

**A CRITICAL ANALYSIS OF FREEDOM OF SPEECH AND EXPRESSION
WITH RESPECT TO CYBERSPACE IN INDIA**

Dissertation submitted to National Law University and Judicial Academy, Assam

in partial fulfillment for award of the degree of

MASTER OF LAWS/ONE YEAR LL.M. DEGREE PROGRAMME

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SUPERVISOR CERTIFICATE

This is to certify that Miss Priyanka Hiloidari has completed her dissertation titled “A CRITICAL ANALYSIS OF FREEDOM OF SPEECH AND EXPRESSION IN CYBERSPACE IN INDIA” under my supervision for the degree of Masters of Law/One year LL.M degree programme of National Law University and Judicial Academy, Assam.



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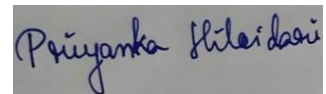
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DECLARATION

I, Miss Priyanka Hiloidari, do hereby declare that the dissertation titled “A CRITICAL ANALYSIS OF FREEDOM OF SPEECH AND EXPRESSION IN CYBERSPACE IN INDIA” submitted by me for the award of the degree of Master of Laws/One year LL.M degree programme of National Law University and Judicial Academy, Assam is an original work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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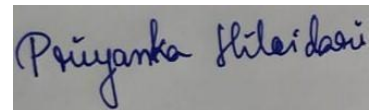
ACKNOWLEDGEMENT

Firstly, I would like to express my gratitude and thank Dr. V.K. Ahuja, Vice Chancellor of National Law University and Judicial Academy, Assam for allowing me to write dissertation on the title “A critical analysis of freedom of speech and expression in cyberspace in India” and for his help and support from time to time who is always an inspiration to us.

I express my deep gratitude towards my supervisor and teacher Mr. Saheb Chowdhury, Assistant Professor of Law, National Law University and Judicial Academy, Assam for his help, invaluable guidance and encouragement throughout the course of the dissertation.

I would also like to thank all the faculty members of National Law University and Judicial Academy, Assam for their support and encouragement in preparing the dissertation despite of their busy schedule.

Lastly and most importantly I would like to express my gratitude to my parents and friends who supported me constantly and encouraged me to write the dissertation.



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1988 - The Human Rights Act

1948- Universal Declaration of Human Rights

1976- International Covenant on Civil and Political Rights

TABLE OF ABBREVIATIONS

AMU	ALIGARH MUSLIM UNIVERSITY
Art	ARTICLE
BAWS	BABA SAHEB AMBEDKAR'S WRITINGS AND SPEECH
Cr. P C	CRIMINAL PROCEDURE CODE
CAA	CITIZENSHIP AMENDMENT ACT
CAD	CONSTITUENT ASSEMBLY DEBATES
FIR	FIRST INFORMATION REPORT
HRA	HUMAN RIGHTS ACT
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
IPC	INDIAN PENAL CODE
IT	INFORMATION TECHNOLOGY
JMI	JAMIA MILIA UNIVERSITY
MHA	MINISTRY OF HOME AFFAIRS
NIA	NATIONAL INVESTIGATION AGENCY
NJAC	NATIONAL JUDICIAL APPOINTMENTS COMMISSION
NSA	NATIONAL SECURITY ACT

OSCE	ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE
SC	SUPREME COURT
SCC	SUPREME COURT CASES
TGs	TRANSGENDERS
UDHR	UNIVERSAL DECLARATION OF HUMAN RIGHTS
UN	UNITED NATIONS
UNESCO	UNITED NATIONAL EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

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CHAPTER I

INTRODUCTION

1.1 Research Background

Communication and exchange of thoughts, views and ideas are a basis of civilization. The development of the skill of speaking and conveying thoughts and ideas has occurred throughout the evolution of the human species.¹ This paved the way for the development of human civilisation, including language, philosophy, literature, the arts, science, and culture.² The Vedas, Upanishads, epics such as the Ramayana, Mahabharata, Silpadikaram, Manimekali, Illiad, Odysseus, and sculptures and paintings from Ajanta, Ellora, and Khajuraho are just a few instances of this history that continues to this day.³ Without the capacity to talk and convey one's thoughts and ideas, none of this would have been possible.⁴ This fact was taken seriously by modern jurisprudence. As a result, under democratic legal systems, freedom of speech and expression has acquired an important position.⁵ Natural law and natural rights are concepts that assert that human beings have some inherent inalienable rights.⁶ Human rights refer to the rights of an individual to life, liberty, equality, and dignity in general. The right to freedom of speech and expression is one of the most fundamental human rights that gives meaning to a person's existence.⁷ The right to freedom of speech and expression is seen as a precondition of modern democracy. It's also known as the first criterion for liberty.⁸ It can be said that people have the right to express their views freely without any fear in every democratic nation. Freedom of speech and expression is considered as an important kind of liberty and it has been recognized as an essence of a free society.⁹ Freedom of speech and expression is given an important status in almost every country. The freedom of speech and expression is the essence of any civilized state which claims to be democratic in its spirit and ethos.¹⁰ The importance of

¹ Maknikar Vijay Prabhakar Rao, 'Freedom of Speech and Expression with Special Reference to Democracy in India: A Critical Study' (chapter 1, page 1, para 1, PhD thesis) <http://hdl.handle.net/10603/259845> accessed on 9 August, 2021

² Ibid

³ Gokulesh Sharma, Human rights and Social Justice (Deep & Deep Pub. Pvt. Ltd, New Delhi, 2004), p.1.

⁴ Ibid

⁵ Ibid

⁶ William Blackstone, Commentaries on the Laws of England, in Arlene W. Saxonhouse, Free Speech and Democracy in Ancient Athens (Cambridge University Press, New York, 2006), p. 21.

⁷ Ibid

⁸ Ibid

⁹ Sital Sarai, 'Sedition vis a vis freedom of speech and expression national and international perspectives' <http://hdl.handle.net/10603/301464> accessed on 8 June 2021

¹⁰ Anil Kumar Thakur and Krishan Kanha, 'An Overview of Political Communication under the Freedom of

freedom of speech and expression is highlighted in ancient Indian philosophies.¹¹ The Vedas, or Shrutis, as well as non-Vedic intellectual writings, demonstrate India's long tradition of freedom of speech and expression. The Bhagvad Gita, according to Shankaracharya, proclaimed that the Jnana marga was the sole genuine path to redemption.¹² This implies that freedom of speech and expression may be used to enhance one's own knowledge (Jnana).¹³ Self-regulatory, non-harmful speech was encouraged by Jainism and Buddhism. The Nyaya Sutra, formulated by philosopher Gautama, offers us with a science of reasoning that allows us to infer principles via discussion.¹⁴ Liberal democracies all around the world have acknowledged this freedom as conditional rather than absolute. The free speech law has also been created in accordance with international law.¹⁵ The exercise of freedom of speech and expression can only be limited under the procedure established by law.¹⁶ Indian Constitution also guarantees certain rights to the citizens whom we address as Fundamental Rights. Freedom of speech and expressions under Article 19(1)(a) is one of such Fundamental Rights.¹⁷ Thus, from this we can say that every citizen has the right to express their views (via any medium). With the development in science and technology it is seen that Cyberspace has become a very easily accessible and convenient platform to express our views. Cyberspace is a concept describing a widespread interconnected digital technology.¹⁸ We have various social media platforms such as Facebook, WhatsApp, Instagram, Twitter etc. to express views of our own on any matter. These are the platforms where a person can express what's on mind. New technologies, such as the Internet, offer an opportunity to express freedom of speech worldwide.¹⁹ Various posts are flooded daily on different topics in the internet. We can witness debate on issues on the internet from different individuals.²⁰ Despite having rights and liberties it is observed that these rights are being infringed and people are prohibited from expressing their views by the government. While exercising the right of free speech in social media platforms various steps are taken against citizens to curtail it. Sometimes in the name of

Speech and Expression' (2020) 10 GNLU JL Dev & Pol 16

¹¹ Ibid at 1

¹² Ibid

¹³ Ibid

¹⁴ Siddharth Narrain, 'Disaffection' and the Law: The Chilling Effect of Sedition Laws in India, *Economic and Political Weekly*, VOL XLVI NO 8 (February 19, 2011), p. 33

¹⁵ Ibid

¹⁶ Ibid at 3

¹⁷ Ibid

¹⁸ Cyberspace| Definition of cyberspace in US English by Oxford Dictionaries

¹⁹ Farzad Damania, 'The internet: Equalizer of freedom of speech and expression? A discussion on freedom of speech on the internet in the United States and India' accessed on 7 August 2021

²⁰ Alon Harel, 'Freedom of Speech' (2011) COMPANION TO PHILOSOPHY OF LAW <http://ssrn.com/abstract=1931709> accessed on 8 June 2021

National Security Issues, maintenance of public order the right to freedom of speech and expression is infringed.²¹

Constructive criticism is a part of a healthy society. But it is seen that while criticising the government or the authority for issues the people had to face the wrath of the government. This is not a sign of healthy and progressing society. Speaking something against the government does not make a person anti-national or less patriotic. Awareness on various issues can also be created through social media. So, freedom of speech and expression should not be suppressed. Freedom of speech and expression helps persons to communicate and know things. Several cases have come forward where persons had to face legal actions for expressing their views in social media platform. Some prominent cases are discussed below:

Two girls Shaheen Dhada and Renu Shrinivas were arrested over their Facebook post questioning the shutdown in the city for Shiv Sena patriarch Bal Thackeray's funeral with the comment also leading to an attack on the clinic of an uncle of one of them by Sena activists. Shaheen Dhada wrote on her Facebook post that Death is natural and many people die every day in connection to Bal Thackeray's demise and shutting the entire city mourning over his death is not a logical reason. Her friend Renu liked the Facebook post. Shiv Sena activists broke the clinic of Shaheen's uncle. They were arrested by the police this post. Later both Shaheen and Renu were released by the police.²²

A person was arrested for a Facebook post by the Uttar Pradesh Police from Azamgarh district for hosting flags on houses to show solidarity with Palestine. However, the family members of Yasir Akhtar, who lives in Saraimaer village in Azamgarh, claim that the Facebook post was not for India but was related to Gaza. Senior Superintendent of Police Sudhir Kumar Singh told Al Jazeera that he was running a page and he made the message viral through Facebook that after Friday prayers, people should hoist the flags on their vehicles and homes.²³

The Uttar Pradesh Police has come hard on anti-CAA (Citizenship Amendment Act). According to the data released by Lucknow DGP Headquarters, the Uttar Pradesh police have registered 337 FIRs across the state. Action has been taken against more than 19409 social media posts so far for spreading falsehood with an intention of inciting violence in the

²¹ Aharon Barak. 'Freedom of expression and limitations' (1990) No. 8 Keshet
<http://www.jstor.org/stable/23902900> accessed on 22 June 2021

²² [archive.indianexpress.com/news/two-girls-arrested-for-facebook-post-questioning-bal-thackeray's death](https://archive.indianexpress.com/news/two-girls-arrested-for-facebook-post-questioning-bal-thackeray's-death)

²³ Man Arrested in UP for Facebook Appeal to 'Hoist Palestinian Flag' (thequint.com) accessed on 10 August 2021

country. The administration identified and blocked more than 9372 Twitter, 9856 Facebook, and 181 YouTube profiles claiming to be spreading incendiary content. According to data released the Uttar Pradesh Police have already arrested 124 people for posting inciting content on social media.²⁴ Such examples become pertinent for the present study because the right to freedom of speech and expression is granted to all the citizens and criticizing any government enacted Act is a part of such right. To promote democratic way of life, it is essential that people should have the freedom to express their views openly and without fear. Threatening citizens for expressing their views or penalizing them is bad practice and the State shall refrain from doing so.

Peaceful protest against any law does not amount to offence. Moreover, people have right not to accept anything or oppose it. In Bihar, Sharjeel Imam, Indian Muslim rights activist was arrested & charged with sedition for inflammatory speech against CAA and NRC in Aligarh University in January 2020.²⁵ Again, another girl name Disha Ravi was arrested for supporting the farmer's protest.²⁶ The case is studied in details in later chapter.

Kovan, a singer, was arrested for sedition in 2015 for uploading defamatory electronic content against the former Tamil Nadu chief minister J Jayalalithaa. He was granted bail later.²⁷

Cyberspace is used to connect and converse with people they meet online, to exchange photographs, to see what other people are doing, as a kind of amusement, and to obtain information.²⁸ But sometimes apart from fun individuals also write and express their views on serious issues such as development, corruption, harassment issues (defamation, abusive messages or calls and threats) and so on. So, it can be said that we have the right of freedom of speech and expression and cyberspace acts as a platform of exercising this right. But this platform is taken not seriously sometimes or misused. As cited above many people have faced problems while expressing their views in the cyber platform.

²⁴ 124 people arrested by Uttar Pradesh Police for posting content inciting violence during anti-CAA riots (opindia.com) accessed on 10 August 2021

²⁵ Sharjeel Imam charge sheeted in seditious speech case - The Economic Times (indiatimes.com)

²⁶ Sedition in India: Case of Disha Ravi and many others over the decades | India News (timesnownews.com)

²⁷ Ibid

²⁸ Ammar Oozeer, 'Internet and Social Networks: Freedom of Expression in the Digital Age' (2014) 40 *Commw L Bull* 341

1.2 Statement of Problem

Right to freedom is one of the most important fundamental rights provided under Part III of Constitution of India. It is because of this right that makes democracy purposeful. We also have international human rights instrument such as UDHR and ICCPR which states about right to freedom of expression. However, it is seen that despite having the right to express views and expression the scenario is not always favourable and at times quite opposite. There are examples of individuals who have faced charges of harsh offences like sedition, national security charges due to expression of views in public. Now when we are entering into a digital age, social media platforms or we can say the cyberspace is the platform to which a common man will resort to express his or her views. However, it is often seen that there are lot of restrictions placed on an individual in the garb of national security or threat to law and order. It is essential to note here that cyberspace do provide a platform from where an individual sitting in the comfort of his or her house can gather the support of masses or can influence thousands of people with just a click. Thus, it would not be wrong to say that misuse of right to freedom of speech and expression in cyberspace can lead to a chaos or create disturbance in the society. There is a very thin line between exercising the right and abusing the right. We have already witnessed number of cases of right to freedom of speech and expression in cyberspace wherein even the Courts found it difficult to strike a balance between the right and the restriction. In view of this, the present study is titled as **“A Critical Analysis of Freedom of Speech and Expression with Respect to Cyberspace in India”**.

1.3 Literature Review

- 1) The article **Contradictions in freedom of speech and expression**²⁹ by **V. Govinda** is based on freedom of speech and expression in India. The researcher tries to depict a brief idea of purpose, scope, need and limitations of freedom of speech and expression in the nation. The prime objective of the paper is to analyze the freedom of speech and expression in public, press and other related platform such as television (cinema and serials). Certain issues due to press and movies in the state of Andhra Pradesh are

²⁹ V.Govindhu, 'Contradictions in freedom of speech and expression (2011) Vol. 72 no. 3 pp641-650 Indian political Science Association <http://www.jstor.org/stable/41858840> last accessed on 8 June 2021

enumerated here. The stand of judiciary is also clearly visible in the article. With a view that freedom of speech and expression should flourish but within the limitations under Article 19(2) thus maintaining a balance it is concluded.³⁰

- 2) The article named **Television and freedom of speech and expression**³¹ by **P.M Bakshi** gives a wider view of Article 19(1)(a) of the Indian Constitution as most of the articles are related to fundamental rights. And fundamental rights play a vital role in a democratic nation as we know that democracy is a government of the people, for the people, by the people. Every citizen has the right to enjoy rights guaranteed to them. The researcher states that whenever there arises any constitutional question the matter is to be viewed with a broad perspective and take into consideration certain approach which are not mentioned in the constitution specially if it a matter of fundamental rights. A case related to an advocate whose interview was edited and shown partially in a Door-darshan channel stating lack of time and the later part to be a debatable issue as an excuse is the central theme of the paper. It is understood from the decision of the high court that freedom of speech and expression include press and other media as well. This right cannot be curtailed for any reasons except it falls under reasonable restrictions that is by law.³²
- 3) The article named **Life in the cloud and freedom of speech**³³ by the author **John Harris** is about freedom of speech. In this paper the author makes a comparison of freedom of speech and expression with the clouds. The paper is primarily about the personal and public responsibilities of ethics and of ethicists in speaking, writing or commenting in a public platform about matters which are ethically, socially and politically significant. The research states that it is much needed to be aware of what we speak or express as we don't have much knowledge who will have access to our words and in what circumstances. The difference between thought, speech and action is being highlighted in the paper. The author draws a balance between the affirmative and negative consequence of free speech and the cloud stating the benefits and problems which may arise.³⁴

³⁰ Ibidat 29

³¹ P M Bakshi, 'Television and freedom of speech and expression' (1989) Vol. 31 no. 3 pp 408-411 Indian Law Institute <http://www.jstor.org/stable/43951252> accessed on 8 June 2021

³² Ibid

³³ John Harris, 'Life in the cloud and freedom of speech' (2013) Vol. 39 no 5 pp 307-311 BMJ <http://www.jstor.org/stable/43282714> accessed on 8 June 2021

³⁴ Ibid

- 4) The article named **Stifling Freedom of Expression and Opinion**³⁵ by the **South Asian Human Rights Documentation Centre (SAHRDC)** is on the circular released by the Ministry of Home Affairs warning the persons and NGOs not support or help the Maoist/Naxalists. The researcher came across that the soft corner amongst some people towards the Maoist/Naxalists which can put them in danger resulting them to be accused of certain serious offences under section 39 of the Unlawful Activities Prevention Act, 1967. Though there are various provisions for fundamental rights, freedom of speech, rights on humanitarian grounds under Article 19(1)(a) of the Indian Constitution, Article 19(2) of the International Covenant on Civil and Political Rights, Article 19 of Universal Declaration of Human Rights still while exercising them there shouldn't be any violation of law in the name of Democracy.³⁶

- 5) The article **Free Speech and Religion**³⁷ by **A.G. Noorani** is on the discussion of the resolution on defamation of religion that was adopted by the United Nations Human Rights Council. The researcher emphasizes on the conflicts arising due to freedom of speech and religion taking advantage of the democracy and opines that it is not justified to disgrace or discriminate any religion in the name of free speech. Riots and disturbance in the society shouldn't amount due to free speech neither should be favored.³⁸

- 6) The article **Films and free speech**³⁹ by **A.G. Noorani** is about certain cases which arouse as a result of some movies which were based on certain social circumstances. The conditions such a discrimination on caste, religion or dominion by the upper caste which prevailed for a long time. The visualization of those discriminations may not portray a good image of the nation but is a bitter truth. The protestors alleged that such movies may hurt the sentiments of the people and thus should be banned. The author states that law doesn't permit ban on films which would hurt feelings or emotions of worshippers of

³⁵ SAHRDC, 'Stifling Freedom of expression and opinion' (2010) Vol. 45 No.32 pp.19-22 Economic and Political Weekly <http://www.jstor.org/stable/20764381> accessed on 8 June, 2021

³⁶ Ibid

³⁷ A.G. Noorani, 'Free speech and religion' (2009) Vol. 44 No.3 pp. 17-19 Economic and political weekly <http://www.jstor.org/stable/40279078> accessed on 8 June 2021

³⁸ Ibid

³⁹ A.G. Noorani, 'Films and free speech' (2008) Vol.43 No 18 Economic and political weekly <http://www.jstor.org/stable/40277656> accessed on 8 June 2021

historical figures or political leaders. Though the Supreme Court's rulings haven't been consistent.⁴⁰

- 7) The article **Social Media and Online Speech: How Should Countries Regulate Tech Giants?**⁴¹ by the author **Anshu Siripurapu and William Merrow** is about the role of social media is increasing daily. It discusses about certain instances of violence which are largely circulated by various social media platforms and also about the religious and ethnic violence against Muslims in India and Rohingyas of Myanmar. Social media platforms have also created a lot of disturbance by spreading contents or posts containing violence and assault about the covid19 pandemic situation, sexually explicit post, hate speech post and so on. However various steps are taken to reduce such activities, ban political ads, limit disinformation including by fact-checking posts, labelling the accounts of state-run media. The article discusses about the operation of internet in various countries and controversies of politicians or public figures giving special treatment or sometimes being banned when soever needed. Lastly the concludes is being drawn saying there is much need of strong rules to check and balance of internet and avoid the negative aspects.⁴²
- 8) The article **Intermediary liability in India**⁴³ by **Pritika Rai Advani** discusses how in its attempt to regulate content on the internet the Indian state is increasingly making demands on intermediaries to monitor and screen. While doing so it will lead to private, invisible censorship, thereby severely endangering the exercise of our right to freedom of speech and expression. Like most jurisdictions recognizing the role of intermediaries in providing platforms of free speech, India has incorporated a safe harbor provision in order to limit their liability. However, the legislative ambiguities, coupled with the onerous obligations imposed on intermediaries, threaten to defeat the purpose of providing safe harbor protection. The researcher also discusses about the need of a definite stand by the judiciary

⁴⁰ Ibid at 39

⁴¹ Anshu Siripurapu and William Marrow, 'Social Media and Online Speech: How should Countries Regulate Tech Giants?' (2021) Council on Foreign Relations <http://www.jstor.org/stable/resrep31160> accessed on 8 June 2021

⁴² Ibid

⁴³ Pritika Rai Advani, 'Intermediary Liability in India' (2013) Vol. 48 No pp.120-128 Economic and Political Weekly <http://www.jstor.org/stable/24479053> accessed on 8 June 2021

and legislature towards intermediary liability in India without hampering the right of freedom of speech and expression.⁴⁴

- 9) **People You Might Know: Social Media in the Conflict Between Law and Democracy**⁴⁵ is a chapter by **Stephen Tully** from the book *Law and Democracy*. The author in this chapter brings in focus two broad perspectives with respect to social media as a mode of communication within the modern society. Firstly, the author describes the easy accessibility and high demand of social media in the society. Social media is used as an important tool to express views in a democracy nowadays and has also increased the risk and dangers in active political participation. The chapter describes how to use social media and what are the measures to take to ensure one's own safety in the digital platform. Part II illustrates the solutions arising out of use of social media and to draw a balance between the law and democracy with respect to freedom of expression as a reference to Human Right. The author concludes saying that there should be a legitimate use of social media and government should take measures to ensure them. Right to speech and expression is important in democracy and thus must be guaranteed however maintaining proper law and order. Citizens must not abuse law in the name of democracy.⁴⁶
- 10) The article **Social Media and Freedom of Speech and Expression: Challenges before the Indian law**⁴⁷ by **Shishir Tiwari and Gitanjali Ghosh** is about the fundamental right of freedom of speech and expression in the social media. The article states the importance of freedom of speech and expression in India. And, also the rising importance of freedom of speech and expression in the social media platform or internet. Social media is an easily accessible and new platform where various persons put forward their views and opinions on different topics. The researchers have also discussed about the cyber laws of India and social media. And considers social media to be a powerful mode of freedom of speech and expression.⁴⁸

⁴⁴ Ibid at 43

⁴⁵ Stephen Tully, 'People You might know: Social Media in the Conflict Between Law and Democracy' *Law and Democracy-Contemporary Questions* ANU Press <http://www.jstor.com/stable/j.ctt.13wwvp7-12> accessed on 8 June 2021

⁴⁶ Ibid

⁴⁷ Shishir Tiwari and Gitanjali Ghosh, 'Social media and Freedom of speech and expression: challenges before the Indian Law' (2018) *Research gate* <http://www.researchgate.net/publication/328476554> accessed on 28 June 2021

⁴⁸ Ibid

- 11) The article **The internet: equalizer of freedom of speech? A discussion of freedom of speech and expression on the internet in the United States and India**⁴⁹ by **Farzad Damania** discusses freedom of speech on the internet of countries the United States of America and India. First part of this article gives a brief background of the internet and the Constitutional issues arising out of its use. Second part summarizes the respective obscenity standard in the United States of America and India while debating whether this list can be applied to the Internet. Though there are similarities in the Constitutional provisions but both the United States and India have their own unique jurisprudence on freedom of speech. The difference lies in the fact that what is acceptable and what is not acceptable as freedom of speech. Lastly the article concludes that conventional free speech jurisprudence enunciated by the courts in the United States and India, cannot be sustained with the internet.⁵⁰
- 12) **Internet and social networks: freedom of expression in the digital age**⁵¹ by **Ammar Oozeer**. The purpose of this paper is to examine the right of freedom of expression in the digital age at social media platforms. The concept of freedom of speech is also discussed in the paper highlighting its importance. The question of breach of privacy via an online social network is also examined in one of the chapters. Freedom of speech in social media platforms should also be treated equally as any other medium. And, also the online abuse on any social media platform should be punished with the same punishment as it is in case of direct abuse. Freedom of expression is also subjected to restrictions. Defamation is not acceptable in the name of freedom of expression. The opportunities of freedom of speech arising out of digital revolution is also discussed here. The researcher concludes that freedom of expression is a fundamental right and all people should not lie any fear of being disconnected in the minds of the people.⁵²

⁴⁹ Farzad Damania, 'The internet: equalizer of freedom of speech? A discussion on freedom of speech and expression on the internet in the United States and India' accessed on 7 August 2021

⁵⁰ Ibid

⁵¹ Ammar Oozeer, 'Internet and Social Networks: Freedom of Expression in the Digital Age' (2014) 40 CommwL Bull 341 <http://HeinOnline.in> accessed on 9 August 2021

⁵² Ibid

13) **An Overview of Political Communication under the Freedom of Speech and Expression**⁵³ by **Anil Kumar Thakur** and **Krishnan kanha**. The purpose of this paper is to analyze the legal political situation in this regard with special reference to communal politics, hate speeches, paid media/ news and unfulfilled manifestos. The researcher in this paper states about freedom of speech and expression of every individual and the restrictions on freedom of speech and expression is equal for all in India including the politicians. The researcher highlights the areas where freedom of speech and expression amounts to the grounds of restrictions. The political scenario during elections is being mentioned here. The researcher concludes with the view that instead of empowering Election Commission through statutory laws, it should be empowered through Constitutional Amendments by amending the chapter relating to elections and subsequently adding a schedule in the Constitution laying down the powers. Again, the researcher says about giving robust powers to the Election Commission without the interference of the legislature and executive body. Election commission should be active the whole time and not only during the elections.⁵⁴

The researcher has made a literature review based on various articles and papers published by different researchers. The literature review contains different articles on freedom of speech and expression and its importance, freedom of religion etc. There are articles which states about challenges in maintaining balance between social media and the laws. But the researcher feels the importance of freedom of speech an expression in cyberspace and the strict actions taken against citizens is left out and not studied in details. So, the researcher decides to make a detailed study showing the significance of freedom of speech and expression in cyberspace. And it should not be oppressed without any justification.

1.4 Aim of the Research

The researcher in this dissertation focuses on certain obstacles faced by citizens while exercising freedom of speech and expression in the cyberspace. It is seen that people were subjected to negative response by the government as result of expressing their views in the cyber world. So, the researcher aims to research and identify the extent to which freedom of

⁵³ Anil Kumar Thakur and Krishan Kanha, 'An Overview of Political Communication under the Freedom of Speech and Expression' (2020) 10 GNLU JL Dev & Pol 16 <http://heinonline.in> accessed on 8 August 2021

⁵⁴ Ibid

speech and expression in cyberspace is accepted and reasonable. And, also to study whether the circumstances on which these rights are curtailed in cyberspace are justifiable.

1.5 Objective of the Research

The research objectives of the research are as follows:

1. To study the jurisprudential aspect of freedom of speech and expression.
2. To study the meaning, importance and content of freedom of speech and expression under the Constitutional Law and International Human Rights laws through judicial interpretations.
3. To study the effect of the existing laws in India on Freedom of speech and expression with respect to the cyberspace.
4. To understand the freedom of speech and expression in cyberspace and its justifiable limits.

1.6 Scope and Limitations of the Research

The scope of the dissertation is to study the freedom of speech and expression in the context of cyberspace and the recent developments in India. The research is limited to books by various authors, e-journals, e-articles and e-books only due to the covid19 pandemic situation as there is lack of availability of sources and research is confined to e-materials and case study.

1.7 Research Questions

The research questions of the research are as follows:

1. What is the jurisprudential aspect of right to freedom and expression?
2. How has the Freedom of speech and expression under the Constitution of India and relevant international laws been recognized and interpreted by the judiciary?
3. What is the status of freedom of speech and expression under various laws in India?
4. What is the scope and limitation of freedom of speech and expression?

1.8 Research Methodology

The researcher has adopted the doctrinal research methodology and case laws study. The researcher has also taken certain primary and secondary sources of data in order to for a sound and logical observation. The researcher has taken the help of certain books, articles and journals by competent authorities to derive the required suggestions and conclusions. The researcher has opted for (OSCOLA) Oxford University Standard for the Citation of Legal Authorities citing references wherever necessary.

1.9 Research Design

CHAPTER I –Introduction:

Chapter I of the dissertation is about introduction, statement of problem, literature review, research objectives and questions, research methodology etc. The research background is being discussed in this chapter with suitable cases. This chapter gives a gist of what problem or drawbacks the researcher has found. The research objectives and research questions are prepared for smooth running of the research.

CHAPTER II- Freedom of speech and expression in India:

Chapter II is an introduction of freedom of speech and expression and its need in a democracy. The importance and need of freedom of speech and expression is discussed here. A glimpse of philosophical views by various renowned philosophers and jurist can also be seen in the chapter. The theological aspects of freedom of speech and expression is described here. This chapter also makes a legal analysis of freedom of speech and expression with certain cases.

CHAPTER III- Freedom of speech- Constitution of India and it's limitations, judicial interpretational human rights laws:

Chapter III deals with the Constitutional provisions, international laws and other laws which are related to freedom of speech and expression in India. The chapter discusses grounds of the limitations of freedom of speech and expression. The chapter also mentions some cases arising due to free speech. The chapter discuss the role of judiciary in context to freedom of speech and expression in India.

CHAPTER IV- Cyberspace and freedom of speech and expression:

Chapter IV deals with freedom and expression in cyberspace. Cyberspace is becoming a new media of expressing views and opinion. The chapter also puts emphasis at the development of technology with the change in time. The importance of cyberspace while exercising freedom of speech and expression is described in this chapter. There is no separate provision for freedom of speech and expression in cyberspace in the Constitution of India. But the general freedom mentioned in Article 19(1)(a) of the Constitution of India is applicable to cyberspace too. Many persons were arrested exercising freedom of speech and expression in cyberspace. A detailed study is done in this chapter about those cases critically analyzing it.

CHAPTER V- Complexities of freedom of speech and expression in cyberspace:

Chapter V deals with the various impacts such as sedition laws and national security laws in exercising freedom of speech and expression. It also puts an emphasis on the use of technology in the era as a tool of freedom of speech and expression and also critically analyze it. This chapter also contains certain cases related to freedom of speech and expression.

CHAPTER VI- Conclusion and suggestions:

Chapter VI is the last chapter of the dissertation. This chapter is about what the researcher has derived as findings from the research and formulated suitable suggestions based on it. Lastly, the researcher arrives at the conclusions derived from the entire research work.

CHAPTER II

AN OVERVIEW OF FREEDOM OF SPEECH AND EXPRESSION

2.1 Definition

*“Black’s Law dictionary defines the phrase Freedom of Expression as the freedom of speech, press, assembly, or religion as guaranteed by the First Amendment: the prohibition of government interference with those freedom. Black’s law Dictionary defines it only for the American point of view”.*⁵⁵

*“Oxford Advanced learner’s Dictionary defines freedom as freedom means the right to do or say what you want without anyone stopping you”.*⁵⁶

*“Justice Hidayatullah defines freedom of speech and expression as freedom of speech and expression is that cherished right on which our democracy rests and is meant for the expression of free opinions to change political or social conditions or for the advancement of human knowledge”.*⁵⁷

2.2 Meaning

Freedom of speech is a fundamental right of every individual or a community to articulate their opinions and ideas without any fear of retaliation, censorship, or legal sanction. The term freedom of expression is usually used synonymously but in legal sense it includes any activity of seeking, receiving, and imparting information or ideas, regardless of the medium used.⁵⁸ Freedom of speech is understood to be a fundamental feature in a democratic nation. Freedom of speech is among the most cherished constitutional rights in liberal democracies. It is entrenched in most contemporary constitutions and in international human rights treaties also. Freedom of speech and expression is often classified as a first generation right– a right protecting individuals from interference by the State. It is understood to be foundational to liberal polities either in the sense that it is a precondition to the existence of a liberal polity and that it is tightly related to liberal values such as autonomy, dignity and liberty.⁵⁹ To realize this liberty, the Constitutions provide those who hold it with additional rights derived from it.

⁵⁵ Bryan A. Garner (Ed), Black’s Law Dictionary, 7th Ed., West Group

⁵⁶ Sally Wehmeier (Ed), Oxford Advanced learner’s Dictionary, p 618 Oxford University Press, 7th ed 2005

⁵⁷ Mamta Rao, Constitutional Law, p.170, Eastern Book Company, 1st Ed. 2013

⁵⁸ Fee, James V. “Books reviews” Today’s speech.21 (1): 45-48. January 1973, 10.1080/01463377309369084 accessed on 8 June,2021

⁵⁹ Alon Harel, ‘Freedom of Speech’ (2011) companion to philosophy of law <http://ssrn.com/abstract=1931709> accessed on 8 June 2021

Among these are the right to receive information and the right to respond to information. The right to demonstrate and the right of assembly are derived from freedom of expression. The right to read and write books and newspapers, as well as to see and write plays and films, are also included in it. So is the right not to make something heard, that is, the right to be silent. Indeed, freedom of expression is not a single right. It is a constellation of rights clubbed together. At the centre of this constellation is the freedom to make oneself heard and to hear and surrounding this are the other rights that aim to realize and protect this freedom of speech and expression.⁶⁰ Freedom of expression and the rights derived from it form a comprehensive and intricate system of interlocking arrangements that sustain one another and, when put in practice, consolidate the tradition of freedom of expression in a legal system. It seems that freedom of expression does not have a single justification, but many different justifications from different perspectives. In this lies a great blessing. Freedom of expression comprises a complex system of intertwined liberties and rights and this complex system cannot be covered by a single explanation and brought under one definition. Various arguments reflecting its different aspects are needed to justify freedom of expression. Only in this the full scope of this freedom can be expressed.⁶¹ The vindication of freedom of expression is complex and has many layers indeed. There is the freedom of the individual to realize himself, to form a worldview and an opinion by giving flight to his spirit, create and receptive, which breaks out of the individual's heart, spreads its wings and sets thoughts free. It is a person's and a community's freedom to light the truth through a free and never-ending battle between what is true and false.⁶² It is the freedom of society's members to exchange opinions and views in a spirit of tolerance, without fear, with respect for the autonomy of every individual, and to persuade one another in order to strengthen, secure and develop the democratic regime. Some of these justifications are utilitarian while the others are not. Some focus on the individual and his happiness, others focus on the community and the defence of its values.⁶³

Freedom of Speech and Expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's ideas through any communicable medium or visible

⁶⁰ Aharon Barak, 'Freedom of expression and limitation' (1990) No.08 Keshet
<http://www.jstor.org/stable/23902900> accessed on 22 June 2021

⁶¹ Ibid

⁶² Ibid

⁶³ A.G. Noorani, 'Free speech and religion' (2009) Vol.44 No.3 pp 17-19 Economic and Political Weekly
<http://www.jstor.org/stable/40279078> accessed on 8 June 2021

representation, such as, gesture, signs and the like.⁶⁴ The expression connotes also publication and thus the freedom of the press is included in this category. The freedom of propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value. The freedom of speech and expression includes liberty to propagate not one's views only.⁶⁵ It also includes the right to propagate or publish the views of other people, otherwise this freedom would not include the freedom of press.⁶⁶ Freedom of expression has four broad special purposes to serve:

- (1) It helps an individual, to attain self-fulfilment;
- (2) It assists in the discovery of truth;
- (3) It strengthens the capacity of an individual in participating in decision making;
- (4) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

All members of the society should be able to form their own beliefs and communicate them freely to others.⁶⁷ The freedom and ability to say and express freely without any restriction can be said as freedom of speech and expression. Thus, we can say that Freedom of Speech and Expression is the right of a person to express his/her idea, thoughts and opinions freely through words, writing, pictures, printings, gestures or any other mode.⁶⁸

2.3 Nature and Scope

Freedom of expression is a supreme condition of mental and moral advancement according to historian J.B. Bury in his book *A History of Freedom of Thought*.⁶⁹ It is absolutely necessary for the preservation of a free society in which government is based on the consent of an informed public and is dedicated to the protection of the rights of all, including the most marginalised minorities, according to the Supreme Court of the United States in the case *Speiser vs. Randall*⁷⁰. As a result, everyone, regardless of social class, has access to the aforementioned freedom. In yet another case, *Stromberg vs. California* it was held that the maintenance of the opportunity for free political discussion to the end that government may be

⁶⁴ Dr. J.N. Pandey, *Constitutional law of India*, (Central law agency, 54th edition, 2017)

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Anupam Kumar Gupta, 'Changing dimensions of freedom of speech and expression under the Constitution of India' (Ph.d thesis, M G Kashi Vidyapith, 2013)

⁶⁹ J.B. Bury, *A history of freedom of thought*, (Charles rivers editors, ISBN: 9781537814322)

⁷⁰ (1958) 357 US 513

responsive to the will of the people and that changes may be obtained by lawful means is a fundamental principle of the constitutional system.⁷¹ Even in India, the Supreme Court has underlined the importance of free speech in its rulings. The Supreme Court ruled in *Union of India vs. Motion Picture Association*⁷² that free expression is the bedrock of a democratic society. The core ideals of a free society include a free interchange of ideas, unrestricted distribution of information, spread of knowledge, airing of diverse viewpoints, debating and creating one's own views and expressing them. This freedom alone allows people to properly establish their own thoughts and opinions and to exercise their social, economic, and political rights in a free society in an informed manner.⁷³ It was held in *S. Rangarajan vs. P.Jagjivan Ram*⁷⁴ that democracy is government by the people through free debate. The democratic form of government inherently necessitates people active and informed engagement in community issues. Democracy cannot function or thrive unless people are willing to voice their opinions.⁷⁵ Freedom of expression is one of the pillars of individual liberty, and it has always been protected by the Constitution. Thus, even in India, the Supreme Court have tacitly protected an individual's right to freedom of speech and expression. Without putting his ideas, thoughts, and expressions in front of others, no one can express himself. Only a lively interchange of talks, political viewpoints, and debates can ensure that everyone in the country has access to freedom of speech and expression. The failure of a state or authority to guarantee such freedom may lead to the breakdown of democracy as a whole.⁷⁶ The objective of free speech stems from the generally held belief that man's proper end is to realise his character and potential as a human being. The formation of ideas, mental research, and the affirmation itself all require free speech. We have been given a mechanism in the form of free speech that aids in the establishment and maintenance of a reasonable balance between stability and societal change. That is to say, what has been accomplished must be preserved, and what remains to be accomplished must be made known to all through free expression. As a result, all members of society should be able to form their own opinions and freely share them with others.⁷⁷

Individual freedom of speech and expression allows a person to control himself rather than being governed by the whims of others. Free expression is essential for the free interchange of

⁷¹ (1931) 283 US 359

⁷² 1999 (3) SCR 875

⁷³ *Supra* note at 63

⁷⁴ 1989 (2) SCC 574

⁷⁵ *Ibid at 73*

⁷⁶ *Ibid*

⁷⁷ *Ibid*

ideas that are required for self-governance.⁷⁸ The nation's citizens, who are the democracy's rulers, must have the right to choose any concept that may be useful in developing public policy. There are several more components in the self-governance explanation that are sometimes thought to be independent justifications for free expression. To begin with, free expression aids in the prevention of vested interests in government. To begin with, free expression aids in the prevention of vested interests in government. Because democracy assumes that governments change after their terms end, power will continue to shift hands from time to time. If this process comes to an end, democracy will come to an end as well.⁷⁹ Political stability is also easier to achieve with the support of free expression. As a result, if politicians who lost elections have a fair chance to be heard, they will not resort to violence. Free speech also helps to control the abuse of power by public officials by providing citizens with the information they need to wield their veto power when public officials' decisions exceed set limits. Self-governance becomes considerably more practicable and successful as a result of freedom of speech and expression.⁸⁰ The virtues of tolerance and self-control are also cultivated in people who practise free expression. Free expression, according to Justice Holmes, does not entail free thought for those who agree with us, but rather freedom for the ideas we despise. These virtues are unavoidable in an increasingly culturally diverse society for the preservation and maintenance of societal standards. As a result, this goal is also tied to self-governance.⁸¹ Only uncompromising commitment to freedom of speech and expression across the country can achieve these goals. Given the importance of freedom of speech and expression in a society for its citizens, as well as the consequences of abolishing it, it has been particularly acknowledged in a number of international instruments, conventions, and treaties.⁸²

In terms of freedom of speech and expression, the Indian Constitution differs from the American Constitution. The US Constitution specifically mentions freedom of press. The first amendment to the constitution of the USA has expressly recognised the freedom of press. But in India, press freedom is predicated on court rulings, i.e., it is implied freedom under Article 19(1) (a). In contrast, the Indian Constitution, like the US Constitution, mentions limits on

⁷⁸ Massey, *Massey on American Constitutional Law*, (Aspen Publication, 2nd Ed., 2005)

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

⁸² Supra note at 63

freedom of speech and expression under Art. 19(2). In the United States, the courts must set out the limitations from case to case.⁸³

Only citizens have access to the rights outlined in Article 19(1). As a result, the determination of citizenship, which is discussed in Part II of the Indian Constitution is a precondition for the availability of rights in this Article. Because a person who is not an Indian citizen, an alien or foreigner has no rights under this article.⁸⁴ Article 19 states that juristic persons, such as corporations, are not citizens. Only natural individuals who have the legal status of citizen are considered citizens in this article. As a result, for the purposes of this Article, registered companies and societies are not considered citizens.⁸⁵ In *Rustom Cavasjee Cooper v. Union of India*,⁸⁶ where the petitioner was a shareholder, a director and holder of deposit of current accounts in the bank, questions arose as he could challenge the nationalization of the bank, which was a company. The Court held that the action of the state “may impair the rights of the company alone and not of the shareholders; it may impair the rights of the shareholder and not of the company”. Jurisdiction of the court to grant a relief cannot be denied, when by State action the right of the individual shareholders are impaired, if that action impaired the rights of the company as well as, approving this position the apex court in *Benett Coleman and Co. v. Union of India*,⁸⁷ said that the fundamental rights of citizens are not lost when they associated to form a company. The fact that the companies are the petitioners does not prevent this court from giving relief to the shareholders ... who have asked for the protection of their fundamental rights by reason of the effect of the law and of the action upon their rights.⁸⁸

From these cases it is clear that citizens do not lose their rights under Article 19(1) (a) merely because they have formed a company and the State action affecting their rights refers to the company and not to citizens as individuals. In the applications of the rights, however, the nature of the right should be relevant. Right to trade or business cannot claim the same consideration as the right to freedom of speech and expression.⁸⁹ In the age of liberalisation and globalisation, the question may emerge at some time in the future as to whether Indian people might claim Article 19(1) rights on behalf of international businesses by becoming shareholders in such

⁸³ Sheetal Gupta, ‘Freedom of speech and expression in India a study on contemporary challenges’ (chapter 2, PhD thesis) <http://hdl.handle.net/10603/221780> accessed on 10 August 2021

⁸⁴ *Anwar v. State of J&K*, (1971) 3 SCC 104: AIR 1971 SC 337

⁸⁵ *Supra* note 60

⁸⁶ 1970 1 SCC 248: AIR 170 SC 564

⁸⁷ 1972 2 SCC 788, 806: AIR 1973 SC 106

⁸⁸ *Supra* note 60

⁸⁹ *Ibid*

corporations. In such situation, the courts may have to lift the corporate veil in order to determine whether the real people behind the business are Indian citizens with significant enough interests to claim Article 19(1) relevant right.⁹⁰ This is how we draw an idea of nature and scope of freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. We can conclude that the fundamental rights guaranteed under the Constitution of India are only for the citizens and not for others. As, we have witnessed in the above cases that firms and artificial persons does not come under this. So, we can say that freedom of speech and expression is for natural persons only. This is how we get an idea about the nature and scope of freedom of speech and expression.

2.4 Philosophical Aspect

Throughout history, the central condition of progress has always been in liberty intellectually. Different philosophers and jurist have different views and ideas. Some of them are discussed here. Philosophers such as Milton, Spinoza, and Locke have played a very prominent role in shaping the progress of intellectual reasoning. They explained that the relevance of testing the best-warranted beliefs by constructive criticism to check their continuing validity. This has reaffirmed the belief that reliance upon authority can be considered as a weak test of truth. These philosophers had fought for the abolishment of seditious libel prioritizing freedom of speech and press. The argument posited in the past by philosophers such as Milton, Spinoza, and Locke still hold in today's time.⁹¹ Below are views on freedom and liberty by some eminent jurists.

2.4.1 Spinoza:

Spinoza was a pioneer in advocating freedom of expression. Spinoza argued the importance of freedom of expression as a natural right that makes a man master of his own thoughts. In 1670, his book named *Tactatus Theologico - Politicus* or *Theologico-Political Treatise* made a balancing analysis of freedom of thought and speech. Spinoza opined that in a free state every man has the right to think freely and express freely. One cannot abdicate from one's liberty of judgment. Spinoza concluded that dissenting opinions were inevitable and no individual should be compelled to accept the opinion of the sovereign as absolute.⁹² This would have a disastrous

⁹⁰ Ibid

⁹¹ Sharique Ahmed Khan, 'A study on sedition in the light of freedom of speech and expression guaranteed by the Constitution of India' (Ph.D, chapter 2, page 30, Bankura University 2021)

⁹² Roger Herst, 'Spinoza on Freedom of Speech', *European Judaism: A Journal for the New Europe*, Vol. 1, No. 2, 1966, pp. 40-44

result for the State as well as the individual. Spinoza balanced his argument by asserting that the social relevance of the freedom had to be weighed against the sovereign's competing claims. Further he pointed out the importance of finding out how far such freedom can be allowed without causing danger to the stability of the state or sovereignty of the rulers.⁹³ Spinoza advocated in favour of the right to speak against the state as long as there is no intention to challenge authority and that arguments are well founded and supported by reason rather than anger, malice or hatred. Opinion against any prevalent law of the sovereign can be criticized as bad as should any speculation concerning philosophy, religion, science, even though there is a chance of abuse of this right.⁹⁴ Spinoza argued that any liberal ruler must recognize the freedom of speech of subjects to build confidence in his favour. This will also enable men to live happily in harmony together with their varied and contradictory opinions. An individual cannot be punished on the basis of his opinions. If an action is capable of disrupting peace and capable of offending, it must be brought to trial but no law should prevent an individual from thinking what he likes or saying what he thinks.⁹⁵ Spinoza went further on his libertarian notions on the scope of free expression. Spinoza opined that sovereign should punish only politically injurious speech as was indistinguishable from a seditious act. Any opinion can be judged to be seditious if, by its very nature, it nullifies the compact by which the right of free action was relinquished. Instigating people against their rulers, encouraging civil disobedience, promoting the enactment of laws by illegal authority, teaching those contracts ought not be kept or that everyone is free to live without paying heeds to the laws of the land were according to Spinoza within the ambit of criminal libels. Spinoza also cautioned against punishment of if they did not lead to action. Thus, Spinoza clearly defined the boundaries of tolerance for the state and drew the line at seditious utterances.⁹⁶

2.4.2 John Milton

John Milton had a more secularist approach to the freedom of expression in comparison to the Levellers. Milton, is considered as the great advocate of the free mind. Unquestionably, several passages of the *Areopagitica*⁹⁷ (his book), such as "dream of free speech for everybody" and "Give me liberty to know, to utter, and to argue freely according to conscience, above all

⁹³ Ibidat 92

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ John Milton, '*Areopagitica*' (Cambridge University press,1918)

liberties," reflect such views.⁹⁸ However, this liberty according to Milton did not extend to "Popery, and open superstition, which according to him should be stopped as should that which was impious or evil, which no law can possibly permit. It will not be incorrect to consider Milton as the father of modern intellectual liberty, His arguments were well founded and based on the assertion that it was incorrect to claim freedom of thought in the name of a belief. Some might argue against the notion of Milton's libertarianism contending that he failed to support freedom of religious debate for Catholics, Anglicans, Atheists or non-Christians.⁹⁹ Although Milton argued in favour of fair licensing system under which royal circulation should also face censorship, he did not oppose the licensing system unequivocally. His critics argue that despite Milton's strong despite his affirmation that free and humane government results only from a free press and freedom of opinion, he did not advocate interest on issues relating to freedom of the press at the time of the *Areopagitica*. Some argue that Milton wanted to limit his role to intellectual and scholarly work.¹⁰⁰

2.4.3 John Locke

John Locke made an elaborate analysis of the formation and nature of opinion. However, this could do nothing more than endorsing the principle of toleration for diversity of opinion. He addressed himself mainly to freedom for sectarian rather than secular expression thereby making his claim of writing in favour of absolute liberty becoming unjustifiable. He was of the opinion that Catholics churches could express its opinion on Mass and of Jews on the New Testament, even if it were not true as the laws aimed for the safety of the Commonwealth and its individuals.¹⁰¹ On the same line he felt that any opinions against human society or moral rules essential for the preservation of civil society should to be under the law. John Locke advocated that the intolerant should not be tolerated; He proposed punishment for those who do not own and teach the duty of tolerating all men in matters of mere religion. When Locke framed the Fundamental Constitutions of Carolina, he outlawed reproachful or abusive language of any religion as a disturbance of the peace. Further he suggested prosecution of that church which taught that faith is not to be kept with heretics. He cautioned that the right ended

⁹⁸ C.L.Ten, MILL'S DEFENCE OF LIBERTY, in John Gray & G. W. Smith, (ed.) J.S. MILL ON LIBERTY in focus (Routledge, London-New York, 1991-Taylor & Francis e-Library, 2003), p. 213

⁹⁹ William Walker, 'Milton's Dualistic Theory of Religious Toleration in *A Treatise of Civil Power, Of Christian Doctrine, and Paradise Lost*', *Modern Philology*, Vol. 99, No. 2, Nov., 2001, pp. 201-230

¹⁰⁰ William Haller, 'Before *Areopagitica*', *PMLA*, Vol. 42, No. 4, Dec., 1927, pp. 875- 900

¹⁰¹ John Locke, *An Essay concerning human understanding*, available at <ftp://ftp.dca.fee.unicamp.br/pub/docs/ia005/humanund>.

at the point when it prejudices or violates the rights of others or endangers the stability of the state.¹⁰²

2.4.4 Immanuel Kant

Immanuel Kant an eminent philosopher of the 18th century expressed the belief that everyone is equal, reasonable and independent and must be allowed to determine what to believe, and in formulating reasons for actions. In order to exercise their self-sufficiency and make choices, individuals' decisions must be fully informed. In this connection the free exchange of ideas is necessary.¹⁰³ The State should refrain from encroaching on individual choice by restraining access to other's views. Kant's theories were based on the principle of supremacy of individuals. This school of thought believes that free speech is important because it helps to constitute a just political society. These libertarian principles of free speech are however not consequence free. If the principle of the libertarians is to be adopted, then even hate speech would be permitted.¹⁰⁴ The arguments by the libertarians that the legislators cannot be allowed to decide with their own prejudices. The difficulty with this argument, is that state interference is often necessary owing to the given circumstances. Therefore, one can assume from this that the value of free speech is closely linked to the contribution it makes to democracy.¹⁰⁵

The term 'freedom of speech and expression' includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used. Based on John Milton's arguments, freedom of speech is understood as a multi-faceted right including not only the right to express or disseminate information and ideas but also including the right to seek, receive and impart information and ideas. The notion of freedom of speech and expression is intimately linked to the concept of democracy.¹⁰⁶ Alexander Meiklejohn, one of the proponents of this link argues that democracy means self-government by the people and for the proper functioning of which, an informed electorate is indispensable which, in turn, requires that there be no constraints on the free flow of information and ideas. Democracy will not be true to its essential ideal if those in power are able to manipulate the electorate by withholding

¹⁰² Leonard W. Levy, 'Freedom of Speech in Seventeenth-Century Thought', *The Antioch Review*, Vol. 57, No. 2, Essays: Personal & Political, Spring, 1999, pp. 165- 177

¹⁰³ Ronald Dworkin, '*Freedom's Law: The Moral Reading of the American Constitution*' (Oxford University Press, 1996) p.199

¹⁰⁴ Ronald Dworkin, '*A Matter of Principle*' (Clarendon Press, 1985) p. 337

¹⁰⁵ Ibid

¹⁰⁶ Shishir Tiwari and Gitanjali Ghosh, 'Social Media and Freedom of Speech and Expression: challenges before the Indian Law' (2018) Research gate. <http://www.researchgate.net/publication/328476554> accessed on 28 June 2021.

information and stifling criticism.¹⁰⁷ Again, Richard Moon argues that the value of freedom of speech and expression lies within social interactions. He says by communicating an individual forms relationships and associations with others-family, friends, co-workers, church congregation, and countrymen, by entering into discussion with others an individual participates in the development of knowledge and in the direction of the community.¹⁰⁸ These are some philosophical views and theories of different jurists on freedom of speech and thought highlighting its importance.

2.5 Theological Aspect

This theological research is a unique attempt to examine the current idea of fundamental human rights in light of various philosophical perspectives. This chapter seeks to critically examine the nature of freedom of speech and expression as it has been valued by Western and Indian philosophers over the last two millennia.¹⁰⁹ In the west, notably in America, the jurisprudence of freedom of expression is very new. The historic cases *Schenck v. United States* (1919) and *Abrams v. United States* (1919) set the path for the birth and growth of free speech jurisprudence in America in the early decades of the twentieth century.¹¹⁰ However, during ancient Greek (Athenian) times, similar ideals of freedom of expression existed, inspiring and influencing its creation and growth. Socrates claims that freedom of thinking entails freedom to educate. He further defended his claim by claiming that it was both a duty he owed the Gods and a benefit he bestowed on the state.¹¹¹ The term parrhesia was introduced in ancient Greek Athenian literature to describe today's freedom of expression.¹¹² Michel Foucault has elucidated the concept while promoting the idea of courageous speech. He discusses the concept of parrhesia using Athenian ancient literature. He goes on to list the fundamentals of the concept, such as honesty, truth, risk, criticism, and obligation. He understands the aspect of frankness to mean that a person exercising the right of parrhesia must speak openly about whatever is on his mind, without hiding anything. He also offers an account of his thinking in detail.¹¹³ The factor of truth indicates that free speech must be genuine, and the viewpoint conveyed must be accurate. Parrhesia, then, is connected to fortitude in the face of peril, he

¹⁰⁷ R George Wright, 'Pragmatism and Freedom of Speech' (2004) 80 ND L Rev 103

¹⁰⁸ R. Moon, 'Review: The State of Free Speech', University of Toronto Law Journal, Vol. 48, No. 1, 1998, p.125

¹⁰⁹ Maknikar Vijay Prabhakarrao, 'Freedom of Speech and Expression with Special Reference to Democracy in India A Critical Study' (chapter 2, PhD thesis) <http://hdl.handle.net/10603/259845> accessed on 10 August 2021

¹¹⁰ Ibid

¹¹¹ Ibid

¹¹² Ibid

¹¹³ Michel Foucault, *FEARLESS FREEDOM*, Joseph Pearson (ed) (SEMIOTEXT (E), Los Angeles), p. 12.

says of the aspect of danger.¹¹⁴ It needs the bravery to speak the truth notwithstanding the risk. Telling the truth, in its most severe form, is a game of life or death.¹¹⁵ According to the principle of parrhesia it could not be used by a king as he risks for nothing.¹¹⁶ Ancient Athenian State was an organized system. The element of individual freedom kept its journey in subsequent development of free speech jurisprudence. During medieval European history the struggle between the Church and the State represented by Monarchy was at its peak.¹¹⁷ The circumstances prevailed then to consider essence of freedom of speech and expression.¹¹⁸ The free speech jurisprudence developed more quickly on the eve of the Renaissance. Treaties on Government (1681), John Locke's second book, is a key source of his classical liberal beliefs. Locke elaborates on the condition of nature as regulated by the Law of Nature in this book.¹¹⁹ According to him, no one has the right to damage another's life, health, liberty, or property under the rule of nature. Because they are creatures of the same species and rank, all humans are equal under the rule of nature.¹²⁰ He goes on to say that because everyone is born equal, everyone is entitled to the same benefits of nature, and the use of the same abilities, should also be equal one to another without subordination or submission.¹²¹ As a result, he argues for the unrestricted use of these rights. These rights have surely included right to freedom of speech and expression, which helps the man to excel in different spheres of life. In spite of being endorsed with these rights by the Law of Nature the men did not have proper agency to protect and enforce them.¹²² It gave birth to society and the State. This was formed as a matter of 'Social Contract.' John Locke explains the purpose behind his notion of social contract was that all men may be restrained from invading other's rights, and from doing hurt to one another, and the law of nature be observed, which willeth the peace and preservation of all mankind.¹²³ He meant that one's exercise of rights is subject to the rights and freedoms of other fellow members of society. He is supporting a kind of act of self-regulation over the exercise of one's own right.¹²⁴ In his book *The Spirit of the Laws* (1748), Montesquieu established the concept

¹¹⁴ Ibid

¹¹⁵ Ibid

¹¹⁶ Ibid

¹¹⁷ Ibid

¹¹⁸ Ibid

¹¹⁹ Steven J. Heyman, *Free Speech and Human Dignity* (Yale University Press, New Haven & London, 2008), p.8.

¹²⁰ Ibid

¹²¹ Ibid

¹²² John Locke, *Of Government: Book 2, CHAPTER IV, Para 22, of Slavery in Economic Writings and Two Treatises of Government* (1691), Published on Natural Law, Natural Rights, and American Constitutionalism Available at (<http://www.nlnrac.org>).

¹²³ Ibid

¹²⁴ Ibid

of power separation. He thought that consolidating all political powers in one hand would lead to dictatorship, similar to what he had witnessed in his own country. The quest for assurance of freedom of speech and expression, as well as democracy, is inextricably linked to the notion of check and balance of power.¹²⁵ The historical contributions of the American legal system are credited with the creation of current free speech jurisprudence. It drew influence from a variety of Western philosophers, developed its own jurist intellectuals, and articulated freedom of speech and expression.¹²⁶

Indian philosophies also play a significance in the free speech jurisprudence. The Vedas that is the Shrutis and the non-Vedic philosophical as well as ancient Sangam Age literature is the proof of the great heritage of freedom of speech and expression in Indian history.¹²⁷ These classical literatures indirectly emphasize upon the ability to speak and express one's views. Shruti means to hear and Smriti means to memorize. Thus, we can conclude that without freedom of speech and expression in the form of rhymes, verse the philosophy of the Vedas would have not been able to be developed and communicated through the ages from generations to generations.¹²⁸ Rig Veda has acknowledged the plurality of ways in which the universal truth can be interpreted and understood. It also suggests that everybody should contribute in discovery of truth through one's wisdom and intellect which would prove to be beneficial to mankind. Thus, it provides a scope for rational enquiry which takes the human being towards fulfillment of his human rights.¹²⁹

Jainism:

Freedom of speech is witnessed in Jainism as well. For self-liberation, Mahavira, the Tirthankara, promotes the path of good behaviour, or Samyak Charitra.¹³⁰ There are five vows that make up proper behaviour. Satya (truthfulness) is one of the vows, which means to express only harmless truth. In his view of freedom of expression, he includes the principle of Ahimsa. As a result, according to Jainism's philosophy, Ahimsa and Satya are fair limits on freedom of expression.¹³¹

¹²⁵ Vincent Blasi, 'The Checking Value in First Amendment Theory', American Bar Foundation Research Journal, Vol. 2, No. 3, 1977, pp. 521-649

¹²⁶ Ibid

¹²⁷ Major B. D. Basu (Ed.), The Sacred Books of the Hindus: The Nyayasutras of Gotama, Vol. VIII (THE PANINI OFFICE, BHUVANESWARI ASRAMA, BAHADURGANJ, Allahabad, 1913), 4/2/35

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ B. R., Ambedkar, THE BUDDHA AND HIS DHAMMA (Buddha Bhoomi Pub., Nagpur, 1997), p. 125.

¹³¹ Ibid

Buddhism:

Buddha's philosophy is considered as an advocate of freedom of speech. His Right Eightfold Path emphasizes up on Samma Vacca that is righteous speech.¹³² It seems Buddha propound reasonable restrictions while one resorts to exercise his freedom of speech and expression. His right speech is nothing but a self-restraint one has to observe while exercising the freedom.¹³³

Ambedkar's perspective:

Dr. B.R Ambedkar on the other hand thinks freedom of speech and expression should not imposed any fear, favour and command.¹³⁴ While explaining the notion of liberty in the modern era, Ambedkar divided it into two categories: civil and political liberty. He goes on to say that civic liberty involves freedom of expression, which includes freedom of thought, reading, writing, and conversation.¹³⁵ He goes on to say that civic liberty is basic and indispensable, and that its importance cannot be overstated. Political liberty, as well as freedom of expression, is vital to him since it is a precondition for all moral, political, and social advancement. As a result, we can see how civil and political rights are linked to freedom of speech and expression for him.¹³⁶ The term democracy, according to Ambedkar, has a broader meaning. On November 25, 1949, in his speech to the Constituent Assembly, he viewed it as a way of life. As a result, he never intended to confine democracy to the political realm, but instead wanted it to comprise both political and social democracy.¹³⁷ This is a jurisprudential view of freedom of speech and expression by various eminent jurists. Thus, we can say that freedom of speech and expression is much needed in a society. And it everyone should be able to express themselves freely.

2.6 Significance

Freedom of speech and expression has been held to be a basic and indivisible liberty for a democratic political system, the citizen's most cherished and scared right, "the prized privilege". It is said to be a cornerstone of functioning of the democracy. It is said to the

¹³² T. W. Rhys Davids (Ed), SACRED BOOKS OF BUUDHISTS, Vol. III (Oxford University Press, London, 1910), pp. 78-81

¹³³ Ibid

¹³⁴ Dr. Ambedkar's address at Poona District Law Library on December 22, 1952.

¹³⁵ BAWS, Vol-3, at p. 98.

¹³⁶ Ibid

¹³⁷ Ibid

foundation of a democratic society. It is also essential to the rule of law and liberty of citizens¹³⁸
In *Romesh Thaper v. State of Madras*,¹³⁹ Patanjali Sastri, C.J. observed that:

Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of the popular government, is possible.

The democratic form of government demands its citizens' active and intelligent participation in the communities' affairs. The public discussion with peoples' participation is one of the basic features and a rational process in the democracy which makes it different from all other forms of governments.¹⁴⁰ In *Secretary, Ministry of I. & B. v. Cricket Association Bengal*,¹⁴¹ the Supreme Court referred to a justification by David Feldman in his book "Civil Liberties and Human Rights" for and limits of freedom of speech and expression:

The liberty to express one's self freely is important for a number of reasons. Firstly, self-expression is a significant instrument of freedom of conscience and self-fulfilment. Second justification concerns epistemology. Freedom of expression enables people to contribute to debates about social and moral value. Thirdly, the freedom of expression allows political discourse which is necessary in any country which aspires to democracy. And lastly, it facilitates artistic scholarly endeavours of all sorts.¹⁴² This opportunity is fundamental for working of the majority rule measure. the right to speak freely and articulation is viewed as the main state of freedom. it's anything but a favoured situation in the progressive system of freedoms giving aid and insurance to any remaining freedoms. It has been genuinely said that it is the mother of any remaining freedoms. In a majority rules system that is democracy, the right to speak freely of discourse and articulation opens up channels of free conversation of issues. Freedom of speech plays a significant role in formation of opinion of the public on matters such as political, social and economic. This right is treated just like equality clause and the guarantee of life and liberty has been construed by the Supreme Court very broadly since 1950s. It has different names such as 'natural right', 'basic human right' etc but denotes the synonymous meaning. It formulates the exchange of ideas and information which helps to form ones' opinion and views and debate on matters of public concern. So as long as the expression is about nationalism, patriotism and love for the motherland, the use of National Flag by way

¹³⁸ Narender Kumar, *Constitutional law of India*, (tenth edition reprint, Allahabad law agency, 2019)

¹³⁹ 1950 AIR SC 124.

¹⁴⁰ *S. Rangarajan v. P. Jagvijan Ram*, (1989) 2 SCC 574.

¹⁴¹ 1995 AIR SC 1236.

¹⁴² *Ibid* at 138

of expression of such sentiments would be a Fundamental Right. It cannot be used for any commercial purpose.¹⁴³ In *Maneka Gandhi v UOI*, Bhagwati J, has emphasised on the significance of the freedom of speech and expression in these words:

Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.¹⁴⁴

The importance and need of the freedom of speech and expression can be understood from the following:

1. In a democracy, the freedom of speech and expression is one of the prime liberties granted to the citizens. It forms a foundation for other rights granted to citizens, such as the freedom of the press. Freedom of the press, in turn, helps in inculcating a better-informed public and electorate.¹⁴⁵
2. It ensures that citizens can express their opinions freely and also hold their political leaders accountable. Also, this freedom ensures that important information is legally shared and circulated among citizens.¹⁴⁶
3. It also provides a platform to make the marginalized and minority voices heard. Issues that concern these groups can be highlighted and brought to the forefront by using the right to freedom of speech and expression.¹⁴⁷
4. The freedom of speech and expression protects the creative license of artists and allows them to develop and share ideas freely. These can be academic writings, satirical work, theatre, cartoons, visual arts, and stand-up comedies.¹⁴⁸

Again, Freedom of speech offers human being to express his feelings to other, but this is not the only reason; purpose to protect the freedom of speech.¹⁴⁹ There could be more reasons to protect these essential liberties. There are four important justifications for freedom of speech –

¹⁴³ M P Jain, *Indian Constitutional Law*, (page no 1058-1070, eight edition reprint, LexisNexis,2020).

¹⁴⁴ 1978 AIR SC 597: (1978) 1 SCC 248.

¹⁴⁵ Diganta raj Sehgal, 'where to draw the line with respect to freedom of speech and expression' (2021) Where to draw the line with respect to freedom of speech and expression - iPleaders accessed on 20 June 2021

¹⁴⁶ Ibid

¹⁴⁷ Ibid

¹⁴⁸ Ibid

¹⁴⁹ Ibid at 143

1) For the discovery of truth by open discussion - According to it, if restrictions on speech are tolerated; society prevents the ascertainment and publication of accurate facts and valuable opinion. That is to say, it assists in the discovery of truth.¹⁵⁰

2) Free speech as an aspect of self- fulfillment and development – freedom of speech is an integral aspect of each individual’s right to self-development and self-fulfillment. Restriction on what we are allowed to say and write or to hear and read will hamper our personality and its growth. It helps an individual to attain self-fulfillment. ¹⁵¹

3) For expressing belief and political attitudes - freedom of speech provides opportunity to express one’s belief and show political attitudes. It ultimately results in the welfare of the society and state. Thus, freedom of speech provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.¹⁵²

4) For active participation in democracy – democracy is most important feature of today’s world. Freedom of speech is there to protect the right of all citizens to understand political issues so that they can participate in smooth working of democracy. That is to say, freedom of speech strengthens the capacity of an individual in participating in decision making.¹⁵³

Thus, the researcher finds that significance of freedom of speech is very much essential for the progress of nations and development of human being. Protection of freedom of speech is important for the discovery of truth by open discussion, for self- fulfillment and development, for expressing belief and political attitudes, and for active participation in democracy. ¹⁵⁴ Thus, from this we can say that freedom of speech and expression is very important and is much needed for smooth functioning and balance between all. It allows the citizens to express freely without any free and hence exercising the true freedom of speech and expression as discussed in the earlier chapters.

This is a study on freedom of speech and expression. In, this chapter the meaning and definition of freedom of speech and expression is mentioned. Views by different philosophers is discussed. The jurisprudential aspect of freedom of speech and expression by different jurists

¹⁵⁰ *ibid*

¹⁵¹ *ibid*

¹⁵² *ibid*

¹⁵³ *Ibid*

¹⁵⁴ *ibid*

is also discussed here. The researcher has also signified the need and importance of freedom of speech and expression. It can be said that freedom of speech and expression is an important kind of liberty. It is as old as civilization. Thus, freedom of speech and expression should be protected in a society. Freedom of speech and expression should flourish freely in a society. However, there should be certain restrictions on freedom of speech and expression. The restrictions check and balance the right of liberty. But the restrictions shouldn't oppress the liberty of the individuals. When the right of freedom of speech and expression is suppressed then it becomes difficult for the people to express themselves with a free mind. And this is not justifiable in a nation. Only justifiable reasons should be used to curtail freedom of speech and expression. Jurist Savigny says that law grows with the growth and strengthens with the strength of the people and finally dies as that nation loses its individuality.¹⁵⁵ This means that law is much needed for the growth of a nation and growth of a nation is inter related with its people. So, there should be a good coordination among the two. Freedom of speech and expression therefore should not be oppressed unless it breaches any law. And every individual should be able to express their thoughts and views freely without any hesitation.

¹⁵⁵ Prof S.N. Dhyani, 'Jurisprudence and Indian legal theory' (page no 75, Reprint 2015, Central law agency)

CHAPTER III

FREEDOM OF SPEECH AND EXPRESSION- CONSTITUTION OF INDIA AND ITS LIMITATIONS, JUDICIAL INTERPRETATION AND INTERNATIONAL HUMAN RIGHTS LAWS

3.1 Framework under Constitutional of India

Freedom of speech and expression is enshrined in part III of the Constitution of India. The word 'freedom' in Article 19 of the Constitution means absence of control by the State. In all matters specified in Article 19(1), the citizen has the liberty to choose, subject only to restrictions in Article 19(2) to (6). Clauses (a) to (g) of Article 19(1) guarantee to the citizens of India six freedoms, viz, of speech and expression, peaceable assembly, association, free movement, residence, and practising any profession and carrying on any business. These various freedoms are necessary not only to promote certain basic rights of the citizens but also certain democratic values in and the oneness and unity of the country. Article 19 guarantees some of the basic, valued and natural rights inherent in a person. According to Supreme Court, it is possible that a right does not find express mention in any clause of Article 19(1) and yet it may be covered by some clause therein. This gives an additional dimension to Article 19(1) in the sense that even though a right may not be explicit, it may yet be implicit, in the various clauses of Article 19. It has been seen that these rights are great and basic rights which are recognised and guaranteed as the natural rights, inherent in the status of a citizen of a free country but not absolute in nature and uncontrolled in operation. The freedoms are not absolute as no right can be. The scheme of Article 19 shows that a group of rights are listed as clause (a) to (g) and are recognised as Fundamental Rights conferred on citizens.¹⁵⁶

Article 19 guarantees to all citizens the six rights. They are:

- a) Right to freedom of speech and expression.
- b) Right to assemble peacefully and without arms.
- c) Right to form associations or unions or co-operative societies.
- d) Right to move freely throughout the territory of India.
- e) Right to reside and settle in any part of the territory of India.
- f) Right to practice any profession or to carry on any occupation, trade or business.

¹⁵⁶ M P JAIN, '*Indian Constitutional Law*' (page 1058-1070, LexisNexis 2020)

Originally, Article 19 had seven rights. But, the right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978. These six rights are protected against only state action and not private individuals. Moreover, these rights are available only to the citizens and to share-holders of a company but not to foreigners or legal persons like companies or corporations, etc. Freedom of Speech and Expression is one of the fundamental rights guaranteed under the Constitution of India. It implies that every citizen has the right to express his views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner. The Supreme Court held that the freedom of speech and expression includes the following:

- a) Right to propagate one's view as well as views of others.
- b) Freedom of the press.
- c) Freedom of commercial advertisements.
- d) Right against tapping of telephone conversations.
- e) Right to telecast, that is, government has no monopoly on electronic media.
- f) Right against bandh declared by a political party or organisation.
- g) Right to know about government policies.
- h) Freedom of silence.
- i) Right against imposition of pre-censorship on a newspaper.
- j) Right to demonstration or picketing but not right to strike¹⁵⁷.

Article 19(1)(a) guarantees to all citizens "the right to freedom of speech and expression". Clause (2) of Article 19, at the same time provides: "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." It may, thus, be stated that the exercise of the right conferred by Article 19(1)(a) carries "special duties and responsibilities."¹⁵⁸

Out of the several rights enumerated in Article 19 (1) the right in sub-clause is not just a mere right of speech and expression but a right to freedom of speech and expression. The other rights

¹⁵⁷ M Laxmikanth, *Indian Polity*, (page 7.9, fourteenth reprint, Mc Graw Hill Education pvt ltd,2018)

¹⁵⁸ Narender Kumar, *Constitutional law of India*, (page 265-267, tenth reprint edition, Allahabad law agency,2019)

are not referred as freedom but this one is. Article 19(1)(a) guarantees the right of freedom of speech and expression to all citizens. This means that all citizens can express their views and expression freely in any medium without any objection. The phrase ‘speech and expression’ used in Article 19(1)(a) is broader than it seems. This includes the right to paint, sing, dance, write poetry or literature also. Article 19(1)(a) should be read with “liberty of thought, expression, belief, faith and worship” Preamble and it is intrinsically linked with the Preambular objective and also it is the duty of the Court to realise the values of the Constitution progressively. Artistic and poetic freedom is not absolute or limitless but restricted to certain boundaries such as public order, security etc. The limitations will be discussed later. Article 19(1)(a) covers the right to choose one’s personal appearance or dress subject to the restrictions under Article 19(2). There can be no difficulty in expressing freely about any historically respected personality showing disagreement, dissent, criticism, non-acceptance or any sort of critical evaluation as long as there lies no obscenity in the expression. The limitations as to freedom of speech and expression will be discussed in the later part. This is how TGs have the right to express their self-identified gender through their speech, dress, appearance and mannerisms.¹⁵⁹ Freedom of expression also includes the right to fly the National Flag and sing the National Anthem as this are signs of love and patriotism towards the nation. The right to fly the National Flag is being regulated by the Emblems and Names (Prevention of Improper use) Act, 1950 and Prevention of Insults to National Honour Act, 1971. These rights are neither unsubscribed nor unrestricted. Right to speech is also implied to right to silence. It also implies freedom to not listen, not to be forced to listen. This right comprehends the freedom to be free from what a person desires to hear and what to not. A loudspeaker forces a person to hear what he doesn’t want. The use of loudspeakers may be incidental to the exercise of the right but, its use is not a matter of right, or part of the rights guaranteed by Article 19(1). The expression “freedom of speech and expression” in Article 19(1)(a) has been held to include the right to acquire information and to even disseminate the same which includes the right to communicate it through any available media whether print or electronic or audio visual for example advertisement, movie, article, speech. This also includes freedom to communicate or circulate one’s opinion without interference to a large population in the country, as well as abroad, as is possible to reach.¹⁶⁰ It was held in the case of *Mairembam Prithviraj v. Pukhrem Sharatchandra Singh*¹⁶¹ that voters have the right to know about the educational qualifications of the

¹⁵⁹ M P Jain, *Indian Constitutional Law*, (page no 1058-1062, reprint eighth edition, LexisNexis, 2020)

¹⁶⁰ M P Jain, *Indian Constitutional law*, (1058-1059, reprint eighth edition, LexisNexis, 2020)

¹⁶¹ (2015)652 SC

candidates contesting in an election. The Fundamental Right is concomitant to Electoral Rights.¹⁶² Right to information under Article 19(1)(a) is not absolute and is restricted by reasonable restriction under Article 19(2) and is further limited by right to privacy under Article 21 (though right to privacy is not absolute). In India, freedom of press is implied from freedom of speech and expression guaranteed by Article 19(1)(a). There is no specific provision ensuring freedom of press as such. The freedom of press is regarded as a “species of which freedom of expression is a genus”.¹⁶³

When a person is talking over the phone, he is exercising his freedom of speech and expression. Telephone tapping is violation of Article 19(1)(a) and Article 21 unless it falls within Article 19(2).¹⁶⁴ Indian Constitution guarantees certain fundamental rights to its citizen freedom of speech is one of them.

There was a huge discussion on occurred on the point of freedom of speech and expression during constitutional debate.

Article 13 of the Draft Constitution was related with the right to freedom of speech and expression. Art. 13(1) provides:

“Subject to the other provisions of this article, all citizens shall have the right to Freedom of Speech and Expression”.

Art. 13(2) of the Draft Constitution lay down:

“Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the state from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the state”.

In the Constituent Assembly, 34 changes were proposed to change Art. 13. The modifications were introduced on December 1st, and the general debate was held on December 2nd, 1959. The major criticism was directed at the limitations placed on the Article's seven freedoms. It was claimed that privileges granted in one section of the articles were revoked in another. It was suggested that clauses (2) to (6) of Article 13, which sought to restrict freedoms, be removed from the article and replaced with a single provision stating that no citizen exercising

¹⁶² (2017) 2 SCC 487; 2017 (3) ALD 79

¹⁶³ Sakal papers v UOI, (1962) 3 SCR 842

¹⁶⁴ M P Jain, *Indian Constitutional Law*, (eighth reprint edition, LexisNexis, 2020)

such right "shall endanger the state's security, promote ill will between communities, or do anything to disturb peace and tranquility in the country." It was also suggested that Art. 13(1) (a), in addition to freedom of speech and expression, must expressly mention freedom of press and publication.¹⁶⁵

Pandit Thakur Das Bhargava proposed an amendment that would put the term "reasonable" before the word "restrictions" in Article 13 clauses (2) to (6). This, he said, would put it up to the court to judge whether a conduct was in the public interest and if the legislature's limitations were reasonable. The limitations in Art. 13(2) to (6), according to M.V. Kamath, should be removed.¹⁶⁶

T.T. Krishnamachari, on the other hand, held the opposite viewpoint, claiming that there could be no ultimate right and that every right had to be curtailed in some way under specific conditions. The drafting committee, in their perspective, had selected the "golden medium" of offering a proposed enumeration of those rights that were vital for the person while also putting checks on them to guarantee that the state... they are seeking to bring into life... will endure... and thrive.¹⁶⁷

In this response, Dr. Ambedkar explained that the promise of freedom of speech and expression also encompassed freedom of expression and publishing. Though he did not mention the critique of Art. 13's limits on fundamental freedoms throughout his response. However, he had relied on that criticism when presenting the draught constitution to the Constituent Assembly on November 4, 1948.¹⁶⁸ He had then stated that the critics had relied on the United States Constitution and the Bill of Rights embodied in the first ten amendments to that constitution in support of their and had held the view that the guarantee of fundamental rights in America was inadequate. Dr B.R Ambedkar said that Fundamental rights in Constitution of America is not absolute. In support of his contention he had quoted *Goltow v. New York*,¹⁶⁹ where the Supreme Court of America validating a criminal anarchy law which was brought into effect with a view to punish utterances calculated to bring about violent change held that It is fundamental principle, load established, that the freedom of speech and press, which is secured by the court does not confer an absolute right to speak or publish without, responsibility,

¹⁶⁵ Constituent Assembly Debates, 1st December 1948 at 727

¹⁶⁶ Constituent Assembly Debate, 1st December 1948 at 739

¹⁶⁷ Ibid, 2nd December 1948 at 771

¹⁶⁸ CAD, 4th December 1948 at 40-41

¹⁶⁹ 69 Law Ed. 1138

whatever one may chose, or an unrestricted or unbridled licence that gives immunity for every punishment of language and prevents the punishments of those which abuse this freedom.¹⁷⁰

Dr. Ambedkar further stated that the basic right enacted by the Constitution in the United States of America was unquestionably absolute. Congress, on the other hand, quickly realised that such basic rights ought to be qualified by restrictions.¹⁷¹ When the subject of the validity of such limits came up before the Supreme Court, the Congress had no jurisdiction to enforce them, and the Supreme Court established the theory of "Police Power" to oppose the supporters of unfettered power. Fundamental rights were guaranteed by the understanding that each stage was inherent in its police power, which was not needed by the Constitution. "That a State in the exercise of its police power may perish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public moral, inciting to crime, or disturbing the public peace, is not open to question," Dr. Ambedkar said, quoting from a judgement of the United States Supreme Court in the same case.¹⁷²

Instead of articulating basic rights in absolute terms and relying on the Supreme Court of India, he had stated, speaking about the provisions of the Draft Constitution, "to come to the security of Parliament by infusing the theory of police authority." The state might directly put limits on Fundamental Rights under the Draft Constitution. 'What one does directly, the other does indirectly,' he had decided. Fundamental Rights are not absolute in both cases."¹⁷³

The most significant modification in Art. 13 of the Draft Constitution was the removal of the term "sedition" from clause (2) and the addition of the word reasonable before the word "restrictions" in clause (3). (6). On the 2nd of December, 1948, Art. 13 was adopted. On the 17th of October, 1949, the article was revised. Clause (2) was amended on that day to add the words contempt of court after the term defamation. Article 13 of the Draft Constitution, as accepted by the Constituent Assembly, became Article 19 of the Indian Constitution.¹⁷⁴ This is the basic and fundamental right enshrined in the Constitution of India in Article 19 (1) (a). The word freedom of speech and expression is found in various national and international instruments. The international law such as ICCPR and UDHR which states about free speech and expression. They are discussed in the later chapter.

¹⁷⁰ Gupta Sheetal, 'Freedom of speech and expression in India a study on contemporary challenges'(chapter 2, PhD thesis) <http://hdl.handle.net/10603/221780> accessed on 10 August 2021

¹⁷¹ CAD, 4th November 1948 at 40-41

¹⁷² *Supra* note 149

¹⁷³ CAD, 4th November 1948 at 40-41

¹⁷⁴ 22 CAD, 17th October 1948 at 402

3.2 Limitations under Constitution of India

The freedom of speech and expression does not confer on the citizens the right to speak or publish without responsibility. It is not an unbridled license giving immunity for every possible use of language and prevents punishment for those who abuse this freedom.

Article 19(3) of the ICCPR imposes restrictions on the following grounds:

- (a) For respect of the rights of reputations of others
- (b) For protection of national security, or public order, or public health or morals.¹⁷⁵

Under the Indian Constitution the reasonable restrictions on the right to freedom of expression is being granted under Article 19(2), but such restriction may only be made through legislation, and must be in the interests of any of the following:

- a) sovereignty and integrity of India,
- b) the security of the State,
- c) friendly relations with foreign states,
- d) public order, decency or morality,
- e) or in relation to contempt of court,
- f) defamation or incitement to an offence.¹⁷⁶

- **Sovereignty and integrity of the nation:** This ground was added to clause (2) of Article 19 by the Constitution (Sixteenth Amendment) Act, 1963. The current amendment is designed to prevent freedom of speech and expression from being exploited to attack the Union's territorial integrity and sovereignty.¹⁷⁷ As a result, Parliament will be justified in restricting the right to free expression when it advocates the secession of any section of India's territory from the union under this provision. It should be underlined that the restriction applies to India's territorial integrity, not the

¹⁷⁵ Shishir Tiwari and Gitanjali Ghosh, 'Social Media and Freedom of speech and expression: challenges before the Indian Law' (2018) Research gate. <http://www.researchgate.net/publication/328476554> accessed on 28 June 2021.

¹⁷⁶ M Laxmikanth, Indian Polity (fourteenth reprint edition, Mc Graw Hill Education pvt ltd, 2018)

¹⁷⁷ Sheetal Gupta, 'Freedom of speech and expression in India a study on contemporary challenges' (chapter 2, PhD thesis) <http://hdl.handle.net/10603/221780> accessed on 10 August 2021

component nations' territorial integrity. The Constituent States geographical boundaries are subject to modification under the Constitution.¹⁷⁸

- **Security of the state:** Crimes of violence aimed at overthrowing the government, waging war and rebellion against the government, perpetual aggression or conflict, and so on might jeopardise the state's security.¹⁷⁹ In the sake of the state's security, all remarks intended or designed to have the aforementioned effects should be controlled. The term Security of the state encompasses serious and severe types of public disturbance. Every public disturbance cannot be considered a danger to the state's security.¹⁸⁰ The Supreme Court clearly said in the Romesh Thapar¹⁸¹ case that the phrase does not relate to routine violations of public order that do not pose a threat to the state. Incitement to conduct violent acts such as murder would jeopardise the state's security. The Supreme Court decided in *State of Bihar v. Shaila Bala Devi*¹⁸² that the legislation that made criminal words, signs, or visible representations that incited to or encouraged, or likely to incite to or encourage any cognizable offence involving violence, fell under Article 19. (2). After the 1951 amendment to the Constitution, public order was included as a justification for restricting legislation, and there would be little reason to distinguish between the two terms.¹⁸³
- **Friendly Relations with Foreign States:** This ground was added by the Constitution (First Amendment) Act of 1951. In the sake of good relations with other governments, the state can place reasonable limits on freedom of speech and expression. The rationale is clear: uncontrolled harmful propaganda against a foreign friendly state might damage the state's ability to maintain good ties with India.¹⁸⁴ It should be noted that it is a well-established principle of international law that nations are accountable for acts done by individuals under their authority in their relations with other states. Most current legal systems have established provisions for the penalty of libels against foreign heads of power in accordance with this idea.¹⁸⁵ Such libels are punishable under English Common Law because they jeopardise her Majesty's peaceful ties with other governments. As a result, a legislation punishing any libel that tends to degrade, revile,

¹⁷⁸ *Supra* note 138

¹⁷⁹ *Ibid*

¹⁸⁰ *Ibid*

¹⁸¹ *Romesh Thapar v. State of Madras*, AIR 1950 SC 124

¹⁸² AIR 1952 SC 329

¹⁸³ *Ibid* at 138

¹⁸⁴ *Ibid*

¹⁸⁵ *Ibid*

or expose any foreign prince, ambassador, or other foreign officials to hatred or contempt will fall within this term and will be upheld as long as the limitations are reasonable.¹⁸⁶ In *Jagan Nath v. Union of India*¹⁸⁷, the Apex Court held that it is a possibility that although a sovereign nation might not be regarded as a foreign State for the purpose of this provision, it could be considered as a foreign power for other purposes.

- **Public order:** One of the justifications for restricting freedom of speech and expression is to maintain public order. This basis was not included in the 1950 Constitution. It was inserted in 1951 by the first amendment.¹⁸⁸ The change was essential because the Supreme Court had declined to allow limits on the right to free expression in the interests of public order since it was not a legitimate ground of constraint in the *Romesh Thapar* case.¹⁸⁹ The expression public order is synonymous with public peace, safety and tranquility.¹⁹⁰ In *Supdt. Central Prison v. Ram Manohar Lohia*, public order was defined to include public peace, safety and serenity. Any speech or communication that disturbs the normal course of things in a societal arrangement will be held to have disturbed the public order in being.¹⁹¹ It signifies absence of disorder involving breaches of local significances in contradiction to national upheavals such as revolution, civil strife or war, affecting the security of the state. To illustrate, the state may, in the interests of public order, prohibit and punish the causing of loud and raucous noise in streets and public places by means of sound amplifying instruments, regulates the hours and place of public discussions and the use of public streets for the purpose of exercising freedom, provide for expulsion of hecklers from meetings and assemblies, punish utterances tending to incite breach of the peace or riot and use of threatening, abusive or insulting words or behaviour in any public place with intent to cause a breach of the peace or whereby breach of the peace is likely to be caused, and all such acts as would endanger public safety.¹⁹²
- **Decency or morality:** The words “morality or decency” are words of wide meaning. The word obscenity of English law is identical with the word ‘indecent’ under the Indian Constitution. Sections 292 to 294 of the IPC provide instances of restrictions on

¹⁸⁶ Ibid

¹⁸⁷ AIR 1960 SC 675

¹⁸⁸ Ibid

¹⁸⁹ *Romesh Thapar v. State of Madras*, AIR 1950 SC 124

¹⁹⁰ *Superintendent, Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633

¹⁹¹ AIR 1960 SC 633

¹⁹² *Supra* note 138

the freedom of speech and expression in the interest of decency and morality.¹⁹³ In *Ramesh Y. Prabhoo v. Prabhakar Kashinath Kunte*, the court concluded that the terms ‘decency and morality’ cannot be limited to gender integrity only. In common parlance, an act or expression will be considered indecent if it displeases or upsets an individual or the community at large.¹⁹⁴

➤ **Contempt of court:** The constitutional right to freedom of speech does not prevent the courts from punishing for their contempt spoken or printed words or any other expression calculated to have that effect.¹⁹⁵ The expression “contempt of court” is now defined in Section 2 of the Contempt of Courts Act, 1971 as under:

(a) Contempt of Court means civil contempt or criminal contempt.

(b) Civil Contempt means will-full disobedience to any judgment, decree, direction, order with or other process of a court of will-full breach of an undertaking given to a court.

(c) Criminal Contempt means the publication (whether by words spoken or written, or by signs or by visible representations or otherwise) of any matter or the doing of any other act whatsoever which

(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or

(ii) prejudices or interferes or tends to interfere with, the due course or any judicial proceedings; or

(iii) interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any other matter.

It is not possible here to enter into a detailed discussion of the law of contempt. But one thing is certain. Judges have no general immunity from criticism of their judicial conduct, provided that it is made in good faith and does not impute any private motive to those taking part in the administration of justice, it must be genuine criticism and not malicious or attempt to impair the administration of justice.¹⁹⁶

➤ **Incitement of an Offence:** This is also a ground added in 1951. Freedom of speech cannot confer a license to incite people to commit offence. During the debate on this clause in Parliament, it was suggested that the phrase should be “incitement to violence”

¹⁹³ Ibid

¹⁹⁴ AIR 1996 SC 111

¹⁹⁵ Ibid

¹⁹⁶ *Supra* note 138

as the word “offence” is a very wide expression and could include any act which is punishable under the Penal Code or any other law. The suggestion was rejected. In *State of Bihar v. Shaila bala Devi*,¹⁹⁷ the Supreme Court held that incitement to murder or other violent crimes would generally endanger the security of the State, hence a restriction against such incitement would be a valid law under clause (2) of Article 19.¹⁹⁸

The government is supposedly targeting Freedom of speech and expression in the name of terrorism. Thus, the government mostly likely would purport to draw on the grounds of sovereignty and integrity of India, the security of the state, or public order. However, merely identifying these interests does not legitimise a restriction on free expression. As the Supreme Court has stated, in order for the State to restrict freedom of expression, the anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression and not some mere assumptions. It is seen that taking the advantage of the restrictions freedom of speech is curtailed. There are cases related to these which will be discussed later. Many international bodies have further explained similar restrictions.¹⁹⁹ For example, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information provides that a restriction on expression may only be applied in the name of national security in cases where the expression is intended to incite imminent violence; it is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence (emphasis added).²⁰⁰ Similarly, United Nations Educational Scientific and Cultural Organisation's (UNESCO) Belgrade Declaration states: while it may become necessary to deter direct and effective incitements to violence that may be disseminated, authorities should not confuse independent news and propaganda that calls for violence. Moreover, even if the very exceptional circumstances required to justify a restriction on freedom of expression exist, any such restriction must be narrowly tailored to achieve the aim of the legislation without creating any unnecessary burden on free expression.²⁰¹ As the Special

¹⁹⁷ AIR 1952 SC 329

¹⁹⁸ *Supra* note 138

¹⁹⁹ SAHRDC, ‘Stifling freedom of expression and opinion’ (2010) volume 45, no 32 Economic and political weekly’ <http://www.org/stable/20764381> last accessed on 15 June 2021

²⁰⁰ *Ibid*

²⁰¹ *Ibid*

Rapporteur has emphasised, laws curtailing freedom of expression must ensure a precise and unambiguous definition of the activities and crimes covered by the legislation. In the same vein, the Supreme Court has stated that so long as the possibility of a restriction being applied for purposes not sanctioned by the Constitution cannot be ruled that, it must be held to be wholly unconstitutional and void. Finally, in order to be considered reasonable restrictions on any fundamental rights must not be arbitrary or of an excessive nature and there must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. The Supreme Court has said that a restriction on the right to a fundamental freedom such as freedom of expression will be reasonable only when there is a proper balance between the rights of the individual and those of the society.²⁰² Weighing these factors in the present circumstances, Section 39 of the UAPA and the MHA circular are illegal attempts to curb the fundamental right to freedom of expression.²⁰³ As discussed above, the UAPA provisions and the circular are drafted imprecisely, bringing an excessively broad range of expressive behaviour within the scope of their prohibitions. These provisions could be applied arbitrarily to a large number of advocating, inciting, or supporting violence. As Article 19, a well-respected monitor of freedom of expression violations, has stated: The requirement that restrictions be provided by law means not only that there must be a piece of legislation accessible to the public and enacted by a competent body; the law must also be as clear and precise as reasonably possible, so that citizens know in advance exactly which expressions are prohibited.²⁰⁴ Further the restrictions imposed on freedom of expression in Section 39 and the government's circular are not narrowly tailored to the aims of security, sovereignty, or integrity, instead threatening an unacceptably large swathe of protected expression. As writer and activist Arundhati Roy points out, the government seems eager to label every resistance movement, every activist, 'Maoist'" by "expanding the meaning of the word 'Maoist' to include everybody who disagreed with it."²⁰⁵

The right to freedom of expression is not absolute. Article 10(2) of the European Convention on Human Rights, which was included into the HRA 1998, states that exercising this right involves "duties and obligations" and may be subject to "any formalities, limitations,

²⁰² Ibid

²⁰³ Ibid

²⁰⁴ Ammar Oozeer, 'Internet and Social Networks: Freedom of Expression in the Digital Age' (2014) 40 Commw L Bull 341

²⁰⁵ Ibid

restrictions, or penalties as are imposed by law." These "formalities, requirements, limits, or penalties" must not only be provided for by law, but they must also be required under the restricted situations described in that article.²⁰⁶

Many Commonwealth nations' constitutional documents have similar limits. The Mauritius Constitution's Sections 3 and 12 do not guarantee complete freedom of expression. The right to freely receive and transmit ideas and information is subject to what is prescribed by law and done under its authority in the interests of, among other things, defence, public safety, public order, and public morality, provided that that provision or 'the thing done under its authority' is reasonably justifiable in a democratic society.²⁰⁷ The Republic of South Africa's Constitution, Chapter II, guarantees freedom of expression but also places restrictions on it. It excludes propaganda for war, incitement to impending violence, and promotion of hatred based on race, ethnicity, gender, or religion, all of which constitute incitement to damage. Article 14 of the Republic of Singapore's Constitution and Section 12 of Botswana's Constitution both guarantee an individual's freedom of expression and provide for limitations to that freedom.²⁰⁸ There are several practices on the society opposed to morality and humanity. Caste discrimination is one such issues. It has reduced in certain areas and not in practice anymore. But there are certain places still suffering caste divisions which needs to be eradicated. A very latest example of caste discrimination that took place in India is about two hockey players of the Indian women hockey team who belong to Dalit caste. Persons of higher caste burst crackers on India's defeat at Tokyo Olympics 2021 in front of the Dalit hockey player's residence. The news is flooded in the social media and news channels. Several posts and Debates are going in social media too. Freedom of speech and expression does not mean to hurt anyone's sentiments or to do activities opposed to society and humanity. Again, there are cases where individuals along with their families had to suffer while opposing such inhuman activities as mentioned above about the caste issues. Therefore, reasonable restrictions are much needed for peace and harmony in the society so that no person in the name of freedom of expression does any wrong to other.

²⁰⁶ Ibid

²⁰⁷ Ibid

²⁰⁸ *Supra* note 199

3.3 Judicial interpretation

The judiciary has constitutional duty to interpret the laws. It is the only institution that has been assigned with this duty to interpret the laws under the Constitution. It also adjudges the scope validity of imposed restrictions. In doing so the judiciary has articulated the freedom dynamically and has widened its interpretation. Wide interpretation of the freedom strengthens the democracy. Under the democracy we respect constitutionalism that limits the arbitrary powers of the State. If at all the state attempts to encroach the freedom of speech and expression, the judiciary plays the role of saviour.²⁰⁹ Judiciary, being master interpreter has played significant role in nourishing the democracy in India. Judiciary is one of the organs of India other two being the executive and the legislature. Judiciary is the organ that controls the disputes and then solve them by passing judgements. The decisions taken by judiciary are binding to all be it citizens or the government. Judiciary is considered as the guardian and protector of the Constitution of India and human rights. It is believed that judiciary is the promoter of peace and harmony, ensuring law and order in the nation. Judicial organs check and balance the legislative and executive action of the Government. As we know that Indian Constitution is the largest written constitution in the world so high is the responsibility of the Judiciary. Judiciary is considered to be impartial and fair. Judiciary is the judicial system of a nation comprising the judges and the judicial magistrates who have established its role and significance from time to time. The National Judicial Appointment Commission (NJAC) appoints the judges of high courts and also transfers them. The judiciary is free from political influence and serves justice to all.²¹⁰

In *Romesh Thappar vs. State of Madras*²¹¹ it was held that freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion, no public education so essential for the proper functioning of process of popular government is possible. Thus, freedom of “speech and expression” means right to express one’s own convictions and opinions freely by words of mouth, printing, pictures or any other mode. It includes expression of one’s ideas through any communicable medium or visible representation such as gesture, signs and the like. From the cases decided from time to time, it

²⁰⁹ Maknikar Vijay Prabhakarao, ‘Freedom of Speech and Expression with Special Reference to Democracy in India A Critical Study’ (chapter 7, PhD thesis, Swami Ramanand Teerth Marathwada University) <http://hdl.handle.net/10603/259845> accessed on 11 August 2021

²¹⁰ Dr. Reetika Bansal and Ms Vertika Bansal, ‘The Role of Judiciary in India: If balancing activism or working under the influence of politics?’ (2020) <http://www.researchgate.net/publication/343335310> accessed on 3 July 2021

²¹¹ AIR 1950 SC 124

can also be concluded that media also has the freedom of speech and expression. Initially, it was available to print media as it was the sole media in nation but later as electronic and social media came into the domain of common man, the same were also entitled to this freedom albeit not without giving rise to certain controversies of the extent of use of this freedom. Likewise, just as a citizen's freedom of speech and expression is subject to reasonable restrictions, the same follows for media as well.

In *Brij Bhushan v. State of Delhi Patanjali Sastri, J.* opined that every free man has undoubted right to lay (express) what sentiments he pleases before the public. If this right is forbidden it is like to destroy the freedom of the press.²¹²

Similarly, in *Sakal Papers v. Union of India* the issue before the court was the Government of the Newspaper Act, 1956 and Daily Newspaper Order, 1960 that required the newspapers to set their prices as per the number of pages. It also reduced the area advertisement and number of supplements. It was argued by the government, that attempt is meant to free up the market and promote more speed by prohibiting the monopolies within newspaper industry.²¹³

Again, in *In the Secretary, Ministry of Information and Broadcasting, Govt. of India and Ors. v. Cricket Association of Bengal and Ors* the Supreme Court reiterated that the freedom of speech and expression includes right to acquire information.²¹⁴

Apart from speech judiciary took its firm stand with regards to movies too. Cinema and films are also considered as expressions of views and thoughts. In *K. A. Abbas v. Union of India & Anr* the Supreme Court, while dealing with the issue of banning the film on the grounds of being offensive to public morals, opined that the standards should not be framed in such a way that the morally healthy minds could not view or read. The Standards should not be thus lowered to the level of least capable minds. The court also asserted that the sex and obscenity need not be always synonymous. Sex cannot be always obscene, indecent or immoral.²¹⁵ Accordingly, Chief Justice Hidayatullah, writing for the Court, ruled that a film was entitled to a certificate for unrestricted viewing, even though it included a brief scanning shot of Bombay's red light district showing prostitutes wearing short skirts. The movie *Padmavat* was banned from releasing at first. But after facing a lot of controversies it was released.²¹⁶

²¹² 1950 SCR 60

²¹³ 1962 3 SCR 842

²¹⁴ 1995 AIR 1236, Para 44

²¹⁵ 1971 AIR 481, 1971 SCR (2) 446

²¹⁶ *Supra* note 204

In *Nandini Satpathy v. P.L. Dani and Anr* the Apex Court held that a person, who adopts a stance of silence, runs a calculated risk. But under any circumstances he cannot be compelled to speak. Thus, the court attempted to analyze the scope of freedom of speech and expression in the context of Article 20 (3) of the Indian Constitution.²¹⁷

Thus, we can say that Indian Judiciary has stood by the Constitution and protected the nature of freedom of speech and expression. India has given itself a liberal constitution in the Euro-American traditions, which aims at establishing a free and democratic society. It also aims at prosperity and safety of the society. Its makers believed that such a society could be created through the guarantee of fundamental rights and an independent judiciary to guard and enforce these rights. Therefore, the framers of the Indian Constitution dealt with these two aspects with maximum and identical idealism.²¹⁸

3.4 Framework under International Humanitarian Right Laws

Freedom of speech and expression is also related to several international laws. International law states that everyone has the right to freedom of opinion and expression and these rights help underpin democracy and public participation.²¹⁹ Freedom of speech and expression is given much importance in many nations including India. Such as:

- ❖ Article 19 of Universal Declaration of Human Rights provides for freedom of opinion and expression. It states that everyone shall have the right to hold opinions without interference and shall have access or disseminate the information by way of any medium.²²⁰
- ❖ Article 10 of the European Convention on Human Rights provides for freedom of expression and freedom to freely impart information without any restriction by public authority. However, the article does not prohibit the requirement of license for broadcasting, television or cinema enterprises. The freedom under this article is not absolute and is subject to the restrictions imposed in the interest of national security, territorial integrity, public safety, health, morality or defamation or for keeping the judiciary impartial.²²¹

²¹⁷ 1978 2 SCC 424

²¹⁸ Raghvendra Singh Raghuvanshi & Nidhi Vaidya, 'Independence of Judiciary- Indian Experience' SSRN- id 1558979 accessed on 5 June 2021

²¹⁹ Farzad Damania, 'The internet is equalizer of freedom of speech? A discussion on freedom of speech on the internet in the United States and India' (2002) Vol 12:2 IND.INT'L&COMP.L.REV

²²⁰ Article 19, Universal Declaration of Human Rights, 1948 (UDHR)

²²¹ Article 10, European Convention on Human Rights, 1953.

- ❖ Article 9 of the African Charter on Human and People’s Rights provides for free expression of opinion. It states that everyone is entitled to freedom of free access to the information and further to disseminate it according to the law.²²²
- ❖ Article 19 of International Covenant on civil and political rights, provides for expression of opinion without interference. It states that everyone is entitled to information and further to circulate it. However, this freedom is not absolute and is subject to laws restricting free speech in the interest of maintenance of public order, health or morality and defamation.²²³
- ❖ Article 13 of the American Convention on Human Rights provides for freedom of thought and expression. This right includes seeking, receiving or imparting information and to share ideas or opinions of any sort by way of writing, speech or through any other medium. This right is not subject to pre-censorship but is not exempted from the liability which can be imposed if it is inconsistent with the maintenance of public order, national security, reputation of others, public health or morality. However, the government cannot impose any indirect methods of restricting free speech, but, television programs or radio broadcast might be subject to scrutiny for protection of childhood. Further, advocacy of any ideas promoting racial unrest or disturbs harmony among people of different class has been considered as criminal offence and restrictions can be imposed on free speech on these grounds.²²⁴
 - Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers - Article 19, Universal Declaration of Human Rights, 1948 (UDHR).
 - Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice - Article 19 (2), International Covenant on Civil and Political Rights, 1966 (ICCPR).

²²² Article 9, African Charter on Human and People’s Rights.

²²³ Article 19, International Covenant on civil and political rights (ICCPR).

²²⁴ Article 13, American Convention on Human Rights.

The right to freedom of expression and opinion is guaranteed under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which states that "everyone should have the right to hold opinions without interference." The right to freedom of expression also encompasses the freedom to seek, receive, and transmit information and ideas of all types, according to Article 19(2). The United Nations Human Rights Council and General Assembly have stated that people's online freedoms are the same as their offline freedoms.²²⁵

States may impose content restrictions under the ICCPR, but only to the extent that Article 19 permits. Any restriction on the right to freedom of expression must be provided by law and required to protect the rights or reputations of others, as well as to protect national security, public order, public health, or morals, according to Article 19(3). However, any restrictions must pass stringent criteria of need and proportionality. Proportionality ensures that limits are targeted at a specific goal and do not infringe on the rights of those targeted. Finally, among the instruments that could produce the desired outcome, the limits must be the least intrusive.²²⁶ The United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and other intergovernmental experts concluded in the 2017 Joint Declaration on Freedom of Expression and "Fake News," Disinformation, and Propaganda that general prohibitions on the dissemination of information based on vague principles are ineffective. Private entities are threatened by laws and regulations that compel or pressure them to censor or delete information based on these nebulous and imprecise criteria. This is due to the fact that private organisations are ill-equipped²²⁷. Platforms to over-regulate and disproportionately censor a wide range of acceptable material, and the risk of incurring hefty penalties or losing their ability to function can push platforms to over-regulate and disproportionately censor a wide range of permissible content. These are some international laws which depicts freedom of speech and expression in various nations thus we can say that this a brief description of freedom of speech and expression through various international laws.²²⁸ India is a party to the UDHR and has ratified the ICCPR.²²⁹ In case of India, international treaties are not self-executing. International laws must be converted into domestic law issued by a legislative act of the Parliament in order to be successfully implemented in the domestic legal system.

²²⁵ B. R., Ambedkar, THE BUDDHA AND HIS DHAMMA (Buddha Bhoomi Pub., Nagpur, 1997), p. 125.

²²⁶ Ibid

²²⁷ *Supra* note 145

²²⁸ Farzad Damania, 'The internet is equalizer of freedom of speech and expression? A discussion on freedom of speech on the internet in the United States and India' (2002) Vol 12:2 IND.INT'L & COMP.L.REV.

²²⁹ Subradipta Sarkar, 'Right to Free Speech in a Censored Democracy' (2009) 7 U Denv Sports & Ent LJ 62.

Nonetheless, India's Supreme Court has made laudable attempts to uphold the requirements of international treaties.²³⁰ The Supreme Court in the case of *Vishaka v. State of Rajasthan*²³¹ observed that the applicability of the UDHR and principles thereof may have to be read, if need be, into the domestic jurisprudence. The Court also summed up the implications of international law through the following words: Any International Convention not inconsistent with the fundamental rights (enshrined in the Constitution of India) and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Art.51(c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Art.253 with Entry 14136 of the Union List in the Seventh Schedule of the Constitution.²³² In *Nilabati Behera vs. State of Orissa*²³³ the honourable supreme court while granting compensation for custodial death has laid down its backing on Article 9(5) on the conventions on civil and political rights. In another case of *Chairman Railway Board vs. Chandrima Das*²³⁴, the honourable Supreme court while expanding the scope of Article 21 of the constitution by providing protection to foreign rape victim and referred to the international convention and declaration of human rights. From this we can draw an idea of freedom of speech and expression and various related international laws. And whenever needed Indian judiciary has referred to International treaties with domestic laws too.

- Freedom of speech and expression is a very important right of every citizen. Therefore, it should not be curtailed.
- Article 19(1)(a) of the Constitution of India mentions about freedom of speech and expression.
- Article 19(2) of the Constitution of India contains the restrictions on freedom of speech and expression such as sovereignty and integrity of the nation, security of the State, friendly relation with foreign States, public order, decency and morality, or in relation to contempt of court, defamation or incitement to an offence.
- Article 19 of the Universal Declaration of Human Rights, 1948 (UDHR) speaks that everyone has the right to freedom of opinion and expression; this right includes freedom

²³⁰ Ibid

²³¹ AIR 1997 SC 3011

²³² *Supra* note 149

²³³ 1993 AIR 1960

²³⁴ 28 January, 2000- 2 SCC 465

to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

- Article 19 of International Covenant on civil and political rights, provides for expression of opinion without interference.

CHAPTER IV

CYBERSPACE AND FREEDOM OF SPEECH AND EXPRESSION

4.1 Meaning and Definition of Cyberspace

Cyberspace- The word has stormed into our language and invaded our collective consciousness like nothing else. As the technology improves and ownership of home computers increases, we competently navigate our way around cyberspace, downloading information, reading and writing to newsgroups,

and receiving and sending emails.²³⁵ Cyberspace refers to the virtual computer world, and more specifically, an electronic medium which is used to facilitate online communication. Cyberspace involves a large computer network made up of many worldwide computer subnetworks that employ TCP/IP protocol to aid in communication and data exchange activities. Cyberspace's core feature is an interactive and virtual environment for a broad range of participants. In the common IT lexicon, any system that has a significant user base or even a well-designed interface can be thought to be cyberspace.²³⁶ Cyberspace is the representation of the new medium of communication, electronic communication, which is fast outmoding, or even replacing the more traditional methods of communication. Nowadays we often send emails in place of paper letters, we leave electronic messages on bulletin boards rather than pinning slips of card to wooden notice boards and more and more frequently we are able to read texts online through the e-journals, for instance rather than on good old-fashioned wood pulp. The physical objects of traditional communication (letters, books and so on) are being superseded by these new electronic objects. And, just as physical objects exist in physical space, so these cyber objects exist in the cyberspace.²³⁷ The term cyberspace was introduced by William Gibson in his book "Neuromancer" in 1984.²³⁸ Cyberspace also includes various social media platforms comprising primarily internet and mobile phone base tools for sharing and discussing information. It blends technology, telecommunications, and social interaction and provides a platform to communicate through words, pictures, films, and music. Social media includes web- based and mobile technologies used to turn communication into

²³⁵ Rebecca Bryant, 'What kind of space is cyberspace?' (2001) volume 5 *Minerva* www.minerva.mic.ul.ie/vol5/cyberspace/pdf accessed on 1 July 2021

²³⁶ What is Cyberspace? - Definition from Techopedia accessed on 25 June 2021

²³⁷ Ibid at 235

²³⁸ Cyberspace: Meaning, Regulation and Scope (legalbites.in)

interactive dialogue.²³⁹ Thus we can say that cyberspace includes WhatsApp, Facebook, Instagram, twitter, YouTube and so on.

4.2 Cyberspace - A Changing Dimension of Freedom of Speech and Expression

The endless growth of computer network and telecommunications facilitated by the digital technologies has given birth to a common space called Cyberspace.²⁴⁰ As we have already seen in the previous chapters that freedom of speech and expression is a very important right under the Constitution of India and has a very broad perspective in exercising it. This doesn't include just speaking words, writing, songs, paintings, gestures but also various platforms such as electronic media, press, social media. The Internet and the social media have become a vital communications tool through which individuals can exercise their right of freedom of expression and exchange information and ideas. In the past year or so, a growing movement of people around the world has been witnessed who are advocating for change, justice, equality, accountability of the powerful and respect for human rights. In such movements, the Internet and the social media have often played a key role by enabling people to connect and exchange information instantly and by creating a sense of solidarity.²⁴¹ Emphasising the importance of internet, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his Report, which was submitted to the Human Rights Council, stated that the internet has become a key means by which individuals can exercise their right to freedom and expression and hence, internet access is a human right. Report further stressed that States should ensure that internet access is maintained at all times, even during times of political unrest. The States were also reminded of their positive obligation to promote or to facilitate the enjoyment of the right of freedom of expression and the means necessary to exercise this right, including the Internet. The States were also asked to adopt policies to make the Internet widely available, accessible and affordable to all. The UN Human Rights Committee has also tried to give practical application to freedom of opinion and expression in the radically altered media landscape, the centre stage of which is occupied by the internet and mobile communication.²⁴² Describing new media as a global network to exchange ideas and opinions that does not necessarily rely on the traditional mass media, the Committee stated that the States should take all necessary steps to foster the independence of these new media and also ensure access to them.¹⁶ Moreover, Article 19 of the UDHR and Article 19(2) of the

²³⁹ *Supra* note 83

²⁴⁰ *Supra* note 235

²⁴¹ *Supra* note 83

²⁴² *Supra* note 83

ICCPR also provides for freedom of speech and expression even in case of internet and social media. Thus, it is seen that freedom of speech and expression is recognized as a fundamental right in whatever medium it is exercised under the Constitution of India and other international documents. And in the light of the growing use of internet and social media as a medium of exercising this right, access to this medium has also been recognized as a fundamental human right.²⁴³

Social media primarily serves the purposes of connecting, networking and voicing out opinions. From trivia to tragedies, individuals are kept informed as events unfold, which keeps them interested like never before. However, how they express themselves or respond thereafter is what distinguishes them as social beings. The media is a two-edged sword. The world has altered as a result of social media not just in the way we are able to communicate and act, but also in the way we are able to communicate and behave not only with each other, but with organisations and society.²⁴⁴ People believe they have more freedom of expression and/or speech while utilising online networks than they do in the real world, where social etiquette and manners may sometimes feel restricted and constraining. Of course, information is monitored and can be removed, but with millions of users on Facebook, Twitter, and even YouTube, not every status, photo, or comment can be watched, analysed, and totally regulated. This information posted on social networking sites has undoubtedly resulted in an increase of expressions, sentiments, and ideas from people who may otherwise find it difficult to depict themselves in person and face-to-face with others.²⁴⁵

The Internet's importance in political communication has grown in recent years as technology has advanced. The increasing importance of social media in communication has had a significant impact on traditional communication. This phenomenal development in social media is increasingly being used in political contexts—by politicians as well as individuals. In a relatively short period of time, politicians all over the world have chosen social media as a primary way of connecting with the public, allowing for lively debates and conversations.²⁴⁶

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

²⁴³ Shishir Tiwari and Gitanjali Ghosh, 'Social Media and Freedom of Speech and Expression: challenges before the Indian Law'(2018) Researchgate <https://www.researchgate.net/publication/328476554> accessed on 28 June 2021

²⁴⁴ Guna Graciyal and Dr. Deepa Viswam, 'Freedom of Expression in Social Media: A Political Perspective' (2018, volume 03, Issue 1, research revise journal)

²⁴⁵ Ibid

²⁴⁶ Ibid

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.²⁴⁷ The Internet and social media have evolved into specialised instruments that allow people to exercise their right to free expression and exchange ideas and information. In recent years, there has been a growing movement of people all around the world advocating for change, equity, communication, tremendous responsibility, and respect for human rights. The Internet and the 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.²⁴⁸ 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.²⁴⁹ Thus, social media has an important role in free speech. It has become easier for people to get information education, news etc. by print media and electronic media. Social media are different from traditional media such as newspaper, Television and Films. Millions of people can be connected with one-other. Social media is an evaluation of efforts collectively made by the technology. It is using highly accessible and rapid communication. It is also used in mobile technology and others to turn communication into the process of interaction and dialogue. The revolution by social media has brought change in West Asia. Facebook is used to schedule the protest, Twitter to coordinate and YouTube to share the ideas with the rest of the world. Social media has become the topic of discussion in the whole world nowadays. From young to old everyone is influenced by social media. Every person is taking advantage of it by some way or the other. Because of social media there are so many changes in urban, rural and metro city. Indian democracy gives to its citizen the rights to information. In this the role of social media is very significant.²⁵⁰ Thus, cyberspace is becoming a new dimension of freedom of speech and expression. People express their views. Social media has also witnessed various protest and movements too. Even protests are taking a digital mode. Internet was flooded with various image and videos during CAA movement all over India. Due to the protest internet was shut-down in Assam. Students from various educational institutions such as Delhi University, Jawaharlal Nehru University, Jamia Milia University, Gauhati University, Dibrugarh and others actively took part in protest against CAA. Recently, everyone witnessed images and clippings of the Farmers protest in India. #SAVE-DEHING-PATKAI was a movement in

²⁴⁷ Ayush Verma, 'Should freedom of speech and expression have limits' Should Freedom of Speech and Expression have limits - iPleaders accessed on 17 July 2021

²⁴⁸ Ibid

²⁴⁹ Ibid

²⁵⁰ Ajay Ramrao Suryawanshi, 'Social media and changing trends in Indian democracy'

twitter to save DEHING PATKAI WILD LIFE SANCTURY in Assam. Hence, we can say that social media is becoming a new mode of freedom of speech and expression.

4.3 Freedom of Speech and Expression and Cyber Laws in India.

Although there's no specific legislation in India that deals with social media, there are several provisions within the existing supposed cyber laws which may be accustomed look for redress in case of violation of any rights within the cyber area, net and social media. Freedom of speech and expression in cyberspace is same as it is mentioned in Article 19(1)(a) of the Constitution of India. However, there are provisions for the regulation of the internet in India. The legislations and the relevant provisions are discussed below:

The Information Technology Act,2000 deals with certain provisions of cyber law in India. Some of them are related to exercising freedom of speech and expression in cyberspace. They are as follows:

Section 66E	Publishing private images of others	Imprisonment for 3years or 2lakhs fine ²⁵¹
Section 66F	Acts of cyberterrorism	Imprisonment of life ²⁵²
Section 67	Publishing information which is abscone in electronic form	Imprisonment for 5years or 10lakhs fine ²⁵³
Section 67B	Publishing child porn or predating children	Imprisonment for 5years or 10lakh on first conviction, Imprisonment for 7years or

²⁵¹ The information Technology (Amendment) Act, 2008 retrieved 7 May 2017

²⁵² Ibid

²⁵³ Ibid

		10lakh on second conviction ²⁵⁴
Section 71	Misrepresentation	Imprisonment for 2years or fine 1lakh ²⁵⁵
Section 72	Breach of confidentiality and privacy	Imprisonment for 2years or fine 1lakh ²⁵⁶
Section 74	Publication for fraudulent purposes	Imprisonment for 2years or fine 1lakh ²⁵⁷
Section 66A (now scrapped)	Publishing offensive, false or threatening information	Imprisonment for 3years or fine
Section 69A	Cyber and e-commerce crimes	Central government is empowered to block the content and arrest the culprits. ²⁵⁸

²⁵⁴ Ibid

²⁵⁵ Ibid

²⁵⁶ Ibid

²⁵⁷ ibid

According to section 69A Indian Government banned several Chinese apps such as Tiktok, Shein, Clubfactory, helo and so on.²⁵⁹ Section 43A of the act states that where a body corporate possessing, dealing or handling any sensitive personal data or information in a computer resource owned, controlled or operated by it, is negligent in implementing and maintaining reasonable security practices and procedures thereby causing wrongful loss or wrongful gain to any person, it shall be liable to pay damages by way of compensation to the affected person. Again, section 70B provides for an agency of the Government to be appointed by the Central Government called the Indian Computer Emergency Response Team, which shall serve as the national agency for performing functions relating to cyber security.²⁶⁰

In August 2017, the central government under the Indian Telegraph Act, 1885 promulgated the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (Shutdown Rules) which provided the authorities with the legal basis to pass an order for an internet shutdown under Section 144. Under these rules, the government can temporarily suspend the internet in any part of the country.²⁶¹

The cyber laws are formulated to check and balance the use of internet in maintaining law and order in the society. These laws have been quite successful to a certain extent in ensuring liberty, safety and convenience to the users. But there are also certain drawbacks in this. In the name and purview of laws several times citizens had to face bitter actions.²⁶² The cyber laws have provisions to block websites, monitor, unhindered access to personal data, selective internet filtering.²⁶³ Section 69,69A,69B of the information technology act,2000 gives power to central government to monitor, access to personal data, blocking social media accounts and websites. The rules are needed to prevent cyber offences but the lack of specific and definite meaning benefits the government. Because what amounts to offence is not clear for matters related to freedom of speech and expression. Anything that might seem offensive to the government might not be offensive in real sense.²⁶⁴ Hence it is pretty evident the parameter of

²⁵⁹ India takes a tough stand on neighbouring apps (2021) volume XI No 187 The national law review India Blocks 224 Mobile Apps (natlawreview.com) accessed on 5 July 2021

²⁶⁰ *Supra* note 250

²⁶¹ Right to freedom of speech and expression through the Internet is part of Article 19(1)(a): Supreme Court of India - TheLeaflet accessed on 17 July 2021

²⁶² *Supra* note 47

²⁶³ *Ibid*

²⁶⁴ *Ibid*

judging any speech and expression as offensive and threat to nation's integrity should be more specific, apart from Article 19(2) of the Indian constitution. With the emerging time cyberspace is becoming an essential tool. Judiciary has also considered cyberspace as an important platform too. Importance of cyberspace in judiciary has been seen in various cases. In this chapter the role of judiciary in cyberspace cases will be focused. In Anuradha bhasin's case the court held that internet is an integral part and freedom of speech and expression in cyberspace is equally important as any other medium.²⁶⁵ Again The High Court of Kerala in a recent judgment in Faheema Shirin R K v. State of Kerala & Others, stated that "When the Human Rights Council of the UN have found that the right to access to the internet is a fundamental freedom and a tool to ensure the right to education, a rule or instruction which impairs the said right of the students cannot be permitted to stand in the eye of the law." The judgment pointed out that the lack of access to the internet had a differential and higher impact on weaker sections of the society who depend on it for life and livelihood.²⁶⁶ From this we can draw that internet is an essential tool. Keeping in view of the present covid19 situation everything is gradually taking a digital leap. Digital class, online exams, digital hearings of courts etc. Shreya Singhal vs Union of India is a landmark judgement in India regarding cyberlaws. The court scrapped section 66-A of the information technology act,2000. It held that freedom of speech and expression under Article 19(1)(a) of the constitution of India is a fundamental right. And every citizen has the right to express freely. Section 66A of the information technology act,2000 was violative of Article 19(1)(a) of the constitution of India.²⁶⁷ The cases are studied in details in later chapter. Thus, we can say that judiciary gives freedom of speech and expression in cyberspace and others mediums an equal footing. With the change in time, the cyber offences are taken seriously and have gained importance. Judiciary through its decisions have laid that no person or authority is above law. And it is equal for all irrespective of its caste, creed and religion.²⁶⁸

4.4 Limitations as to Freedom of Speech and Expression in Cyberspace

As there is Freedom of speech and expression there are restrictions as well. We have discussed in the earlier chapters about freedom of speech and expression and its limitations under the

²⁶⁵ <https://indiankanoon.org/doc/82461587> accessed on 18 July 2021

²⁶⁶ Right to freedom of speech and expression through the Internet is part of Article 19(1)(a): Supreme Court of India - TheLeaflet accessed on 18July,2021

²⁶⁷ (2015) AIR SC 1523

²⁶⁸ Rajni Bagga, 'The National Cyber Security Policy of India 2013: An Analytical Study' (2018) 9 Indian JL & Just 164

International Human Rights Laws and under the Indian Constitution. The limitations as to freedom of speech and expression in the cyberspace are same that of the restrictions under Article 19(2) of Indian Constitution. This chapter will discuss about the limits of freedom of speech and expression in cyberspace. The right to freedom is a broad concept that encompasses people's rights to freedom of movement, occupation, and assembly, among other things. However, it is claimed that one's right should not obstruct the right of another. Furthermore, everyone has a responsibility to the State; one should exercise freedom of expression in a way that does not offend others or instigate violence. Similarly, if the realm of any such privilege is not restricted, it has a consequence. As a result, this privilege is not absolute and is subject to certain limitations.²⁶⁹ The restrictions that are in coherence with the national interest can be illustrated as-Security of State, Friendly relations with foreign States, Public Order, Decency and Morality, Contempt of Court, Defamation, Incitement to an offence, Sedition.²⁷⁰ When looking at these limits, it is clear that the legislature's goal in granting a right to freedom is to protect the interests of others, including the State and people. It would be extremely difficult for the courts to balance the interests of various State bodies if these limits were not enforced. The rights and responsibilities are inextricably linked and should never be seen separately.²⁷¹ For example, my right to free expression cannot be used to degrade another person's dignity, thus defamation as a limitation comes to the rescue. It is critical in a functioning democracy to keep people's rights at bay. Wherever there is a disagreement, India's courts have stepped in to provide interpretations and fair implementation. These rights will lose their worth if no limitations are placed, and every individual or state entity would lose the boundaries they live in, infringing on others' lawful pleasure.²⁷² The limitations under Article 19(2) are applicable to the cyberspace and various social media platforms as well. However, despite of freedom various restrictions as to freedom of speech and expression also exists.²⁷³ In December, 2011, the Indian Government asked the internet companies like Google, Facebook, Microsoft, etc. to create a framework to pre-screen the data before it goes up on the website. Some defamatory content was found on a social networking site and on that pretext, Government has asked the companies to chalk out a way to ensure that such content is screened

²⁶⁹ Ayush Verma, 'Should freedom of speech and expression have limits' Should Freedom of Speech and Expression have limits - iPleaders accessed on 17 July 2021

²⁷⁰ Ibid

²⁷¹ Ibid

²⁷² Ibid

²⁷³ Greeshma Govindarajan and Nanditha Ravindar, 'Freedom of expression on social media: myth or reality (2016) Vol 7 No 1 Global Media House

before it goes online.²⁷⁴ Various controversies took place regarding free speech in the cyber world if laws are new and clever policies to curtail freedom of speech and expression. As a major debate broke out on the matter and it was portrayed in a negative light, Kapil Sibal told media that the Government was not trying to censor the freedom of speech and expression online; it merely wanted to stop offensive material from being uploaded on social networking sites. The companies also informed that it is not possible to meet with the demand due the volume of user-generated content in India and that they cannot be responsible for determining what is or is not defamatory.²⁷⁵ In the Secretary, Ministry of Information and Broadcasting, Government of India and others vs. Cricket Association of Bengal and others, the Supreme Court held that for ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an aware citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This cannot be provided by a medium controlled by a monopoly- whether the monopoly is of the State or any other individual, group or organization. In the light of the above, it can be opined that rather than censoring of social media, its regulation is desirable in a way which maintains the rights of users and also protects that of the victims simultaneously. This brings us to discussing the cyber laws of India which are intended to regulate social media, albeit in an indirect manner.²⁷⁶ The right to freedom of speech and expression is guaranteed to every Indian citizen under Article 19 (1) (a) of the Indian Constitution. Every individual has the freedom to express his or her thoughts or ideas through speech. Individuals have the freedom to propagate their thoughts or opinions through writing, through ads, or through audio visuals, not just through words. The right to information, the right to press, the right to broadcast, and the right to commercial speech are all part of the right to freedom of speech and expression. Article 19 (2) of the Indian Constitution allows for reasonable limits on the right to freedom of speech and expression.²⁷⁷ We can conclude that everyone has the right to freedom of thought and expression, which includes the freedom to hold beliefs without interference and the freedom to seek, receive, and transmit information and ideas through any medium and across all borders. Residents of India have the right to freedom of speech and expression under Article 19 (1) of the Indian Constitution. This liberty entails the ability to openly express one's

²⁷⁴ *Supra* note 243

²⁷⁵ *Ibid*

²⁷⁶ *Supra* note 94

²⁷⁷ Ayush Verma, 'Should freedom of speech and expression have limits' Should Freedom of Speech and Expression have limits - iPleaders accessed on 17 July 2021

thoughts and conclusions through speaking, writing, printing, images, or any other means. It also involves the right to spread or publish other people's ideas²⁷⁸. Article 19(2) lays forth some justifications for limiting this right in a fair way. Only content that fits within these legal boundaries might legally be labelled objectionable. Instead of creating a new category of objectionable speech, it would be more beneficial to evaluate all of India's laws and policies relating to freedom of expression against the Constitution's principles. This will guarantee that the line between socially unacceptable and legally problematic information stays firmly in place, as it should.²⁷⁹

4.5 Judicial approach in cyberspace cases

As we have discussed freedom of speech and expression under Article 19(1)(a) of the constitution and the various medium of exercising this freedom. In recent times it is seen that due to easy accessibility internet has become very popular in our daily life. While exercising freedom of speech and expression in various social media platforms several persons faced problems. Some of them are described below:

- a) In November 2012, a girl named Shahen Dhada was arrested for a post on her Facebook profile in which she wrote questioning the city why has everything come to a standstill due to death of Shiv Sena leader Bal Thackeray's death. The post she updated, quoted verbatim was: "With all respect, every day, thousands of people die, but still the world moves on. Just due to a natural death of a politician, everyone just goes bonkers. They should know, we are resilient by force, not by choice. When was the last time, did anyone showed respect or even a two-minute silence for Shaheed Bhagat Singh, Azad, Sukhdev or any of the people because of whom we are free-living Indians? Respect is earned, given, and definitely not forced. Today, Mumbai shuts down due to fear, not due to respect." A friend of hers named Renu srinivas who had 'liked' the post was also arrested. The uncle of shahen was also harassed and shiv sena activist broke his clinic. There was a lot of uproar. following their arrests and the court later dropped charges against the two girls.²⁸⁰

²⁷⁸ *Supra* note 268

²⁷⁹ *Ibid*

²⁸⁰ Greeshma Govindarajan and Nanditha Ravindar. 'Freedom of expression on social media: myth or reality?' (2016) Vol 7 no 1 Global media journal

- b) In October 2012, three youngsters from Kishtwar were arrested for their Facebook content, after they were tagged in a video which was termed blasphemous by the Government. One of them had commented on the video and met with the same fate as the other two. Furthermore, there was no prima facie evidence that they had actually uploaded the video. They spent 40 days in jail for this after which they were set free. Apart, from these two specific incidents, there were several other cases where people were arrested for posting, commenting or sharing content which was termed either seditious, insulting or offensive by the government.²⁸¹
- c) In 2013, the Supreme Court of India faced certain special challenges to the fundamental right to freedom of speech and expression under the cyberspace in the case of *Shreya Singhal v. Union of India*.²⁸² One of the preliminary arguments that was made by the respondents in *Shreya Singhal* is that the restrictions on freedom of speech on Internet are not bound by Article 19(2), as it is a separate medium altogether. The Supreme Court did not adopt this argument. In order to reject this proposition, the court relied on *The Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal*²⁸³ and held that right to acquire and disseminate information forms part of freedom of speech and expression. However, the Supreme Court struck down section 66A of the Information Technology Act, 2000 relating to the restrictions on online speech, as unconditional on grounds of violating the freedom of speech guaranteed under Article 19(1)(a) of the Constitution of India. The Court further held that the section was not saved by virtue of being a reasonable restriction on freedom of speech under Article 19(2). It also read down section 79 and Rules under the Section and held that online intermediaries would only be obligated to take down the content on receiving an order from a court or government authority. This case is considered as a watershed moment for online free speech in India.²⁸⁴
- d) The Himachal Pradesh police filed sedition charges against senior journalist Vinod Dua for a YouTube broadcast. He told the Supreme Court that freedom of speech and expression guaranteed by the Constitution extends to citizens on social media and in the press. And it is right of any citizen to put forward constructive criticism against the government without inciting anyone for violence with the intention to create public

²⁸¹ *Supra* note 277

²⁸² (2015) AIR SC 1523

²⁸³ (1996) AIR SC 1236

²⁸⁴ <http://Indiankanoon.org/doc/110813550> accessed on 3 July 2021

disorder. The top court granted him interim protection from arrest on 14 June which is still continuing.²⁸⁵

- e) *Anuradha Bhasin v. Union of India*: This case arose in the midst of the abrogation of Article 370 which resulted in the revocation of the special status of Jammu and Kashmir. The case argued on the internet shutdown and movement restrictions imposed over the territory of Jammu and Kashmir on 4th august,2019. The restrictions were imposed in the name of maintaining public order in the region. The court ordered the Government to assess the impositions by conducting the test of necessity and proportionality and should act accordingly to that. The decision of the court was questioned on the basis of curtailing the freedom of speech of the press and media and also on the basis of the court's ignorance on the indefinite restriction of internet services and movement of press personnel. The case is a ray of hope as it is about freedom of speech and expression over the internet is a fundamental right. It recognised that freedom of press should not be curtailed until it harms the public order of a country. It also stated that internet shutdown for an indefinite period is not a solution for preventing apprehension of harm to law and order.²⁸⁶
- f) *Prashant Bhushan's case*: This case is based on two tweets made by senior advocate and activist Prashant Bhushan on twitter. His tweets are:
- i) June 27- Prashant Bhushan tweeted about an undeclared emergency in the country and the role of Supreme Court and last four chief justices of India. When historians in the future look back at the last six years to see how democracy has been destroyed in India even without a formal emergency, they will particularly mark the role of the SC in this destruction and more particularly the role of the last four CJIs, the tweet alleged.
 - ii) June 29- Bhushan tweeted about then CJI S.A. Bobde sitting on a Harley Davidson motorcycle in his hometown Nagpur during the Coronavirus outbreak. The CJI rides a 50lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur without wearing a mask and helmet at the time when he keeps the SC on lockdown due to covid19 denying the citizens their fundamental right

²⁸⁵ [Freedom of speech extends to social media too: Vinod Dua to SC | India News,The Indian Express](#) accessed on 4 July 2021.

²⁸⁶ <https://teamattorneylex.in/2021/05/13/anuradha-bhasin-v-union-of-india>

to access justice. Bhushan's second tweet accompanied a picture of CJI Bobde sitting on a stationary Harley Davidson bike.

As a result of the tweets advocate Mehek Maheshwari filed a petition before the SC seeking initiation of criminal contempt proceeding against Bhushan. SC initiated contempt proceedings against Bhushan after taking a note of the complaint and issues notice to him. Bhushan refused to apologize and in his response before the SC told the Apex court that his statements fell within the domain of free speech. He cited similar criticism of the SC made by its sitting and retired judges. SC held Bhushan guilty of criminal contempt for his both tweets against the judiciary. Bhushan submitted another statement before the apex court maintaining that he would not apologize. He said that the views expressed by him through his tweets represented his bona-fide beliefs and, as a result, an apology for expressing such beliefs would be insincere. Prashant Bhushan was fined Rs1, failing to do so would amount to 3 months jail term and also debarred from practice in the apex court for 3years. Bhushan accepted the fine but indicated that he would file a review plea against the order.²⁸⁷

- g) In 2011, *Aseem Trivedi*²⁸⁸ launched a countrywide anti-corruption movement called India Against Corruption. To support the movement, he started Cartoons Against Corruption, launched a website www.cartoonsagainstcorruption.com, and displayed his cartoons in the MMRDA ground in Mumbai during Anna Hazare's hunger strike, but his website was banned by Mumbai Crime Branch in December 2011 for displaying defamatory and derogatory cartoons.²⁸⁹
- h) Disha Ravi- toolkit case: 22-year-old climate change activist Disha Ravi was arrested by Delhi Police in the 'toolkit' case. Charges against Ravi included Sections 124A (sedition), 153A (promoting hatred amongst various communities on social/cultural/religious grounds) and 120B (criminal conspiracy) of the Indian Penal Code. She was also accused of having Khalistani connections as well as plotting to "promote disaffection against Indian state". The farmers' protest grabbed international attention when 18-year-old Swedish climate activist Greta Thunberg tweeted about it. Cyber Crimes cell of Delhi Police filed an FIR against the creators of a 'toolkit' that was shared by Greta Thunberg on Twitter. Disha Ravi was charged with sedition and

²⁸⁷ Prashanth Bushan Contempt of Court case (legalserviceindia.com)

²⁸⁸ Cri.PIL 3-2015

²⁸⁹ Role of Social media and Freedom of Speech and Expression (legaldesire.com) accessed on 18 July 2021

immediately arrested without it being established that her actions led to violence at Red Fort on January 26. Disha stated her view that she supports the farmers as they are the future. She also said she was not the creator of the toolkit.²⁹⁰

Importance of cyberspace in judiciary has been seen in various cases. In this chapter the role of judiciary in cyberspace cases will be focused. In Anuradha bhasin's case the court held that internet is an integral part and freedom of speech and expression in cyberspace is equally important as any other medium. Again, The High Court of Kerala in a recent judgment in *Faheema Shirin R K v. State of Kerala & Others*, stated that "When the Human Rights Council of the UN have found that the right to access to the internet is a fundamental freedom and a tool to ensure the right to education, a rule or instruction which impairs the said right of the students cannot be permitted to stand in the eye of the law." The judgment pointed out that the lack of access to the internet had a differential and higher impact on weaker sections of the society who depend on it for life and livelihood. From this we can draw that internet is an essential tool. Keeping in view of the present covid19 situation everything is gradually taking a digital leap. Digital class, online exams, digital hearings of courts etc. *Shreya Singhal vs Union of India* is a landmark judgement in India regarding cyberlaws. The court scrapped section 66-A of the information technology act, 2000. It held that freedom of speech and expression under Article 19(1)(a) of the constitution of India is a fundamental right. And every citizen has the right to express freely. Section 66A of the information technology act, 2000 was violative of Article 19(1)(a) of the constitution of India. The cases are studied in details in later chapter. Thus, we can say that judiciary gives freedom of speech and expression in cyberspace and others mediums an equal footing. With the change in time, the cyber offences are taken seriously and have gained importance. Judiciary through its decisions have laid that no person or authority is above law. And it is equal for all irrespective of its caste, creed and religion. The chapter is about freedom of speech and expression in cyberspace and the limitations. Some cases are also discussed in the chapter which are related to freedom of speech and expression in cyberspace. From this chapter it is clear that cyberspace is quite often used to express one's views nowadays. It is an important and notable platform. Freedom of speech and expression should not be curtailed in cyberspace without reasonable restrictions.

²⁹⁰ Supra note 25

CHAPTER V

COMPLEXITIES OF FREEDOM OF SPEECH AND EXPRESSION IN CYBERSPACE

5.1 Freedom of Speech and Expression under Indian penal laws

Freedom of speech and expression is an integral right of every citizen. Every citizen exercises this right at some point of time by some means or other. As it is discussed in the earlier chapters the provisions of freedom of speech and expression under Article 19(1)(a) of the Constitution of India and several International laws. So, individuals exercise this right. While exercising the right of freedom of speech and expression those expressed views are accepted or not objected but sometimes certain actions were taken against individuals which were not favourable for them. For instances there are cases where individuals were charged under some serious offences for freedom of speech and expression under IPC, Cr.PC etc. The Indian Penal Code, 1860 and The Criminal Procedure Code, 1973 deals with the criminal offences in India. If while exercising freedom of speech and expression the meaning amounts to any of this offence under section 121, 122, 123, 124, 124A, 125, 126, 131, 499 of IPC the person is liable. Abetment under section 107 by any person is also one of them.²⁹¹

Section 121 states about waging war or attempting to wage war against Govt. of India. Section 122 states about collecting arms with the intention of waging war against Govt. of India. Section 123 states about concealing with intent to facilitate design to wage war. Section 124 states about assaulting President, Governor, etc. with intent to compel or restrain, or exercise of any lawful power. Section 124A speaks about Sedition- using of words both written and spoken, signs, visual representation to bring hatred towards the Govt. of India. Section 125 speaks about waging war against any Asiatic power in alliance with the Govt. of India. Section 126 is about committing depredation on territories of power at peace with the Govt. of India. Section 131 states about abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty. Section 499 states about defamation-harming reputation of anyone by words or other means.²⁹² If any person commits the above mentioned then they will be charged under the offences mentioned.

²⁹¹ Sital sarai, 'Sedition vis a vis freedom of speech and expression national and international perspectives' (Ph.D, Panjab University, 2019)

²⁹² Prof S.N. Misra, *Indian penal code with the criminal law (amendment) act, 2018* (twenty first edition, central law agency, 2018).

5.1.1 Seditious laws

Freedom of speech and expression and sedition especially have a direct connection. Freedom of speech and expression includes expression of views by words, writings, artistic mode and so on. Now, if we see sedition this also means using of words, writings etc. Speaking against the government has to be done by words, writings, signs. So, sedition has to be done by speech and expression.²⁹³ Historically, the government has abused the provisions of the law of sedition in the name of carrying out its declared responsibilities. Governments have employed a variety of tactics to repress dissent, intimidate political opponents, taint public opinion, and avoid humiliation as a result of their failures by diverting public attention and stifling basic fundamental rights like freedom of speech and expression.²⁹⁴ Thus, they are connected to each other. In India, the history and the interpretation of law of sedition is looked at from two different perspectives, one being, judicial and the other is political.²⁹⁵

Section 124A of IPC– Sedition - *'whoever by words, either spoken or written or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.'*²⁹⁶

The law of sedition is based on the principle that every state, regardless of its form of government, must be armed with the power to punish those who, through their actions, jeopardise the state's safety and stability, or disseminate such feelings of disloyalty that have the potential to cause disruption or public disorder.²⁹⁷ But that doesn't mean freedom of speech and expression should be suppressed in the light of sedition. Sedition is seen to be the most commonly used law to suppress freedom of speech and expression. Sedition is a non-bailable offence in India. And the punishment for sedition is imprisonment for life to which fine may be added or imprisonment for three years, to which fine may be added, or with fine.

²⁹³ Shivani Lohiya, Law of Sedition 38 (Universal Law Publishing, New Delhi, 2014).

²⁹⁴ Michael Head, Crimes Against the State: From Treason to Terrorism 1 (Ashgate Publishing Company, 2011).

²⁹⁵ Anushka Singh, Sedition in Liberal Democracies 137 (Oxford University Press, New Delhi, 2018).

²⁹⁶ Section 124A of Indian Penal Code, 1860

²⁹⁷ K.D. Gaur, The Indian Penal Code 225 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 4th edn., 2009).

5.1.2 National security laws:

Apart from IPC there several other laws such as national security laws which can be implied if a persons' freedom of speech and expression passes any message or intention which can be a threat to Nations' security issues. If any person speaks, writes, paints, sings anything which can be against the National security then National Security Laws are implied on the individual. Examples of some National Security Laws are NSA,1980; AFSPA,1958; UAPA,1967. If any person is found to promote views against the security of India, the security laws come into force. National security laws are also applicable to areas which are disturbed areas, disturbed areas are those areas where there is disturbance in the peace and order.²⁹⁸ In the name of freedom of expression supporting terrorist groups or sympathizing them is also treated as an offence. Section 39 of the Unlawful Activities (Prevention) Act (UAPA), upon which the warning in the MHA's circular rests, unconstitutionally infringes on freedom of expression and speech. Section 39 criminalises a person who invites support, including non-monetary or property support with intention to further the activity of a terrorist organisation. The section also criminalises someone who address es a meeting or assists in arranging or managing a meeting that will support or further the activity of a terrorist organisation. The section even criminalises someone who is simply to be addressed by a person who associates or professes to be associated with a terrorist organisation.²⁹⁹ Taslima Nasreen is a prominent author. She has so many books published. The author has written several books on status of women, minority rights and other social issues. This author received death threats for numerous times. In her book 'lajja' the author has criticised the failure of Bangladesh government. In 'Dwikhandita' she used certain words hurting the religious sentiments of Muslim minorities. She exercised the freedom of speech and expression through her books. She was charged for defamation under section 499,500,501 and 502 of the IPC. The court banned her book under section 295A of IPC and forfeiture the copies of the book under 95(1) of the Cr.PC.³⁰⁰ Again Police in Delhi arrested Alok Tomar, the editor of the Hindi-language magazine Senior India, and seized all copies of the relevant issue in early 2006, after filing a case under sections 153A and 295A in response to the magazine's re-publication of the Jyllands Posten cartoons, which

²⁹⁸ Surabhi Chopra, 'National Security Laws in India: The Unravelling of Constitutional Constraints' (2015) 17 Or Rev Int'l L 1.

²⁹⁹ SAHRDC, 'Stifling Freedom of Expression and Opinion' (2010) Vol 45, No. 32, Economic and Political Weekly <https://www.jstor.org/stable/20764381> accessed on 15 June 2021.

³⁰⁰ Iqbal A. Ansari, 'Free speech-hate speech: The Taslima Nasreen Case' (2008) volume 43 no 08 Economic and political weekly <http://www.jstor.org/stable/40277172> accessed on 08 June 2021.

sparked worldwide outrage due to their depiction of the Prophet Muhammad.³⁰¹ Section 500 of IPC states about punishment for defamation. Section 501 states about printing or engraving matter known to be defamatory. Section 502 is about sale of printed or engraved substance containing defamatory matter.³⁰²

5.2 Case analysis

Below are some cases where the citizens exercising freedom of speech and expression were charged under certain offences:

- *Kedar Nath Singh vs state of Bihar*:³⁰³ The Supreme Court clearly distinguished between disloyalty to the country's government and commenting on the government's measures without inciting public disorder by acts of violence in this landmark case, the first case of sedition tried in a court of Independent India, where the constitutionality of the very provision was challenged and the Supreme Court clearly differentiated between disloyalty to the country's government and commenting on the government's measures without inciting public disorder by acts of violence. He was a member of the Forward Communist Party in Bihar, was charged for quite an extreme speech condemning the ruling government of the time and calling for a revolution.³⁰⁴
- *Kanhaiya Kumar v. state of NCT of Delhi*:³⁰⁵ Students of Jawaharlal Nehru University organized an event on the Parliament attack convict Afzal Guru, who was hanged in 2013. The event was a protest through poetry, art and music against the judicial killing of Afzal. Allegations were made that the students in the protest were heard shouting anti-Indian slogans. A case therefore filed against several students on charges of offence under sections 124-A, 120-B, 34 of Indian Penal Code, 1860. The university's students' union then president Kanhaiya Kumar was arrested after allegations of anti-national sloganeering were made against him. Kanhaiya Kumar was released on bail by the Delhi High Court as the police investigation was still at nascent stage, and Kumar's exact role in the protest was not clear.³⁰⁶

³⁰¹T. John O'Dowd and UCD Dublin, 'Pilate's paramount duty: constitutional "reasonableness" and the restriction of freedom of speech and assembly, <https://ssrn.com/abstract=1583181> last accessed on 15 July 2021.

³⁰² Prof S.N. Misra, *Indian penal code with the criminal law(amendment)act,2018* (twenty first edition, central law agency, 2018).

³⁰³1962 AIR 955

³⁰⁴ *Kedar Nath Singh vs State of Bihar* on 20 January, 1962 (indiankanon.org)

³⁰⁵ MANU/DE/0496/2016.

³⁰⁶ <https://indiankanon.org/doc/77368780> last accessed on 15 July 2021

- *Sharjeel Imam case*³⁰⁷: JNU student Sharjeel Imam was arrested under the stringent Unlawful Activities (Prevention) Act and sedition law for his speech. Imam was arrested for his alleged speech at Jamia Milia Islamia (JMI) on December 13, 2019, and at Aligarh Muslim University (AMU) on December 16 where he allegedly threatened to cut off Assam and the rest of the Northeast from India. In one speech, a video of which went viral, he was heard calling for Assam to be ‘cut off’ from the rest of India by having a ‘chakka jam’ at the chicken’s neck at the Siliguri corridor. Five states lodged sedition charges on him. They are Assam, Uttar Pradesh, Manipur, Arunachal Pradesh and Delhi.³⁰⁸

Between 2015 and 2019, 279 sedition cases were registered under Section 124A of IPC, though only nine persons were convicted in five cases in this period, the home ministry told the Rajya Sabha.

- Akhil Gogoi case: Akhil Gogoi is a former peasant leader and RTI activist of Assam. He is also associated with Krishak Mukti Sangram Samiti (KMSS). He is now the MLA of Sivsagar Constituency. He was arrested under charges of sedition and other national security laws with three others namely Bittu Sonowal, Manas Konwar and Dhajijya Konwar. He was arrested for participating in the protest against Citizenship Amendment Act (CAA) and detained under the National Security Act, 1980 by National Investigation Agency (NIA). He was accused of abetment, waging war against the state and taking advantage of the CAA movement to plan unlawful activities to cause grievous injury to the public. The chargesheet also mentioned that he was addressed as comrade and greeted laal salam. This is a way of greeting used by the communist or Marxist party. FIR against Gogoi was filed in Jorhat, Sivsagar and Chabua police station. Akhil Gogoi got bail and was released later. He was not found guilty.³⁰⁹
- Binayak Sen, a public health expert based in Chhattisgarh, was booked for sedition for allegedly supporting Maoists in 2010. He was sentenced to life imprisonment by Raipur sessions court but was eventually granted bail in 2011, by the Supreme Court.³¹⁰
- Natasha Narwal, Devangana Kalita and Jamia student Asif Iqbal Tanha were booked under UAPA in the 2020 Delhi riots case. They were arrested in May 2020 under the stringent UAPA law and were charged with premeditated conspiracy in the Delhi

³⁰⁷ CRL.M.C 1475/2020

³⁰⁸JNU student Sharjeel Imam seeks bail in sedition case, denies encouraging violence during anti-CAA protests India News (timesnownews.com) accessed on 15 July 2021

³⁰⁹ <http://indiankanoon.org/doc/55439106> accessed on 10 August 2021

³¹⁰ *Supra* note 26

riots case. They were released on 15 July 2021.³¹¹ 5,128 cases were registered under the Unlawful Activities Prevention Act (UAPA) between 2015 and 2019, though only 155 persons were convicted in 123 cases. As regards UAPA cases, between 2015 and 2019, 5,128 cases were registered and chargesheet filed in 1,427 cases in which a total 3,613 persons were charge sheeted. Out of which 123 cases reached the conviction stage, in which 155 persons were convicted.³¹² And the remaining were not.

In many cases it is seen that the persons accused with national security charges were not found guilty. Security laws are a mandate in a nation but that should not be based on assumptions. Such charges destroy a person's honour and dignity. Moreover, everyone has the right to freedom of speech and expression so unless the expression falls under the reasonable restrictions it should not be suppressed.

5.3 A human rights perspective

As we know freedom of speech and expression is an important right. But unlawful activities or offences are not tolerated in the name of free speech and will. Constitution of India guarantees certain rights and privileges to its citizens but also aims to maintain the sovereignty, unity and integrity of the nation. Law of the land is supreme and no man is above it.³¹³ Internet has made things easily accessible to all. Therefore, communication has become convenient even at distant places. It has helped every individual connect with one another.³¹⁴ As there are advantages of technology so are the drawbacks. On a domestic level, in 2012, information was circulated in Bangalore targeting a group in an attempt to disrupt the region's communal peace. It was disseminated in order to compel the population to leave the city by a certain date, as well as to warn terrible repercussions if the conditions were not met. Offenders utilised social media and mobile phones to carry out their nefarious intentions, and the impact was so great that hundreds of people flocked to Bangalore train stations on August 15, 2012, hoping to get out of the city before communal violence erupted.³¹⁵

The naxal attack in Chattisgarh in May 2013, a group of anti-national forces attempted to abuse the power of cyberspace by creating a page that explained the naxals whole objective, portrayed

³¹¹ <https://www.indiatoday.in/india/video/delhi-riots-case-natasha-narwal>.

³¹² Government: Conviction only in 5 of 279 sedition cases filed in 4 years | India News - Times of India (indiatimes.com) accessed on 10 August 2021

³¹³ Rajni Bagga, 'The National Cyber Security Policy of India 2013: An Analytical Study' (2018) 9 Indian JL & Just 164

³¹⁴ Ibid

³¹⁵ Ibid

them as heroes, and sought people's support. Although the page was taken down before it could cause any harm, all of these events served as a warning to the government to address this issue as quickly as possible.³¹⁶

The 26/11 Mumbai attack, 17 were the last straw that forced the Indian government to come up with stringent cyber security strategy to combat this evil which has threatened the sovereignty of our country time and again. Government has realised the importance of cyber security framework due to rising cyber security challenges mounting day and night.³¹⁷ Cyber security has become critical for the stable development of every nation today. Finally, government of India released its First and much awaited National Cyber Security Policy in July, 2013.³¹⁸ National cyber security policy of India has been released to cover variety of cyber security concerns in depth and holistic manner.³¹⁹ But still cyber security policies haven't been much successful in ensuring. Cyberspace has no borders which make it all the more dangerous for any specific country to regulate. India is still waiting for the implementation of a cyber-security policy that does not fully address basic cyber security requirements, let alone new and emerging issues such as the cashless economy, e-governance, Aadhaar, the rising number of digital gazettes imported from China, cloud computing, and cyber radicalization.³²⁰ Cyber terrorism has become a new threat for India apart from the others. Therefore, it is much needed to have strict cyber policies and laws to safeguard the nation. Various terrorist organization now a days operate through high technology devices. Security of the nation is a paramount matter. There are also cases where persons are accused of national security charges and sedition while exercising free speech in social media platforms.³²¹ The cases where persons were subjected to sedition and others are already discussed in the previous chapters. But there are also examples where in the name of security persons are subjected to inhuman treatment and their basic rights were curtailed. North eastern region of India has been subjected with previous security laws from time to time. Manipur, Nagaland, Assam had many national security laws at times due to illegal and terrorist groups of the regions. Common people who were innocent also suffered a lot due to such laws.³²²

³¹⁶ Guna Graciyal and Dr. Deepa Viswam, 'Freedom of Expression in Social Media: A Political Perspective' (2018, volume 03, Issue 1, research revise journal)

³¹⁷ Ibid

³¹⁸ Ibid

³¹⁹ Ibid

³²⁰ Ibid

³²¹ Ibid at 316

³²² Surabhi Chopra, 'National Security Laws in India: The Unraveling of Constitutional Constraints' (2015) 17 Or Rev Int'l L 1

Many women faced lot of humiliations and sexual assault in the regions where such harsh laws were implemented. Such treatments are against humans and breach humanitarian grounds.³²³ It is much needed to be sure about the persons and their offences so that no innocent person suffers as law states that innocent shouldn't be punished.³²⁴ Thus, it is to be checked and maintained so that no individual is caused harmed and also the security and integrity of the nation stands firm.

5.4 Challenges

There can't be true democracy without genuine freedom of expression, and there can't be genuine freedom of expression without genuine democracy. Democracy and free speech are both precious goods that are devalued and constantly threatened all across the world. Censorship is a sickness that spreads quickly. It affects individuals in positions of power all around the world. Any democracy's lifeblood is freedom of speech and expression.³²⁵ The fundamental notion of freedom of speech and expression has existed since the dawn of civilisation. As a result, a democracy's Constitution should defend the concept of free speech by prohibiting censorship by the legislative or executive branches of government.³²⁶ In a free democratic society those who hold office in government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter such criticism amounts to political censorship of the most insidious kind.³²⁷ In modern liberal democracies, freedom of expression is frequently viewed as an essential principle. India, as a liberal democracy, believes that freedom of expression and the press are necessary for a democratic system to function. As a result, members of the constituent assembly lauded the most essential guarantee of free expression, the charter of freedoms, the core of fundamental rights, and other eulogistic phrases.³²⁸ These views highlight the need of ensuring freedom of dissent in a society founded on individual respect. It is critical for democracy's success to cultivate a capacious and sensitive temperament of tolerance, formed and moulded not out of a lack of commitment to one's own beliefs, but rather out of the conviction that it would be false to democracy if we did not provide a level playing field and an honest race for all ideas.³²⁹ It requires a sustained

³²³ Ibid at 316

³²⁴ Ibid

³²⁵ Sheetal Gupta, 'Freedom of speech and expression in India a study on contemporary challenges' (chapter 2, PhD thesis, University of Lucknow) <http://hdl.handle.net/10603/221780> accessed on 12 August 2021

³²⁶ Ibid

³²⁷ *Hector v. Attorney General of Antigua and Barbuda*, (1990) 2 AC 312 (PC)

³²⁸ Soli J. Sorabjee, "Freedom of expression in India", chapter 8 296-311 at 296, Soli J. Sorabjee (ed.), *Law and Justice*, Delhi: Universal Law Publishing Company Ltd., 2006

³²⁹ Rajni Bagga, 'The National Cyber Security Policy of India 2013: An Analytical Study' (2018) 9 *Indian JL &*

effort to change the attitude of persons and to sensitize them to the value of free speech and the importance of dissent, and to impress upon them that no group has the monopoly of truth and wisdom, about which there may be genuinely different perceptions.³³⁰ Though, freedom of speech is a fundamental right, but it is not absolute, rather subject to number of exceptions. But the exceptions must be narrowly interpreted and the necessity for any interference must be convincingly established. In almost, all liberal democracies, it is generally recognised that restrictions should be exception and free expression, rule; nevertheless, compliance with this principle is often lacking.³³¹ Thus, the challenge for a democracy is one of balance to defend freedom of speech and expression while countering speech which obstructs the administration of judiciary. Here it is worth to quote John Stuart Mill³³² who writes that, ...If any opinion is compelled to silence, that opinion may for ought we can certainly know be true ... to deny this is to assume our own infallibility.

It is seen that there are certain challenges while exercising freedom of speech and expression in India. As, discussed earlier freedom of speech and expression has led to various sedition cases in India. Some of the challenges of freedom of speech and expression in a democracy are: one person's freedom of speech and expression may be defamation for another. Constructive Criticism is taken as speaking against the state. Imposition of National security laws and sedition laws are major threat in freedom of speech and expression. There are other related challenges too. Freedom of speech and expression is a fundamental right. Thus, it should not be suppressed by any means.

5.5 Recent Developments of Freedom of Speech and Expression in Cyberspace

Restrictions in free speech and expression are also needed. But they should not breach the liberty, free will and peace. The principal battleground is the government's attempt to tackle the challenges social media platforms pose to Indian society, as codified in a measure known officially as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021. The influence of social media on communities is causing reasonable conflicts throughout the world these days. The way social media influences public discourse has a sour underbelly, revealing and maybe encouraging hate and division while generating a

Just 164

³³⁰ Supra note 322

³³¹ Santiago A. Canton, "The Role of the OAS special Rapporteur for freedom of expression in promoting Democracies in the America", U. Miami L.Rev., Vol. 56, 2002, 255, at 307

³³² John Stuart Mill, On Liberty (1859), See also, www.wikipedia.org/wiki/freedomofspeech visited on 28-02-2011.

proliferation of undesirable pictures ranging from child abuse to revenge porn. The danger is that these tensions will be used as a justification to restrict freedom of expression, changing social media platforms from platforms that allow many voices to reach many people into platforms that allow only a few powerful voices to reach a large number of people.³³³ In India, a country of over 600 million internet users and the biggest market by user numbers for both Google and Facebook, these tensions are now crystallizing into a battle between the government and social media platforms. The regulations are designed to combat troubling trends such as fake news, skewed pictures of women, and harsh language, as well as crime, terrorism, and incitement to disrupt public order. The laws compel social media platforms to follow due diligence procedures to verify that they are not hosting unlawful content, and they also allow the government to alert platforms when a specific piece of information is prohibited. They also compel news and current affairs publishers to follow a code of ethics that will be monitored by the government. Furthermore, where essential to protect national security or combat criminality, social media companies must allow the government to track out the perpetrators of specific private messages.³³⁴

The restrictions have been widely criticised in India and throughout the world. They pose at least two major human rights issues when it comes to social media. First, the restrictions on permissible content are broader than the exceptions to freedom of speech permitted by international law and India's constitution, and the government's discretion to declare information unlawful creates the risk of censorship of acceptable political debate by whichever political party is in power. Second, the demand that messaging service providers decrypt their end-to-end encryption in response to government requests in order to identify the original posters of messages may infringe on the right to privacy.³³⁵ So, the silly issues should not be taken as offences and the real culprits should be taken into account.

The Supreme Court of India ruled that freedom of access to the Internet is a basic right guaranteed by Article 19(1)(a) of the Indian Constitution, which guarantees freedom of speech and expression. The court held that orders suspending internet access under the Suspension Rules were susceptible to judicial review, but stopped short of labelling the shutdown in the union territory unlawful, instead ordering that the order be examined by a committee.³³⁶ In

³³³ Kate Jones, 'India's misguided war on social media' For Freedom of Speech, India's Social Media Regulations Raise Concerns (worldpoliticsreview.com) accessed on 18 July 2021

³³⁴ Ibid

³³⁵ Ibid

³³⁶ Right to freedom of speech and expression through the Internet is part of Article 19(1)(a): Supreme Court of India - TheLeaflet accessed on 18July,2021

Anuradha Bhasin v Union of India and Ors,³³⁷ a three-judge panel comprised of Justices N V Ramana, R Subhash Reddy, and B R Gavai upheld the petitioner's challenge to the internet shutdown in the Union Territory of Jammu & Kashmir. The case was on section 144 of the criminal procedure court, internet, shutdown rules. The decision comes after the longest internet blackout in Indian history, which lasted five months in Jammu and Kashmir. After the abrogation of Article 370 of the Constitution, the internet shutdown was implemented in the union territory on August 5, 2019.³³⁸ According to the Software Freedom Law Centre, the Indian government has shut down the internet 381 times since 2012, utilising the authority granted by the aforementioned laws and guidelines. The apex court today held that the power under Section 144, CrPC cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights and asserted that the magistrate while exercising power under Section 144 was duty-bound to balance the rights and restrictions based on the principles of proportionality and thereafter, apply the least intrusive measure.³³⁹ Our Constitution protects the expression of divergent views, legitimate expressions and disapproval, and this cannot be the basis for invocation of Section 144, CrPC unless there is sufficient material to show that there is likely to be an incitement to violence or threat to public safety or danger, the apex court said. The court rejected the government of Jammu and Kashmir's argument that the court could not examine all of the orders issued under Section 144 and that it only had limited jurisdiction to intervene, holding that the state was required to disclose all of the orders passed under Section 144 so that aggrieved parties could challenge them. The court stated, Repetitive orders under Section 144, CrPC would constitute an abuse of authority.³⁴⁰ In terms of the Shutdown Rules, the court determined that an indefinite suspension of the internet was not permitted and that it may only be utilised for a limited time. The court also demanded that orders restricting internet access strictly in compliance with the Shutdown Rules be reviewed on a regular basis. An order made under the Suspension Rules is not subject to a periodic review or a time restriction under the existing Suspension Rules. We instruct that, until this gap is filled, the Review Committee established under Rule 2(5) of the Suspension Rules undertake a periodic review within seven working days after the preceding review, in accordance with Rule 2(6). The government's argument that the internet shutdown in the union territory was necessary to protect national interests and internal security was also

³³⁷ WRIT PETITION (CIVIL) NO. 1031 OF 2019

³³⁸ *Ibid* at 336

³³⁹ *Ibid*

³⁴⁰ *Ibid*

rejected by the court.³⁴¹The court warned against “excessive application of the proportionality concept in concerns of national security, sovereignty, and integrity,” while urging a balance between national security and individual liberty. The Supreme Court also reviewed whether Anuradha Bhasin, Kashmir Times Editor, had her journalistic freedom infringed as a result of limitations. Bhasin claimed in court that from August 6, 2018 to October 11, 2018, she was unable to print her newspaper. The court maintained the right to use the Internet while also maintaining the freedom of the press, saying, there is no doubt that the importance of the press is well established under Indian law. In order for any democratic society to function effectively, press freedom is required.” Under Article 19(1)(a) of the Constitution, freedom of the press is an important and fundamental right. This right is required in any modern democracy without which there cannot be transfer of information or requisite discussion for a democratic society. The right to access to the internet is also a salient feature of the Universal Declaration of Human Rights (UDHR). Article 19 of the UDHR states that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”³⁴²

The High Court of Kerala in a recent judgment in *Faheema Shirin R K v. State of Kerala & Others*,³⁴³ stated that “When the Human Rights Council of the UN have found that the right to access to the internet is a fundamental freedom and a tool to ensure the right to education, a rule or instruction which impairs the said right of the students cannot be permitted to stand in the eye of the law.” The judgment pointed out that the lack of access to the internet had a differential and higher impact on weaker sections of the society who depend on it for life and livelihood.³⁴⁴

In the instance of Agrima Joshua, a clip of the stand-up comedian performing a performance with a reference to Shivaji Maharaj in her satire was shown. This did not go down well with the audience, but it did cause a fuss for the comic when a man from Gujarat went public on his YouTube channel and made an open rape threat to the lady, which became a source of concern for him. On social media, everyone stood up for the woman and protected her, claiming that blatant rape threats are unjustifiable. Within 24 hours of the protests, Vadodara Police

³⁴¹ *Supra* note 322

³⁴² *Ibid*

³⁴³ WP(C)No.19716 OF 2019(L)

³⁴⁴ *Supra* note 322

apprehended the man and detained him, demonstrating the power of social media as a platform for expression, speech, and justice.³⁴⁵ These are some cases and developments in freedom of speech and expression in cyberspace. Cyberspace has gained a quite important status in today's time.

³⁴⁵<https://www.bing.com/newtabredir?url=https%3A%2F%2Flegaldesire.com%2Frole-of-social-media-and-freedom-of-speech-and-expression%2F> accessed on 18July,2021

CHAPTER VI

CONCLUSION AND SUGGESTIONS

“Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and ...inflict great pain. Hence, it is to be delivered rightfully.” – *John G. Robert, CJ.*³⁴⁶

This chapter is a summary on findings of the research and conclusions arrived at based on findings in the dissertation. Further, this chapter also includes certain suggestions made by the researcher based on the conclusions.

❖ Findings:

- a) Freedom of speech and expression is curtailed using sedition laws. There are cases where persons accused of national security and sedition are not found guilty. Charging such charges destroys a person’s dignity and self-respect in the society sometimes even causing a mental breakdown. Students and activists were charged with sedition and UAPA for protesting against the government. Kanhaiya kumar and Akhil Gogoi were charged under sedition. Sharjeel Imam, Devangana Kalita, Natasha Narwal and many others are examples of UAPA cases against students for exercising freedom of speech and expression.
- b) 5128 cases were registered under the UAPA between 2015-19. Charge sheet was filed in 1427 cases in which a total of 3613 persons were charged sheeted. Out of which in only 123 cases, 155 persons were convicted. Whereas, in the remaining cases, all the people were acquitted and it was held that these people were merely exercising the right to freedom of speech guaranteed by the Constitution of India.
- c) During anti- CAA movement the UP Police have registered 337 FIR’s across the State. Action was taken against more than 19409 social media posts for spreading falsehood with an intention of inciting violence in the country. The administration identified and blocked more than 9372 twitter accounts, 9856 Facebook profiles, and 181 YouTube channels claiming to be spreading incendiary content. According to data released by the Up Police, the Police has arrested 124 people for posting inciting content on social media. These are some noteworthy observations of suppression of freedom of speech in cyber space.

- d) Between 2015 and 2019, 279 sedition cases were registered under Section 124A of IPC, though only nine persons were convicted in five cases in this period, the home ministry told the Rajya Sabha.

❖ **Conclusion:**

India is known to be a country which respects an individual's fundamental rights. Though the image of India in this sphere is not that much mesmerizing but the situation in India is still much better as compared to citizens of other countries. This paper has dealt with the freedom of speech and expression in cyberspace by referring to cyber laws of the country, particularly section 66A of the IT Act, 2000 and also studies the grounds of restrictions often used by the State to curtail the freedom of speech in cyberspace. Cyberspace here primarily means social media, internet and mobile phones based tools of interaction. It is basically a platform which blends technology, telecommunications, and social interaction and provides a platform to communicate through texts, voice, pictures, videos and music. It enables exchange of ideas among individuals even if there are thousands of miles apart. Cyber space has indeed made the world smaller and has indeed enabled an individual's ability to put his opinions in front of the whole world.

Freedom of speech and expression means to express the views and thoughts freely without any fear in mind. Freedom of speech and expression has always held a place of pride in all civilized societies and has been humanity's ideal in times, ancient and modern. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment. In the West, notably in the United States of America, the jurisprudence of freedom of expression is of recent origin. The Constitution's First Amendment provides proof of this. The guarantee of free speech is a re-affirmation of mankind's fundamental belief that, thought remains soliloquy unless men can communicate their ideas to one and another, that is a free and frank exchange of views between the individuals and groups that ensures the progress of civilization, the flowering of democracy and the creation of human culture. Freedom of speech and expression is a very integral concept in every society. We have various national and international instruments describing the significance of freedom of speech and expression.

³⁴⁶ John G. Robert, CJ.

Indian Constitution has borrowed the freedom of speech and expression from the US Constitution. International Laws such as International Covenant on Civil and Political Rights (ICCPR) and Universal Declaration of Human Rights (UDHR) states about freedom of expression. The purpose of the ICCPR is to recognize the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights. And UDHR aims to recognize the inherent dignity and of the equal and alienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Thus, we can say that the ICCPR and UDHR states about liberty and freedom of individuals. Freedom of expression is recognized as an important kind of liberty.

Article 19(1) expressly secures the freedoms to citizens of India only. The fundamental freedoms guaranteed under Article 19(1) of the Indian Constitution have to perform three functions. They are:

Firstly, these individual freedoms are meant to ensure and afford to every citizen maximum opportunity to develop his personality fully so as to good.

Secondly, they perform the function of drawing a line of demarcation between social good and individual good and they clearly delineate an area where, in the name of social good, a citizen should not be pounced upon.

Thirdly, its function is to maintain healthy and sound democracy and to ensure the even development of a free society.

Citizens have the freedom to express themselves freely and interact with one another. As, we have seen, freedom of speech and expression as enshrined under Article 19(1)(a) of the Constitution of India is a fundamental right of every Indian citizen.

But the framers of the constitution were aware of the fact that unrestricted freedom of expression, wholly free from all sort of restraints, would amount to uncontrolled license which would tend to lead to disorder and anarchy in the society. While providing the mechanism of Article 19(2), the framers of the constitution took lesson from the American experience where the freedom of speech and of press was guaranteed in absolute terms but soon it was realized that no individual freedom could be absolute and the judiciary had to evolve certain implied restrictions on the freedom. This is how reasonable restrictions under the Indian Constitution exists. The grounds include matters related to security and sovereignty of the nation,

defamation, integrity of the nation, public order, contempt of court. It has become an established principle of law that an individual's right to freedom of speech and expression shall not infringe or violate any other individual's fundamental right. It may be the duty of the state to ensure that this right is available to all in equal measure and that is not hijacked by a few. So, suppressing freedom of speech and expression in the name of the restrictions is not justifiable. The State in order to protect certain greater values such as the sovereignty and integrity of India, the security of the state, public order and morality etc must keep in view the reasonable restrictions. It is true that the right to freedom of speech and expression is undoubtedly a valuable and cherished right possessed by citizens in our republic. Our government system is decided by election. Free speech is essentially necessary because, without free propagation of news and views, the ideals of democracy cannot be achieved. However, it becomes imperative to note here that the societal interests, public order and national integrity also have to be taken into consideration in cases involving right to freedom of speech and expression. It is to be kept in mind that the security consists of various competing public interests and, one of them is to be freedom of speech and expression. Therefore, free speech is not to be regardless of other social needs and collective interests which may sometimes require the State to impose reasonable restrictions on it. Rights are dependent upon the existence of the state in which prevails peace and order. Hence, no right of freedom can be allowed to jeopardize the very existence of the state or maintenance of public order or which would injure the reputation of any member of the society or hamper the fair and impartial administration of justice. In modern times the area of freedom of speech and expression has become wider and it includes new dimensions. Thus, cyberspace is also very important in exercising freedom of speech and expression. With, the change in time the mode of expressing has also changed. Internet is empowering freedom of expression by providing individuals with new means of expression. Not only in expressing views internet has also been helpful in many ways. Even at this tough situation internet has played a very significant role. Several awareness related posts and videos are seen in the cyberspace which has helped the people to survive Covid-19 pandemic situation. The academic institutions have adopted online mode of teaching in this situation so that students don't miss their classes and access their right to education. Even the important cases are heard in the courts through virtual mode. However, despite of benefits in cyberspace we have witnessed various offences. Some of them are

arrested and punished whereas some go unnoticed. Again, on the contrary some others face bitter consequences as a result of their views. Cyberspace is a very vast sphere and it is quite difficult to segregate the guilty ones. Coming to freedom of speech an opinion which seems offensive to one may be justified to other. Constructive criticism has always been a part of democracy. Though, it has been mentioned in this paper how various governments from time to time has attempted to crack down the voices of criticism. In some cases, such people are even charged under harsh laws like Unlawful Activities (Prevention) Act. Such incidents reflect upon the need of establishing a mechanism wherein the voices of criticism against government are not suppressed in the name of public order or national integrity. It is seen that government of India has instructed various social media platforms to check the content of posts before sharing it. In addition to this there should be also a competent authority to check and scrutinize the content in the cyberspace fairly. In a country like India, where the nation faces constant threats and propagandas by the neighboring countries, national security laws need to be strictly implemented but the elected governments should refrain from using these laws for political gains. should be strict and specific. Freedom of speech and expression also includes cyberspace as a medium of exercising this right. As there is no separate provision for freedom of speech and expression in cyber so it is obvious that Article 19(1)(a) is applicable to cyberspace too. International, regional and national standards also recognize that freedom of speech and expression includes any medium, be it orally, in written, in print, through the Internet or through art forms. This means that the protection of freedom of speech as a right includes not only the content, but also the means of expression. In this research we have seen that the freedom of speech and expression guaranteed to the citizens are suppressed and they are not allowed to express freely.

Another incident highlighted in this paper is the widespread criticism of Citizenship (Amendment) Act, 2019. People criticized the Act in large numbers, particularly in Assam. Criticism is a part of a healthy democracy. It is to be noted here that the right to raise voice against the government actions is also protected under the right to freedom of speech and expression. However, the paper has elaborately discussed as to how the people involved in this protest were charged for sedition and were put behind bars. This is the most recent example of suppression of right to freedom of speech and expression in the world's largest democracy. India must lead by an example and should take the criticism as a process to strengthen

democracy. The charges of sedition on Akhil Gogoi, Dhaijya Konwar, Manash Konwar, Bitu Sonowal for protesting against CAA are examples which shows how freedom of speech and expression is curtailed. Criticizing the government does not make an individual anti-national or less patriotic. The State should refrain from imposing such unreasonable restrictions in the garb of national security. But there is a very fine line which demarcates the enjoyment of one's right and the violation of the law. A statement which might be justified for one must not be the same for other. No citizen can violate the law in the name of freedom of speech and expression. And the government should take actions without violating the international covenants to which India is a signatory, for example International Covenant on Civil and Political Rights and Universal Declaration of Human Rights. Until a person's expression does not breach the law, not amount to defamation or threat to the nation it should not be considered as an offence. As Article 19 of the ICCPR clearly states about freedom of opinion and expression and this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media. Again Article 19 of the UDHR also speaks about freedom of expression. The right of freedom of speech and expression is an implicit part of a democratic nation. To curb the right of freedom of speech and expression is to curb free will and liberty of thought. The constitutional guarantees of free speech do not allow a state to prohibit or regulate advocacy of the use of force or of law violations unless such advocacy is aimed at inciting or generating imminent unlawful action and is likely to do so. So, expressing views on any political situation, corruption, issues relating to development of the nation or constructive criticism against the government in social media platforms should not be considered as an offence unless disturbs the peace and order, create threat to nation's integrity, defame any person or state or breaches the provisions of Article 19(2) of the constitution. Thus, it can be concluded that expression of views is much needed in a democracy but that shouldn't breach the law and order of the society. And, also the right to freedom of speech and expression should not be suppressed by some silly excuses. There should be a state of equilibrium between the rights and the law to maintain public order and harmony. And freedom of speech and expression should not be curtailed. These fundamental rights are to ensure and to afford to every citizen maximum opportunity to develop his personality fully so as to good. Thus, to promote freedom of speech and expression becomes essential in order to maintain healthy and sound democracy and to ensure the even development of a free society.

Furthermore, the Supreme Court judgment in the case of *Shreya Singhal v. Union of India*³⁴⁷ is an encouraging one. The Hon'ble Supreme Court in this judgment had dealt with the right to freedom of speech and expression particularly in cyberspace. While discussing the importance of Article 19(1), the Supreme Court held section 66A of the IT Act as unconstitutional. The Supreme Court held that the terms used in this section like 'grossly offensive', 'annoyance', 'inconvenience' are vague and open to multiple interpretations and thus it may lead to imposition of unreasonable restriction upon the right to freedom of speech and expression guaranteed by Article 19(1). Therefore, holding the scope of Article 66A undefined the Hon'ble Court struck down the entire provision. The Court also observed that it failed the test of Article 19(2) which lays down the grounds of restrictions. This is an important observation made by the Court, i.e. any restriction upon Article 19(1) shall fall under Article 19(2) failing which it would amount to unreasonable restriction. The Supreme Court further highlighted the importance of freedom of communication in cyberspace.

Another landmark judgment in the case of *Anuradha Bhasin v. Union of India*³⁴⁸, also known as Kashmir internet case, highlights the importance of communications in cyberspace and held that it is a part of fundamental right guaranteed under Article 19(1) of the Constitution of India. The judgment insists upon constant administrative review of orders passed under section 144 CrPC imposing internet bans in the State. Court held that these orders have to fall under Article 19(2) to be called as reasonable restrictions. It was further observed that if a complete prohibition is imposed on the internet, then the State must ensure that it do not excessively burden the right to free speech and should look for alternatives instead.

Living in a digital age, it is well established now that more people are going to adopt cyberspace as a medium to express their opinions. The fact that some people might misuse this platform to spread hatred, fake news or harmful content cannot be neglected. Cyberspace has its own advantages and disadvantages. To make the most out of it, along with the government refraining from imposing unreasonable restrictions, we as the citizens also have a duty to use the digital platforms for good purposes with an aim for self and country's growth.

³⁴⁷ AIR 2015 SC1523.

³⁴⁸ <https://teamattorneylex.in/2021/05/13/anuradha-bhasin-v-union-of-india>

❖ **Suggestions:**

The researcher would like to suggest the following after the research:

- a) An Amendment is required in UAPA similar to that of sec 49. The amendment should be aimed to protect people exercising freedom of speech and expression in good faith
- b) An Amendment needs to be made in IT Act to incorporate the protection of freedom of speech and expression in 'cyber space'. Also the restrictions to such right in cyberspace should be specifically mentioned.
- c) There should be an appropriate redressal forum for people whose freedom of speech and expression is curtailed in cyberspace.
- d) The IT Rules 2021 do not provide definitions for the terms listed under Rules 3(1)(b) sub rule (ii), (iii), (vi) which might result into ambiguity regarding the interpretation of the terms. Therefore, an amendment needs to made to explicitly define the terms.

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