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**ANALYZING THE IMPACT OF FREEDOM OF SPEECH
LIMITATIONS ON SOCIAL MEDIA PLATFORMS - A CRITICAL
PERSPECTIVE**- Aashi Chaturvedi¹**Abstract**

Social networks of today have developed into dynamic platforms that allow people to communicate in a more transparent and coherent manner. Because of the increased potential for public conversation brought about by this digital sphere, some regulations are required to maintain fair constitutional government. The Indian Constitution provides strong protection for the right to free speech and expression, but it also imposes restrictions as per art. 19(1)&(2) to stop this freedom from being abused. There have been many cases of inappropriate opinions expressed by both private citizens and major people. Instagram, for instance, has videos of women dancing that get nasty and obscene comments. Such actions not only harm the targeted person but also perpetuate a disrespectful loop that diminishes the dignity of all those involved. Public personalities are not exempt from this problem; they frequently get unfair criticism or false accusations. Even if there are laws that regulate social media, such the Information Technology (IT) Act and the newly implemented intermediary rules in 2021, it is still necessary to assess how well these laws comply with art. 19(1)&(2). The purpose of this essay is to investigate the effects and effectiveness of the limitations outlined in art. 19(1) & (2) on social media platforms.

Introduction

The fundamental right to freedom of speech, which allows people to express their ideas, opinions, and thoughts without undue restrictions, is a crucial aspect of democratic society. This is a complicated right that encompasses the ability to voice one's thoughts on matters of public or private concern as well as the choice to keep quiet in order to preserve one's

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autonomy and conscience. Around the world, and especially in the context of the Indian constitution, this right is acknowledged and fiercely upheld by a variety of laws and court rulings.

The Indian Constitution's drafters struck a careful balance between the necessity to impose some restrictions in order to safeguard broader social and national interests and the right to freedom of speech and expression. Any functioning democracy depends on the freedom of speech and expression, which is a basic right protected by art. 19(1)(a). Nonetheless, the architects inserted art. 19(2) because they understood that such liberty may be abused in ways that endanger the foundation of society and the state. This clause serves as a regulatory mechanism that enables the state to set appropriate limitations on the use of this right for a number of strong justifications. These include public order, decency or morality with regards to contempt of court, defamation, or incitement to a crime; the sovereignty and integrity of India; state security; amicable relations with other nations; and so on.

Social media platforms have become essential venues for the expression of both individual and group voices in the age of digital communication. These platforms enable for instantaneous global idea exchange and dissemination across conventional borders. Information flow has become more democratic as a result, but it has also brought up difficult issues linked to cybercrimes, such as online harassment, privacy violations, and the dissemination of false information. The fact that these problems are so widespread highlights the importance of art. 19(2), which offers a legal framework for taking action to lessen injuries that occur in the digital sphere.

In addition, social media's introduction has made it necessary to create and implement certain regulations in addition to the Constitution's basic requirements. For instance, the IT laws of India are created to handle the particular difficulties that come with living in a digital age. While guaranteeing that any limitations on the right to free speech are appropriate and justified in accordance with the standards outlined in art. 19(2), these regulations also seek to safeguard users and society from cybercrimes and other online misbehaviour.

Nonetheless, balancing social media laws with constitutional restraints is a complex task. The internet's dynamic and international character makes it difficult to apply traditional legal concepts, which begs the question of whether current rules are sufficient to handle modern problems like digital defamation, invasions of privacy, and the spread of false information.

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This essay aims to explore the intricacies of this alignment by assessing how well social media laws adhere to the limitations specified in art. 19(2) of the Indian Constitution.

The study also looks at the effects of these limitations on social media, especially in national emergency situations as defined by art. 358. The freedom of speech and expression is one of the six freedoms under art. 19 that can be suspended at such periods, which has a big influence on digital communication and the flow of information. This issue has to be examined in order to comprehend how people manage the delicate balance between state security and individual liberty when there is a lot of stress in the country.

Laws pertaining to Social Media and the Right to Free Speech and Expression

Chapter XI of the IT Act of 2000 lists a number of offenses that fall under the category of cybercrime and carries serious legal ramifications. Despite without specifically mentioning 'social media', the Act includes these online communities under its more expansive definition of communication services. Sec. 66A makes this inclusion more pertinent as it forbids the distribution of content that is considered objectionable through these means. Even if there is not a clear connection, social media platforms will be significantly impacted because of their significance as primary communication channels in the digital era.

The IT Act is not the only piece of legislation in India that addresses cybercrime. The 1973 Criminal Procedure Code of 1973 and the Indian Penal Code of 1860 have also played a pivotal role in identifying and countering the constantly changing cybercrime scene. These include identity theft, phishing, video voyeurism, and the spread of inflammatory information via communication platforms, to name a few. The controversial aspect of Section 66A was highlighted by the historic *Shreya Singhal case*,² particularly in light of its compatibility with art. 19(2), which guarantees the right to free speech and expression. The Court had to weigh the protection of individual rights against the possible evils made possible by unrestrained expression, drawing comparisons to *Whitney v. California*.³

The interpretation of "fear of serious injury," which art. 19(2) seems to erroneously prioritize over individual liberties, will determine how this balance is struck. Social media's introduction has had a greater influence on individual rights, which means that in order to properly protect these rights, legal concepts must be understood and used with more subtlety.

² *Shreya Singhal v. Union of India*, (2013) 12 SCC 73.

³ *Whitney v. California*, 274 U.S. 357 (1927).

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The Supreme Court's consideration of the *Whitney v. California* precedent presents important issues regarding the bar for limiting free expression when doing so would help avert significant harm.⁴

One event in Kerala that brought to light the necessity for strict regulation in the digital sphere was the serious degradation of a woman's dignity due to offensive comments she had posted on Instagram. These events show the negative aspects of social media interactions as well as the possible relevance of the decency and defamation limits included in art. 19(2).

An event that happened in November 2012 brought to light the significant relationship between social media and political attitudes in India. After publishing a remark on her Facebook site, a little child became the focus of a national scandal. Her tweet was a commentary on the extensive closure of Mumbai in the wake of the death of Shiv Sena leader Bal Thackeray. Her post's language raised concerns about the public's outsized response to a politician's passing in comparison to the hundreds of people who pass away every day. "With all due respect, thousands of people pass away every day, but the world continues to turn," she wrote. When one politician passes away naturally, everyone goes completely insane. We are resilient by force, not by choice, and they should know that. When was the last time someone paid tribute to Shaheed Bhagat Singh, Azad, Sukhdev, or any other person who made it possible for us Indians to live in freedom, or even just observed two minutes of silence? Respect is not demanded; rather, it is earned and given. Mumbai closes its doors today out of fear, not out of decency." The purpose of the article was to provoke a discussion about the nature of respect and how the public responds to death, emphasizing the value of true, earned respect over that which is forced by fear or social pressure.⁵

Her message received an immediate and harsh response. She was arrested along with a friend who had just "liked" the post on Facebook after it attracted the attention of both the public and the authorities. The police intervention raised questions about the state's response to criticism and the right to free speech. Civil society strongly denounced the arrest, sparking a great deal of controversy and discussion throughout the nation. The case against the two girls was eventually abandoned once the court became involved, but the episode served as a clear

⁴*Id.*

⁵ Parmar, R. (2012, November 20). *21-year-old girl held for Facebook post questioning Mumbai's "Bal Thackeray shutdown."* The Times of India. <https://timesofindia.indiatimes.com/india/21-year-old-girl-held-for-facebook-post-questioning-mumbais-bal-thackeray-shutdown/articleshow/17276979.cms?from=mdr>.

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illustration of the difficulties associated with social media, free expression, and political sensitivity in India.

In July 2017, a troubling incident that highlights the erratic influence of social media on intercommunal harmony took place in the West Bengal town of Baduria. A 17-year-old boy's Facebook post that some members of the community regarded "blasphemous" served as the catalyst for the assault. Tensions were sparked by the post, and they quickly developed into a full-fledged riot that sadly claimed one life and injured twenty others, including police officers. During the pandemonium, crowds set around twelve police cars on fire and looted and ransacked many residences. This tragic event serves as a sobering reminder of how easily social media can act as a spark for actual violence, escalating online arguments into altercations. It brought to light the difficulties that communities and law enforcement confront when negotiating the tricky terrain of religious sensitivities, free expression, and the quick spread of accurate or inaccurate information via social media platforms.⁶

Together, these events highlight how social media has a significant influence on public conversation, political environments, and interpersonal harmony. They are a reflection of a larger worldwide effort to strike a balance between the necessity of upholding public order and respect for differing opinions and the right to freedom of speech. These episodes serve as warning tales about the ability of digital platforms to not only connect and empower but also to divide and agitate, as social media continues to permeate more and more aspects of daily life. The lessons learnt emphasize the need for a balanced approach to social media administration, law enforcement, and personal accountability in order to maximize its potential for good while reducing its threats to social harmony and peace.

The IT Rules of 2011 have come under fire for not doing enough to effectively address issues of hate speech, defamation, and insulting language, even though this was their stated goal. The problem is made worse by social media companies' algorithms, which frequently unintentionally aid in the dissemination of dangerous content and make it harder to distinguish between benign and harmful information.

The Indian judiciary has instructed the government to impose tougher control over digital material in response to the rising concern about the misuse of social media for encouraging lynchings or spreading violence. Notable cases such as *Tehseen S. Poonawalla v. Union of*

⁶ Das, M. (2017, July 7). *Social media posts trigger seven communal riots in a month in West Bengal*. Economic Times. https://m.economictimes.com/news/politics-and-nation/social-media-posts-trigger-seven-communal-riots-in-a-month-in-west-bengal/amp_articleshow/59496771.cms#aoh=16292670881130&referrer=.

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*India*⁷ and *Re: Prajwala* have demonstrated this.⁸ The purpose of these guidelines is to rebalance the liberties allowed by art. 19(2) with media platforms' obligations to stop the spread of harmful information.

A major step in resolving these issues was taken in 2021 with the implementation of the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules by the Ministry of Electronics and Information Technology. These standards prioritize the protection of women and children, requiring intermediaries to take prompt action upon receiving complaints regarding content that jeopardizes the safety or dignity of individuals. These regulations also recognize the constitutional balance that exists between the right to privacy and the need to track down communications that may be connected to acts of terrorism, violent crimes, or dangers to national security. The guidelines, which prioritize adherence to art. 19(2), impose supplementary obligations on prominent social media intermediaries in terms of due diligence and harmonize defamation laws with digital communications. This reflects a comprehensive strategy for protecting individual rights in the face of the challenges presented by the digital era.

Social Media Limitations in times of Emergency

The proclamation of an emergency under a nation's founding constitution is a subject of great importance in the complex web of constitutional law and digital governance, especially when it entails the suspension of art. 19. As per art. 358, the declaration of an emergency confers to the government the power to impose restrictions on fundamental liberties, which may be beyond the limitations specified in art. 19(2). This law clause emphasizes the need for a careful balance between individual liberty and national security, a balance that is being tested more and more in the digital era.

With social media's widespread impact on modern culture, social media has ingrained itself into billions of people's everyday lives worldwide. Its influence on public opinion, community building, and social movement mobilization is immeasurable. As a result, there is considerable opposition to the idea of outright banning social media during emergencies. Such actions raise serious concerns about the violation of fundamental freedoms and have an influence on the fabric of daily communication.

⁷ Tehseen. S. Poonawalla v. Union of India, (2018) 9 SCC 501.

⁸ In Re: Prajwala E-Letter, Videos of Sexual Violence And Recommendations, SMW (CrI.) No(S).3/2015.

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The Secretary of the Ministry of Information and Broadcasting has significant freedom to manage computer resources and limit access to information considered required in emergency situations, because of the Rule 16 of the IT Rules, 2021. The IT (Procedure and Safeguards for Blocking for Access to Information by Public) Rules of 2009 established precedents that constitute the basis of this power. These regulations were created to offer a formal basis for the prohibition of internet content during emergency situations.⁹ They have drawn criticism, meanwhile, for being vague about the circumstances that support these interventions, which leaves room for misunderstanding and possible abuse.

Opposition quarters have been especially vocal in their criticism, calling the provision ‘autocratic’ and a threat to democracy’.¹⁰ Opponents claim that it transgresses art. 19’s fundamental protections of free speech and privacy. It is crucial to carefully assess the constitutional legality of this power before labeling it as arbitrary, especially in light of the restrictions allowed by art. 19(2). This provision’s nebulous definition of emergency circumstances, which basically gives the Secretary complete discretion over what qualifies as adequate justification for information blocking, is among its most divisive features.

Publishers are required by rules to take into account a number of issues prior to distributing material that may have an impact on public order, sovereignty, international relations, or national security. These rules add another layer of complexity to the regulatory structure, even if they are in keeping with the limitations allowed by art. 19(2). Notably, they do not address morality or decency.

There has also been discussion concerning state governments’ jurisdiction to implement social media bans in times of emergency. An example of this is the 2019 repeal of art. 370 and the ensuing internet ban in Jammu & Kashmir. The closure provoked intense debate and judicial investigation, casting doubt on the legality of imposing such severe restrictions on the pretext of upholding national integrity and public order.¹¹

It is impossible to overestimate the importance of free speech and expression on social media in today’s conversation, especially during times of crisis. It is essential to be able to obtain

⁹Jose, Aleena Rose, & O., Anagha. (2022). Freedom of speech and expression and social media: an exigency for balancing. *Indian Journal of Integrated Research in Law*, 2(1), 1-14.

¹⁰ Saha, P. (2021, February 27). *Power to block internet content in emergency been there since 2009: Govt. India Today*. Retrieved February 7, 2024, from <https://www.indiatoday.in/india/story/power-to-block-internet-content-in-emergency-been-there-since-2009-govt-1773806-2021-02-27>.

¹¹*J&K Internet Shutdown Based on “Dubious” Legal Framework: Report*. (2020, August 26). The Wire. Retrieved February 7, 2024, from <https://thewire.in/government/jammu-and-kashmir-internet-shutdown-jkccs>.

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and distribute information through social media platforms. The *Faheema Shirin v. Union of India* case challenge, which connected internet access to the constitutional rights to privacy and education under art. 21, demonstrates how our understanding of digital rights is developing. This decision suggests that limitations on using social media and the internet in times of emergency may violate people's basic right to privacy. It suggests that government control of social media, even under the pretence of suspending art. 19, may not be acceptable since it contradicts the rights provided by art. 21, which are unaffected even in emergency situations.

Conclusion

It is indisputable that social media has a huge impact on modern society. It has become more significant in the twenty-first century as a means of social communication and as an essential component of the right to free speech. On the other hand, the idea that this effect is a given raises serious questions about how society will be affected. While social media encompasses several rights, including the freedom of speech and expression, the right to privacy, and the right to information, it is important to recognize that appropriate limitations must be put in place in order to protect the fabric of society. This viewpoint is consistent with the ideas expressed in art. 19(2), which emphasizes the significance of limiting some liberties for the sake of society as a whole.

Numerous rights overlap with social media, and each one shows up differently depending on the situation. The difficult part is figuring out when and how to impose appropriate limitations without going against the core principles of freedom of speech and association. This work requires a comprehensive assessment of the possible effects of such limits as well as a sophisticated grasp of the rights concerned.

The lack of clarity and efficiency in the existing social media legislation is one of their most obvious problems. Numerous laws have imprecise definitions and unclear meanings of key phrases, which make them difficult to comprehend and result in uneven enforcement. Legislative improvement is desperately needed to overcome these flaws. Not only will more precise definitions and rules increase the efficacy of these regulations, but they will also guarantee that individual rights are not unintentionally violated.

Furthermore, any limitations placed on social media sites must strictly comply with art. 19(2). To ensure compliance with constitutional obligations, it is necessary to conduct a

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comprehensive examination and modification of current social media legislation and ethical standards. Through the use of such a method, a legal framework that balances the need for regulation with the defense of fundamental rights would be formed.

The role of the government becomes especially delicate in emergency situations. It is imperative that the state approaches these situations with a dedication to upholding individual liberties. Despite their need, emergency protocols should not be used as an excuse to impose unwarranted limitations on people's right to privacy or freedom of speech. The government has to make sure that everything it does is essential, appropriate, and consistent with the values of democracy and human rights.



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