

**DE JURE NEXUS LAW JOURNAL**

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**FREEDOM OF SPEECH AND EXPRESSION IN THE NEW WORLD OF DIGITAL MEDIA****LEGAL ASPECT OF FREE SPEECH**

Freedom of Speech and expression is broadly understood because the notion that each person has the natural right to freely express themselves. This expression can be through any of the different forms of media and there should not be any interference from third parties whether directly or implied. Freedom of speech and expression is to carried out without any censorship from the government or any organization. The person who is expressing himself should not have to worry about any retaliation on him due to his proclamations. He should not receive any threats indicating fear of his life or injury or be subject to imprisonment for his statements. But at the same time, he should not speak anything derogatory or defame anyone through false information, and not infringe on anyone's rights. Hence, it can rightly be said that freedom of speech and expression is a complex right.

This is because freedom of expression isn't absolute and carries with it, special duties and responsibilities therefore it's going to be subject to certain restrictions provided by law. In our Indian laws, freedom of speech and expression is guaranteed through Art 19 (1) (a) of our Constitution which promises this right to all the citizens of the country. It is one of the six fundamental and basic rights entrusted to us under the Constitution. The freedom of speech and expression is the right to convey one's thoughts, opinions and ideas through various modes of

word of mouth or in writing, through print or pictures, etc. One also has the right to publish and propagate his views.

On the other hand, Art 19(2) of the Constitution also gives a few pointers which put reasonable restrictions while providing the right of expression. These are the interests of sovereignty and integrity of India, maintaining the safety of the state, prevent comments which hamper friendly relations with foreign states, public order, prevent expressions which are against decency or morality. Restrictions are in place to prevent speech which cause contempt of court, defamation or incite an offence. Thus, all speech and expressions are admissible if they follow the restrictions set by law and it will only be called objectionable if it violates any of these parameters. Rather than defining a replacement category of “objectionable speech”, what therefore would be useful is to assess all of the laws and policies which have been set forth relating to freedom of speech and expression and analyze their standards. Doing that will make sure that there is a proper demarcation between what is socially and legally objectionable and will prevent arbitrary abuse of power by authorities against individuals who are within the legal limits of their expression. It would at the same time also help to ensure that the Constitution is operationalized as intended by its authors. Social media has the facility to succeed in the masses and distribute information, which successively has been followed by the masses becoming a watchdog over the government and criticizing those in power by giving proofs of their inefficiency in handling matters of grave importance and also exposing dishonesty and frauds.

Several cyber-crimes, defamation, invasion of privacy, incitement of offences, racist remarks, stalking, abuse, hacking, harassment and many other crimes are often easily committed through social media and once such objectionable content is uploaded, it becomes viral and consequently, very difficult to contain. Thus, it can sometimes become essential for the state to filter out speech and expressions which go against the law. As long as the interests of individuals, either individually or collectively are taken care of, there are often no objections to government regulation but the matter arises when, in the name of regulation, it starts to censor and infringe the civil rights of the people viz. their freedom of expression. It is quite unfortunate that though rights of expressions are given in one form or another in every state throughout the globe, in some places, the rights just remain on paper and there is arbitrary abuse of power by the dominion who suppress them and prevent voices from being heard. This abuse differs in magnitude from state to state even

when there are safeguards to prevent it. The Information Technology Act came into force from the year 2000, but there was not much policing by the Cyber crime Cell of India. But this changed in 2008 when Mumbai attacks of 26/11 took place. This caused the cyber space to be regulated with much vigor and the Information Technology Act, 2000 was amended to expand and strengthen the monitoring and censoring capacity of the government.

The cyber law of India now contains provisions relating to blocking of websites, monitoring and collecting internet traffic data, interception or decryption of such data, unhindered access to sensitive personal data and also holding intermediaries liable viz. social networking sites which host objectionable content posted by the users. Unfortunately, due to India's selective internet filtering, it is criticized by experts on lack of freedom of expression due to policing on the various forms of media.

The recent case of banning the telecast of controversial BBC documentary 'India's Daughter' on the December 16, 2012, gang rape was the clear violation of the right to speech and expression guaranteed under Article 19 of the constitution of India. This movie was based on the brutal gang rape and subsequent death of a 23-year-old woman who worked as a trainee physiotherapist on the 16<sup>th</sup> of Dec in the year 2012. This tragic incident took place on a moving bus in Delhi. The documentary generated a lot of buzz when one of the 4 convicts Mukesh Singh was interviewed in Delhi's Tihar Jail. A.P. Singh and M.L. Sharma, who were the convict's counsel have also allegedly made derogatory remarks against women in the film. The film was then banned in India in all formats and this move was again questioned by some. The PILs have been filed In the Supreme Court saying the ban on the documentary was in clear violation of fundamental rights under Article 19 of the constitution.

The law commission of India gave recommendations on Media law in their report of 2014 from the regulation of it to the opinions taken in polls, from privacy in the field of media to the aspect of ownership and control of it. Thereafter, the Internet Democracy project sent their response to the report focusing on one aspect which is Sec 66A of the IT Act 2000 in the domain of social media and some challenges were drawn up in this feedback which was sent to the commission. There it was asked as to what constitutes objectionable content mentioned in Sec 66A of the IT Act 2000.

## **LEGAL REGIME**

In the case<sup>1</sup>, the Supreme Court held that it is necessary for the citizens to have their own wide range of opinions on all policies and issues, and there is a benefit if the views have plurality. It was held that the citizens must have the right of free speech in the country. Democracy is successful only if the citizens are aware of the happenings in the state and have the freedom to express their views. Only when there is a diversity in the opinions, views, ideas and ideologies, then only the citizens can reach an unbiased and enlightened judgment on all issues touching them. This can't be provided by a medium controlled by a monopoly- whether the monopoly is of the State or the other individual, group or organization. In light of all the above discussion, it can be opinioned that rather than banning and censoring of social media, its regulation is desirable in always that it protects the rights of the user.

The Supreme Court in its recent judgment in 2015 struck down Sec 66A of the Information Technology Act saying it to be a “draconian” provision that had led to the arrests of many people for posting content deemed to be “allegedly objectionable” on the web. The bench of Justices J. Chelameswar and Rohinton F. Nariman said that *“it's clear that Section 66A arbitrarily, excessively and disproportionately invades the proper of free speech and upsets the balance between such right and therefore the reasonable restrictions that may be imposed on such right. Section 66A of the Information Technology Act, 2000 was brought in through the amendment in 2008, and it provides punishment for sending offensive messages through communication mediums”*.

An interesting take on freedom of speech is that it also includes the freedom to remain silent. The Supreme court of India held in the National Anthem case that the right to freedom of speech also includes the right to remain silent. Three students were expelled from school because though they were respectfully standing for the national anthem, they did not sing it. The apex court held that this expulsion was a clear violation of the right to freedom of speech. Recently, Kanhaiya Kumar was arrested for allegedly chanting anti-national slogans and misusing his freedom of speech. Later, he was released on bail as his role was not clear. In a case<sup>2</sup>, it was held that advertisement

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<sup>1</sup> *Secretary, Ministry of Information and Broadcasting, Government of India and others Vs Cricket Association of Bengal and others.*

<sup>2</sup> *Hamdard Dawakhana Vs Union of India.*

of drugs does not come under Art 19 of the Constitution and hence it is not allowed. In<sup>3</sup>, it was ruled that the tapping or recording of telephones is a violation of the right of free speech. In *Indian Express newspapers Vs Union of India*, it was stated that it is the court's duty to protect the freedom of press as it comes under freedom of free speech. Also, the courts should prevent any laws to take place which censor the press. On the contrary, it was held in<sup>4</sup>, that censorship of films was valid as per Art 19 (2) of the Constitution as movies are more psychologically moving compared to other forms of art. In *Bennet Coleman Vs Union of India*, it was held that the government putting restrictions on the number of pages or size of the page in newspapers is violative as per Art 19 (1) (a) of the Constitution of India.

Due to the rapid spread of social media, new challenges have come up where a balance has to be maintained, giving the freedom of expression to the masses while also ensuring that this right is not used to discriminate or violate the right of equality of others. India still has a long way to go to ensure that the essential right of free speech is not violated and voices are heard even from the remotest corners.

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<sup>3</sup> *PUCL Vs Union of India*.

<sup>4</sup> *Abbas Vs Union of India*.