Can the law effectively regulate social media and should it?

Over the past decade, the emergence of social media has spread around the world becoming an integral part of our everyday life. Social media platforms like Facebook, Google and Twitter have transformed the way we see, receive and share information. However, it could be argued that its emergence has altered and ushered a new dynamic between the law and the spread of information, raising a lot of ethical and legal concerns. In the wake of social media crises all over the world, some people argue that the law is not adequately equipped in curbing the surge of social media and its implications on communication and safety. Social media has raised a lot of concerns such as people’s loss of privacy, the rising era of cybercrime- cyberbullying and terrorism and a threat to the structure of democracy. They contend that social media is a form of media outlet and just like any other media avenue, it should be regulated by the law. Others would reason against this and believe it is pointless for the government to try and regulate social media and instead it should be up to the social media platforms to take up the responsibility themselves and individuals who use the platforms. However, I would take a more neutral viewpoint, I believe in a concept called co-regulation. Some regulation and the enforcement of existing legislation is necessary to strike the balance between promoting free speech and protecting public interests. However, there should still be a distinction between government and its interference with activities on social media.

The first question I am going to tackle in this conundrum is should the law regulate social media? The biggest issue surrounding government regulation of social media is the restriction of free speech and freedom of expression. Most democratic countries have legal structures in place that protects their citizens’ rights to freedom of expression. For example, In the UK there is Article 8 that is incorporated in the Human rights Act that states that “Everyone has the right to freedom of expression…without interference by public authority” In the US, the first amendment protects people’s right to free speech and freedom of expression. Therefore, it can be argued that the law and the government regulating social media would be a backward step in our fight for democracy and expression of individuality. In most totalitarian governments like North Korea, the censorship of social media by the government is a key instrument in oppressing and subjugating the citizens. the country and countries like China have been criticised for their excessive censorship of their media. Since Chinese President Xi Jinping came to power, there has been increased censorship on the media. In February 2016, Xi publicised new media policy that party and state news “must reflect the party’s will, safeguard the party’s authority, and safeguard the party’s unity.” This exemplifies the slippery slope of letting the government gain control and ownership of the platform of social media as the government can just filter out information that they do not want people to receive.

Furthermore, social media shouldn’t be regulated as there would be less discourse on issues in our society and this would limit the progress of our society. Social media is an arena where issues that are relevant are discussed in an open forum and this dissent spurs and instigates progress. Michael Chertoff, former U.S. secretary of Homeland Security and a co-author of the internet governance report writes that. “Free expression is one of the foundational elements of the internet and "It shouldn’t be protecting the political interests of the ruling party or something of that sort.” President Trump has been accused by many for trying to inhibit people’s right to the First Amendment. For example, in 2017, he threatened to take away NBC’s broadcast license to punish the network for reporting on his security meetings. Even though this might just be empty words, it cannot be ignored that his position at the White House gives him the ability to enforce these rules.
There is a threat to the foundation of democracy and banning hate speech or “fake news” could turn our tolerant and democratic society into a world where all types of speech would be labelled “hate speech” and “fake news”.

Nevertheless, it could still be argued that there is a thin line between freedom of speech and misuse of speech. It can be said that with the advent of social media, people now use their right to freedom of expression to incite violence, spread hate and infringe on the privacy of others. An example of how social media can be used to incite violence is that of India. Facebook has been a driving force in the Rohingya genocide. The use of vitriolic images and commentary on the Rohingya Muslims spurred thousands of people into committing atrocious and odious acts. Beginning in late August, Burmese security forces pursued a brutal campaign against the Rohingya on social media. This resulted in the killing of 6,700 and 645,000 were forced to seek refuge in Bangladesh. This shows the alarming capabilities of the widespread use of social media when there are no structures put in place to limit the spread of misconstrued information.

Additionally, social media can also be used to foster terrorism. ISIS and other terrorist groups have exploited social media as a method of recruiting new members and instigating violence. It is estimated that there are over 200,000 messages that are sent each day on social media that contains ISIS propaganda. This has created an army of foreign fighters (once estimated to be as large as 40,000) to take up the group’s cause in Syria and Iraq and has provoked a range of devastating attacks by self-directed supporters overseas. This threat to national safety elucidates the fact that more needs to be done to regulate this kind of activity on social media.

Furthermore, social media has posed a real threat to people’s privacy and it is arguably producing an erosion in democracy. In 2018, it was revealed that Cambridge Analytica, a data analytics firm that was hired by Donald Trump’s election team and the winning Brexit campaign had harvested the data of 50 million Facebook profiles and used them to predict voter behaviour and target ads towards voters. American intelligence agencies also discovered that Russian agents were spreading false information online and by doing this, undermined “public faith” in the democratic process. According to BuzzFeed News, the top 20 fake news reports on Facebook during the 2016 election had more engagement than the same number of stories from major media outlets. This showcases a serious breach of privacy and cast doubts over the legitimacy of the democracy in America and universally. The idea that social media can be used to manipulate the mind and ideas of voters to achieve a certain result in the election is increasingly worrying and threatens the foundations of democracy.

The second question I am going to be tackling is can social media be regulated? Currently, about 1.2 billion people regularly use Facebook; 255 million regularly use Twitter and 500 million "tweets" are made a day. Due to its widespread use and its consequences on society, social media platforms have taken various steps to mitigate its consequences. However, some countries do not feel like these measures have been enough. Various countries have implemented or are in the process of implementing laws that regulate social media. For example, In Germany, The Netzwerkdurchsetzungsgesetz (NetzDG) law that was passed at the end of June 2017 imposed heavy fines on social media platforms that said if the sites do not remove “illegal” posts within 24 hours they could face fines of up to 50m euro (£44.3m).

However, one of the major problems with the law regulating social media is that social media platforms are transnational and global companies. They transcend countries, communities and neighbourhood and the social media sphere is like a world of its own. Therefore, as Scott Golder of Cornell university said, “One of the things that would be difficult for them to do is for them to have
policies that they can enforce and that makes sense all over the world.” It would be problematic and impractical to have a global standard of conduct on social media since every country is different. The law around social media use needs to be sensitive to the socially acceptable traditions of various countries. For example, in 2012, Twitter worked with the Saudi-Arabian government to implement country-based regulation that pacified the country’s government. This an example of co-regulation where the government and the social media platform worked together to provide a solution that was desirable for both sides without having to impose legislation that sanctioned heavy fines on the social media platforms\(^{(11)}\). It is impractical to have a global standard that is enforced by the law all over the world. Instead of imposing heavy legislation against social media companies, governments should work with the companies to envisage resolutions that are suitable for both parties.

Another concern with the law regulating social media is that the government simply does not understand how the world of social media works so it would be extremely difficult to legislate it without the due knowledge of its processes. Legislating the problem away with significant fines and sanctions may not be as effective as we might think as the world of social media is constantly in flux and the law would continually have to play “catch-up”. Therefore, the best approach would be largely allowing social media platforms to self-regulate with limited amount of legislation from the government. Paul Barrett, he deputy director at the NYU Centre for Business Rights and Human Development said that “The problem with turning to the government to regulate….is that it could …result in an overreaction by the companies to avoid whatever punishment was put in place,” and “That would interfere with the free expression that is one of the benefits of social media... If the platforms do this work themselves, they can do it more precisely and do it without government overreach\(^{(12)}\)”. However, an aspect that the government can and should legislate is on the issue of terrorist propaganda and politically motivated misinformation. The government can implement legislation such as the Honest Ad acts which is being proposed by Congress that advocates that the same laws that apply to political ads on the TV and radio should also apply to political ads on social media. This would ensure more transparency from platforms like Facebook, Twitter and Google about who’s paying for the political advertisements on their apps or sites\(^{(13)}\). This type of legislation doesn’t impede free speech but instead helps to protect the foundation of democracy.

In conclusion, I would advocate moderation and regulation from the social media companies themselves with limited government involvement. Social media platforms have shown that they are prepared to take more responsibility. Twitter has stricken out hate groups, YouTube is adding additional human review staff and expanding algorithms to more categories, and Facebook has made a commitment to monitor abuse on its platform in 2018\(^{(12)}\). It can be very dangerous to regulate social media using legislation from the government as it creates a hostile environment between the government and social media companies. If there are threats of heavy sanctions, this would result in companies “errning on a side of caution” meaning they would start to censor out large amounts of information which would have devastating consequences on the usefulness of social media and our freedom of speech. Through co-regulation, government and social media platforms can work together collaboratively to have joint responsibility and accountability for regulating the social media space in a way that protects public interests\(^{(14)}\).

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