

**FREEDOM OF SPEECH AND EXPRESSION AND ROLE OF SOCIAL MEDIA: A LEGAL ANALYSIS OF THE CONSTITUTIONAL MANDATE IN INDIA**

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**Abstract**

Social media has played a vital role of peoples' lives nowadays. One of the most prevalent platforms for computer-mediated communication is social media, which is significant role in the decision making process. Speech is a gift from God to humanity. A human being communicates with others through speech and expression to express his thoughts, feelings, and sentiments. Thus, the right to freedom of speech and expression is one that all people are born with. Therefore, it is a fundamental right under Article 21 of the Indian Constitution. The first prerequisite for liberty is said to be the freedom of speech and expression. The freedom of expression is often referred to be the mother of all other liberties since it holds a prominent and significant position in the hierarchy of rights.

The article examines the constraints that are placed on social media and on the right to freedom of speech and expression under the national and intentional legal systems. And also discuss the restrictions established by the country's cyber laws, specifically Section 66A of the Information Technology Act, 2000, as well as the limits of the right to freedom of speech and expression in the context of social media.

**Keywords:** Freedom of Speech & Expression, Cyber Law, Indian Constitution, Reasonable Restriction, Social Media.

*“Everyone is in favour of Free Speech. Hardly, a day passes without its being extolled, but some people’s idea of it is that they are free to say what they like, but if anyone else says anything back, that is an outrage”.*

**-Sir Winston Churchill**

**Introduction**

The freedom of speech and expression, which is enshrined in Article 19 of Indian Constitution, is one of the most significant freedoms. The Supreme Court has given the freedom of the press a very wide interpretation, and both are necessary conditions for a democratic system. The freedom of speech and expression signifies the right to speak and express one’s thoughts and beliefs freely by way of words, either oral or written, pictures, gestures or any other acts. This freedom is not only guaranteed by the Constitution or various statutes of different nations but also by various international conventions such as Universal Declaration of Human Rights, International Covenant on Civil and Political Rights etc.

Freedom of speech and expression is a fundamental rights guaranteed by the Constitution of India under Article 19(1) (a). This right is considered to be indispensable for the preservation of a democratic society wherein the citizens are active participants in the political affairs. It implies a free exchange of ideas, dissemination of information and knowledge and freedom of expression of opinion.<sup>1</sup> The freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution which should be jealously guarded by the court and also be recognised that free political discussion is essential for the proper functioning of a democratic government.<sup>2</sup>

There are a number of statutes and legislations restrict to the media, as well as the freedom granted to it by the Constitution. The media's obligations to be respected individual rights are also obligated to operate within the confines of legal concepts and statutes. Freedom of speech and expression implies that different views are allowed to be expressed by proponents and opponents not because they are

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<sup>1</sup> Trimbak Krishna Tope, *The Constitution of India* 65-66 (Bombay Popular Parkashan, 1971).

<sup>2</sup> *Brij Bushan v. State of Delhi*, AIR 1950 SC 129.

correct or valid but because there is freedom in this country for expressing even different views on any issue.<sup>3</sup>

The importance of media can be deduced from the words of the great and distinguished jurist.

The importance of social media can be restricted by the protective legislations as well as interpretation of the different distinguished jurists. Mr. F. S. Nariman stated that

*“A responsible Press is the handmaiden of successful judicial administration’. The press not only publishes information about cases and trials, and moreover holds the entire Justice hierarchy (police, prosecutors, lawyers, Judges, and Courts) accountable to the public. Free and robust reporting, criticism, and debate all contribute to a greater comprehension of the rule of law and the overall justice system among the general public. It also serves to improve the system's quality by exposing it to the purifying influence of public scrutiny and accountability.”*

The press freedom is at the heart of social and political discourse. The courts have a key responsibility to protect press freedom and to declare all restrictions unconstitutional or administrative acts that obstruct it in violation of the Constitution's mandate.

The goal of freedom of expression is to accomplish four major social goals:

- a. It assists a person in achieving self-fulfillment.
- b. It aids in the search for the truth.
- c. It improves an individual's ability to participate —in decision-making and it provides a method through which an acceptable balance between stability and social change<sup>4</sup> can be achieved.

## Meaning and Definition

### Freedom of Speech & Expression

Freedom of speech & expression is a complex right under the Indian Constitution. Considering that Freedom of speech & expression is not a free freedom and it accompanies a variety of commitments, the law might take into consideration certain restrictions on how it very well may be utilized. Article 19(1)(a) guarantees freedom of speech and expression to all citizens. It states that “All citizens shall have the right (a) to freedom of speech and expression,”<sup>5</sup> It means a citizen is free to express his outlook and opinion through any communicable medium such as by words of mouth, writing, signs, and even by way of silence. The Freedom of speech and expression includes the right to express one’s own convictions and opinions freely by words of mouth, writing, printing, pictures, theatre or any other mode. It thus includes the expression of one’s ideas through any communicable medium or visible representation such as gesture, signs and the like<sup>6</sup>.

The freedom of speech and expression not only includes liberty to propagate one's own views but also the right to promulgate or publish the views of others. Thus, it includes freedom of press also within its ambit. This freedom therefore serves the purpose of helping persons to attain self-fulfilment, assisting for discovering the truth, strengthening the capacity of persons to participate in decision making and establishing a balance between social change and stability.<sup>7</sup>

Communicable medium includes social media where people express their views. This right connotes also publication and thus freedom of press is included in this category. Freedom of expression has four broad special purposes to serve: it helps an individual to attain self-fulfilment, it assists in the discovery of truth, strengthens the capacity of an individual in participating in decision making and it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.<sup>8</sup>

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<sup>3</sup> Durga Das Basu, Commentary on the Constitution of India 2390 (Wadhwa and Company Law Publishers, Nagpur, 8th edn., 2007).

<sup>4</sup> <https://shodhganga.inflibnet.ac.in> (last visited on June 21, 2023 at 01:00 pm).

<sup>5</sup> Article 19 (1)(a) of the Indian Constitution.

<sup>6</sup> Lowell v. Griffin ,(1939) 303 US 444.

<sup>7</sup> *Indian Express Newspapers v. Union of India & Ors.*, [(1985) 1 SCC 641].

<sup>8</sup> Dr. J N Pandey, Constitutional Law of India (Central Law Agency,2019)pp.211.

Freedom of speech and expression has been held to be basic and indivisible for a democratic polity. It's said to be the cornerstone of functioning of the democracy. It is the foundation of a democratic society. It is essential to the rule of law and liberty of citizens. In *Romesh Thaper v. State of Madras*,<sup>9</sup> Patanjali Sastri, C. J. observed:

“Freedom of speech and of the press laid at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the constitution may well have reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, what it is better to leave a few of its noxious branches to their luxuriant growth than by pruning them away, to injure the vigour of those yielding the proper fruits.”

Freedom of speech and expression, just as equality clause and the guarantee of life and liberty have been very broadly construed by the Supreme Court right from the 1950s. It has been variously described as a “basic human right”, “a natural right” and the like. The freedom of speech and expression includes liberty to propagate not one's views only. It also includes the right to propagate or publish the views of other people,<sup>10</sup> otherwise this freedom would not include the freedom of the press. Freedom of expression has four broad special purposes to serve:

- a. It helps an individual, to attain self-fulfilment;
- b. It assists in the discovery of truth;
- c. It strengthens the capacity of an individual in participating in decision making; and
- d. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own belief and communicate them freely to others.<sup>11</sup>

Due to its ability to give citizens a significant voice in the political and social life of the country, this right is regarded as one of the foundational elements of a robust democratic government. Furthermore, it allows a citizen the chance to live a social or political life in addition to a fundamental one. The Preamble to the Indian Constitution states about securing liberty of thought and expression and this is rightly reflected in Article 19(1)(a) where there is right to express opinion, to seek, impart and receive information. The government has a duty to establish such conditions where all the citizens can efficiently and effectively enjoy this right.

But no right is absolute in nature and such is the case with freedom of speech and expression. Article 19(2) lays down reasonable restrictions that can be imposed by the State on the exercise of this right in the interest of the public. These include:

- Security of State
- Friendly relations with foreign states
- Public Order
- Decency or morality
- Contempt of Court
- Defamation
- Incitement to an offense Sovereignty and integrity of India.<sup>12</sup>

The Courts in India have given a broad interpretation to the Article 19(1)(a) which is subject only to the restrictions given under Article 19(2). In *Union of India v/s Association for Democratic Reforms*<sup>13</sup>, the Supreme Court observed “One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a mockery. Freedom of speech and expression includes right to impart and receive information which includes freedom to

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<sup>9</sup> AIR 1950 SC 124.

<sup>10</sup> *Srinivas v. State of Madras*, AIR 1931 Mad 70.

<sup>11</sup> *J. N. Pandey*, *The Constitutional Law of India*, Central Law Agency, 47<sup>th</sup> edn., 2010, p. 183.

<sup>12</sup> Art. 19 (2), Indian Constitution.

<sup>13</sup> (2002) 5 SCC 294.

hold opinions". In *Life Insurance Corporation of India v. Prof. Manubhai D. Shah, Doordrashan*<sup>14</sup>, the Court made it clear that "subject to Article 19(2), a citizen has a right to publish, circulate and disseminate his views to mold public opinion on vital issues of national importance. Hence, any attempt to that or deny the same would offend Art. 19(1)(a)".

## SOCIAL MEDIA

Social media can be defined as any web or mobile based platform that enables an individual or agency to communicate interactively and enables exchange of user generated content. Andreas Kaplan and Michael Haenlein define social media as "a group of internetbased applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of user-generated content." "Web 2.0" refers to Internet platforms that allow for interactive participation by users.<sup>15</sup>

Social media can also be defined as any web or mobile based platform which enables an individual or an agency to communicate interactively and enables exchange of user generated content.<sup>16</sup> Another variant of social media is mobile social media i.e. when social media is accessed through mobile devices it is called mobile social media. It differentiates from traditional social media as it incorporates new factors such as the current location of the user or the time delay between sending and receiving messages.<sup>17</sup>

Social media comprises primarily internet and mobile phone based tools for sharing and discussing information. It creates a relationship between technology, telecommunications, and social interaction and thereby provides a platform to communicate through words, images, documentaries, movies and music.<sup>18</sup> Social media includes web-based and mobile technologies used to turn communication into interactive dialogue.<sup>19</sup>

## Freedom of speech and Cyber Law

In order to establish a legal framework for policing Internet usage, the Information Technology (IT) Act was put into effect in 2000. The Act makes it illegal to publish pornographic content online and gives authorities the right to examine any location without a warrant and detain anyone who violates the Act's rules. An amendment to the IT Act in 2008 reinforced the power of the government to block Internet websites and its content and also criminalized sending of messages which are deemed to be offensive.<sup>20</sup>

The Indian Constitution enables limits, but only under certain circumstances; therefore the issue of internet censorship in India is tricky. The worldwide nature of the internet makes it difficult to govern the subject matter that is uploaded in other countries and has visitors in India, which causes this problem to reach a higher degree. Moreover, the most debated issue about who decides what content is to be censored and under what situations tend to be seized by arguments which are supported by security safeguards or by need for broad provisions. Thus, most of the efforts at censorship have been messy, unorganized and contradictory. Looking into the rising concerns regarding blocking of internet content, the need of the hour is to enact new laws that are consistent with the protective measures set

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<sup>14</sup> AIR 1993 SC 171.

<sup>15</sup> Neshapriyan M, 'Social Media And Freedom of Speech And Expression', <https://www.legalserviceindia.com/legal/article-426-social-media-and-freedom-of-speech-and-expression.html> access on 23/07/2023.

<sup>16</sup> "Social Media Framework Draft for Public Consultation", available on the Web, URL:[http://www.indiaenvironmentportal.org.in/files/file/SocialMediaFrameworkDraftforPublicConsultation\\_192012.pdf](http://www.indiaenvironmentportal.org.in/files/file/SocialMediaFrameworkDraftforPublicConsultation_192012.pdf)  
<sup>17</sup> *Ibid.*

<sup>18</sup> Paranjy Guha Thakurta, *Media Ethics* (New Delhi: Oxford University Press, 2012), p. 354

<sup>19</sup> "Social Media", available on the Web, URL: [http://en.wikipedia.org/wiki/social\\_media](http://en.wikipedia.org/wiki/social_media)

<sup>20</sup> India, Bureau of Democracy, Human Rights, and Labour, U.S. DEPARTMENT OF STATE, <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154480.htm>

forth by the Court in the aforesaid judgment and which are also in line with the international human rights standards.<sup>21\</sup>

The Information Technology Act has developed into a simple weapon for criminalising speech that is frequently used to protect prominent political people. We have observed how Section 66A of the aforementioned Act has frequently been utilised to criminalise a wide range of speech at various times, to arrest individuals who made legitimate criticisms of the authorities, and to control the content that is made available online.

Section 66A of the IT Act was declared unconstitutional by the Supreme Court of India in the case of *Shreya Singhal v. Union of India*<sup>22</sup>. In response to this judgement the Government of India has expressed its view that it is examining this judgment by the Supreme Court and it may enact a new amended version of Section 66A which shall comply with the Constitutional provisions. This judgment set some important measures of protection with respect to the future of freedom of internet in India.

The "Information Technology Rules" were enacted in 2011 to supplement the IT Act 2000. Internet service providers were required to remove any content that was deemed undesirable within 36 hours of receiving notification from the government under these rules. After the commencement of the rules, in 2011, the Government solicited different social networking sites such as Facebook, Google, and Yahoo! to pre-screen user content before publishing it.<sup>23</sup> Later that year, the website of a cartoonist was blocked by the officials for exhibiting anti-corruption cartoons which were aimed at politicians.<sup>24</sup> In 2012, the Department of Telecommunications instructed to block numerous torrent sites without stating any reasons or giving any prior warnings. The department also ordered ban on around 300 particular URLs because of seditious matter with fabricated facts in regard to the Assam violence and promotion of North East relocation from cities such as Bangalore and Pune.<sup>25</sup> In 2013, a set of 39 websites were blocked for containing pornographic content. Similarly in 2015, there have been various complaints on social media where users talked about blocking approximately 857 pornographic websites by the Government agencies.<sup>26</sup>

Union Minister Shri Ravi Shankar Prasad has stated that "The entire debate on whether encryption would be maintained or not is misplaced. Whether Right to Privacy is ensured through using encryption technology or some other technology is entirely the purview of the social media intermediary. The Government of India is committed to ensuring Right of Privacy to all its citizens as well as has the means and the information necessary to ensure public order and maintain national security. It is WhatsApp's responsibility to find a technical solution, whether through encryption or otherwise, that both happen."<sup>27</sup>

"Requiring messaging apps to "trace" chats is the equivalent of asking us to keep a fingerprint of every single message sent on WhatsApp, which would break end-to-end encryption and fundamentally undermines people's right to privacy. We have consistently joined civil society and experts around the world in opposing requirements that would violate the privacy of our users," a WhatsApp spokesperson said.<sup>28</sup>

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<sup>21</sup> Anindito Mukherjee, Stifling Dissent: The Criminalization of Peaceful Expression in India, HUMAN RIGHTS WATCH <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india>

<sup>22</sup> AIR 2015 SC 1523.

<sup>23</sup> Heather Timmons, India Asks Google, Facebook to Screen User Content, THE NEW YORK TIMES <https://india.blogs.nytimes.com/2011/12/05/india-asks-google-facebook-others-to-screen-user-content/>

<sup>24</sup> Preetika Rana, Cartoonist Faces Ban on Right to Poke Fun, THE WALL STREET JOURNAL <https://blogs.wsj.com/indiarealtime/2012/01/04/cartoonist-faces-ban-on-right-to-poke-fun/>

<sup>25</sup> Government asks Twitter to block fake 'PMO India' accounts; site fails to respond, THE ECONOMIC TIMES <https://economictimes.indiatimes.com/news/politics-and-nation/government-asks-twitter-to-block-fake-pmo-india-accounts-site-fails-to-respond/articleshow/15610767.cms>

<sup>26</sup> Javed Anwer, Govt. goes after porn, makes ISPs ban sites, GADGETS NOW

<https://www.gadgetsnow.com/tech-news/Govt-goes-after-porn-makes-ISPs-ban-sites/articleshow/20769326.cms?>

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

### **The Information Technology Act, 2000**

(a) Under Chapter XI of the Act, Sections 65, 66, 66A, 6C, 66D, 66E, 66F, 67, 67A and 67B contain punishments for computer related offences which can also be committed through social media viz. tampering with computer source code, committing computer related offences given under Section 43, sending offensive messages through communication services, identity theft, cheating by personation using computer resource, violation of privacy, cyber terrorism, publishing or transmitting obscene material in electronic form, material containing sexually explicit act in electronic form, material depicting children in sexually explicit act in electronic form, respectively.

(b) Section 69 of the Act grants power to the Central or a State Government to issue directions for interception or monitoring or decryption of any information through any computer resource in the interest of the sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States, public order, for preventing incitement to commission of any cognizable offence, for investigation of any offence.

(c) Section 69A grants power to the Central Government to issue directions to block public access of any information through any computer resource on similar grounds.

(d) Section 69B grants power to the Central Government to issue directions to authorize any agency to monitor and collect traffic data or information through any computer resource for cyber security.

(e) Section 79 provides for liability of intermediary. An intermediary shall not be liable for any third party information, data or communication link made available or hosted by him in the Section 66A of the Information Technology Act, 2000.

Of all of these clauses, Section 66A has recently made headlines, albeit not for the right reasons. It is preferable to first have a look at Section 66A, the provision, before delving deeper into the problem. Sending offensive messages through communication services, etc. is punishable under Section 66A of the Information Technology Act of 2000, which was added by the Information Technology (Amendment) Act of 2008, and it is stated as follows:

Any person who sends, by means of a computer resource or a communication device-

(a) any information that is grossly offensive or has 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, persistently 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 punishable with imprisonment for a term which may extend to three years and with fine.

Explanation: For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, images, audio, video and any other electronic record, which may be transmitted with the message.

### **Conclusion & Suggestions**

It is undeniably true that using social media to express one's freedom of speech and expression is a very effective strategy. However, it is also being used more frequently for unlawful activities, which has made the government's efforts to restrict social media more effective. Whereas the misuse of social media necessitates legal regulation, there are real concerns that censorship will inevitably lead to the infringement of people's civil rights.

Regulation rather than restriction should be used to stop social media from becoming a cause of conflict. Indian cyber legislation as it stands now, though, is insufficient and neither fit. The results show that the government has enormous and unaccountable control when it comes to cyberspace security, based on an evaluation of current IT regulations. However, it can't always be stopped by merely keeping an eye out for abuse on social media. So, in order to control social media, specific law is needed.

India's current cyber laws are neither fit nor sufficient for addressing the problems. The current situation calls for a replacement for Section 66A of the IT Act. In a big, varied country like India, legislating social media is fraught with numerous practical challenges.

In light of all of this, it is recommended that the government create a committee composed of technical specialists to examine all potential aspects of the use and abuse of social media and provide recommendations for an appropriate approach to regulation that won't jeopardise individuals' civil rights.