

IS SOCIAL MEDIA AN EASIER WAY TO DEFAME PEOPLE? A CRITICAL STUDY OF FREEDOM OF SPEECH IN DIGITAL INDIA

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INTRODUCTION

Speech is God's gift to mankind. Through speech a human conveys his thoughts, sentiments and feeling to others. Milton in his *Aeropagitica* says that without this freedom there can be no health in the moral and intellectual life of either the individual or the nation. That's why a freedom of speech and expression is a natural right, which should be acquired by the birth but is available only to limited few in world context. Speech and expression plays a vital role in guaranteeing a person the liberty to do or not to do certain things it desires. It helps in development of nation from being a deficient democracy to a competent and accountable one. Almost the whole world has accepted it as basic right of the person. Freedom of speech & expression is not only a basic human right, but in most of the countries it is considered as the fundamental right of a person, without this the development of any person is not possible and if one is not able to develop oneself, one can't give its contribution in the development of the country and world. By having this point in the mind Article 19, Freedom of Speech & expression was added in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The UDHR holds that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"

The ICCPR holds that, "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of

frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". In India, under Part III of the Constitution of India also referred to as Magna Carta of Indian constitution, Article 19(1) (a) guarantees all its citizens the right to freedom of Speech & Expression. According to Article 19, all citizens shall have the right to freedom of speech and expression. Hence, in India every citizen has the Right to Freedom of speech & Expression. But, this right is not absolute. This is also subjected to certain restrictions. It does not confer on the citizens the right to speak or publish without responsibility. It is not an unbraided license giving immunity for every possible use of language and prevents punishment for those who abuse this freedom. Article 19(3) of the ICCPR imposes restrictions on the grounds- (1) For respect of the rights of reputations of others; and (2) For protection of national security, or public order, or public health or morals.

As per Article 19(2) of the Constitution of India, the legislature may enact laws to impose restrictions on the right to speech and expression on the following grounds:- (1) Sovereignty and integrity of India, (2) Security of the State, (3) Friendly relations with foreign States, (4) Public order, (5) Decency or morality. (6) Contempt of court, (7) Defamation, and (8) Incitement to an offence. The freedom of speech and expression is regarded as the first condition of liberty. It's the mother of all other liberties and has been described as "basic human right" "a natural right" and the like.

Article 19(2) of the Constitution of India, 1950- "Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. " Article 19(2) explains the circumstances in which the Right to freedom of Speech and expression can be suspended. People's Union for Civil Liberties (PUCL) v. Union of India', is where Court said that Reasonable restrictions can be imposed on the freedom of speech and expression, in the interest of the security of the State. The term security of state has to be distinguished from public order. For security of state refers to serious and aggravated forms of public disorder, example rebellion, waging war against the state [entire state or part of the state], insurrection etc. Another situation is where it hampers the friendly relations of India with other State or States or public order. In Romesh Thapar v.

UOI, As per Hon'ble Supreme court, public order is different from law and order and security of state (Kishori Mohan v. State of West Bengal]". The expression 'public order' connotes the sense of public peace, safety and tranquility. Anything that disturbs public peace disturbs public order [Om Prakash v. Emperor¹2]. But mere criticism of the government does not necessarily disturb public order. A law, which punishes the deliberate utterances hurting the religious feelings of any class, has been held to be valid and reasonable restriction aimed to maintaining the public order. Decency and morality- Section 292 to 294 of the I.P.C., 1860 provide instances of restrictions on the freedom of speech and expression on the grounds of decency and morality, it prohibits the sale or distribution or exhibition of obscene words. But, the standard of morality changes with changing times. In Ranjit D. Udeshi v. State of Maharashtra", the Hon'ble Supreme Court upheld the conviction of a book seller who was prosecuted under Section 292, I.P.C., for selling and keeping the book Lady Chatterley's Lover. Another situation is Contempt of Court. This Right would not allow any person to do contempt of Court by using this article as a Shield and defaming judiciary in India. In E.M.S. Namboodripad v. T.N. Nambiars, the Supreme Court confirmed the decision of the High Court, holding Mr. Namboodripad guilty of contempt of court. In M.R. Parashar v. Farooq Abdullah", Contempt proceedings were initiated against the Chief Minister of Jammu and Kashmir. But the Court dismissed the petition for want of proof. In both of the cases Hon'ble Court did not allow the Article 19 (1) (a) as a defense against the charges of Contempt of Court. In Re Prashant Bhushan & Another", The Court found Advt. Prashant Bhushan guilty of criminal contempt and the Court said, "The scurrilous allegations, which are malicious in nature and have the tendency to scandalize the Court are not expected from a person, who is a lawyer of 30 years standing. In our considered view, it cannot be said that the above tweets can be said to be a fair criticism of the functioning of the judiciary, made bona fide in the public interest." It was further held, "In our considered view, the said tweet undermines the dignity and authority of the institution of the Supreme Court of India and the CJI and directly affronts the majesty of law ... the tweets which are based on the distorted facts, in our considered view, amount to committing of 'criminal contempt."

The Bench added, "If such an attack is not dealt with, with requisite degree of firmness, it may affect the national honour and prestige in the comity of nations Fearless and impartial courts

of justice are the bulwark of a healthy democracy and the confidence in them cannot be permitted to be impaired by malicious attacks upon them."

In another circumstances like Defamation, Incitement of an offense, Sovereignty and integrity of India are the situations in which Article 19(1) (a) can be suspended or taken back by the state. The clause (2) of Article 19 prevents any person from making any statement that defames the reputation of another. Defamation is a crime in India inserted into Section 499 and 500 of the L.P.C. Right to free speech does not mean freedom to hurt another's reputation which is protected under Article 21 of the constitution. Although truth is considered a defense against defamation, but the defense would help only if the statement was made only for the public interest.

Incitement to an offence- The Constitution also prohibits a person from making any statement that incites people to commit offense. Sovereignty and integrity of India- This is aimed to prohibit anyone from making the statements that challenge the integrity and sovereignty of India. But as we all know the only thing i.e. constant is change. Nothing is static. And in India to some of the previous incidents create a different picture to us picture that defines India differently. Now fair criticism in form of comment, statement or expression could not be treated as an offence. The statements that can disturb communal harmony, that can create harm to the law & order. Intolerance now had the part of Indian culture. We have seen the incidents where these rights were taken back by the officials. Increased mob lynching's, arrest of various journalists, imposing NSA, UAPA on social activists, suppression of protesters protesting against the Government on the points of fees hike, CAA etc. are some of the most common examples which we have seen of it.

Freedom of speech prior to emergence of social media- In today's world, the news is just a tap away, and comes very handy in the form of mobile phones. Not just viewing news but also sharing it is as easy as a pie. Watching movies or clips. viewing and sharing caricatures, even making one is quite common and easily accessible. But there was time when watching a movie required going to cinema halls or wait for it to broadcast on television, playing games required meant just outdoor games or video games that needed different set up. Freedom of speech could be easily restricted in such a world. In the case of *Romesh Thapper v. State of Madras*,

circulation of petitioner's weekly journal was prohibited by madras govt. and freedom of press was included in freedom of speech.

Regulation of price of newspaper by the govt. under the Newspaper Act and Newspaper Order was challenged in the case of Sakal Papers P. Ltd. v. Union of India. Accordingly, the Newspaper Act and Newspaper Order were held unconstitutional as they were directly infringing right to freedom of speech and expression. The Bennet Coleman and Co. v. Union of India" stated that limitation on pages in newspaper cannot be made without reducing the advertorial content or the news itself. Advertisements in themselves often have a content of informing the people about new products, Government schemes, Amended laws, notification, etc. and hence reducing them would directly lead to increased cost whereas if the news itself were curbed, it would directly hamper the right of free press. The above cases give a clear image of how important freedom of speech is in any democracy and one's life. It is very important to keep this liberty free from various interferences. Judiciary has always played a major role in safeguarding it as well. Media has been considered the fourth pillar of democracy.

FREEDOM OF SPEECH AFTER EMERGENCE OF INTERNET

Emergence of internet only brought faster access but the scope was widened by the emergence of social media platforms such as whatsapp, twitter, facebook, instagram, snapchat, YouTube etc. Today the money isn't counted in rupees but mbps. The calling can be done via whatsapp, people can virtually see each other, can send texts and gifs, pictures, watch news T.V. serials, and web series all in one go by paying a small price of few megabytes. This has been encouraged by 2 GB per day data rather than 2 GB per month as in earlier days. The internet is cheap and full of wonders, black truths and colorful lies. It's hard to distinguish between what might be right and what might be wrong, virtually distributing speech but affecting it in a solid way. In case of Anuradha Bhasin v. Union of India and Ors," the petitioner challenged the internet shutdown in the Union Territory of Jammu & Kashmir, The Supreme Court held that the "freedom to access the Internet" is a fundamental right and is protected under Article 19(1) (a) as freedom of speech and expression under the Constitution of India. "Expression through the internet has gained contemporary relevance and is one of the major means of information diffusion. Therefore, the freedom of speech and expression through the medium

of internet is an integral part of Article 19(1)(a) and accordingly, any restriction on the same must be in accordance with article 19(2) of the constitution. The judgment comes after five months of internet suspension in Jammu & Kashmir -- the longest in the history of India. The internet shutdown was imposed in the union territory on August 5, 2019, after the abrogation of Article 370 of the Constitution.

Emphasizing the significance of internet, the UN Special Reporter on the advancement and protection of the right of opinion and expression in his Report, which was submitted to the Human Rights Council, expressed that the Internet has turned into a key means by which people can practice their entitlement to right of freedom of speech and expression and subsequently, to get and access of internet is a human right. UDHR and Article 19(2) of the ICCPR additionally accommodates the right to speak freely and articulation of thoughts i.e., the expression even if there should be the case of web and social media networking. There are various laws in India which puts reasonable restriction on use of internet and social media platforms in view of restrictions imposed under article 19(2)25, like Information Technology Act, 2000, National Security Act, UAPA, IPC, Cr.P.C. etc. The maximum cases in India are brought under S. 66 A of the Information & Technology Act, 2006, which punishes persons for sending offensive messages through social media. Some cases are as under:

In *Nithyananda Swami v. S. Arathi Rao and others*, 26 the Madras High Court used videos posted on social sites like Facebook and Twitter etc. as criminal evidence, noting that they has the potential to reach thousands of people and cause hatred for the plaintiff in the minds of others who could potentially hurt her. In another famous case is "*Chris Cairns v. Lalit Modi*", Lalit Modi, then the IPL commissioner, tweeted in January 2010 that Chris Cairns, the former New Zealand all under, had been removed from the forthcoming IPL auction list because of his involvement with match-fixing during the Indian Cricket League. Denying the claims of fixing, Cairns sued Modi for defamation in the London High Court. In this case, Mr. Justice Bean discovered Modi subject to liable for act of defamation and granted £90,000 compensation to Cairns. The High Court ruled: of Appeal added that the issue of "percolation is of particular relevance and favor of Cairns. The Court immeasurably enhanced due to the emergence and ease of availability of the World Wide Web".

In the case of *Shreya Singhal v. Union of India*, The court said: "Every expression used is nebulous in meaning. What may be offensive to one may not be offensive to another". Therefore, the interpretation was held to be subjective in nature. Hence the court ordered 66A as violative of right to freedom of speech and expression and is not covered under the grounds of reasonable restrictions given under Article 19(2). The court also held that blocking of information for public access given under Section 69A of IT Act is constitutionally valid in nature. In India, the fair criticism of the Government or public authorities is permissible under Indian Constitution and i.e. under Article 19(1) (a). The philosophy behind this Article lies in the Preamble of the Constitution, where a solemn resolve is made to secure to all its citizen, liberty of thought and expression. In case of *S. Rangarajan v. P. Jagjivan Ram*, the Court observed that everyone has a fundamental right to form his opinion on any issues of general concern. Open criticism of government policies and operations is not a ground for restricting expression. Intolerance is as much dangerous to democracy as to the person himself. In democracy, it is not necessary that everyone should sing the same song.

These all cases are just an example of a fair democracy. Freedom of speech and expression considered equally important for the person as their Right to Life. There are certain situations in which this right could be suspended but the constitution is clear on the points that in what situation it could be taken back. Fair criticism or expressing your thoughts on a particular thing should not be a part of restriction defined under Article 19(2). Internet and social media together is a thrust to freedom of speech and expression. For example-The floor of twitter is used not only to express one's opinion but also as a platform to complain to the government and seek redresser. This technology is not only being used by people but also by our own government.

DEFAMATION

Reputation of a person is one the most important asset in one's life and beyond it. Reputation of one person not only affects his life but also of all the people he is in consanguinity with. Reputation is the opinion that people in general have about someone or something, or how much respect or admiration someone or something receives, based on past behavior or character. The negative opinions formed by people once are as tough to change as easy it is to

create. A man's Reputation is his property, and if, possible more valuable than other property Publication of statement which tends to lower person in the estimation of right thinking members of society generally or which makes them shun or avoid that person can be termed as defamations. Defamation is an offence against reputation and also a civil wrong under tort. It is also one of the restrictions for freedom of speech. If the published matter tends to lower the reputation of a person in the eyes of substantial group of persons then that is sufficient to attract the liability"

Section 499 of Indian Penal Code] 1860, defined the term 'Defamation' such as- "Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person." It also provides for 10 exceptions that can be used as a defense mentioned below:

First Exception-

Imputation of truth which public good requires to be made or published. It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception –

Public conduct of public servants. It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception-

Conduct of any person touching any public question. It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception-

Publication of reports of proceedings of Courts. It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Fifth Exception-

Merits of case decided in Court or conduct of witnesses and others concerned. It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Seventh Exception-

Censure passed in good faith by person having lawful authority over another. It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception-

Accusation preferred in good faith to authorized person. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception-

Imputation made in good faith by person for protection or other's interests. It is not defamation to make an imputation on character of the cha for another provided that the imputation be made in good faith the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception-

Caution intended for good of person to whom conveyed or for public good. It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be

intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

As per above definition it can be construed that mere spoken and direct words are not a must for the wrong, it also include implied words that can be interpreted by the context of the words used (slander). The caricatures as well as dramatical representation can lead to defamation (libel). So the news print or the movies or the memes which is very popular and trending in today's social media world can be included under defamation. However it is to be duly noted that opinion in regards to a class of people is not defamation, it should be in regards to a particular person.

CYBER DEFAMATION

When a device connected to internet is used as tool to defame any person or entity it is cyber defamation". So it extends to use of facebook, twitter and instagram handles. The law applied to physical and cyber defamation is same.

Who can be punished?

1. On the author of defamatory material online,
2. On the service provider or an intermediary. However, it is pertinent to note that as per section 79 of IT act 2000, an intermediary shall not be liable if it does not initiate or modify such defamatory content but merely acts as a facilitator. Further, this protection is also subject to the condition that the intermediary shall comply with due diligence and intermediary Guidelines, requirements issued by the central government as also remove such unlawful content on being notified by the appropriate government or its agency or upon receiving actual knowledge 70

Cyber defamation even though judged via same Law is much more serious offence due to the widespread circulation of defamatory material at a higher pace than by any other ordinary mode. The persisting problem in current scenario is that literally everything, that can be sent virtually is circulated at a very fast rate. Be it pictures, audio or video clips. This might be useful in lot of fields but like every coin has two sides, so does its impact on society. Keeping in mind the magnitude of tardiness of reputation, the judiciary leans on to granting exemplary

damages in its cases. Following are the mediums via which cyber defamation can be committed:"

- World wide web
- Discussion groups intranets
- Mailing lists and bulletin boards
- Email

There are two broad categories" of cases:- (1) cases in which liability is of primary publishers of defamatory material; (2) cases involving liability of internet service providers or bulletin board operators.

Cases:

SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra"- An employer of the said company was sending derogatory, offensive and abusive emails to the employers of the said branch as well other branches of the company to defame it. Tamil Nadu v. Suhas Katti- Obscene and offensive messages were sent on yahoo email group about a divorcee women due to which she received lot of calls with a view that she was soliciting.

Tata Sons Limited v. Greenpeace International & Anr¹⁵- The Hon'ble high court of Delhi made following observations- "It is true that in the modern era defamatory material may be communicated broadly and rapidly via other media as well. The international distribution of newspapers, syndicated wire services, facsimile transmissions, radio and satellite television broadcasting are but some examples. Nevertheless, Internet defamation is distinguished from its less pervasive cousins, in terms of its potential to damage the reputation of individuals and particularly significant consideration in assessing damages in Internet defamation cases."

Kalandi Charan Lenka v. State of Odisha"- The petitioner was being stalked and fake account was opened in her name posting obscene material. Also the pictures were sent to her friends to defame her.

M/S Spentex Industries Ltd & Anr. v. Pulak Chowdhary". The petitioner had filed for a compulsory and prohibitory injunction along with the recovery of 50k as damages for loss of reputation and business due to defamatory emails sent by defendant to the IFC, World Bank

and President of Republic of Uzbekistan and UZERPORT (A news website portal and publisher of monthly news report)

Swami Ramdev & Anr. v. Facebook Inc. & Ors"- Justice Pratibha Singh had passed an order to remove all defamatory content posted online against yoga guru Baba Ramdev, without any territorial limit, stating that if the content is uploaded from India or such content is located in India on a computer resource, then the Courts in India should have international jurisdiction to pass worldwide injunctions. Facebook, has filed an appeal against the said order which has been admitted by the Division Bench of the Delhi High Court. The grounds of the said appeal are that in spite of the fact that the Plaintiff was aware of the persons who uploaded the content, they have not been made party to the suit. Further, it has also been contended that Baba Ramdev has not shown any strong prima facie case of irreparable loss. Among other submissions, Facebook in its appeal has also contended that global takedown order is against national sovereignty and international comity, as it interferes with defamation laws of other countries. Additionally, the said order also undermines the immunities granted to them in other jurisdictions.

The above cases point towards the various facets of the instances in which cyber defamation can occur and what legal recourse can be adopted to resolve the same. However, a certain set of limitations prevail in the cyber space that current global laws have not transcended to. Although, if a complaint is timely filed and at the correct forum then cyber defamation and its resulting damage can be curtailed.

Boys Locker room case"- A juvenile girl posed as a boy named "Siddharth" and started a group chat on Instagram of sexual assault on herself to know the reaction of its other members. Carryminati YouTube Video: YouTube V. Ticktock -The End Video

Carryminati roasted a single individual Salman Siddique, the video was removed by the YouTube as it infringed its harassment policy. The YouTube authorities said; "we have strict policies that prohibit harassment on YouTube, including using malicious insult based on intrinsic attributes such as sexual orientation." The video was line by line attack on Amir Siddique, a ticktock self 80 proclaimed social influencer.

MEMES

A new field of entertainment has emerged in form of "mimeme" short form "meme" widely circulated through WhatsApp, Facebook, Twitter, Instagram etc. A meme is something such as video, picture, or phrase that a lot of people send to each other on the internet." A unit of cultural information, as a concept, belief, or practice, that spreads from person to person in a way analogous to the transmission of genes. It's usually humorous and in the name of it can lead to being offensive or defamatory in nature. The memes are generally used for trolls via the medium of internet. In social media context troll is defined as creating discord on the internet by starting quarrels for upsetting people by posting inflammatory or off topic messages in an online community. It is to antagonize (others) online by deliberately posting inflammatory, irrelevant, or offensive comments or other disruptive content.

Is creating meme illegal?

No creating meme is not illegal but it can be offensive and when complained of needs to be put down. Various instances where claim was made against memes:

A mother of a young girl who was diagnosed with down syndrome filed a suit against dancing with the stars professional valentine chmerkovskiy and cbs corp. She alleged that the defendant caused a distasteful meme of her daughter go viral. The meme is based on picture taken in 2008 at a minor league baseball game; the picture depicts a young girl drinking a "sugary" drink near a concession stand. The picture was captioned, "letting your kid 857 become obese should be considered child abuse" 85 Ali Ziggi Mossmani, sued several media companies after a picture of him dancing in his birthday party went viral, stating it portrayed him ugly and made fun of his hair.

Alix Bromley posted a picture of her sizeable décolletage on BeBo in 2006 which was circulated throughout the internet with the caption "epic boobs" beneath. Parents of Adam Holland, who suffers from Down syndrome filed a suit against a Tampa radio station. The radio station showed the picture of boy holding a painting he made with the caption "retarded news" while Lavee posted a doctored version on twitter Conclusion- The paper portrays the importance of freedom of speech in India as well as whole wide world, the span and role of social media in our lives and how grossly more than being a part, it is our lives. The laying

stones of one life starts from sharing a picture and amount of likes it get. The social media is woven in our lives to an extend that its impossible to unwind from it. It's a platform to connect to people, we rarely or occasionally meet, but somehow it had made us distant from people we are living with. Posting picture of food is much more important than cating it. These are some minor consequences of this Handle, the greater one impacts the reputation of person via memes, trolls and email. Emails are specifically targeted while the memes are unspecific and maybe innocent. The person making or circulating might be totally unaware of its consequences or the nature of act he/she doing. The dingy cells are bit more for a very innocent act of sharing which has turned out to main object of life. The young generation is the one that is stuck in this web of World Wide Web. The paper aims to highlight how an innocent act or a medium of entertainment could turn out to be nightmare for other's life.in the name of freedom of speech one cannot go on to derogating a certain person or class of person. Calling ticktockers, "hijra" is not only offensive to them but also offensive to the community of transgendrens itself. The community isn't an abuse and has been accepted as a gender". In conclusion it is very important for a person to be aware of its surrounding and what he or she may be sharing. Our constitution provides for liberty of thought, expression, belief, faith and worship in its preamble puts a duty on us to protect of others as well.