

THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN THE DIGITAL ERA: A STUDY IN THE LEGAL PERSPECTIVE

Written by Dr. Rakesh Chandra

*Academician, Former Civil Servant, LL.M. from B.B.A. (Central) University, Lucknow, Ph.D.
in Law from Lucknow University, India*

ABSTRACT

The present age is rightly described as the digital age. The ever-growing use of latest technological advancements in the field of electronics and communications has almost changed the scenario of the day-to-day life of human beings. It seems that without the use of technology, it is very difficult to survive. This expansion of digital growth has impacted every walk of life. One of the most significant developments in this context can be seen in the unprecedented growth of social media including digital media. While social media has emerged as the most potent tool of social interaction, digital media is gradually coming up as an alternative to the print media. In both the cases, there appears to be absolute freedom to post any content and use any language on the various social media platforms. As a consequence, the users are airing their views and venting their pent-up feelings without maintaining the decorum of language. Digital media, by and large, is also without any statutory control. In part 3 of the Constitution of India, Article 19 provides the freedom of speech and expression to the citizens of India. But this freedom is not absolute and can be exercised with certain restrictions. These restrictions apply in the case of social and digital media also. But it appears that the users of social media platforms are bent upon crossing the barriers set by the Constitution itself. Similarly, the owners of digital media feel free to express their views flouting all prescribed norms. This paper explores the factual situation and tries to analyze the causes and suggests means to ameliorate the prevailing practices.

Keywords: Freedom of Speech and Expression, Fundamental Rights, Social Media, Digital Media, Information Technology Act, 2000.

INTRODUCTION

Article 19 of the Constitution of India once enshrined 'seven freedoms' which now encapsulates only six freedoms including Article 19 (1)(a), popularly known as 'freedom of speech and expression'. 'The freedom of speech is the matrix, the indispensable condition of nearly every other form of freedom. It is the well spring of civilization and without it liberty of thought would shrivel'.¹ This freedom is not absolute as the Constitution makers have provided under Article 19(2), the reasonable restrictions on the exercise of the right conferred by the subsection 1(a) in the interests of (i) the sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with foreign States, (iv) public order, (v) decency or morality or (vi) in relation to contempt of court, (vii) defamation, (viii) or incitement to an offence. Therefore, the freedom of speech and expression is limited by these restrictions irrespective of any medium, be it print media, digital media or social media. Since the present age is dominated by digital technology, the emphasis on print media is gradually giving way to digital medium. The digital medium is largely dependent on the Internet. The end result is that any type of communication is much faster on digital or social media platforms than on print media. Thus, anything posted on the digital media spreads like wildfire without any checks and controls. Even it crosses the boundaries of the nations in a jiffy. Moreover, unlike print media, there are no editors or editorial team to check the contents of any matter coming for publication. Even though there are editors in the case of certain online news portals, there is no oversight mechanism to look into the quality of the content. Hence, digital media and social media are more prone to misuse the freedom of speech and expression as envisaged in the Constitution. Social media has so far proved to be the biggest culprit where anything obnoxious or contrary to Constitutional provisions can be posted with impunity without going through any kind of control worth the name. Undoubtedly, social media has disturbed society in various forms more than other formats. So much rubbish including fake news, disinformation, misinformation, porn, etc. are being dished out on a daily basis in the name of freedom of speech and expression. Incidentally, there are no appropriate laws in India to counter this menace. At this juncture, it would be helpful to properly understand the nature of the problem by citing some significant examples of such misuse:

1. Digital Media

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules define digital media in rule 2 (i) as such:

'Digital media' means digitized content that can be transmitted over the internet or computer networks and includes content received, stored, transmitted, edited, or processed by-(i) an intermediary; or (ii) a publisher of news and current affairs content or a publisher of online curated content.

(i) In September 2020, the Supreme Court issued an injunction in regard to a television programme barring the channel Sudarshan News from televising the programme for the time being. The said programme related to civil services exams is said to give an impression that it is being aired with the objective of vilifying the Muslim community and bringing it into disrepute. A three-judge Bench headed by Justice D.Y. Chandrachud took strong exception to the contents of the show, Bindas Bol, which stated about 'UPSC jihad'. The Court held that the claims made by the channel appeared to be 'insidious' and also cast aspersions on the credibility of the UPSC.ⁱⁱ

(ii) In January 2021, three journalists were booked in Kanpur Dehat district of Uttar Pradesh for allegedly running fake news in a Television channel which displayed the pictures of students shivering in the cold during an event held on January 24 on the occasion of U.P. Diwas. The channel was identified as K News. The news was found to be fake and an F.I.R. was lodged against the three journalists at Akbarpur police station the next day.ⁱⁱⁱ

(iii) A set of journalists reported the death of a protestor in police firing at the fateful incident on January 26,2021 in connection to farmers' protest which was later found to be false. A video was released by the Delhi police that the death was caused when his (protestor) tractor overturned. An F.I.R. was lodged against the journalists, including Rajdeep Sardesai on charges of sedition, criminal conspiracy, effort to break public peace, promote religious enmity and more. It was said to have a chilling effect on free speech and liberty.^{iv}

(iv) An F.I.R. under Sections 153 A, 500,505 C, was lodged against the Shillong Times editor, Patricia Mukhim in regard to her Facebook post dated July 4,2021 in which she condemned an attack on some non-tribal boys, seeking the intervention of the chief minister of Meghalaya and the Dorbar Shnong to take remedial steps. She elaborated further that these attacks had

been happening since 1979. The Supreme Court quashed the criminal case in March 2021 by holding that there is a difference between criticizing a government action and promoting hatred between communities.^v

(v) An F.I.R. was lodged against the news portal The Wire on allegations raised by BJP IT Cell head, Amit Malviya, of cheating, forgery, and publishing 'fake stories' against him, Meta and Instagram in the month of October 2022 by the Delhi Police.^{vi}

2. *Social Media*

(i) Bharatiya Janata Yuva Morcha (BJYM) leader, Priyanka Sharma had circulated a meme that morphed Mamata's face on the photo of Bollywood star Priyanka Chopra Jonas in a quirky avatar at the MetGala. The Kolkata Police lodged an F.I.R. She was also booked under Section 66A of the Information technology Act, 2000, already struck down by the Supreme Court in 2015. Section 67A of the IT Act, and the criminal defamation charges were also leveled by the police. She was remanded to 14 days judicial custody. Later, the Supreme Court gave directions to immediately free the BJYM leader but she was ordained by the Court to tender an apology upon her release to Mamata Banerjee, who was made a target of the meme.^{vii}

(i) In 2020, a freelance journalist, Prashant Kanojia, was arrested by the Lucknow Police for allegedly posting a fake tweet purportedly about Dalits, tribals and Backward Caste people being barred from entering the Ram Mandir. He was later granted bail by the Allahabad High Court in October 2020.^{viii}

(iii) A Malayali journalist from Kerala, Siddique Kappan, was accused of sedition and various offences under the Unlawful Activities (Prevention) Act, 1967, and arrested on the way to Hathras, a district in Uttar Pradesh on October 7, 2020.^{ix}

(iv) Mohammed Zubair, the co-founder of fact-check website Alt News, was arrested on June 27, 2022, by the Delhi Police on a complaint from an anonymous Twitter handle. It was alleged by the complainant that he hurt religious sentiments over a tweet he sent out four years ago. The tweet was of an image from a 40-year-old film. He was charged under Sections 153-A, 295-A of the Indian Penal Code, and Section 35 of the Foreign Contribution (Regulation) Act (FCRA), 2010.^x Mahesh Langa, The Hindu, July 3, 2022.) The Supreme Court granted him interim bail on July 27, 2022, and averred that the accused got 'trapped in a vicious cycle of the criminal process where the process has become the punishment'.^{xi}

(v) Lucknow Police lodged an F.I.R. against a Twitter handle @AzaarSRK for sharing an image of a song from a Bollywood movie, Pathaan, with a picture of chief minister Yogi Adityanath's face morphed into an actor's body. The report was registered under Section 295A of the IPC and Section 66 of the IT Act. The morphed picture was posted from the song 'Besharam Rang' of the said movie.^{xii}

(vi) Kannada actor-activist, Chetan Kumar alias Chetan Ahimsa, was arrested in March 2023 by the Bangalore cityscape police for hurting religious sentiments with his tweet on Hindutva. He was arrested for the second time in the last one year for his controversial tweets. The complaint was lodged by one Shivkumar, a Bajrang Dal activist.^{xiii}

The above-mentioned list is not an exhaustive one but just illustrative of the current situation. It is pertinent to note here that the proliferation of any hate news, fake news, memes, cartoons or hurting posts for example, spreads to millions of viewers across the world without batting an eyelid. That means the adverse effects of misuse of the right to freedom of speech and expression guaranteed under our Constitution are beyond imagination. In the case of digital and social media, there are no fact checkers to glean through the uploaded contents. Any user from any place can post anything of his own choice without thinking of its possible and potential repercussions. In a way, these mediums have posed a grave danger to the exalted right of freedom of speech and expression. Such unmindful users of digital and social media often forget the prophetic words of the US Supreme Court in the case of *Time v Hill* (1967): "The constitutional guarantee of freedom of speech and press are not for the benefit of the press so much as for the benefit of all the people".^{xiv} This statement is not only true in the case of the press but in all other forms of speech and expression in the realm of digital and social media. In this regard, it would be helpful to understand the legal scenario existing in India. Before that it would be worthwhile to note that there is and there can't be any comprehensive law to control the deviations from the constitutionally protected right to freedom of speech and expression in India. Any aberration comes under the lens of judicial scrutiny and is decided accordingly by the courts. Moreover, there are various forms of such aberrations or deviations from the purview of this right and each contribute to the fissures on the democratic polity of India. Minister of State for Electronics and Information Technology, Government of India has rightly stated in the context of Twitter Files 2.0 controversy sometimes ago that "The fact that a few people were distorting the conversations happening on the platform and 'weaponising

misinformation' is unacceptable".^{xv} Similarly, the Supreme Court strongly disapproved the conduct of TV channels in sensationalising news and "serving an agenda". A division bench of Justice K.M. Joseph and B.V. Nagarathna also observed that such TV channels are creating a divide in society. It was also suggested by the Court that strict action be taken against news anchors indulging in hate speech. The Court asked the News Broadcasting and Digital Standards Authority (NBDSA) and the Central Government how such broadcast could be controlled. The Court was hearing a bunch of petitions seeking to curb hate speech incidents.^{xvi} Thus, the problem of transgressing the limits of right to freedom of speech and expression and consciously ignoring the reasonable restrictions contained in Article 19(2) has assumed a larger proportion in the present times which need to be addressed in right earnest. Following are some crucial steps taken by the Central Government in the recent past:

(i) Fact Checking of the Posted Contents

In April 2023, the Ministry of Electronics and Information Technology notified amendments to the IT Rules, 2021, and inserted a clause that will need intermediaries (social media companies) to ensure users do not post content about the Union Government that has been 'fact checked' by an approved body. It was further stated that the Government of India will notify an organization that will fact check all content regarding government-related content. If the companies want to enjoy a safe harbour under Section 79 of the I.T. Act, 2000, they have to comply. Here, it is pertinent to note that Section 79 provides social media companies legal immunity from liability of what their users post as long as they carry out the necessary due diligence outlined by the government. In the earlier version, the Press Information Bureau was authorized to do the job, but the amended provision does not mention such a thing.^{xvii}

(ii) Approval by the Government of a Self-Regulatory Body

The Central Government has approved the Print and Digital Media Association (PADMA) as a self-regulatory body for publishers of news and current affairs across the country in the month of December 2022. The order says "PDMA shall perform functions laid down in the sub-rules (4) and (5) of rule 12 for the purpose of redressing grievances related to the code of ethics under the rules. The body shall also ensure that the member publishers have agreed to adhere to the provisions of the rules, including furnishing information under rule 18". Till date, the Ministry has approved nine self-regulatory bodies since May 2021 under rule 12 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules,

2021. They include DIGIPUB News India Foundation, Confederation of Online Media (India), and NBF-Professional News Broadcasting Standards Authority, among others.^{xviii}

(iii) The Role of Intermediaries

The Information Technology Rules, 2021 cast specific obligations on the intermediaries that no intermediary shall violate the rights given to citizens enshrined in the Constitution. The government itself doesn't cast any fetters on the freedom of expression of users or control social media intermediaries. Rule 3 of these Rules, 2021 stipulates due diligence to be exercised by the intermediaries. It also throws light on the grievance redressal mechanism. Rule 3(1)(c) casts a duty on the intermediaries to periodically inform its users, at least once every year, that in case of non-compliance with rules and regulations, privacy policy or user agreement for access or usage of the computer resource of such intermediary, it has the right to terminate the access or usage rights of the users to the computer resource immediately or remove non-compliant information or both, as the case may be. It has also been provided that an authorized agency shall issue any notification made by the Appropriate Government or its agency in relation to any information prohibited by law for the time being in force. Provided further that in case such information is hosted, stored or published, the intermediary shall remove or disable access to the information, as early as possible, but in no case later than thirty-six hours from the receipt of the court order or on being notified by the Appropriate Government or its agency, as the case may be. Rule 3(g) stipulates that where upon receiving actual knowledge under clause (b), or on the basis of grievances received under sub-rule 2, any information has been removed or access to which has been disabled, the intermediary shall, without vitiating the evidence in any manner, preserve such information and associated records for one hundred and eighty days for investigation purposes, or for such longer period as may be required by the court or by the lawfully authorized Government agencies. Rule 3(j) provides that the intermediary shall, as soon as possible, but not later than seventy-two hours of the receipt of an order, provide information under its control or possession, or assistance to the Government agency which is lawfully authorized for investigative or protective or cyber security activities, for the purpose of verification of identity, or for the prevention, detection, investigation, or prosecution, of offences under any law for the time being in force, or for cyber security incidents. Rule 3(2) contains the Grievance redressal mechanism of intermediary. The Grievance Officer shall

acknowledge the complaint within twenty-four hours and dispose of such complaint within a period of fifteen days from the date of its receipt.^{xix}

Against the orders of the grievances redressal committee, the Central Government has set up three Grievance Appellate Committees that will address user complaints against social media and other internet-based platforms. These panels will also be empowered to oversee and revoke content moderation-related decisions taken by these platforms. As per the Minister of State for Electronics and IT, Rajeev Chandrasekhar, these Committees will solve disputes under two categories: "One is violation of law and rights of users including the right to free speech and privacy, and two, if there is any contractual dispute between a platform's community guidelines and a user".^{xx}

(iv) Digital India Bill

The Digital India Bill is likely to be placed before the Parliament soon. It will replace the Information Technology Act, 2000. The Bill may contain provisions related to a comprehensive framework for the internet, including provisions on user harm, ownership of non-personal data, cyberbullying, doxing, and other cybercrimes.

CONCLUSION

The fundamental right to freedom of speech and expression is a very sacred right given to us by the makers of the Constitution. In a democracy, people's role is very important. The democratic values are required to be nurtured in true spirit, otherwise the whole structure of democracy will go haywire. Expressing dissent against any government's policies is a healthy practice. It helps the government to adopt corrective measures. But dissent must be expressed in sober and simple language. The language of political and social discourse should be graceful, and not in any case, below standard. However, regrettably in a democracy like India, this freedom is deemed to be absolute by some people. They consider it as their right to say anything about anybody. In politics and social arena, mudslinging has become a convenient norm. The growth of the internet and electronic media have contributed to this fast-spreading malaise. Since, there doesn't lie any mechanism to check the posted content, much harm is being done to the reputation and goodwill of a person or the institution. For this, laws are evolving slowly but surely. However, this is also true that no law works better than self-restraint. Democracy

thrives on mutual respect and regard for the highest traditions. No power or right can be absolute, and every citizen should understand this basic doctrine. At the same time, the government should not desist from legislating new and more stringent laws to curb the use of this unwanted and undesirable misuse of right to freedom of speech and expression, particularly in the Indian context.

ENDNOTES

- ⁱ Maqbool Fida Hussain v Raj Kr. Pandey, 2008 Cr LJ 4107.
- ⁱⁱ Murali Krishnan, SC halts broadcast of 'insidious' show, Hindustan Times, September 16, 2020.
- ⁱⁱⁱ Asad Rehman, January 28, 2021, The Indian Express.
- ^{iv} Editorial, Hindustan Times, February 1, 2021.
- ^v Abraham Thomas, 'Free speech can't be stifled': SC quashes FIR against journalist, Hindustan Times, March 26, 2022.
- ^{vi} The Hindu Bureau, The Hindu, October 30, 2022.
- ^{vii} Editorial, The Times of India, May 15, 2019.
- ^{viii} Omar Rashid, The Hindu, October 22, 2020.
- ^{ix} Leah Verghese, The crippling effect of sedition and UAPA on dissent in India, Hindustan Times, October 12, 2020.
- ^x Mahesh Langa, The Hindu, July 3, 2022.
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- ^{xvii} Deeksha Bhardwaj, Govt notifies changes to IT rules, Hindustan Times, April 7, 2023.)
- ^{xviii} Divya, Print, digital self-regulatory news Association gets govt's approval, The Indian Express, December 6, 2022.
- ^{xix} GSR 139(E), dated 25th February, 2021.
- ^{xix} Soumyarendra Barik, The Indian Express, January 29, 2023.