

# The Impact of Social Media and Internet on Free Speech

Mahima Digwal<sup>1</sup>, Dr. Superna Venaik<sup>2</sup>

<sup>1,2</sup>*Amity Law School, Noida*

## I. INTRODUCTION

There exist certain rights which are acquired by human being since birth by the virtue of nature. Freedom of speech and expression is one of such natural rights which is there with human since his birth only. In Indian context right to freedom of speech and expression is the fundamental right and finds place in part III of Indian constitution. Right to freedom of speech and expression is so vital that it is not only provided under Indian constitution but is also guaranteed by almost every modern constitution either as fundamental or human rights. In fact this can be said that what we termed as fundamental rights are the modern versions of natural rights only.

But as we all know that rights always have their correlative duties, thus rights are not absolute. In this modern era where digitalization is the dream no State gives absolute rights otherwise it may create anarchy. Therefore every fundamental right has some restrictions which are needed to be observed. In this ICT age where the line between free speech and hate speech has blurred due to which the right to free speech and expression has become highly debated issue. Many a times a question is being raised that whether we are exercising freedom of speech and expression in true sense or not? As discussed in the previous chapter one can easily observe that social media is a double edge sword which has its own benefits as well as disadvantages. Therefore we need to resolve this issue with the help of concepts like accountability, transparency, and traceability. And all this should be observed along with privacy of the users.

As recently seen in the case of statement given by Nupur Sharma which caused the huge uproar in India as well as in Qatar which also summoned the Indian Ambassador in the issue wherein the BJP leader has given some objectionable statement regarding religious head<sup>198</sup>. Thus it can be observed that the right though seems to be easy but it is not especially in the age of Internet wherein through social media the information spreads within splits of seconds.

All this is possible with the help of laws especially made for cyberspace. Artificial intelligence can also be resorted in order to regulate the cyberspace. But as we all know that this virtual space is dynamic and the one which is evolving constantly it is much difficult to regulate all the issue related to cyberspace.

## II. MEANING

As discussed above FOSE is a natural right which human has since birth and state could not deny this right to an individual though the state can regulate the said right as no rights are absolute. Basically FOSE means a right through which an individual can express himself. This expression of thought, view or opinion can be through words spoken or written or can also be through gestures. An individual can express his thoughts on any matter whether it may be national or international, social or political, religious or non-religious. This expression can take place through any medium like print media, electronic media and also include social media. But this right can be exercised when there is no fear in the mind of individual. If an individual already has a fear that his or her thoughts would be censored then in this case FOSE is not exercised in its true sense.

As discussed above this right seems to be very simple but that's not the case. All rights are not simple as they are not absolute. But with FOSE things become more critical as not only the domestic issues are related to the exercise of this right but also the international issues are related with its exercise.

a). Universal Declaration of Human Rights, 1948:

This is popularly known as UDHR and it is one of the international instruments which contain rights and for all human being. It is treated as milestone instrument in regards to human rights and its history. As far as right to free speech is concerned it has its place in UDHR under Article 19. This Article states that everyone is free to hold his or her opinion without any interference. This right also extends to media frontiers wherein individual possess right to receive and seek

### III. ORIGIN OF FREEDOM OF SPEECH AND EXPRESSION

As FOSE is a natural right its existence can be traced back to the time of nature or natural law school. It exists since ancient times. Basically it owes its existence to Greek Athenian era wherein it relates to the word parrhesia which means free speech<sup>1</sup>. In Athenian period free speech was treated as foundation stone of democracy in fact it was an art of democracy with which democracy couldn't be practiced. That's why there writer, philosopher and leaders were provided with free speech and thus they were also free to criticize the government.

But as we all know law is something which is as dynamic as society is thus this right to freedom of speech and expression has also grown gradually according to the legal system of various nations. And thus it was realized that by international community that some common standards through international conventions, treaties and declarations are needed so as to have some model system for protection of freedom of speech and expression. Some of such important instrument which have strengthen rift to freedom of speech and expression are as follow:

As discussed above it has enforceability element because it is a treaty and is legally binding upon the nations who have adopted it. At the same time it also provides right to states to impose some reasonable restrictions on this right as no rights are absolute. In this line Article 19(3) clarifies the position stating that one is not permitted to frustrate someone else's right in the name of free speech. And thus this free speech can be restricted on the basis of reasonable grounds like reputation or goodwill of others, protection of national security, sovereignty & integrity and to maintain law and order. But all such restrictions must only be imposed through law and with some particular objective or goal.

### IV. SCOPE OF FREEDOM OF SPEECH AND EXPRESSION

Freedom of speech and expression is a building block for all other freedoms leading towards a healthy democracy. Basically it leads towards four corner stone's which are as follows:-

a) Essential for dignity and self development of individual:- It is a well established fact in any society a person has a right to life<sup>2</sup>. And life of

information through which he can form efficient opinion or idea.

But as we all know that it is just a declaration and hence not enforceable. It just depicts broader idea of human right and freedom. It is actually a set of morals or standards which is sought to be achieved by international community as a whole.

b) International Covenant on Civil and Political Rights, 1966: it is popularly known as ICCPR. This is one of the most important instruments for upholding and protecting human rights as it has enforceability element. It is actually multilateral treaty which makes it mandatory that the parties to it must respect the civil and political rights of individual. It encompasses of various rights like right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. Article 19(2) of the instrument states about freedom of speech. It actually states that everyone has right to have his opinion or view without any interference. This provision of covenant is similar to that of UDHR. It also deals with expressing the views or thoughts regardless of media frontier. It gives freedom to express in any form through any medium. quest in human mind which may prove helpful in finding the truth from the market of falsehood. It actually provides us with a varied offer of information

a) Healthy democracy: Democracy in itself implies freedom of expression at political level. In democracy people are sovereign which ultimately means they cannot be limited in their expressions, for a healthy democracy citizens must be free to share their opinion regarding my political decision.

b) Integration and social stabilization: Language is something which actually connects the people in the same way as watching the same TV shows or a movie. It people have common idea or an opinion on any issue then they may have a sense of unity. It helps up in suppressing negative ideologies thus function as a safety valve. E.g. Amidst the corona pandemic a call from Indian Prime Minister to light a candle and to clap in honour of safety personnel's actually created a sense of unity among Indian citizens and helped in coping up with the crisis.

### IV. INDIAN CONSTITUTION

According to Article 19 (1) (a) of the Indian Constitution, everyone has the right to freedom of speech and expression. It simply means

a human is invaluable without dignity<sup>3</sup>. As a natural right freedom of speech and expression automatically provides dignity to human life.

Moreover this right to expression is interconnected with rights like freedom of religion, freedom of reception and freedom of equality. In cumulative freedom of expressions leads us towards an open society where people are open to creation of new ideas and comparison among the various available options.

b) Includes right to information and thus unraveling the truth: It actually encourages the

As discussed earlier, that no right is absolute in nature, especially the right to freedom of expression. Article 19(2)<sup>4</sup> states about the reasonable restrictions applicable on article 19(1) (a). It enumerates certain grounds like sovereignty and integrity of India, the security of the nation, friendly relation with foreign states, public order, decency or morality, contempt of court, defamation and incitement to an offence. The content which falls within these grounds is considered to be objectionable.

The reasonable restrictions mentioned under Article 19(2) are discussed below:-

a) Sovereignty and Integrity of India: Sovereignty and integrity of the country cannot be compromised on account of freedom of speech and expression. This restriction was added in constitution by sixteenth amendment w.e.f. 06.10.1963. The intent was to make any expression by words, writing or visible interpretations which is contrary to safety or security of nation is a punishable crime. As a prevention of Insult of National Honors Act 1971 was enacted in order to make insult of national flag a punishable offence.

b) Security of State: The pillar stone behind freedom of speech is security of state organized government. And that's why it cannot be sacrificed in a democratic country. Any unlawful or unconstitutional means which attempt to overthrow the organized government of state can't be tolerated.

In Article 19(2) security of state is not a simple danger, but it is an aggravated form of public order

maintenance of law and order. It simply means public peace in general safety and tranquility in society. This term is wide enough to include commercial disturbances.

having the freedom to express one's opinions and allowing them to be spread by speech, writing, printing, pictures, or any other methods under the Indian constitution. It also involves the freedom to spread other people's opinions. Though the freedom of press is not expressly mentioned in article 19 (1) (a) but the position in this regards has been settled down by apex court. Thus it can be said that it is a multifaceted right which cannot be read in isolation.

including rebellion, waging war etc. in order to maintain security of state Indian Parliament has enacted several legislations are:

1. The Press (Objectionable Matter) Act 1951<sup>5</sup>- This Act was in force till 1956 only. It was enacted to put restriction on any such publication which is capable of inciting violence or any act of overthrowing the government established by law. This Act was further replaced by Criminal Amendment Act 1961.
2. The Custom Act 1962<sup>6</sup>- It is related to the documents where export or import is restricted on the ground that document is adverse to the security of India.
3. Sections 121 and 121A of Indian Penal Code.
4. Police ( Incitement to Disaffection ) Act (2933) section 3.
5. The Civil Defence Act 1968
6. The National Security Act 1980.

C) Friendly Relations with Foreign States: This restriction was added through First Amendment Act of 1951. The intent behind this was to prohibit unwanted propaganda against a foreign friendly state. Anything which has a potential to jeopardize the Indian foreign relations, comes under this.

The term friendly relation with foreign state connotes several things like libel of foreign dignitaries, propaganda in favor of rival claimants to authority in foreign state, inducement of foreign establishment, propaganda in favor of war with a peace state etc. Putting it simply means international relations.

d) Public Order: this was inserted by constitution First Amendment Act. The term Public Order is wide enough and different from

5. Right to criticize
6. Right to remain silent
7. Freedom of Press

A healthy democracy can survive only if the

Public order can be justified as absence of violence accompanied with orderly state of affairs in which citizen can peacefully enjoy their lives.

In India we have certain legislatures which put freedom of speech and expression in the ambit of this restriction:

- i. Indian Penal Code
  - Section 153A- promoting enmity between different classes of person is an offence.

#### V. JOURNEY OF RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN INDIA AND ROLE OF INDIAN JUDICIARY

In any democratic country judiciary is always known as one of the foundational pillar on which democracy relies. In India we also have a very strong and independent judiciary which ensures that the provisions of Indian constitution are respected. Not only this it's the judiciary whose craftsmanship has ensured the protection of part III of Indian Constitution which is termed as Magna Carta of Indian Constitution<sup>11</sup>. It is the wisdom of judiciary which has ensured that FOSE is not only protected but it can be widened up in accordance with the need and technology. Now with many judicial pronouncements FOSE includes:

1. Right to Information
2. Right to Broadcast
3. Freedom and right of Commercial Speech
4. Freedom of expression even beyond national boundaries

pages, on the grounds that it violated Article 19(1) (a) and was not a reasonable restriction under article 19 in Bennett Coleman and Co. v. Union of India. The Daily Newspapers (Price and Page) Order, 1960, which set the number of pages and size that a newspaper could publish at a price, was also invalidated (2). The Government's argument that it would promote the expansion of small news papers was rejected by the Court.

5. Brij Bhushan v. State of Delhi : The court overturned the pre-censorship order against the English Weekly of Delhi on the grounds that it violated press freedom and required the editor and publisher of a newspaper to submit all communal issues, all news, and all opinions about Pakistan, including pictures and cartoons, for scrutiny in duplicate before publication.

legislature and judiciary are vigilant enough at the same time public is free to express them. Actually with the passage of time this right has been expanded and now is applicable to cyberspace too. But this expansion was possible only because of the following judgments:

1. Romesh Thappar v. State of Madras : It was among the earliest cases the Supreme Court decided, recognizing press freedom as a part of speech and expression.
2. Patanjali Sastri, J. made the accurate comment that "Freedom of Speech and of the Press lay at the core of all democratic institutions, for without free political discussion, no public education, so necessary for the successful functioning of the process of Government, is imaginable."
3. Indian Express v. Union of India<sup>13</sup>: In this case it was held that the Press is an important part of the democratic apparatus. The courts have a duty to safeguard journalistic freedom and declare unconstitutional any laws or government policies that restrict it. Press freedom comprises the ability to publish, to circulate, and to avoid pre-censorship.
4. Sakal Papers Ltd. v. Union of India<sup>14</sup>: The Supreme Court of India invalidated the Newsprint Control Order, which set the maximum number of pages, on the grounds that it violated Article 119(1)(a) and was not a reasonable restriction under Article 19 in Bennett Coleman and Co. v. Union of India<sup>15</sup>. The Daily Newspapers (Price and Page) Order, 1960, which set the number of

addressing the right to free expression since the Romesh Thappar case. Justice Jeevan Reddy reaffirmed the necessity of press freedom in R. Rajagopal v. Tamil Nadu<sup>18</sup>. In his clear explanation, he highlights the jurisprudential imperative as follows: But what is required in the present-day is a right balancing between press freedom and aforementioned regulations ensuring that democratic way of life as enshrined in Constitution could be achieved. In the recent years, the press and electronic media have become important components of life in our country. They are still growing, and as they do so, their curiosity grows. The exercise of governmental authority by the press and media, among others, must be constantly monitored under our system of government as well as systems of government in the United States of America and

6. *Tata Press Ltd. Vs. Mahanagar Telephone Nigam Ltd.*: In this decision, the Supreme Court found that a business advertisement or commercial speech was likewise protected by the First Amendment's freedom of speech and expression and would only be restricted within the confines of Article 19. (2). In spite of the fact that advertising is essentially a business transaction, the Supreme Court held that it nonetheless disseminates knowledge about the marketed product. The public benefits from the information made available through the advertisements. In a democracy, there must be a free exchange of commercial information.

#### VI. SCOPE OF FOSE

The Supreme Court of India has established or reaffirmed the importance of upholding the freedom of speech and expression in number of judgments. There have been many other cases

The right to know is acknowledged as a basic right under Article 19(1)(a) by the Supreme Court in *Resurgance India v. Election Commission of India*<sup>19</sup>. The Court ruled that candidates who submitted affidavits with fraudulent information and candidates who submitted affidavits with blanks for certain details cannot be considered equally. If done so, it will violate the right to know, which is included in freedom of speech and expression and is guaranteed under Article 19(1)(a) of the Constitution. In addition, the court directed the Election Commission to publish a notice requiring candidates to provide details about their qualifications, possessions, obligations, and criminal records for the benefit of voters.

The scope of FOSE was expanded by SC in famous case *Rakeysh Omprakash Mehra & Anr. v. Govt. of NCT of Delhi*<sup>20</sup> by a ruling that our constitution doesn't protect only FOSE but also the freedom after the exercise of FOSE. Additionally, it stated that in a democratic society built on the rule of law, the value of freedom of expression cannot be overstated.

#### VII. FREEDOM: IT'S ONLINE APPLICABILITY

Now as we have discussed the brief of social media as well as freedom of speech and expression, it has become easier to discuss their interrelation. In the era of technology commonly known as internet generation how freedom of speech and expression is being exercised? What are the implications? And what is the extent of freedom of speech and

the United Kingdom. A good government without such monitoring system is worthless. Electronic media have grown in popularity and activity with the introduction of new technologies. The digital press has emerged as a popular medium for "expression" in the electronic age as the cyber globe opens up to electronic journals. The question of whether they really reflect public opinion or if they are merely acting as spokespeople for certain interest groups, however, still begs to be answered. It may be beneficial to conduct a "sting operation" during an interview by deploying electronic bugs to eavesdrop, but doing so in order to blackmail someone is not only against the law but also immoral. The result could be a videocracy that degrades democracy. However, it is encouraging to see that there are a lot of websites devoted to exposing instances of human rights violations. questions, firstly we need to understand the applicability of major laws on cyberspace:

a) Article 19 ICCPR: According to a report ICCPR and UDHR serves as one of best instruments for dealing with issues on internet related to freedom of speech and expression. The basic ideology behind this is that internet is in no way less important than traditional platforms of communication and that's why Article 19 is applicable to internet too. Moreover restrictions are also applicable to it in same way as they are made applicable to all other means of communication.

b) Article 10 ECHR: Article 10 ECHR makes it very clear that it protects each form of expression irrespective of medium. It is applicable on new communication network including internet. Moreover committee of ministers of council of Europe has already admitted the fact that the right to freedom of speech and expression should equally be respected in digital as well as non digital platform and should only be subjected to restrictions enumerated in Article 10. Thus, at international level freedom of speech and expression is also made applicable digital medium. But with the growing complexities a specific multilateral treaty on cyber crime popularly known as Budapest Convention has come into existence. It was further supplemented by protocol on xenophobia and racism.

It basically criminalizes certain cyber crime conducts like production, offering, distribution, processing and possession of child pornography. Also hate speech, racial comments and xenophobia were made punishable. But due to certain strategically move India is not a party to this

expression on online forum? Whether the online freedom and restriction is different from other communications forum?

In order to understand the answers to these Convention but has supposed Russia led resolution in this regard.

#### REFERENCE

- [1] Jennings, W.I., Cabinet Government, 13. [Cited in Dr. Madhabhushi Sridhar, The law of Expression, an Analytical Commentary on Law for Media 18 (Asia Law House, Hyderabad, 18, (2007)].
- [2] Kubin Emily & Sikorski Christian Von, The Role of (Social) Media in Political Polarisation: A Systematic Review, Annals of International Communication Association, Vol. 45, 2021 Issue 3.
- [3] Bansal Arpana & Rani Anita, Freedom of Speech and Expression vs Social Media Violations, Turkish Journal of Computer and Mathematics Education, Vol. 12 No. 1 (2021), 862-872.
- [4] Goodnight G Thomas, —Rhetoric, Risk, Markets: The Dot- Com Bubble!, Quarterly Journal of Speech, May 2010.
- [5] Raphael Cohen-Almagor,—Internet History!, International Journal of Technoethics, April 2011.
- [6] Nasir Jamal Abdul, Khatoon Aisha & Bharadwaj Shubhangi, —Social Media Users in India: A Futuristic Approach”, International Journal of Research and Analytical Reviews, Vol 5, Issue 4, Oct.- Dec. 2018.
- [7] Jha, Chandan Kumar; Kodila-Tedika, Oasis (2019): Does social media promote democracy? Some empirical evidence, AGDI Working Paper, No. WP/19/031, African Governance and Development Institute (AGDI), Yaoundé.
- [8] Dey, A. (2018), “Nirbhaya and Beyond – Role of Social Media and ICTs in Gender Activism in India”, Nirbhaya, New Media and Economy And Digital Gender Activism (Digital Activism and Society: Politics, Economy And Culture In Network Communication), Emerald Publishing Limited, Bingley, pp. 125-161.
- [9] D. Cucereanu, Aspects of Regulating Freedom of Expression on theInternet, Antwerp Oxford, 2008, 216.
- [10] Goswami Geetum & Dutta Sujit Kumar, —Social Media-A Boon or Bane:A Case Study!, IOSR Journal Of Humanities And Social Science (IOSR-JHSS), Volume 24, Issue 6, Ser. 8 (June. 2019) 31- 32.