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# Social Media Impact on Freedom of Speech and Expression

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## ABSTRACT

*The right to freedom of speech and expression, enshrined in Article 19(1)(a) of the Indian Constitution, forms the cornerstone of a democratic society. With the rapid proliferation of social media platforms such as Facebook, Twitter, and Instagram, this fundamental right has acquired new dimensions and challenges. Social media has revolutionized communication by democratizing public discourse and amplifying individual voices, but it has also blurred the line between legitimate criticism and perceived threats to national integrity. This paper critically examines the dual impact of social media on freedom of speech and expression in India—its empowering potential as well as its misuse leading to cybercrimes, defamation, privacy violations, and hate speech. Judicial perspectives, including landmark cases such as Anuradha Bhasin v. Union of India and Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal, are analyzed to explore the balance between free expression and reasonable restrictions under Article 19(2). The study also highlights the striking down of Section 66A of the Information Technology Act as a significant reaffirmation of digital freedom. Furthermore, it discusses privacy concerns and the need for responsible government regulation rather than censorship. Through doctrinal analysis and case-based discussion, the paper concludes that while social media enhances democratic participation, effective regulation grounded in constitutional values is essential to safeguard both free speech and societal harmony.*

**Keywords:** *Freedom of Speech, Social Media, Article 19, Information Technology Act, Privacy, Cybercrime, Constitutional Law, Regulation.*

## I. INTRODUCTION

*"Freedom of Speech and of the Press lie at the foundation of all democratic organisations, for without free political discussion, there can be no public education, which is so important for the government process to work well."*

- M. Patanjali Sastri, the second Chief Justice of India

In India's main set of rules, Section 19(1)(a) gives each person in India the main and most

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important freedom to speak and share thoughts. But this freedom isn't endless and has certain limits explained in Section 19(2). As time has passed, this specific freedom has led to other connected freedoms. The highest court has regularly backed these freedoms through many decisions, including the freedom to be informed, the freedom of news outlets, and the freedom to have personal views.

The ideas of fairness included in the introduction to our main set of rules are strongly tied to the freedom to share what you think. The growth of online tools has made it easier and quicker to share lots of information, showing the many thoughts, opinions, new ideas, and concepts from people everywhere.

The importance of online communities in our country has helped spread good opinions of the government and its plans, along with political actions, especially when elections are happening. Although the good sides of this are big, many people see these changes in a bad way, especially those with power who often treats any criticism as a danger to the country.

The line between real criticism and something seen as against the country has become unclear, causing lots of disagreements between normal people and the government. This is very clear in today's online world, where people using different online community sites like Twitter, Facebook, and Instagram can come together and share their thoughts as a group.

## **II. REASONABLE RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION**

The liberty to voice thoughts and express oneself signifies the entitlement to openly share personal beliefs and perspectives through spoken words, written text, published materials, visual representations, or any other means of communication.

These encompass safeguarding India's independence and unity, ensuring the nation's safety, fostering positive relationships with international nations, maintaining societal harmony, upholding standards of propriety or ethical conduct, and addressing matters related to disrespect towards the judiciary, character assassination, or instigation of unlawful acts.

Therefore, rather than establishing a new classification for "offensive speech," it would be advantageous to scrutinize all of India's legal frameworks and policies pertaining to freedom of expression in light of the constitutional norms.

This would guarantee that the distinction between content deemed socially unacceptable and content deemed legally unacceptable remains intact, as is fitting. This would simultaneously

facilitate the effective implementation of the Constitution in accordance with the intentions of its creators<sup>2</sup>.

### **III. SIGNIFICANCE OF FREEDOM OF SPEECH AND EXPRESSION**

The ability to speak and express yourself freely means you can share your ideas and thoughts in any way you choose, whether you're talking to someone, writing, making pictures, or using any other means. It also lets you share or publish the ideas of others. Article 19(2) lists a few reasons why there might be fair limits on this right. These involve protecting India's freedom and unity, keeping the country safe, maintaining good ties with other nations, keeping order in society, being decent, or following moral standards, not showing disrespect for the courts, not hurting someone's reputation, or not encouraging someone to commit a crime.

Only content following these rules and allowed by law can really be called "objectionable." So, instead of coming up with a new group called "objectionable speech," it would be helpful to check all of India's rules and plans about freedom of expression against the standards set by the Constitution. This would make sure that we keep a clear difference between what people might not like socially and what is against the law, as it should be. It would also help us make sure the Constitution works the way it was meant to by those who wrote it.<sup>3</sup>

#### **Upholding the Principles of Expression and Unrestricted Dialogue: A Discourse by MARK ZUCKERBERG**

Hello, everybody. I am very happy to be here at Georgetown with all of you today. Before we begin, I wanted to acknowledge the sad news of the death of a well-known person, Elijah Cummings, earlier today.

He fought for fairness, improvements in society, and bringing people together with significant power. When I was a student in college, the United States had just started its invasion of Iraq.

Deep doubt was everywhere on the university campus. It seemed like we were moving ahead without thinking about many important viewpoints. The effect on soldiers, their families, and the country's overall mindset was significant, and most of us felt unable to change anything. If more people had been able to share what they were experiencing, maybe the final result could have been different. These important years only made me believe more that letting everyone speak freely helps those who feel helpless and makes society better over time.

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<sup>2</sup> <https://about.fb.com/news/2019/10/mark-zuckerberg-stands-for-voice-and-free-expression/>

<sup>3</sup> Anuradha Bhasin v. Union of India (2019) SCC Online SC 1725

Back then, I was working on making an early version of Facebook for people nearby to use, which let me see these beliefs come true on a smaller scale. The result was that when students were able to define themselves and share what was important to them, there were more social events planned, more businesses started, and even questioning of the usual rules on campus. I learned a very important thing, which was that while big events and organizations often get most of the attention from the world, most real progress in our lives happens when everyday people are able to speak up.

Since then, I have focused on creating tools that do two things: give people a way to speak out and help them connect with each other. The ideas of allowing free speech and including everyone are connected. This has happened many times throughout history, even when it might be hard to see now. Over time, it has been very important for societies to be inclusive, which means letting more people share their thoughts. Also, our shared commitment to each other — that we prioritize the right of others to say what they think and to be heard, even when it goes against what we want is what helps us move forward together.

However, people are starting to doubt this way of thinking more and more. Some people claim that having more voices doesn't bring us together but actually splits us apart. More and more people with different political views are starting to believe that getting the political results they feel are most important is more crucial than making sure everyone has the freedom to say what they think. I believe this is a very risky idea. Today, I want to explain why I think this is true and talk about some very important choices we all need to make together to protect the freedom of speech.

When we look at different times in history, we see that people come together when they have the chance to speak freely. The civil rights movement is a great example of this. Frederick Douglass became famous for saying that free speech is what "brings back what is right" in a community. He said that "Slavery cannot exist when people can speak freely." Civil rights activists always said that protesting was protected by the constitution, and as one of them said, "almost every court case about the civil rights movement was decided based on the First Amendment."

#### **IV. INTERNET'S IMPORTANCE IN SAFEGUARDING THE RIGHT TO INFORMATION**

The Anuradha Bhasin case resulted in a significant ruling from the top court in India regarding whether the government's internet blockages and movement restrictions in

Kashmir violated the fundamental right to free speech and expression. The court questioned the legality of the internet shutdown, taking into consideration the regulations outlined in Article 19 of the Indian Constitution (2).

The court scrutinized Article 19(2), which addresses "reasonable limitations" that may be imposed on the freedom of speech and expression, and highlighted that the right to access information is a crucial element of the freedom to speak and express opinions. The central focus of the court's previous ruling was the recognition of the right to free speech and expression for every individual, allowing limitations on this right, even to the extent of complete restrictions.

However, should the government impose a complete restriction on exercising this right, it would have to take great care to ensure that the restriction does not unfairly impinge on free expression, and it would have to justify why less restrictive approaches were insufficient.

## **V. GOVERNMENT OVERSIGHT OF SOCIAL MEDIA**

Numerous online offenses, such as damaging reputations, infringing on privacy, inciting unlawful actions, racist statements, stalking, abuse, hacking, harassment and a multitude of others, can easily occur through social media. The rapid spread of this harmful content after its posting renders it exceedingly difficult to manage.

Thus, governmental regulation of social media is essential. While regulations that serve to protect the interests of individuals or groups should not be problematic, difficulties arise when regulatory actions veer into censorship, thereby encroaching upon fundamental civil rights, such as the freedom of speech and expression. Despite existing safeguards, governments tend to exceed these limits to varying degrees. Although the Information Technology Act has been in effect since 2000, India's internet oversight was not stringent until the 2008 Mumbai terrorist attack.

Presently, Indian regulations governing online activity encompass measures designed to block access to Operating covertly to amass online intelligence through website monitoring, the practice of surreptitiously accessing or deciphering confidential data, the effortless infiltration of private realms, and the imposition of accountability upon social media and kindred digital ecosystems for user-generated content deemed objectionable are all components that contribute to the perception of India as a selective arbiter of internet censorship.

The Public Interest Litigations submitted to the Supreme Court argue that the prohibition on the documentary clearly infringes upon fundamental rights as enshrined in Article 19 of the constitution.

In the matter of Secretary, Ministry of Information and Broadcasting, Government of India and others v. Cricket Association of Bengal and others<sup>85</sup>, the Supreme Court affirmed that —to guarantee the entitlement to free speech for the nation's citizens, it is imperative that they have access to a multitude of perspectives and a diverse array of opinions concerning all matters of public significance.

A variety of viewpoints, ideas, and ideologies is indispensable for enabling citizens to form well-considered judgments on all issues affecting them. This cannot be achieved through a medium controlled by a monopoly – whether that monopoly belongs to the State or any other individual, group, or entity.

Considering the entirety of the preceding discourse, it is reasonable to suggest that rather than prohibiting and censoring social media, its regulation is preferable in a manner that safeguards the rights of its users. This stance is particularly relevant in the context of Section 66A of the Information Technology Act. In its recent verdict, the Supreme Court invalidated Section 66A of the

Information Technology Act, labeling it as a —draconian provision that had resulted in the arrest of numerous individuals for posting content deemed —allegedly objectionable on the Internet. The panel of Justices J. Chelameswar and Rohinton F. Nariman stated that it is evident that Section 66A infringes upon the right to free speech in an arbitrary, excessive, and disproportionate manner, thereby disrupting the equilibrium between this right and the reasonable limitations that may be imposed upon it.

Section 66A of the Information Technology Act, 2000, which was inserted through the Information Technology (Amendment) Act of 2008, prescribes penalties for transmitting offensive communications via communication services, among other things.

## **VI. RIGHT TO PRIVACY**

The concept of privacy encompasses an individual's entitlement to manage their own private data, including the power to control how this data is collected and used. Given the sheer quantity and diversity of actions conducted online, safeguarding the right to privacy is crucial.

The "Right to Privacy" is recognized as a fundamental, though not explicitly written, human right. While the Indian Constitution doesn't explicitly mention the right to privacy, the Supreme Court has interpreted it to be implicit within Article 21, which addresses the protection of life and personal freedom. Although the highest court in India has reaffirmed the "Right to Privacy"

in various legal proceedings, the judiciary has not yet provided a direct and clear ruling on its specific relevance to online content<sup>4</sup>.

Numerous individuals regard social media platforms as a kind of digital social gathering, where individuals can build connections and promote a personal or professional image. Nevertheless, the comparison to a social gathering is not completely precise. Actually, it would be more advantageous for users to consider social networking sites as an open public venue with complete openness.

This is demonstrated through a few rulings made by the Indian legal system, in which actions taken on Facebook were admitted as evidence. The judgment in *Mattel Inc. and Others v. Jayant Agarwalla and Others*<sup>86</sup>, rendered by the Delhi High Court on September 17, 2008, serves as an effective example where printed versions of Facebook pages were utilized to resolve a case concerning Trademark Infringement. Facebook activities were admitted as evidence in another case, *Carla Gannon and Another vs. Shabaz Farukh Allarakhia and another*<sup>87</sup>, which was decided on July 10, 2009, to determine the issue of child custody. Thus, it confirms the importance of actions conducted carelessly on a Social Networking Site. The Indian legal system acknowledges their importance as well<sup>5</sup>.

In an ongoing legal dispute with social media platforms and related internet forums, the Delhi High Court has determined that inappropriate information on these platforms must be removed, or else a complete restriction of these sites may be enforced. Following a review of all supporting documentation, the Indian government approved the court's position and being content that they can take action against them according to section 153-A, 153-B, and 295A of the Indian Penal Code (Singh, 2012).

Like all rapidly evolving technologies, security and privacy have not been the main focus when creating these platforms. Consequently, alongside the advantages offered, there are also serious risks to privacy and security (Gross & Sweeney, 2007). While this situation raises concerns about our nation's integrity, it is a positive step in pressuring large corporations to take privacy and security matters seriously and develop systems to manage information on their websites effectively.

Concerns about security have become so prominent that major companies like Facebook and LinkedIn are compelled to add various features to their platforms to safeguard their users'

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<sup>4</sup> (CS(O S) 344/2008)

<sup>5</sup> (Criminal Writ Petition No.509 of 2009).

privacy. Users have the ability to control how much of their posts, photos, online status, and other details are visible to others.

They can limit what information shows up on their profile and what details about their online behavior are public, including their usage of certain Facebook applications. Additionally, users can prevent specific Facebook users from viewing anything beyond a minimal profile, or from discovering them through search functions.

Facebook has rolled out a new feature where users logging in from an unfamiliar computer receive a request for approval. This login event is communicated to the user's registered email address. Therefore, if an account gets hacked or someone unknown logs in, the user is immediately alerted through their registered email

LinkedIn is a professional social networking site, and its users tend to recognize the importance of maintaining a professional demeanor. The platform offers a variety of tools for users to customize how others perceive them, such as the option to decide if connections can see only mutual connections or the complete list of connections.

## **VII. CYBERCRIMES IN INDIA – INCIDENTS**

### **A. Case of Bank NSP<sup>6</sup>**

In this story, a trainee who worked at a bank got involved in a romantic relationship. The two often sent many emails to each other while at work. Eventually, they ended their relationship, and the woman created fake email accounts, pretending to be from things like "Indian bar associations." She used these to email the man's clients from abroad

### **B. Baze.com case<sup>6</sup>**

In December 2004, the head of Baze.com was taken into custody because he was offering a CD on the site that had inappropriate content. This CD was also sold out in Delhi. Both the Delhi and Mumbai police got involved, and later, the CEO was granted bail.

### **C. The Attack on Parliament Case**

This case was handled by the Bureau of Police Research and Development located in Hyderabad. The terrorist who attacked the Parliament was discovered to have a laptop with him. When the attack happened on December 13, 2001, the police seized the laptop from the two attackers and sent it to the BPRD's Computer Forensics Division. The laptop contained significant evidence that supported the terrorists' activities, including a sticker from the

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<sup>6</sup> AIR 1995 SC 1236

Ministry of Home that they had designed to place on their diplomat car to enter Parliament and a fake ID card held by one of the attackers that bore the Government of India's seal and emblem. The three lions' emblem was carefully replicated, and the seal along with an address in Jammu and Kashmir was skillfully created. However, a detailed investigation revealed that all of it was fake and was made using the laptop. Tax Case in Andhra Pradesh The Vigilance Department visited the residence of the plastics company owner in Andhra Pradesh and discovered 22 rupees in cash.

They requested evidence from him regarding the missing money. The accused provided 6,000 vouchers to demonstrate that the transactions were legitimate. However, upon thorough examination of the vouchers and his computer data, it became obvious that these were all created after the investigation began. It was also revealed that the individual was managing five businesses under a single company name while using fake and digital vouchers to display sales records and evade taxes.

#### **D. Case of SONY. SAMBANDH.COM<sup>7</sup>**

The first person in India was found guilty of a cybercrime. In this incident, Sony India Private Limited, which operates a site called [www.sony-sambandh.com](http://www.sony-sambandh.com) aimed at NRIs, submitted a complaint. NRIs can pay online to send Sony products to their friends and family in India. The company guarantees delivery of the items to the recipients. In May 2002, an individual using the name Barbara Campa logged into the site and ordered a Sony color television and a cordless headset. She requested the items to be sent to Arif Azim in Noida and provided her credit card information for payment.

The credit card company approved the transaction, allowing it to be completed. After conducting the necessary checks, the company shipped the items to Arif Azim. They took digital photos during the delivery to confirm that Arif Azim received them. Everything was settled, but a month and a half later, the credit card company informed the business that the transaction was unauthorized as the true account holder denied making the purchase. The business reported the internet fraud to the CBI, which initiated a case under Sections 418, 419, and 420 of the Indian Penal

Code. Following the investigation, Arif Azim was arrested. It was found that while working at a call center in Noida, Arif Azim obtained the credit card number of an American and used it on the company's website.

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<sup>7</sup> R v. Governor of Brixton Prison and Others

The CBI recovered both the color TV and the cordless phone. In this matter, the CBI had sufficient evidence to support their claims, leading the accused to admit guilt. The court declared Arif Azim guilty under Sections 418, 419, and 420 of the IPC.

**Suhas Katti v. The State of Tamil Nadu.**

In this case, hurtful, defamatory, and bothersome messages were shared in a Yahoo group about a woman who had gone through a divorce. The accused used a phony email account created in the victim's name to send her emails asking for details. Due to these posts, the woman received many irritating phone calls. Following a report, law enforcement apprehended the accused. He was acquainted with the victim's family and wished to marry her.

However, when she married someone else and that relationship ended in divorce, the man who caused her distress reached out to her again. Since she refused to marry him, he began to harass her online.

Found: The accused was deemed guilty of breaching sections 469, 509, and 67 of the IT Act 2000. He received a conviction and was sentenced under section 469 IPC to two years of rigorous imprisonment and fined Rs.500. For the violation of section 509 IPC, he was given a one-year term of simple imprisonment along with an additional fine of Rs.500. Regarding the offense under section 67 of the IT Act 2000, he faced another two-year term of rigorous imprisonment.

After settling the fines, he was sent to Chennai's Central Prison. This marked the first instance in India where someone was convicted under Section 67 of the Information Technology Act of 2000.

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