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Freedom of Speech and Expression in Digital Age: A Constitutional Perspective

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ABSTRACT

One important pillar of democracy in the world is the right to freedom of speech and expression. It is the right of every human being to communicate and convey his ideas, opinions, beliefs, and information. The modern world has witnessed tremendous changes in the way the right of freedom of expression is exercised by the people because of the advent of technology and the use of the internet. In the recent past, the development of social media forums and internet journalism has greatly enhanced the right of freedom of expression. Nonetheless, the digital world has brought about several complex issues that have put the freedom of expression to the test. Issues of the spread of misinformation, hate speech, online harassment, government control of internet content, and the role of internet service providers have raised critical questions about the protection and regulation of the freedom of expression in the digital world. This has raised critical questions of law and ethics about the delicate balance that needs to be struck while protecting the freedom of expression while preventing potential harms in the digital world.

This article will discuss the concept of freedom of expression in the digital age with special reference to the constitutional framework. It will examine the concept of freedom of expression in the digital world in the context of the evolution of the freedom of expression in the digital world, the significance of the freedom of expression in the digital world, the challenges facing the freedom of expression in the digital world, the constitutional framework relating to the freedom of expression in the digital world with special reference to the Constitution of India.

From the study, it is evident that the digital world has immensely enhanced the freedom of expression while raising critical questions about the regulation of the internet and the delicate balance that needs to be struck while protecting the freedom of expression while preventing potential harms.

Keywords: *Constitution, Digital Age, Freedom of speech, Expression, Rights.*

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I. INTRODUCTION

Freedom of speech and expression is perhaps the most important freedom that exists in a democracy. This is because it gives people the freedom to express themselves freely without any fear of persecution or suppression. Freedom of expression is the freedom that gives people the ability to contribute to discussions in public, question governments, and share information.³ In short, it is the freedom on which a democracy is based. Freedom of expression has existed for a while now. Yet, the freedom to express oneself was limited by the level of communication that existed at the time. In the olden days, people used public gatherings, newspapers, and later the use of the radio and television to express themselves freely.

Conversely, these means of communication were mostly out of reach for the majority of people since they were controlled by governments and large organizations.⁴ But, the coming of the digital age has changed everything. Today, the internet has provided people with the platform to express themselves and share their ideas with the global community at very minimal costs. This has opened doors for people to express themselves through social media, blogs, podcasts, and video sharing. Today, millions of people across the world have the ability to take part in discussions on issues like politics, social issues, culture, and global issues through the internet. This has greatly enhanced the freedom of speech and expression. Still there have been challenges arising from the internet. Therefore, to understand the freedom of speech in the digital age, one has to look at the constitutional basis of the freedom and the technological environment in which the freedom is taking place.

II. MEANING AND SCOPE OF FREEDOM OF SPEECH AND EXPRESSION

Freedom of speech and expression is right of an individual to express their opinion, ideas, and beliefs without any fear of persecution.⁵ It is not limited to verbal communication but extends to the exchange of ideas through written word, symbols, and digital communication.

Freedom of expression generally encompasses the following rights:

- a) Right to express one's opinion and ideas.
- b) Right to receive and disseminate information.
- c) Freedom of the press.
- d) Freedom of artistic expression.

³ M.P. Jain, *Indian Constitutional Law* (8th ed.).

⁴ Ministry of Information & Broadcasting, India Reports.

⁵ Black's Law Dictionary (supra).

- e) Freedom of political criticism.
- f) Freedom of online expression.

Freedom of expression is essential in the functioning of a democracy in several ways. Freedom of expression makes it possible to have the free exchange of ideas, to arrive at the truth, and to hold the government accountable. In the absence of freedom of expression, democracy is not possible. Notwithstanding, the freedom of expression is not absolute. This is so because there is the recognition of the fact that the state has the power to restrict the freedom of expression.⁶ This is so because the state has the responsibility of safeguarding the rights of the people, maintaining law and order, and ensuring national security. But the question is whether the state is not abusing the power vested in it by restricting the freedom of expression.

III. EVOLUTION OF FREEDOM OF SPEECH IN THE DIGITAL AGE

The digital age has greatly impacted how individuals express their freedom of speech. The internet has revolutionized communication from a restricted one-way communication system to a global interactive communication platform. The evolution of the freedom of speech from its traditional roots to the current digital context denotes a marked change not only in terms of the methods used to exercise such right but also the manner in which it is currently practiced and the extent of coverage that the right now encompasses. Freedom of speech was traditionally practiced within physical spaces such as public meetings and through print and even broadcasting media, with the access limited through state and other institutional mechanisms that have prevented a wider coverage and participation of people. But, with the coming of the digital era, freedom of speech has become decentralized in nature, where information is shared instantly and without geographical boundaries. In the contemporary digital era, the role of citizens has shifted to being passive recipients to active producers and distributors of information. This development has thus widened the scope of Article 19(1)(a), which today extends to digital forms of communication and online freedom of speech. Yet, this evolution in practice poses challenges that necessitate the use of the reasonable restrictions provision of Article 19(2) for the application of some constitutional rights.

IV. RISE OF SOCIAL MEDIA, DIGITAL JOURNALISM & CITIZEN PARTICIPATION

Social media has come up as a vital tool for communication and engagement with the public. Social media like Facebook, Twitter (X), Instagram, and YouTube provide a platform for individuals to express their thoughts on various issues. Social media sites have enabled

⁶ *State of Madras v. V.G. Row*, AIR 1952 SC 196.

individuals from different backgrounds to express their opinions on various issues.

Social media has redefined the boundaries of freedom of speech by making people active contributors to the conversation rather than passive receptors of information. Social media platforms like Facebook, X (previously Twitter), Instagram, and YouTube have facilitated live communication and discussion between people all over the world. They allow people not only to express their opinions but also to become a driving force behind certain political or social issues that might arise. Nevertheless, due to the lack of any regulation concerning the spread of such information, there is a constitutional problem emerging here, and it includes hate speech and misinformation. As opposed to state censorship, however, social media regulation is not controlled by law but follows different policies and terms specific to each particular platform.

The rise of online news portals and blogs by media houses has greatly impacted journalism. Digital journalism provides a platform for both citizens and journalists to express themselves instantly. In this regard, digital journalism has been recognized as an important means of exercising freedom of speech and expression through its contribution to journalism.⁷ While conventional forms of journalism had many restrictions due to various controls, such as those by editors and other media-related institutions, digital journalism involves immediate reporting, citizen journalism, and even the provision of alternative points of view. Bloggers, news sites, and freelance journalists have all gained importance and contribute to providing the people with relevant information through digital platforms, thus helping to further protect their rights as provided for in Article 19(1)(a) of the Constitution. But, on the flip side, due to the lack of stringent monitoring and editing processes in most digital media outlets, issues regarding veracity and sensationalism have raised concerns.⁸

The digital age has greatly impacted public participation in discussions on various issues, including social, political, and cultural issues. Individuals can participate in campaigns for social causes and raise awareness on key issues. The digital era has improved the involvement of citizens in governance activities and policy making by offering various digital platforms which individuals use to get involved in policy discussions and social movements. Petitions online, campaign on social media, blogging, and discussion forums have contributed to the enhancement of citizen participation, whereby the citizens are able to hold authorities accountable through these platforms. This form of citizen participation is based on a broader meaning of freedom of expression, which involves engaging in collective actions and digital

⁷ M.P. Jain, *Indian Constitutional Law* (LexisNexis)

⁸ Reuters Institute, *Digital News Report*, Available at: <https://www.reutersinstitute.politics.ox.ac.uk>

advocacy. Nevertheless, there is a need to be wary of the possible problems associated with the use of digital tools in the expression of ideas. There might be dissemination of information leading to the creation of echo chambers, among others. In view of that, a strong constitutional framework would go a long way in ensuring that the participation of citizens is meaningful and beneficial.

V. CONSTITUTIONAL PROVISIONS ON FREEDOM OF SPEECH AND EXPRESSION

Freedom of Speech under the Constitution of India

In India, the right to freedom of speech and expression is provided as a fundamental right under Article 19(1)(a) of the Constitution of India.⁹ Article 19(1)(a) provides as under:

“All citizens shall have the right to freedom of speech and expression.”

This right enables the citizens to freely express and communicate their views and ideas through any means such as speaking, writing, printing, and even through pictures and other media. Article 19(1)(a) has been interpreted very broadly and has been held to encompass many aspects of the right to expression such as the right to freedom of the press, the right to freedom of commercial expression, and the right to receive information.

Interpretation of Article 19(1)(a) by the constitution has always been dynamic and liberal through the passage of time. The Supreme Court of India has always held that the right of speech and expression under Article 19(1)(a) does not confine only to mere oral expression but covers the entire gamut of actions that convey a person's opinion. It includes the right to remain silent, right to receive information, and right to seek knowledge from various sources. Such liberal interpretations are based on the democratic character of our constitution, which highly values informed citizenship for its governance system. In today's modern democratic world, it is crucial for the effective functioning of a democracy that people should be able to form opinions freely and also express their views on any subject matter without fear of reprisal. When it comes to the contemporary scenario, such a liberal constitutional interpretation is quite important, particularly in view of the new age where people rely upon the internet to hold debates and exchange ideas on various matters.

VI. REASONABLE RESTRICTIONS UNDER ARTICLE 19(2)

Freedom of speech is cover in the list of fundamental rights; however, it is also important to note that there can be reasonable restrictions on freedom of speech as per Article 19(2).¹⁰ The

⁹ Constitution of India, Article 19(1)(a).

¹⁰ Constitution of India, Article 19(2).

state can inflict reasonable restrictions on the fundamental right to freedom of speech in the interest of:

- a) The sovereignty and integrity of India
- b) The security of the state
- c) Friendly relations with foreign states
- d) Public order
- e) Decency or morality
- f) Contempt of court
- g) Defamation
- h) Incitement to an offence

These restrictions on freedom of speech ensure that freedom of speech is not misused and does not disturb public order and the rights of others. These restrictions are not of an absolute nature, and they need to pass a rigorous test by the judiciary before it can be assured that the restrictions imposed on individuals or corporations are reasonable and justified. "Reasonableness" here means that the State's restrictions should not be capricious, excessive, or unjustified as compared to their purpose. With the passing of time, the principle of proportionality has gained a great importance within constitutional law, and now it is considered to be a key requirement in the evaluation of all State regulations.¹¹ The issue of proportionality is especially significant in today's information era when State's restrictions on individuals' right to access the Internet could greatly harm people's ability to freely speak. In this regard, measures taken by the State, for instance, regulation of certain web sites, blocking of websites, and shutting down of the Internet itself cannot always be justified by authorities, who usually use national security and other pretexts as reasons.

VII. CHALLENGES TO FREEDOM OF SPEECH IN THE DIGITAL AGE

Despite its benefits, the digital world has some challenges in the protection of free expression.

A. Misinformation and Fake News

The ease of dissemination of information in the digital world has encouraged the spread of false information in society. This has affected different sectors of society, including politics and social relationships. Misinformation and fake news in the digital era have major constitutional

¹¹ *Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353; Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press).

ramifications since they impact the quality of the debate and affect the informed decision-making ability of the citizenry. In comparison to traditional media wherein editorial oversight was present, unverified content can spread quickly in the digital era, and it is difficult to separate fact from opinion on various matters. It becomes a threat to democracy, the electoral process, and can create civil unrest. When considered through the lens of constitutional law, the regulation of misinformation is an intricate matter since it requires balancing restrictions placed on such practices against the fundamental right of freedom of speech guaranteed by Article 19(1)(a). Over-regulation can result in censorship, while inadequate regulation can threaten social peace and harmony.

B. Hate Speech and Online Abuse

The digital world has been a platform for hate speech and online abuse. People are abused based on their race, religious affiliations, and gender. This has discouraged some people from engaging in online discussions and interactions. Hate speech and online abuse are one of the greatest threats to the freedom of expression in the digital age, since these pose tests on what can be considered lawful speech within a constitutional democracy.¹² The spread of these harmful expressions through digital media has led to their being aimed at specific individuals and communities because of their religious beliefs, castes, genders, or ethnic backgrounds. Not only do such expressions undermine the dignity of the persons concerned, but they could pose a threat to public peace, hence making the restriction on the speech reasonable within the context of Article 19(2). The problem, however, arises in identifying and dealing with such speech without curtailing the freedoms of legitimate opposition or critique. With anonymity afforded by digital media, people have been able to commit online abuse without facing any consequences.

C. Government Regulation and Internet Shutdowns

Governments have been known to regulate the internet in the name of protecting their citizens and maintaining security in their respective nations. Although some control is necessary, too much control can be detrimental to free expression in society. Constitutionally speaking, there arise some serious issues with regard to the extent of government intervention in the regulation of the internet since while on one hand the State's intervention in regulating the digital space might be necessary for reasons of preserving public order and security, on the other hand the same might lead to a situation whereby individuals' right to express dissent would become curtailed by virtue of the State exercising excessive control over internet spaces. Furthermore,

¹² Gautam Bhatia, *Free Speech Jurisprudence*

the issue of internet shut-downs has gained considerable prominence in recent times because of the fact that it impacts not just individuals' freedom of speech but also their access to information, commerce, education and other such necessities. Consequently, any such regulatory measure ought to be scrutinized in light of certain constitutional norms such as those of necessity, proportionality and accountability.

D. Algorithmic Influence

Social media has algorithms that determine what users are exposed to when they are online. These algorithms are designed in a way that they can expose users to extreme content. Influences from algorithms have become an important and subtle way of affecting freedom of speech since it is the algorithm that controls what online content gets visibility and popularity. Social networks use sophisticated algorithms to curate the feed of the individual and give preference to those pieces of content that bring more engagement, including the most controversial and extremist ones. It leads to the creation of filter bubbles and echo chambers when people see only what confirms their ideas and beliefs and limits their access to other points of view. Constitutional restrictions may come into place here because freedom of speech does not receive its fair share of expression through these filters. Algorithms, despite being created by the private companies, act like gatekeepers of the past, and it becomes necessary to evaluate their functions in terms of freedom of speech.

E. Role of Technology Companies

Technology companies that run digital platforms are at the lead in influencing online communication. They set community guidelines and moderation policies for the content on the platforms.¹³ On the other hand, content moderation is necessary in order to curb harmful content. But simultaneously, there are concerns over transparency and accountability in content moderation. This is because technology companies are the ones who run the digital communication platforms. Experts in the field argue that technology companies need to be transparent in the content moderation policies they set. Technology companies hold great importance when it comes to the development of the contemporary digital public sphere because they serve as intermediaries through which all forms of expression take place on a digital level. These companies set community guidelines and standards according to which they can moderate content and even remove certain pieces of material from their networks based on whether it complies with the company's rules or not. Although such an action might be necessary in order to ensure users' safety, it raises significant constitutional concerns because it

¹³ Tarleton Gillespie, *Custodians of the Internet* (2018).

represents the privatization of free speech regulation. On one hand, such actions can help to ensure safety online while, on the other hand, technology companies, in contrast to the State, do not fall under the jurisdiction of constitutional laws. As a result, users can suffer from content being removed from these networks without due process.

VIII. RESOLVING THE CHALLENGES TO FREEDOM OF SPEECH IN THE DIGITAL AGE

The hurdles posed by the advent of digital communication to the freedom of expression, while daunting, are certainly not beyond resolution and require a judicious balance that respects the constitutional ethos. For one, it is imperative that any intervention by the State in restricting digital speech should conform to the principles of legality, necessity, and proportionality enshrined under Article 19(2). Judicial supervision is necessary to avoid the arbitrary exercise of state powers in such matters and prevent its abuse.

Second, there is an urgent requirement for establishing a strong regulatory regime for digital platforms which will not only make sure that platforms become accountable but will also ensure that freedom of expression is not compromised in any way. It is necessary to make technology companies implement policies of content moderation and inform users about the reasons behind removal of content from platforms. The introduction of due process in platform governance could ensure that there will be no arbitrary restrictions on freedom of expression while addressing the problem of harmful content. There is also another effective solution which includes improving digital literacy among citizens. If they are educated on how to identify misinformation and biases in algorithms, then fake news and hate speech can be prevented to a great extent.

In addition to this, a multi-sectoral approach through collaboration between the State, civil societies, and private technology firms plays a critical role in dealing with threats to freedom of expression in the digital era. Through this collaborative effort, balance could be achieved in policy making in such a way that any harm caused by social media is properly addressed. Self-regulation among social media firms, together with the creation of autonomous monitoring bodies, could be an ideal means through which accountability can be guaranteed without unnecessary interference on the part of the State. Nevertheless, there is a need to reform laws in response to emerging threats, such as deepfake technology and artificial intelligence-based information; yet, any attempt at this must never be divorced from the constitutionally guaranteed freedoms of expression.

IX. BALANCING FREEDOM AND RESPONSIBILITY

Although freedom of speech is a fundamental right, this right has to be exercised responsibly.¹⁴

Responsible digital communication includes:

- a) Verification of information before communicating
- b) Respect of the dignity of others
- c) Abstinence from abusive language
- d) Constructive dialogue

Digital literacy helps people understand how to evaluate information responsibly and communicate effectively online.

The future of freedom of speech will constantly progress alongside technological developments. Emerging technologies such as AI (Artificial Intelligence, deepfakes, and virtual reality may create new opportunities for communication but also introduce new risks.¹⁵ Governments, technology companies, and civil society organizations must collaborate to develop policies that protect freedom of expression while addressing digital harms. Promoting transparency, accountability, and public awareness will be essential in maintaining a healthy digital public sphere.

X. CONCLUSION

One such fundamental right that is essential in the context of democratic nations is freedom of speech and expression. This right has gained significant momentum with the advancement and proliferation of the digital world and the increased availability of the internet and digital communication technologies. Nonetheless, the digital world has presented fresh difficulties and hurdles that have raised questions about the freedom and rights of citizens, particularly in respect to the freedom of speech and expression that is being exercised through the digital world.

The Constitution of India has bestowed the right to freedom of speech and expression through Article 19(1)(a), which also grants the right to impose reasonable restrictions as per Article 19(2). This has ensured the protection and preservation of the fundamental right to freedom of speech and expression. But, the preservation and protection of the fundamental right to freedom of speech and expression in the digital world can be ensured through the balanced and combined

¹⁴ Ministry of Electronics and IT, *Digital Literacy Programme*.

¹⁵ UN Human Rights Council Report on Digital Speech (2018).

effort of the government and the citizens, with the latter being aware and informed about the implications and consequences of exercising the right to freedom of speech and expression through the digital world.
