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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CYBERSPEECH: PROTECTING FREEDOM OF EXPRESSION IN AGE OF INFORMATION (FREE SPEECH IN THE DIGITAL AGE)

AUTHORED BY - HARSHIT DAYMA

Abstract

The idea of free speech is changing in the age of digital technology. The limits and meanings of what is considered free speech are changing as society moves away from conventional modes of communication and towards digital platforms. The notion of CyberSpeech, which encompasses freedom of expression in the digital sphere, is examined in this research. It explores the potential and problems brought about by the digital age, looks at how governments and tech corporations regulate speech, and suggests a framework for preserving free speech while taking into account the complexity brought about by the internet. The Constitution's Article 19(1)(a) guarantee of free speech is the cornerstone of India's thriving democracy. But this fundamental right faces special difficulties in the digital age. The proliferation of social media and news websites, among other internet platforms, has democratized expression but has also made it easier for false information, hate speech, and calls for violence to proliferate. Communication has been transformed by the internet, which allows people to exchange ideas and information across geographic boundaries. This has given marginalized voices greater clout and encouraged a more inclusive public conversation in India. But there is a drawback to the simplicity of expressing oneself online. The anonymity provided by the internet might encourage people to say hurtful things, which can have negative effects in the real world.

Evolution Of Free Expressions Of Rights With Respect To Technological

Advancements

While history has celebrated its existence, the journey of Article 19 resonates with the flow of our country's evolving societal fabric. As a citizen, one is often immersed in a world of boundless expression, and understanding the nuances of this Article is akin to charting the path of one's academic freedom. While history has celebrated its existence, the journey of Article 19 resonates with the flow of our country's evolving societal fabric. As a citizen, one is often immersed in a world of boundless expression, and understanding the nuances of this Article is

akin to charting the path of one's academic freedom While history has celebrated its existence, the journey of Article 19 resonates with the flow of our country's evolving societal fabric. As a citizen, one is often immersed in a world of boundless expression, and understanding the nuances of this Article is akin to charting the path of one's academic freedom.¹ India's Constitution, in Article 19(1)(a), lays down the country's commitment to free speech. Nevertheless, there are limitations on this privilege under Article 19(2) for a variety of reasons, such as morality, decency, and public order. These constitutional provisions have been stretched into new areas by the shift to the digital era, requiring legal and societal recalibrations.

An age when information could be quickly distributed without the conventional gatekeeping systems present in earlier media forms was heralded by the development of the internet. Early on in the digital revolution, there was a hopeful idea that the internet could improve free speech everywhere by providing people with never-before-seen means of self-expression, information access, and social movement mobilization.

The new public squares were digital venues like social media, blogs, and forums where anybody with internet access could debate ideas, express opinions, and participate in political conversation. The breadth of free speech was greatly increased by the democratization of content generation and delivery, giving voiceless people in mainstream media a platform. An important change occurred with the 1990s economic liberalization of India and the ensuing information technology revolution. The media landscape was revolutionized and content creation and dissemination became more accessible with the widespread use of mobile technology and the internet in the late 20th and early 21st centuries. The introduction of social media brought about an even greater shift in the dissemination and consumption of information, giving citizens a voice and posing previously unheard-of difficulties.

In a world progressively moving towards a digital age, the embrace of internet accessibility as an economic right mirrored the foresight of a nation readying its youth for tomorrow. Digital platforms have, in many ways, democratized information. They aren't just instruments for communication; they are catalysts for mobilizing public sentiment. Of late, the Indian corridors of power have viewed the digital realm with an eye of caution. Triggered by instances of digital

¹ Index on censorship, <https://www.indexoncensorship.org/2013/01/india-conference-index/> (last visited April 8 2024)

discord, calls for a regulated digital landscape have grown louder. But, this has simultaneously birthed a plea for transparency. After all, when a curtailment brushes against a fundamental right, it demands scrutiny.²

Effects Of Content Moderation On Media Platforms And Public Conversations In India

Content moderation has become a vital tool for media platforms in the digital age to guarantee the security, applicability, and legality of the material exchanged inside their networks. India has been leading the way in addressing the difficulties and ramifications of content moderation due to the size and diversity of its internet user base. This investigation examines how content moderation affects Indian media outlets and public discourse while taking the country's sociopolitical environment, legal system, and delicate balance between free speech and legal requirements into account. India's digital environment is characterized by extreme diversity, with a vast array of languages, cultures, and socio-political perspectives. With the emergence of digital channels, content creation has become more inclusive and voices from all backgrounds can now be heard. On the other hand, the abundance of content also presents problems in the form of false information, hate speech, and content that could be harmful to morality or public order. As a result, content moderation becomes an essential tool for platforms to overcome these obstacles, changing the character of public discourse and the dynamics of digital communication.

Content monitoring is made more difficult by India's sociopolitical context. Strong issues that can swiftly spiral out of control include political unrest, caste-based discrimination, and religious sensitivity. As a result, media outlets face the difficult challenge of policing content that can encourage violence or social disturbance without suppressing free speech or political opposition.

The legal foundation for content moderation in India is provided by the Information Technology (IT) Act, 2000³, as well as the rules and modifications that followed, most notably the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. According to these standards, platforms must set up procedures for moderating content and adhering to laws

² Sneha Mahawar, Article 19 of the Indian Constitution, Ipleaders (April 8, 2024, 11:00PM),

<https://blog.ipleaders.in/article-19-indian-constitution/>

³ https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf

requiring the removal or blocking of particular types of content. These regulations have sparked worries about over-censorship and the possibility that they could be abused for partisan or political ends, even as their stated goals are to make digital places safer and more legal.

Freedom of speech and expression, as liberating they may be in nature, are subject to some scrutiny and constraints. When exercising one's right to freedom, one must refrain from using defamatory or offensive language and show consideration for other's right to privacy. There is an absolute ban on exceeding these boundaries. These are just a handful of the numerous restrictions that exist on the right to free speech, which means that it is not unqualified. Here's where moderating internet content comes into play. Moderators must be engaged to ensure that no evil thoughts come to pass since the "offence principle" is applied while granting the right to free speech. But it also becomes dubious when the nations that hire them take advantage of them for their own ends, as was recently the case with the government-employed Golden Shield Project, which strives to obstruct access to any material that it considers to be detrimental to the government. The necessity of striking a balance between moderation and freedom becomes increasingly evident as technology spreads daily, becoming the operating system of governments and global politics. In India content moderation came into the picture and concern after few of the famous cases were addressed by the supreme court.

The Apex Court rendered a historic ruling in the 2015 case of *Shreya Singhal v. Union of India*⁴. Before this ruling, the legislature applied the freedom of expression differently to matters involving offline speech and online information. Section 66A⁵ of the Information Technology Act of 2000 stipulated a three-year prison sentence for anyone found to have posted insulting content online. Despite its good intentions, this rule was frequently abused to silence anyone who dared to challenge or condemn the administration. This was viewed as excessively strict, particularly since the foundation of any democracy is the right to express one's opinions. In the case, the plaintiff had claimed in a Facebook status that it was improper to close India's financial center due to the passing of a political figure. The teenager was forced to spend the night in jail for the same offence, as was her buddy who had "liked" the post. According to the police, they used Section 66A of the IT Act of 2000 to make an arrest. After being let go, the women filed a case with the Apex Court challenging the decision's constitutionality. The Court

⁴ <https://indiankanoon.org/doc/110813550/>

⁵ https://www.indiacode.nic.in/show-data?actid=AC_CEN_45_76_00001_200021_1517807324077&orderno=77

granted their request, declaring Section 66A unconstitutional due to its ambiguity and infringement on the right to free speech and expression guaranteed by Section 19(1)A⁶. Nevertheless, the section is still used even if it was declared invalid. A 22-year-old man was detained by the Uttar Pradesh Police in 2017 under Section 66A after altering the Chief Minister's portrait and jeopardizing his dignity.

It was also shown in the case of *Google vs SNIL*⁷, When implementing online content moderation, the proportionality principle needs to be used. This is due to the fact that freedom of speech and expression varies greatly between countries and is mostly dependent on the society, the government, and the populace. A fundamental legal concept that permeates both domestic and international law is proportionality. It stipulates that the balance between the goal, the means and techniques employed, and the action's outcomes determines whether an activity is lawful. This notion suggests that one must consider the surrounding circumstances before determining whether an activity is lawful or unlawful. It is the duty of people who take action to determine proportionality, and this process needs to be done in advance before any action is done.⁸

A unified online tool for the moderation of the same cannot exist for those that are more conservatively closed off than the rest.

Adequacy of Legal Systems in Protecting Free Expression on Internet Platforms

The anonymity of the internet can encourage people to spread false information, promote hatred, and incite violent acts. Discord and a decline in faith in institutions can result from misinformation. Hate speech can inspire violence and shatters social cohesiveness since it frequently targets marginalized or religious minority. Legal frameworks struggle to control this kind of discourse without impeding free speech. Current legal frameworks frequently find it difficult to keep up with the digital landscape's rapid change. Many cling to antiquated ideas of content control that were intended for broadcast or print media with certain gatekeepers. Social media platforms bring about a new paradigm because of their large user base and dynamic nature.

⁶ <https://indiankanoon.org/doc/1142233/>

⁷ C-507/17, *Google v. Commission nationale de l'informatique et des libertés (CNIL)*

⁸ <https://guide-humanitarian-law.org/content/article/3/proportionality/>

Online, it is far more difficult to attribute content, identify the source, and ascertain the intention behind a message. Governments use the implementation of laws such as the Information Technology Act (2000) in India as one tactic. By giving authorities the authority to remove content that is deemed obscene or dangerous, these laws seek to stop internet abuse. Nonetheless, a key worry is how vague and wide these regulations are. Lack of precise definitions for terms like “offensive” and “disruption of public order” may lead to arbitrary interpretations and abuse by the government. This could result in the willful suppression of acceptable criticism of the government, so limiting free expression.

The lack of transparency in the content filtering procedures used by internet companies itself exacerbates the issue. In the digital sphere, these platforms serve as gatekeepers, with the ability to censor information and ban individuals. Their content moderation procedures are frequently ambiguous, with little indication of what constitutes an appropriate flag or content removal standard. Free speech is further hampered by the opaqueness, which makes it harder for people to challenge decisions on material removal.

But legal systems by themselves are not an adequate remedy. It is essential to cultivate a culture of responsible internet conduct. Initiatives aimed at promoting media literacy that provide people the tools to assess internet content critically are crucial. A healthy online environment can be created by promoting digital citizenship, which places an emphasis on decency and appropriate online behavior. Using multiple stakeholders is essential. Governments, IT corporations, and civil society organizations must work together to create a complex legal framework. It is imperative that this framework distinctly delineate types of damaging speech and distinguish them from valid forms of opposition. Additionally, it ought to set up strong and open appeal processes so that users can challenge content removals.

In addition, platforms must be held responsible for their methods of content moderation. This might entail independent oversight organizations that keep an eye on material removals and make sure platforms follow a set of guidelines that preserve free speech, among other things. Technology in and of itself can provide answers. Platforms could use content analysis techniques that are aware of the context in which a post is posted and take into account its intent before flagging it. Furthermore, encouraging trustworthy people to report content for review through user-led content moderation procedures can help create an online community that is more accountable.

The difficulties in defining and controlling online humor are highlighted by the *Shashi Tharoor case*⁹ in India, when a satirical tweet put him in legal hot water. This instance illustrates how legal institutions can overreach and how internet communication needs to be interpreted more carefully. The continuing discussion around India's Information Technology Rules, 2021, is another case study. Social media companies are burdened by these regulations to aggressively monitor content and remove anything that is deemed detrimental. There are worries that these regulations may discourage lawful criticism and encourage platforms to give priority to content removals above free speech in order to avoid legal ramifications.

Jurisdictional And Cultural Aspects Affecting Digital Free Expression In India

Physical borders are not a barrier for the internet by nature. When it comes to controlling internet expression, this leads to a legal maze. Indian authorities are struggling with the issue of jurisdiction: who gets to determine what content is damaging and who can remove it?

- **Foreign Platforms, Domestic Laws:** Because social media behemoths like Facebook and Twitter are worldwide in scope, they are bound by a number of national laws. This is confusing since something that is okay in one nation could be considered offensive in another, like India. Legal and practical challenges arise when national laws are enforced on international venues.
- **Online platforms are considered intermediates** because the Information Technology Act (2000) protects them from liability for user-posted content. Still, the act requires platforms to take down anything that is considered "offensive" or "disrupting public order." Because of this uncertainty, content on platforms can be removed without cause and without regard to the law, even if it is an acceptable form of expression.

India offers a distinctive forum for online discussion because of its diverse range of cultures and religions. In certain communities, what is deemed appropriate communication may be objectionable to others. The complexities of free speech problems are further compounded by this cultural sensitivity:

- **Blasphemy and Religious Sensitivities:** India's diverse religious landscape makes blasphemy a contentious issue. Satirical content or criticism of religious figures, even

⁹ <https://timesofindia.indiatimes.com/elections/news/shashi-tharoors-squeamish-tweet-kicks-of-controversy/articleshow/68644731.cms>

if not intended maliciously, can spark outrage and violence. Balancing the right to free speech with the need to respect religious sensibilities is a delicate task for legal systems.

- **Social Hierarchies and Defamation Laws:** India's social hierarchy, with its emphasis on respect for elders and authority figures, can lead to misuse of defamation laws. Criticism of individuals in positions of power, even if well-founded, can be construed as defamation, resulting in legal harassment and stifling dissent.

Identifying a Way Forward: Crafting a Novel Story

In order to ensure a healthy internet discourse in India, a multifaceted strategy that takes into account both the jurisdictional obstacles and the deeply ingrained cultural aspects is needed:

- **Complex Legal Framework:** To ensure that harmful speech categories are properly defined and kept apart from acceptable opposition, the legal framework needs to be revised. Irrespective of their intended use, concepts such as "offensiveness" require precise definitions.
- **Transparency in Content Moderation:** Social media companies need to make their content moderation guidelines more clear. Robust user appeal methods along with well-defined criteria for what constitutes dangerous content are important.
- **Encouraging Media Literacy:** It's vital to provide people the tools they need to assess online content critically. The ability to identify prejudice, comprehend how algorithms operate, and double-check material are essential skills in the fight against hate speech and disinformation.
- **Multi-stakeholder Dialogue:** To discover solutions that strike a balance between free expression and cultural sensitivities and jurisdictional complications, government agencies, civil society organizations, legal experts, and technological corporations must work together.

Conclusion

In India, the digital age has both expanded and complicated the terrain of free expression. Technological advancements have transformed traditional understandings of speech rights, necessitating a reevaluation of legal and regulatory approaches to protect these freedoms while addressing the challenges posed by digital platforms. Content moderation, legal protections, and the interplay of jurisdictional and cultural factors are critical in shaping the future of free speech in India's digital landscape.

In the era of information, defending the right to free speech calls for a complex strategy that strikes a balance between the obligations of the state and platforms, as well as the rights of the person. Protecting CyberSpeech in India requires strengthening legal frameworks to accommodate digital challenges, ensuring openness in content management, and promoting an inclusive atmosphere that values differing points of view. Promoting a free, open, and inclusive digital public sphere will require constant communication amongst stakeholders, including the government, tech corporations, civil society, and users, as the digital domain continues to evolve.

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