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INTERNET AND ITS IMPACT ON FREE SPEECH

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Abstract

Freedom of Speech and Expression is one of the important fundamental right which is guaranteed by the Constitution of India under Article 19(1) (a) which states that *"all citizens shall have the right to freedom of speech and expression"*¹⁵⁴². The philosophy behind this Article lies in the Preamble of the Constitution- that a solemn resolve is been made to secure the liberty of thought and expression of all its citizens. The term 'freedom of speech and expression' means any act of seeking, receiving and imparting information or ideas, regardless of the medium used. Now with the growing use of internet day by day, it gives an unprecedented opportunity for the freedom of speech. Due to the diversity of the content and ease of its use, the internet has become controversial. The unrestricted flow of information has increased the need for content regulation that might potentially harm users. Additionally, these social media platforms need to have stricter regulatory policies to stop the flow of any misleading information. The paper looks into the aspect that how the internet has impacted the right to free speech and expression that is guaranteed by the constitution. It also looks into the aspect that internet, though having a strong public sphere, it should also receive the same level of protection as the right of expression receives in the physical world.

Keywords: Fundamental rights, Freedom of speech, information, internet

Introduction

Freedom of Speech and Expression means the right to express one's own opinion freely through speech writing, printing, pictures or any other mode. It is considered as the notion that every person has the right to freely express themselves through any medium without interfering the rights of any other person. The essence of free speech is the ability to think and speak freely and to obtain information from others through publications and public discourse without fear of retribution, restriction or repression by the Government. It is the first condition of liberty and plays an important role in forming public opinion. The right to freedom of expression has been recognized as a human right in the Universal Declaration of Human Rights and International Human Rights law by the United Nations. Article 19 of UDHR states *"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 any media and regardless of frontiers"*.¹⁵⁴³ Article 19 (1) (a) of the Indian Constitution guarantees the freedom of speech and expression to all its citizens.¹⁵⁴⁴ Freedom of speech, though guaranteed, is not absolute in India.¹⁵⁴⁵ It carries with itself certain restrictions which the people have to abide with. Article 19(2) of the Constitution the legislature may impose restrictions on the right to speech and expression on the following grounds:

- Sovereignty and integrity of India
- National Security
- Friendly relations with foreign states
- Public order
- Decency or morality
- Contempt of court
- Defamation

¹⁵⁴³ Article 19, Universal Declaration of Human Rights, GA Res 217A (III), 10 December 1948, A/810 91

¹⁵⁴⁴ INDIA CONST. art 19, cl. 1, cl. a

¹⁵⁴⁵ INDIA CONST. art 32, cl. 4.

- Incitement to an offense¹⁵⁴⁶

The Internet by nature is multi-jurisdictional that is a worldwide collection of computer networks which cooperate with one another to exchange data by using a common software standards. Social media is one such platform or any web which enables an individual or agency to communicate interactively and exchange content generated by the users. It has the potential to communicate through audio, video, pictures, and reach to

millions of people which cannot be even done through satellite TV station or the best read international newspaper. In *Indian Express vs Union of India*¹⁵⁴⁷, it was held that the Press plays a significant role in the democratic machinery and the courts have the duty to uphold the freedom of press and invalidate all laws and administrative actions that abridges that freedom. In *Secretary Minister of Information and Broadcasting vs Cricket Association of Bengal*¹⁵⁴⁸, the Supreme Court found that the right to communicate and receive information is a form of right to freedom of expression which is guaranteed by Article 19 (1) (a) of the Constitution. Citizens have the basic right to receive information and access television broadcasts for this purpose.

Internet and Freedom of Speech and Expression

The Internet has proved to be a vital tool of communication through which people can exercise their right of freedom of expression and exchange of information, also majority of people have conducted business, education, social and financial activities since it being connected with the technology, global market economy and freedom of movement. With the advent of internet, people of all age groups are well informed of all the happenings in the

world because they can get to know about anything through this cyberspace. The Supreme Court in the case of *Reno vs American Civil Liberties Union*¹⁵⁴⁹ had held that no one can restrict a person's access to words or images on the internet. Emphasizing the importance of internet, the UN Special Rapporteur in one of its report to Human Rights Council said that internet has become a key means by which any individual can exercise their right to freedom of speech and expression and thus, internet access is a human right¹⁵⁵⁰. The States were also asked to adopt policies to make internet widely available, accessible and affordable to all. In the light of the growing use of internet and social media as a medium of exercising this right, access to this medium has also been recognized as a fundamental human right.

The shutdown of the internet witnessed in Jammu and Kashmir after the abrogation of Article 370, by which the internet services were completely suspended, it prohibited the people from exercising the right to free speech and along with that it also impacted the essential services like

healthcare, trade, education and news services. The court said that indefinite suspension is not permitted and restriction on the internet must follow the principle of proportionality under Article 19(2) of the Constitution.¹⁵⁵¹ However, in *Anuradha Bhasin vs Union of India*¹⁵⁵², the court said that prohibiting the access of the internet is valid provided there is an "unavoidable circumstance" otherwise the order passed will cease to exist. The court said that freedom of expression online enjoys Constitutional protection, but it can be restricted in the name of national security. The order for temporary

¹⁵⁴⁶ INDIA CONST. art 19, cl. 2

¹⁵⁴⁷ *Indian Express vs Union of India*, (1985) 1 SC 641 (India)

¹⁵⁴⁸ *Secretary Minister of Information and Broadcasting vs Cricket Association of Bengal*, AIR 1995 SC 1236 (India)

¹⁵⁴⁹ *Reno vs American Civil Liberties Union*, 521 U.S. 844

¹⁵⁵⁰ UN General Assembly Doc. A/HRC/17/27

¹⁵⁵¹ *Internet a fundamental right, review suspension: Supreme Court on J&K communication shutdown*, The Hindustan Times, <https://www.hindustantimes.com/india-news/access-to-internet-fundamental-right-review-suspension-supreme-court-rules-on-communication-shutdown-in-kashmir/story-M9IocBFOPADxEeiAbHh6MK.html>

¹⁵⁵² *Anuradha Bhasin vs Union of India*, AIR 2020 SC 1308 (India)

suspension of internet services must be published and must be made available to the general public at the earliest.

Effect of internet on free speech

Without the right to free speech, the people could not have developed a sense of independence. Additionally, the freedom of expression of one person may violate another person's right to privacy and vice versa. The internet has increased the potential for unprecedented levels of privacy rights abuse, but it has also increased the chances for freedom of speech and information sharing. Essentially, social media has revolutionized the way we are able to communicate and behave, not only in groups and society, but with each other.

Although there is no specific legislation which deals with social media, in India, it is currently being governed by the Information Technology Act, 2000. Section 66A of Information Technology Act, 2000 inserted vide Information Technology (Amendment) Act, 2008 lays down punishments for sending offensive messages and states- "Any person who sends, by means of a computer resource or communication device-

- a) Any information that is grossly offensive or has a menacing character
- b) Any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, by making use of such computer resource or a communication device
- c) Any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,

Shall be punished with imprisonment for a term which may extend to three years and with fine.¹⁵⁵³

However, the Supreme Court in the case of *Shreya Singhal vs Union of India*¹⁵⁵⁴ struck down Section 66A of Information Technology Act 2000 and declared it to be unconstitutional as it violated the right to freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India. However, posting defamatory and inflammatory content online is still punishable under the Indian Penal Code. The court said that the procedural safeguards in the criminal procedure code still exists in order to ensure that it is not misused.

The recent ban on the Chinese applications by the Central Government on the Grounds that the applications were 'prejudicial to sovereignty and integrity of India, defence of India. security of state and public order'¹⁵⁵⁵ have been seen in a positive light by some but others claim it as a violation of the right to freedom of speech and expression as the ban included various social media apps which had a major user base in India.

Incidents of Violation of Free Speech on Internet

Free speech is like a two-edged sword to the general public. The freedom of speech is used by both recognized and anonymous persons when they express themselves online. They may even express a negative opinion, but it will still be viewed as exercising their right to free speech. There are websites that promote racism, sexism, terrorism, eating disorders, and even suicide; this has become one of the most crucial issues for child protection.

In December 2011, the Indian Government had asked the internet companies like Google,

¹⁵⁵³ The Information Technology Act, 2000, Act No. 21 of 2000

¹⁵⁵⁴ *Shreya Singhal vs Union of India*, AIR 2015 SC 1523 (India)

¹⁵⁵⁵ Press Information Bureau, Government of India, <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1635206>

Facebook, and Microsoft etc. to create a framework to pre-screen the data before it goes on the website. Since some defamatory content was found on the sites so, the Government had asked the companies to chalk out a way to ensure that contents like these are first screened before they are posted.

A professor at Jadavpur University was arrested in April 2012 for posting a cartoon on West Bengal Chief Minister Mamta Banerjee on the social networking sites.¹⁵⁵⁶

In November 2012, two young women were arrested on charges of "promoting enmity between classes" and "sending offensive messages through communication service" which was posted on Facebook and 'liked', questioning the Mumbai bandh that followed Shiv Sena leader Bal Thackeray's death. Both of them were later released on bail¹⁵⁵⁷.

The UK Prime Minister Theresa May on 3 June 2017, after the London Bridge attack, said that there is a need for new rules as to what can and what cannot be posted online. Work needs to be done with allied and democratic countries to form an international agreement to regulate the cyberspace and prevent the spread of terrorism and extremism.¹⁵⁵⁸

On 15 March 2019, Facebook live video was streamed in which two consecutive mass shootings were shown by an individual in New Zealand that showed his anti-immigrant moves.¹⁵⁵⁹ These video's disturb the mental health of an individual.

Facebook, Twitter and Google have been accused of being too tolerant in their censorship and not removing the posts that are

offensive towards the users and of influencing national events like elections by promoting and hiding stories to influence people to vote specific groups.

The Supreme Court in a recent case said that the social media platforms must be responsible and accountable for the spread of disruptive messages and hate speeches. In a recent case, Justice Kaul has said "While Facebook has played a crucial role in enabling free speech by providing a voice to the voiceless and means to escape state censorship; we cannot lose sight of the fact that it has simultaneously become a platform for the disruptive messages, voices and ideologies."¹⁵⁶⁰

Solution to overcome the issue

After a lot of discussions and debates, the Ministry of Electronics and Information Technology has notified new rules i.e. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 under the Information Technology Act, 2000 which aims to serve a dual purpose:

- (1) increase the accountability of social media platforms like Facebook, Instagram, Twitter etc, to prevent their misuse and abuse
- (2) empower the users of social media by establishing three-tier redressal mechanism for efficient grievance resolution

These Intermediary Guidelines are intended to be integrated into the existing information technology laws and regulate the social media and digital media platforms within India.¹⁵⁶¹ According to the IT Rules, the intermediaries must designate a grievance officer to handle

¹⁵⁵⁶ Professor arrested for poking fun at Mamta, Hindustan Times, April 14, 2012, <https://www.hindustantimes.com/india/professor-arrested-for-poking-fun-at-mamata/story-OmV4FhEop4XaRP13gZd11H.html>

¹⁵⁵⁷ Mumbai shuts down due to fear, not respect, The Hindu, 19 November 2012, <https://www.thehindu.com/news/national/other-states/article60013803.ece>

¹⁵⁵⁸ PM Statement following London terror attack, 4 June 2017, <https://www.gov.uk>

¹⁵⁵⁹ Christchurch shootings: Social media races to stop attack footage, <https://www.bbc.com/news/technology-47583393>

¹⁵⁶⁰ Can't evade legislative scrutiny: SC to Facebook on Delhi Assembly notice, The Economic Times, 9 July 2021, <https://m.economictimes.com/news/india/cant-evade-legislative-scrutiny-sc-to-facebook-on-delhi-assembly-notice/articleshow/84255981.cms>

¹⁵⁶¹ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021: Impact on Digital Media, <https://www.mondaq.com/india/social-media/1063198/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021-impact-on-digital-media>

user complaints about rule violations. Within twenty-four hours of receiving a complaint from a person, the intermediary is required to take all reasonable steps to delete or restrict access to any content it hosts, stores, publishes, or transmits. As per Rule 3(1)(b), the intermediaries will be expected to “cause the users of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information” that-

(i) belongs to another person and to which the user does not have any right

(ii) is defamatory, obscene, pornographic, paedophilic, invasive of another’s privacy, including bodily privacy, insulting or harassing on the basis of gender, libellous, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or otherwise inconsistent with or contrary to the laws in force

(iii) is harmful to child

(iv) infringes any patent, trademark, copyright or other proprietary rights

(v) violates any law for the time being in force

(vi) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any information which is patently false or misleading in nature but may reasonably be perceived as a fact

(vii) impersonates another person

(viii) threatens the unity, integrity, defense, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognizable offence or prevents investigation of any offence or is insulting other nation

(ix) contains software virus or any other computer code, file or program designed to

interrupt, destroy or limit the functionality of any computer resource

(x) is patently false and untrue, and is written or published in any form, with the intent to mislead or harass a person, entity or agency for financial gain or to cause any injury to any person¹⁵⁶²

Analysis

We all understand that social media has developed into one of the most useful tools for self-expression, but because many people abuse it for illegal activities, the lack of freedom of expression in the online world has become a serious problem that necessitates the imposition of stricter actions. Due to the free speech, the information from an online opinion might not be reliable because there are so many different perspectives on a given topic that it ends up being inaccurate information. There is a need for a separate law or legislation that will oversee social media activities apart from the current IT system. It is insufficient for the current developments that are occurring. The legislation shall regulate the social media speech and it must be respected also, the corporations must develop programs and corporate policies to be compliant with them.

Conclusion

Free speech was nevertheless introduced so that people might express their opinions without fear of encountering hostility. This has been successful to some extent, but other people have used the situation and disseminated false information. Since, there is a very thin line that demarcates the enjoyment of one’s rights from the violation of those rights and the enjoyment of others’ rights while engaging in the activity. There is a need to take actions and put legislation in place that protect people’s online safety while also guaranteeing that their right to free speech and expression is upheld. This can be accomplished by raising public awareness

¹⁵⁶² The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021



of all events and encouraging them to use their rights in a way that allows the relevant authorities to apply reasonable limitations in order to preserve peace and order.

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