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FREEDOM OF SPEECH IN THE AGE OF SOCIAL MEDIA

~ *NANDANI SINGH*

INTRODUCTION

One of the most important human rights is freedom of speech¹. It is a vital component of democracy. The right to express one's thoughts or opinions, to share or discuss ideas with others, to criticize or provide feedback on the actions of any government, and to participate in public discussions are all part of this right. The growth of social media, like Facebook, X (formerly known as Twitter), Instagram, YouTube, and WhatsApp, has significantly expanded the extent and speed at which individuals can communicate with one another. Social media has enabled regular individuals to have more influence over the direction of public opinion and the spread of information. At the same time, this digital transformation has created new concerns about misinformation, hate speech, the privacy of users, and the regulation of online content.

FREEDOM OF SPEECH AND CONSTITUTIONAL PROTECTION

India's Constitution provides its citizens the right to freedom of speech and expression through Article 19(1)(a)². This right allows individuals to communicate their opinions freely by all means including words, writing, art, or other forms of expression. However, this right is not limitless. Article 19(2) allows the Government to impose reasonable limits³ on the freedom of speech and expression of citizens in order to protect the state's sovereignty and integrity, the security of the state, public order, decency, morality, contempt of court; defamation; or inciting others to commit an offence.

Internationally, the right to freedom of speech and expression is similarly protected in Article 19 of the Universal Declaration of Human Rights⁴, and in the International Covenant on Civil

¹ Universal Declaration of Human Rights art. 19, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

² INDIA CONST. art. 19, cl. 1(a).

³ INDIA CONST. art. 19, cl. 2.

⁴ Universal Declaration of Human Rights art. 19, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

and Political Rights,⁵ but both instruments also allow for reasonable limits on the exercise of this right to protect public interests.

THE USE OF SOCIAL MEDIA TO COMMUNICATE

In many ways, social media provides an equal opportunity platform for all individuals to express their opinions to a variety of different audiences, as well as engage in dialogue with one another. The openness of social media channels has made them instrumental in the development of many social movements, political awareness and active participation in democracy. Examples such as the #MeToo Movement, Black Lives Matter⁶, and recent climate change movements illustrate how social media has enabled previously disenfranchised individuals to have their voices amplified and to bring individuals together to work collectively towards a common cause.

In times of emergencies and crisis situations social media has allowed instant access to information about both events happening within the emergency or the crisis and information about how to hold governments or organizations accountable. Social media also has developed into an effective vehicle for journalism⁷, activism, and public participation in the process of reporting on issues.

THE DIGITAL AGE AND FREEDOM OF EXPRESSION

While social media has many advantages, it also presents many challenges to freedom of expression.

1. False or Misleading Information

False or misleading information can spread rapidly⁸ via social media channels, creating fear, influencing election results, and undermining public confidence in the integrity of our institutions. As a result, it can be challenging for individuals to discern valid information from invalid information based on social media's algorithms.

2. Cyberbullying, Hate Speech, and Trolling

Many social media platforms have seen a rise in the proliferation of hate speech and other types of cyberbullying, trolling, and harassment. These types of content can contribute to the

⁵ International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171.

⁶ Jack M. Balkin, Free Speech in the Algorithmic Society, 51 U.C. DAVIS L. REV. 1149, 1151–53 (2018).

⁷ THOMAS I. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 6–9 (1970).

⁸ U.N. Human Rights Comm., General Comment No. 34, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).

deterioration of community cohesion and discourage people from participating in online forums.

3. Censorship and Moderation of Content

Private technology companies have significant control⁹ over what individuals say online by removing content, suspending accounts, and limiting access to platforms. Moderation is an important tool to deal with harmful content; however, excessive moderation can result in censorship and suppression of legitimate speech.

4. Government Regulation and Surveillance

Governments around the world are enacting legislation in order to regulate online speech and to maintain public order and safety; however, too much regulation or surveillance by the government can negatively impact of both the right to privacy and freedom of expression, meaning that finding ways to balance national security with individual liberties can be a challenging goal¹⁰.

LEGAL REGULATIONS FOR ONLINE SPEECH IN INDIA

India has put in place multiple pieces of legislation to regulate speech made via the internet. The main piece of legislation that establishes legal means for regulating cyber-related activities is the Information Technology Act, 2000.¹¹ In particular, Section 66A criminalises¹² the sending of offensive messages by means of communication services. The Supreme Court of India recently ruled that Section 66A¹³ of the Information Technology Act was unconstitutional as it violated Article 19(1)(a) and imposed unreasonable restrictions on the right to free speech (*Shreya Singhal v. Union of India*, 2015).

The newly-issued rules related to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code)¹⁴ impose requirements on social media intermediaries to remove unlawful content as well as establish procedures for resolving disputes over content removal. Although this is intended to create a level of accountability for the intermediaries, there are

⁹ Jack M. Balkin, *supra* note 6, at 1155.

¹⁰ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

¹¹ Information Technology Act, No. 21 of 2000, INDIA CODE.

¹² *Id.* § 66A.

¹³ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

¹⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

many concerns over possible overreaching by the government and how this will affect free expression.

JUDICIAL PERSPECTIVE ON FREE SPEECH IN TODAY'S DIGITAL WORLD

The Indian judiciary has made significant contributions towards upholding free speech and expression in the age of digital communications and through several key Supreme Court decisions, it has reinforced that constitutional protections apply to online forums as well. It also stated that any limitations on speech must pass a reasonableness test prescribed in Article 19(2).

1. Shreya Singhal v. Union of India (2015) 5 SCC 1¹⁵

This decision is widely seen to be a landmark case regarding freedom of expression over the internet in India. The petitioner challenged the constitutionality of the government's carrying into force the provisions of section 66A of the Information Technology Act, 2000, which prohibited sending a "message that is grossly offensive or annoying" via electronic means such as the internet.

The petitioner argued that these provisions were unconstitutional because they were vague, overly broad and permitted arbitrary arrest and further limited protected expression on social media.

The Supreme Court of India concluded that section 66A was unconstitutional due to the fact that it violated article 19(1)(a) of the Indian Constitution. In reaching this conclusion, the Court found that the terms "grossly offensive," and "annoying" were vague and did not provide sufficiently clear guidance for enforcement; thus, they created a chilling effect on the exercise of free speech. In addition, the Court reaffirmed that restrictions on online speech must be in accordance with the restrictions set forth in article 19(2) of the Indian Constitution. The decision has established itself as a keystone in protecting freedom of expression in cyberspace and ensuring democratic discourse in a digital world.

2. Anuradha Bhasin v. Union of India (2020) 3 SCC 637¹⁶

In this case, the Supreme Court of India addressed an ongoing internet blackout in Kashmir after the revocation of Article 370. The petitioner alleged that the disruption to internet services

¹⁵ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

¹⁶ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

restricted access to news and communication, severely harming many people such as journalists, businesses, and everyday citizens.

The Court held that preserving the right to express one's thoughts and ideas freely over the internet is constitutionally protected ¹⁷by Article 19(1)(a) of the Indian Constitution. The Court also determined that any limit placed on the access and enjoyment of the internet must meet the requirements of necessity and proportionality, and that it is impermissible for the government to suspend or terminate internet services indefinitely. The Supreme Court ordered that the government review such orders from time to time and ensure transparency with regard to them. Throughout its decision, the Court emphasized that the internet is an essential means by which we exercise our rights as citizens of today.

3. Secretary Ministry of Information and Broadcasting v. Cricket Association of Bengal, (1995) 2 SCC 161¹⁸

This case occurred before social media became widely used but established principles that still apply today to digital communications. The issue before the Court was whether the Cricket Association of Bengal had the right to send out its broadcasts of cricket games through privately operated television stations.

According to the Supreme Court, free speech and expression extend to distributing information via electronic media; therefore, the public property of airwaves must enable multiple viewpoints as well as democratic participation. Furthermore, all citizens are entitled not just to express themselves but also have the right to obtain information. The pervasiveness of social media and how they are used as the primary means of communication and idea exchange further illustrate these principles.

The judiciary's collective decisions on these issues signify its dedication to preserving freedom of speech while maintaining the state's ability to place reasonable, proportionate restrictions according to constitutional values.

THE IMPORTANCE OF BALANCING RIGHTS AND RESPONSIBILITIES

In this digital age, freedom to express opinions must be done in a responsible manner. Users need to be aware of how their actions affect others and to demonstrate respect for others' rights and dignity. As such, social media companies should endeavour to be transparent in their

¹⁷ Id.

¹⁸ *Sec'y, Ministry of Info. & Broad. v. Cricket Ass'n of Bengal*, (1995) 2 SCC 161.

content moderation policies and have fair procedures for addressing complaints. Governments must also implement laws to maintain public order without infringing upon their constitutional liberties.

Digital literacy and awareness¹⁹ are vital tools to combat misinformation and promote responsible use of the Internet. A concerted effort among all segments of society (citizens, governments, and technology companies) is necessary to keep democratic ideals intact and create a safe online environment.

CONCLUSION

Social networking platforms have created an opportunity for individuals to engage in unprecedented levels of communication and political participation than ever before. Traditional media outlets cannot allow the level of information dissemination through social networks as they would traditionally do; thus, social networks are creating new avenues of information sharing that were not previously available to individuals. Despite these advantages of social networking sites, there are also serious problems associated with the use of these sites: misinformation, hate speech, and censorship. Protecting free expression²⁰ in the digital environment requires a delicate balance of the rights of individuals, the interest of the general public, and the regulation of technology. The preservation of constitutional principles²¹ and fostering a culture of responsible use of social networking sites will be key components in ensuring that the right of free expression is sustained in the digital age.

¹⁹ U.N. Human Rights Council, Report of the Special Rapporteur on Freedom of Opinion and Expression, U.N. Doc. A/HRC/38/35 (Apr. 6, 2018).

²⁰ JOHN STUART MILL, *ON LIBERTY* 22–35 (1859).

²¹ GEOFFREY R. STONE ET AL., *CONSTITUTIONAL LAW* 1038–45 (7th ed. 2013).