



NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
DEPARTMENT OF INTERNATIONAL LAW

**SOCIAL MEDIA AND HUMAN RIGHTS: THE IMPACTS OF SOCIAL MEDIA ON
FREEDOM OF EXPRESSION**

LL.M THESIS

Etini Essien MARKSON

Nicosia
January, 2023

ETINI ESSIEN MARKSON

SOCIAL MEDIA AND

HUMAN RIGHTS: THE

IMPACTS OF SOCIAL

MEDIA ON FREEDOM OF

EXPRESSION

MASTERS THESIS

2023

NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
DEPARTMENT OF INTERNATIONAL LAW

**SOCIAL MEDIA AND HUMAN RIGHTS: THE IMPACTS OF SOCIAL MEDIA
ON FREEDOM OF EXPRESSION**

LL.M THESIS

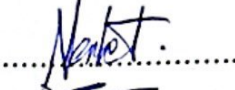
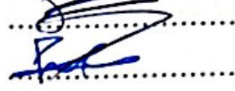

Etini Essien MARKSON

Supervisor
Assist. Prof. Dr. Tutku TUGYAN

Nicosia
January, 2023

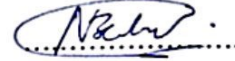
Approval

We certify that we have read the thesis submitted by Etini Essien Markson titled "SOCIAL MEDIA AND HUMAN RIGHTS: THE IMPACTS OF SOCIAL MEDIA ON FREEDOM OF EXPRESSION" and that in our combined opinion it is fully adequate, in scope and in quality, as a thesis for the degree of Master of Laws in International Law.

Examining Committee	Name-Surname	Signature
Head of the Committee:	Dr. Nezihe Tetman	
Committee Member*:	Asst. Prof. Dr. Ayten Ordu	
Supervisor:	Asst. Prof. Dr. Tutku Tuşyan	


Approved by the Head of the Department

13/01/2023



Asst. Prof. Dr. Nabi-Berkut
Head of Department

Approved by the Institute of Graduate Studies

...../20...

 Prof. Dr. Cemal Hüsnü Can Başer
 Head of the Institute

Declaration

I hereby declare that all information, documents, analysis and results in this thesis have been collected and presented according to the academic rules and ethical guidelines of Institute of Graduate Studies, Near East University. I also declare that as required by these rules and conduct, I have fully cited and referenced information and data that are not original to this study.

Etini Essien Markson

02/01/2023

Acknowledgements

Firstly, I would sincerely like to appreciate my Lord and Saviour Jesus Christ who made it possible for me to complete this thesis. He gave me the strength, resources and determination to complete this work and I pray may all glory be to His holy name.

I also would like to express my profound gratitude to God for bringing me in contact with the Watchman Catholic Charismatic Renewal Movement. This is because the divinely inspired words I have been receiving from my father in the faith, Daddy A. C. Ohanebo, our General Superintendent, his seasoned ministers and my beloved Pastor have made colossal impact in my life, causing transformation in my reasoning and creating the desire to be exactly who God has designed me to be. Without them, I certainly would not be the person I am today and I most certainly would not be writing this thesis.

Additionally, I specially want to thank my Pastor, Pst. Sebastian Nlebedim for his encouragement and support all through this thesis journey. I will not fail to thank my father Mr Essien Markson for all the efforts and resources invested in me to see that I have a good education in order to contribute positively to my society. Many thanks also go to my esteemed Supervisor Assist. Prof. Dr. Tutku Tugyan for his time and input in the outcome of this thesis despite.

Conclusively, I would like to appreciate my sisters who in one way or another made this thesis a huge success.

Etini Essien Markson

Abstract

Social Media and Human Rights: The Impacts of Social Media on Freedom of Expression

Markson, Etini Essien

Assist. Prof. Dr. Tutku Tugyan

LL.M, Department of International Law

January, 2023, 80 pages

The internet has become an integral part of human existence and social media in the form of internet forums, social networking sites, blogs and so on have initiated a platform that facilitates online communication for the global community. Social media users are at liberty to share content, inventions, ideas, opinions, information and personal details. This research sheds light on the impacts of social media on human rights which cannot be separated from the individuals who are spending a considerable amount of their time on these social media platforms. It focuses on freedom of expression; the ways social media have facilitated the enjoyment of this right as well as its abuse, leading to calls for the regulation of the latter. It concludes by highlighting social media regulation methods and the effect on freedom of expression. The findings through review of related literature reveal that even though social media is a great tool for defending human rights as well as exercising “freedom of expression in its purest form”, it also creates opportunities for the abuse of these rights.

Key Words: social media, human rights, freedom of expression, social media regulation

Table of Contents

Approval	2
Declaration	3
Acknowledgements	4
Abstract	5
Table of Contents	6
List of Abbreviations	8

CHAPTER I

Introduction	10
Statement of the Problem	10
Purpose of Study	12
Research Questions	12
Significance of Study	12
Methodology	13
Limitations	13

CHAPTER II

Social Media and Human Rights:	
A “Bittersweet” Relationship	14
Social Media Overview	14
Human Rights Overview	15
Human Dignity: The Essence of Human Rights	16
The Call for Human Rights Protection	17
The UN and Human Rights Instruments	17
Impacts of Social Media on Human Rights	19
Social Media, Human Rights	
Violations and Digital Activism	19
Hashtag Activism	21
The Downsides to Social Media Activism	23
“Slacktivism”	23
False Information	24

Intersection Between Social Media and Human Rights.....	25
Social Media and Human Rights Law.....	25
Social Media and Digital Privacy.....	26
Social Media and Tyrannical Governments.....	27
Conclusion.....	29

CHAPTER III

Freedom of Expression and Social Media.....	31
Legal Provisions.....	31
Scope.....	34
The Right to Hold Opinions.....	35
The Right to Seek and Receive Information.....	35
The Right to Impart Information and Ideas of all Kinds.....	35
Significance.....	37
Freedom of Expression on Social Media.....	42
The Paradox of Social Media.....	44
Conclusion.....	45

CHAPTER IV

Social Media Regulation and Freedom of Expression.....	46
Content Moderation.....	46
Necessity for Content Moderation.....	48
Social Media Regulation: A Danger for Freedom of Expression?.....	49
Government Legislations.....	49
Social Media Platform Regulation.....	52
Social Media Shut-downs.....	53
UN Concerns.....	54
UN Human Rights Approach to Social Media Regulation.....	63
Benefits of Human Rights Based Approach.....	65

CHAPTER V

Conclusions and recommendations.....	67
First Question of Research.....	67
Second Question of Research.....	68
Third Question of Research.....	68
Recommendations.....	69

BIBLIOGRAPHY

List of Abbreviations

BAFTA:	British Academy Film Awards
CAC:	Cyberspace Administration of China
COVID-19:	Coronavirus Disease 2019
ECHR:	European Convention on Human Rights
ECtHR:	European Court of Human Rights
HRC Lab:	Human Rights Investigation Centre Lab
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICT:	Information and Communication Technology
MDGs:	Millennium Development Goals
NetzDG:	The Network Enforcement Act
RTL:	Radio Television Libre des Mille Collines
UDHR:	Universal Declaration of Human Rights
UGC:	User-Generated Content
UN:	United Nations
UNHRC:	United Nations Human Rights Council
UNESCO:	United Nations Educational, Scientific and Cultural Organization
URL:	Uniform Resource Locators
WWW:	World Wide Web

CHAPTER I

Introduction

The following chapter outlines the background of this research, as well as the problem statement, research questions, purpose and significance of the study including the methodology used and limitations faced while conducting this research.

Background and Statement of the Problem

The world is dynamic, characterized by constant and rapid change. Owing to the pervasiveness of Information and Communication Technology (ICT) the human experience has undergone a massive revolution. The glaring impact of modern-day technological innovations on human lives as well as communities is unprecedented. The technological convergence of communication and computing over the past decades has developed and thrived. The internet together with the World Wide Web (WWW) as well as mobile communications have turned out to be an inherent part of the contemporary world as well as the lives of its members. As a result, the experiences of everyday life have been absorbed into a new reality with notable differences from the normal realities that people have existed in for years. Thus, the ubiquitous use of ICT platforms has created a virtual cyberspace which supplements normal reality and has grown into an indispensable part of many lives.¹ The internet has evolved from serving the purpose for which it was created in the 1960s to become an integral component of daily life in homes, offices, businesses as well as factories, to the extent that envisioning life without the internet is a difficult task. Even toddlers get accustomed to the culture of technology before being admitted into school and learning the alphabet.² From birth, online activities are part of the lives of young people and as such these activities are presumed to be in the same class as oxygen, water or electricity as a necessity for modern life.³ As the largest network of networks worldwide, a considerable amount of the global population access and navigate it with ease.⁴ In

¹Ilya Levin and Dan Mamlok, 'Culture and Society in Digital Age' (2021) 12(2) Information p68

²Jonathan D James, 'The Internet: Friend, Foe or Target', in Jonathan D James (ed), *The Internet and the Google Age Prospects and Perils* (Research-Publishing.net 2014) p155

³Neil Selwyn 'The Internet and Education' (Openmind BBVA)

<<https://www.bbvaopenmind.com/en/articles/the-internet-and-education/>> accessed 20 May 2022

⁴According to Datareportal in January 2022, 4.95 billion people out of the 7.91 billion in the world used the internet. This makes for 62.5 per cent of the world population. See Datareportal, 'Digital Around the World' <<https://datareportal.com/global-digital-overview>> accessed 30 December 2022

reality, both life and society are structured around the internet.⁵ In the world of today, an indispensable role is played by the internet in different fields ranging from social life, to work and leisure time.⁶ Access to information is at the centre of this role⁷ as immeasurable forms of information and knowledge can be retrieved with ease.⁸ In various ways, no aspect of modern-day society can easily be discussed without taking the internet into account. The lives of many are scrupulously saturated with digital technology so much so that the differentiation between being online and offline seems not to be appropriate for a situation where the internet is implicitly always on.⁹ The World Wide Web has drastically revolutionized modes of interaction, working, shopping and even participation in politics.

As a means of communication, the internet creates an unprecedented environment which supports the expression of ideas, connection as well as association between people and the exercise of human creativity and innovation.¹⁰ Social media is the major means of communication on the internet. People from different age groups expend a significant of their time engaging in social media daily and seeing that majority of the world population engage in social media use and interactions, the issue of safeguarding their fundamental rights is of major concern. It is no doubt that digital technology has changed the means for the exercise and violation of human rights globally.¹¹ The internet has proven to be a potent facilitating tool for human rights,¹² in that it has an imperative function in procuring numerous rights.¹³ Notwithstanding, considering the nature of social media and social networking platforms, it appears that users enjoy a lot of freedom seeing as anyone can say or post anything they desire regardless of the content and its effect on other users and their rights. This is problematic because some content can be damaging, jeopardizing the rights of others.

⁵James (n 2)

⁶Yair Amichai-Hamburger and Zack Hayat, 'The Impact of the Internet on the Social Lives of Users: A Representative Sample from 13 Countries' (2011) 27(1) *Computers in Human Behavior* p585

⁷James (n 2)

⁸Levin (n 1)

⁹Selwyn (n 3)

¹⁰Internet Society, 'The Internet and Human Rights: An Internet Society Public Policy Briefing' (October 2015) <<https://www.internetsociety.org/wp-content/uploads/2015/10/ISOC-PolicyBrief-HumanRights-20151030-nb.pdf>> accessed 18 May 2022

¹¹Eileen Donahoe, 'Human Rights in the Digital Age' (*Just Security*, 23 December 2014) <<https://www.justsecurity.org/18651/human-rights-digital-age/>> accessed 18 May 2022

¹²Internet Society (n 10)

¹³Donahoe (n 11)

Thus, the issue seeking to be analyzed and understood is the ways in which the widespread, universal utilization of social media has affected human rights.

Purpose of the Study

Human rights are intrinsically connected to human existence and seeing that the internet, particularly social media has grown to be an indispensable component in human lives, this research aims at examining what ways social media utilization impacts the rights humans possess.

Also, considering that social media is characterized by a certain level of openness and primarily user-generated content, it is evident that users are at liberty to share and receive information. This ability appears to be directly related to a fundamental human right namely freedom of expression. Thus, this research aims to examine the scope of freedom of expression and its exercise on social media.

Furthermore, seeing that the use of social media and the exercise of free expression on social media has led to the need for its regulation, this research seeks to understand the concept of social media content regulation and to discover its effect on freedom of expression.

Summarily, this research aims first to understand the ways social media affects human rights generally and particularly to discover the ways in which the enjoyment of free expression is facilitated and limited by social media.

Research Questions

The objective of the following study is to answer the questions stated below:

- i. What are some of the areas where social media intersects human rights?
- ii. What is the role of social media in facilitating human rights, in what ways does social media impact the exercise of freedom of expression?
- iii. What role does social media regulation play in the exercise of freedom of expression on social media?

Significance of the Study

There is a technological evolution worldwide and this will revolutionize as well as impact all spheres of human life whether positively or negatively. Thus, this research forms a contribution to the existing body of knowledge concerning social media impacts on human rights. It will reveal the ways wherein social media both

facilitates and threatens the exercise of human rights, especially the right to freedom of expression.

Additionally, this research lays a foundation for further study, research and analysis on how to use social media as a means of exercising and upholding human rights. Conclusively, it will also be useful for further study to prevent the abuse of human rights especially freedom of expression by governments and social media platforms in the guise of social media regulation.

Methodology

Qualitative data was utilized in order to discover and gain insights into the various areas where social media intersects with human rights, including the impacts of social media on freedom of expression. More specifically, secondary sources such as books, journal articles, working papers, reports, including newspaper and website articles and even blogs were used. Additionally, primary sources such as case law and statutory law were utilized for data collection.

These sources were accessed from detailed internet searches as well as research databases for academic literature. A major criterion for choosing and utilizing any of the secondary sources was the date. Sources dated prior to the turn of the current millennium were not utilized except in chapter three where an important quote from an older work was used. An additional criterion is the relevance of the source content to this research. These methods were considered ideal for the exploratory nature of this research.

Limitations

One limitation faced while conducting this research was the inability to access some related articles and books due to the requirement of payment before accessing them. Hence, a considerable amount of newspaper and website articles have been utilized for the study.

CHAPTER II

Social Media and Human Rights: A “Bittersweet” Relationship

The following chapter opens up with an overview of social media and human rights. Afterwards, the impacts of social media on human rights is discussed. The chapter concludes by briefly outlining the areas where social media and human rights intersect.

Social Media Overview

This appellation “Social Media” is mostly utilized when making reference to the types of media that entail interactive participation.¹⁴ It is described as “collaborative online applications and technologies that enable participation, connectivity, user-generated content, sharing of information, and collaboration amongst a community of users.”¹⁵ These media include but are not limited to internet forums, sites for sharing photos and videos, social networking sites, podcasts, blogs, platforms for microblogging and so on.¹⁶ Some properties associated with social media are community, connectedness, conversation, participation and openness.¹⁷ By providing an avenue for giving feedbacks and disseminating information, social media encourages participation among its users. Consequently, a collaborative, participatory culture has been created and as such users comfortably express themselves, create and share their inventions and communicate with different people from all parts of the world. Social media has initiated a platform that facilitates online communication for the global community. Conversations are made instantaneously, making room for discussion, debate and collaboration among users while many others watch, listen and learn. Social media users are free to share content, inventions, ideas, opinions, information and personal details.¹⁸

The inception of social media originated during the fledgling period of the internet when information dissemination and communication was engaged in by

¹⁴Jimmie Manning, ‘Social Media, Definition and Classes of’, *Encyclopedia of Social Media and Politics* (1st Edn, 2014) p1158

¹⁵Alison Henderson and Rachel Bowley, ‘Authentic Dialogue? The Role of “Friendship” in a Social Media Recruitment Campaign’ 14(3) (2010) *Journal of Communication Management* 237, 239

¹⁶ Varinder Taprial and Priya Kanwar, *Understanding Social Media* (Bookboon 2012) p8

¹⁷Anthony Mayfield, *What is Social Media?* (iCrossing 2008) p5

<http://crmxchange.com/uploadedFiles/White_Papers/PDF/What_is_Social_Media_iCrossing_ebook.pdf> accessed 28 December 2022

¹⁸Manning (n 14) p1158

people. However, the amount of people engaged in the use of these earlier platforms was limited because they required expertise for their use. Over time, with the development of the technology, platforms which required no technological background from users were developed, thereby making the services usable by all. This was a landmark in the history of the internet seeing as it became all-inclusive, giving the opportunity for content creation and sharing, response to people, collaboration among users and many more. Thus, no more were users silent spectators of the content being distributed to them. Therefore, this user interaction urged the evolution of social media as it is known today.¹⁹ New ways through which individuals can engage not only with each other but also with the content obtainable on the internet, have been made available through social media.

A world of new possibilities has emerged as social interaction formerly restricted by numerous barriers has experienced a shift to the online world. It can be deduced that apart from staying connected, users have the desire for knowledge acquisition and enhancement, as well as insight gaining into certain subjects to improve their decision making. This factor has made social media inviting for businesses, celebrities, politicians and many other categories of people. Numerous opportunities are made available for customer view assessment, acquisition of new fans and customers, interaction with customers, brand improvement as well as management of online reputation.²⁰ Social media is important. Protest groups use it for the opposition of tyrannical government acts. Not only does it possess the capacity to aid people in search of support to navigate difficult circumstances of life, it also establishes a digital inventory containing the habits of individuals which researchers as well as corporations can utilize. Social media has experienced a growth from an obscure but unique communication medium to a progressively pervasive medium for socializing, organization, research as well as commerce.²¹

Human Rights Overview

Since the concluding half of the millennium, the growing popularity of the notion “human rights” has influenced quite tremendously the social, political,

¹⁹ Taprial (n 16) p6

²⁰ Ibid., p29

²¹ Jeffrey W Treem, Stephanie L Dailey, Casey S Pierce and Diana Biffi ‘What We Are Talking About When We Talk About Social Media: A Framework for Study’ (2016) Vol 10(9) Sociology Compass p768

economic, cultural and even the psychological aspects of the present world.²² As the United Nations put it, “human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.”²³ Human rights are fundamental to the human nature, therefore to live as humans in their absence is rather impossible.²⁴ They have been described as a group of norms through which state as well as non-state actor behaviour towards individuals and groups are regulated. These norms (rights) are based on ethical values considered essential for decent living. They are further integrated into international and national legal instruments where means and measures to guarantee accountability of duty-bearers as well as retribution for victims of human rights violation are listed.²⁵ In short, human rights refer to the privileges people possess simply for being human beings.²⁶

Human Dignity: The Essence of Human Rights

Dignity is a possession of all humans and since a sense of value and worth is offered to humans by it, the existence of human rights is a proof that humans recognize the worth of each other. Dignity is not a single, personal or private sense but is as a matter of fact intrinsic to our shared humanity. Thus, human rights principles were drafted to guarantee the proper and equal respect of the dignity of everyone. In other words, individuals have the freedom to thrive fully, utilize their human qualities like intelligence, talent and conscience and to meet their spiritual and additional needs. Individuals coexist and respect one other with human rights. Thus, it is permissible to state that human rights should not only to be sought for but individuals ought to respect and be responsible for them, because the rights that pertain to an individual, applies also to others.²⁷

²² Sarbani Guha Ghosal, ‘Human Rights: Concept and Contestation’ (2010) Vol 71(4) The Indian Journal of Political Science p1103

²³ United Nations, ‘Global Issues: Human Rights’ (*United Nations*) <<https://www.un.org/en/global-issues/human-rights>> accessed 4 April 2022

²⁴ Rajeev Kumar, ‘Classification of Human Rights’ (2015) 5 IJEMR p756

²⁵ Stephen P Marks, ‘Human Rights: A Brief Introduction’ (2016) Harvard School of Public Health Working Paper <<https://cdn1.sph.harvard.edu/wp-content/uploads/sites/134/2016/07/Human-Rights-A-Brief-Intro-2016.pdf>> accessed 4 April 2022

²⁶ Ghosal (n 22)

²⁷ HURIGHTS Osaka, *Human Rights Education in the Northeast Asian School System: Resource Material* (Asia-Pacific Human Rights Information Center 2013) Ch 1, p15

The Call for Human Rights Protection

Safeguarding human rights became a subject of interest for the international community at the outset of the millennium.²⁸ With the conclusion of the First World War, efforts were made by the international community under the League of Nations²⁹ towards the creation of an international legal framework as well as international monitoring mechanisms for the protection of minorities.³⁰ Following the devastation resulting from World War II, the international community was compelled to create some international instrument to safeguard human life and human rights.³¹ The heinous acts committed in the course of the war served not only as a motivation for the international community to ensure that such acts were never repeated, but also as an incentive to establish an international system of binding human rights protection.³² The institutionalization of human rights initiated an era in which immunity from international scrutiny would no more be enjoyed by states in cases that involved egregious human rights violations like the Holocaust. Consequently, international standardization of human rights norms urged international scrutiny whereby the international community verified the dedication of a nation to safeguard the rights owned by the citizens.³³

The UN and Human Rights Instruments

The United Nations Charter declared that “promoting and encouraging respect for human rights and fundamental freedoms for all” is one of its objectives.³⁴ Although human rights as a subject is not expatiated on in the charter, its predominant impact is found in the idea that instead of human rights to be left at the discretion of public authorities, gross human rights violations should be given responses from the international community. Consequently, the 56th articles of the Charter facilitated a sturdy codification of human rights which resulted in the proclamation of the 1948

²⁸ Ibid., p19

²⁹ The League of Nations is the predecessor of the UN. See United Nations, ‘Predecessor: The League of Nations’ <<https://www.un.org/en/about-us/history-of-the-un/predecessor>> accessed 15 August 2022

³⁰ HURIGHTS (n 27)

³¹ Ghosal (n 22) p1103

³² HURIGHTS (n 27)

³³ Linda Hajjer Leib, *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives* (Brill 2011) p45

³⁴ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at <<https://www.refworld.org/docid/3ae6b3930.html>> accessed 15 August 2022

Universal Declaration of Human Rights (UDHR).³⁵ On December 10, 1948, the UDHR was adopted by the UN General Assembly. The declaration is regarded as the genesis of the contemporary advocacy for human rights. It was the initial step on the way to accomplishing the goal of the international community.³⁶ The declaration happens to be the first to profess liberty, equity and justice, as well as world peace as the foundation upon which the human rights of every individual can be safeguarded without discrimination. Additionally, it stresses the inherent dignity of man and urges cooperation, unanimity and harmony between every state not only to discard discrimination of every kind against all people, but also to create an environment that favours safeguarding the inalienable rights of all. Further discussion on contemporary human rights will prove inconclusive without reference to two subsequent covenants adopted by the UN in 1966, namely the “International Covenant on Civil and Political Rights” (ICCPR) and the “International Covenant on Economic, Social and Cultural Rights” (ICESCR).

The UDHR together with these two covenants comprise that which is dubbed “The international Bill of Human Rights.”³⁷ In fact, human rights and fundamental freedoms have undergone codification into local and international, as well as non-binding and binding instruments concerning nearly all facets of existence.³⁸ For example, the international human rights treaties that address particular rights or right-holders like the “UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment”³⁹ and the “UN Convention on the Rights of the Child”⁴⁰ among others.⁴¹ Regionally, Europe, America and Africa have constructed their different treaties on human rights with different success levels.⁴²

³⁵Leib (n 33)

³⁶HURIGHTS (n 27)

³⁷Ghosal (n 22) p1104

³⁸HURIGHTS (n 27)

³⁹UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol 1465, p 85, available at: <<https://www.refworld.org/docid/3ae6b3a94.html>> accessed 15 August 2022

⁴⁰UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol 1577, p 3, available at: <<https://www.refworld.org/docid/3ae6b38f0.html>> accessed 15 August 2022

⁴¹Leib (n 34)

⁴²HURIGHTS (n 27)

The Impacts of Social Media on Human Rights

Information on Statista holds that in the year 2020, social media was used by more than 3.6 billion people and in a matter of five years, the figures are envisioned to rise to roughly 4.4 billion.⁴³ With these stats, social media becomes a prominent internet activity worldwide. Generally, two and a half hours are spent by internet users on social media each day. For human rights, this implies that social media constitutes a remarkable means through which awareness on human rights issues can be raised and human rights safeguarded.⁴⁴

Social Media, Human Rights Violations and Digital Activism

Social Media possesses strong capabilities for doing good. Consider the Human Rights Investigation Centre Lab⁴⁵ as an example of this ability. The lab was established in 2016, at the department of Law in the University of California, Berkeley as a means for uncovering and verifying human rights violations and possible war crimes. At the lab, students undergo training on how to discover, verify and investigate information in the form of pictures, videos and posts available on social media, bordering on human right challenges that are critical to the present times.⁴⁶ The initial case handled by the lab was one involving the study of a Sudanese video that was utilized later by Amnesty International during a UN convening. Additionally, the lab in collaboration with the Associated Press discovered people killed by security forces in Myanmar and used as ‘tools of terror’⁴⁷ for protesters. Therefore, associations such as the HRC Lab are granted access to a vast array of easily accessible information and evidence about abuses of human rights with the help of social media. Consequently, the disseminators of the information have the assurance that their posts are not existing

⁴³Statista Research Department, ‘Number of Social Network Users Worldwide from 2017 to 2025’ (*Statista*, 28 April 2022) <<https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/#:~:text=In%202020%2C%20over%203.6%20billion,almost%204.41%20billion%20in%202025.>>> accessed 20 May 2022

⁴⁴Emmaline Soken-Huberty, ‘How Can Social Media Help Defend Human Rights?’ (*Human Rights Careers*) <<https://www.humanrightscareers.com/issues/how-can-social-media-help-defend-human-rights/>> accessed 20 May 2022

⁴⁵Human Rights Center, ‘Lab Projects’ (*UC Berkeley School of Law*) <<https://humanrights.berkeley.edu/programs-projects/investigations-lab-projects>> accessed 31 December 2022

⁴⁶Ibid

⁴⁷Robin McDowell and Margie Mason, ‘AP Investigation: Myanmar’s Junta Using Bodies to Terrorize’ *Associated Press News* (New York, 26 May 2021) <<https://apnews.com/article/myanmar-business-b2187c696e428139437778aeab0c43d4>> accessed 14 December 2022

in a void, especially seeing as their lives are endangered in sharing these pieces of information.⁴⁸

Additionally, social media is usually the primary means through which people can raise awareness and discover others with similar values and experiences. An example of this among many is the “#metoo” movement. The #MeToo hashtag was initially conceived in 2006 by Tarana Burke, an activist at the grassroots level working to promote solidarity among disadvantaged young black women that were victims of sexual assault. The hashtag was utilized to advocate “empowerment through empathy”.⁴⁹ The #MeToo Movement did not gain prominence until over a decade after its inception when an actress named Alyssa Milano made a post on her Twitter feed using the hashtag. During the initial twenty hours following the tweet, millions of people emerged with accounts of rape, sexual assault and harassment, particularly against women. The hashtag was disseminated worldwide and was translated into other languages like Spanish and French. Public awareness on the significance of the issue of sexual assault was raised as Google searches on the subject notably increased. Using the hashtag, numerous celebrities such as Gabrielle Union, Debra Messing to name a few, shared accounts of sexual harassment or just the reality of that kind of ordeal.⁵⁰ Red carpet events like the Oscars and BAFTA Film Awards aided in advocating for the cause. Additionally, the #MeToo movement was named the “person” of the year in 2017.⁵¹

Essentially, the #MeToo Movement is representation of the “voice of women” shattering that “wall of silence” encircling the pervasive and “so long tabooed” issue of sexual harassment across every age, profession and setting. With the help of social media, the hashtag went viral, urging women from various backgrounds to open up and discuss their experiences of sexual harassment. Headlines aside, data reveals the wide-spread effects of the movement as numerous women and even men have phoned hotlines, reported incidents of sexual harassment and shared their own #MeToo

⁴⁸Soken-Huberty (n 44)

⁴⁹Laetitia Thissen, “Introduction” in Marcella Corsi, Laetitia Thissen and Giulia Zacchia (eds), *The #MeToo Social Media Effect and its Potentials for Social Change in Europe* (FEPS 2019) p5

⁵⁰ Sara Praeceptor, ‘Understanding the Impact of the #MeToo Movement on Leadership and Corporate Culture, with Regards to Female Inclusion and Value of Voices’ (BBA Thesis, MODUL University 2020) p51

⁵¹ Paula McDonald, *A Great Awakening with Many Dangers: What Has the #MeToo Movement Achieved?* (QUT 2020)

stories.⁵² In addition to initiating the avenue for survivors to open up and share their experiences, the #metoo movement accentuated the necessity for formal anti-harassment policies, engendered the prohibition of non-disclosure agreements that aid influential people in concealing their actions by buying the silence of survivors, created the Time's up Legal Defense Fund, a platform through which survivors have received legal representation and the creation of new legal standards by the International Labour Organization.⁵³ Simply put, in the absence of social media and the power thereof, it becomes difficult to determine the possibility of or time in which society would acknowledge the magnitude of sexual harassment and address it.

Hashtag Activism. A significant hike in social media activism, also known as “Hashtag activism” has occurred within the past few years.⁵⁴ Hashtag activism can be described as a process involving mobilization of widespread support or social media utilization to fight for a cause. The phenomenon has gained popularity as a way to advocate for change and it has the capacity to introduce newer perspectives into national debate. Other than sharing or liking posts as well as re-tweeting tweets on Twitter, hashtag activism necessitates no other action from users as opposed to general practices of activism. These hashtag campaigns have grown into a popular strategy for numerous worldwide socio-political changes and it has proven to be very essential for emergency and crisis response. In advocating for a cause, a hashtag acts as a data tag, creating links between social media users across different platforms for the purpose of engagement in a campaign with messages of concise design. Even though it is a fairly new concept and practice, hashtag activism has garnered worldwide media attention with a large amount of participant “netizens”.⁵⁵ It is employed to address issues such as human rights abuses and justice for victims, environmental and natural disaster awareness, opposition to policies of government that are not people friendly, fund raising, pushing for crime controlling regulations or people-friendly rules and many others. Additionally, advocates for humanitarian causes, environmental issues as well as political and economic debates account for a robust segment of twitter users.⁵⁶

⁵² Thissen (n 49)

⁵³ Sherri Gordon, 'What is the #MeToo Movement?' (*Verywell Mind*, 24 April 2022) <<https://www.verywellmind.com/what-is-the-metoo-movement-4774817>> accessed 14 December 2022

⁵⁴ Soken-Huberty (n 44)

⁵⁵ Netizens is a term used to refer to users of the internet.

⁵⁶ Manash P Goswami, 'Social Media and Hashtag Activism' in Susmita Bala, Manmeet Kaur and Divya Rastogi (eds), *Liberty, Dignity and Change in Journalism* (Kanishka Publishers 2018)

In the last decade, the concept, approach and procedure for organizing social movements and large-scale protests have undergone significant change owing to the expansion and establishment of emerging communications technology. Numerous studies have revealed that social media and the internet are exceedingly useful mechanisms for organizing and aiding offline protests. In this context, social media has emerged as an important mechanism through which participatory behaviour is encouraged, public debates are organized, information disseminated and new participants connected. In reality, most mass protests are birthed online, where isolated actors and organizations gather people on social networks virtually. Through the addition of the hashtag (#) feature, the social media site Twitter has “simplified online campaigns to streamline.”⁵⁷ However, it is worth noting that online activism extends past the known tweets or hashtags. Videos on YouTube for instance have been used as an effective and accessible way through which people can be educated on human rights problems. Furthermore, the digital era has enabled people to seek assistance and help unknown people in need. This type of activism is illustrated by lawyers providing free legal assistance to refugees via social media as well as virtual conversations. This kind of outreach demonstrates the potential of technology because even a decade ago, it would not have been conceivable.⁵⁸

The basic goal for human rights activism is to fight for the rights of repressed and marginalized persons while also attempting to shift political and social discourse. Human rights activism has been modernized and given unprecedented access by the sustained presence of social media in the present world. The playing field has been levelled and the voices of people who are not given airtime on mainstream media have been amplified through social media, showing the vital role it has played in catalyzing this process. Even though the sound of ‘human rights activism’ brings images of adamant protesters wielding placards, the phenomenon has been modernized by the existence of social media. Currently, demonstrations are promoted and mobilized through a flood of hashtags together with stories and posts sharing information as well as the ability to hear different voices and perspectives on a particular issue. The virtual world has created an environment in which many have been educated on real-world

⁵⁷ Ibid

⁵⁸ Zara Baig, ‘How Social Media is Changing the Face of Human Rights Activism’ (*Human Rights Pulse*, 1 December 2020) <<https://www.humanrightspulse.com/mastercontentblog/how-social-media-is-changing-the-face-of-human-rights-activism>> accessed 14 December 2022

issues and empowered to take actions offline. In addition to coordination of action, engagement with personal stories of people experiencing human rights crises has been made possible with social media. The focus of increased activism has been to give previously impersonal news about human rights abuses some depth and humanity. Outsiders have an increased feeling of connection to the cause when firsthand accounts of ongoing problems are shared on the internet. Furthermore, social media has grown into an instrument for independently shifting and reclaiming stagnant narratives by human rights abuse victims as they are empowered to give their personal accounts on their circumstances.⁵⁹ Not only does social media allow people to provide truthful, first-person accounts of occurrences, it has also grown into an important mechanism through which communications about injustice incidences that mainstream media outlets either exclude or present with a hidden motive are exposed.

The Downsides to Social Media Activism

“Slacktivism”

There are major drawbacks in the context of human rights and social media activism. The most obvious is the extreme ease with which social media activism can be limited to social media only. It is quite unfortunate that sharing or liking of posts makes little to no impact in reality. It is useless to create awareness without it resulting in action.⁶⁰ “Slacktivism” is the practice of assisting social causes through social media but in the actual sense, making little difference. It denotes the effortless manner in which people click on online petitions or the pages of social media activists and “feel like they are actually helping”.⁶¹ This shows that social media can be utilized to raise awareness but it is easy for it to stop there.⁶²

On one hand, Social media has been heralded as being crucial to promoting social change through activism and related actions. On the other hand, online activism has been criticized by many.⁶³ Online activism has been condemned as lazy, too easy and naïve in its illusion that a single click can fix pressing issues. This viewpoint

⁵⁹ Ibid

⁶⁰ Soken-Huberty (n 44)

⁶¹ Jane-Marie Fatkin and Terry C Lansdown, ‘ProSocial Media in Action’ (2015) 48 Computers in Human Behavior p2

⁶² Soken-Huberty (n 44)

⁶³ Nolan L Cabrera, Cheryl E Matias and Roberto Montoya, ‘Activism or Slacktivism? The Potential and Pitfalls of Social Media in Contemporary Student Activism’ (2017) 10(4) Journal of Diversity in Higher Education p400

contends that online activism satisfies hedonistic desires like making an impression on the audience. The immediate outcome for offline activism is a substitution effect, thwarting true and relevant participation offline. Hence, the term ‘slacktivism’ highlights the inadequate character of online participation in activism and all such acts.⁶⁴ It underlines the absence of action media activism entails, as it is characterized by discussion of social and human rights issue without any real action taken. While social media activism serves as a potent communication tool to bring like-minded people together,⁶⁵ researchers assert that oftentimes it fails to bring about real-world change and it only succeeds in mere Twitter retweets and Facebook likes and shares.⁶⁶

False Information

An additional problem on the subject of social media activism is the swift spread of false information as opposed to the truth. Researchers in a 2018 study discovered that falsehoods were seventy percent times more likely to be re-tweeted on Twitter. There are a number of reasons to back this fact, one of which is simply the propensity for fake news to be more interesting than the truth. Moreover, in such an emotional field as human rights, users have the tendency to disseminate information with no investigations in the bid to assure their community of their care and concern. Usually, users feel great pressure to comment on issues promptly or run the risk of being perceived as being disengaged from something of great importance. Thus, such a fast-moving environment is incompatible with taking the time to investigate the authenticity of information.⁶⁷

Basically, misinformation in cyberspace is a serious issue seeing as anyone can say anything on the internet and profess it to be fact without evidence. This has the propensity to and in fact has manipulated sociopolitical discourse and induced significant harm to various movements. The most notable example is the alarming dissemination and amplification of false information during the 2020 United States

⁶⁴ Carol Galais and Eva Anduiza, ‘The Slacktivism Crossroad: Causal Relationships Between Online and Offline Political Participation’ (2016) p1 <<https://www.oidp.net/docs/repo/doc38.pdf>> accessed 01 Jan 2023

⁶⁵ Themba Benjamin, ‘Social Media Activism: Limitations and Benefits’ (2018) 4(1) INOSR Arts and Management p34

⁶⁶ Fatkin (n 61)

⁶⁷ Ibid

elections.⁶⁸ It can be difficult to separate fact from fiction on the social media as a result of the enormous amount of false news. Numerous fake news websites have emerged on Facebook specifically for the purpose of discrediting a particular person or disseminating meticulously designed propaganda. Part of the reason for this is the inexpensiveness and accessibility of fake news.⁶⁹

Intersection Between Social Media and Human Rights

Thus, it can be established that social media has two sides to it in terms of human rights. It possesses the capacity to defend human rights or threaten them.⁷⁰ As established above, social media possesses the capability of being used for good. Nonetheless, the connection between social media and human rights is in diverse forms; hence considerations about its impacts can be done through various lenses. It has been propounded that with regards to structure, the dangers presented by social media will always exceed the benefits and as an inevitable effect of corporate conduct, social media remains antagonistic towards human rights.

Social Media and Human Rights Law

At the outset, the link connecting Human Rights Law and social media companies is worthy of scrutiny. Considering that Human Rights Law applies to citizens together with the state, it is rather contradictory that social media and human rights law should have any interaction. The connection between social media and human rights law is an implied one where obligations are stipulated in User License agreements and other laws for social media companies towards their users. Additionally, governments owe the citizens under their authority the responsibility to safeguard their human rights and as such it would be violation of these laws on their part if there is failure to guarantee obedience to legislations among social media companies. Thus, there are numerous cases where governments have brought legal actions against social media companies over the violation of the rights of their citizens. For example, the case brought against Facebook by the Belgian Privacy Commission

⁶⁸ Aljazeera, 'Facebook, Twitter CEOs back in Congress hot seat over US Election' (*Aljazeera*, 16 November 2020) <<https://www.aljazeera.com/economy/2020/11/16/facebook-twitter-ceos-back-in-congress-hot-seat-over-us-election>> accessed 16 December 2022

⁶⁹ Patricia Moravec, Randall Minas and Alan R Dennis, 'Fake News on Social Media: People Believe What They Want to Believe When it Makes no Sense at all' (2018) Kelley School of Business Research Paper No 18-87 <<https://dx.doi.org/10.2139/ssrn.3269541>> accessed 01 January 2023

⁷⁰Soken-Huberty (n 44)

in 2015 where the commission after investigating the recently updated privacy and data collection policies of Facebook, discovered that the practice of using internet cookies to track the online activities of non-users by Facebook as well as their excessive collection of data from users were in violation of Belgian law, compromising privacy rights of their citizens. The Brussels Court of First Instance in 2018 ruled that Facebook was in violation of Belgian cookie and privacy regulation and ordered it to discontinue its practices or pay a fine.⁷¹ Facebook lost the case despite going on appeal and the case eventually landing in the Court of Justice of the European Union.

Social Media and Digital Privacy

Furthermore, Social media is an ingrained function of businesses. Not only does it serve as a platform for mass marketing, it also offers companies the benefits of collecting and using consumer data on a large scale. Social media companies create extremely accurate user profiles through the languages they use, the contents they share and accounts they follow. For third-party companies, these profiles are indispensable as the information therein is utilized by them for more efficient marketing. This process is profitable for third-party companies who gain the ability to make additional sales and the social media companies in question who benefit from the sale of user insights. Notable international human rights instruments such as the ICCPR and ECHR to name a few, guarantee the fundamental right to privacy and with social media gaining greater presence in daily life, efforts are being made by courts to analyse how human rights are affected. Additionally, an increasing body of precedents as well as treaty law that discuss personal data protection rights exists. Evidently, there is an interaction between human rights and digital privacy.

The data collection procedure mentioned earlier may not always entail an interference with human rights. This is because users give their consent to submission of data, thereby authorizing social media companies to create thorough profiles about them when registration of a profile is done by them on these platforms. Nonetheless, the collection and sale of data in bulk with minimal oversight can and as a matter of

⁷¹ Columbia Global Freedom of Expression, 'Belgian Privacy Commission v Facebook Ireland Limited' <

fact, does have hazardous effect on the human rights of many.⁷² The case of the data analytics firm, Cambridge Analytica involved in harvesting the personal data of millions of Facebook users years ago is a notable example of this issue.⁷³ The failure by the social media giant Facebook to protect the privacy of its users is what aided this act by the company. The company went further to utilize the misappropriated data in micro targeting election advertisements by political campaigns, an example of which is the 2016 presidential election in the United States.⁷⁴ This is an infamous illustration of the right to privacy being interfered with as well as fundamental democratic rights.⁷⁵

A counter argument to this could be that this example is merely a single horrific case of a ‘bad egg’. Notwithstanding, it is important to note that gathering and storing data is indispensable to the business practices of such companies as Facebook and because at the time of usage social media profiles do not cost anything, the bulk of their profits are generated by advertising revenue. Thus, the larger the amount of user data sold by social media companies, the better. Social media companies lack sufficient motivation to safeguard the control users have over their personal data and consequently to have their rights safeguarded. There is competition among social media companies to attract third-party companies to advertise on their platforms. Essentially, they compete to provide the most comprehensive user data to these third-party companies. Consequently, a race to the bottom by which rights are jettisoned. Hence, a rebuttal to the above counter argument is the fact that the conduct of the company in question, Cambridge Analytica was facilitated through social media companies business practices.⁷⁶

Social Media and Tyrannical Governments

It has been established that social media is capable of being used as a significant instrument through which governments can be attributed liability for violating human rights by exposing and publishing them. It is no doubt that with the great potential possessed by social media, political protests can be organized, inspired

⁷² Claudia Hyde, ‘Social Media: Friend or Foe of Human Rights?’ (*Rene Cassin*, 2019) <<https://www.renecassin.org/wp-content/uploads/2020/01/Social-Media-Friend-or-Foe-of-Human-Rights-Ren%C3%A9-Cassin-essay-competition-winner.pdf>> accessed 14 December 2022

⁷³ Carole Cadwalladr and Emma Graham-Harrison, ‘Revealed: 50 Million Facebook Profiles Harvested for Cambridge Analytica in Major Data Breach’ *The Guardian* (London, 17 March 2018)

⁷⁴ *Ibid*

⁷⁵ Hyde (n 72)

⁷⁶ *Ibid*

and ignited. However, it is quite unfortunate that this potential has been exploited by tyrannical regimes to violate human rights and needless to say, serious repercussions have been produced by this phenomenon. Take Myanmar for instance, the social media accounts of government and government officials was utilized in the promotion of violence targeted at the Rohingya people, a minority ethnic group experiencing ethnic cleansing, violence and persecution. Right from the top tier of government hatred was instigated, demonstrated by the post on the Facebook page of the former president, Thein Sein, in which the Rohingya people were described as ‘terrorists’ and the military was implored for their eradication. Facebook confessed that it had a part to play in this instigation of violence towards these Rohingya people because it failed to respond to the series of posts and false information that aided in provoking ethnic cleansing in Myanmar.⁷⁷ Also, in Malta, it was discovered through investigations that senior officials, even the Prime Minister in the person of Joseph Muscat, together with his Chief of Staff and additional high ranking staff are members of Facebook groups encouraging violence against journalists and political opponents. These groups contain violent comments, including the dissemination of the personal information of activists advocating for anti-corruption and demands for them to not only be stalked but to also be assaulted physically and sexually. The investigation revealed numerous misogynistic, aggressive and hateful comments. A lot of the comments appeared to be in violation of the “Data Protection Act”⁷⁸ as well as Article 82A of the Criminal Code, in which a six to eighteen-month prison sentence for using statements that are threatening, abusive and insulting for the purpose of inciting violence.⁷⁹ These groups remained online even though they were brought to the notice of Facebook.⁸⁰

Nevertheless, these instances involving government social media utilization for the promotion of hatred and spreading of propaganda must be distinguished from the traditional communication functions of a government. It is not wrong for social media to be utilized by governments to provide information about its policies to the citizenry and perhaps as a tool for participation. Howbeit, because the nature of social

⁷⁷ Ibid

⁷⁸In Malta, protection of data is principally controlled by the “General Data Protection Regulation” (Regulation (EU) 2016/679) (GDPR) which undergone incorporation into Maltese legislation through the “Data Protection Act” (Chapter 586 of the Laws of Malta)

⁷⁹The Shift Team, ‘Investigating Joseph Muscat’s Online Hate Machine’ (*The Shift*, 14 May 2018) <<https://theshiftnews.com/2018/05/14/investigating-joseph-muscats-online-hate-machine/>> accessed 14 December 2022

⁸⁰ Hyde (n 72)

media is pervasive, governments are empowered to perpetrate human right violations on a considerably larger spectrum than what is obtainable through conventional media. In Rwanda, militias supported by the government instigated genocide against the Tutsis by deploying the airways of the Rwandan radio-station, “Radio-Television Libre des Mille Collines” (RTLM).⁸¹ In like manner, social media is being deployed by governments in the present day to incite and promote the abuse of human rights. Concurrently, social media companies recognize that in taking relevant steps to eliminate hate speech sponsored by states from their platforms, their relationship with governments are at risk of jeopardy and as such their market access will be limited. Instead of human rights monitoring authorities, social media companies are chargeable to their stakeholders for more earnings; thus, in cases such as that of Myanmar and Malta the incentive is the facilitation of these abuses of human rights. Although they were formerly perceived as strong tools for ensuring government accountability, Social media companies are thus participating in state power abuse as well as infringements of human rights.⁸²

Conclusion

From this chapter, it has been established that social media serves as a vital tool for human rights advocacy, though some downsides have been identified. Additionally, the existing connection between social media, human rights law and digital privacy have been considered. Lastly, the possibility of social media utilization by tyrannical governments for spreading propaganda is discussed. The next chapter will go into freedom of expression as a right, examining its scope, legal codifications, importance and its exercise on social media.

⁸¹ Jolyon Mitchell, ‘Remembering the Rwandan Genocide: Reconsidering the Role of Local and Global Media’ (2007) p6 <<https://www.globalmediajournal.com/open-access/remembering-the-rwandan-genocide-reconsidering-the-role-of-local-and-global-media.pdf>> accessed 14 December 2022

⁸² Hyde (n 72)

CHAPTER III

Freedom of Expression and Human Rights

Generally, freedom of expression is conceived as the notion that everyone is entitled to the right to freely express themselves via any media or frontier without interferences such as censorship and without fear of requitals such as threats and oppressions. Freedom of expression is not just one of the cornerstones of liberal societies, it is also an indispensable part of a flourishing democracy and it thrives through efficacious rule of law implementation. It is a universal standard guaranteed in local and international human rights instruments, agreements and systems. Freedom of expression has for a prolonged period of time been embraced as a “fundamental human right” and its instantiation in the UDHR is the most symbolic endorsement of the right.⁸³

The UN General Assembly in the course of its initial convening made a declaration stating that,
 “Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated;
 Freedom of information implies the right to gather, transmit and publish news anywhere and everywhere without letters. As such it is an essential factor in any serious effort to promote the peace and progress of the world...”⁸⁴

Legal Provisions

In 1948 when the UDHR was adopted by the UN General Assembly, it offered protection for freedom of expression in Article 19.⁸⁵The guarantee for this right in the UDHR is widely believed to have obtained legal standing as customary international

⁸³Victoria Nash, ‘Analyzing Freedom of Expression Online: Theoretical, Empirical, and Normative Contributions’ in William H Dutton (ed), *The Oxford Handbook of Internet Studies* (Oxford University Press 2013) p2

⁸⁴UN General Assembly, Calling of an International Conference on Freedom of Information, 14 December 1946, A/RES/59, available at <https://www.refworld.org/docid/3b00f0975f.html> [accessed 16 December 2022]

⁸⁵Brittan Heller, ‘Freedom of Expression: A Comparative Summary of United States and European Law’ (2019) Working Paper of the Transatlantic High Level Working Group on Content Moderation Online and Freedom of Expression p3
https://www.ivir.nl/publicaties/download/TWG_Freedom_of_Expression.pdf> accessed 21 Dec 2022

law despite its non-binding effect on states.⁸⁶In fact, the conception of freedom of expression as a norm of customary international law is not only due to its incorporation in the UDHR but also, the profound rate of ratification of the various treaties containing the subject by states.⁸⁷The UDHR in article 19 stipulates that,

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through media and regardless of frontiers.”⁸⁸

On the regional level, following the UDHR, the “European Convention on Human Rights” was the first treaty where the right to freedom of expression was stated. According to section one, article 10 of the ECHR,

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”⁸⁹

Section two of article 10 lays out circumstances that amount to the right being interfered with, stating that, “the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”⁹⁰

Furthermore, Article 19 of the ICCPR provides protection for the right to freedom of expression in terms that are slightly more elaborate than that of the UDHR, although still similar to both the UDHR and ECHR. It states the following;

- “1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of

⁸⁶Centre for Law and Democracy and International Media Support, Briefing Note Series: Freedom of Expression (CID, IMS 2014) p2

⁸⁷Emily Howie, ‘Protecting the Human Right to Freedom of Expression in International Law’ [2018] 20 International Journal of Speech-Language Pathology p12

⁸⁸Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 19

⁸⁹Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos 11 and 14*, 4 November 1950, ETS 5, available at:

<https://www.refworld.org/docid/3ae6b3b04.html> [accessed 21 December 2022]

⁹⁰Ibid

frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with its special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order... or of public health or morals.”

As noted above, both articles 19 and 10 of the ICCPR and ECHR respectively, contain three key tenets namely the right to hold opinions without obtrusions that is the freedom of opinion, the right to seek and receive information that is access to information and the right to impart information, which is freedom of expression.⁹¹

The ICECSR also acknowledges free expression under section 3 of Article 15, stating that, “The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.”⁹²

As stated earlier, current technological advancements in ICT have paved new ways for dissemination of information by individuals to a larger audience. This has impacted quite significantly, citizen involvement and input in political discourse. Thus, it is important that every human right recognized offline ought also to be upheld online, especially the right to freedom of expression among others.⁹³ The significance of freedom of expression on the internet is clearly stated in the 2011 Report of the UN Rapporteur on Freedom of Opinion and Expression. The report examines major trends and concerns relating to the right to seek, receive and transmit information and ideas of all kinds through the internet. The former Special Rapporteur highlights the distinctive and revolutionary nature of the internet, affirming how it can help in the enjoyment of freedom of expression among other rights. The report also shows how

⁹¹Media Defence, ‘The Right to Freedom of Expression Under International Law’ (*Media Defence*) <<https://www.mediadefence.org/ereader/publications/introductory-modules-on-digital-rights-and-freedom-of-expression-online/module-1-key-principles-of-international-law-and-freedom-of-expression/the-right-to-freedom-of-expression-under-international-law/>> accessed 21 December 2022

⁹²UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol 993, p3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> accessed 16 December 2022

⁹³Council of the European Union, *EU Human Rights Guidelines on Freedom of Expression Online and Offline*, 12 May 2014

international human rights norms and standards on the right to freedom of opinion and expression can be applied to the internet as a channel of communication.⁹⁴ Additionally, there exists a substantial amount of both international and regional case law concerning the exercise of human rights including the right to freedom of expression on the internet and social media. An example of such case law is that of *Melike v Turkey*⁹⁵ the ECtHR ruling in this case examined the validity of social media likes from the standpoint of freedom of expression. The unanimous decision of the court was that there was a breach of Article 10 of the ECHR manifested in the dismissal of the claimant who was a contractual employee at the Turkish National Ministry of Education for liking some posts of third parties on Facebook. The posts contained harsh critique of the purported oppressive government activities and maltreatment of pupils in institutions run by their authority. The court described the “like button” on social media as a modern and popular method for the exercise of freedom of expression online, as it represents the desire to support or encourage specific content.⁹⁶

Scope

The freedom of expression right has a wide range of applications and is multi-faceted.⁹⁷ It is both individual and collective in nature and necessitates positive and negative obligations from states. As stated in Article 19 of the UDHR and other international instruments in which protection for freedom of expression is given, freedom of expression predominantly protects three interconnected elements namely; “the right to hold opinions without interference, the right to seek and receive information and the right to impart information and ideas of all kinds through any media and regardless of frontiers.”⁹⁸

⁹⁴UNGA ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue’ (2011) A/HRC/17/27

⁹⁵ *Melike v Turkey* App No 35786/19 (ECHR, 15 June 2021)

⁹⁶ T McGonagle, ‘Melike v Turkey (ECtHR, 35686/19) - Social Media ‘likes’ and Freedom of Expression: the ECtHR’s Tentative Considerations’ (European Human Rights Cases Updates, 22 Nov 2021) <https://www.ehrc-updates.nl/commentaar/211792?skip_boomportal_auth=1> accessed 23 January 2023

⁹⁷Centre for Law and Democracy (n 86)

⁹⁸ Katie Bresner, *Understanding the Right to Freedom of Expression: An International Law Primer for Journalists* (IHRP, JHR 2015)

The Right to Hold Opinions

In General Comment No 34 on Freedom of expression, the UN Human Rights Committee made an assertion that “the right to hold opinions without interference” involves the right to switch between opinions at any time and for any reason. All forms of opinions whether religious or moral, political, scientific or historic. Exceptions and limitations are not allowed and constitutionally, the Article 19, paragraph 1 is always in opposition of criminalizing the expression of an opinion. Additionally, certain acts like stigmatization, harassment and intimidation, as well as the arrest, detention and incarceration of a person because of their opinion are in opposition to paragraph one. Nonetheless, “the right to hold opinions” can be limited in situations where the expression of an opinion is in breach of the legal justifications under which restrictions are permissible. For example, in *Faurisson v France*⁹⁹ it was held that the expression of an opinion motivated consolidation of anti-Semitic or racist feelings, necessitating limitations for protecting the rights and reputation of others.

The Right to Seek and Receive Information

Through freedom of expression, all citizens have the ability to make contributions to the public sphere and access a diverse information range along with perspectives. This is a fundamental component of the right as it underpins significant concepts of freedom of expression like information access rights held by public bodies as well as diversification of media.¹⁰⁰ Freedom of expression entails all forms of communication that have the capacity for transmission to others, though bound by the terms in Articles 19(3) and 20 of the ICCPR, that criminalize war propaganda along with advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.¹⁰¹

The Right to Impart Information and Ideas of all Kinds

Additionally, the right entails the freedom “to impart information...of all kinds.”¹⁰² The Human Rights Committee posited in General Comment No. 34 that various kinds of information and ideas can be expressed under this right. Some

⁹⁹ *Faurisson v France* (1996) UNHRC Communication No 550/1993

¹⁰⁰ Centre for Law and Democracy (n 86)

¹⁰¹ Bresner (n 98) p27

¹⁰² Centre for Law and Democracy (n 86)

examples include political discussions, campaigning, remarks concerning personal affairs and government policy, human rights discourse, religious discourse, journalism, teaching, cultural and artistic expression as well as commercial advertising in some instances.¹⁰³

A noteworthy point is this; “the right to impart information and ideas of all kinds” as well as the right to express oneself also covers controversial and offensive speech, in addition to generally accepted speech.¹⁰⁴ Obnoxious and dissenting opinions are expressed with no fear of retribution on the basis of this right.¹⁰⁵ Safeguarding unpopular speech is undoubtedly one of the most significant faucets of free expression. The ECtHR in the *Handyside v United Kingdom* case of 1976 illustrated this fact when it pronounced that,¹⁰⁶ “Freedom of expression...is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broad-mindedness without which there is no ‘democratic society’.”¹⁰⁷

The ways of sharing information encompass every form and modes of audio-visual, electronic and internet-based expressions, including spoken, written and sign language, as well as nonverbal expressions examples of which include images as well as pieces of art. Some examples of expressions in written form include books, newspapers, pamphlets, banners and so on. Additionally, the right to freedom of expression is not hindered by frontiers,¹⁰⁸ meaning that its applicable without regard to state boundaries and borders.¹⁰⁹

As stated earlier, freedom of expression is both individual and collective. Individuals possess the right to freely hold their opinions, the right to search out and gather information, also the right to disseminate ideas and information. An additional privilege encompassed therein is the collective right of accessing information related to public interest.¹¹⁰ Thus, states are charged with positive and negative obligations.

¹⁰³ Bresner (n 98) 28

¹⁰⁴ Centre for Law and Democracy (n 86)

¹⁰⁵ Egun-Olu Adegboruwa, ‘Criminalization of the Freedom of Expression’ *The Guardian* (London, 2 December 2022) <<https://guardian.ng/opinion/criminalization-of-the-freedom-of-expression/>> accessed 17 December 2022

¹⁰⁶ Centre for Law and Democracy (n 86)

¹⁰⁷ *Handyside v United Kingdom* App no 5493/72 (ECHR 4 November 1976)

¹⁰⁸ Centre for Law and Democracy (n 86)

¹⁰⁹ Bresner (n 98) p28

¹¹⁰ *Ibid*

On the positive side, states are to ensure an environment which is conducive for the unhindered flow of information and ideas. They are also obligated to set up regulations for access to public information, in addition to fostering conditions that allow communication channels to thrive unrestricted and independently. On the negative side, “the right to seek, receive and impart information and ideas” are not to be interfered with by the states unless with the permission granted under international law.¹¹¹

Significance of the Right

It is impossible to overemphasize the significance of freedom of expression. In the landmark case from the ECtHR; *Lingens v Austria*,¹¹² it was asserted that “freedom of expression...constitutes one of the essential foundations of a democratic society and one of the basic conditions of its progress and for each individual’s self-fulfillment.” Despite this fact, freedom of expression is not limitless since it is subject to legal constraints and limits. Certain rights safeguarded under the ICCPR and other instruments may either support or contradict the right to free expression. Some of such rights include the right to a fair trial, the right to freedom of conscience and religion as well as the right to privacy. In the event of such a conflict, examination and assessment must be done against the backdrop of the particular situation.¹¹³ Additionally, the right to freedom of expression stretches to all other kinds of rights that aid people in communicating and putting their views, ideas, opinions or information into concrete actions. It is inviolable and inherent as it cannot be separated from human existence. Therefore, freedom of expression is guaranteed and safeguarded so long as the right to life is in existence.¹¹⁴

Even though freedom of expression has been acknowledged as a primary virtue by numerous political systems all through history, there are different normative theories outlining the reason for its importance. One argument is the conception of freedom expression as the foundation of individual liberty as well as self-fulfilment. The assertion of this notion is that human liberty and its value as well as freedom of choice; together with the importance of plurality and respect for it are the basis upon

¹¹¹ Centre for Law and Democracy (n 86)

¹¹² *Lingens v Austria* App no 9815/82 (ECHR, 8 July 1986)

¹¹³ Bresner (n 98) p26

¹¹⁴ Adegboruwa (n 105)

which freedom of expression is grounded. Therefore, freedom of expression is posited as a means to an end as it is among the primary conditions for self-fulfilment in the society and is worthy of maximum protection by society.¹¹⁵

A different school of thought underlines the indispensability of freedom of expression in obtaining and advancing knowledge and the pursuit of truth. The work of John Stuart Mill, the famous English philosopher is fundamental to this notion. Mill held that, “The peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they’re deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.”¹¹⁶ In essence, Mill is asserting that even unpopular and off-putting opinions are entitled to protection because they are given the opportunity to be tested. Another popular quote associated with this school of thought is “The cure for bad speech is more bad speech.”

Other theories conceive freedom of expression as a prerequisite for democracy, therefore the liberty to express and obtain information and ideas that are relevant to society and politics is emphasized. Freedom of expression is significant; in that it encourages participation in politics and there is the opportunity for citizens to enlighten themselves on issues of public concern. For this theory, attention is given to the press and media owing to their role as the forum for deliberation as well as the means through which the public gets informed. Freedom of expression is also conceived as a mechanism for checking against abuse and overreach in the government. Under the theories related to this, the dangers of government interference in speech related issues, including the importance of the creation of space for speech that involves criticism of government actors.¹¹⁷

Essentially, freedom of expression is vital for dignity, human advancement, self fulfilment as well as the pursuit of truth. It is also an essential requirement for democracy as well as good governance. Freedom of expression acts as an enabler for unrestricted discourse on political rivals. Concerns with authorities can be raised by citizens and emerging policies as well as regulations can undergo thorough scrutiny

¹¹⁵Heller (n 85)

¹¹⁶John Stuart Mill, *On Liberty* (Rowman & Littlefield Pub Inc, 1859) Ch 2

¹¹⁷Heller (n 85)

with the aid of freedom of expression. In fact, free speech heightens the quality of government because with its help, honesty and competency on the part of the government is guaranteed. In other words, democratic values face risks when the free flow of information and ideas is hindered.¹¹⁸

In the 1999 case of *Constitutional Rights Project and others v Nigeria*,¹¹⁹ the African Commission asserted that, “Freedom of expression is a basic human right, vital to an individual’s personal development and political consciousness, and to his participation in the conduct of public affairs in his country.”¹²⁰ Years later, in the case of *Ghazi Suleiman v Sudan*,¹²¹ the commission recognized the “fundamental importance of freedom of expression and information as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms.”¹²² In the *Chavunduka v Minister of Home Affairs* case of 2000,¹²³ the supreme court in its decision, enunciated the various roles freedom of expression plays in a democracy. In the words of the court,

“Freedom of expression has four broad special objectives to serve;

(i) It helps an individual to obtain self-fulfillment;

(ii) It assists in the discovery of truth, and in promoting political and social participation;

(iii) It strengthens the capacity of an individual to participate in decision making; and,

(iv) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.”¹²⁴

Considering the language of the UDHR (article 19), ICCPR (article 19) and ECHR (article 10), the right to freedom of expression is first an individual right with close links to the freedom of conscience and opinion of the individual. However, as the list unfolds, it becomes clear that there are widespread social benefits afforded by freedom of expression. It is essential to the entire functioning of democracy. It also guarantees unrestricted exchange of ideas, including accountability of authorities.¹²⁵

¹¹⁸Centre for Law and Democracy (n 86)

¹¹⁹*Constitutional Rights Project v Nigeria* (1999) ACHPR Comm 148/96 (1999) ACmHPR

¹²⁰*Ibid*

¹²¹*Law Office of Gazi Suleiman v Sudan* (2003) ACHPR Comm 228/96 (2003) 2 ACmHPR 430

¹²²*Ibid*

¹²³*Minister of Home Affairs and Others v Watchenuka and Another* [2003] 010/2003 ZASCA 142

¹²⁴*Ibid*

¹²⁵Southern Africa Litigation Centre and Media Legal Defence Initiative, *Freedom of Expression: Litigating Cases of Limitations to the Exercise of Freedom of Speech and Opinion* (2016) Ch 2

An incisive overview about the connection between freedom of expression and democracy was given by the Indian Supreme Court in the case of *Gandhi v Union of India*. It was stated by the Court that, “Democracy is based on a free debate and open discussion for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.”¹²⁶ Additionally, the ECtHR acknowledged the value of free expression for a democracy in the *Handyside* case.¹²⁷

The significant weight accorded to freedom of expression under international law and associated rhetoric is not just a philosophical or ideological issue. From empirical observation, it can be deduced that freedom of expression is necessary for the human rights system as a whole to operate effectively. Occasionally, freedom of expression has been referred to as a multiplier or meta right owing to the role it plays in the facilitation of the enjoyment of numerous rights. If ideas are not being exchanged, political participation rights would be pointless. Excluding the right to engage with others from the right to assembly and association would have little meaning. This link to other rights is not limited to political and civil rights but also to economic and social entitlements such as health and shelter. Although this seems unlikely at face value, further examination reveals the impossibility of enjoying these rights with the absence of respectful transmission and reception of information between the duty bearer and rights holder; and without the rights holder being able to take part in making decisions that concern their welfare.¹²⁸

Moreover, politics and democracy are not the only areas where freedom of expression is significant; media freedom is another area. Amartya Sen, an economist and Nobel prizewinner made an assertion that countries with the existence of freedom of the press do not experience famines. Essentially, freedom of expression, which encompasses freedom of the press serves as a prerequisite for the exercise of other freedoms such as the right to freedom of religion or belief, the right to education as well as the right to take part in cultural life. It has been argued that the aforementioned

¹²⁶ *Maneka Gandhi v Union of India* AIR 1978 SC 597

¹²⁷ Southern Africa Litigation Centre (n 125)

¹²⁸ Michael O’Flaherty, ‘Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee’s General Comment No 34’ (2012) 12 Human Rights Law Review p627

rights cannot be exercised if the cultural values and religious beliefs owned by individuals are not expressed without hindrance through any means, whether in writing or verbally. Additionally, the right to education is greatly dependent on freedom of expression because research which is a key aspect of standard education would be unsuccessful if researchers are restricted in dispatching their various views and discoveries. Also, without freedom of expression, students cannot be presented with the information to express their opinions which is an essential part of their development.¹²⁹

Numerous actors have highlighted the importance of freedom of expression. For example, the joint message which the former UN Secretary-General Ban Ki-moon, and the former Director-General of UNESCO Irina Bokova issued on World Press Freedom Day in 2014. In the message, the unhindered enjoyment of free expression by all peoples was deemed necessary for the successful implementation of the long-term sustainable development agenda following the Millennium Development Goals (MDGs) set to end in 2015. Their statement also pointed out the indispensability of the right to the rule of law, democracy, transparency and accountability, including human dignity, social progress and inclusive development.¹³⁰

The history of freedom of expression is lengthy and is influenced by political, economic as well as cultural developments. Technological revolutions have a profound influence on this right and this can be seen from the emergence of the printing press, to radio broadcasting and unto the advent of digital technologies. New questions emerge alongside every stage of evolution in the communication landscape, regarding the most appropriate way the value of freedom of expression can be expressed so as to safeguard people from new kinds of interferences and improper restrictions from both governments and private parties respectively. Unprecedented opportunities for freedom of expression have been made available through the internet. However, it has produced new types of censorship, regulation and participation threats. Even though the challenges to freedom of expression like hate speech and deception or propaganda

¹²⁹Ogechukwu Sylvia Okeke, 'The Importance of Expression in a Democratic Society' (2018) <https://www.researchgate.net/publication/333967776_The_Importance_of_Freedom_of_Expression_in_a_Democratic_Society> accessed 02 January 2023

¹³⁰UN News, 'On World Day, UN Cites Press Freedom as Critical to Reaching Development Goals' (United Nations, 3 May 2014) <<https://news.un.org/en/story/2014/05/467502-world-day-un-cites-press-freedom-critical-reaching-development-goals>> accessed 22 December 2022

are not new, the present landscape introduces new opportunities as well as questions in response to these challenges in a manner that safeguards fundamental rights.¹³¹

Freedom of Expression on Social Media

The inception of social media has facilitated social change. The freedom for people to express and share their thoughts and opinions have accompanied the emergence of social media. Additionally, people have discovered that through social media their voices are heard by an immensely responsive audience who participate in the conversation and express their opinions. A social shift in which power returns to the masses has been ignited. No more do individuals have to undergo suffering at the hand of the powerful, or be compelled to accept subpar products or services, or spend their lives awaiting justice or resolution of issues. Individuals have the opportunity to state their own account of events and demand their merits.

Eventually, people have discovered that not only can social media solve their minor issues but it offers them the opportunity to influence decision-making by means of collaboration. People have become influencers within their network and in their own rights, some more than others. A difference is being made by them, whether in simple issues such as product recommendation or more significant ones such as garnering support for a public cause. These are presently known as ‘Social Influencers.’ Through the shift in public opinion as well as the declining returns from the traditional advertising and marketing systems, authorities such as politicians, media outlets, corporate houses and even public figures have come to acknowledge the power and efficiency of social media. While a number of them have embraced social media as it has become the means through which they or their businesses are made compatible with consumer needs, some others clearly misunderstand it and others are still on the fence, wondering if it’s worth the risk.¹³²

Essentially, the internet as well as social media have grown into indispensable communication tools through which the exercise of the right to freedom of expression as well as the dissemination of information and ideas have been made possible. A significant role has been played by the internet, more specifically social media, in the burgeoning global coalition of individuals calling for evolution, social equity, inclusivity and accountability of leaders as well as respect for human rights in recent

¹³¹Heller (n 85)

¹³²Varinder Taprial and Priya Kanwar, *Understanding Social Media* (Bookboon 2012)

times. It is apparent that social media possesses both emancipation and empowerment abilities for individuals, irrespective of their social status. Millions of publishers, as it were, that can evade the traditional mass media have been produced on social media. It can be argued that this is only favourable for freedom of expression, including freedom of thought. These publishers are unaffected by filters that exist on traditional media platforms such as political bias, censorship or editorial control. Thus, it is possible to deduce that “freedom of expression in its purest form” is facilitated by social media.¹³³

Essentially, users on social media become global publishers. The speed with which any content is disseminated via social media is extremely high such that oftentimes it raises concern, particularly when the content in question is potentially slanderous or provocative. Unlike traditional media where the information is edited in conformity with the policies of the media house before publishing, social media content goes viral instantly with minimum editing. Consequently, a message that is capable of being tailored or interpreted in conformity to the requirements of the source has the potential to affect the envisaged recipients immensely, seeing that both the sources and recipient can easily access social media.¹³⁴ Platforms such as Twitter and Facebook act as enablers of uncensored expression because they are platforms for user speech as compared to those that are for the owners, employees or political views of a media organization. Therefore, it is clear that traditional media organizations cease to possess control over the ways in which the discovery as well as facilitation of information collection, dissemination or transmission or even the manner in which opinions and ideas are expressed. For example, the demise of Osama Bin Laden circulated via Twitter prior to it being reported in newspapers. Also, the case of the famous Nigerian gospel singer Osinachi Nwachukwu and how she was a victim of domestic abuse which eventually took her life seemed to have spread like wildfire on social media before traditional news outlets. Additionally, information concerning American surveillance programs was revealed to a blogger by former United States

¹³³Peter Coe, ‘The Social Media Paradox: An Intersection with Freedom of Expression and the Criminal Law’ (2015) 24 Information & Communication Technology Law p16

¹³⁴Greeshma Govindarajan and Nanditha Ravindar, ‘Freedom of Expression on Social Media: Myth or Reality’ (2016) 7 GMJ Indian Edition p1

NSA intelligence contractor, Edward Snowden because of his distrust in the “New York Times” newspaper for publication of the information.¹³⁵

The Paradox of Social Media

It is true that social media makes room for the exercise of freedom of expression in its purest form. It has also been established that social media serves as an avenue through the opinions and thoughts of people on any given issue can be expressed. There have been several occasions where social media has been praised for the significant role it played in the subversion of authoritarian governments, (for example the Arab Springs) or mobilization of activists to address various problems in society.

However, some issues arising from social media usage are in opposition to this idea of a more authentic form of free expression. Such issues undoubtedly create concerns related to the right to privacy and reputation of individuals, as well as their safety from harassment, bullying and other harsh or threatening acts. One of such issues is that oftentimes users have little or no control over their audience. Twitter for example, allows for retweeting of a post made by another user. Additionally, screenshots of conversations, tweets and pictures can be taken, stored and reposted on another social media platform by users. While the instant process of posting a tweet or a picture on social media promotes “freedom of expression in its purest form”, retweets and screenshots of these posts and their dissemination on other platforms takes away the control users have who sees their pictures and posts. As a result, their right to express themselves is undermined.¹³⁶ A few other issues demonstrating the paradoxical character of social media include cyber-bullying or trolling, revenge pornography,¹³⁷ and hate speech. For states, social media can constitute an unbridled threat. This is because in some cases such as the riots that took place in the UK following the killing a suspect by a police officer, participants in the riot were said to have utilized social networking sites to organize public disorder throughout London and other locations. This amounted to criminal prosecutions and convictions.¹³⁸ These

¹³⁵Marvin Ammori, ‘The “New” New York Times: Free Speech Lawyering in the Age of Google and Twitter’ (2014) 127 Harvard Law Review p2259

¹³⁶ Coe (n 133) at p14

¹³⁷ Ibid., 16

¹³⁸ Dominic Mcgoldrick, ‘The Limits of Freedom of Expression on Facebook and Social Networking Sites: A UK Perspective’ (2013) 13(1) Human Rights Law Review p130

issues arising from social media have led to calls for regulation and censorship by governments.

Conclusion

After considering the right to freedom of expression in considerable detail, the exercise of the right on social media is considered. From this chapter it has been established that social media has facilitated freedom of expression to a great extent, in that people can express themselves on both personal and political issues. Nonetheless, the exercise of free expression has amounted to other vices which have further led to desires for regulation and censorship of social media. This will further be discussed in the next chapter.

CHAPTER IV

Social Media Regulation and Freedom of Expression

The following chapter considers the concept social media regulation, highlighting the necessity for content moderation. Furthermore, it looks at the various forms of social media regulation before considering the concerns of the United Nations and its human rights approach to the subject of social media regulation to conclude.

Thus far, it has been established that immense power lies in social media. Originally, social media was created as a means of connection between people and their friends and loved ones. However, it appears that there has been a gradual regression from this foundational goal. It has become quite glaring that social media can be utilized for negative purposes. In present times it is typical to encounter hate speech, fake news and content encouraging violence as one scrolls through their news feed. Some questions have risen in this context namely, should these contents be left on these platforms or should they be gotten rid of? How do these platforms make the differentiation between what is appropriate and what is not? Are their decisions consistent and accurate? Additionally, there is a bigger question which is the issue of whether or not the content being removed by social media platforms is enough or excessive.¹³⁹

Content Moderation

For social media platforms like Twitter, Instagram or Facebook, acting as the custodians of social media while simultaneously being the centre of self-expression and user-generated content is a major challenge in present times. On a daily basis, millions of people with various perspectives are allowed by these social media platforms to express the thoughts and ideas they hold on a variety of topics. A number of these views are perceived by most users as offensive, hurtful or extreme. On one hand, what is demanded by users is the free expression of the opinions they hold on current political, social and economic issues on social media platforms without interference and certainly without these opinions being tagged inappropriate. On the other hand, these same users detest content which they perceive to be inappropriate, sensitive, hurtful or extreme. Thus, in order to safeguard individual users and their

¹³⁹ Greyson Young, 'How Much is too Much: The Difficulties of Social Media Content Moderation' (2021) 31 Information & Communications Technology Law p1

interests, platforms in one way or another regulate content through the removal of posts which may be considered as extreme by users.¹⁴⁰

James Grimmelman in his article titled “The Virtues of Moderation” described moderation as “the governance mechanisms that structure participation in a community to facilitate cooperation and prevent abuse.”¹⁴¹ Therefore, moderation of content essentially has to do with the detection, assessment as well as the interventions undertaken on content or conduct considered to be objectionable by a social media platform or any other information intermediary. It also includes the rules imposed, the necessary human effort and technology, as well as the underpinning systematic processes pertaining to adjudication and implementation.¹⁴² Simply put, Content moderation is the systematic process employed to ascertain if user-generated content (UGC) shared on social media, internet sites and other online channels are appropriate for a particular website, region or even jurisdiction.¹⁴³ Content moderation is widely utilized as a medium for addressing numerous issues that originate from the activity of users in the online environment.¹⁴⁴ Presently, a variety of strategies are implemented by companies for content moderation. Numerous tools are utilized for the enforcement of content policies and removal of objectionable content and accounts.¹⁴⁵ Moderation depends on user-generated content and oftentimes it is ‘outsourced and opaque by design’.¹⁴⁶ It is among the most prevalent duties of social media platforms because of its importance in deciding the nature of content encountered by users.¹⁴⁷ In other words, it is the determinant of what content is removed, hence what users can share and view.¹⁴⁸ It has been described as the principal commodity offered by social media platforms. Content moderation highlights some questions concerning the extent to

¹⁴⁰ Yi Liu, T Pinar Yildirm and Z John Zhang, ‘Social Media, Content Moderation, and Technology’ (2021) <<https://doi.org/10.48550/arXiv.2101.04618>> accessed 02 January 2023

¹⁴¹ James Grimmelman, ‘The Virtues of Moderation’ (2015) 17 *Yale Journal of Law & Technology* p47

¹⁴² Tarleton Gillespie and others, ‘Expanding the Debate about Content Moderation: Scholarly Research Agendas for the Coming Policy Debates’ (2020) 9(4) *Internet Policy Review* p2

¹⁴³ Sarah T Roberts, ‘Content Moderation’ *Encyclopaedia of Big Data* (2018)

¹⁴⁴ Council of Europe, Content Moderation Guidance Note, (Adopted by the Steering Committee for Media and Information Society (CMDSI) at its 19th Plenary Meeting, 19-21 May 2021)

¹⁴⁵ Spandana Singh, ‘Everything in Moderation: An Analysis of how Internet Platforms are Using Artificial Intelligence to Moderate User-Generated Content’ (July 2019) <https://d1y8sb8igg2f8e.cloudfront.net/documents/Everything_in_Moderation_2019-07-15_142127_tq36vr4.pdf> accessed 22 December 2022

¹⁴⁶ Martin J Reidl, Kelsey N Whipple and Ryan Wallace, ‘Antecedents of Support for Social Media Content Moderation and Platform Regulation: The Role of Presumed Effects on Self and Others’ (2022) 25 *Information, Communication & Society* p1632

¹⁴⁷ *Ibid*

¹⁴⁸ Liu (n 140)

which citizens desire private entities, examples of which are social media sites, to engage in regulation of content together with the way freedom of expression is included in content governance practices.¹⁴⁹

It appears that the task of content moderation is a difficult one.¹⁵⁰ According to Facebook co-founder and Chief Executive Officer, Mark Zuckerberg, Social media platforms are forced to establish compromises between fundamental societal principles of free expression and personal security, implementation of laws and privacy, as well as developing open systems versus securing data. He adds that there is usually no correct answer.¹⁵¹ Additionally, Content moderation and platform regulation are gaining popularity.¹⁵² In recent years, regulators, policy makers, social activists, scholars as well as practitioners have taken interest in this rather important subject. It has drawn profound scrutiny from the public as well as regulatory attention. On a broad scale, it affects freedom of expression as well as civil society, political discourse, personal liberty and governmental laws. In addition to this, policy makers, academics and industry experts all place high priority on the issue of the precise manner in which content moderation should be enforced. As a result, it has become a subject of contentious debates because various professionals with different objectives hold different opinions concerning whether platforms should self-regulate or if intervention by the government is necessary for the control of social media content. Summarily, Content moderation is a highly debated subject with significant policy ramifications and as such numerous questions are raised against its backdrop.¹⁵³

Necessity for Regulation

More than half of the global population do not only use the internet but are also active social media users. Regardless of the magnitude and ease of global information and opinion dissemination, internet freedom is increasingly perceived as both a curse and a blessing. While, previously silenced groups have received empowerment for

¹⁴⁹ Reidl (n 146)

¹⁵⁰ United Nations, 'Moderating Online Content: Fighting Harm or Silencing Dissent?' (*United Nations Human Rights Office of the High Commissioner*, 23 July 2021) <<https://www.ohchr.org/en/stories/2021/07/moderating-online-content-fighting-harm-or-silencing-dissent>> accessed 23 December 2022

¹⁵¹ Mark Zuckerberg, 'Big Tech Needs More Regulation' (*Meta*, 18 February 2020) <<https://about.fb.com/news/2020/02/big-tech-needs-more-regulation/>> accessed 23 December 2022

¹⁵² Reidl (n 146)

¹⁵³ Liu (140)

mobilization and evasion of traditional forms of censorship through social media, these platforms have metamorphosed into channels for sharing hate speech and disinformation.¹⁵⁴ An example being the “torrents of racist epithets” faced by three black players in the England soccer team after they missed their penalty kicks in the final game and ultimately the defeat of the team.¹⁵⁵

Despite the provision of a voice for previously marginalized groups and channels through which traditional censorship is evaded, the increase in the amount of individuals on centralized platforms has resulted in intensifying the abuse of freedom of expression because the phenomenon “platformization” has made room for hatred, extremism, abuse and disinformation. For a long time, hate speech continues to be an issue of debate, regulation and court rulings globally, also under International Human Rights Law but existing controversy bordering on its definition and regulation has become severe due to its spread on private platforms. In like manner, particularly following the US presidential election of 2016 as well as the COVID-19 pandemic, the aggressive disinformation disseminations have raised concerns. Such phenomena do not only question the validity of private sites being called “the arbiters of truth and deciders of harms” but also raise reasonable concerns bordering on the appropriateness of broad content moderation and the risks of privatized censorship.¹⁵⁶

Social Media Regulation: A Danger for Freedom of Expression?

Government Legislations

As stated earlier, the gross abuse of freedom of expression on social media in the world of today has given rise to calls for regulation of online content. Consequently, nations are increasingly establishing laws for the regulation of online speech, requiring social media platforms to pull down harmful or illegal user content through intermediary liability, for example the “Network Enforcement Act” (NetzDG) of Germany.¹⁵⁷ Both liberal and authoritarian regimes are increasingly pressurizing

¹⁵⁴ Jacob Mchangama, Natalie Alkiviadou and Raghav Mendiratta, ‘A Framework of First Reference: Decoding a Human Rights Approach to Content Moderation in the Era of “Platformization”’ (November 2021) p2 <https://futurefreespeech.com/wp-content/uploads/2021/11/Report_A-framework-of-first-reference.pdf> accessed 20 January 2023

¹⁵⁵ Becky Sullivan, ‘Three Black Soccer Players are Facing Racist Abuse after England’s Euro 2020 Defeat’ (*NPR*, 12 July 2021) <<https://www.npr.org/2021/07/12/1015239599/prince-william-and-boris-johnson-denounce-the-racist-abuse-of-englands-soccer-te>> accessed 23 December 2022

¹⁵⁶ Mchangama (n 154)

¹⁵⁷ *Ibid*

social media platforms into addressing allegedly harmful content. The NetzDG for instance, obliges social media platforms having users above two million to delete clearly illegal content such as insults, incitement and religious defamation within a twenty-four-hour time frame or they would be faced with a fine of about Fifty Million Euros. This intermediary liability model laid by the NetzDG has been adopted by numerous other countries, some of which include Russia, Belarus, Venezuela and even Turkey.¹⁵⁸

Throughout the past couple of years, Turkish authorities have mostly utilized administrative measures and judicial decisions to block URLs to control online speech. More often than not, international human rights standards have been violated. Owing to the illegal or excessive use of content blocking tools, Turkey was found to be in violation of freedom of expression in numerous proceeding before the ECtHR. The Internet Law in Turkey has undergone numerous legislative amendments following these ECtHR rulings but none has met international standards. Huge amounts of contents have continued to be blocked by Turkish authorities with little concern for the right of the people to receive and the right of content creators to impart information and ideas. It was discovered that more than four hundred thousand internet sites are blocked in Turkey presently. At the request of administrative authorities oftentimes without a court order, local service providers implement these blocking measures. In addition to website blocking, official requests for removal of content on social media platforms are made. Majority of the requests for content removal on Twitter and Reddit come from Turkey. In the past decade, social media companies have face severe consequences owing to noncompliance with official requests from Turkey. Access to platforms such as YouTube, Twitter, including Wikipedia has been barred for extended periods of time.¹⁵⁹

Moreover, additional controversial online content legislation exist globally. Recently, over forty social media related laws have been adopted globally and an additional thirty are being discussed. According to Peggy Hicks, the Director of Thematic Engagement for UN Human Rights, practically all countries that have

¹⁵⁸Jacob Mchangama and Joelle Fiss, *The Digital Berlin Wall: How Germany (Accidentally) Created a Prototype for Global Online Censorship* (Justitia 2019) p3

¹⁵⁹ Orcun Cetinkaya and Atakan Gungordu, 'When National Laws and International Standards are at Odds: Human Rights Responsibilities of Social Media Platforms Under Turkey's New Internet Law' (*International Bar Association*, May 2021) <https://www.ibanet.org/human-rights-responsibilities-of-social-media-platforms-under-Turkey-new-internet-law#_edn4> accessed 02 January 2023

adopted these online content related laws are endangering human rights. The reason for this is these laws are considered by some governments as a means of limiting speech abhorred by them as well as silencing civil society and additional critics. For instance, the 2019 Vietnam Law on Cybersecurity which contains prohibitions on conduct involving distortion of history and denial of revolutionary achievements as well as provision of false information, engineering confusion among citizens and harm to socio-economic activities.¹⁶⁰ Together with the Penal code, the previously stated provision has been utilized to compel removal of posts as well as arrests and apprehension of people expressing criticism. At the onset, Facebook was unwilling to comply with government removal requests but it appears that is no longer the case as they have seemingly accepted to restrict significantly more content, allegedly as a prerequisite for remaining in business in Vietnam.¹⁶¹

Additionally, Vietnam adopted a new Social Media Code which contains prohibition of posts affecting the interests of the state. Similarly, places such as Bangladesh, Singapore, Australia and numerous others have incorporated excessive and vague language like this. The list continues to grow. In May, 2021 the United Kingdom presented its draft Online Safety Bill, containing an overboard principle that allows for the removal of substantial amounts of speech that ordinarily should be legitimized under international law. Considering the racist abuse faced by black football players online at that time, the calls for the legislation to be passed rapidly heightened. Also, there have been major cases of incitement to violence in India, which is undoubtedly a contributory element in current efforts to govern the online space. Early last year, India issued new “Guidelines for Intermediaries” as well as a “Digital Media Ethics Code”. A number of provisions in this new law raise concerns especially those under which non-judicial authorities are enabled make requests for prompt removal of content, requiring that platforms make identification of message initiators and requiring companies to make appointment of local representatives whose prospective liability could jeopardize their capacity to safeguard speech and carry out

¹⁶⁰ Law No. 24/2018/QH14 on Cybersecurity, passed by the National Assembly on 12 June 2018 “Cybersecurity Law Art 4(3)”

¹⁶¹ UN Human Rights Office, ‘Online Content Moderation and Internet Shutdowns’ (2021) <https://www.ohchr.org/sites/default/files/Documents/Press/Press_briefing_140721.pdf> accessed 02 January 2023

operations. Additionally, the law also contains risks restriction for freedom of expression and even the right to privacy.¹⁶²

Social Media Platform Regulation

In recent years, how social media firms moderate user content is being subjected to increased criticism. Oftentimes, these social media companies deal with difficult human rights dilemmas in that, active policing of content considered to be harmful puts protected speech or speech that should be permitted under international law, at risk of being suppressed. The rights to freedom of expression and privacy are negatively impacted in the face of interventions and removal of content. Additionally, it can easily result in censorship.¹⁶³

With each passing year, platform takedown rates are burgeoning as a result of demands coming from the social sector, users and states for platforms to control different kinds of content considered harmful. These legislative measures and the accompanying pressure have fueled a regulatory “race to the bottom”¹⁶⁴ and social media platforms have transformed into the “ultimate arbiters of harm, truth and the practical limits of the fundamental right to freedom of expression.”¹⁶⁵ The extreme growth in content removal within the past few years is an illustration of this fact. For example, over two million pieces of content in the first quarter of 2018 for violation of their “Community Standards on Hate Speech.” Three years later, this figure increased to about twenty-two million pieces of content. On the issue of disinformation, Twitter revealed its removal of over fourteen thousand tweets and confrontation of more than four million accounts that continually shared fake COVID-19 material between May and July 2020 only. Still, the guidelines and viable methods employed for the regulation of content moderation are usually ambiguous, inconsistent and without transparency. The effect of this is detrimental for exercising and protecting the right to freedom of expression by users. Evidently, social media platforms that formerly aimed at increasing the limits of information access and freedom of expression are presently limiting the enjoyment of these freedoms. This is the direct opposite of the incipient guarantee of the internet being an accrescent universal zone

¹⁶² Ibid

¹⁶³ United Nations (n 150)

¹⁶⁴ Mchangama (n 154)

¹⁶⁵ Ibid

for freedom of speech. Thus, one of the major challenges influencing the global exercise of free expression is content moderation by social media companies. Major social media companies are global in nature and this produces notable challenges in the face of decisions about fixing the limits on different types of content.¹⁶⁶

Social Media Shut-downs

Shut downs are a prime tool for controlling online expression, including blocking of particular apps as well as partial or total shutdown of internet access. Restrictions need not always infringe upon human rights, but they must always be reasonable, essential and non-discriminatory. For a restriction to be proportionate it must be the least intrusive option but shutdowns vastly outweigh any necessity. People depend on the internet for their work, health and education, thus shutdowns affect more than simply freedom of expression.¹⁶⁷

In 2021, at least a hundred and eighty-two shutdown instances in thirty-four countries were recorded worldwide by Access Now and the #KeepItOn campaign.¹⁶⁸ Protracted and increasingly targeted internet shutdowns were imposed by governments, using similar rationale for implementation of these blatantly excessive and extreme measures. In numerous nations, obvious attempts to stifle criticisms and subdue opposition were made by authorities through shutdowns. During elections, ongoing conflicts, wars and coups other nations utilized shutdowns as a tool for regulation of information flow.¹⁶⁹ In June last year, the Nigerian government banned Twitter within the country following the deletion of a post shared by the Nigerian president. President Buhari shared a tweet threatening secessionist activities with situations akin to the brutality experienced during the Nigerian Civil War. After the post was flagged by numerous Nigerian Twitter users, the platform did not just remove the post, but it also suspended the account of the Nigerian president for a period of twelve hours on the grounds that the post was in violation of its on abusive behaviour. International actors as well as human rights organizations extensively condemned the

¹⁶⁶ Ibid

¹⁶⁷ UN Human Rights Office (n 161)

¹⁶⁸ Marianne Diaz Hernandez, Felicia Anthonio and Access Now Team, 'The Return of Digital Authoritarianism: Internet Shutdowns in 2021' (April 2022)

<<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>>

accessed 02 January 2023

¹⁶⁹ Ibid

ban on Twitter, asserting that it would destroy democracy by restricting the rights of Nigerians to freedom of expression and access to information.¹⁷⁰

In conclusion, with all these various challenges, social media companies have transformed into “something of a punching bag for everything that goes wrong online” as put by Peggy Hicks. This is seen in the harsh criticisms they face over failure to remove harmful content and similar reactions when they actually do. However, a large portion of this criticism is valid because of the vague and unclear procedures and policies adopted by these companies.

UN Concerns

In 2018 the former UN Special Rapporteur on the promotion and protection of the right to freedom of expression made a report where the issue of user-generated online content regulation was addressed. A structure which centralizes human rights in the moderation of user-generated online content. The report places focus on how states as well as social media firms control content on the internet. The relevant human rights legal framework is outlined in the report and recommended the principles and procedures platforms should use for regulation of content in conformity with human rights law. Before the recommendations, however, the report lays out some of the concerns of the United Nations regarding current content moderation.¹⁷¹

From the findings of the report, it has been discovered that what governments strive to do is influence the content moderation environment of social media companies, while the user agreements of these companies are the premise for individuals to access their platforms. These agreements contain the terms and conditions governing permitted expressions and the manner in which they can be expressed.¹⁷² Oftentimes, states demand restriction from social media companies of content that are evidently illegal with the presumption that they would adhere to the requirements of necessity and legality.¹⁷³ Examples of such content include child

¹⁷⁰ Daniela Kyle, ‘The Battle for Social Media Regulation: Can International Human Rights Bridge the Governance Gap in the digital Space?’ (*Universal Rights Group Geneva*, 28 June 2021) <<https://www.universal-rights.org/universal-rights-group-nyc-2/the-battle-for-social-media-regulation-can-international-human-rights-bridge-the-governance-gap-in-the-digital-space/>> accessed 02 January 2023

¹⁷¹ UNGA ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (2018) UN Doc A/HRC/38/35

¹⁷² Ibid

¹⁷³ International Covenant on Civil and Political Rights (adopted December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 19

sexual abuse illustrations, implied and plausible harm threats as well as stimulation of violence. Further measures such as censorship and criminalization have been undertaken by some other states in order to shape the atmosphere of online regulation. Additionally, states hide under the guise of broadly worded prohibitory regulations regarding extremism, blasphemy, defamation, offensive speech to demand suppression of legitimate speech on online platforms from social media companies. Particularly, on the part of states there is an increased target on content found in online platforms. At the same time, other laws have the capacity to restrict online privacy in such a manner that the exercise of freedom of opinion and expression is restricted. Furthermore, disinformation and propaganda are utilized by states as tools for the limitation of the accessibility and credibility of independent media.¹⁷⁴

Another content moderation issue that is of concern to the UN is the issue of states imposing obligations on social media companies. A number of states charge companies with the obligation to regulate content using complicated or unclear legal standards with no preceding judicial review, not to mention the ultimatum of strict sanctions. An example of this is the 2016 “Cybersecurity Law of the People’s Republic of China”. The law which went into force in June 2017 and is a significant mechanism for cyber censorship China. The establishment of the law is supposedly an attempt by the Chinese authorities to safeguard information security and national interests. The authorities also asserted that the law safeguards the privacy of citizens because companies are mandated to implement measures for the protection of data. However, under the said law pervasive obligations have been laid on every internet company carrying out operations within. The obligations require more intensive implementation of censorship rules from companies and increased stakes for failure to comply. Additionally, the legal obligations of companies to restrict the transmission of ‘prohibited information’ is solidified and codified. Under Article 12 of the statute, internet users are prohibited from utilizing the internet to engage in some vague activities namely, “endangering national security, honour and interest.”¹⁷⁵ Furthermore, Article 47 asserts that transmission of illegal speech by network operators is disallowed and they must take necessary steps to prevent this.¹⁷⁶ Failing

¹⁷⁴ UNGA (n 171)

¹⁷⁵ Art 12 Cybersecurity Law of the People’s Republic of China 2016

¹⁷⁶ *Ibid.*, Art 47

to adhere with legal provisions results in numerous sanctions such as fines, website shutdowns or even rescindment of business licenses.¹⁷⁷ For instance, in August 2017, an announcement was made by the Cyberspace Administration of China (CAC) on their official website revealing their initiation of investigations into the online information exchange as well as the social networking operations of three internet giants in china, namely ‘WeChat’,¹⁷⁸ ‘Sina Weibo’,¹⁷⁹ and ‘Baidu Tieba’.¹⁸⁰

The allegations made by the CAC against the three companies was the inappropriate prevention or removal of such prohibited content as violence, terrorism and defamation among others by the operators of their platforms. Therefore, this amounted to possible violation of the Cybersecurity Law and its corresponding regulations.¹⁸¹ The companies faced a number of fines a month after.¹⁸²

Globally, there appears to be an increase in state requirements for social media companies to monitor and quickly delete user-generated content, instituting systems that are punitive, with the tendency to restrict freedom of expression and democratic societies are no exempted. This is another concern for the UN. In Germany, for example, the “Network Enforcement Act” mandates giant social media companies to eliminate content that are incompatible with stipulated national laws. Accompanying these obligations are significant sanctions in the event of non-fulfillment within extremely short time spans. Furthermore, establishment of legal requirements for active monitoring and filtering of unlawful content has been advocated for by the European Commission for member states. In 2017, Kenya also adopted guidelines for disseminating content via social media the course of elections, in which it mandates

¹⁷⁷ PEN America, ‘Forbidden Feeds: Government Controls on Social Media in China’ (March 2018) <https://pen.org/wp-content/uploads/2018/03/PENAmerica_Forbidden-Feeds-3.13-3.pdf> accessed 02 January 2023

¹⁷⁸ Run by Tencent, “a world-leading internet and technology company,” WeChat happens to be the most prominent social network China owns

¹⁷⁹ A microblogging service frequently considered as the Chinese equivalent to Twitter

¹⁸⁰ A platform for online communication run by the Chinese search engine company Baidu which is frequently considered as the equivalent of Google

¹⁸¹ Faegre Drinker, ‘Recent Enforcement Developments and Trends Regarding China’s Cybersecurity Law’ (August 2017)

<<https://1npdf11.onenorth.com/pdfrenderer.svc/v1/abcpdf11/GetRenderedPdfByUrl/Recent-Enforcement-Developments-and-Trends-Regarding-Chinas-Cybersecurity-Law.pdf?url=https%3a%2f%2fwww.faegredrinker.com%2fen%2finsights%2fpublications%2f2017%2f8%2frecent-enforcement-developments-and-trends-regarding-chinas-cybersecurity-law%3fformat%3dpdf&attachment=false>> accessed 02 January 2023

¹⁸² PEN America (n 177)

social media companies to take down accounts utilized for spreading “undesirable political contents on their platforms” within a day.

When such genuine State concerns as privacy and national security, are taken into consideration, the call for regulation is justified. Nonetheless, these regulations put the right to freedom of expression at risk and pressurize social media companies to the extent that legal content are removed by them in an extensive attempt to circumvent liability. An additional issue with these regulations is the devolution of regulatory responsibilities to private actors lacking fundamental mechanisms for accountability. Usually, complicated factual and legal issues are to be decided by public institutions. They are not to be decided by private actors who are not only engaged in practices that are incompatible with the standards of due process but are also driven primarily by financial motives.¹⁸³

Global Takedowns is another issue of concern to the UN. There have been cases where states have demanded for withdrawal of links, sites and additional content beyond their borders on the grounds that they are in breach of their domestic laws. An example of such case is *Google Inc v. Equustek Solutions Inc.*¹⁸⁴ In this case, Google Inc was ordered to takedown, all the websites of a particular company from its global search engine. This order was made in an interlocutory injunction granted by the Supreme Court of Canada in an underlying case involving an allegation of intellectual property infringement by Equustek the plaintiff against Datalink the defendant, with Google Inc as a third party. It was determined by the Supreme Court of Canada that de-indexing the domain of the defendant from the google search engine worldwide was a necessity for prevention of irrevocable damage to Equustek, thus issuing the injunction was for the purpose of justice. Claims made by Google highlighting the fact that an order for a global de-indexing would not only inconvenience the search engine unfairly but would also violate international comity and freedom of expression were rejected by the Supreme Court.¹⁸⁵ However, a new chapter was opened for the case when Google was granted a temporary injunction by the United States District Court of Northern California to prevent the enforceability of the order made by the Supreme

¹⁸³ UNGA (n 171)

¹⁸⁴ *Google Inc v Equustek Solutions Inc* [2017] SCC 34 [2017] 1 SCR 824

¹⁸⁵ Columbia Global Freedom of Expression, ‘Google Inc v Equustek Solutions Inc (Equustek I)’ <<https://globalfreedomofexpression.columbia.edu/cases/equustek-solutions-inc-v-jack-2/>> accessed 02 January 2023

Court of Canada in the United States. The injunction was issued on the grounds that Google had legal protection as a “neutral intermediary” under Section 230 of the “Communications Decency Act 1996”. Additionally, the courts stated that the Canadian order for Google, an intermediary, to takedown links to the material of a third-party was a violation of “the policy goals of Section 230 and a threat to free speech on the global internet.”¹⁸⁶ This case and its ruling presents disturbing effects on global regulation of the internet. First of all, if all the courts in the world are to claim jurisdiction over the internet, it will not only become heavily regulated with a plethora of potentially incompatible rules, but more authoritarian nations may also adopt their own restrictive laws over information on the internet. If Canadian courts have the capacity to demand implementation of Canadian Law on a global scale from third-party online platforms, nothing hinders repressive regimes having differing views on what constitutes acceptable expression from taking similar action.¹⁸⁷

An additional issue raised by the decision made in the google case is its impact on comity. When the implementation of the content removal order of a particular nation affects the citizens of a different nation across geographic boundaries, basic international law principles of territoriality and international comity are undercut or outrightly contradicted. Even though these issues are a contemporary reality, it is unclear that courts are in the right position to resolve them in such a manner that respects national sovereignty within and beyond territorial boundaries, while safeguarding global information access as well as the right to freedom of expression.¹⁸⁸ Even though it is not a rule of law, Comity is a principle of interpretation which the United Nations in its charter expressed as “respect for the principle of equal rights and self-determination of peoples.”¹⁸⁹ The Court in *Morguard Investments Ltd. V. De Savoye* described it as “the deference and respect due by other states to the actions of a state legitimately taken within its territory.”¹⁹⁰ Courts are

¹⁸⁶ Matthew Renda, ‘Google Scores Injunction in Canadian Censorship Case’ (*Courthouse News Service*, 3 Nov 2023) <<https://www.courthousenews.com/google-scores-injunction-canadian-censorship-case/>> accessed 02 January 2023

¹⁸⁷ Ankita Gupta, ‘Google v Equustek: An Attempt to Domestically Govern a Global Resource’ (*thecourt.ca*, 16 October 2017) <<http://www.thecourt.ca/google-v-equustek-an-attempt-to-domestically-govern-a-global-resource/>> accessed 02 January 2023

¹⁸⁸ Alicia Solow-Niederman and others, ‘Here, There or Everywhere? Assessing the Geographic Scope of Content Takedown Orders’ (2017) Harvard Law School Cyber Law Clinic Working Paper p3 <<https://clinic.cyber.harvard.edu/files/2017/03/Here-There-or-Everywhere-2017-03-27.pdf>> accessed 02 January 2023

¹⁸⁹ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI

¹⁹⁰ *Morguard Investments Ltd v Savoye* [1990] 3 SCR 1077 (SCC)

required under comity to refrain from seeming intrusion across the boundaries of their territories and this cordiality will be reciprocated by other jurisdictions. Supposing Canadian courts commence issuance of universal orders, there exists a genuine possibility that Canadian judgments will not be acknowledged by other jurisdictions especially in cases where the order issued is not in agreement with their regional laws, raising additional enforcement concerns. As a result, the global order poses a significant threat to the principle of comity, because disregard for the sovereignty and integrity of other nations is demonstrated by it. In essence, the court is deciding what information is available to the citizens of other nations, through its order for a de-index of all the websites belonging to Datalink from all the google search engines worldwide.¹⁹¹

Shortly after the *Equustek* case, foreign courts had already begun to cite it. For instance, a court in Hong Kong accepted a case involving a local entertainment mogul against Google over autocomplete suggestions on Google search which reportedly were destructive to his reputation. Alluding to the decision in *Equustek*, the judge issued a global de-indexing order. In a nutshell, it is a concern for the UN that there are calls by states for crossboundary takedowns of sites, links and virtually any additional content purported to be in violation of domestic laws. These calls have raised significant concerns that the right to freedom of expression “regardless of frontiers” will be interfered with by states. The rationale backing these demands would give room for transboundary censorship, to the advantage of the most repressive censors. The UN suggests that the states demanding removal are obligated to make their requests through the regular legal and judicial procedures in every jurisdiction where relevant.¹⁹²

Government demands that are not based on their domestic laws is undoubtedly another issue of concern for the UN. Usually, social media companies make differentiations between submissions for takedown requests of supposedly unlawful content via proper legal processes and those requests based on the terms of service of the companies. Legal removals are applicable mostly only within the jurisdiction demanding for it while removals based on terms of service are applicable worldwide. What has been discovered is that more and more, content takedowns are sought by

¹⁹¹ Gupta (n 187)

¹⁹² UNGA (n 171)

state authorities without the appropriate legal procedures or even via terms of service requests. Specific government units have been created by numerous governments specifically for referring content to social media companies for removal. For example, “The European Union Internet Referral Unit” engages in flagging online content that involve terrorism or violent extremism. It also collaborates with online service providers for removal such content. Similar referral mechanisms exist in Australia. Additionally, it has been reported that in South East Asia political restriction attempts have been made by parties in alliance with governments using terms of service requests.¹⁹³

Furthermore, social media companies are pressurized by states to hasten content removal through unlawful efforts that are often insufficient in transparency. In Pakistan, YouTube faced a three-year ban, pushing google into the establishment of a local version subject to removal demands of “offensive” content by the government. According to reports, Facebook together with Israel took the decision to collaborate in order to monitor as well as remove “incitement” online. Although the components of this arrangement were not publicly disclosed, it was stated by the Israeli Minister of Justice that between June and September 2016, Facebook complied with most of the removal requests for incitement from the government. Such plans for coordination of content actions with inputs from states intensifies concerns that social media companies are in fact performing public duties beyond the purview of the judiciary and other systems for ensuring accountability.

The 2016 “European Union Code of Conduct” on countering illegal hate speech online entails an agreement between the EU and four large corporations namely Facebook, Microsoft, Twitter and YouTube, for content removal. The code of conduct agreement commits them to cooperate with “trusted flaggers”¹⁹⁴ and advocate for independent counter-narratives. Promoting counter-narratives when confronted with extremist or terrorist content may be alluring. However, with the pressure involved in these approaches, platforms risk being transformed into propaganda carriers above recognized spheres of legitimate concern. In principle, every social media company is under obligation to act in conformity with the local law where it conducts business.

¹⁹³ Ibid

¹⁹⁴ A trusted flagger is “an entity that has been awarded such status by a Digital Services Coordinator” Law Insider, ‘Trusted Flagger Definition’
<<https://www.lawinsider.com/dictionary/trusted-flagger>> accessed 02 January 2023

However, commitment to legal compliance can become challenging when confronted with ambiguous relevant state laws that are susceptible to different interpretations or incompatible with human rights law. For instance, laws that prohibit “extremism” without defining the term leave governments authorities with the freedom to coerce companies into content removal under debatable pretexts. In like manner, companies are oftentimes faced with the pressure to conform with state regulations criminalizing any content that is allegedly criticising the state, blasphemous, defaming government officials or false.¹⁹⁵

Internet service providers request adherence to the community standards and terms of service that control expression on their platforms. Users are expected to accept the terms of service of the company in order to use their platforms. These terms of service specify dispute resolution jurisdictions and give control over content and content actions to the company. Content policies are a subdivision of these terms and they provide limitations on what may be expressed by users and in what way it should be expressed. The content policies of most companies are not expressly based on any specific expression regulating body of law like domestic or international law. Usually, the development of content policies involves senior executives, product and public policy managers as well as legal counsel. Additionally, trust and safety teams may be instituted by the companies to tackle such things as spam, fraud and abuse, while terrorist content is handled by counterterrorism teams. Some companies have established means to obtain feedback from independent groups. The rapid growth of user-generated content has prompted establishment of elaborate and dynamic rules. The rules differ based on a number of factors such as company size, revenue and business model, including the brand, reputation, risk tolerance of the platform, as well as the desired nature of user engagement.

In the matter of content moderation standards of social media companies, the UN has a number of concerns. One of these concerns is vague rules. The opaqueness of platform rules that prohibit terrorist and violent extremist content persists and this is amidst all the detailed rules, blog posts and other announcements. The rules fail to clearly state which organizations are classified as terrorist organizations, thereby

¹⁹⁵ UNGA (n 171)

giving the platforms a great amount of latitude in enforcing the rules.¹⁹⁶ Company bans on “threatening or promoting terrorism” as stated by Twitter in its policy for violent organizations,¹⁹⁷ “supporting or praising leaders of dangerous organizations” as stated by Facebook in its community standards,¹⁹⁸ and content that “promotes terrorist acts or incites violence” as stated by YouTube in their policies for violent and graphic content, are all unnecessarily vague. Additionally, it is unclear what constitutes an offence under company guidelines on hate, harassment and abuse.¹⁹⁹

Furthermore, on the issue of hate, harassment and abuse, due to the ambiguity of platform regulations on hate speech and harassment, criticisms have been generated about irregular policy implementation that inflict penalties on minorities while powerful groups with their status are upheld. Civil society organizations as well as users have made reports on violence and abuse against women, harm threats targeted at politically disenfranchised persons, minority races and violently persecuted ethnic groups. There has also been abuse targeted at asylum seekers, refugees as well as migrants. In addition to this, platforms are said to have repressed opposition to authoritarian governments, ethnic cleansing reports and criticisms of racist phenomena and power systems.²⁰⁰ Long-term problems are posed by the scope and intricacies involved in regulating hateful expressions online and this has the capacity to steer companies into restriction of such expressions despite the non-existence of a direct link to negative consequences on the account of the fact that article 20 of the ICCPR describes advocacy for hatred as having connection to incitement.²⁰¹

Another concern for the UN on the issue of content moderation standards is that of context. Emphasis is laid by companies on the significance of context in determining the relevance of general restrictions. Notwithstanding, paying attention to

¹⁹⁶ Angel Diaz and Laura Hecht-Felella, *Double Standards in Social Media Content Moderation* (Brennan Centre for Justice 2021) p5

¹⁹⁷ Help Centre, ‘Violent Organizations Policy’ (*Twitter*, October 2020) <<https://help.twitter.com/en/rules-and-policies/violent-groups>> accessed 02 January 2023

¹⁹⁸ ‘Facebook Community Standards’ (*Meta*) <<https://transparency.fb.com/policies/community-standards/?source=https%3A%2F%2Fwww.facebook.com%2Fcommunitystandards%2F#dangerous-organizations>> accessed 02 January 2023

¹⁹⁹ UNGA (n 171)

²⁰⁰ *Ibid*

²⁰¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 20

context has not stopped the removal of certain content such as challenges or reclaims to racist or xenophobic language, depictions of nudity in spite of their historical, cultural or educational value, documentary and historical accounts of conflicts, war crime evidences and counter speech against hate groups. Time and resource limitations on human moderators as well as overdependency on automation and even the lack of awareness of linguistic and cultural nuance may inhibit meaningful context analysis. Although users are encouraged by companies to replace contentious content with contextual details, it is quite difficult to determine the possibility and efficacy of this recommendation.²⁰²

An additional issue with company standards that is of concern to the UN is real name requirements. A number of social media companies demand for authentic identity with the aim of combating online abuse, while the strategy for some other companies to questions of identity is more flexible. Notwithstanding, the efficacy of these requirements for real names as a means of protection against online abuse is highly debatable. Undeniably, bloggers and activists protecting themselves with pseudonyms have been exposed as a result of stringent requirements for real names, leaving them at risk of serious physical harm. Oftentimes, anonymity online is essential for vulnerable users and their physical security, thus principles of human rights tilt towards safeguarding anonymity, with limitations for identity protection. Therefore, a more commensurate way to protect user rights, reputation and identities would be carefully drafted impersonation rules that hinder users from representing other people in ways that amount to confusion or deception.²⁰³

UN Human Rights Approach to Social Media Regulation

During a press briefing in July 2021, Peggy Hicks, the Director of Thematic Engagement for UN Human Rights mentioned that discourse on the way through which “lawful but awful” online speech should be addressed often results in accusations between states and social media companies, with political and economic interests overshadowing public interests. She stressed the importance of addressing these challenges with strategies that centralize human rights or “human-rights based approaches” seeing as it is the only system with global consensus that will guarantee

²⁰² UNGA (n 171)

²⁰³ Ibid

efficacy in this pursuit, considering the propensity for proliferation of defective laws and negative practices.²⁰⁴

Governments are confronted with the need to ensure accountability and as a result they have increasingly begun regulation of online content.²⁰⁵ It may be admissible for unlawful online content to be opposed by governments. Notwithstanding, this may become justification for limitation of legitimate information and ideas, particularly with ambiguous national security and public order rules.²⁰⁶ For UN Human Rights this trend is alarming with significant implications for public debate and participation. According to Peggy Hicks these laws on online content regulation adopted in the various countries previously mentioned are characterized by similar issues namely, deficient descriptions of what illegal or harmful content constitutes, excessive focus on content removals, deploying regulatory duties to social media companies, enforcement of unreasonable time frames, state officials granted power to take down content in the absence of judicial review and overdependence on algorithms and artificial intelligence. She further stated that making the internet a safer place is achievable without disregarding fundamental rights and a number of recommendations to aid this pursuit were outlined.²⁰⁷

The first recommendation is for governments to prioritize procedures of amplification and restriction of content rather than the content themselves and ensure that actual people, not algorithms examine complicated decisions. The second recommendation is for governments to ensure that the basis for content-based restrictions are precise and narrowly-tailored rules that are necessary, proportionate and non-discriminatory. Furthermore, companies are urged to show transparency in their content curation and moderation methods as well as their information dissemination methods. States also in requesting for content removal or access to user data should be transparent. Another recommendation is for users to have access to potent avenues for challenging inequitable decisions as well as appropriate remedies for instances where their rights are threatened by state or company actions. Independent courts should decide cases concerning lawfulness of content. The final

²⁰⁴ UN Human Rights Office (n 161)

²⁰⁵ OHCHR (n 150)

²⁰⁶ Cetinkaya and Gungordu (n 159)

²⁰⁷ UN Human Rights Office (n 161)

recommendation is to make room for experts and civil society to participate in regulation design and evaluation as their engagement is a necessity.²⁰⁸

Benefits of Human Rights Based Approach

In an interview with Recode²⁰⁹ four years ago, Mark Zuckerberg the founder of Facebook voiced his desire for a procedure that would enable his company to properly portray the beliefs of the community in diverse areas. According to the former Special Rapporteur for freedom of opinion and expression in his report on the promotion and protection of the right to freedom of opinion and expression,²¹⁰ that desired procedure along with the applicable norms are contained in human rights law. He stated that private norms have exacerbated government oversight and produced unstable, unpredictable and risky situations for users, as they differ depending on the business model of each company and their ambiguous claims of community interests. National regulations are unsuitable for companies that require uniform standards for their geographically and culturally diversified users. However, with transparent and consistent application as well as significant inputs from users and civil society, human rights norms offer a framework that makes for the accountability of both governments and companies to users from various countries.²¹¹

Furthermore, the report asserted that forceful normative reactions to excessive restrictions from states are facilitated under a human rights framework, although this is dependent on companies following the same standards. The guiding principles along with the connected body of soft law lay down recommendations for the means through which companies should hinder or reduce government orders for undue removal of content. Additionally, due-diligence, accountability, transparency and remediation principles that inhibit the extent to which platform product and policy development interfere with human rights are established. Companies with commitment to consistent application of human rights norms in all their activities regardless of whether or not it serves their interests will be more successful in seeking governments accountability to the same standards. Moreover, when company terms of service are in alignment with

²⁰⁸ Ibid

²⁰⁹ Kara Swisher and Kurt Wagner, 'Here's the Transcript of Recode's Interview with Facebook CEO Mark Zuckerberg about the Cambridge Analytica Controversy and More' (Vox, 22 March 2018) <<https://www.vox.com/2018/3/22/17150814/transcript-interview-facebook-mark-zuckerberg-cambridge-analytica-controversy>> accessed 02 January 2023

²¹⁰ UNGA (n 171)

²¹¹ UNGA (n 171)

human rights law, it will be difficult for states to coerce them into censorship of content.²¹²

Human rights standards allow for the establishment of an environment that is accommodative of the diverse user demands and concerns of companies while they institute predictable and consistent behavioral guidelines. Human rights law guarantees users that they can depend on fundamental standards for the protection of their expression in addition to what is prohibited by national law. Notwithstanding, human rights law is not so rigid that it compels companies to allow expression that impairs the rights of others or even the capacity for states to safeguard legitimate national security or the interests of public order. Furthermore, for occurrences that have greater online impact than offline, human rights law would provide a widely accepted system for developing user protection tools, as well as familiar vocabulary for states and users to understand their nature, objectives and implementation.²¹³

²¹² Ibid

²¹³ Ibid

CHAPTER V

Conclusions and Recommendations

In this concluding chapter, the research questions outlined at the outset will be answered according to the findings of the research.

First Question of Research

What are Some of the Areas Where Social Media Intersects Human Rights?

In essence this question seeks to know the areas where social media and human rights cross each other.

As stated in Chapter II, some of the points of intersection between social media and human rights are human rights law, digital privacy. When considering the User License agreements social media platforms make their users to consent to, social media and human rights law intersect because the terms of the agreement must not compromise the rights of the users.

As established in this research, social media platforms facilitate mass marketing. They offer companies the opportunity to collect and use the data of their customers. This aids them to monitor user decision making patterns, their likes, interests and so on for the purpose of marketing their products effectively. This raises the question of the safety of the right to privacy on social media. The process of data collection mentioned earlier may not always entail an interference with human rights. This is because users give their consent to submission of data, thereby authorizing social media companies to create detailed profiles about them when they register a profile on these platforms. Nonetheless, the collection and sale of data in bulk with minimal oversight can and as a matter of fact, does have hazardous effect on the human rights of millions of people.²¹⁴ The case of the data analytics firm, Cambridge Analytica case cited in chapter II highlights this issue. This is another area where human rights and social media intersect.

An additional area that highlights the intersection between social media and human rights is the use of social media platforms by governments to spread hatred and propaganda as in the Rohingya case discussed in chapter II.

²¹⁴ Hyde (n 72)

Second Question of Research

What is the Role of Social Media in Facilitating Human Rights, in what ways does Social Media Impact the Exercise of Freedom of Expression?

From the findings of this research and discussed in considerable detail in chapters II and III, social media through digital activism and hashtag activism facilitates the fight for social causes. It creates an avenue for individuals to speak against repression as well as human rights abuses and seek for reforms. These acts online often lead to real life protests, advocating for rights to be upheld. The black lives matter campaigns and protests in the United States of America is an example of this. Another is the #EndSars protests of 2020 that took place in various locations in Nigeria. However, criticisms have been raised against digital activism saying it oftentimes ends in slacktivism where people they are helping a social cause by a mere click on social media without actually taking any action.

Additionally, it has been established in the course of this research that social media grants the opportunity for freedom of expression to be enjoyed freely, 'in its purest' form, in that opinions, pictures, live moments can be shared without the censorship that comes with information dissemination through traditional media outlets. However, this notion is debatable because freedom of expression on social media has gone overboard, manifesting itself in defamation, cyberbullying, trolling, hate speech and so on. This has in turn led to clamours for censorship of social media. Governments also seek to censor social media to stifle criticism against their regimes.

Third Question of Research

What role does social media regulation play in the exercise of freedom of expression on Social Media?

It has been established in the course of this research that Social media regulation by both governments and platforms can become excessive and impair the right to freedom of expression on social media. Nonetheless, to curb the vices that arise from the so-called exercise of the right on social media, regulation is necessary.

Recommendations

It is necessary for governments to take the recommendations of the UN on a more human-rights based approach in regulating social media. So as to ensure that in protecting their citizens online, they are not harming them.

It appears that the negative effects of social media on human rights generally, outweigh the positive, thus a comparison of both the negative and positive effects of social media on human rights is a recommended area for research.

BIBLIOGRAPHY

Primary Sources

Cases

Constitutional Rights Project v Nigeria (1999) ACHPR Comm 148/96 (1999) ACmHPR

Faurisson v France (1996) UNHRC Communication No 550/1993

Google Inc v Equustek Solutions Inc [2017] SCC 34 [2017] 1 SCR 824

Handyside v United Kingdom App no 5493/72 (ECHR 4 November 1976)

Law Office of Gazi Suleiman v Sudan (2003) ACHPR Comm 228/96 (2003) 2 ACmHPR 430

Lingens v Austria App no 9815/82 (ECHR, 8 July 1986)

Maneka Gandhi v Union of India AIR 1978 SC 59742

Melike v Turkey App No 35786/19 (ECHR, 15 June 2021)

Minister of Home Affairs and Others v Watchenuka and Another [2003] 010/2003 ZASCA 1

Morguard Investments Ltd v Savoye [1990] 3 SCR 1077 (SCC)

Legislations

Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos 11 and 14*, 4 November 1950, ETS 5, available at: <https://www.refworld.org/docid/3ae6b3b04.html> [accessed 21 December 2022]

Council of the European Union, *EU Human Rights Guidelines on Freedom of Expression Online and Offline*, 12 May 2014

International Covenant on Civil and Political Rights (adopted December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

Law No. 24/2018/QH14 on Cybersecurity, passed by the National Assembly on 12 June 2018 “Cybersecurity Law Art 4(3)”

UN General Assembly, Calling of an International Conference on Freedom of Information, 14 December 1946, A/RES/59, available at <https://www.refworld.org/docid/3b00f0975f.html> [accessed 16 December 2022]

UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol 993, p3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> accessed 16 December 2022

United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at <<https://www.refworld.org/docid/3ae6b3930.html>> accessed 15 August 2022

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 19

Secondary Sources

Books

Bresner K, *Understanding the Right to Freedom of Expression: An International Law Primer for Journalists* (IHRP, JHR, 2015)

HURIGHTS Osaka, *Human Rights Education in the Northeast Asian School System: Resource Material* (Asia-Pacific Human Rights Information Center 2013)

Leib L H, *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives* (Brill 2011)

Mayfield A, *What is Social Media?* (iCrossing 2008)
<http://crmchange.com/uploadedFiles/White_Papers/PDF/What_is_Social_Media_iCrossing_ebook.pdf> accessed 28 December 2022

Southern Africa Litigation Centre and Media Legal Defence Initiative, *Freedom of Expression: Litigating Cases of Limitations to the Exercise of Freedom of Speech and Opinion* (2016)

Taprial V and Kanwar P, *Understanding Social Media* (Bookboon 2012)

Centre for Law and Democracy and International Media Support, *Briefing Note Series: Freedom of Expression* (CID, IMS 2014)

Book Chapters

Goswami M P, ‘Social Media and Hashtag Activism’ in Susmita Bala, Manmeet Kaur and Divya Rastogi (eds), *Liberty, Dignity and Change in Journalism* (Kanishka Publishers 2018)

James J D, ‘The Internet: Friend, Foe or Target’, in Jonathan D James (ed), *The Internet and the Google Age: Prospects and Perils* (Research-Publishing.net 2014)

Nash V, ‘Analyzing Freedom of Expression Online: Theoretical, Empirical, and Normative Contributions’ in William H Dutton (ed), *The Oxford Handbook of Internet Studies* (Oxford University Press 2013)

Thissen L, “Introduction” in Marcella Corsi, Laeticia Thissen and Giulia Zacchia (eds), *The #MeToo Social Media Effect and its Potentials for Social Change in Europe* (FEPS 2019)

Encyclopaedias

Roberts S T, ‘Content Moderation’ *Encyclopaedia of Big Data* (2018)

Selwyn N, ‘The Internet and Education’ (Openmind BBVA)

<<https://www.bbvaopenmind.com/en/articles/the-internet-and-education/>> accessed 20 May 2022

Manning J, ‘Social Media, Definition and Classes of’, *Encyclopedia of Social Media and Politics* (1st Edn, 2014)

Journal Articles

Amichai-Hamburger Y and Hayat Z, ‘The Impact of the Internet on the Social Lives of Users: A Representative Sample from 13 Countries’ (2011) 27(1) *Computers in Human Behavior*

Ammori M, 'The "New" New York Times: Free Speech Lawyering in the Age of Google and Twitter' (2014) 127 Harvard Law Review

Benjamin T, 'Social Media Activism: Limitations and Benefits' (2018) 4(1) INOSR Arts and Management

Cabrera N L, Matias C E and Montoya R, 'Activism or Slacktivism? The Potential and Pitfalls of Social Media in Contemporary Student Activism' (2017) 10(4) Journal of Diversity in Higher Education

Coe P, 'The Social Media Paradox: An Intersection with Freedom of Expression and the Criminal Law' (2015) 24 Information & Communication Technology Law

Fatkin J and Lansdown T, 'ProSocial Media in Action' (2015) 48 Computers in Human Behavior

Ghosal S G, 'Human Rights: Concept and Contestation' (2010) Vol 71(4) The Indian Journal of Political Science

Gillepsie T and others, 'Expanding the Debate about Content Moderation: Scholarly Research Agendas for the Coming Policy Debates' (2020) 9(4) Internet Policy Review

Govindarajan G and Ravindar N, 'Freedom of Expression on Social Media: Myth or Reality' (2016) 7 GMJ Indian Edition

Grimmelmann J, 'The Virtues of Moderation' (2015) 17 Yale Journal of Law & Technology

Henderson A and Bowley R, 'Authentic Dialogue? The Role of "Friendship" in a Social Media Recruitment Campaign' 14(3) (2010) Journal of Communication Management

Howie E, 'Protecting the Human Right to Freedom of Expression in International Law' [2018] 20 International Journal of Speech-Language Pathology

Kumar R, 'Classification of Human Rights' (2015) 5 IJEMR

Levin I and Mamlok D, 'Culture and Society in Digital Age' (2021) 12(2) Information

Mcgoldrick D, 'The Limits of Freedom of Expression on Facebook and Social Networking Sites: A UK Perspective' (2013) 13(1) Human Rights Law Review

Mitchell J, 'Remembering the Rwandan Genocide: Reconsidering the Role of Local and Global Media' (2007) 6 <<https://www.globalmediajournal.com/open-access/remembering-the-rwandan-genocide-reconsidering-the-role-of-local-and-global-media.pdf>> accessed 14 December 2022

Moravec P, Minas R and Dennis A R, 'Fake News on Social Media: People Believe What They Want to Believe When it Makes no Sense at all' (2018) Kelley School of Business Research Paper No 18-87 <<https://dx.doi.org/10.2139/ssrn.3269541>> accessed 01 January 2023

O'Flaherty M, 'Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights and the Human Rights Committee's General Comment No 34' (2012) 12 Human Rights Law Review

Reidl M J, Whipple K N and Wallace R, 'Antecedents of Support for Social Media Content Moderation and Platform Regulation: The Role of Presumed Effects on Self and Others' (2022) 25 Information, Communication & Society

Treem J W and others, 'What We Are Talking About When We Talk About Social Media: A Framework for Study' (2016) Vol 10(9) Sociology Compass

Young G, 'How Much is too Much: The Difficulties of Social Media Content Moderation' (2021) 31 Information & Communications Technology Law

Working Papers

Heller B, 'Freedom of Expression: A Comparative Summary of United States and European Law' (2019) Working Paper of the Transatlantic High Level Working Group on Content Moderation Online and Freedom of Expression

<https://www.ivir.nl/publicaties/download/TWG_Freedom_of_Expression.pdf>

accessed 21 Dec 2022

Solow-Niederman A and others, 'Here, There or Everywhere? Assessing the Geographic Scope of Content Takedown Orders' (2017) Harvard Law School Cyber Law Clinic Working Paper p3 <<https://clinic.cyber.harvard.edu/files/2017/03/Here-There-or-Everywhere-2017-03-27.pdf>> accessed 02 January 2023

Reports

Council of Europe, Content Moderation Guidance Note, (Adopted by the Steering Committee for Media and Information Society (CMDSI) at its 19th Plenary Meeting, 19-21 May 2021)

Diaz A and Hecht-Felella L, 'Double Standards in Social Media Content Moderation' (Brennan Centre for Justice 2021)

Hernandez M D, Anthonio F and Access Now Team, 'The Return of Digital Authoritarianism: Internet Shutdowns in 2021' (April 2022)

<<https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf>> accessed 02 January 2023

Internet Society, 'The Internet and Human Rights: An Internet Society Public Policy Briefing' (*Internet Society*, 30 October 2015) <<https://www.internetsociety.org/wp-content/uploads/2015/10/ISOC-PolicyBrief-HumanRights-20151030-nb.pdf>>

accessed 18 May 2022

McDonald P, *A Great Awakening with Many Dangers: What Has the #MeToo Movement Achieved?* (QUT 2020)

Mchangama J and Fiss J, *The Digital Berlin Wall: How Germany (Accidentally) Created a Prototype for Global Online Censorship* (Justitia 2019)

Mchangama J, Alkiviadou N and Mendiratta R, 'A Framework of First Reference: Decoding a Human Rights Approach to Content Moderation in the Era of "Platformization"' (November 2021) <http://justitia-int.org/wp-content/uploads/2021/11/Report_A-framework-of-first-reference.pdf> accessed 20 January 2023

PEN America, 'Forbidden Feeds: Government Controls on Social Media in China' (March 2018) <https://pen.org/wp-content/uploads/2018/03/PENAmerica_Forbidden-Feeds-3.13-3.pdf> accessed 02 January 2023

Singh S, 'Everything in Moderation: An Analysis of how Internet Platforms are Using Artificial Intelligence to Moderate User-Generated Content' (July 2019) <https://d1y8sb8igg2f8e.cloudfront.net/documents/Everything_in_Moderation_2019-07-15_142127_tq36vr4.pdf> accessed 22 December 2022

UNGA 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (2018) UN Doc A/HRC/38/35

Online Articles

Galais C and Anduiza E, 'The Slacktivism Crossroad: Causal Relationships Between Online and Offline Political Participation' (2016) p1 <<https://www.oidp.net/docs/repo/doc38.pdf>> accessed 01 Jan 2023

Liu Y, Yildirm T P and Zhang Z J, 'Social Media, Content Moderation, and Technology' (2021) <<https://doi.org/10.48550/arXiv.2101.04618>> accessed 02 January 2023

Okeke O S , 'The Importance of Expression in a Democratic Society' (2018) <https://www.researchgate.net/publication/333967776_The_Importance_of_Freedom_of_Expression_in_a_Democratic_Society> accessed 02 January 2023

Dissertations

Praeceptor S, 'Understanding the Impact of the #MeToo Movement on Leadership and Corporate Culture, with Regards to Female Inclusion and Value of Voices' (BBA Thesis, MODUL University 2020)

Newspaper Articles

Adegboruwa E, 'Criminalization of the Freedom of Expression' *The Guardian* (London, 2 December 2022) <<https://guardian.ng/opinion/criminalization-of-the-freedom-of-expression/>> accessed 17 December 2022

Cadwalladr C and Graham-Harrison E, 'Revealed: 50 Million Facebook Profiles Harvested for Cambridge Analytica in Major Data Breach' *The Guardian* (London, 17 March 2018)

McDowell R and Mason M, 'AP Investigation: Myanmar's Junta Using Bodies to Terrorize' *Associated Press News* (New York, 26 May 2021) <<https://apnews.com/article/myanmar-business-b2187c696e428139437778aeab0c43d4>> accessed 14 December 2022

Websites and Blogs

--'Facebook Community Standards' (*Meta*) <<https://transparency.fb.com/policies/community-standards/?source=https%3A%2F%2Fwww.facebook.com%2Fcommunitystandards%2F#dangerous-organizations>> accessed 02 January 2023

Aljazeera, 'Facebook, Twitter CEOs back in Congress hot seat over US Election' (*Aljazeera*, 16 November 2020) <<https://www.aljazeera.com/economy/2020/11/16/facebook-twitter-ceos-back-in-congress-hot-seat-over-us-election>> accessed 16 December 2022

Baig Z, 'How Social Media is Changing the Face of Human Rights Activism' (*Human Rights Pulse*, 1 December 2020)

<<https://www.humanrightspulse.com/mastercontentblog/how-social-media-is-changing-the-face-of-human-rights-activism>> accessed 14 December 2022

Cetinkaya O and Gungordu A, 'When National Laws and International Standards are at Odds: Human Rights Responsibilities of Social Media Platforms Under Turkey's New Internet Law' (*International Bar Association*, May 2021)

<https://www.ibanet.org/human-rights-responsibilities-of-social-media-platforms-under-Turkey-new-internet-law#_edn4> accessed 02 January 2023

Columbia Global Freedom of Expression, 'Belgian Privacy Commission v Facebook Ireland Limited' <<https://globalfreedomofexpression.columbia.edu/cases/belgian-privacy-commission-v-facebook/#:~:text=The%20Belgian%20Court%20ruled%20Facebook's,tracking%20non%2Dusers%20in%20Belgium.>> accessed 09 February 2023

Columbia Global Freedom of Expression, 'Google Inc v Equustek Solutions Inc (Equustek I)' <<https://globalfreedomofexpression.columbia.edu/cases/equustek-solutions-inc-v-jack-2/>> accessed 02 January 2023

Datareportal, 'Digital Around the World' <<https://datareportal.com/global-digital-overview>> accessed 30 December 2022

Donahoe E, 'Human Rights in the Digital Age' (*Just Security*, 23 December 2014) <<https://www.justsecurity.org/18651/human-rights-digital-age/>> accessed 18 May 2022

Faegre Drinker, 'Recent Enforcement Developments and Trends Regarding China's Cybersecurity Law' (August 2017)

<<https://1npdf11.onenorth.com/pdfrenderer.svc/v1/abcpdf11/GetRenderedPdfByUrl/Recent-Enforcement-Developments-and-Trends-Regarding-Chinas-Cybersecurity-Law.pdf?url=https%3a%2f%2fwww.faegredrinker.com%2fen%2finsights%2fpublications%2f2017%2f8%2frecent-enforcement-developments-and-trends-regarding->

[chinas-cybersecurity-law%3fformat%3dpdf&attachment=false](#)> accessed 02 January 2023

Gordon S, 'What is the #MeToo Movement?' (*Verywell Mind*, 24 April 2022) <<https://www.verywellmind.com/what-is-the-metoo-movement-4774817> > accessed 14 December 2022

Gupta A, 'Google v Equustek: An Attempt to Domestically Govern a Global Resource' (*thecourt.ca*, 16 October 2017) <<http://www.thecourt.ca/google-v-equustek-an-attempt-to-domestically-govern-a-global-resource/>> accessed 02 January 2023

Help Centre, 'Violent Organizations Policy' (*Twitter*, October 2020) <<https://help.twitter.com/en/rules-and-policies/violent-groups>> accessed 02 January 2023

Human Rights Center, 'Lab Projects' (*UC Berkeley School of Law*) <<https://humanrights.berkeley.edu/programs-projects/investigations-lab-projects>> accessed 31 December 2022

Hyde C, 'Social Media: Friend or Foe of Human Rights?' (*Rene Cassin*, 2019) <<https://www.renecassin.org/wp-content/uploads/2020/01/Social-Media-Friend-or-Foe-of-Human-Rights-Ren%C3%A9-Cassin-essay-competition-winner.pdf> accessed 14 December 2022

Kyle D, 'The Battle for Social Media Regulation: Can International Human Rights Bridge the Governance Gap in the digital Space?' (*Universal Rights Group Geneva*, 28 June 2021) <<https://www.universal-rights.org/universal-rights-group-nyc-2/the-battle-for-social-media-regulation-can-international-human-rights-bridge-the-governance-gap-in-the-digital-space/>

Law Insider, 'Trusted Flagger Definition' <<https://www.lawinsider.com/dictionary/trusted-flagger>> accessed 02 January 2023

Marks S P, 'Human Rights: A Brief Introduction' (2016) Harvard School of Public Health Working Paper <<https://cdn1.sph.harvard.edu/wp-content/uploads/sites/134/2016/07/Human-Rights-A-Brief-Intro-2016.pdf>> accessed 4 April 2022

Media Defence, 'The Right to Freedom of Expression Under International Law' (*Media Defence*) <<https://www.mediadefence.org/ereader/publications/introductory-modules-on-digital-rights-and-freedom-of-expression-online/module-1-key-principles-of-international-law-and-freedom-of-expression/the-right-to-freedom-of-expression-under-international-law/>> accessed 21 December 2022

Renda M, 'Google Scores Injunction in Canadian Censorship Case' (*Courthouse News Service*, 3 Nov 2023) <<https://www.courthousenews.com/google-scores-injunction-canadian-censorship-case/>> accessed 02 January 2023

Soken-Huberty E, 'How Can Social Media Help Defend Human Rights?' (*Human Rights Careers*) <<https://www.humanrightscareers.com/issues/how-can-social-media-help-defend-human-rights/>> accessed 20 May 2022

Statista Research Department, 'Number of Social Network Users Worldwide from 2017 to 2025' (*Statista*, 28 April 2022) <<https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/#:~:text=In%202020%2C%20over%203.6%20billion,almost%204.41%20billion%20in%202025.>> accessed 20 May 2022

Sullivan B, 'Three Black Soccer Players are Facing Racist Abuse after England's Euro 2020 Defeat' (*NPR*, 12 July 2021) <<https://www.npr.org/2021/07/12/1015239599/prince-william-and-boris-johnson-denounce-the-racist-abuse-of-englands-soccer-te>> accessed 23 December 2022

Swisher K and Wagner K, 'Here's the Transcript of Recode's Interview with Facebook CEO Mark Zuckerberg about the Cambridge Analytica Controversy and More' (*Vox*, 22 March 2018) <<https://www.vox.com/2018/3/22/17150814/transcript->

[interview-facebook-mark-zuckerberg-cambridge-analytica-controversy](#)> accessed 02 January 2023

The Shift Team, 'Investigating Joseph Muscat's Online Hate Machine' (*The Shift*, 14 May 2018) <<https://theshiftnews.com/2018/05/14/investigating-joseph-muscats-online-hate-machine/>> accessed 14 December 2022

T McGonagle, 'Melike v Turkey (ECtHR, 35686/19) - Social Media 'likes' and Freedom of Expression: the ECtHR's Tentative Considerations' (European Human Rights Cases Updates, 22 Nov 2021) <https://www.ehrc-updates.nl/commentaar/211792?skip_boomportal_auth=1> accessed 23 January 2023

UN Human Rights Office, 'Online Content Moderation and Internet Shutdowns' (2021) <https://www.ohchr.org/sites/default/files/Documents/Press/Press_briefing_140721.pdf> accessed 02 January 2023

United Nations, 'Global Issues: Human Rights' (*United Nations*) <<https://www.un.org/en/global-issues/human-rights>> accessed 4 April 2022

United Nations, 'Moderating Online Content: Fighting Harm or Silencing Dissent?' (*United Nations Human Rights Office of the High Commissioner*, 23 July 2021) <<https://www.ohchr.org/en/stories/2021/07/moderating-online-content-fighting-harm-or-silencing-dissent>> accessed 23 December 2022

United Nations, 'Predecessor: The League of Nations' <<https://www.un.org/en/aboutus/history-of-the-un/predecessor>> accessed April 2022

Zuckerberg M, 'Big Tech Needs More Regulation' (*Meta*, 18 February 2020) <<https://about.fb.com/news/2020/02/big-tech-needs-more-regulation/>> accessed 23 December 2022

APPENDIX A

Turnitin Similarity Report

Social Media and Human Rights: The Impacts of Social Media on Freedom of Expression

ORIGINALITY REPORT

19%	17%	12%	%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

1	docs.neu.edu.tr Internet Source	1%
2	files.elsa.org Internet Source	1%
3	www.renecassin.org Internet Source	1%
4	downloads.softwarefreedom.org Internet Source	<1%
5	www.ivir.nl Internet Source	<1%
6	hdl.handle.net Internet Source	<1%
7	www.media-diversity.org Internet Source	<1%
8	www.law.georgetown.edu Internet Source	<1%
9	dokumen.pub Internet Source	<1%