



## Misuse of free speech in cyber world and conflicting rights

**Barla Mallesh Yadav**

LLM (NALSAR), Hyderabad, Telangana, India

### Abstract

The free speech philosophy as enshrined in our Constitution had a robust growth in the fertile soil of Indian democracy. The primacy of the people and their empowerment is the core of our basic document and right to free speech and expression as enunciated in Art. 19 (1) (a) is a guarantee to the citizens to achieve this noble objective. Our judiciary gathered the spirit of Constitution in its best way and furthered the width and ambit of right to free speech and expression subject only to limited restrictions. The times went on. The mode of speech and expression also took different forms. Whereas press was the major means of public communication earlier, now, television and internet have taken over. Television is the tool in the hands of limited number of players only and more or less, it is under certain self-enacted restrictions. Whereas, internet or cyber world, thanks to its high penetration levels, is a medium for the large masses to express their thoughts and opinions. What was earlier limited to mouth to mouth conversation can now be a public affair in cyber space. This paper is going to discuss how constitution of India defined about free speech, Information and Technology Act, 2000 provisions relating to free speech, important judicial pronouncements on free speech in India relating to free speech.

**Keywords:** internet, communication, constitution of India, information technology act, free speech, conflicts of rights

### Introduction

The free speech philosophy as enshrined in our Constitution had a robust growth in the fertile soil of Indian democracy. The primacy of the people and their empowerment is the core of our basic document and right to free speech and expression as enunciated in Art. 19 (1) (a) is a guarantee to the citizens to achieve this noble objective. Our judiciary gathered the spirit of Constitution in its best way and furthered the width and ambit of right to free speech and expression subject only to limited restrictions.

The times went on. The mode of speech and expression also took different forms. Whereas press was the major means of public communication earlier, now, television and internet have taken over. Television is the tool in the hands of limited number of players only and more or less, it is under certain self-enacted restrictions. Whereas, internet or cyber world, thanks to its high penetration levels, is a medium for the large masses to express their thoughts and opinions. What was earlier limited to mouth to mouth conversation can now be a public affair in cyber space. The opinions and views in cyber world have that explosive power of reaching the millions on web. This is where the problem begins. Free speech and expression over cyber world many a times lead to disastrous consequences. The scandalous comments on web over someone causes unpredictable harm since that reaches out to thousands or lakhs of users in internet. Acts such as cyber bullying affects his right to peaceable living and freedom of speech and expression.

Feeling the heat, Parliament had inserted Sec. 66 A in the IT Act, 2000 in 2009 but only to be struck down by the Apex court four years later, in 2013. The Apex court approves of the intelligible differentia on which a differential treatment was

given to speech and expression in cyber world however, the court found that Sec. 66A was unconstitutionally obscure or vague and not meeting the standards of Art. 19 (2). The cyber speech is virtually unregulated now and this legal vacuum claims many precious rights of men and this is the topic of this research paper. The research traces how misuse of free speech in cyber space claims the precious rights and liberties of innocent cyber netizens and how it forms a hurdle in the exercise of rights. The paper advocates that free speech in cyber world should not be allowed to trample upon others' rights and regulation of free speech is necessary in the interests of protection of rights of persons.

### Development of Cyber World as a Platform of Free Speech and Expression

Internet and allied technological growth has the history of few decades. In the context of India, internet happened to be more common by the end of 90s and beginning of 2000s. The rapid growth in technological advancement made internet an easy mode of communication and it revolutionized the public and private lives of people, even in third world countries like India. The digital boom coupled with economic growth made internet accessible to common masses at affordable rates.

The major change happened when social media sites logged in. These sites provided a platform for inter-personal communication or personal expression thereby constructing an environment for parallel social life in cyber world. Primarily internet and mobile phone based tools are used for sharing and discussing information and they are popularly called as social media. Social media can be further categorized as social networking sites such as Facebook and Linked in, blogs of individual users, micro blogs, video blogs such as Youtube,

Wiki pages as in Wikipedia and social bookmarking, social news and media sharing web pages.

### **Misuse of Cyber Speech and Conflict of Rights – An Analysis**

Free flow of opinions and ideas is essential to sustain the collective life of the citizenry. By entering into discussion with others, an individual participates in the development of knowledge and in the direction of the community. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. Free speech forms the bedrock of any democracy as also liberty of an individual. Article 19 of Universal Declaration of Human Rights, 1948 and Article 19 (2) of International Covenant on Civil and Political Rights, 1966 hold that everyone shall have the freedom of opinion and expression without interference and 'to seek, receive and impart information and ideas through any media and regardless of frontiers.' Our Constitution also secures freedom of speech and expression to its citizens under Art. 19(1)(a). The relevance of free speech and expression to the cause of a healthy democracy cannot be underrated or winked at.

#### **Case of Misuse**

Cyber space certainly takes forward the avowed object of furthering free speech and expression of common masses and empowering them. But while examining it closely from another angle, it can be seen that there are many instances when the so called free speech in cyber world has crossed its legitimate limits and stepped into undesirable contours of petty intolerance and personal mudslinging. Indecent/obscene, grossly offensive, insulting/ harassing, false/rumoring, scandalous, hateful, intimidating speech and expression are on the rise in cyber world. This undesirable situation is maneuvered by multiple reasons. One of the reasons is that it is impossible to oversee millions of activities in the cyber world. The idea of pre-censoring or regulation itself is against the basic idea of freedom of speech and expression since that might lead to anarchical practices by executive and eventually a great hurdle in the free flow of opinions. India had, in December 2011, planned of imposing a pre-screening process in the cyber world but it did not materialize. Again, screening of millions of accounts and posts/ comments in cyber space is an impracticable idea. Secondly, fake/ anonymous accounts can be easily created in cyber world and this is a convenient garb for fraudsters or delinquents to carry out their unholy intentions in web. Anonymity results in lack of accountability. Investigative difficulty in tracking culprits in cyber offences is yet another reason for increasing menace in cyber world.

This peculiar situation in cyber world emboldens individuals to assail others without any reluctance by using free speech as a weapon. What it leads to is intolerance towards unpopular views or minority voices in cyber world and thereby violation of various rights of the society at large. We can call it 'misuse of free speech'. How do we know whether a reckless case of speech and expression amounts to misuse or not? Fair use of free speech and its misuse have only a fine distinction amidst them. Misuse of free speech is called that way since the free speech and expression in such a case lacks the genuine soul of

this constitutional right. The intention of the author makes all the difference. A case of misuse can be stated to advance mere intolerance towards unpopular or minority views or opinions whereas free speech occasions fight of differing thoughts and views. Extermination of unacceptable views and personal mudslinging are the dominating purposes of the 'misuse class' while the 'fair use class' views cyber space as a market place of ideas.

Such a case of misuse does not fall within the lifeblood of free speech and expression as enshrined in Art. 19 (1) (a). Our Hon'ble Supreme Court has, in *Indian Express Newspapers v. Union of India*, noted down the four broad social purposes of freedom of expression which are 1) attainment of self-fulfillment by an individual, 2) discovery of truth, 3) participation in decision making, and 4) balance between stability and social change. A right seeking to achieve these noble objectives cannot, by any stretch of imagination, be thought to justify cases of misuse as detailed above.

#### **Misuse and conflicting rights**

Misuse of free speech in cyber world can be seen to be affecting various rights of an individual emanating from our Constitution. Though a case of misuse does not breach these rights directly, on a closer analysis, it can be seen that the right to freedom of speech and expression under Art. 19 (1) (a) and right to life and personal liberty under Art. 21 are badly imperiled by an improper exercise of free speech in cyber world.

Right to freedom of speech and expression entails the right to express it fearlessly and independently. The person exercising such a right should be able to do it without any fear of its consequences. The word 'freedom' or 'liberty' implies absence of constraints and freedom of speech and expression means 'the power or right to act, speak, or think as one wants'. Hohfield's theory explains the jural correlatives of right and duty. If A has a particular right against B, it implies that B has the duty to honour A's right. So, every individual is in a mould of relationships with other individuals. Liberty normally implies absence of duty in oneself and right in another. But a regulated freedom such as speech and expression does not fall in the realm of absolute liberty.

The right under Art. 19 (1) (a) equally call for respect for the freedom of speech of others. Freedom of speech and expression should certainly prepare one to tolerate unpopular views or opinions too. Culture of open dialogue is generally of great societal importance, in the market place of ideas. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). In other words, a hostile environment for free speech would go against the spirit of Art. 19(1)(a). Viewed in that angle, an intimidating or distressing environment in cyber space is a violation of citizen's right under Art. 19(1)(a). Cyber space multiplies the impact of speech and expression and hence even a slightly adverse remark in cyber space goes on to affect the public image of a person and injures his good name and reputation. Thereby, it forms a hurdle by discouraging him from exercise of right to free speech in a fearless manner. *'It is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government.'*

Misuse of free speech in cyber world also affects the right to life and personal liberty under Art. 21 of Constitution. In *Kerala Voluntary Health Services v. Union of India*, Kerala High Court observed that apart from the reasonable restrictions enumerated in Art.19(2), the freedom of speech and expression guaranteed by Art.19(1)(a) is also circumscribed by the right to life guaranteed under Art.21 of the Constitution. The malicious comments and remarks directed at a person tears away his most valued asset in the form of reputation and invades into his right to privacy. Both right to reputation and privacy are facets of right to life under Art. 21.

In *Om Prakash Chautala v. Kanwar Bhan*, hon'ble Supreme Court observed that *'when reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the down trodden and the privileged..... It is dear to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of Article 21 of the Constitution.'* In *Vishwanath S/o Sitaram Agrawal v. Sau. Sarla Vishwanath Agrawal*, Apex court observed that *".....reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life."*

### Need for Regulation

Individual rights are not absolute. They cannot be so extensively read as to amount to violation of rights of another. There has to be a perfect balance of rights. If there is a conflict of fundamental rights of two persons, the right which advances public morality will prevail. When right to privacy and dignity of a person is in conflict with the exercise of right to free speech of another, the former rights which lay the basis for peaceful living of persons in the society should weigh higher.

Since misuse of cyber speech breeds at the expense of rights of others, it must be regulated. Art.10 of European Convention of Human Rights says that exercise of the right to freedom of expression is subject to protection of reputation or rights of others. Equally, ICCPR also talks in its Article 19 that right to freedom of expression is subject to restriction in 'respect of the rights or reputation of others'.

In *Ash Mohammad v. Shiv Raj Singh* the Apex court observed that *'in an orderly society, an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one..... That is why Edmond Burke while discussing about liberty opined, "it is regulated freedom. The court went on to add that 'in an organized society, the concept of liberty basically requires citizens to be responsible and not to disturb the tranquility and safety which every well-meaning person desires."*

Cyber world stands on a different footing compared to normal realm of speech. Speech in cyber world gives immense width and coverage to one's speech and expression that sometimes, tens of thousands of people form up as its audience. Whereas, the said coverage is not available in any other medium of communication. Cyber world is free from any pre-censorship/regulation but other print or electronic mediums are under codes of conduct, censorship or other regulations in their particular field. Hence, it is absolutely constitutional to frame

a different policy for cyber space vis-à-vis other mediums of speech. This point was approved by the Apex court in *Shreya Singhal* case.

It is here that the legitimate intention of the Central government behind the insertion of Sec. 66A in the IT Act gains relevance. The 2009 amendment to IT Act was upon a realization of the evil consequences of unrestrained free speech in cyber world. However, *Shreya Singhal* case drove off the new provision on a couple of grounds. First, the new section was a poorly prepared piece and secondly, Art. 19 (2), drafted in 1940s, did not properly complement or contemplate need for such a finer distinction in free speech and its regulation.

However the necessity for a provision such as 66A is more so felt now than in 2009. The media spokesman of the Congress government which brought in Sec. 66A in statute book cautions - "Section 66A of the IT Act, 2000, was enacted to prevent online abuse and hounding of groups and individuals, check the propagation of obscene or incorrigibly false information with the intent to create social divides and unrest, and deter unbridled defamation in cyberspace." In the clamor in demand of protection of free speech, the agonies out of misuse of free speech are often left unheard. Expression of emotions by an individual should not cause mental and psychological harm to another. It is the popular figures who suffer the most in cyber space out of cases of misuse. The comments or remarks on them are often abusive or insulting without any borders and which does irreparable injury on their reputation. Former Judge of the Supreme Court of India, Justice Markandeya Katju recently left 'Facebook' in an apparent weariness on the fighting comments.

Anyway, it is relieving to hear the latest news that the central government is in the process of inserting a new section in IT Act in place of Sec. 66A. It is relieving to learn that both the major national parties felt the need to regulate 'misuse' class and protect individual rights.

### Conclusion

Misuse of free speech and expression has brought about a serious evil to the society. While admitting the fact that free speech and expression is vital to the functioning of a healthy democracy, it is also necessary to remember that democracy does not really give absolute rights and liberties. Rights come with duties. It is the duty of individuals to respect others' rights. It is the duty of citizens to restrain themselves in the exercise of rights not to amount to usurpation of rights of society. When citizens forget this golden thread, anarchy will begin to grip hold of society. We cannot tolerate internet censorship or excessive regulation in the name of protection or rights or reputation. But, in the name of misuse by state, regulation of free speech cannot be given a total go by.

At the same time, it must be said that the constitutional check and balance on free speech is liable to be reviewed on account of change in circumstances. The cyber explosion was not contemplated by the framers of our Constitution when Art. 19 (2) was inserted. The ill effects of misuse cyber speech were not in their minds and so it is for the Parliament to suitably amend Art. 19 (2) so as to contain in its ambit restriction on misuse of cyber free speech. Otherwise, the beautifully worded *Shreya Singhal* judgment is bound to reign over the

new provision as well.

It is imperative for the state to protect the rights of individuals in entirety and weed out practices not conforming to cultural and constitutional standards. It is inevitable to have a perfect balance of rights and avoid a conflict wherein some rights are trampled upon. This is perfectly possible in the case of misuse of free speech in cyber world.

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