

An Analysis of Right to Freedom of Speech and Expression over Internet

¹Dr. Sakshi, ²Dr. Megha Garg

¹Assistant Professor, Apeejay Stya University, Gurugram, Haryana,

²Assistant Professor, School of Legal Studies, K. R. Mangalam University, Sohna-Gurugram

Abstract:

The Right to Freedom of Speech and Expression is one of the Fundamental Rights provided by Part III of the Indian Constitution. It is enumerated at Article 19(1)(a) and encompasses the right to express opinions, communicate information, engage in commercial speech, and publish advertisements etc. A democratic and welfare society cannot exist without the freedom of speech and expression, and without this freedom, our country will cease to exist as it is described in the Preamble. Internet freedom of speech and expression is protected by the constitution. Unrestricted speech in an open discussion is the fundamental tenet of a democratic society. Under no circumstances except as provided under Article 19 (2) the citizens shall be restricted from exercising this Right.

The Judiciary expanded the meaning of this Right after the Internet came into existence. The internet proven to be an excellent platform for people to use their right to free speech and expression and to speak out for deserving causes and sensitive national and international issues. If we believe that individual's opinion and thought triggers the progress of civilization then Freedom of Speech on Internet is the key to that progress. This paper will deal with the concept of Freedom of Speech and Expression under Article 19(1) (a) of the Constitution, what are the significances of freedom of speech and expression on the Internet, how judiciary interpreted it through various judicial pronouncements and effect of Shreya Singhal case on online freedom Speech and Expression.

Keywords: Constitution, Fundamental Right, Internet, Digital Era, Freedom of Speech and Expression.

Introduction:

The right to express oneself is an issue of liberty and freedom. The freedom of thought, criticism, and access to knowledge is all forms of speech. Freedom of Speech and expression are the lifeblood of a democracy, which guarantees everyone the right to freely share their thoughts, opinions, and viewpoints on any topic. The development and expression of a person's personality depend on their ability to express themselves freely. Freedom of expression is essential in a democracy like India since citizens are the sovereign rulers and without it, the welfare state notion is almost impossible to realize. The advancement of the intellectual and moral life of both the individual and the nation depends on freedom of speech and expression.

The Internet has proven to be an indispensable communication instrument for exercising the right to free speech and expression. "In the past few years, a global movement of individuals fighting for justice, equality, accountability, change, and respect for human rights has been observed. The Internet and social media have played a prominent role in such movements, allowing people to raise their voices and reach the public instantaneously and broadly, thereby fostering a sense of unity, harmony, and solidarity."¹

Freedom of Speech and Expression:

Freedom of speech and expression refers to the "idea that everyone has a fundamental right to express oneself through any media and across any barrier without hindrance from the outside world, such as censorship, and without concern for retaliation, such as assaults and persecution."²

The freedom of expression is a complicated concept. This is due to the fact that the freedom of expression can be restricted by legislation because it is not unqualified and involves some obligations. At least 2400 years ago, during the Greek-Athenian era, the phrase "freedom of speech" was first used. The following are some of the most common free speech beliefs that are accepted as universal standards:

¹ Muskan Sharma and Pushkar Bhandarkar, Freedom of Speech and Expression on Internet: An Emerging Right, 4 IJLMH 381,383(2020)

² Muskan Sharma and Pushkar Bhandarkar, *Supra* note 1

We all have the right to free speech and expression, which includes the freedom to contemplate ideas without hindrance and the capacity to look for, gather, and disseminate knowledge using any method and without regard to limitations. Everyone has the right to express their own thoughts without feeling restrained. Everyone has the right to free expression, which includes the ability to congregate, discuss, and exchange ideas of any kind without limitations, whether orally, in writing, visually, artistically, or by any other means. Similar to this, Article 19 (1) (a) of the Indian Constitution guarantees the freedom of speech and expression to all Indian citizens. Freedom of speech refers to the ability to express oneself freely through talking, writing, publishing, art, and other means of expression.

It also encompasses the freedom to communicate and the right to disseminate, circulates, or publishes one's thoughts. However, this right is not unrestricted because, according to Article 19(2), it may be subject to reasonable limitations when used for particular purposes. In order to prevent people from using the freedom of expression as a weapon to undermine the integrity of the country and the public order, it is not made a universal right.

“The Supreme Court of India ruled in the case of *Anuradha Basin v. Union of India* that the rights to freedom of speech and expression under Article 19(1) (a) and the right to freedom of trade and commerce under Article 19(1)(g) via the internet are protected by the constitution but are subject to reasonable restrictions.”³

Under “Article 19(2) reasonable restrictions are provided which are as follows:

1. security of the State,
2. friendly relations with foreign States
3. public order,
4. decency and morality,
5. contempt of court,
6. defamation,
7. incitement to an offence, and
8. Sovereignty and integrity of India.”⁴

“The Supreme Court of India ruled in *K.S. Puttaswamy v. Union of India* that any restrictions placed by the government on the freedom of speech and expression and the right to engage in any profession or occupation over the internet under Article 19 must meet the proportionality test. The government's action is evaluated for reasonability using the proportionality test.”⁵

Significance of Freedom of Speech and Expression over Internet:

In “*Maneka Gandhi v. Union of India*,”⁶ BHAGWATI J., has underscored the importance of the right to free speech and expression by using the following words:

“Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential.”⁷

Internet freedom of speech is a potent tool because it enables people to voice their beliefs and thoughts openly and without concern for censorship or retaliation. The internet has developed into a platform used by people all

³Prashant Sharma, *Freedom of Speech and Expression in the age of Internet*, Law Corner 2022), <https://lawcorner.in/freedom-of-speech-and-expression-internet/> (last visited Jul 20, 2023).

⁴ India Const, art., 19, cl. 2.

⁵ Prashant Sharma, *supra* note 3

⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

over the world to exchange information and interact with those who have similar opinions or life experiences. This has made it possible for people to unite around social and political causes, mobilise, and hold the powerful accountable. One of the main advantages of the internet is that it gives people an equal playing field to share their opinions. The internet, in contrast to traditional media outlets, which are frequently managed by a small number of businesses or people, enables anybody with a computer or smartphone to post their ideas for the world to see. This has given marginalised people a voice and given them the chance to contradict the prevailing stories that the media has been reiterating. However, the ability to express oneself freely online can also have its drawbacks. The same forum where people can express their views and beliefs can also be used to disseminate propaganda, hate speech, and inaccurate information. It can be challenging to tell which sources of information are reliable and which are not because the internet has become a fertile ground for conspiracy theories and extreme ideologies. In conclusion, the freedom of expression on the Internet is a potent weapon because it allows individuals to express their ideas and opinions without fear of censorship or retaliation. However, with this authority comes responsibility, and it is essential to ensure that the shared information is accurate and does not injure others.

“The question of whether freedom of speech on the internet should be restricted to protect public welfare is a complex one that requires a nuanced answer. On the one hand, there are valid worries about the damage that hate speech, false information, and other destructive communication online can do. These may have detrimental effects on people, communities, and even society at large.”⁸

While on the other hand, many international and national laws and constitutions recognise freedom of speech as a basic human right. It is a pillar of democracy and crucial for fostering innovation, supporting free thought, and holding people in positions of authority responsible. Any limitations on free speech must be carefully weighed against these significant principles. In principle, constraints on the right to free expression should only be used where there is an obvious and immediate threat to the welfare of the public. Speech that advocates for terrorism, incites violence, or jeopardises national security may fall under this category. In these situations, the speech restriction must be specifically targeted to address the precise harm at issue, and it must be subject to judicial scrutiny to make sure it is neither excessively broad nor discriminatory. Furthermore, it is crucial to remember that constraints on the right to free expression ought to be the exception rather than the rule. In order to address damaging speech, it is often preferable to support free speech and rely on counter-speech, education, and other platforms for public conversation. This calls for a dedication to developing an online culture that values free discourse, respect for different opinions, and a commitment to the common good, as well as to teaching media literacy, critical thinking, and digital citizenship.

Provision for Freedom of Speech through Internet under the IT Act:

Initially this section was not under the ambit of IT Act 2000 and was added when the IT Act (Amendment Act) 2008 came into force. “This section basically provided that if anyone sends any offensive message, email, or information through computer or any communication mode can be punished under this section. The message or information can be in any form such as audio, video, text, voice message, image, mail, or any other electronic form but the source should be from any computer or communication device. This section particularly dealt with messages which were grossly offensive or threatening, hold out fake information intended to cause annoyance, inconvenience, insult, etc. or intended to deceive the addressee about the message’s origin.”⁹

⁸Archak Das, Effect of Internet on Freedom of Speech & Expression, Legal Vidhiya (Apr, 18, 2023), <https://legalvidhiya.com/effect-of-internet-on-freedom-of-speech-expression/#:~:text=Freedom%20of%20speech%20on%20the,share%20similar%20views%20or%20experience>

⁹ The Information Technology Act, S. 66A, No. 21, Acts of Parliament, 2000 (India) 2000

Shreya Singhal v. Union of India:

In the landmark decision of *Shreya Singhal v. Union of India*, the Hon'ble. Supreme Court considered the entire subject of freedom of speech and expression on the internet and appropriate restrictions.

Facts of the case:

1. In 2012, the Shiv Sena proclaimed a bandh in Maharashtra due to the passing of its leader, Bal Thackeray.
2. Thane residents Shaheen Dhada and Rinu Srinivasan were detained by Mumbai Police for complaining about the bandh and posting content on Facebook that was deemed obscene and inflammatory in violation of section 66A of the IT Act of 2000.
3. Even though Police released the ladies soon after, this incident attracted the media attention and criticism as well.
4. The women filed a PIL under Article 32 of the Indian Constitution to contest the constitutionality of Section 66A on the grounds that it contravened Article 19 (1) (a).
5. In the meantime, the Apex court issued an interim order in this case that forbade any additional arrests for an offence under Section 66A unless the arrest was authorised by senior police officers. The Court considered the validity of the clause in question.”¹⁰

Issues Raised:

1. Whether Section 66A of IT Act, 2000 is constitutionally valid?
2. Whether Section 66A of IT Act, 2000 is curtailing Freedom of speech and expression under Article 19(1) (a)?
3. Whether Section 66A of IT Act, 2000 is saved under Article 19(2).

Judgment of the Case:

“The key question was whether Section 66A of the IT Act infringed the right to freedom of expression granted by Article 19(1) (a) of the Indian Constitution. Article 19(2) allows the government to impose “reasonable restrictions... as an exception to the right, "in the interests of the sovereignty and integrity of India, the security of the State, cordial relations with other powers, public order, decency or morality, or in connection to contempt of court, defamation or incitement to a crime.”

The petitioners claimed that Section 66A was invalid since its intended defence against frustration, discomfort, menace, hindrance, insult, damage, illegal intimidation, or ill-will is not covered by Article 19(2). Additionally, they claimed that the law was unconstitutionally ambiguous because it did not clearly specify its restrictions. Additionally, they argued that the rule has a “chilling impact” on the right to free expression.

Since “the mere causing of annoyance, inconvenience, danger, etc., or being grossly offensive or having a menacing character are not offences under the Penal Code at all,” the Court further apprehended that the government had failed to demonstrate that the law intends to prevent communications that incite the commission of an offence.

Regarding the petitioners' challenge of the vagueness of the statute, the Court adhered to U.S. judicial precedent, which states that "a section which creates an offence and which is vague must be struck down as being arbitrary and unreasonable" when "no reasonable standards are laid down to define guilt in a Section which creates an

¹⁰ *Shreya Singhal v. Union of India* AIR 2015 SC 1523

offence, and where no clear guidance is given to either law-abiding citizens or to authorities and courts." The Court determined that Section 66A's many ambiguous and open-ended phrases render the law unenforceable.

The Court also discussed whether Section 66A could have an effect on the freedom of expression by limiting it. According to the court's ruling, "a very substantial amount of protected and innocent expression" could be suppressed because the rule doesn't define concepts like inconvenience or annoyance.

Based on the aforementioned arguments, the Court completely nullified Section 66A of the IT Act because it infringed on the right to free speech protected by Article 19(1) (a) of the Indian Constitution."¹¹

Current Scenario:

"The Judiciary of India has extended the scope of Freedom of Speech and Expression under Article 19(1) (a) of the Constitution of India and declared that the Internet and social media are included in the scope of Article 19(1)(a) of the Indian Constitution's protection of freedom of speech and expression."¹²

Anuradha Bhasin v. Union of India & Ghulam Nabi Azad v. Union of India (Kashmir Internet shutdown case)¹³

"In this case, the Apex Court ruled that the constitution protects the freedom of speech and expression and the rights to engage in any form of online commerce. The Jammu and Kashmir authorities were mandated by the Supreme Court to immediately reestablish internet access in all establishments offering essential services, including banks and hospitals. In its ruling, the Apex Court discussed the procedures that are followed when Section 144 of the Code of Criminal Procedure is used to shut down or restrict access to the internet. In regards to internet blackouts, the court ruled that any orders that result in a blackout must be made public. It was also made clear by the court that internet suspension orders cannot be continued indefinitely because that would violate the constitution."

Lipika Pual v. State of Tripur:¹⁴

"Smt. Lipika Paul, who is currently retired from the government service, campaigned against a political party while employed by the Tripura government's Department of Fisheries as the UDC at the Directorate of Fisheries. She did this by making offensive remarks about a political leader who was running for office. Therefore, it was claimed that she would not receive her post-retirement payments because her behaviour violated Rule 5(4) of the Conduct Rules.

The Tripura High Court ruled that posting on social media platforms is essentially the same as exercising a fundamental right that is guaranteed to all people, including government employees. The court also ruled that government employees have the right to express and hold their political beliefs, subject to the limitations outlined in the Tripura Civil Services (conduct) Rules, 1988."

Conclusion:

The Indian Constitution's Article 19(1)(a), known as the Mother of All Liberties, guarantees everyone's freedom of speech and expression. This right is not restricted to any one medium and can be used in the virtual world as well. With the development of the Internet, people now have a wide platform to exercise their right to free speech and expression in an instant and on a budget. One can share his or her opinions, thoughts, expressions, ideas, etc. to everyone around the world through social media, blogs, postings, and all internet information. Democracy is built on the principles of free speech and expression because it creates forums for open discourse on topics of public interest.

¹¹ Shreya Singhal v. Union of India AIR 2015 SC 1523

¹² Muskan Sharma and Pushkar Bhandarkar, *Supra* note 1

¹³ Anuradha Bhasin & Anr. v. Union of India & Ors., AIR 2020 SC 1308

¹⁴ Lipika Pual v. State of Tripura, 2020 SCC Online Tri 17.

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The Indian judicial system has made significant advancements and raised awareness among the populace that their constitutional right to free speech and expression equally applies online. The first case to deal with the idea of free speech and expression online was the Shreya Singhal case, in which the Hon'ble Supreme Court declared Section 66A of the Information Technology Act to be unconstitutional since it contravened Article 19 (1) (a) of the Indian Constitution.

According to the Honourable Supreme Court, internet freedom of speech and expression is now acknowledged as being protected by the constitution.