed that the virtual world due to its majority use is the only exception in terms of getting protection through the inherent rights. Comparing the status of free speech-expression between the real-time and virtual scenario; it is evident that the virtual space also acts as an effective platform while exercising rights by the user. Like the real-time scenario, the existence of free speech and its restrictions can be reflected virtually through true threats, offensive comments and defamation. But as the time passes, conflict on balancing between the free speech and its regulations is growing gravely as behind a text or sentence of a speech, there can be much more meaning along with the literal meaning of the sentences which often amounts to various interpretations and misunderstandings. Due to this, it makes so challenging to identify the limitation of free speech in virtual environment. Hence, an attempt has been made in this research paper to encounter the pressing issues lying in such borderline disorder in Virtual space followed by the recent reforms in this context and moreover, necessary recommendations have been suggested to balance the equation of digital freedom.

Keywords:Borderline, Censorship, Cyber-democracy, Defamation, Free Speech, Reforms.

"***It is ridiculous that the rights you have as a citizen; go away, when you are on the internet***."[2]

- The statement quoted has been thrown by AnjaKovacs; a human rights activist who is also working with a pan India based Digital Democracy Project.

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[2]Livemint, 'Free Speech | Virtual empowerment', (14 June 2016) < http://www.livemint.com/ Leisure/VViKHUnyEZzuxOSQumBhEL/Free-Speech--Virtual-empowerment.html>

Introduction

Born as a human has absolute ownership and control on its certain things, which are popularly known as human rights, a sort of guarantee rights that every human should have and cannot be a subject to be infringed by others. Without having rights, a human becomes a slave and specifically having no right to life raises the question of the extinction of a person. The bunch of rights of every human imposes a duty upon the others not to violate those rights. Since the implementation of the First Amendment of USA Constitution i.e. Bill of Rights, the Legislators along with the Judiciary have been acting as a safeguard for protection of the inherent human rights. Therefore, under the shadow of legislations and other authorities of a nation, the human rights become the citizenship rights and a human becomes a citizen of that specific nation. It is the first and foremost duty of a nation to be a defense of the citizenship rights. Apparently it seems that there is no question of conflicts, but if we delve deeper into the real-time scenario, a grave conflict will surely be caught by our eye view. It has already been passed around two or three decades since the social media is considered as a fourth pillar of any stabilized democratic nation as the social media has proved its enough capability to form a second world termed as virtual world containing approximately 98% inhabitants of our real world. Although in realm, every nation has laid down a flock of codified or un-codified rights and liberties, but the question of effective existence of the human rights is growing louder while shifting to the virtual environments. It is of no doubt that the Cyber Laws are covering the preventive measures and penalties for the offences committed in the cyber spaces. Despite having that, the law still remains as incomplete as it fails to draw a borderline between the status of human rights and regulation of human rights in the digital environment like Facebook, Twitter etc. where with passing of times, gradually increasing numbers of people are gathering to devote their attention, time and resources. The Social Networking Sites are now considered as a part and parcel of a person's life. Hence, the law should specially focus its attention on the virtual world by creating new norms, legal regulations like our real sphere. For example, in a nation like India, the citizens are benefitted with a bunch of fundamental rights which protect their existence, democracy and privacy. The social networking sites by no stretch of imagination are virtual but the users are real and henceforth certain rights and liberties should be guaranteed to them in order to protect their digital democracy. Amongst the human rights prevailing, the most conflicted rights in the contemporary virtual world are right to Free Speech and Expression, being a pressing issue since the adoption of human rights by the First Amendment and Bill of Rights of other nations. Not only

from the angle of a layman, it is evident from a lawman's perspective also that the status of free speech in the virtual plot has been a hot debate topic now-a-daysand the people often fail to draw a line between the free speech and the regulation of free speech when they are on the Internet due to which it is high time to re-analyze the effectiveness of the human rights in the prevalent virtual networks.

Evolution of human rights in the space

Searching words like "Human Rights" and "Background" in Google shows a huge matches relating to "First Amendment". What is the significance of this "First Amendment" in the sphere of Human Rights? So many debates, conflicts regarding federalism, democracy against dictatorship and unitary form of Government could have not been arisen had there been no U.S Constitution and its Bill of Rights which was adopted by the First Amendment in 1791. The credit mostly goes to James Madison who was the drafter of this most significant Bill. If we focus on the wide area of the rights the said Amendment covered, it can be well-noticed that the First Amendment to the U.S. Constitution guarantees freedom mainly in the sphere of Press, Peaceful Assembly, Speech and practice of Religions as well along with other auxiliary rights. While drawing a time portal, the Bill of Rights relates back to its proposition with an aim to appease the Anti-federalism thoughts under the Constitutional Ambit. However, after its initiation, the usage of the newly-implemented rights was less, but the scenario changed when the case "**Gitlow v. New York**"[3] (1925) came before the U.S. Supreme Court where the Provisions under the First Amendment were officially applied to the States. Specifically talking about the Free Speech Rights, it took over a lot of place in the First Amendment and was considered as one of the weightiest human rights. Its broad application rate has started following an ascending graph from the 20th Century after getting support of an ample of precedents restricting different types of speech under the Bill namely, Hate Speech, Political debates and speeches, pornography etc. The then landmark judgment was "**New York Times Co. v. Sullivan**"[4] (1964) which became a fruitful judgment by strengthening the borderline between Defamation and Free Speech. Not only a guaranteed gift of free speech, while discussing on the digital democracy or the freedom in social media, it will be incomplete research without mentioning the Free Press Rights. Although the virtual sites are the modern as well as unique products of this

[3]268 U.S. 652 (1925)
[4]376 U.S. 254 (1964)

technological and digital era, but almost 225 years ago, the legislators brilliantly laid down the rights and regulations governing this new product through the Free Press Clause, which safeguards the publication of opinions, speeches in media. Through the noteworthy verdict "**New York Times v. United States**"[5] (1971) the U.S. Supreme Court regulated the Censorship in Pre-publication statements in social media.

This was the birth history of legal human rights in USA whose footprints later was followed in India. Indian Constitution, known as the effective mixture of seven Constitutions, borrowed the fundamental rights section (Part III) from the US Constitution and arranged it as per their situation with the help of Dr. B.R. Ambedkar, the head of the Constitutional Drafting Committee. In the Part III of our Indian Constitution, Articles 12-35 deal with the various kinds of fundamental rights and restrictions among which, the free speech and expression has been enshrined in the proviso of Article 19 along with other rights. Article 19(1) protects free speech of the citizens and Article 19 (2) imposes some restrictions on the free speech right.

Although many nations like India adopted human rights from the US Constitution, but the Whole European Union forming a larger part of the World protected the human rights including the free speech and free press under the Universal Declaration of Human Rights drafted by the U.N. General Assembly in 1948. The reason behind implementation of the Declaration is the atrocious experience gained from the World War II. As per the Declaration, it contains 30 Articles elaborating political rights, regional rights of human and their social-cultural rights and regulations.

Also, in other countries, with the passing of time the human rights have been added in their Constitution as a most valued document. For example, in South Africa, the rights like free speech and expression have been granted to its citizens in a liberal approach due to the terrific racial background suffered by the citizens. Therefore, the Constitution of South Africa, through their Bill of Rights, affirmed the basic rights of human being. (Section 16, Chapter II)

Now, having a glance on the title of this paper may create a confusion that what is the connection between human rights and media here with respect to free speech status in virtual world. The connection I viewed in an intangible way that "Protection of the free speech itself is actually the protection of social and virtual media." This is because media like television, virtual media are the technological source of communication via which social practices, discussions, ideas, valued opinions have been sharing by human beings since the beginning of the technological era and also

[5]403 U.S. 713 (1971)

changing and improving their attire as the time passes. Therefore, the title containing the terms like "Human Rights", "Media" and "Free Speech" are successfully supporting and expressing my notion and issue of the paper.

Human Rights in Virtual Space: Crossing the Borderline

USA Scenario

The Pressing Issue lies in the "Borderline Disorder". Now, the question may arise why it is "Borderline Disorder"? The Freedom of Speech and its restrictions – both can go together harmoniously while on the Social Settlements as the legislation itselfhelps to distinguish the free speech from the conduct as a governmental restriction. Hence, the line that lies between the speech and conduct is not creating any conflict or disorder as the Governmental intention behind the legislations is to differentiate and regulate the act of conduct from the act of free speech. But when we shift to the virtual environments, the balance between speech and conduct easily gets crashed due to the failure of the legislature and the users to understand the difference between what is "Conduct" and what is "Speech" in digital world. In a single sentence, virtual sites like Facebook, twitter etc. use to show all the opinions, comments as an activity irrespective of the fact it is hurting others or not. Therefore, the borderline between speech and conduct is blurred in virtual plots and due to which speech and conduct overlap with each other. Therefore, in order to protect the virtual 'activities', one must develop his analogy and understanding skill so that he can recognize the strategy to catch the restricted speeches or conducts from the virtual "Speech vs. Conduct" game.

Also, the problem turns into a grave conflict if one keenly observes the nature and spirit of the words used in the First Amendment itself. The First Amendment strictly prevents the citizens against the State or Governmental Actions. But the Present world is the World of new technologies andtheir designers such as; online games and game designers. So, for example, if the game designers and players – both are the private parties and the conflict arises among the private parties, then the First Amendment stands of no use for protection of right to play the online games as well as the right to design the virtual games. Similar may happen in case of right to free speech and expression as well while defaming others or infringing the right to privacy of others.

A bunch of precedents have been able to shake the chair of the Apex Court Judges of many Countries where the matters were turned into grievous in nature and repeatedly brought the

borderline conflicts in the limelight. '**Elonis v. United States**'[6] is the exact instance of the "**Borderline Disorder**".

"***There's one way to love ya but a thousand ways to kill ya. I'm not gonna rest until your body is a mess, soaked in blood and dying from all the little cuts.***"[7]

The above was the famous distressing statement Mr. Anthony Elonis updated on the Social Networking Site named Facebook towards his wife who left with their children. Mr. Elonis constantly threated her on Facebook and as a result she was satisfied with a protection mandate and custody of the children. But Elonis did not stop posting the disturbing threats on Facebook pointing towards his colleagues and society with a belief that he was exercising his right to free speech. Now the comical fact is that it is clearly written in his Facebook "About" as a disclaimer that: "**All Content Posted To and By This Account is strictly for Entertainment Purposes only and does not Represent The Views, Beliefs or Values held By Anthony Elonis, the Person, LOL.**"[8] In spite of that, Anthony Elonis was prisoned for a term of three years for federal crime. During the time of pleading, the Accused challenged his imprisonment by referring the protection given by the First Amendment, but the defense counsel contended the argument as a clear humor by stating that it would be a satire if all the internet users claimed that whatever threats they spread are beyond of their intention. Now, if we take a look on the ratio of the case, it is evident that the issue in this case is mainly based on the standard of the accused intention v. the standard of a reasonable person's viewpoint, which will be measured and taken for consideration in most of the statutes. It is obvious that intending to spread threat affects the people both physically and mentally irrespective of the fact that the threat carrying on is real or fake. Therefore, it should be considered whether Elonis, the accused is eligible for protection under the First Amendment rather than the victim Mrs. Elonis or not. As per the facts, the continuous threats towards the wife, children and society at large infringe victim right to live dignifiedly and without any fear or panic. Therefore, it is apparent that Elonis must not be granted protection under the shadow of First Amendment.

When does a speech convert to cyber bullying? And to what extent a person can be protected from the offence of cyber bullying under the First Amendment Umbrella? The above two questions have been crucially created debates and increased number issues via two landmark American Precedents.

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[6] 575 U.S. ___ (2015)

[7] "Free speech and social media: Where to draw the line" (AMERICAN BAR ASSOCIATION, March 2015) < http://www.americanbar.org/publications/youraba/2015/march-2015/aba-panelists-debate-free-speech-limits-on-social-media.html> accessed on 6 June 2016

[8] supra note 5

The first precedent which plays a paramount role in this context is of **Abraham Jacob Alkhabaz**, popularly known as The "**JAKE BAKER**"[9] case. Jake Baker was a student of Michigan University. During pursuing under-graduation, he often posted sexually open stories to a Digital Bulletin Notice Board displayed the Internet users. Among those, there was one story in which he explained very efficiently about his sexual torture on a woman, but the woman was given the name of his classmate. Thereafter, these short stories grabbed the focus of one user whose name was Arthur Gonda. Subsequently, both of them started to communicate through mails and shared their fancies how they could abuse a young woman. Baker was charged for the offence under 18 U.S.C. 875 (c) while he was caught due to those horrible stories and mails. As per 18 U.S.C. 875 (c), whoever conveys any conversation in interstate or international commerce mentioning about any kind of kidnapping or abusing threat to any individual, he or she, as the case may be, will be liable to fine or imprisonment which may extend to five years maximum or both. But to initiate a criminal prosecution, there should be a true threat in favour of which issue Jake Baker moved for quashing his prosecution on the ground that the statements which he exchanged was fantasies and not amounting to true threat. Despite having an offensive fantasy but The district Court allowed Bakers appeal to quash his conviction on the ground that what Baker exchanged mails with Arthur Gonda was a private communication which was not subject to the attention of public and social media having publication like in Newspaper with a broad distribution. Therefore the charge of 18 U.S.C. S.875 (c) was invalid and not violative. When the appeal for quashing the conviction was heard by the Three Judges Panel, two judges clearly clarified that as per 875 (c) the threat should contain an intention to cause any individual bodily injury and to achieve some modifications or effects through those extortion; both of which was absent in Baker's communication. But the third Judge of that panel disagreed with the majority opinion and well-argued that the measurement that on what basis it would denote that the speech constitutes a serious intention was full of loopholes. From the perspective of a prudent person, it is prime facie clear to enlighten the fact that as Baker mentioned his classmate's name in the story as a young woman sexually abuse and murdered by him; therefore it is well-concluded that Baker's communication rose upto that level of offence.

"**Nuremberg File**"[10] case is another landmark case where the ACLA group (American Coalition of Life Activists group) who was basically promotes their campaign against abortions, made posters in the year 1995 named as "**Dirty Dozen**" displaying a dozen of doctors practicing abortions. In the

[9]United States of America v. Abraham Jacob Alkhabaz, also known as Jake Baker [1997]; [104 F.3d 1492]
[10]Planned Parenthood v. American Coalition of Life Activists (2002); 41 F. Supp. 2d 1130 (D. Ore.)

posters, a reward of $5000 was announced along with the addresses and contact information of those doctors so that any person would help to arrest them and revoke their practice licenses. The posters were spread throughout all media channels. In 1996, the "**Nuremberg Files**" were published on the Internet with the help of Neil Horsely, an activist of ACLA group and this files were contained a list of doctors who had been killed and injured by the Anti-Abortion activists and terrorists. The doctors whose names were mentioned in the list as attacked by the terrorists were in panic, because by disclosing their addresses and contact numbers, ACLA group was serving supreme role behind the earlier attacks. Accordingly, some of those doctors sought for protection before the Court and sued against the ACLA group of activists for infringing 18 U.S.C. S. 248 of The F.F.A.C.E Act (Federal Freedom of Access to Clinic Entrances Act, 1994) and 18 U.S.C. S. 1962 of the RICO Act (Racketeer Influenced and Corrupt Organizations Act). While giving verdict, The Trial Court held that if the accused's speeches would constitute a true threat, then only the accused would be held as liable, which was proved by the Jury and thereafter the doctors were awarded approx. $107 Million in terms of damages and ACLO was restrained from publishing and spreading any posters or operating any webpage and any other things similar. But the story is not finished here. It became shocking news all on a sudden when the Appeal Court just reversed the Trial Court Verdict on the ground that it is contrary to the First Amendment. The panel of the Appellate Court considered the Anti-Abortion campaign like other political activities and revolutions occurred in the History of America and held that the accused would not be liable unless they authorized or advocated or directly encouraged or threatened to commit violent actions. And if the accused, individually or jointly, threatened directly in order to spread violence, then the activities they have triggered already, could have been concurrent with the Trial Court Judgment. But in the Instant case as per the panel opinion, the statements the ACLA group published were merely responsible for exhilarating the unknown terrorists who were not related with this group and thus their speeches were subjected to protection under the First Amendment.

Indian Scenario

If we throw a spotlight towards the Contemporary India, a different picture is portrayed to us. It is beyond any doubt that higheris the number of legislations, stronger is the protection and less is the clashes.Although, along with the safeguard of fundamental rights, in India, the cyber laws like the Information Technology Act (IT Act,2000) and its amendments have been attempting to provide more restriction on free speech and expression on the virtual environments, but it is very much disappointing that till now these laws only increased and deepened the virtual issues rather than

resolving it. In our Indian Constitution, freedom of Speech and Expression include as a fundamental and inherent right of an Indian Citizen under Article 19 (1)[11]though this freedom has not been guaranteed to them absolutely but with a cover of reasonable regulations. These restrictions deal with the matters involving national and community interests etc. Now, while going by the words of the provisions in the IT Act, 2000[12]; the amendments of 2011 focus our attention on a very comical fact that the status of free speech and expression is more protected on the virtual world rather than the realm. If we observe the restrictions laid down in the IT Act apart from the Constitution, Section 66A[13] will be the most important Section to us as it contains the offences relating to Computer- Internet and profanity. How does the IT Act strengthen the virtual disputes, can be well-pictured through an example. The owner of the website '**www.aamjanta.com'**, **Vidyut Kale**[14] is a successful blogger from Mumbai. She has been running the said website for almost six years. In her website, she once wrote about the previous corruption and one scam case with detail proof. Accordingly, in September, 2012 she again posted about a shady property deal in the website with documents. But this time, she got a notice of defamation after two weeks of the said incident. In reply, Kale bravely said that as she had enough proofs and materials relating to the scams and deals, so she would be happy to produce the documents before the Court. The story didn't end yet. Next day, Vidyut Kale received a second defamation notice regarding the removal of the publications. This second notice was sent to her under the provisions of the IT Act, 2000. But this time, Kale was unable to show her bravery because of the effectiveness of the IT regulations. As, thewords and spirit of the IT Act provisions were itself a big problem and unclear; then Kale could have been held liable even if whatever she posted on her website were not wrong.[15]

Through this real Indian example, the loopholes of the IT rules are pointed and highlighted efficiently. Where our great Constitution makes it essential to involve a Governmental Body in the matters of basic rights and restrictions, the IT Act follows completely the opposite way. It endows

[11] (1) All citizens shall have the right
(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form associations or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India; and
(g) to practise any profession, or to carry on any occupation, trade or business

[12] Information Technology Act, 2000
[13] supra 35
[14]Livemint, 'Free Speech | Virtual empowerment', (14 June 2016) < http://www.livemint.com/ Leisure/VViKHUnyEZzuxOSQumBhEL/Free-Speech--Virtual-empowerment.html>
[15] supra 15

the private bodies with the power to censor any opinion or publication posted in the Internet. Therefore, the consequence is that any person can be authorized by the IT Act provisions to raise objections against any content published virtually and to send defamation or other sort of legal notices to remove the concerned content from Internet where failure to remove the material can also hold the content publisher liable in view of the legislation. Similar cunning situation could have happened in **Vidyut Kale's case** due to why Kale was compelled to remove the materials without taking any action against them.

As the virtual issues are rapidly spreading throughout the entire IndiaIndia because of the ambiguous nature of the IT act which is mainly overlapping with the Freedom of speech guaranteed in the Indian Constitution, India faces and learns lessons from a lot of precedents and instances of cyber freedom. When in 2004**, Avnish Bajaj, the CEO of the Online marketplace "Baazee.com**" got arrested and produced before the Court as his website was used for the bidding of a porn MMS by some unknowns. Although this was not the fault of the CEO, ultimately he was only held liable. [16]

Apart from Section 66A of the IT Act (2000), Section 79 also plays a major role in increasing the concerned issues because it mainly deals with private right of censorship. It is clearly stated in Section 79 that if anybody finds any objectionable material in the Internet, they themselves have the right to ask for the removal of the content rather than coming to the Court. This temporary relief is termed as Intermediary and a period of 36 hours will have to give to the Intermediary person for checking the concerned material. Dodges will be spotlighted while finding the specific definition of "Intermediaries" in the act itself. It is truly miserable fact and a great blunder of the Indian Legislative authorities that they did not even define such an important word on which the whole liability clause of IT act stands. Therefore, sadly, by making such a fatal blunder, IT act empowers any person to exercise a right to censor against any content on the virtual space.

UK Scenario

Comparably stringent actions on e-censorship have been adopted in the countries of United Kingdom. Under the governance of United Nations, a variety of legislations as well as judicial proceedings and administrative arrangements have been achieved by blocking the pornography sites, including child pornography and by banning and penalizing publications of defamatory contents

[16]AVNISH BAJAJ v. STATE (DPS MMS SCANDAL CASE) (2005) 3 CompLJ 364 Del

regulated by the Defamation and Copyright Laws of UK. A negative freedom of expression is guaranteed to the citizens as per the English Common Law System. After the introduction of European Convention (1950)[17], the right to freedom of expression has been guaranteed along with a bunch of exceptions under the Human Rights Act. Talking about the UK status of free speech, the broad legislations guarantee right to free speech as well as press while imposing restriction on capricious intrusion with family, correspondences as well as privacy matters. In order to ensure this guaranteed freedom, an autonomous press, a stable democratic society and a functioning judiciary are there. In relation with the freedoms in virtual space, free access to the Internet for instance, mails are not placed into the bunch of restrictions. As since the beginning the twenty-first century the graph of security concerns including extreme surveillance against terrorism has been sloping upwards, the outcome shows the extreme tracking effects on virtual spaces also by the State or the private Internet service operators, as the case may be. The effect was so high and beyond control that UK countries were known as Internet-enemy in the year 2014. At that time other major nations who wrote their names in the list of Internet- enemy were Russia, China, Pakistan etc.

If we delve deeper into UK Internet and defamation laws, the reflection of Contemporary Indian Scenario can be clearly exposed. The main conflict lies in both cases that the restrictions against free speech on the cyber space are not too stern because it empowers to those who demands to remove any content published in the Internet. Hence, this easy complaint procedure gives undue advantage to every "intermediary" (in UK & India) to remove any posted material in any time. In this way, they use to gain unjustifiable benefit of the defences endowed through the laws. According to the European laws, the intermediaries who are the host of any disputed content are given a safeguard that if they have no knowledge of such infringed content, they will not be subjected to liability, but only an injunction to delete the published material. But such safeguard from liability will not be applicable to those who have knowledge about their disputed content.

In July, 2011 the European Court in "**L'Oreal v. eBay**"[18] case, strengthened the defences of the Intermediaries by deciding that the knowledge of the Intermediary relating to the material must be shown as requisite through a test indicating that the awareness of the economic operator must be concrete. Similar decision can be observed in "**BT v. Newzbin 2**"[19] case held by the English High Court that the awareness or the knowledge of the hosts of the infringed content should have actual

[17]European Convention on Human Rights 1950
[18] [2011] R.P.C. 27
[19]Bird & Bird, 'High Court orders BT to block website used to distribute infringing copies of films' (28 July 2011) < http://www.twobirds.com/en/news/articles/2011/bt-20cfox-blockweb-0711>

and requisite knowledge of his/her material and this quantum of awareness should not be interpreted too harshly. Hence, through these decisions, except the repeated offenders cum hosts, all other hosts can exempt from liability.

In July (2010), The Twitter, Facebook and Google users have contravened a lot of super injunctions. For instance, when an injunction which was obtained by the "Cairn", a Scottish Oil & Gas Exploration Company against The Greenpeace International to post in Social Networking Sites the pictures of the environmental polar bear group's protest in Cairn Headquarter regarding Arctic Drilling Plan, within a while a number of unknown users published further thousands of photographs to quash the said injunction. Subsequently, The Greenpeace won against the Cairn Company and injunction order was nullified. Now, if the decision of the European Court and the MPs would have been followed, then Facebook, Google and Twitter would have to remove such pictures from their sites. In this way, they also broke the injunction orders.[20]

The disorder lies in several instances also. For example, on April 19, 2015 the Islamic States Community published a video showing decapitation of 30 Christians of Ethiopia with religious statements against them. The question arises whether this activity should be covered by the Freedom of speech or not. The answer is simply "No" as it is a clear threat by those terrorists. But this question shaped big when in one instance, a man while the flight getting delayed made fun by stating that he would blow off the whole airport if the flight would get delayed. But he was arrested as it was thought this comment won't come under the free speech rights. But from a prudent person's perspective, the said comment is not apparently a threat as there is a less probability that he, in realm would blow up the entire airport.

Present-Day Cyber Reforms: Border Management

Being a worker of justice and an interpreter of existing laws, the Judiciary since the creation of such borderline disorder, has been focusing their attention to cure the defect by reforming some rules, regulations perceptible in many precedents. Among them, most of the precedents are related to manage the borderline between Free Speech-Expression and Its limitation when you are on Digital

[20]http://www.greenpeace.org/international/en/press/releases/Greenpeace-wins-Scottish-court-case-against-Cairn/ as accessed on 6 June 2016

World. By presenting some case studies and orders of Judiciary, a clean scenario of such Management reforms has been pictured below.

US Reforms

Relating with USA Cyber Reforms, the virtual revolution against censorship has intensified comparatively more diverse communication channel the people have had ever. Therefore, in order to protect such diversity, the digital users have been raising their hands in favour of an uncensored zone with a wide exercise of freedom of Speech and Expression as well. In terms of real world, the safeguard of First Amendment has always been there to preserve media and fundamental rights of human being through the Governmental Interference. But whether the said Amendment protection of Governmental Interference would be applicable to the virtual space or not, was a big question for the virtual revolunists. "**Reno v. American Civil Liberties Union**"[21] is that landmark precedent where the US Supreme Court held the inapplicability of Governmental Intrusion on Internet. Through this verdict, the Supreme Court declared that The USA Government can no longer regulate a person's access to images, speeches or words on the Internet or social media than it can cover a naked statuette in a Museum. Hence, by introducing such a transition, The US Supreme Court perfectly ensured the future of the digital world as a stable and free zone of speech and expression which established a new privatized body and is not subject to hijacking by the Governmental Interference.

Another concept on which the US Judiciary has thrown the spotlight in this context is the Net Neutrality i.e., a motion of treating all Internet carriers equally. Or in an elaborative way, this concept denotes that all types of networks (for instance Airtel, Broadband etc.) should provide equal and non-discriminatory Internet speed for every sort of accesses irrespective of the quality and quantity of data, the users and the blocking or censored websites. Having a glance on the famous "**Verizon v. FCC**"[22] case, it shows that the Open Internet Order (2010) introduced by Federal Communication Commission, USA in realm enforced to ban the Blocking and arbitrary discrimination itself.

Moving to "**Mainstream Loudon v. Board of Trustees of the Loudon County Library**"[23] case, where the Loudoun County's policy on Cyber Sexual Harassment was structured to restrain the

[21] 138 L.Ed.2d. 874 (1997)
[22] 740 F.3d 623 (D.C. Cir. 2014); 11-1355
[23] 24F.Supp.2d 552 (E.D. of Va. 1998)

virtual world from uploading and accessing pornography and creating a sexually abusive environment. In order to achieve the policy target, LogOn Data Corp. (software Manufacturing Company) and the Library Board entered into a contract for using the LogOn's product "XStop". But the method of filtering websites by XStop was refused to reveal in front of them although after some while, it was disclosed that XStop blocks and filters those sites which are not in the prohibition list of the Board's Policy. The consequences of the adoption of this software and policy was that a litigation was initiated by the residents of Loudoun County and member of the American Way Foundation against the Board of Trustees of the Loudon County Library on the ground that the policy adopted was violative to the free speech right protected under the First Amendment and the policy was no matter highly restrictive in nature as it unnecessarily barred restriction on adult and minors to access the pornographic material as well as other authentic contents also. In 1998, the Court finally declared that the policy due to its deterrent nature was not valid as per the protection guaranteed in First Amendment.[24]

Next comes the debate between Copyright and Freedom of Speech which was increasing its shape towards severity. During such circumstances, "**Harper & Row Publishers v. Nation Enterprises**"[25] came to the limelight where The U.S Supreme Court efficiently explicated the harmonious relationship between the right to free speech and the Copyright while treating the Copyright being an Engine of the freedom of expression and speech. The reasoning behind the clarification as per the Judges was that by creating this copyright, it supports and encourages one's own creativity in an economic way. Therefore, Copyright does not act as an obstruction for free speech; rather it emboldens the free speech and expression.

Apparently, it seems that the debate has been over; but in realm it was the beginning. Copyright was again subjected to challenge on the grounds of rights issue in the case "**Eldred v. Ashcroft**"[26]. The main subject of challenge was the famous Copyright Term Extension Act, 1998 and the ground was that this extension Act of Copyright acting for "limited time" only, was interfering the plaintiff's business of online books placing violating the freedom of expression as well as speech. None of the three Courts i.e., District, Appellate and Circuit Court was agreed with the plaintiff's grounds whereas they followed Harper Verdict. At last in "**Golan v. Holder**"[27] case, The Supreme Court

[24] American Law Association, < http://www.ala.org/advocacy /intfreedom/censorshipfirstamendmentissues/ courtcases> as accessed on 8 June 2016
[25] 471 U.S. 539 (1985)
[26] 537 U.S. 186 (2003)
[27] 565 U.S. ___ (2012), 132 S.Ct. 873

against the issue of the international treaty of Uruguay Round Agreements Act expressly declared the affirmation of Harper Judgment.

UK Reforms

The exception cannot be seen in case of UK also. Apart from US, UK also started reforming their laws against and in favour of Human Rights issues no matter whether some laws are discriminatory and some are equitable. Since 2012, Cameron's Government forced to implement legislations regarding the Governmental Intrusion over the Censorship on Digital Freedom, as it was stated by Cameron himself that free and unlimited flow of expression, privacy and information can often create problems and that is why it should be subjected to control by the Government.[28]Among the measures adopted by David Cameron for winning the Government battle against the citizens, the most divisive plan is the Mass Surveillance Plan[29] which empowers the UK Government to check each and every mail, message and calls throughout the entire country. According to the said plan, the service providers would be insisted to install a controlling hardware whose main function was to monitor the IP address of every user accounts. In earlier cases, Google, Twitter, Facebook and similarly other services encoded the user database and information and when UK Government forced them to comply with the user data, Google simply negated this obligation in respect of 37% data received by the UK Officials in 2011. Due to mandate such obligation, Mass Surveillance Proposal was introduced under which Google could not but comply with all user data on the hand of the UK Authorities. The object behind this proposal was to protect the Country from cyber threats and organized crime as stated by Cameron although the Privacy International opined in contrary to the view of Cameron by stating that the police officers have the power to access all user data required for their investigation and hence such plan would help to make all the info available for local law implementation for the purpose of any kind of investigation.

In "**DutchRefomed Church Vergesig Johannesburg Congegation v. Sooknunan Glory Divine World Ministries**"[30] case, the sale of the said church ground was involved which glittered a virtual campaign whee the said church was compared to the Judas Iscariot, Disciple of Jesus Christ, selling for 30 Silver pieces. While challenging, the Court found that the speeches were defamatory and should be embargoed henceforth.

[28]supra 29

[29]Trevor Timm, 'The UK Government's War on Internet Freedom' (Al Jazeera, 13 April 2012) < http://www.aljazeera.com/indepth/opinion/2012/04/201241373429356249.html > as accessed on 10June 2016

[30] [2012] 3 All SA 322 (GSJ) (14 May 2012)

Apart from above, the laws laid down in the Context of free speech, are arbitrary. For instance, the libel laws of UK Citizens empower the people from other nations to sue and be sued in another country instead of suing or being sued in their own country. A recent incident was taken place where a man had to pay around 90000 Pounds damages due to his two tweets viewed by the citizens of both England as well as Wales.[31] Hence, such laws are serving and spreading fear in public rather than encouraging for the exercise of their rights. Under such situation, it is a positive news that the Government was going to bring a new Defamation Bill as a reform of the old legislations in 2012, which was enforced as **Defamation Act from 2013** as an effect of "**Simon Singh v. the British Chiropractic Association**"[32] case.

Reforms in India

While turning back to India's Cyber Scenario, one of the greatest reforms that sparks in our mind first is the landmark **ShreyaSinghal Case**[33] against the arbitrariness of S. 66A – IT Act (2000)[34].But before delving deeper into such a latest judgment, it is preferable to follow the time portal of Indian Digital Reforms. Observing Indian status of free speech in digital environment, it is evident that Section 66A is the main culprit behind the creation of all issues. Before the ShreyaSinghal Case, the issues lies in blocking unnecessary contents, shutting down websites and networks as well as criminalizing online speech. Although S. 66A provided a procedure to provide greater protection to the Intermediaries by sending notice and blocking the contents; but who can be an intermediary and what type of contents can be removed were unanswerable. In the year 2011, Mr. KapilSibal, Ministry of IT & Communications, directed Facebook, Google and Yahoo to structure and adopt new software which would automatically pre-filter the defamatory as well as religiously harmful statements published on Internet.[35] Such direction was clearly an indirect assault against the digital

[31] supra 29
[32][2010] EWCA Civ 350
[33]supra 39.
[34]IT (Amendment) Act 2008
66A: Any person who sends, by means of a computer resource or a communication device, —
(a) any information that is grossly offensive or has a menacing character; or
(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or
(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.
[35]The Hindu, 'Sibal warns social websites over objectionable content' (6 December 2011), < http:// www.thehindu. com /news/national/sibalwarnssocialwebsitesoverobjectionablecontent/article2690084.ece accessed on 7 June 2016.

freedom. Hence, both Sec 66A and the direction of designing software curbed the free speech rights of the citizens. Besides, Section 66A works on a wide area including the statements of annoyance, obstruction, enmity, inconvenience, hatred as well as other potential accusations characters and it imposes a penalty of fine and imprisonment upto three years. Hence, the citizens were frightened to exercise their free speech and expression on virtual environment.

The incident is of November 18, 2012. **ShaheenDhada**, a woman of 21 years age posted her opinion on Facebook regarding the cessation of Mumbai due to funeral ceremony of Bal Thackeray, the Chief of Shiv Sena. The post was as follows: "***Respect is earned, not given and definitely not forced. Today Mumbai shuts down due to fear, and not due to respect***."[36] On the said post, only one person, **RenuSrinivasan**, the friend of Shaheen, liked and due to this reason, both of them were arrested as a criminal complaint was filed against them under S. 295A as well as S. 505 (2) of the Indian Penal Code (1860). S. 295A of IPC penalizes for malicious activities intending to disgrace any religion or any particular class and their beliefs; whereas S. 505(2) penalizes for the speeches which creates or spreads hatred as well as enmity among the classes. Apart from these two charges, the Police also added S. 66A to impose penalty on them, which was a glimpse of capriciousness as political criticism always creates a bit of disturbance or annoyance, but the post published was not containing any harmful material at all as being a citizen of democratic and republic country, the statements of Shaheen was a free opinion and a personal view and not defamatory at all. Subsequently, the Court ordered 14 days' imprisonment for them. Surprisingly, on that day itself, they again got bail while paying Rs. 15,000 per head.

History shows numerous arrests of citizens for criticizing politicians on the Cyber Space through opinions, cartoons etc. In order to expound, a bunch of flagrant cases have been referred here-

1. ManojOswal was charged for creating inconvenience to Sharad Power's relatives due to posting some allegations on his website. [37]
2. AmbikeshMahapatra, the Professor of Jadavpur University was arrested for making a cartoon about Chief Minister of West Bengal, Smt. Mamata Banerjee.[38]

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[36]Indian Express, 'Now Palghar police detain 19yearold for Facebook post on Raj Thackeray' (28 November 2012), <http://www.indianexpress.com/news/nowpalgharpolicedetain19yroldforfacebookpostonrajthackeray/1037462/> accessed on 7 June 2016

[37]The Hindu, 'Animal rights activist vindicated' (26 March, 2015), < http://www.thehindu.com /news/national/ other-states/animal-rights-activist-vindicated/article7033034.ece> as accessed on 11June 2016

[38]Hindustan Times, 'Professor arrested for poking fun at Mamata' (Apr 14, 2012) , < http://www.Hindustantimes .com/ india /professor-arrested-for-poking-fun-at-mamata/story-OmV4FhEop4XaRP13gZdI1H.html>

3. Due to posting caricatures and obnoxious statements on Facebook against P.M. Manmohan Singh, President of Samajwadi Party, Mulayam Singh Yadav and Mr. KapilSibal, Sanjay Choudhary was arrested under S. 66A of the IT Act (2000). [39]

It is an ironical fact that till now, no politician did face the effect of Section 66A and it derives into a conclusion henceforth that Section 66A was an effective instrument to protect the activities of the political leaders from any question of citizens. By observing the consequences and cases, a question may arise: it is obvious that the statements against politicians would create annoyance in the society, but do the cases that already held fall under the area of the restrictions provided along with Free Speech? Can the Police be empowered to interpret law and arrest an ordinary citizen arbitrarily due to stating his personal viewpoint only? It nothing but a fateful truth that if such criticisms against political corruptions would be subjected to arrest rather than being safeguarded, the free flow of Indian Democracy would come to an end.

But, nothing is bad if end is good. Although legislature failed to protect the citizens through S. 66A; but there was another body which was the last resort to maintain and protect democracy and that was Judiciary which was reflected through "**ShreyaSinghal v. Union of India**"[40] judgment. Due to the arbitrary arrest of two girls named Shaheen and Rinu as discussed earlier, a PIL was filed before the Supreme Court as it was believed that the Police officials misused their power by invoking S. 66A on them. A several number of petitions were filed challenging the constitutionality of S. 66A of the IT Act (2000) like "**Mouthshut.com v. Union of India**"[41] and "**ShreyaSinghal case**". Therefore, finally in 2013, Supreme Court struck down S. 66A of the IT Act (2000) as being unconstitutional and arbitrary nature. It was declared that S. 66A is only an obstruction but it also curbs the free speech of citizens. Hence, by striking down the said provision, the free flow of democracy was properly maintained and the role to be a Constitutional Court was served in an effective manner.

Further recommendations

as accessed on 11June, 2016

[39]The Telegraph, 'UP engineer held for Facebook post' (February 6 , 2013), < http://www.telegraphindia.com/ 1130206/jsp/nation/story_16528779.jsp#.V2AOWLt97IU> as accessed on 11 June 2016

[40] WRIT PETITION (CRIMINAL) NO.167 OF 2012

[41] W.P.(C).No. 217 of 2013

Freedom of Speech and Expression plays as an integral facet of every individual's life as well as the society at large. One of the purposes behind human life lies in such birth right without which there are no lives, no human, no legislation, no nation and no civilization. But some sort of restrictions in terms of such absolute freedom should be existent in order to protect self-personality and creativity from hampering by other individuals.

Apart from the reforms brought by the Legislature and Judiciary varying from nation to nation till date as elucidated in detail; I, being a citizen of a democratic country, also have right to suggest further recommendations in order to improve the status of free speech in virtual world.

1. First of all, before prosecuting any citizen whoever has expressed an opinion through online, it should be thoroughly checked whether the statements are false and harmful in realm or not, otherwise the citizen should not be prosecuted.
2. While requesting for shutdown or blocking any content or material published on Internet, the entire material should be subjected to revision to ensure that blocking the material would not infringe digital freedom and public interest.
3. The Governmental Interference must not be desirable to protect individual's privacy in virtual conversations as in order to initiate a necessary investigation, Government has the power to collect data whatever required in that investigation. Hence, unnecessarily, the Government should not censor the websites and virtual user accounts.
4. There should be no legislations or policies adopted by any Government in any Nation which curbs the area of individual freedom of speech and expression.
5. Before using a social media account or signing up in a virtual site, every citizen must be diligent in checking the terms and conditions of that particular site, otherwise, you will never know that what you think is not an offence, is a clear violation in view of law.
6. The Police Officers while receiving complaints regarding blocking contents or taking down any website, should not take actions on basis of the complaints unless they get any court order or follow any specific procedure prescribed by Law and the Court.
7. While accessing Internet in Cybercafé, a proper functioning should be maintained as a user of public network. For instance, in Cybercaféevery user should have account in his used Computer where their operating duration, the sites they have accessed will be available. The scope of the freedom guaranteed to individual will not face any sort of limitation due to such system.

Hence, it is expectant that by following the above recommendations, the Government as well as individual both may be successful to settle the issues and recover from the Borderline Disorder between Free Speech and Virtual Media at least. The Virtual World should not be treated differently from the real world. In the era of modern-day technology, the rights that are ensured as fundamental rights in the nations should also be protected equally under the ambit of Digital Environment also.

Conclusion

Social Networking sites containing the Virtual World is presaged as the contemporary channel of interaction in today's era without which no quick solution is possible to link the entire World in one thread. This is indeed a crucial point that the same virtual environment are also enriched with hassles related to digital democracy where freedom of speech and expression also play a major role as it does in case of real world. Even, the freedom related issues are going to be much more restrictive in virtual environment than the real scenario. Although to defend cyber freedom right to free speech and expression should be provided widely, but it cannot also be denied that assuring absolute freedom will amount to the spread of cyber bullying, offensive statements as well as hate speech resulting to the bodily injury to any individual. Therefore before implementing any guidelines for the cyber space, the responsibility of the legislature is to regulate the freedom of virtual users to the degree when it is true threat or highly offensive in nature and to unregulated the freedom of virtual users to the degree when it is just a criticism and not amounting to a true threat to anybody. Being a fourth pillar of a nation and a third world likewise, the Social or Digital Media should be preserved in such an effective way that along with ensuring the individual's right to expression, the precarious speeches and bullying should certainly be taken care of. Also, where there are no seemingly dangerous and possible coercions towards anyone, the matter should be left for the decision of the Concerned User because "Report Spam" options are now-a-days a very easy resort to get rid of the less harmful speeches. Therefore, for such less defamatory speeches, the action should be taken care by the user itself and the best action one can take is to oppose by speech but that should be proportionate and not extreme. However, the threats causing serious harm to the society or the individual are a different matter which must not be escaped and left for people's choice. Last but not the least;First Amendment, Indian Constitution, Universal Declaration of Human Rights and other Bill of Rights etc. varying from nation to nation have been safeguarding you through the bunch of rights including right to free speech and expression so that without any fear you can share and

express your views and opinions in the virtual media. It is definitely the responsibility of legislature and judiciary to remove the unnecessary limitations from this freedom through reforms; but that does not mean that you can express anything whatever you wish without following a basic propriety. You have a fundamental right to opine about any matter, but not in vulgar or abusive way which would harm others badly. Apart from legislature and judiciary, it is you who has the ultimate responsibility to improve the status of free speech in virtual world instead of degrading it through abuses, obnoxious and harmful threats, comments and expressions. This is ultimately the main mission and vision behind safeguarding with the Fundamental Rights and Cyber Democracy as well.

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