

Rapporteur Report

Individual Rights and Social Media - Panel Discussion

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Venue: Stein Auditorium, India Habitat Centre, New Delhi

Panellists:

- **Aakar Patel** – Executive Director, Amnesty International India
- **Chinmayi Arun** – Research Director, Centre for Communication Governance (NLU-Delhi)
- **Pankaj Pushkar** – MLA (Timarpur, Delhi)
- **Rai Mahimapat Ray** – Deputy Commissioner, Bokaro district
- **Rohit Prasad** – Professor, MDI Gurgaon
- **Ruben Dieckhoff** – Regional Project Manager, Friedrich Naumann Stiftung für die Freiheit

Chair-cum-Moderator: R. Sukumar – Editor, Mint

The panel discussion started with a welcome note by Digital Empowerment Foundation's Communications Officer Ravi Guria. **R. Sukumar**, being the moderator of session, started with introducing the people in the panel and went on to discuss how social media has given voice to people. Social media has provided common man a voice, and conversation is no longer one way; now it has become two ways. In terms of social media's effect, he mentioned that it has affected print journalism, education, administration and various other sectors; and the hierarchy of traditional forms of communication is collapsing as very few people know how to use it. Social media in its own way has helped in information dissemination; TV being the instant form of social media amplifies the information usually. He also mentioned the various aspects of social media in context of the larger ecosystem that we live in. The first aspect is the *legal aspect* that includes information access rights and privacy rights that a person on social media has; more broadly it covers the kind of laws that we have in place that rule the ecosystem of information. The second aspect includes how people in power react; and how do they control the information or curb the information if required.

Chinmayi Arun from the Centre for Communication Governance spoke on the existing laws related to freedom of speech and expression in India. She said that everyone knows the existing laws and, interestingly, people are even realising the importance of these laws in their life. In India, it gets complicated when it comes to how these rights are implemented and the classical illustration of this is the *Shreya Singhal case* that threw up several questions and highlighted where the legal system and public sensibility can go wrong. One important aspect of this case was Section 66A that criminalised an individual for posting any content online that may have

been deemed “offensive”; another aspect of this case was intermediary liabilities that the government could block or regulate the speech. She also said that it was very hard for people to digest the concept of middleman who regulate the speech such as an editor of a newspaper, a telecom company or any other big Internet platform.

After that she threw up a topic for discussion. The topic was:

“A lot of debates are happening on net neutrality and on blocking of content online; what these debates have to do with middleman, these gatekeeping functions that are provided by the intermediaries and the ways in which it is regulated by the government.”

Rohit Prasad, Professor at MDI, Gurgaon, in this context said that the Internet is a global phenomenon and, therefore, there is a need to look at the laws related to privacy and freedom of speech in other parts of the world, especially in the U.S.

Rai Mahimapat Ray, Deputy Commissioner, Bokaro district, highlighted the major question that arises - *“Do we have the right protocols or do we have the right systems to protect sensitive information from being made public?”*. Earlier, there used to be a Public Relations Officer in each office but now that the system has died to a large extent; and everybody is a public relations officer now. So, *as a head of an institution, whose voice will be given how much credibility?”*. He also alluded the the potential conflict when an individual, who is also a government servant, exercises his/her right to free speech and the limitations that arise out of the Official Secrets Act, 1923.

R. Sukumar added to Rai’s point stating that rather than one person acting as an outlet of information, the information is going out through 20,000 different people now; and that some people would like to rely on specific trustworthy sources to get the information. He also redirected a query to Rai; *“Have you felt any constraint by the existing rules in some or the other way? Or do you think that these are all right? Do you have a presence on Twitter?”*

Rai Mahimapat: *“Yes, I do have a presence on Twitter but the characteristic bureaucratic answer is yes and no. I have not been constrained by the existing rules but if there are rules of engagement then I should follow them. There are no rules of engagement but for the officers, like deputy commissioners, it is very important to consider what type of information you give out. What about the Official Secrets Act, 1923? And the government officers can work only in favour of government line up to a point.”*

R. Sukumar said that in 2009, Mint had put down the *social media rules for newsroom*. Mint has always been big about policies. Mint claimed to be the first to have a social media policy but in India there is no engagement policy that can define what you can do and what you can’t do.

Rohit Prasad shared his personal experience and said that he used to be a Facebook user, he doesn’t have a presence on Twitter and only recently joined WhatsApp. He talked on liberty rights and said that it’s a hard time for individual liberty because they are overrun based on a number of reasons which are as follows:

- *Cultural Nationalism* - Under this reason, he mentioned that *Donald Trump*, a businessperson and television personality, announced his candidacy for President of the United States, and now in all likelihood he is going to get a Republican nomination on the basis of his followers.
- *GDP Growth* - Extremely pessimistic growth aspects are visible globally, including India, and at such time you are not allowed to say anything which comes in the way of GDP growth. From 2000-2010, the world grew at a very fast pace and it grew along with a lot of corruption all across the globe but now that the growth is dying up, suddenly everybody is concerned about corruption.
- *Security* - In India, the problem of left-wing extremism and alarming crime rate is a bigger concern than Islamic terrorism.

Adding to the debate on individual liberty, he said that the Indian Constitution was meant to be an instrument of social change. This means that the individual liberties of rich had lesser priority than to bring a social and economic equality. But now, the individual liberties of poor are being overrun in the name of GDP growth; and both the left wing and the right wing are against individual liberty.

Chinmayi talked on individual rights, highlighting that they are part of the Indian Constitution and have been articulated very beautifully, making the government accountable for marginalised people but in some way we, the Indians, are also accountable for group dynamics. Looking at the architecture of social media, she said that the various platforms of social media are designed by Americans who believe in civil view of liberty. When they (the U.S.) talk about rights, they think of an individual and follow the '*individual-centric liberty model*'.

After that, she discussed the difference of power both online and offline. She highlighted this by citing an example where on one side we create an individual-centric liberty model and on the other side, women get attacked online every time they express their opinion, even if it's exactly the same as a man's. In the *International Human Rights Treaty*, there is entire convention on removal of racial discrimination which criminalises a certain type of hate speech and we, Indians, are beginning to adopt the same perspective.

Aakar Patel, Executive Director, Amnesty International India, said that the government of India inherited many laws from the expansionist, colonial state & its laws and, for example, Section 144 is a reflection of the fact that the State doesn't trust its citizen and, thus, attempts to restrict the freedom of speech in every possible way. Some of the earliest laws regarding the internet were directly imported from the Telegraph Act regarding search and seizure. He does not believe that the laws have improved much since; the suspicion of the citizens by colonial state still persists.

It has to be clarified that at what time does the needle tip in favour of individual rights or collective rights which the State insist upon.

R. Sukumar summarised the discussion and said:

"Either the laws don't exist or they are inadequate or antiquated; and there is not an

explicit guarantee that you have right to say what you have to say online.”

Then, he threw another topic for discussion that focussed on “*how various people and entities use social media either to their advantage or to do whatever they want to do*”.

Pankaj Pushkar, MLA (Timarpur, Delhi), in this context said that whenever a new medium is introduced and seems relevant to us, there is a possibility of it being used for personal advantages. Democracy requires participation without tiny reservations; and in the growing need of complexity, social media allows the participation and also addresses various issues.

Ruben Dieckhoff, Regional Project Manager, Friedrich Naumann Stiftung für die Freiheit, said that as a German, he was surprised by how Indians and the Indian government don't look at the individual space and rights; big companies have the hunger of big figures of sale and make money out of it but the State uses the digital space for surveillance. National security and terrorism are the two major concerns.

R. Sukumar spoke about how social media offers a lot of avenues for communication. He said that there are no nuances in social media and there are just extreme positions; and we all approach social media in a very colonial way.

Aakar Patel said that:

“If you want to isolate from the debate and see in that fashion then its right but to expect the conversation not to have some element of extremism is unfair. If you are limited to 140 characters in text, then there will be a reduction of words that will not bring depth and there will be an increase in emotions; that is why Twitter is popular.”

Further, he said that the important aspect is the democratisation of views, and depending on what social media platform you are on, the level of intensity changes.

Rai Mahimapat talked on ‘*Extremism in Social Media*’. He said that the question that arises is on which platform of social media should we write the extremism post; do we tend to put the posts or want to emulate the post; and each platform serves a different purpose.

Osama Manzar, Director, DEF, put forward his thoughts as a participant. He said that we follow the individual rights, freedom of expression as its written in the books or anything in print; and you hear anti-espionage from the government that actually governs us. How do we survive the confusion? He further spoke about a confusion he has in his mind: How do we differentiate between what is right or wrong on social media? I get picked on for writing something which isn't even equal to an iota of violating the freedom of expression, but somebody else who is much more extreme in his views isn't picked on. How to survive this and overcome this confusion? We are living in the middle of social media so do you agree with this confusion?

Chinmayi answered to Osama's question and said that:

“We should not leave our rights to the government and the reason behind this that the government loves violating our rights, and so it is important to distinguish between the rights that the laws grant us and the way in which the institution treats those rights. So, we are seeing the classical illustration of where we can have the best laws in the world but the laws are implemented by the people. Section 66A is a great example where the people of India refused to accept it and made sure that the government realised the institutional failure inherent by the nature of the law allows criminalising expression . So, it is important for us to repeatedly articulate again and again; and we need to question different institutions to make sure our rights are supported. We also have a controversial encryption policy of which consultation draft is out, and there was huge push back saying that it's not acceptable”.

Question from a participant: He said that he doesn't have an understanding of freedom of expression on social media. Quoting an example of *Bal Thackeray's* death, following which a student questioned the need to shut down Mumbai for a day and another student supported it by 'liking' it on Facebook, which led to both the students being put behind bars the same day, the participant said that he doesn't think freedom of expression, especially in countries like India, exists. He requested panellists to throw some light on freedom of speech and expression in India.

Aakar Patel explained by saying that there are restrictions for each and every law; and there is no law that gives us the complete freedom. Therefore, unfortunately, the problem is that the government structure interprets the laws and policies in such a way that are in favour of the State and not in favour of citizens. The change will come when the thinking of the State will change.

Rohit Prasad said:

“There are two reasons because of which the government puts restrictions on freedom of speech and expression. One is economic growth or GDP and the second is nationalism. Being the economist, I can say that GDP growth is not possible in India. India's first Prime Minister Jawaharlal Nehru said India should grow keeping in mind the class and not the caste but the structure of the society is still divided. A study on caste also reflected that the people from backward classes are also economically backward; that study was kept hidden. Today, we are doing the same. On one side, we are saying that India is one and we are all united but there is an internal conflict which is not ready to accept that we are one. The way the government is imposing restrictions on its citizens, it's bringing differences among people, and I am very hopeful that these tactics will not be successful”.

Question from a participant: Being an entrepreneur in the social media space, how do I balance the government which tends to restrict the users?

Chinmayi answered to this question by saying that:

“My pet theory to this is that we are still adapting the idea of market freedom, we are not very far away from license raj days and we are adapting to the idea that liberalisation that involves a certain amount of freedom. The state doesn’t have a choice here, so it’s very important to understand. In the context of net neutrality, people managed to communicate to the state that growth is not possible until and unless you allow some freedom. The same applies to privacy where we are all trying to communicate to the government that, on one side, we need data protection regulations so ensure start-ups are not actively infringing the rights of users. If you have a market that is completely unregulated and start-ups are able to do whatever they want with your data; then the consumers will be left with no trust; so you need some amount of coordinated regulations to encourage start-ups to create a safe environment for the users. On another side, the patriarchal state is trying to control the data of each start-up; and for the sake of catching one terrorist, we are being violated of our right to privacy.”

Rohit Prasad added to Chinmayi’s words, and focused on Net neutrality and market structure of the Internet. He said:

“I think we don’t realise strongly enough how strong penetration in India has been. Top ten sites on the Internet belong to Google, such as Google Search and YouTube. So, the Internet has become an extremely concentrated place. Today, the challenge to start-ups not just comes from the government but also from the established Internet players; and this is also in terms of individual liberty. We are in threats from big Internet companies. There is an illusion of Net neutrality and also the illusion of anonymity, which is not true at all. There was a person who challenged the anonymity of another person on the Internet and said he could find the address, occupation, height and weight of any individual within 20 minutes. Now there is a conflict between the nation state and the Internet companies because, today, Internet companies are more powerful than the nation state and globalisation is not winding down as international trade is starting to dry up and states are erecting tariff barriers. The nation state is emerging as the nucleus of power and is going to take on the Internet companies.”

Ruben added that big players are acting as gatekeepers and reducing competition. This is not an anti-trust issue. However, we should not allow the mentality of “*too big to fail*” to take hold again.

Rai Mahimapat said that when big data exists, it’s liable to be lost. As you keep seeing on and off, there is a lot of credit card information floating on the Internet; so we need to understand protections of data from that perspective.

Question from a participant: Everyone is talking about two things - globalisation for the economy and nationalisation when it comes to politics. In many countries like India, Russia and

so on, the political discourse is about nationalism and economical discourse is about globalisation. There is an inner conflict between these two, whether it's going to resolve or not. The second thing the Internet companies that are behaving like nation states - like Twitter talking to the U.K. government. So now there are two types of states - political state and business state, how are tis divide going to dissolve?

Rohit Prasad answered the above question by saying that there is a big conflict between the political nationalism and economic globalisation. As the momentum of globalisation will continue to wind down for next five years so, there will be a big conflict between the Internet companies and the nation state.

Aakar stated that old, European-style nationalism of the 1910's & 1920's assumes an external enemy. In India as opposed to Syria, the enemy is internet; that dichotomy doesn't exist; we are fighting our own people. Its more anti-nationalism that is the discourse rather than nationalism

Chinmayi added to Rohit's answer by saying:

“In the context of television, the media theorists has argued that the space and tension between the big media companies are trying to push one narrative, and the government is trying to push another narrative; this is a space where our individual rights lie. So, I am not sure whether it's a good thing for these companies to reconcile their agenda with the government, which will result in two powerful networks merging. The debates that have taken place are the result of tension between companies and the government, for example net neutrality.”

Pankaj Pushkar talked about the mismatch between globalisation and nationalism. He also shared his concern that nationalism of a particular kind is just trying to find its own way and to a certain extent, it's ending up creating its own historical footprint as feudalism has stepped aside. So, it's a crucial time to know whether such type of nationalism will stay for long or not. So, it's the time to innovate globalisation in a manner that it can sustain human needs.

Question from a participant: Social media in the current scenario is like a hot potato. And, when looked at from the darker side, some extremist groups are using this medium to recruit people from our country. The question is how can we protect people from the dangers of social media which can threaten the society.

Rohit Prasad answered this question by saying that people are using social media for women trafficking, child pornography, recruitment of Naxalites, throwing acid on women and also to recruit people for the Islamic State (IS). He stressed on the importance of keeping things in perspective and not focus only on Islamic terrorism because it's just one of the many threats; and let's not be played on hands of people who are promoting a wrong kind of nationalism.

Question from a participant: India is collectivistic in nature and there are many groups; and individuals are not important here. When it comes to safeguarding opinions and views, and whether the laws are protecting or not protecting our views, the concern arises regarding what to

write and what not to write as it can be offensive for some people and for some it might not be. So, as a common man, how to decide what is offensive and what is not?

Chinmayi answered the above mentioned question by saying:

*“In India, the Constitution guarantees free speech but not the right to offence. The first amendment that was mentioned inserted public order as an exemption to ensure something that has the tendency to create public disorder could be censored. That has been used as an excuse; people say that we have public order exception, let’s threaten to create disorder and silence the speech - this is also called as **heckler’s veto** - this is something we have to fight”.*

R. Sukumar ended the panel discussion by saying that the aim of journalism and media is to go with the truth, and some people might like it and some might not.

The panel discussion ended with gifts being distributed to each panellist.