

Free Media and Rights of Citizens with Special Reference to Online Free Speech and Indian Laws

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Abstract

In these present days, when information technology and electronic communication are fast changing the style and nature of social life, it is a legal priority to have an overview and analysis of existing provisions that guarantee the right to freedom of media people including newborn social media, and reasonable restrictions on that ring in the interest of individual rights and public interest. It is more so because media as such do not enjoy any exclusive right to expression in contrast with the rights of an ordinary citizen of India. Media have their share of right to freedom of speech and expression quite the same way and in an equal degree as the Constitution of India confers on its common citizen.

One of the first legislative measures in the field for regulating and governing the electronic world of the internet was brought by way of enactment of the Information Technology Act 2000. The Act recognized the legal status of electronic records for various purposes. It also provides for the penalization and punishment of several cyber crimes. Now the government of India has come up with a set of rules called The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 in the exercise of their power conferred by sub-section (1), clauses (z) and (zg) of the sub-section (2) of Section 87 of the Information Technology Act 2000. It covers Social Media and OTT (Over The Top) Platforms under its provisions of regulations. This paper examines the state of online free speech and Indian Laws.

Keywords

Online Free Speech, Media Freedom, Social Media, Information Technology Act, Intermediary Rules

Introduction

In these present days, when information technology and electronic communication are fast changing the style and nature of social life, it is a priority to have an overview and analysis of existing provisions that guarantee the right to freedom of media people including newborn social media, and reasonable restrictions on that ring in the interest of individual rights and public interest. It is more so because media as such do not enjoy any exclusive right to expression in contrast with the rights of an ordinary citizen of India. Media have their share of right to freedom of speech and expression quite the same way and in an equal degree as the Constitution of India confers on its common citizen. Similarly considering the potential of the media to have a negative social impact on the lives of the people due to the influential publication of information, it is a highly required necessity that media

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operations are checked and balanced in the best interest of society. We need a balanced scale of claims of media and citizens with a potential of tilting in favour of individual rights in the event of any disturbance to the said equilibrium.

Free speech and democracy

The preamble of the Constitution of India declares India to be a sovereign, socialist, secular, democratic republic. The right to freedom of expression, which is one of the basic human rights, is a fundamental feature of a democratic society. In a democratic country where people are governed by representatives elected by them themselves from within, the liberty to speak their minds holds high. Freedom of expression is known as the fourth pillar of the governmental framework. According to Article 19 of the Universal Declaration of Human Rights ‘*everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.*’ Democratic values of a society without assurance of a fearless atmosphere for free speech would be nothing but hollow words. The democratic system attaches great importance to the right to free speech. In *Romesh Thapper v. State of Madras*², Patanjali Sastri CJ observed “*Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible*”.

Freedom of speech and expression under the Indian Constitution

Expression of opinion, thoughts, emotions, ideas, feelings and the like is quite human and natural; on the other side, its suppression is unnatural and anti-human. Gaining and sharing knowledge and information among people is one of the pivotal elementary factors in forming a society. In tune with the growth of international law in terms of human rights jurisprudence and the basic right of speech and expression, many nations have given constitutional recognition and protection.

Article 19(1) (a) of the Constitution of India guarantees its citizens the right to freedom of speech and expression. Of the six freedoms conferred under the provisions of Article 19 right to freedom of speech and expression is the most valuable one. It is to be read as part and parcel of the right to life enshrined under Article 21 of the Constitution.

² AIR 1950 SC 124

Media functions as the constructive pillar of the society

The word 'media' has been derived from the Latin word *midus* (meaning middle). Accordingly, the term conveys the idea of being means of communication. Evolved over time, now the term Media stands for several connotations including press, the media people, any established media firm, media house, and types of media classified as print media, television media, and newborn social media. All of it represents the collection, storage, and circulation of various data ranging from news, views, entertainment, opinion, arguments, etc. Now it has grown to such a level of organized institutions in the social gathering and spreading of information among the people that it is christened as the fourth pillar of the society after legislature, executive, and the judiciary, though still conferred as a popular status only with no legal recognition.

Right of media for speech and expression

Unlike the Constitution of the US, the Constitution of India does not expressly mention liberty or freedom of expression of the press or media. But is a settled legal position that the right to freedom of speech and expression guaranteed under Article 19(1) (a) also includes the right of press media as well³. It is relevant to note that the wordings used are 'freedom of speech and expression' and not 'speech and expression'. The terminology of freedom of speech and expression is a composite one. Similarly, both these expressions are different in their meaning and scope. Freedom of speech and expression denotes liberty to express one's views, opinions, and beliefs. It means the right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures, or any other mode.

Age of social media

As a result of the explosive growth of information technology society is currently living in the age of social media. In contrast with the traditional concept of media covering print and television media, the term social media conveys the idea of a group of internet-based interactive platforms. The emergence and growth of social media are linked to one of the human ideas of getting connected to others around. At the same time when the exponential growth of social media has brought the world to a global village, its misuse by anti-social elements also poses a great number of threats to order, safety, and security in society.

³ *Sakal Papers (P) Ltd v Union of India*, AIR 1962 SC 305

Regulations and their purposes

One of the first legislative measures in the field for regulating and governing the electronic world of the internet was brought by way of enactment of the Information Technology Act 2000. The Act recognized the legal status of electronic records for various purposes. It also provides for the penalization and punishment of several cyber-crimes. Chapter XI of the Act consisting of Sections 65 to 78 deals with different kinds of cyber-crimes namely tampering with computer source documents, sending offensive messages, receiving stolen computer resources, violation of privacy, cyber terrorism, and obscenity.

Freedom of Speech and Restrictions

The aforesaid right to freedom of speech and expression as provided under Article 19(1) (a) is not an absolute right but is subject to restrictions under the Constitution and Penal laws. Articles 19(2) to 19 (6) of the Constitution lays reasonable restrictions on the fundamental freedoms guaranteed under Article. Out of this Article, 19(2) stipulates eight grounds based on which reasonable restrictions are imposed on the right to freedom of speech and expression. The right to free expression is one of the most important fundamental rights, restrictions imposed have to pass the test of reasonableness. In *Shreya Singhal v. Union of India*,⁴ it was held by the Hon'ble Supreme Court that “*any law seeking to impose a restriction on the freedom of speech can only pass muster if it is proximately related to any of the eight subject matters set out in Article 19(2)*”. In this case, the court struck down Section 66A of the Information Technology Act⁵ as unconstitutional because the regulation of electronic communication under the said provision was not any of the eight grounds for imposing reasonable restrictions as aforementioned. Section 66A provided for

⁴ (2015) 5 SCC1

⁵ **Sec.66A. Punishment for sending offensive messages through communication service, etc.**--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; or
- (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

severe punishment for sending electronic messages causing annoyance and inconvenience.

Constitutional Grounds for Reasonable Restrictions⁶

i. Sovereignty and Integrity of India: - This ground was added by the 16th Constitutional Amendment in the year 1963 for guarding against the freedom of speech and expression from being used to attack the territorial integrity and sovereignty of the Union.

ii. Security of the State: - All utterances intended for overthrowing the government, waging war making rebellion against the government, external aggression, etc. Not every public disorder but only those serious and aggravated forms of the public disorder are within the expression of “security of the state”.

iii. Friendly relations with foreign states:-The state got the power to impose restrictions in the interest of friendly relations with foreign states by way of the Constitutional First Amendment in 1951.

iv. Public Order: - This ground was added by the First Constitutional Amendment as necessitated by the refusal of the Supreme Court to permit the imposition of restrictions on the right to speech in the interest of public order in the Romesh Thapper case.

v. Decency and Morality: - In this ground decency is the same as lack of obscenity. Obscenity comes as a ground of reasonable restriction in the Constitution since it represents the clash between the individual right to free speech and expression on the one side and the duty of the state to safeguard the morals of the society.

vi. Contempt of Court:-In *Leo Roy Frey v. R Prasad*⁷, it was held that *the Constitutional right to freedom of speech and expression does not prevent courts from punishing for their contempt spoken, words printed, or any other expressions having the effect of contempt of court*. Now contempt is defined under the provisions of the Contempt of Courts Act 1971.

vii. Defamation: - Defamation is a ground for restriction because defamatory matter exposes one to hatred, ridicule, or contempt. In *Subramanian Swamy v Union of India*,⁸ it was held *that every person is entitled to dignity and*

⁶ Article 19(2)-(6), Constitution of India

⁷ AIR 1958 Punj 377

⁸ (2016) 7 SCC 221,344

reputation and nobody has a right to denigrate others' right to dignity or reputation.

viii. Incitement to an offence: - The freedom of speech and expression cannot be allowed to go to the level of inciting or abetting offences. In the *State of Bihar v. Shailabala Devi*,⁹ it was held by the Supreme Court that *incitement to murder or other violent crimes would generally endanger the security of the State.*

Restrictions under the Indian Penal Code

Based on the grounds provided for in the Constitution, the state can impose reasonable restrictions on the rights of the citizen to speak and express themselves. Such restrictions can give birth to the definition of crimes and imposition of criminal liability. Some of them have been provided for under the general penal law of India.

i. Section 124A Sedition: - The act of sedition has not been included as a ground in the Constitution. This word has a varying connotations. Bringing hatred, contempt, or disaffection in the people against the government by words, signs, or visible representation or otherwise is punishable with imprisonment or life imprisonment.

ii. Section 153A:- This section punishes causing enmity, disharmony, and ill-will between different religious, racial, language, or regional groups, communities, or castes by words, signs, visible representations, or otherwise.

iii. Defamation – Section 499:- Defamation of a person by imputation is punishable under this provision. Defamation as such is a ground for reasonable restrictions as covered under Article 19(2) of the Constitution.

Free Media and Rights of State and Citizens

Freedom of communication is a vital factor for the existence of a successful democratic society. In a sense, the right to freedom of speech and expression can be said to be the cornerstone of democracy. Though the institutional media have not been given any separate treatment in terms of free speech their rights are covered under the Constitution on the same line as those of the citizenry. Consequently, all the rights to free speech and expression enjoyed by the citizen of India can be claimed and enjoyed by the Media Organizations as well.

⁹ AIR 1952 SC 329

Though the media can play a constructive and positive role in the field of protection of human rights at times the role of media and their freedom of expression is misused causing many violations of valuable human rights. Unscrupulous and irresponsible media may also cause threats to social harmony and national security.

i. Violation of Individual Privacy: - One of the areas of infringement of individual rights committed by media persons is the most valued right to privacy of citizens. Their privacy is violated by the media in the name of investigative journalism. Uncontrolled publication of individual data in connection with unpleasant events and incidents without consent or authenticity causes irreparable damage to the goodwill and reputation of the people. In *K. S. Puttaswamy's* case,¹⁰ it has been held that the right to privacy is a fundamental right comprised within the provisions of Article 21 of the Constitution. Fundamental rights are guaranteed vertically against the excess of governmental power, but now they are held to be protected horizontally also against their violation by other private persons including the media.

ii. Media Trial:- Nowadays activism of media leads to media trials of cases, mainly criminal cases, with created sensation, trampling upon cherished rights and interests of the people, both victims and the accused, causing them anguish and trauma. Unwarranted publication of unverified content without caution and care destroys the credibility of the people leaving marks of social stigma in their lives.

Limiting restrictions on media

The theory that fundamental rights are not absolute applies squarely to media too. Not just that given the potential of media to sow severe damage in the personal life of the people by way of their privacy violations and media trials it is the need of the hour to put some additional measures restrictions. The media has to be held responsible and accountable for the publication of their news, views, and reports. There are several legislations dealing with the functioning of the media like the Press and Regulation of Books Act 1867, Press Council of India Act 1956, etc.

Social Media Regulation – Challenges

Unlike other media, social media poses its kinds of challenges as well as opportunities before society. Whereas other usual media has a place of business and an institution or organization with the responsible and traceable human agency at its helm the newly emerged social media runs through social

¹⁰ *Justice K.S.Puttaswamy(Retd) v. Union Of India*, (2017) 10 SCC 1

networks with online operations. Social media sheds the cover of anonymity for those who like to operate from the darkness. Moreover, it knows no geographical boundaries as the network covers various nations. As of now international cooperation and law-making are in the budding stage only. Not only that it is also difficult to have uniform principles or rules as the standards of morality and criminality are different among countries, especially in terms of the right to speech and expression.

Intermediary Rules and impact on democracy

Now the Government of India has come up with a set of Rules called The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 in the exercise of their power conferred by sub-section (1), clauses (z) and (zg) of the sub-section (2) of Section 87 of the Information Technology Act 2000¹¹.

It covers Social Media and OTT (Over the Top) Platforms under its provisions of regulations. An intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services is called a social media intermediary. And such an intermediary having fifty lakh registered users is called a significant social media intermediary.

This Rule stipulates that social media intermediaries have to observe due diligence as provided for in it. As per the provisions of Rule 7, the intermediary failing to observe these rules will be deprived of immunity which could otherwise be enjoyed under Section 79 of the Act. An intermediary enjoying the said immunity will not be held liable for postings of content made by its users. Consequently, non-compliance with the rules makes the intermediary liable for the content of posts created and uploaded by its users. Among others these rules include:-

- *Publication of rules and regulations, privacy policy and user agreement, and user agreement for access or usage of its computer resource by any person*
- *Inform the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that belongs to another person, or is defamatory, obscene, pornographic, invasive of another's privacy, including bodily privacy, insulting or harassing based on gender, libelous, racially or ethnically objectionable, or which is harmful to the child or threatens the unity,*

¹¹ Sec.87- Power of Central Government to make rules.

integrity, defense, security or sovereignty of India, friendly relations with foreign states, or public order, or causes incitement to the commission of any cognizable offence.

- *Take all reasonable measures to secure its reasonable security practices and procedures as prescribed in the Rules*

Likewise, the Rules also state that significant social media intermediaries are bound to observe additional due diligence, including the Chief Compliance Officer's appointment to ensure compliance with the Act and Rules.

These rules are said to be enacted for the protection of social and national interests. It aims to prevent irresponsible anti-social publications and fix accountability for those misusing social media platforms. It is made to uproot cyberspace misdemeanors and offensive acts and regulate the operation of the OTT platforms as well.

Even when these rules are defended in the name of protecting the rights of individuals and public rights and the unity and integrity of the nation the same has to be tested against the touchstone of the reasonableness of the restrictions as stipulated under the provisions of Article 19(2) of the Constitution.

The state must protect and preserve the individual as well as the media's right to freedom of speech and expression of its people. At the same time, it has to safeguard social interests and individual privacy. It has to maintain a judicious balance between media rights and individual interests.

Censorship by Government through the amendment to the Intermediary Rules

The Ministry of Electronics and Information Technology lately proposed an amendment to the IT Rules 2021 that would further harden the Internet censorship. This has caused profound unease among those who value free speech and media freedom in India with the advent of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

There will be a new grouping to take down social media content and news media content with respect to the amendment. The proposed amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which states that online intermediaries must take down any information identified as "false" or "misleading" by the government agency, press information bureau (PIB) or "other agency authorized by the

central government”¹². Ironically, the PIB lacks regulatory or oversight powers and hence it cannot exercise supreme power over what independent media publishes in the name of ‘fact-checks’. As a matter of fact, the Press Information Bureau (PIB) is the nodal agency of the Government of India to disseminate information to the print and electronic media on government policies, programmes, initiatives and achievements¹³.

These Rules give executives the excessive authority to bring all online news under its ambit through the imposition of a nebulous ‘Code of Ethics’ on online news media accompanying the three-tier Grievance Redressal Committees, the final tier of which is adjudicated by government nominees. The constitution of the three Grievance Appellate Committees (GAC)¹⁴ and them being chaired by government functionaries under the Ministry of Home Affairs, Ministry of Information and Broadcasting and Ministry of Electronics and IT, respectively is what affects online free speech the most¹⁵.

Conclusion

As public views have increasingly shifted online, governments around the world are tussling to control the online sphere. For that matter, the union government has tried to enforce control over online platform over the last few years. Certain initiatives taken by the government are benign and aim at establishing accountability for digital platforms. But, the interventions being made by the Government of India is against free speech guaranteed by constitution in many spectrums. There have been amendments to IT rules, giving the executive the supreme authority to control what can be said online. It will seriously affect the operations of not just social media intermediaries but also all providers of digital news content, if the amendment is implemented. Then, it would definitely violate press freedom of speech and expression guaranteed by Art. 19 (1) (a) of the constitution of India.

In conclusion, on the one side, for the successful existence of a democratic society, strong built media culture and circumstances for their functioning

¹² Amendment to Rule 3(1)(b)(v)

¹³ https://pib.gov.in/Content/205_5_AboutPIB.aspx (last accessed 7th March 2023, 7pm)

¹⁴ Rule 3A, The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

¹⁵ Rule 3A. Appeal to Grievance Appellate Committee(s).—(1) The Central Government shall, by notification, establish one or more Grievance Appellate Committees within three months from the date of commencement of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022.

(2) Each Grievance Appellate Committee shall consist of a chairperson and two whole time members appointed by the Central Government, of which one shall be a member ex-officio and two shall be independent members

without fear or pressure, especially from the governmental machinery, and on the other side there should be protection and assurance of fructuous enjoyment of individual rights especially right to privacy and dignity. The success of democracy depends on the existence of free media and its fulfillment hinges on protecting and upholding the valuable human and fundamental rights of its people.

References:

H.M.Seervai (1991), *Constitutional Law of India*, Sweet & Maxwell

D.D. Basu, *Law of the Press* (5th Edn.) (2010), LexisNexis, Butterworths Wadhwa

P.M.Baskhi (1985), *Press Law: An Introduction*, BTRFI Publications

Thomas Gibbons (1998), *Regulating the Media*, 2nd Edn., Sweet & Maxwell

Timothy Garton Ash (2006), *Free Speech: Ten Principles for a Connected World*. Atlantic Books

Aparamita Basu (n.d), *Media Laws- An Overview*, Legal Services India
<https://www.legalserviceindia.com/articles/media.htm>

Tanu Priya (2015), *Freedom Of Speech And Expression*.
<https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>

[The Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules, 2021, https://prindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021](https://prindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021)

[Aashish Aryan, Explained: Social media and safe harbor, 2021, https://indianexpress.com/article/explained/intermediary-guidelines-digital-media-ethics-code-facebook-twitter-instagram-7331820/](https://indianexpress.com/article/explained/intermediary-guidelines-digital-media-ethics-code-facebook-twitter-instagram-7331820/)

Government notifies Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, <https://vikaspedia.in/news/government-notifies-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>

<https://www.meity.gov.in/content/draft-amendments-it-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>

I.Prateek Singh, *Cyber Law In India, IT Act, 2000*,
<https://www.legalserviceindia.com/legal/article-836-cyber-law-in-india-it-act-2000.html>

https://pib.gov.in/Content/205_5_AboutPIB.aspx