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**FREEDOM OF SPEECH AND CYBERSPACE****ABSTRACT –**

*With the advent of new technologies especially the cyber technology, the whole world has got inter-connected and there is no concept of boundaries left in cyber space unless restrictions are imposed on it like China has done. It has given a huge and affective platform to people to express their thoughts, opinions, issues etc. and their views and thoughts have also led to various positive changes in the society. This right of freedom of speech and expression has been granted by our Constitution but this right also comes with certain restrictions also. In cyber space, it is not easy to draw a line between what comes under right and what under restriction. The companies providing platforms to realize our right of freedom of speech sometime sensor our views and opinions and restrict them if it violates other persons right and sovereignty and integrity of India. While doing this they sometime cross their limits and put absolute restriction on this right and that is why there is a need to draw a clear line between what comes under our right of freedom of speech and what not.*

Keywords – freedom, speech, platforms, limits, constitution.

**INTRODUCTION –**

The right to Freedom has been granted by our Constitution which ranges from Article 19 to Article 22. The Article 19 talks about Protection of certain rights regarding freedom of speech etc. Its clause (1) sub clause (a) says that all citizens shall have right to freedom of speech and

expressions. The word 'freedom' in this Article means absence of control by the state. In all matters specified in Article 19(1), the citizen has the liberty to choose, subject only to restrictions in Article 19(2) to (6). These various freedoms are necessary not only to promote certain basic rights of the citizens but also certain democratic values in and the oneness and unity of, the country. Article 19 guarantees some of the basic, valued and natural rights inherent in a person. Supreme Court in cases like *Maneka Gandhi vs. Union of India*<sup>1</sup>, *Kharak Singh vs. State of Uttar Pradesh*<sup>2</sup> held that it is possible that a right does not find express mention in any clause of Article 19(1) and yet it may be covered by some clause therein. This gives an additional dimension to Article 19(1) in the sense that even though a right may not be explicit, it may yet be implicit, in the various clauses of Article 19.

The right of Freedom of Speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succor and protection to all other liberties. It has been truly said that it is the mother of all other liberties. The right under Article 19(1)(a) includes the right to express one's views and opinions at any issue through any medium e.g., by words of mouth, writing, printing, picture, film, movie etc. It thus includes the freedom of communication and the right to propagate or publish opinion.

In a democracy, freedom of speech opens up channels of free discussion of issues. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. Freedom of speech and expression, just as equality clause and the guarantee of life and liberty has been very broadly construed by the Supreme Court right from the 1950s. It has been variously described as a "basic human right", "a natural right" and the like. It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would help formation of one's opinion and view point and debates on matters of public concern. So long as the expression is confined to nationalism, patriotism and love for the motherland, the use of the National Flag by way of expression of those sentiments would be a Fundamental Right. It cannot be used for commercial purpose of otherwise. The law in USA not only recognizes the right to fly National Flag but it has gone to the extent of holding flag burning as an expression of free speech and free expression of its

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<sup>1</sup> AIR 1978 SC 597: (1978) 1 SCC 248

<sup>2</sup> AIR 1963 SC 1295: (1964) 1 SCR 332

citizens against the establishment but our constitution does not approve the latter part of the right as envisaged in the USA<sup>3</sup>.

### **CYBER SPACE AND INTERNET**

Nowadays, the internet is a tool which provides space to various entities to provide platform to people to share their ideas. This is the place where everyone and anyone irrespective of their nationality, color, caste, religion, sex, gender can easily express themselves by putting their own ideas or other things. It is way to show their existence in the society which was not easy or possible earlier when there was no inter-connection among people. This platform is now widely used to have healthy discussions on issues related to society, economy, fundamental rights and issues related to humanity as a whole. People share their ideas and also participate in the discussion with a healthy criticism so that essential changes can be made in the government policies. Various platforms like Facebook, LinkedIn, Twitter, Instagram etc. have changed the environment to virtual which was once mostly physical. Anyone can make his/her account in their databases and can interact with a person sitting at another side of the world.

Unlike fundamental rights, the right to internet is a 21<sup>st</sup> century phenomenon. The right to internet is a prerogative recognized through judicial pronouncements and through a judgment of the Supreme Court in *Anuradha Bhasin vs Union of India*<sup>4</sup>. Various evidences suggests that the use of internet is primarily for entertainment and social interaction purposes and the trend of people getting their information/news through the web is on the rise. The challenge before our courts and citizens is not restricted to accessing the internet alone, but also breaking the stranglehold of New Age technology giants such as Google, Twitter and Facebook. The scale and reach which these companies have achieved over the past two decades have been astronomical and it is virtually impossible for people around the world to communicate outside these platforms<sup>5</sup>. While it is undeniable that the service they provide has been proved to be of a great benefit for the people but it has also subjected people to manipulation and widespread surveillance through collection and analysis of their personal data. Under the garb of providing a free service consumer have been turned into products. These companies have also used their vast wealth and market dominance to quash emerging competitors and subdue innovation. In

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<sup>3</sup> Available in Indian Constitutional Law by M.P. Jain, 8<sup>th</sup> edition.

<sup>4</sup> AIR 2020 SC 1308

<sup>5</sup> Available at [www.mondaq.com](http://www.mondaq.com) (last visited on 2 December 2021)

March 2020, the European Commission fined Google of 1.49 billion euros for violating Anti-Trust rules.

There is a growing trend to censor views or arbitrarily tag comments as “misleading” or “unsubstantiated” to the extent that even the American president had his tweets labelled as such in the recent past. Social media giants which had hitherto always claimed that they occupied the role of a platform and not a publisher have started policing speech in an obtuse and arbitrary manner. That tech companies can monitor and dictate the kind of views that are deemed to be permissible or acceptable is a trend which should be a cause for worry for all people who value free speech, particularly those who get disbarred from these platforms will inevitably be those who espouse critical and contrarian views of the prevailing orthodoxies<sup>6</sup>.

### **CASES OF CENSORSHIP ON ONLINE PLATFORMS**

The issue of censorship of OTT (over the top) platforms is seen in news recently. OTT is an online streaming media service which offer service directly to the viewers via internet. This platform has overtaken the task done by television through cable, satellite etc. there are a large number of OTT platforms working in India such as Netflix, Amazon Prime, Hotstar, Voot etc. The OTT platforms have no regulatory body over them to control the content streamed, and consequently enjoy their freedom. The Union Ministry of Information and Broadcasting, Law and Justice, Electronics, Information and Technology, Telecom and CBFC do not exercise any sort of jurisdiction over such platforms. The Government considers such platform to be intermediaries where they cannot exercise jurisdiction<sup>7</sup>. Although as per Rule 3(2)(b), (c), (e) of Information Technology (Intermediaries guidelines) Rules, 2011 due diligence shall be observed by the intermediaries in displaying, hosting, publishing any obscene, pornographic or unlawful content and shall not harm minors. As per Rule 3(3) the intermediary shall not knowingly host, initiate transmission of such content.

The most recent issue surrounding OTT's was the John Oliver show on Hotstar, where he actively criticized Narendra Modi and CAA and the show was further blocked on Hotstar. A similar incident occurred on Hasan Minaj's show that dealt with Lok Sabha Elections, 2019 and was highly criticized later. But Netflix did not succumb to the pressure. Shows such as Sacred Games was criticized as it mentioned some speculative lines on Rajeev Gandhi and also mentioned about the Borors scam. Leila was criticized as it hurt the feelings of Hindus by

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<sup>6</sup> Supra 5

<sup>7</sup> Available at [www.legalservicesindia.com](http://www.legalservicesindia.com) (last visited on 3 December 2021)

promoting Hindu phobia. It was highly criticized by viewers. Other than Netflix, Amazon Prime also deleted an entire episode of CBS Political Drama “Madam Secretary” in its Indian version. The show was said to hurt the sentiments of various people as it deals with Hindu Nationalism, India occupied Kashmir, violence on Muslims by majoritarian society etc.<sup>8</sup>.

The issue related to the censorship of people of Kashmir has attracted out attention towards it. A report by the Stand with Kashmir (SWK) titled “How social media corporations enable silence on Kashmir” claims that since 2017, Facebook, Twitter, Instagram and other social media platforms have continuously silenced Kashmir-related content<sup>9</sup>. The spokesperson of SWK said that “Kashmiris already have no avenues to express themselves in person. Social media provided an outlet for them. Not only is the Indian Government going after Kashmiri social media users in Kashmir, but social media companies are also complicit in censoring Kashmiris by removing content, blocking important accounts that provide information, and restricting the reach of content. This is unacceptable”. In its reply the spokesperson of Twitter said that “Twitter’s reporting processes are designed to be transparent and to enable real accountability. Where possible, we provide user notice when we receive these requests to remove the content or block the account of that user. Importantly, unless we are prohibited from doing so, when we remove or withhold content in a certain country, Twitter will provide a copy of the request to the publicly available Lumen Database. When content is withheld, it is only withheld in the country making the removal demand and remains visible in all other jurisdictions.<sup>10</sup> India which has a vast internet market of nearly 700 million users, announced strict rules to regulate content on social media earlier this year. Under the new rules, social media companies are under a legal obligation to remove posts and share information on the origin of content at the request of the government. The rules, called the Intermediary Guidelines and Digital Media Ethics Code, have sparked criticism from digital rights activists and raised concerns about the freedom of speech in the country<sup>11</sup>.

The new IT rules require social media platforms to warn users not to post anything that’s defamatory, obscene, invasive of someone else’s privacy, encouraging of gambling, harmful to a child or “patently false or misleading” among other things. If the government orders these platforms, then they are required to take down such material. The rules also require platforms to identify the original source of information that’s shared online or, in the case of messaging

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<sup>8</sup> Supra 7

<sup>9</sup> Available at [www.aljazeera.com](http://www.aljazeera.com) (last visited on 3 December 2021)

<sup>10</sup> Supra 9

<sup>11</sup> Supra 10

apps, forwarded among users. Company executives can be held criminally liable if the platforms don't comply. But there is a huge uproar seen from these companies because they say that these rules violate their users 'freedom of expression and privacy' and amount to censorship. Free speech advocates warn that such rules are prone to politicization and could be used to target government critics<sup>12</sup>.

## **REASONABLE RESTRICTIONS ON RIGHT TO SPEECH**

Limitations imposed by Article 19(2) of Indian Constitution, on right to freedom of speech and expressions serve a twofold purpose –

- It specifies that this freedom is not absolute but is subjected to regulation
- It puts a limitation on the power of a legislature to restrict these freedoms.

Three significant characteristics of 19(2) are –

1. The restriction under it can be imposed only by or under the authority of a law, no restriction can be imposed by executive action alone without there being a law to back it up.
2. Each restriction must be reasonable
3. A restriction must be related to the purpose mentioned in clause 19(2).

There is thus a double test to find the validity of a restriction –

- Whether it is reasonable and
- Whether it is for a purpose mentioned in the clause under which the restriction is being imposed ?

Both these questions are to be determined finally by the courts when a law is challenged as unconstitutional. The legislative determination of what restrictions to impose on a freedom is not final and conclusive as it is subject to judicial review.

## **TEST OF REASONABLENESS BY COURTS**

It is difficult to give an exact definition of the word "reasonable". There is no definite test to adjudge reasonableness of a restriction. Each case is to be judged on its own merits, and no abstract standard, or general pattern of reasonableness is applicable uniformly to all cases. As

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<sup>12</sup> Available at [www.npr.org](http://www.npr.org) (last visited on 3 December 2021)

the Supreme Court has observed in *State of Madras vs V.G. Row*<sup>13</sup>, it is important in this context to bear in mind that the test of reasonableness should be applied to each individual statute impugned and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases.

For looking at the reasonableness of a restriction, the courts consider factors like the duration and the extent of the restrictions, the circumstances under which and the manner in which that imposition has been authorized. The nature of the right infringed, the underlying purpose of the restrictions imposed, the extent and the urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, all these considerations enter into the judicial verdict.

### **CASE OF DOORDARSHAN**

In the case of *Director General, Directorate General of Doordarshan vs Anand Patwardhan*<sup>14</sup>, the complaint was made against the Doordarshan for violating Fundamental Right under Article 19(1)(a) where the doordarshan decided not to telecast a documentary film titled “Father, Son and Holy War”. The film was the third part of a trilogy of documentary film against communal violence. In this film the respondent film maker looked at the question of gender along with the issue of religious violence (prompted by the understanding of Sati in Deorala and thousands of young men celebrating the death of Roop Kanwar). The filmmaker challenged the refusal of Doordarshan to telecast the film which was disposed of by a Division Bench of the Bombay High Court by directing Doordarshan to take a decision on the application of the film maker. A selection committee was constituted by Doordarshan to preview the film and according to the Committee the violence depicted in the film would have adverse effect on the minds of the viewers. This decision came up before Supreme Court for consideration. The Supreme Court came to the conclusion that the film maker had a right to convey his perception on the oppression of women, flawed understanding of manhood and evils of communal violence throughout the film. The film, according to the Court, in its entirety had a serious message to convey which was relevant in the present context and Doordarshan, being a state controlled agency funded by public funds, could not have denied access to screen the documentary. The court pointed out that the test of fairness has to be looked into from

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<sup>13</sup> AIR 1952 SC 196: 1952 SCR 597

<sup>14</sup> (2006) 8 SCC 433: AIR 2006 SC 3346

various angles and common sense point of view; the manner in which the film maker has handled the thinking the absence of offensive matters like vulgarity and obscenity etc. The court considered the implications of the states power to impose reasonable restrictions under Article 19(2)<sup>15</sup>.

The limitation imposed on a freedom should not be arbitrary or excessive, or beyond what is required in the situation in the interest of the public. A legislation arbitrarily or excessively invading the right cannot be characterized as reasonable. A restriction should strike a proper balance between the freedom guaranteed by any of the clauses and the social control, so that the freedom is limited only to the extent necessary to protect society of which a citizen is only a part. The introduces the principle of proportionality. This means that the court would consider whether the restriction imposed by legislation on the Fundamental Right are disproportionate to the situation and are “not the least restrictive of the choices<sup>16</sup>”.

The burden to show that the restriction is reasonable lies on the state. The restrictions are imposed by law on the Fundamental Rights contained in Article 19(1)(a) and the courts are entitled to consider the “proportionality” of these restrictions which means that the restrictions should not be “arbitrary or of an excessive” nature, beyond what is required for achieving the objects of the legislation. Legislation which arbitrarily or excessively invades the Fundamental Right cannot be said to contain the quality of reasonableness unless it strikes a proper balance between the Fundamental Right guaranteed and the restriction imposed thereon<sup>17</sup>.

Also, the Article 19(1)(a) should be read with words “liberty of thought, expression, belief, faith and worship” of Preamble as it is intrinsically linked with the Preambular objective and it is the duty of the court to progressively realize the values of the constitution. Artistic or poetic freedom is not absolute or limitless. This freedom is subject to reasonableness restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality<sup>18</sup>.

## CONCLUSION

The right to freedom of speech has been in challenge continuously from many years and judiciary has time and again tried to formulate a balance between freedom of speech and

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<sup>15</sup> Supra 3

<sup>16</sup> Supra 14

<sup>17</sup> Supra 15

<sup>18</sup> Supra 16

reasonable restrictions. The state sometimes extends its power up to that extent that it violates other peoples fundamental right of speech which is largely because there is no clear cut demarcation and definition of what comes under reasonable restrictions. Also, as the time is changing very rapidly and there is advent of new technologies and platforms to share our opinion, there is a need to formulate clear laws which govern those platforms and it should be in a way that it also does not violate anyone's right of freedom of speech.



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