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INTERNET AND FREEDOM OF SPEECH

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INTERNET AND FREEDOM OF SPEECH

INTRODUCTION

India has been a successful and robust democracy for over six decades. Individual freedom is an integral part of democracy. However, freedoms are not absolute. Absolute freedom to an individual may lead to compromising other's privacy, safety and rights. There are laws to govern and restrict people's behaviour so as to maintain a balance in the society.

Today we live in a connected world facilitated by Information and Communication Technology (ICT). The rapid penetration of ICT in innovative ways has led to considerable development in India and globally with respect to people-centred, inclusive and development-oriented Information Society. At the same time, it has created multidimensional and often unpredictable challenges since the technology continues to exponentially outpace legal, policy and ethical dimensions. Cyber-crime and cyber-attacks have resulted in changing the dimension of conflict of individual freedoms and national security to a new height. This has become one of the serious threats to individual freedoms and rule of law which serves as the pillar of democracy.

INTERNATIONAL PERSPECTIVE:

The right to freedom of speech and expression is widely protected under international law and is recognized under *Article 19* of the *Universal Declaration of Human Rights (UDHR)* and *Article 19(2)* of *International Covenant on Civil and Political Rights (ICCPR)*. These provisions define this right as the 'freedom to hold

opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'. In recent years, the United Nations has explicitly extended this right to online platforms.

The freedom to 'seek, receive and impart information' becomes particularly relevant in the context of the Internet. Efforts are needed to be made to bridge the gap between those who have access to the Internet and those who do not. Reducing this 'Digital Divide' helps realise the right to free speech, as discussed during the *World Summit for Information Society Review* (WSIS+10 review).¹

INDIAN PERSPECTIVE:

India has the second largest Internet consumer base in the world, after China, having recently overtaken the United States.² But with Indian population crossing 1.2 billion mark, the number of internet users has just crossed 340 million as of March 2016. As the right to free speech includes the right to access and gather information as well, the Indian Government has been working on bridging the Digital Divide through its *Digital India Initiative*.³ Bridging the digital divide has become

¹ In December 2015, the United Nations General Assembly reviewed the progress of World Summit on the Information Society (WSIS) goals over the past ten years and considered the future of the WSIS process beyond 2015. This is called the "WSIS+10 Review" which culminated in a High-Level Event on 15-16 December at the UN Headquarters in New York.

² According to the *Internet Trends Report* by Mary Meeker, India is the only exception to the flat growth rate across the world, with a steady growth in double-digits.

³ Digital India is an umbrella programme that covers multiple Government Ministries and Departments. It weaves together a large number of ideas and thoughts into a single, comprehensive vision so that each of them can be implemented as part of a larger goal. Digital India aims to provide the much needed thrust to the nine pillars of growth areas, namely Broadband Highways, Universal Access to Mobile Connectivity, Public Internet Access Programme, e-Governance: Reforming Government through Technology, e-Kranti - Electronic Delivery of Services, Information for All, Electronics Manufacturing, IT for Jobs and Early Harvest Programmes. Each of these areas is a complex programme in itself and cuts across multiple Ministries and Departments.

imperative as the Government services are increasingly being made available to citizens electronically. In a country with a growing reliance on the Internet, it becomes important to understand the legal framework that governs speech online.

Constitutional Provision: - Article 19 (1)(a) of the Constitution of India guarantees to citizens the fundamental right to freedom of speech and expression:

“19. (1) All citizens shall have the right- (a) to freedom of speech and expression;..”

This is a broad right that includes the right to exchange thoughts with others, both within and outside India. It also includes freedom of the press. This right is medium neutral, which means that it is applicable to communication on the Internet as well. However, this right is also subject to certain restrictions which can only be imposed by a duly enacted law. Article 19(2) provides that the such reasonable restriction must be in the interests of state security, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to an offense, and the sovereignty and integrity of India. Alongside the freedom of speech, one must also consider the *right to privacy*, which has been read into the right to life under Article 21 of the Constitution. (Article 19 is given at ***Annexure I***)

Legislative Restrictions:

The *Indian Penal Code* (IPC) places some restrictions on free speech. It criminalizes speech that is seditious, obscene, defamatory, promoting enmity between different groups on ground of religion, race, place of birth, residence, language,

committing acts prejudicial to maintenance of harmony, or consisting of statements, rumors, or reports that may cause fear, alarm, disturb public tranquility, or promote enmity or ill will. The offender is liable to be punished with a jail term ranging from two to seven years, if found guilty. Further, the *Official Secrets Act* also contains a provision that criminalizes wrongful communication of information that may have an adverse effect on the sovereignty and integrity of India. All these provisions are applicable to Internet users as well.

Another relevant legislation in this context is the *Information Technology Act (IT Act 2000)*, which criminalizes certain online activity, such as the publication or transmission of obscene or sexually explicit content in electronic form, as well as the creation, transmission or browsing of child pornography. *Section 66A (ANNEXURE II)* of the Act had criminalized any information that could be considered grossly offensive, of a menacing character, or any information that is false, but causes “annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will.” Several arrests were also made for social media posts, on the basis of this provision. But in the 2015 landmark case of *Shreya Singhal v. Union of India*, the Supreme Court struck down Section 66A of the IT Act 2000 on grounds of violating Article 19 of the Constitution. In its judgment, it categorically stated that the *freedom of speech offline is equal to freedom of speech online*, a principle that has been clearly stated by the UN as well. Section 66A was found to be an arbitrary and disproportionate restriction on the right to free speech, and outside

the confines of the reasonable restrictions laid down in Article 19(2). This judgment is a critical step for free speech jurisprudence, with the courts taking a firm stand in favour of the right to free speech on the internet.

CURRENT SCENARIO

Internet freedom in India has improved for the continuous second year, according to the report "*Freedom on the Net*" published by *Freedom House*, a US nonprofit organisation that monitors freedom worldwide. India has been categorised as "*partly free*" with score of 40 in 2015 from 42 in 2014⁴. Further, the report notes positive developments in the regulatory framework, decline in the detentions for online speech and a steady increase in digital access. However, increased website blocking and intimidation of internet users threatened to hamper steadily improving internet freedom in the country.

A total of 136, 13, 10 and 492 social media websites were blocked in 2012, 2013, 2014 and 2015 (till 30.11.2015) respectively under Section 69A of IT Act, 2000. Further, a total of 533, 432 and 352 social media websites were blocked in compliance with the directions of the competent Courts of India in 2013, 2014 and 2015 (till 30.11.2015) respectively. Also, as per National Crime Records Bureau (NCRB), a total of 4,192 cases were reported under section 66A of the IT Act 2000 (under the offences of sending offensive messages through communication services etc.) during 2014.

⁴ less points means more freedom and high points means less freedom.

REFERENCES:

1. India, Ministry of Electronics & Information Technology, 14 October 2016.
2. "*Freedom on the Net*" by Freedom House, 2015.
3. Lok Sabha Unstarred Question No. 2879, dated 16.12.2015.
4. Rajya Sabha Unstarred Question No. 40, dated 22.02.2013.
5. "*Freedom of Connection – Freedom of Expression: The Changing Legal and Regulatory Ecology Shaping the Internet*" by UNESCO, 2011.

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights.—Arts. 18-19.)

Right to Freedom

19. (1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; [and]
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise

of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

THE INFORMATION TECHNOLOGY (AMENDMENT) ACT, 2008

No. 10 OF 2009

[5th February, 2009.]

- 66A. Any person who sends, by means of a computer resource or a communication device,—
- (a) any information that is grossly offensive or has menacing character; or
- (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or
- (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,
- Punishment for sending offensive messages through communication service, etc.

shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation.— For the purposes of this section, terms “electronic mail” and “electronic mail message” means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.