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**FREE SPEECH IN THE DIGITAL AGE: DOES THE
CONSTITUTIONAL AMENDMENT IS THE NEED OF AN HOUR?**

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Abstract

The constitutional provisions of any country serves as the Grundnorm of the country for the governing of the citizens. The various constitutions pertinent to the specific countries be it written or unwritten is formed mainly on the principles of securing justice and guarantying the rights of every individual. Indian constitution is governed in this substance by the Article 19 of the Constitution, Which grants the right to free speech and expression with reasonable restrictions however as with every merit there comes a demerit. The freedom of speech and expression is the bedrock of Indian democracy, as provided for in Article 19(1)(a) of the Constitution of India. But it is not an absolute freedom. Reasonable restrictions may be placed under Article 19(2) on the basis of sovereignty, public order, morality, decency, defamation, and incitement to offense.

Thus In proliferation age of the internet, where information flows instantly and freely across every borders, and the use of free speech values is confronted with challenges like never before.

Fake news, online hate speech, social media, government control, and the power of Big Tech have all asked fundamental questions: Is the current legal framework adequate in India, or must the right to free speech be calibrated for the age of the internet? The article is dedicated to solve the contemporary issue of want of justice and efficacy of the legal framework in this context.

1) The Evolution of Free Speech in India

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As any topic to be evaluated it has to be understood the alike is essential. In the long gone past, Indian courts have vindicated the right of free speech resolutely, though ever with regard for the requirement of restraint in a multi-religious, multi-ethnic society.

The fundamental rights origin is from the inhumane deeds of the King John at Ranneymede thus on the claims of the masses the “Magna Carta” or “The Great Charter” was formed in 1215 against the arbitrary use of power of the Royal Absolutism. Thus the latin expression relays “Rule of Law” or the “Supremacy of Laws” thus these basic inalienable rights of the persons, were required by every individual to attain the utmost possible development of the self regarding sphere of life as J.S.Mill put forward the distinctions of self regarding and other regarding spheres of life. The Individual must have the right to attain to his/her greatest possible self and any barrier must be justified even if it is provided by the State itself.²

If the state fails to submit any justifications of any such rule the common individuals has the right to revolt, as provided by John Locke (1632–1704), In his Second Treatise of Government (1690), Locke argued that: Governments are formed through a social contract to protect natural rights—life, liberty, and property. If a government violates these rights or becomes tyrannical, the people have a right—and even a duty—to revolt and establish a new government.³

Thus when the seminal contributions of the Magna Carta were understood in the governance of a country it was adopted by many constitutions and thus the Magna Carta till date forms the superstructure on which the constitutions stands tall. It was mainly embraced in the U.S Bill of rights, 1791 and The French Revolution & The Declaration of the Rights of Man and Citizen (1789) chiefly.

Thus the drafting committee discussed this provision and put forward as a balance between individual liberty and state power with the public order and security among the other factors held accounted.⁴

Early seminal cases such as

Romesh Thappar v. State of Madras (1950)⁵ - The Supreme Court ruled that the freedom of speech and expression cannot be restricted without a reasonable basis.

²John Stuart Mill, On Liberty 19 (Liberal Arts Press 1956).

³ John Locke (1632–1704), In his book Two Treatise of Government (1690)

⁴Constituent Assembly of India, Constituent Assembly Debates (1946-1950), Vol. XII at 1049-1055 (Lok Sabha Secretariat 1999)

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Bennett Coleman v. Union of India (1973)⁶ - In this case, the Court emphasized the right to freedom of press under Article 19(1)(a).

Nevertheless the emergence of the internet, and most notably mobile internet and social media platforms such as WhatsApp, Facebook, Instagram, and X (Twitter), has changed the pace, extent, and anonymity of speech — posing new challenges for the good governance of our country.

2) Challenges faced in the domain of Free Speech in India's Digital Space.

A. Government Regulation and Censorship

The Indian government has progressively endeavoured to regulate online speech.

Legislations such as the Information Technology Act, 2000 (specifically Section 66A, which was quashed in *Shreya Singhal v. Union of India* in 2015)⁷ originally criminalized "offensive messages" on the internet, resulting in arbitrary arrests. Nonetheless the due arbitrary provision was severed from the act due being arbitrary on the powers of the state.

Even afterwards, Section 66A was quashed, several cases have occurred whereby the citizens were booked under other ambiguous laws (e.g., sedition under Section 124A of IPC) for social media posts. The new Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 amplified government authority to order content exclusions and seek data on users, nurturing free speech concerns.

For the online methods of sedition an act which can incite an offence or hampers the security of the state can be excluded U/A 19 and therein punished accordingly. In the recent suit of *Faizal T Kottukkal Case* (2018)⁸: A Kerala-based man was charged with sedition for posting a meme about the Indian Prime Minister. The case highlighted how sedition laws were being used to curb critical hatred on online speech platforms, even if it was satirical or humorous in nature.

⁵Romesh Thappar v. State of Madras, AIR 1950 SC 124.

⁶Bennett Coleman & Co. v. Union of India, AIR 1973 SC 106

⁷Shreya Singhal v. Union of India, (2015) 5 SCC 1

⁸Faizal T Kottukkal v. State of Kerala, (2018) 4 KHC 330

Anuradha Bhasin v. Union of India (2020)⁹ The Hon'ble Supreme Court ruled that indefinite internet shutdowns are against constitutional rights, and access to the information of the internet is a part of free speech.

B. Content Moderation by Platforms

International tech corporations' modest content according to their own "community standards," at times deleting posts or accounts critical of the government (e.g., farmers' protests hashtags).

This is disquieting: Are private firms the new guardians of Indian free speech? And whose rules do they adhere to? — Indian constitutional values, or corporate guidelines?

Facebook and Hate Speech:

Facebook was under the limelight in 2018 when it came to dealing with hate speech, particularly ethnic violence in Myanmar. The company was criticized for not doing quite enough to stop its platform from being utilized to foment violence against the Rohingya Muslim minority. This brought into focus the huge responsibility that platforms have in policing offending material.

Twitter's Ban of Donald Trump (2021):

Following the Capitol insurrection on January 6, 2021, Twitter suspended Donald Trump permanently for breaking its rule on inciting violence. The action raised the specter of whether social media companies can delete political figures' material and the free speech consequences of that.

YouTube's Content Moderation and Misinformation

YouTube has come under criticism for failing to act promptly to prevent the proliferation of disinformation, particularly pertaining to issues such as COVID-19 and voter fraud. YouTube introduced stricter moderation of content rules, but there is still debate about finding the right balance between free speech and preventing harm.

WhatsApp and Fake News:

WhatsApp has been criticized for being a platform for the spread of false information and communal hatred in nations such as India. The company has implemented features such as

⁹Anuradha Bhasin v. Union of India, (2020) 3 SCC 637

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restricting the forwarding of messages to prevent the spread of false information, but the challenge is to maintain users' privacy while preventing the ill effects of content spread.

These noteworthy steps helps to curb down the exercise of hate speech or misleading information which can incite an offence in the elongated period.

C. Abuse of Information and Hate Speech.

WhatsApp and Facebook have been used as platforms for the swift dissemination of misinformation, resulting in offline violence (e.g., mob lynching's instigated by rumours).

In Indian contextual view, hate speech online inclines to assume communal tones, posing a threat to public order and security of the state. But then againstnugger hate speech laws risk being abused to stifle criticism therefore the consequences of the hate speeches and content moderation laws have to be made more stringent for a enhanced safety and security of the citizens.

D. Internet Shutdowns

India is one of the world's top performers when it comes to internet shutdowns, usually on "public order" grounds — for instance during protests in Kashmir, Rajasthan, and Assam.

Blanket shutdowns pose deep constitutional concerns: they are not only a restriction of speech, but also impact livelihoods and education, internet shutdown is not a real relief the actual feasible and essential for the greater good of the society.

International Law:

The International human rights law places particular stress on the right to freedom of expression (Article 19 of the Universal Declaration of Human Rights), which entails the right to receive information and hold opinions online. Shutdowns of the internet must satisfy the principle of necessity and must be proportionate to the threat from hate speech or violence.

India:

In India, the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 permits state governments to order internet shutdowns. Yet, there is growing pressure from human rights groups for greater judicial scrutiny and transparency around such measures.

European Union:

The Digital Services Act (DSA) of the European Union aims to create a legal framework for content moderation and the regulation of online platforms. The DSA, even though not explicitly dealing with internet shutdowns, promotes transparency and accountability in the handling of harmful content, such as hate speech.

Faheema Shirin v. State of Kerala (2019)¹⁰ The Hon'ble court upheld that the right to internet access is an integral part of the right to education and the right to privacy.

E. Surveillance and Privacy

Government reconnaissance schemes (such as the Centralized Monitoring System and NATGRID) and the absence of robust data protection legislation infuse chilling effect apprehensions — where people censor themselves in case they are being monitored.

In the significant observation of Puttaswamy v. Union of India (2017)¹¹ acknowledged privacy as a right, but its extension to free speech in online surveillance settings is still evolving. It held that the privacy as the bigger interpretation of life and thus is incorporated of A.21 too as it is a necessity in the 21st century.

In contrary, The Court also emphasized the necessity of data protection legislation in India, which would govern the collection, storage, and transmission of personal information, particularly in the context of growing surveillance and digital technologies. It stressed that any collection of personal data should be subject to strict privacy standards so that individuals' personal information is not misused.

3) Then Does the Indian constitution requires an Upgrade?

No, in its place of amending the Constitution, the state of India requires more effective frameworks and administrative measures to protect free speech while suitably managing online threats.

Enriched Laws Online speech should be administered by clear, proportional, and non-vague legislation. Terms like "offensive," "anti-national," or "hurt sentiments" must be defined more closely and unambiguously in the Terms.

¹⁰Faheema Shirin v. State of Kerala, (2019) 3 KLT 1 (Ker.)

¹¹K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

A Strong Data Protection Law, A good Personal Data Protection Bill can protect users from voyeurism ailments and subsidize to a freer Internet application usages,

An Independent Oversight Government content removal requests must be vetted by independent judiciary to prevent political abuse.

The Platform Accountability the large tech platforms must be made accountable for content moderation without being given arbitrary powers of the institution should be governed by the constitution.

Enhanced Digital Literacy Programs the citizens must be educated to detect disinformation, recognize hate speech, and responsibly exercise their digital rights in order to terminate the problem well within the grassroots.

Conclusion-

India's constitutional guarantee of free speech is among the strongest in the world, yet its enforcement online is under unceasing strain and pain.

The age of the internet requires a grown-up notion of speech freedom and responsibility in balance, safeguarding citizens' rights against the state and corporations, and building legal systems that protect democracy without stifling dissent. The contemporary acts and rules requires to be formulated for a better supervision therein.

The future of free speech in India will not be shaped by the redrafting of the Constitution, but by how wisely and courageously the courts, legislatures, tech companies, and citizens read and stand up for it in the fast-changing digital era. As the lord Acton Wrote, "Power tends to corrupt, and absolute power corrupts absolutely"¹² the power of free speech and expression must be checked in order to prohibit its abuse. As Isaiah Berlin observed in his "Two Concepts of Liberty 1958"¹³ There must be Positive liberty which means Liberty with restrictions otherwise it would be negative liberty which means absence of any restrictions and by doing so it would give people the license to kill. As with Rights there lies Duties too, with the grant of freedom there attracts obligations with it excessively.

¹²Lord Acton, Letter to Bishop Mandell Creighton (April 5, 1887), in *The History of Freedom and Other Essays* 353 (1907).

¹³Isaiah Berlin, *Two Concepts of Liberty*, in *Four Essays on Liberty* 118 (Oxford University Press 1969).