



Right to Freedom of Speech and Expression: Its Changing Dimension in the Era of Internet Technology

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ABSTRACT

India's story of free expression on the internet age has seen upheaval and turbulence. Article 19¹ provides this freedom, thus signifying the country's will to uphold an individual's right to expression, so anchored in the democratic character. Thanks to the rise of internet platforms like news portals and social media, citizens today have more active means than ever before to voice their ideas. Nelson Mandela once remarked, "To be free is not only to cast off one's chains but to live in a way that respects and enhances the freedom of others." Though there are hazards to this freedom in the digital sphere, such the perils of divisive speech and the fast spread of false information. Article 19² is investigated in this study with particular attention to its great importance in preserving free expression. It is imperative to strike a balance and gently negotiate the existing terrain between free opinion flow and the hazards of digital misinformation. Whether governmental or personal, censorship throws still another level of challenge to this careful balancing act. As the world observes India's digital dialogue grow, the preservation and appropriate use of free expression—as supported by Article 19³—becomes of uttermost relevance. Examining Article 19 helps one to realise that it is imperative to find a careful balance between unbridled digital expression and the accompanying responsibilities⁴.

¹ The Constitution of India, 1950.

² Ibid.

³ ibid

⁴ The changing face of free speech: a study of article 19 in the digital age in India



“The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may accordingly, speak, write and print with freedom but shall be responsible for such abuses of this freedom as shall be defined by the law”.

Introduction

People have been entitled to freely think and express their opinions in great respect from prehistoric times. Rather than have his freedom to free expression restrained, Socrates chose death. Let a man express his opinions if only then his personality would be clear. God gives words to humans. People share with others around them their innermost ideas, feelings, and sensations, therefore expressing themselves⁵. Every human being therefore naturally has a right to freely express herself. As so, it is a basic right.

The Universal Declaration of Human Rights, "everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (1948). The people of India declared in the Preamble to the Constitution their will to ensure every person their freedom of opinion and expression. Part III of the Constitution, Article 19(1), which names the Fundamental Rights, captures this will.

Man has many aspirations as he is a logical thing. In a civil society, though, man has to learn to moderate, balance his needs with those of others. The Constitution limits the provision of the above listed rights in order to safeguard the society at large. Article 19(2) limits the freedom of expression right. Expanding the power to impose limitations based on public order, the Constitution (First Amendment) Act, 1951 Preserving law and order represents only the surface of public order issues. In this modern context, a public order is distinguished by peace, safety, and tranquilly.

Freedom of Speech and Expression at A Glance

One of the objectives of the Constitution is to guarantee the people their freedom to think and express themselves. One's right to freely express their ideas and feelings can be used in a variety of ways: verbally, in writing, through printing, drawing, or visual or auditory devices like cinematographs, televisions, radios, videos, loudspeakers, or telephones; or through dramatic performances, music, singing, or dancing;

⁵ A history of freedom of thoughts by J. B. Bury



or by demonstrations, picketing, dharma, manifestos, signs, or behaviour. Under this category would all that is designed for the view or ears of others.

The freedom of speech is, first of all, the liberty to openly express one's ideas and opinions via whichever medium one choose. The freedom of expression naturally calls for two parties: one from whom ideas and views are articulated and another to whom they are shared. In essence, the freedom of speech consists in the right to publish and distribute one's own work as well as in the work to be published and circulated. All people have rights to know what's going on, hence it's reasonable. Conversely, free speech cannot compel someone to observe or pay attention if they so want.

Freedom of Speech and Expression as A Human Right

Human Rights

Among man's most valuable rights are his freedom to voice his ideas and opinions. Everyone has the right to freely express oneself via print, writing, and speech; anyone who infringe this freedom shall be subject to legal action.

The right to free expression, taken broadly, covers all spheres of human interest—religious, political, economic, scientific, informational, etc. This covers the capacity to assist others seeking legal action for rights breaches as well as to exchange ideas or knowledge regarding work conditions or the causes of labour conflicts.

Everybody has the same basic human rights regardless of their colour, religion, gender, sexual orientation, country of origin, language spoken, or any other unique attribute. Human rights ought not to be subjected to any kind of discrimination. These all rights cannot be split and are interconnected. Every single person should be able to fully exercise their cultural, social, economic, political, and civil rights as stated in the thirty articles comprising the Universal Declaration of Human Rights.

The rights reflect human dignity and offer protection from suffering and terror as well as freedom of opinion and religion. John Locke, Montesquieu, and Rousseau⁶ express various human rights, namely:

- a. Freedom for themselves
- b. Freedom of religion
- c. Freedom of assembly and association

⁶ Sulaiman Hamid, 2002 *Hak Asasi Manusia dalam Lembaga Suaka Hukum Internasional*. Jakarta: PT. Raja Grafindo Persada.



- d. Writ of Habeas Corpus Rights
- e. Freedom of thought and freedom of the press.

Human rights hold true anywhere. One does not deny someone their rights to certain legal safeguards just because they are human. An international legal corpus enlists human rights. Human rights are protected by international human rights instruments. These international instruments comprise treaties and other papers commonly classified as Declarations and Conventions. Though the United Nations General Assembly adopted the Universal Declaration of Human Rights (henceforth "UDHR") in 1948, it lacks any legally binding power. Still, the UDHR is *jus cogens* since it is the human rights book. Conversely, international law renders conventions legally binding. Draughted by the United Nations, the most important human rights framework—the "International Bill of Rights"—lays forward a broad spectrum of rights. Declaring a set of basic human rights, the three historic treaties—the UDHR, the ICCPR, and the ICESCR—also reflect.

The Human Rights Universal Declaration confirmed and recognised in 1948 as a basic human right the right to free expression. A basic human right is the right to freely express one's opinions and beliefs, free from government censorship, and the freedom to search, access, and distribute such ideas and knowledge via any media, wherever.

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible⁷.

Freedom of Speech and Expression as Fundamental Rights in India

The India Fundamental Right to Freedom of Expression Article 19(1)(a) states that the state is obliged to protect "all citizens shall have the right to freedom of speech and expression," therefore expressing a positive view on the right to free expression. Article 13(2) declares that any legislation that violates fundamental liberties is null and void since the State cannot pass laws diminishing or eradicating of these rights. Of course, Article 19(1) (a) offers only protections in the case of state activity. Article 12 thereby limits the right to free expression to use against the state solely. Should the state infringement this right, there is a constitutional recourse. Those who violate Article 19(1) (a) do not fit under its purview. Therefore, without any kind of State intervention, there is no constitutional remedy available when a

⁷ United Nations Human Rights 2013 *What is Human Rights*. <http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx> (accessed 4 January 2025)



private person invasion this right. In this case, the right line of action is to punish the offender in line with common law standards. Private people who stand to benefit from the contested statute, however, can also band together in a challenge against state activity.

Freedom of Speech and Expression Through Social Media

The Right to Online and Other Social Media Free Expression thanks in great part to the explosion of online sites like Facebook, Twitter, and the Internet, people are able to freely express themselves and exchange information. In the last year or two, there has been a growing wave of people seeking reform, justice, equality, transparency from the powerful, and preservation of human rights all around. Often leading these kinds of movements, the Internet and social media have been essential in bringing people together in unity and enabling the quick information distribution. Given the drastically altered media scene—the internet and mobile communication front stage—the UN Human Rights Committee has also aimed to give freedom of opinion and expression pragmatic implementation. The Committee defined new media as an international venue for the free flow of information independent of traditional mass media. It pushed the states to ensure the accessibility of these platforms and simultaneously perform what is required to support their autonomy.

Moreover, Articles 19(2), Article 10, and Article 19 ensure the freedom of expression and speech even via the internet and social media. Apparently, regardless of the media it is used in, freedom of speech and expression is acknowledged as a basic right in the Indian Constitution as well as other international instruments. Given the rising usage of social media and the internet to exercise a core human right, access to these platforms has also been recognised as such. Not only has the seemingly limitless methods of expression and information sharing of the digital era made it easier to learn about the world around us, but it has also created an environment where fast change is feasible because of the abundance of information sources.

The emergence of digital technology and internet platforms has changed human connection and provided consumers the means to produce worldwide content⁸. While governments have grudgingly become more receptive of many points of view and competing narratives, new civil society organisations and technology breakthroughs have given the voiceless a voice and empowered the weak.

⁸ Monshipuri, Mahmood, *Information Politics, Protests, and Human Rights in the Digital Age*, 267 (Cambridge University Press, New Delhi, 2016)



There are several possible ways in which technology could be used to threaten or compel someone into acting against their will. The way people interact, cooperate, plan, and coordinate forms of conflict using modern technologies speeds up the process of gaining human rights.

The proliferation of information sources in the digital era that has accompanied the seemingly countless ways of conveying and exchanging information not only has made it easier to learn about the world around us but has created the digital environment for rapid change. Digital technology and virtual platforms have changed how people relate to each other and how consumers have gained the power to generate content that transcends borders and localities.

Freedom of Speech and Expression and the Judicial Response

The Right to Judge and Express Free Will regarding the substance as well as the form of communication, the concept of freedom of speech and expression as described in Article 19(1)(a) is multifarious. It's also a live, shifting concept that has evolved with technology and new surroundings. Article 19(1)(a) guards the ability to freely express oneself in any form verbally, in writing, in printing, through images, or any other media. It covers the freedom to express oneself both orally and in writing. Ideas can be expressed in any type of media—print, broadcast, online, hybrid, and so forth.

The freedom of speech and expression under Article 19(1)(a) is a concept with diverse facets, both with regard to the content of the speech and expression and in the means through which communication takes place. It is also a dynamic concept that has evolved with time and advances in technology⁹.

Article 19(1)(a) covers the right to express oneself by word of mouth, writing, printing, picture or in any other manner. It includes the freedom of communication and the right to propagate or publish one's views. The communication of ideas may be through any medium, newspaper, magazine or movie¹⁰ including the electronic and audiovisual media.

- It is important to underline that thanks to the creative approach of the court, a great number of other rights have emerged from the basic freedom of speech and expression. Given this, the chapter looks at the judicial response to free expression. Based on the theory that some unsaid rights are implied in the specified guarantee, the Swedish Supreme Court has deduced in many rulings important traits that aren't specifically expressed in Article 19(1)(a). Therefore, the judicial art's inclusion of several diverse components has enlarged the freedom of speech and

⁹ Madhavi Goradia Divan, *Facets of Media Law* 5 (Eastern Book Company, Lucknow, 2010).

¹⁰ *S. Rangarajan v. P. Jagjivan Ram* (1989) 2 SCC 574.



expression by means of Press rights, Having rights to access information the capacity for reaction.

- Freedom of press,
- Right to receive information,
- Right to reply,
- Compelled speech,
- Right of convict to express himself
- Right not to speak,
- Freedom of circulation
- Right of access to the source of information,
- No pre-censorship on press,
- Freedom in volume of news,
- Commercial speech
- Right to fly the national flag,
- Right to broadcast,
- Right to criticize, Right to expression beyond national boundaries,
- Right of the press to conduct interviews and the like.

Furthermore, highlighted will be the careful reading of Articles 14, 19, and 21 by the Supreme Court in the Maneka Gandhi case. Revealing Uncharted Prospect in the Domain of Free Expression.

New Dimensions of Freedom of Speech and Expression

The Supreme Court broadened the breadth of free speech by deciding that the government did not have a monopoly on electronic media, therefore negating any control over them. Art. 19(1)(a) states that a person is entitled to broadcast any noteworthy occurrence to the public via radio and television among other electronic media. The government can restrict this right only using the reasons stated in Article 19's second paragraph; no other justification will do. A fundamental human right is the access to and use of the most efficient communication tool available including television. Press Release Freedom, Political liberty and democracy cannot function as they should without the right to free speech and expression, which comprises the fundamental right to press. "Democracy can thrive not only under the vigilant eye of



legislature, but also under the care and guidance of public opinion and the press is par excellence, the vehicle through which opinion can become articulate," asserts the Indian Press Commission.

Freedom of Press

The fundamental right of the freedom of press implicit in the right the freedom of speech and expression is essential for the political liberty and proper functioning of democracy. The Indian Press Commission says that "Democracy can thrive not only under the vigilant eye of legislature, but also under the care and guidance of public opinion and the press is par excellence, the vehicle through which opinion can become articulate." Unlike the American Constitution, Art.19 (1) (a) of the Indian Constitution does not expressly mention the liberty of the press but it has been held that liberty of the press is included in the freedom of speech and expression. The editor of a press for the manager is merely exercising the right of the expression, and therefore, no special mention is necessary of the freedom of the press. Freedom of press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of press and invalidate all laws or administrative actions, which interfere with it contrary to the constitutional mandate.

Commercial Advertisements

The court held that commercial speech (advertisement) is a part of the freedom of speech and expression. The court however made it clear that the government could regulate the commercial advertisements, which are deceptive, unfair, misleading and untruthful. Examined from another angle the Court said that the public at large has a right to receive the "Commercial Speech". Art.19 (1) (a) of the constitution not only guaranteed freedom of speech and expression, it also protects the right of an individual to listen, read, and receive the said speech.

Right to Information

The right to know, 'receive and impart information has been recognized within the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. The right to know has, however, not yet extended to the extent of invalidating Section 5 of the Official Secrets Act, 1923 which prohibits disclosure of certain official documents. One can conclude that 'right to information is nothing but one small limb of right of speech and expression.

Technological development in communication has brought revolutionary opportunities and changes in the landscape regarding how people obtain, process and exchange information. One of the emerging

challenges for the legal and regulatory regime is in shaping of modern interpretation of the rights to freedom of thoughts and expression. The rapidly evolving media revolution has generated a number of new regulatory initiatives designed to reduce systemic risks associated with this means of communication “ranging from risks to children, to privacy, to intellectual property rights, to national security, which might more indirectly and often unintentionally, enhance or curtail freedom of expression¹¹”.

Right to Internet

The right to Internet access, also known as the right to broadband or freedom to connect, is the view that all people must be able to access the Internet in order to exercise and enjoy their rights to freedom of expression and opinion and other fundamental human rights, that states have a responsibility to ensure that Internet access is broadly available, and that states may not unreasonably restrict an individual's access to the Internet¹².

Fundamental right to freedom of speech and expression extends to the Internet medium as well. Every citizen has a freedom to acquire or share knowledge (or information) using Internet and related resources, subject only to reasonable restrictions. In fact, the courts may apply reasonable restrictions in the interest of decency or morality to restrict the publication of information which is obscene in electronic form. For this purpose the courts may have to invoke reasonable restrictions in the interest of decency or morality in light of sections 67, 67A and 67B of the Information Technology Act, 2000 which deals with publication or transmission of obscene material in electronic form¹³.

The access to the Internet is a right that is very similar to what the Supreme Court held with respect to the right to privacy in the Justice K.S. Puttaswamy judgment.

The High Court of Kerala made a start to the domestic recognition of the right to Internet access with its judgement in Faheema Shirin R. K. v. State of Kerala and others, holding that “when the Human Right Council of the U.N. found that the right to access to the Internet is a fundamental freedom and a tool to ensure the right to education, a rule or instructions which impairs the said right of student can’t be permitted to stand in the eye of law”.

¹¹ Monroe E. Price and Stefaan G. Veerhuslt and Libby Morgean (eds.), *Routledge Handbook of Media Law*, 157 (Routledge, New York, 2013)

¹² *Rights to Internet Access* available at :https://en.wikipedia.org/wiki/Right_to_Internet_access

¹³ Vakul Sharma, *Information Technology Law and Practice: Cyber Laws & Laws relating to E-commerce*, (6th ed)

The UN Special Rapporteur on the Promotion and Protection of the Right to Free of Opinion and Expression recently stated that the Internet has become the central global public forum with profound value for human rights¹⁴.

The idea of internet access as a basic human right has been put forward by many, and according to large survey by the BBC World Service, nearly 80 percent of people around the world believe that it should be. In Estonia, France and Greece for example, internet access has already been made a constitutional right, while in Finland this right has become legally enforceable. The EU Telecoms Reform Package agreed in 2009 supports high-speed access for all citizens' throughout the EU¹⁵.

Increasingly, access to the Internet is seen as a human right in itself. Related to enhancing human agency, the Internet has also led to an expansion of political empowerment, which is vital to the promotion and sustenance of the human rights movement. "Network Politics" are particularly suited for the human rights movement because of their ability to spread.

The digital medium has invariably increased usage of internet in various contexts like online searches, shopping, consumer activity, Smartphone use, social media etc which results in generation of huge amount of data. In this respect, digital technology has created a symbiotic relationship of sorts. It enables us to access and share information for our own benefit. At the same time, the data we generate is of immense value to the public and private entities that facilitate and control our digital interactions¹⁶

Making laws for the internet is very difficult. There are many reasons for this, including the speed of technological development, the lack of speed of lawmakers, the seemingly borderless nature of the internet, the limited technological understanding of lawmakers, and the power of various lobby groups.

Copyright Versus the Freedom of Expression

The law of copyright is indeed to prevent plagiarism and unfair exploitation of creative work. It is a natural extension of the freedom of speech and expression protected under Article 19(1)(a) of the constitution. If an individual enjoys the freedom of speech and expression, he must also be guaranteed protection of the intellectual property in his expression. Absence of such protection would demoralize creative artists and have a chilling effect on creative activity. Copyright is not a positive right to do something but confers a

¹⁴ Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye - U.N. Doc.A/HRC/29/32 (May 22, 2024)

¹⁵ Bernal, Paul, *Internet Privacy Rights*, 2-3 (Cambridge University Press, United Kingdom, 2014)

¹⁶ Privacy, Data and Technology: Human Rights Challenges in the Digital Age, A paper issued by New Zealand Human Rights Commission available at: https://www.hrc.co.nz/files/5715/2575/3415/Privacy_Data_Technology_Hum_FINAL.pdf visited on 13-09-2024



negative right which restricts others from copying the original work of an author. A right for one person is thus a restriction on another. The laws of copyright protect the right of one person and restrain another from exercising corresponding rights¹⁷.

Conclusion

Social media is a very powerful means of exercising one's freedom of speech and expression. However, it is also been increasingly used for illegal purposes and this made it essential to regulate social media. This regulation should not be violative of people's right. Government, service providers and the users should work hand in hand to develop a new healthy social media culture in our nation. Service providers can help in bringing out the best of government regulations by providing timely updates.

¹⁷ The Constitution of India, 1950, Article 19(1)(a)