

# LEGALFOXES LAW TIMES

## **FREEDOM OF SPEECH AND EXPRESSION IN INDIA: A CRITICAL EVALUATION**

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### **1. ABSTRACT**

In the form of speech, God has bestowed a priceless gift onto mankind. Speech allows a person to express his or her ideas, feelings, and sentiments to others. As a result, everyone is born with the right to freedom of expression and speech. As a result, it is regarded as a basic human right. Everyone must have the right to freedom of expression, which includes the freedom to hold opinions without interference and the freedom to seek, receive, and communicate information and ideas. In the Preamble of the Constitution, the people of India affirmed their determination to provide liberty of thought and expression for all citizens. Article 19(1) (a) of the Constitution, which enumerates the Fundamental Rights, reflects this determination. In a civil society, man's rational desires must be controlled, regulated, and reconciled with the exercise of similar desires by other individuals. As a result, the Constitution limits the assurance of each of the aforementioned rights in the public interest. This article examines the freedom of speech and expression in India, as well as its limitations. It also considers new restrictions on freedom of speech and expression on social media in the form of new media ethics code 2021.

### **2. INTRODUCTION**

Human beings are endowed with the gift of speech by almighty god. A person's thoughts, opinions, and feelings are communicated to others through speech. Thus, freedom of speech and expression is a basic right that every human being is born with. As a result, it is a fundamental right. The right to freedom of thought and speech belongs to everyone. The Universal Declaration of Human Rights declares that right to speech includes the freedom to hold opinions without interference, as well as the freedom to seek, receive, and transmit information and ideas through any medium, regardless of boundaries. In a civil society, man's desires must be controlled, regulated, and balanced with the exercise of identical needs by other persons. As a result, the Constitution limits the guarantee of each of the aforementioned rights in the public interest. Article 19 limits the right to free speech and expression (2).The Constitution (First

Amendment) Act of 1951 included public order as a reason for establishing limitations. The term "public order" refers to more than just the enforcement of the law. In this sense, public order refers to public peace, security, and tranquility

### 3. ARTICLE 19 OF INDIAN CONSTITUTION

India's Constitution ensures that its inhabitants have a number of fundamental rights. Article 19 of the Constitution guarantees the right to liberties. This includes the right to freedom of expression<sup>1</sup>, the right to assemble peacefully and without arms<sup>2</sup>, the right to form associations and unions<sup>3</sup>, the right to move freely throughout India<sup>4</sup>, the right to reside and settle in any part of India<sup>5</sup>, and the right to practice any profession, trade, or business<sup>6</sup>.

### 4. SCOPE OF ARTICLE 19(1)(A)

The Supreme Court explained the extent of freedom of speech and expression, saying that the terms "freedom of speech and expression" must be construed widely to encompass the freedom to propagate one's ideas by words, writing, or other means. As a result, it includes the freedom to express oneself through the print media or any other form of communication, such as radio and television. Every person of this nation has the freedom to express himself or herself through the printed and electronic media, subject to the limitations set forth in Article 19(2) of the Constitution.

### 5. NEW ESPECTS OF FREEDOM OF SPEECH AND EXPRESSION

#### i) Freedom of Press

Citizens obtain knowledge about important government actions and policies that may impact them through the media. Every individual may not be able to obtain the news or information that

<sup>1</sup> Freedom of speech is a concept that supports an individual's or a group's right to express their thoughts and beliefs without fear of retribution, censorship, or legal repercussions. [https://en.wikipedia.org/wiki/Freedom\\_of\\_speech](https://en.wikipedia.org/wiki/Freedom_of_speech)

<sup>2</sup> According to Article 19 (1) (b) all citizens have the right to assemble in peacefully and without armaments, . Meetings and processions are all part of the freedom to assemble. This right, like all other individual rights, is not absolute, but rather limited.

<sup>3</sup> according to Article 19(1) (c) all Indian citizens have the freedom "to form organisations, unions, or cooperative societies," However, the State may place reasonable limits on this right by legislation in the interest of public order or morality, as stated in paragraph (4) of Article 19.

<sup>4</sup> All Indian nationals have the freedom "to move freely within the territory of India," according to Article 19(1) (d). However, as stated in clause (5) of Article 19, this freedom is subject to reasonable limitations.

<sup>5</sup> According to Article 19(1)(e) of the Constitution, every citizen of India has the right "to reside and settle in any part of the territory of India."

<sup>6</sup> All citizens have the right to practise any profession or carry on any occupation, trade, or business under Article 19 (1) (g) of the Indian Constitution, subject to Art. 19 (6), which enumerates the types of restrictions that the state can impose on the citizens' right to practise any profession or carry on any occupation, trade, or business.

they seek. The press gathers and disseminates this information, which is available to the general public. When it comes to elections, press freedom helps people to acquire information and make educated judgments.<sup>7</sup>

Without restrictions, any kind of media may be dangerous. They may broadcast anything and distort the facts to fit their objectives since they have the power to spotlight anything. They possess the ability to incite public anger. The public's view may readily be manipulated by a free press.<sup>8</sup>

In *Romesh Thappar v. State of Madras*<sup>9</sup>, the Supreme Court has declared freedom of press to be a pillar of freedom of speech and expression. Freedom of Speech and Expression lay at the core of all democratic organisations, for without open political conversation, no public education, so necessary for the efficient functioning of the government process, is conceivable

*Indian Express v. Union of India*,<sup>10</sup> It is widely believed that the press plays a crucial role in the democratic process. The courts have a responsibility to protect press freedom by declaring any legislation and administrative actions that restrict it unconstitutional. Freedom of the press encompasses the freedoms of publishing, circulation, and pre-censorship.

In *Sakal Papers Ltd. v. Union of India*,<sup>11</sup>, the Supreme Court of India struck down the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size that a

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<sup>7</sup> Restricting people's freedom of expression is unconstitutional and unenforceable. The press freedom exists not only to express one's views, but also to evaluate those in positions of power. The press establishes a system of checks and balances for the government, ensuring that accountability is maintained. It works for the general good by uncovering corruption and inequalities in society. They build a picture of what happens around them by reporting on confirmed and credible information. It aids in the triumph of alertness

<sup>8</sup> The right to spread one's ideas through print media or any other communication medium, such as radio or television, is included in the right to freedom of expression, subject to reasonable limits established by Article 19 (2).

<sup>9</sup> 1950 SCR 594. The press is sometimes referred to as the fourth estate. Press freedom is one of the most valued rights in a properly democratic system. It is because of this independence that the press is able to bring to the attention of the general public the failures of those in positions of power. The freedom of the press encompasses not only the content that is published and disseminated, but also the amount of information that is to be disseminated.

<sup>10</sup> (1985) 1 SCC 641. The Supreme Court of India ordered the central government to review its taxation policy and determine if it imposed an undue burden on publications on December 6, 1984. The petitioners, which included newspaper firms and workers, claimed that an import tariff raised the cost of newspapers and reduced circulation, limiting freedom of speech and expression. The Court reasoned that while a government can charge fees on newspaper publishing, it must do so within reasonable limitations so as not to stifle freedom of expression.

<sup>11</sup> AIR 1962 SC 305. The petitioner in this case is a private firm that produces newspapers. It is a Marathi newspaper firm called SAKAL, which publishes a daily paper with a total of 6 pages for five days and 4 pages for one day at a cost of 7np, and a Sunday edition with 10 pages at a cost of 12np. The advertising took up 40% of the newspaper's area, leaving the remainder for news, stories, and other items. Later in 1952, the government established a Press

newspaper could publish at a price, and in *Bennett Coleman and Co. v. Union of India*, AIR 1973 SC 106; (1972) 2 SCC 788, the Supreme Court of India struck down the validity of the Newsprint Control Order, which fixed the maximum number of pages as it was a violation of Article 19(1)(a) and that it was not a reasonable restriction under Article 19 (2).

The legality of an order imposing censorship before publishing on an English Weekly of Delhi, which required the editor and publisher of a newspaper to submit for scrutiny, in duplicate, before publication, all communal matters, all matters and news and views about Pakistan, including photographs and cartoons, was struck down by the court In the case of *Brij Bhushan v. State of Delhi*<sup>12</sup>

## ii) Freedom of Commercial speech

In *Tata Press Ltd. Vs. Mahanagar Telephone Nigam Ltd*<sup>13</sup>, the Supreme Court decided that a commercial advertising or commercial speech was equally an element of the freedom of speech and expression, which could be curtailed only by provisions given in Article 19(2) of Indian Constitution. The Supreme Court ruled that, while advertising is nothing more than a business transaction, it is nevertheless the transmission of information about the goods being marketed.

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Commission to address issues with the press, which issued a report with specific suggestions that served as the foundation for the enactment of the Newspaper (Price and Page) Act 1956 and Order 1960. They feel that the newspaper firm should set rates depending on the amount of pages published. If they print more pages, they should charge more. The Act and Order also stipulated the areas that must be advertised, as well as the availability of space that must be allocated for advertising. The Act and the Order both limit the number of supplements that can be issued. A writ petition was brought by the newspaper firm, together with two other petitioners, opposing the Act and the Order. They further claimed that the challenged Act and Order were in violation of the Constitution's Article 19(1)(a).

<sup>12</sup> (AIR 1950 SC 129) The *Brij Bhushan* case is about media restriction prior to censorship. Bhushan urged for a regulating agency for media content in 1950. However, a Supreme Court panel chaired by India's Chief Justice has emphasised that neither the court nor the executive may have control of media material. Parties who believe they have been damaged can only come to courts after the broadcast or publishing.

<sup>13</sup> AIR 1995 SC 2438. The Supreme Court had previously decided in *Hamdard Dawakhana vs. Union of India*, AIR 1960 SC 554, that a commercial advertising was not protected by Article 19(1)(a) of the Constitution. Advertisements were permitted under Article 19(1)(a) of the Indian Constitution. The case of *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*<sup>13</sup> provides support for the notion that Article 19(1) (a) covers the freedom to print advertisements, even if they are commercial in character . It can only be restricted for any of the reasons listed in Article 19(2). The telephone authorities granted permission for 'Tata Press Yellow Pages' to include commercial ads in telephone directories. Nigam and the Union of India filed a legal suit for injunction, alleging monopoly in the publication of directory under the Indian Telegraph Act. Tata filed an appeal against an injunction imposed by the Trial Court and upheld by the High Court. The Supreme Court granted the appeal, and the High Court's decision was overturned on the grounds that advertising is a type of commercial communication covered by Article 19(1). (a). Court further observed that the right of a person to listen , read, and receive commercial speech through advertising is protected by Article 19(1)(a) of the Constitution, even if it is provided by a corporation for the purpose of promoting trade and commerce. Both the speaker and the recipient of the speech can benefit from Article 19(1)(a) of the Constitution. As a result, the Nigam and the Union of India were unable to prevent the appellant from printing the 'Tata Press Yellow Pages'.

The information made available through ads benefits the general public. The unrestricted circulation of business information is essential in a democratic economy.

### **iii) Telecasting or Broadcasting Rights**

In *Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal (CAB)* <sup>14</sup>, The right to freedom of speech and expression was broadened by the Supreme Court, which stated that the right to receive and impart information is included in the right to freedom of speech and expression. Individuals must have access to a broad range of opinions and ideas on all public issues in order to ensure that citizens of our country have the right to free expression. Citizens must be able to make educated decisions on all topics that affect them, which requires a diversity of perspectives, viewpoints, ideas, and ideologies. All of the legal developments that have given meaning to freedom of speech and expression or personal liberty do not need to be reviewed, and no legislation could be enacted to negate such interpretations unless the exceptions to fundamental rights are met.<sup>15</sup>

### **iv) Right to exhibition of films etc.**

In *S. Rangarajan vs. P. Jagjivan Ram* <sup>16</sup> the Court has agreed that movies, films, and other forms of expression are undoubtedly protected by Article 19(1)(a) of the Constitution. However, under Article 19(1)(a), basic freedoms can be legitimately curtailed only for the objectives listed in Article 19(2), and the restriction must be justified on the basis of need rather than convenience or expediency.

### **v) Right to Fly National Flag**

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<sup>14</sup>AIR 1995 SC 1236:(1995) 2 SCC 161.

<sup>15</sup> In this scenario, a cricket match between the six nations was conducted in 1993. The Bengal Cricket Association (CAB) requested that the match be broadcast on Doordarshan. It agreed to pay Doordarshan royalties. Later, international television was granted the right to broadcast. CAB filed a petition before the Calcutta High Court, claiming that it had a basic right to broadcast the cricket match under Article 19(1)(a). It was included in the definition of freedom of expression. Following that, the identical plea was made before the Supreme Court. The Supreme Court upheld the petition and ordered Doordarshan to offer telecasting services. The allegation that the government has a monopoly on electronic media was refuted. Article 19(2) of the Constitution does not include monopoly. There can be no new foundation for a restraining right under Article 19(1). (a).

<sup>16</sup> (1989) 2 SCC 574. Court observed that films are more popular in our nation, particularly among the rural masses, and if freedom of speech and expression includes freedom of the press, it may be extended to expression through radios, movies, films, television, and videographs. It goes without saying that freedom of expression and speech implies freedom of dissemination.



The Supreme Court of India held in *Union of India v. Naveen Jindal*<sup>17</sup> that a citizen's right to fly the National Flag freely and respectfully is a fundamental right under Article 19(1)(a) of the Constitution, as it is an expression and manifestation of his allegiance and feelings and sentiments of patriotism for the country, so long as the expression is limited to nationalism and patriotism. It cannot be used for any commercial or other purposes.

**vi) Right not to speak or to remain silent**

The right not to speak or the right to remain silent also covered under freedom of expression. Three students were dismissed from school for refusing to perform the national anthem in the case of National Anthem. When the national anthem was played, however, the students stood up in reverence. The legitimacy of the students' expulsion was questioned before the Kerala High Court, which supported the expulsion on the grounds that singing the national anthem was their basic responsibility. In an appeal to Supreme Court, the Supreme Court ruled that the students did not commit any offence under the Prevention of Insults to National Honour Act, 1971, . There was also no law that could restrict their fundamental right under Article 19(1)(a).<sup>18</sup>

**vii) Right against Noise pollution.**

In *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association*<sup>19</sup>, the Supreme Court of India decided that banning the use of amplifiers for prayer does not infringe religious freedom because no faith necessitates the use of voice amplifiers. The Court ordered

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<sup>17</sup> AIR 2004 SC 1559:(2004) 2 SCC 476. The same is a qualified right, subject to reasonable limits, as stated in clause (2) of Article 19 of the Constitution. The National Flag is governed by the Emblems and Names (Prevention of Improper Use) Act of 1950 and the Prevention of Insults to National Honour Act of 1971.

<sup>18</sup> *State of Kerala v. Bijoe Emmanuel*, 1986 3 SC 615

<sup>19</sup> **A.I.R. 2000 SC 2773.**In this case, the appellant K.K.R.Majestic colony welfare organisation on 15.5.1996 filed a complaint with the Tamil Nadu pollution control board, alleging that significant noise pollution is caused by the use of drums, guitars, and slide speakers during church prayer, which is a nuisance to those who live nearby. It upsets their peace and has a negative impact on their lives. Copies of the complaint are sent to the superintendent of police, the police inspector, the joint chief environmental engineer, and others. The high court cites the case of *M.S. Appa Rao vs. Tamil Nadu Government*, 1 M.L.W.319 from 1995. In this situation, specific rules for reducing noise pollution have been established. The High Court found the noise generated by the use of loudspeakers in the Church to be noise pollution and annoyance in light of the aforesaid directive. The court further stated that noise pollution is harmful to people's health and that there is a risk of serious disease as a result of it. The church was given instructions on how to manage noise. In the case of *K. Venu v. Director General of Police* (AIR 1999 Ker. 262) a single judge of the Kerala High Court stated that he was not determined to accept that the right to use loudspeakers was a fundamental right in and of itself because sound pollution was an accepted danger and indiscriminate use of loudspeakers could not be tolerated.

the competent authorities to adopt the government's recommendations provided under the 1986 Environmental Protection Act's applicable law.

**viii) Right to receive information**

Article 19(1)(a) of the Constitution has been interpreted to encompass the right to obtain and publish information. It includes the right to convey it through any available medium, including print, electronic, and audio-visual media, such as ads, films, essays, and speeches. A citizen has a basic right to use the most effective means of disseminating and receiving information, including access to telecasting for that purpose. However, the right to know has not yet been extended to invalidate Section 5 of the Government Secrets Act of 1923, which restricts the revelation of some official records. Even the Ability to Information Act of 2005, which specifically addresses the right of citizens to get information from government officials, restricts the release of some records.<sup>20</sup>

**ix) Right to criticise**

In *S. Rangarajan v.P. Jagjivan Ram*<sup>21</sup>, everyone has a fundamental right to form his opinion on any issues of general concern. Open criticism of government policies and operations is not a ground for restricting expression. Intolerance is as much dangerous to democracy as to the person himself. In democracy, it is not necessary that everyone should sing the same song.

**x) Right to expression beyond national boundaries**

In *Maneka Gandhi vs Union of India*<sup>22</sup>, the Supreme Court considered whether Article 19(1)(a) of Indian Constitution was confined to Indian territory and held that the freedom of speech and expression is not confined to National boundaries.

**xi) Right to Protest:** While hearing the case of *Amit Sahni vs Commissioner of police (Shaheen Bagh case)*<sup>23</sup> the SC declared that there is **no absolute right to protest**, and it could be subjected to the orders of the authority regarding the place and time.

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<sup>20</sup> In *Union of India v. Association for Democratic Reforms (2002) 5 SCC 294*, the Supreme Court stated, "One-sided information, disinformation, misinterpretation, and noninformation all contribute to an uninformed public, making democracy a joke. The right to impart and receive information, as well as the freedom to have ideas, is part of the right to free speech and expression."

<sup>21</sup> The court decided that dissent and criticism of an elected government's policies can not attract penal provision unless it is aggressive, misleading, or even untrue. The government should refrain from deciding what is true or untrue, good or bad, valid or invalid, as these issues should be subject to public debate.

<sup>22</sup> 1978 SCR (2) 621.23. The Supreme Court dismissed these claims, concluding that the right to freedom of expression is not limited by geography. The right to collect information, as well as the right to express themselves at home and abroad, and to exchange ideas with people not only inside India but also outside of it, is included in the freedom of speech and expression.

**xii) Truth and Hate Speech:** According to Supreme Court, “Historical facts must be portrayed without in any way exposing or encouraging hatred or animosity between distinct classes or communities.”<sup>24</sup>

**xiii) Internet as a Medium of Information Diffusion:** While hearing the case of **Internet shutdown in Jammu and Kashmir**, the SC refrained from the view on declaring the right to access the Internet as a fundamental right but still went on to make the Internet as an integral part of the freedom of expression guaranteed under Article 19(1) of the Constitution. SC stated that the Internet is a key way of disseminating information, and that the right to acquire information is fundamental to freedom of speech. It further stated that limiting the Internet in a globalised society meant curtailing the freedom of trade and business guaranteed by Article 19(1). (g).<sup>25</sup>

## 6. GROUNDS OF RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION

In a democracy, it is important to protect and preserve freedom of speech and expression, but it is also necessary to impose some restrictions on this right in order to maintain social order. There can be no total or unlimited freedom. Article 19(2) lays up the grounds for imposing reasonable limitations on freedom of speech and expression.

**a) Security of State:** For the sake of state security, appropriate limits on freedom of speech and expression can be imposed under Article 19(2). The term 'security of the state' only applies to significant and exacerbated types of public disturbance, such as rebellion, waging war against the

<sup>23</sup>(2020) 10 SCC 439. In this case the panel of three judges bench recognised the right to peaceful protest against government's law and policy, but made it very clear that public routes and public spaces may not be occupied continually. The current instance involved not only a protest at an undesignated place, but also a blockage of a public route that caused considerable inconvenience to the public. The court stated that it cannot accept petitioners' claim that an unlimited number of people can gather any time at any place to demonstrate. Information available at, <https://www.livelaw.in/columns/on-the-right-to-protest-in-sub-judice-matters-farmers-protest-supreme-court-183101>.

<sup>24</sup> In discussing dignity in the context of hate speech, the court stated that any attempt to spread hatred on the basis of race, religion, caste, creed, or regional basis must be condemned and halted. The purpose of criminalising hate speech, according to the court, is to safeguard the dignity of individuals and groups and to maintain political and social equality among them, independent of caste, creed, religion, sex, gender identity, sexual orientation, language preference, and so on. Information available at, <https://www.drishtias.com/daily-updates/daily-news-analysis/truths-and-hate-speech-sc>

<sup>25</sup> In the case of Anuradha Bhasin v. Union of India (Writ Petition (civil) no. 1164 of 2019), the petitioner challenged the internet shutdown in the state of Jammu and Kashmir. The Court held that the “freedom to access the internet” is a fundamental right and it is protected under Article 19 (1) (a); the freedom of speech and expression of the Indian Constitution. The requests of suspending the internet were put on hold under the Internet Suspension Rules were dependent upon judicial review, the court, however, avoided considering the shutdown in the Union Territory as illegal. The Supreme Court ruled that there could be no secret orders imposing an Internet shutdown or Section 144 in any location. All orders the government issues about such restrictions must be published so that they may be challenged in court. It further said that such limitations may not last longer than required or be endless.



state, and insurgency, rather than routine violations of public order and public safety, such as illegal assembly, riot, and affray.<sup>26</sup> Individual remarks or expressions that incite to or promote the commission of serious crimes, such as murder, are things that might jeopardise the state's security. 112 Article 19(2) defines 'security of the state' as a threat to the security of the whole country.

**b) Friendly relations with Foreign States:** The Constitution (First Amendment) Act of 1951 added this issue. The purpose of the clause is to ban unrestricted harmful propaganda against a foreign friendly state that might endanger India's good ties with that country. There is no equivalent clause in any other world constitution. In India, the Libel by Indian citizens against foreign dignitaries is punishable under India's Foreign Relations Act (XII of 1932). The pursuit of cordial ties with foreign countries does not justify the suppression of reasonable criticism of the government's foreign policy. Members of the Commonwealth, including Pakistan, are not considered "foreign states" for the purposes of this Constitution.<sup>27</sup>

**c) Public Order:**

The case of Romesh Thappar vs. State of Madras<sup>28</sup> is said to be a good precedent in the realm of press freedom. Freedom of the press is one of the most prized rights of a democratic society like India, and it is also recognised as an institutional limb of modern democratic states. It includes the right to freedom of publishing, which includes the transmission and circulation of information. It's worth noting that the Constitution's first amendment was ratified after this momentous decision. Under Article 19(2) of the Constitution, the word "public order" was inserted as a legitimate limitation. The word 'public safety,' on the other hand, is still regarded to be outside the realm of reasonable limitations.<sup>29</sup>

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<sup>26</sup> Peoples Union for Civil Liberty filed a public interest litigation (PIL) under Article 32 of the Indian Constitution against the numerous cases of telephone tapping in People's Union for Civil Liberty vs Union of India AIR 1997 SC 568. The constitutionality of Section 5(2) of the Indian Telegraph Act of 1885 was questioned. It was noted that the "occurrence of a public emergency" and "in the interest of public safety" are both needed for the requirements of Section 5 (2) to be applied. The government has no authority to use its power under this provision if one of these two requirements is not met.

<sup>27</sup> The Supreme Court is debating whether a restriction on freedom of speech and expression can be imposed on the grounds that it is harmful to a Commonwealth country. A country may not be considered a foreign state for the purposes of the Constitution, but it may be considered a foreign power for other purposes, according to the Court. As a result, freedom of speech and expression cannot be curtailed just because the issue is harmful to Pakistan.

<sup>28</sup> AIR 1950 SC 124

<sup>29</sup> In Supdt. Central Prison v. Ram Manohar Lohia, AIR 1960 SC 633, it argued that public order was necessary for establishing and sustaining an environment in which basic rights, in general, and freedom of expression, in particular, could be successfully exercised. In another case Collector & District Magistrate v. S. Sultan, AIR 2008

Public order entails more than just maintaining the rule of law. The term "public order" connotes public peace, safety, and tranquility.<sup>30</sup> The test for evaluating whether an act impacts law and order or public order is to examine if the act causes disruptions in the community's current of life, resulting in a disturbance of public order, or if it affects just a person, leaving the society's serenity undisturbed.<sup>31</sup> Public order is disrupted by anything that undermines public peace or harmony. Thus, community disturbances and strikes organised solely for the purpose of creating dissatisfaction among workers are considered public order violations. As a result, public order denotes the absence of violence and an orderly condition of affairs in which inhabitants may live in peace. As a result, public order denotes the absence of violence and a peaceful condition of things in which residents may live their everyday lives in peace. As a result, causing internal unrest or revolt would have an impact on public order.<sup>32</sup>

However, just criticising the government does not always result in public disorder.<sup>33</sup> In its most basic sense, "public safety" refers to the country's defense against foreign attack. The state would have the right under public order to ban propaganda for a state of war with India. The phrase "in the interest of public order" refers not just to statements that are explicitly intended to cause trouble, but also to statements that have the potential to cause disorder.

Thus, a law punishing statements made with the deliberate intent to offend the religious feelings of any group of people is valid since it imposes a restriction on the right to free speech in the interest of public order because such speech or writing has the potential to cause public disorder, even if such activities do not always result in a breach of peace. However, there must be a reasonable and adequate connection or relationship between the restrictions and the achievements of public order.<sup>34</sup>

**d) Decency or Morality:** These are terms of variable content having no fixed meaning for ideas about decency or Morality differs from society to society and from era to period, depending on the moral norms in existence.<sup>35</sup> As a result, the terms "morality" and "decency" have many

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SC 2096. Court observed that public order is something more than ordinary maintenance of law and order. 'Public order' is synonymous with public peace, safety and tranquility. The test for evaluating if an act impacts law and order or public order is to examine if the act causes disruptions in the community's stream of life, resulting in a disturbance of public order, or if it affects an individual, leaving the society's tranquillity intact.

<sup>30</sup> Supdt. Central Prison v. Ram Manohar Lohia, AIR 1960 SC 633.

<sup>31</sup> Collector & District Magistrate v. S. Sultan, AIR 2008 SC 2096.

<sup>32</sup> Brij Bhushan v. State of Delhi, AIR 1950 SC 129.

<sup>33</sup> Jawali v. State of Mysore, AIR 1966 SC 1387.

<sup>34</sup> Supdt. Central Prison v. Ram Manohar Lohia, AIR 1960 SC 633.

<sup>35</sup> M.P. Jain, "Indian Constitutional Law" Lexis Nexis Butterworths Wadhwa Nagpur, Gurgaon, 2012, p.1109.

different connotations. Sections 292 to 294 of the Indian Penal Code provide examples of limitations on freedom of speech and expression for the purpose of decency or morality. These provisions make it unlawful to sell, distribute, or exhibit filthy language in public places.<sup>36</sup> The Supreme Court determined that the term "decency and morality" does not refer solely to sexual morality.<sup>37</sup>

**e) Contempt of Court:** If a restriction on freedom of speech and expression goes beyond a reasonable and fair limit and amounts to contempt of court, it can be enforced. It cannot be maintained as law that, because of the constitutional guarantee of freedom of speech and expression, no one may be prosecuted for contempt of court for allegedly scandalising or intending to scandalise a court's authority. The Contempt of Courts Act of 1971, Section 2(a), states that "contempt of court" can be either "civil contempt" or "criminal contempt".<sup>38</sup>

**f) Defamation:** Defamation is defined as a remark that damages a person's reputation. A man is defamed when he is subjected to hate, mockery, or contempt. According to Winfield "defamation is the publication of a statement that reflects negatively on a person's reputation and tends to degrade him in the eyes of right-thinking members of society<sup>39</sup>, or leads them to shun or avoid him." Defamation law in India is still uncodified and subject to a number of exceptions. Defamation is defined under Section 499 of the Indian Penal Code, 1860. It distinguishes between slander and libel.

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<sup>36</sup> Ranjit Udeshi v. State of Maharashtra, AIR 1965 SC 881.

<sup>37</sup> In Ramesh Y. Prabhoo v. Prabhakar Kashinath Kunte, AIR 1996 SC 1113, and in Knüller (Publishing, Printing and Promotions) Ltd. v. Director of Public Prosecutions, (1972) 2 All ER 898. Also referred in Director General of Doordarshan v. Anand Patwardhan, AIR 2006 SC 3346. The Supreme Court decided that the term "decency and morality" does not refer just to sexual morality. Decency means to convey or say anything in a polite manner. It should not have a negative impact on society's morality. Our constitution has addressed this viewpoint by including decency and morals as a foundation. The term 'morality or decency' have a wide range of meanings. In the sake of decency or morality, sections 292 to 294 of the Indian Penal Code offer examples of limits on freedom of speech and expression. These clauses make it illegal to sell, distribute, or display filthy language, among other things, in public areas. Until recently, there has been no clear definition of what is moral and what is immoral. The morality norm changes throughout time and from location to place.

<sup>38</sup> The Supreme Court upheld the verdict of the High Court, finding Mr. Nambodripad guilty of contempt of court in E.M.S. Nambodripad v. T.N. Nambiar (1970) 2 SCC 325; AIR 1970 SC 2015. Contempt proceedings were filed against the Chief Minister of Jammu and Kashmir in M.R. Parashar v. Farooq Abdullah (1984) 2 SCC 343; AIR 1984 SC 615. However, the petition was denied due to a lack of evidence.

<sup>39</sup> The publishing, distribution, and sale of "Godman to Tycoon: The Untold Story of Baba Ramdev", a book about yoga guru Ramdev's life, was banned by the Delhi High Court because sections of the book were defamatory (Swami Ramdev vs. Juggernaut Books (CM(M) 556/2018)). Ramdev claimed that the book, authored by Priyanka Pathak Narain and released by Juggernaut Books in July 2017, was an unauthorised biography that contains false and defamatory information, infringing on his constitutional right to privacy and reputation under Article 21.

**g) Incitement to an offence:** The Constitution (First Amendment) Act of 1951 included this ground as well. Obviously, the right to freedom of speech and expression does not include the ability to urge others to commit crimes. Any act or omission deemed criminal by law for the time being in force is classified as an "offence." Incitement to commit a crime is not the same as incitement to violate the law. As a result, Article 19(2) does not always include encouragement to break every civil law.<sup>40</sup>

**h) Sovereignty and Integrity of India:** As part of the sixteenth amendment to the Constitution in 1963, this provision was added to Article 19(2). Maintaining and protecting the nation's sovereignty and integrity is the government's primary responsibility. Any speech or expression that threatens or undermines India's sovereignty and integrity could be limited by reasonable restrictions. Nobody has the authority to break the law in order to jeopardise the country's sovereignty and integrity.<sup>41</sup>

**i) Sedition:** It should be noted that the sedition is not mentioned in clause (2) of Article 19 as one of the grounds on which restrictions on freedom of speech and expression may be imposed. As understood by English law, sedition embraces all those practices whether by words, or writing which are calculated to disturb the tranquility of the State and lead ignorant person to subvert the government. The Supreme Court held that section 124-A of the Indian Penal Code, 1860 was limited to acts involving an intention or a tendency to create disorder or disturbance of law and order or incitement to violence and was not violative of Article 19(1)(a) read with Article 19(2) of the Constitution.<sup>42</sup>

**i) Fundamental Duties:** Article 51A, which defines a citizen's basic obligations, has put further limits on freedom of speech and expression (42nd Amendment in 1976). No one should perform any of the following things in the name of freedom of speech and expression, according to Article 51A:

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<sup>40</sup> Such a right does not provide an individual or a group of individuals the authority to instigate or encourage another person to commit a crime, or to foment community violence or disruption. Such statements or expressions, which may cause internal problems, are forbidden.

<sup>41</sup> Information available at , <https://www.probono-india.in/blog-detail.php?id=159>

<sup>42</sup> The Supreme Court's decision in Kedar Nath Singh vs. State of Bihar (1962) narrowed the scope of sedition law even further. The court had read down Section 124A of the IPC in the case and concluded that its application should be restricted to "acts containing the purpose or tendency to cause unrest or disruption of law and order; or incitement to violence." As a result of the Kedar Nath Singh decision, the 'tendency test' is now required for laying sedition charges on anyone, much alone the media.

1. to criticise the constitution, its values and institutions, as well as the National Flag or the National Anthem;
2. to jeopardise India's sovereignty, unity, and integrity;
3. to destroy the spirit of universal brotherhood among all people to degrade our composite culture's rich heritage.

## **7. FREEDOM OF EXPRESSION AND SOCIAL MEDIA**

Social media consists mostly of web and mobile-based tools for sharing and discussing content. It combines innovation, broadcast communications, and social networking to provide a platform for people to express themselves through words, photos, videos, and music. Electronic and mobile technologies are utilised to turn communication into interactive discussion in online networking.

The Internet and social media have evolved into sophisticated equipment that allow people to exercise their right to free expression and exchange ideas and information. In recent years, there has been an increasing number of people all around the world advocating for change, equity, communication, great responsibility, and respect for human rights. The Internet and Social Media have regularly played a significant role in such developments, enabling people to interact and exchange information in a split second and fostering a sense of community.<sup>43</sup>

## **8. DIGITAL MEDIA ETHICS CODE (2021) TO CONTROL SOCIAL MEDIA**

The originator of an electronic message is differentiated from an intermediary under this Act. According to the Centre Government intermediaries only deal with third-party content and originators have direct influence over the content that is disseminated." While the Act offers a safe haven for content published by an intermediary, originators are not entitled to any equal protections and are solely responsible for the information they host and/or publish.<sup>44</sup>

**i) Due Diligence by Intermediaries:** Rule 4 of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 discusses on the topic of due diligence

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<sup>43</sup> The right to freedom of speech and expression is viewed as a fundamental right in the Indian Constitution, regardless of the media in which it is practiced. Furthermore, due to the growing use of the internet and online life as a means of exercising this right, access to this medium has been deemed a basic human right.

<sup>44</sup> Information available at , <https://www.hindustantimes.com/india-news/new-it-rules-to-safeguard-digital-space-says-centre-101626179039300.html>



that the intermediaries must adhere to. It also clarifies the scope of the safe harbour protections outlined in Section 79 of the Information Technology Act of 2000<sup>45</sup>

**ii) Intermediaries need to display the privacy policy and use of Personal Data information to its user :** Rule 4 requires the intermediary to clearly display the privacy policy and the use of personal data or information for its users on his website or application, or both (as the case may be).<sup>46</sup> Furthermore, the privacy policy or user agreement should be written in such a way that the user is bound not to host, display, upload, modify, publish, transmit, store, update, or share any information that is contrary to societal rules, unethical, defamatory to the general public, or misleads the general public .<sup>47</sup> Any information that jeopardises a person's dignity would fall under the scope of this specific clause.

**iii) Notify users not to disseminate any information against unity, integrity and sovereignty of the State :** As per the particular clause, any material that jeopardises the state's unity, integrity, or sovereignty will not be accepted. Furthermore, intermediaries must advise users that if unethical material is communicated, their account will be terminated or the information that is not in compliance with the user agreement or privacy policy will be removed.<sup>48</sup>

**iv) Duty of intermediaries to Remove unethical Information sent on their portal :** The intermediary must also be vigilant in removing any information sent on its portals that is in violation of the above-mentioned provisions, as required by Section 79(3) of the Information Technology Rules, 2000.<sup>49</sup> Furthermore, after deleting such information, the intermediary is required to keep the particular information for an investigative period of one hundred and eighty days<sup>50</sup>

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<sup>45</sup> Rule 3 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Social media intermediary means "An intermediary that primarily or entirely facilitates online contact between two or more users and allows them to produce, upload, share, distribute, edit, or access content using its services," according to the definition of social media intermediary.

<sup>46</sup> Rule 4(1) (a) of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

<sup>47</sup>Rule 4(1) (b) of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

<sup>48</sup> Rule 4(1) (c) of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

<sup>49</sup> Rule 4(1) (d) of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

<sup>50</sup> Rule 4(1) (g) of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

v) **Give all details of Grievance Redressal Mechanism:** The intermediary must publish the name of the Grievance Officer and his/her contact information on its website or application, or both, as the case may be, as well as a mechanism by which a user or a victim may file a complaint about a violation of Rule 4 or other matters relating to the computer resources made available by it. Furthermore, the Grievance Officer is required to acknowledge the complaint within three working days of receiving it and to resolve it within one month of receiving it.<sup>51</sup>

vi) **Deletion of information portraying person in bad light, obscene acts:** Furthermore, on the complaint of a person, an intermediary is obligated to remove information within twenty-four hours that represents such a person in a negative way, exposes their private parts, or depicts such a person in a sexual act or nudity. A complaint might be submitted by an individual or on his or her behalf in relation to the aforementioned burden.<sup>52</sup>

vii) **Monthly observance Report:** Subsequently, additional due diligence is to be observed by the significant social intermediaries as per the Rule 5 of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. It specifies the responsibilities of the Chief Compliance Officer, the Nodal Contact Person, and the Resident Grievance Officer. It further states that all of these officers must be Indian citizens. A Monthly Compliance Report should be published as a requirement. Details of complaints received and actions performed in response to such complaints, as well as details of materials deleted proactively, should be included in the report. It is critical that such an officer be physically present.<sup>53</sup>

viii) **Identification of first originator:** Rule 5(2)[17] imposes an extra obligation on major social media intermediaries that provide message services to help law enforcement authorities in identifying and tracking the original source of any disputed or problematic material. This can only be carried out if a competent court or the Competent Authority issues an order under section 69 of the Act. This power can only be used to stop any crime that threatens the state's integrity or

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<sup>51</sup> Rule 4(1) (n) of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

<sup>52</sup> Rule 4(1) (p) of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

<sup>53</sup> Rule 5 of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

security, such as rape, child sexual abuse, or other serious crimes. However, if less intrusive methods are available, this should only be used as a last option.<sup>54</sup>

**ix) Voluntary User Verification:** The 'Voluntary User Verification' is one of the new provisions in the IT Rules for 2021. Users who voluntarily desire to verify their accounts will be given with a suitable means for doing so, as well as a verifiable and visible mark of verification. However, there is a raging discussion about whether the entire process of user authentication should be voluntary.

**x) Publishers of News in Digital Media**

All news and curated content providers must register with the Ministry of Information and Broadcasting, establish a grievance officer, address complaints within 15 days, and publish monthly reports on complaints received.<sup>55</sup>

**xi) Classification of Age groups and Parental Control**

The IT Rules, 2021 have also endeavored to work upon the aspect of the OTT Platforms (such as Netflix, Amazon Prime and Disney+Hotstar). The content showed on OTT platform must be self-classified into five age groups by OTT Platforms. U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adults) are the age categories (Adult). The Code of Ethics also states that platforms must adhere to age restrictions, and that individuals under the age of 18 may require parental supervision or locks. One of the most significant features at this time is Automated Censorship, which is mentioned in the Rules.<sup>56</sup>

**xii) Criticism of new rules**

After a thorough examination of the rules, it can be concluded that the standards established for intermediaries have some flaws that can pose a significant barrier to both companies and individuals. The concept of identifying the message's original sender would defeat different

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<sup>54</sup> The case of Facebook Inc v. Union of India is now being decided on this issue. 17 The matter was initially filed in the Madras High Court for adjudication. As a result, digital powerhouses like Facebook and YouTube were named as defendants in the case. Because the issue was pending in a handful of other High Courts, including the Bombay High Court and the Madhya Pradesh High Court, Facebook eventually moved the Supreme Court. Facebook/primary WhatsApp's argument was that it employs end-to-end encryption, which makes it difficult to identify a message's source, and that even WhatsApp doesn't have decryption keys, so it doesn't have access to the communications. The Supreme Court is currently adjudicating on the issue of how the intermediaries can trace the originators of a message shared on their respective platforms.

<sup>55</sup> <https://www.thehindubusinessline.com/business-laws/gaps-in-digital-media-rules/article35004595.ece>

<sup>56</sup> Content would also be categorized on the basis of themes and messages, violence, nudity, sex, profanity, drug and substance misuse, and terror, and would be clearly displayed with a warning for viewer discretion. Information available at <https://timesofindia.indiatimes.com/business/india-business/content-on-ott-platforms-will-be-divided-into-five-age-related-categories/articleshow/81219365.cms>

social media's end-to-end encryption policies. Though tracking the first sender of a communication might assist in identifying the main offender in the event of an offence, it can be used unnecessarily against anybody.<sup>57</sup> The government's total control of social media, digital news, and OTT platforms, gives government broad discretionary powers, which may be openly abused by a political party.<sup>58</sup>

## 11. CONCLUSION

While the right to freedom of speech and expression is essential to individual autonomy, liberty, and democracy in today's society, it cannot be absolute. Citizens must utilise their rights wisely and for the right reasons since they come with obligations. One's right to freedom of speech and expression can be exercised as long as it is not hateful or defamatory to others, or it does not promote violence in the country. In a democracy, criticism is not only permitted but encouraged; in order to enhance the quality of laws. However, this criticism must be fair, and it must not be used as a two-edged sword to express and cause anguish in the country. The new IT Rules of 2021 are a positive move toward bringing right information to people through social media. The public today is looking for platforms that bring out the truth of society, deal with socio-political issues, provide right information and realities that are going on in the country. Regulation of content must be done but giving complete power to remove any content, attacking on public's privacy is something not acceptable. The government is free to ban and block such undue websites and content that can have bad impact on the society.

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<sup>57</sup> If individuals would be hesitant to give their opinion, it would obstruct the free flow of information and depriving citizens of their fundamental right to free speech and expression. The Rules have an overabundance of delegation of authority. The Rules, for example, have established a non-judicial adjudicatory mechanism for resolving complaints about content published by Digital News Media and OTTs.

<sup>58</sup> According to the IT Rules of 2021, the government will have the authority to delete any information that it deems to be undesirable. The government has the ability to suppress speeches and information that are contrary to its authority, as well as to use its power to conceal any information that is detrimental to its policies.