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FREEDOM OF SPEECH IN THE SOCIAL MEDIA AGE

Enshrined in article 19(1)(a)¹ of the Constitution, freedom of speech and expression forms is one of the most important rights that is protected by the constitution. It is the pillar of Indian democracy that allows people to express their opinions freely without the fear of their voice being oppressed. It states that, “ All citizens shall have the right to freedom of speech and expression.”²

The right to freely express one's thoughts and beliefs through spoken words, written words, printed words, visual arts, theatre, or any other means is a key component of freedom of speech and expression. In Indian context this right is exclusively available to the Indian citizens and not to the foreigners. However it must be noted that this is not an absolute right rather certain limitations have been imposed on this right which are given under art19(2)³ of COI. The restrictions are in place to create a balance between the protection of other fundamental interests, and includes public order, morality, decency, the security of the state, and India's sovereignty and integrity, and the preservation of free expression. Time and again the importance of this right has been emphasised by the courts in India. “In *Maneka Gandhi v. Union of India* , Justice Bhagwati emphasised the value of free speech, stating that a democratic society is fundamentally predicated on unrestricted discussion, debate, and open dialogue because it serves as the only "corrective of government action" while keeping in mind the democratic setting”.⁴ Further in *Romesh Thappar v. The State Of Madras*⁵ It was stated that "freedom of speech and of the press lay at the foundation of all

¹ INDIA CONSTI. Art.19 § 1.cl.a

² INDIA CONST. art. 19 § 1, cl. a

³ INDIA CONST. art. 19 § 2

⁴ *Maneka Gandhi v. Union of India* 1978 SCC 1 248

⁵ *Romesh Thappar v. The State Of Madras* 1950 AIR SC 37 124

democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible."

However, the advent of social media in recent years has transformed the landscape in which these freedoms are exercised, reshaping the contours of free speech under Article 19(1)(a).

Social media has transformed the way people interact with one another. Further it has broadened the reach of people meaning they can interact with people across the globe with their phones. If we look at the data it shows that in India between the 2014 Lok Sabha elections and the 2019 general elections, various social media platforms experienced remarkable development, demonstrating the rapid expansion of social media use among Indian voters. "Back in 2014, merely one of every ten voters (9%) was found by Lokniti's election-time survey to be using Facebook and this figure of usage has increased steadily since, doubling to 20 percent by 2017, and then increasing further to 32 percent during the recent 2019 Lok Sabha elections"⁶. The same trend has been followed by other social media platforms like whatsapp and youtube. This has its own set of advantages and disadvantages.

If we talk about advantages, social media platforms have transformed the arena of free speech by giving people unprecedented access to engage in global dialogue. For instance, the #MeToo movement propelled sexual harassment survivors to tell their stories and demand justice by gaining traction on social media sites like Twitter. It also gives voice to the people of marginalised sections. Further it helps in transmission of information across the globe. The disadvantages include spread of disinformation and misinformation. These days instances of cyberbullying and online harassment have also become frequent. It can also promote hate speech, religious intolerance, dissent, and communalism to spread. The anonymity and reach provided by these platforms serve as a breeding ground for the spread of content that incites racial tensions and sows division. Thus it can be seen that while people do have a right of free speech sometimes it is misused often enough on social media platforms that it becomes detrimental to the democratic principles.

⁶ Social Media and Political Behaviour, Lokniti – Centre for the Study of Developing Societies (CSDS), 11, 11 (2019) <https://www.lokniti.org/media/upload_files/Social%20media%20and%20Political%20Behaviour%20report%20new.pdf>

While discussing free speech on social media platforms it is important to take into account the laws and rules that regulate online platforms and activity. An important factor in this is the Information Technology Act of 2000⁷. Section 66A of the Act was intended to combat internet offences including cyberbullying and harassment and it criminalized "grossly offensive" or "menacing" online communication. However these terms made this section vague and as a result it could be misused by the government to curb free speech. In *Shreya Singhal v. Union of India*⁸ the constitutional validity of this section along with Sec 69 A and Sec 79 was challenged on account of being in conflict with Art 19(1)(a). While addressing the issue as to whether Section 66A is capable of imposing chilling effect on the right to freedom of expression it was held by the court that “ because the provision fails to define terms, such as inconvenience or annoyance, “a very large amount of protected and innocent speech” could be curtailed.”⁹ Thus, the court found sec 66A to be unconstitutional and as a result it was struck down but remaining two sections were upheld by the court.

Another aspect which needs to be discussed is the intermediary liability , which holds intermediaries, including social media platforms, accountable for content posted by users. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021¹⁰ have been put into place to control digital intermediaries, such as social media platforms. These guidelines set forth responsibilities for content moderation, locating the "first originator" of offensive content, and creating a procedure for handling complaints. While addressing issues like fake news and hate speech, these clauses have also raised discussions about potential risks to free speech and worries about overreach.

However it must be taken into account even though laws are in place to strike a balance it is far from achieved. There is a vacuum in the regard that compliance of these laws is far from achieved. Balancing the two is a tough job but it can be achieved through stringent application of existing laws spreading awareness among people and further passing more clear and concrete laws.

⁷ THE INFORMATION TECHNOLOGY ACT, 2000, No. 21, Acts of Parliament, 2000 (India)

⁸ *Shreya Singhal v. Union of India* 2015 AIR SC 1523

⁹ *Shreya Singhal v. Union of India* 2015 AIR SC 1523

¹⁰ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 , Acts of Parliament ,2021