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FREEDOM OF SPEECH IN DIGITAL ERA: ADDRESSING MISINFORMATION AND HATE SPEECH.

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INTRODUCTION

In the burgeoning era of technological advancements with a clump of new dimensions and intricacies in the unprecedented platforms, the menaces of proliferation of misinformation and hate speech is agonizing. The velocity at which the misinformation gains traction is like a bat out of hell. The emergence of the digital age has completely changed how people exercise, share, and regulate their right to free speech and expression. Digital platforms have democratized speech by making it possible for people to instantly communicate across borders, but they have also made it easier for hate speech and false information to spread quickly, which poses major threats to democratic integrity, social harmony, and constitutional governance. This article conducts a thorough legal analysis of freedom of speech in the digital age, looking at its constitutional underpinnings, how hate speech and disinformation are changing, how courts have responded, and how regulations are in place. It highlights the need for a fair, rights-oriented, and constitutionally compliant approach to regulation in the digital realm by critically assessing the conflict between individual liberties and collective security.

ELABORATE THE CONCEPT

The foundation of democratic societies is freedom of speech and expression, which is essential to achieving individual liberty, public involvement, and governmental responsibility. Article 19(1)(a)[1] of the Indian Constitution guarantees this freedom, subject to appropriate limitations under Article 19(2). In the past, this right could only be exercised in tangible settings like print media, public gatherings, and broadcasting services. But the communication landscape has been drastically changed by the digital revolution.

[1] *Article 19 of Indian Constitution*

The impact and reach of speech have been greatly increased by the emergence of social media platforms, instant messaging services, and algorithm-driven content distribution. Digital platforms have facilitated participatory democracy and improved information access, but they have also turned into breeding grounds for hate speech, misinformation, and disinformation. Public order, national security, electoral integrity, and the dignity of individuals and communities are all seriously threatened by these phenomena.

Election democracy is directly and seriously threatened by digital disinformation. Voter choice is undermined and the democratic process is distorted by the spread of misleading narratives, edited videos, and targeted political misinformation. Free and fair elections are a fundamental aspect of the Constitution, as the Supreme Court has stated on numerous occasions.

Through voluntary codes of conduct and content advisories, the Election Commission of India has tried to control political misinformation in collaboration with digital platforms. However, there are regulatory gaps due to the lack of a legislative framework addressing algorithmic manipulation, micro-targeted political advertising, and deepfake distribution.

Though the constitution guarantees right to freedom of speech and expression fostering individuals' liberty to put forth their thoughts and opinion about any subject matter, but it also restrains them from disseminating any hate speech that promotes violence and is against any caste, creed, race, sex or community. The International human rights laws also refrain an individual or group from promoting any speech that incites brutality or propagates discrimination on any grounds. It creates a serious dilemma in front of the regime that the people are not supposed to be restricted, as it burdens them with accusation of infringement of the people's rights along with the threat of spreading of false news on the web which creates a situation of chaos among the netizens. It becomes a challenge for the government to protect free expression and to prevent the harm caused by the embezzlement of the rights facilitated. As we know well that the fake news spreads like forest fire on the diversified platforms provided by several social media applications, now a days people are more prone to social media and digital words than to newspapers and books.

There are significant constitutional issues with the criminal law's response to hate speech and disinformation. Discretionary enforcement, overlapping offenses, and ambiguous statutory language run the risk of stifling free speech. The Supreme Court has repeatedly ruled that criminal laws limiting speech must meet stringent requirements for accuracy and predictability. The line between harmful speech and unpopular opinion may be blurred by an over-reliance

on criminal provisions. The Court made it clear in Kedar Nath Singh v. State of Bihar[2] that criticism of the government alone does not amount to sedition unless it is coupled with incitement to violence. In the digital age, where dissent is often mistakenly classified as false information or anti-national speech, this principle is still applicable.

There are numerous pros of using the digital web but along with it comes numerous threats as well, fake news is spread at the drop of the hat. A single notification that hardly takes a fraction of seconds to get delivered is good enough to portray misinformation fabricated with a pinch of spice to serve as a good gossip material for the netizens. Even the news channel reporters present the news in such a way that it sometimes hurts the wellbeing of the person targeted. The constitution also provides the right to freedom of press which is one of the essential pillars for the creation of a democracy, but it doesn't give them the right to hurt someone's reputation in the eyes of the society. News channels and their social media accounts are for long being trusted for their reliability in delivering voracious information that's why they should work for the enrichment of the people's knowledge about the day-to-day affairs and not to provoke the crowd against some planned tactics.

The Indian Constitution has a thing called Article 19(1)(a) that says all citizens have the right to say what they want and express themselves. The Supreme Court of India has always said that this right means a lot of things. It means people have the right to freedom of speech and expression and this includes the right to get information and hear ideas.

To prevent the criminal justice system from turning into a tool of digital repression, the Bharatiya Nyaya Sanhita, 2023 must be interpreted considering constitutional safeguards, even though it modernizes some offenses. Online speech prosecutions should be the exception rather than the rule, saved for situations where there is obvious, immediate, and observable harm.

The Supreme Court of India thinks that freedom of speech and expression is important, so it says that people have the right, to freedom of speech and expression and this also means people have the right to receive information and ideas. The Court made an important point in the case of Romesh Thappar v. State of Madras[3] back in 1950. It said that freedom of speech is important for any organization.

[2] *1962 AIR 955*
[3] *1950 AIR 124.*

In another case Indian Express Newspapers v. Union of India[4] which happened in 1985 the Court again talked about how important free speeches. The Court said that free speech helps people make decisions and have good opinions, about what is going on. The digital era has extended the scope of this right, allowing citizens to express views on matters of public concern without traditional gatekeepers.

Regulations pertaining to data protection and surveillance are increasingly intertwined with those governing digital speech. Under the right to privacy, which was acknowledged as a fundamental right in Justice K.S. Puttaswamy v. Union of India[5], the monitoring of online content, user behaviour, and metadata raises grave concerns. By encouraging self-censorship and preventing anonymous expression—which is frequently crucial for journalists, whistleblowers, and marginalized voices—excessive surveillance stifles speech.

The freedom that we have under Article 19(1)(a) is not absolute. Article 19(2) allows the State to make some rules that limit our freedom in the interest of Article 19. These rules must be fair and reasonable. The State can impose these rules on Article 19 freedom for reasons, such, as:

a) the interests of the country
b) the interests of Article 19 freedom itself
c) The State must make sure that these rules are necessary and do not take away our Article 19 freedom completely.
d) Sovereignty and integrity of India
e) Security of the State
f) Friendly relations with foreign States
g) Public order
h) Decency or morality
i) Contempt of court
j) Defamation
k) Incitement to an offence

These grounds form the constitutional basis for regulating speech, including digital speech. However, any restriction must satisfy the test of reasonableness and proportionality, ensuring that it does not disproportionately infringe upon fundamental rights

[4] *1986 AIR 515*
[5] *AIR 2017 SC 4161*

These all leads to a situation where people become doubtful about whom to trust, where to reach and how to find the truth. The spread of hate speeches which through emphasis on critical subjects of societal affairs sometimes shapes public opinion against the government, country, other communities and what not. The radical thoughts entertained on social media works as a slow poison in spreading hatred among the mankind. The misuse of digital platforms which can and are being used for quite a few knowledge delivering and awareness creating sources to educate today's digital youth, is instead used to in still aggression and antagony in the netizens by providing them thought provoking materials on sensitive subject matter that can create chaos in the society.

Digital platforms are now the way people express themselves in today's world. They are different from media because they let people create their own content and share it right away. These platforms also use algorithms to make certain things more popular. This helps people express themselves freely. At the same time digital platforms also make it easy for bad content to spread without anyone stopping it.

The freedom of expression, which is what Article 19(1)(a) is about is very important. Digital platforms are where people go to express themselves and they need to be able to do that. Digital platforms also need to make sure that bad content does not spread too easily.

The freedom of expression, on platforms is what we are talking about here and it is a very important issue. The Supreme Court, in Shreya Singhal v. Union of India (2015)[6], recognized the unique nature of online speech, noting that digital communication differs fundamentally from other forms of expression due to its reach and permanence. The Court acknowledged that online speech could have far-reaching consequences, necessitating nuanced regulatory approaches.

The constitutional requirements of necessity, proportionality, and procedural safeguards must be met by any system for identifying false information or hate speech. Due process is undermined by automated surveillance tools, such as content moderation systems powered by artificial intelligence, which run the risk of opacity, bias, and error. To prevent the regulation of digital speech from undermining privacy and civil liberties under the pretense of public interest, the constitutional framework requires legislative authorization, independent oversight, and transparency in surveillance practices.

[6] *AIR 2015 SC 1523*

Robust remedial mechanisms are essential for effective digital speech regulation. Natural justice principles must be followed because content takedown orders, account suspensions, and shadow banning directly impact the exercise of fundamental rights. Such actions are unconstitutional because they lack prior notice, reasoned orders, or appellate remedies.

The best defence against arbitrary limitations on digital speech is still judicial review. Courts must examine restrictions' procedural fairness and proportionality in addition to their legality. A vital tool for contesting unconstitutional digital regulations, internet shutdowns, and opaque platform practices is public interest litigation. Civil remedies (for example, defamation lawsuits, injunctions, and mechanisms to resolve grievances against platforms) provide options for individuals who have suffered speech-related harm other than through punitive measures. A digital environment that respects human rights should reinforce these civil remedies, not just rely on criminal penalties to address such harms.

In constitutional democracies, the norm is to use More Speech instead of Censorship as the way to address problematic speech - This is done through the process known as counter-speech. In fact, Counter-Speech is often viewed as the remedy for the damaging effects of false or harmful speech. The process of counter-speech involves Fact Checking, publicly clarifying issues, Improving Institutional Transparency, and therefore facilitating citizens in obtaining accurate information, as opposed to Being the Ruler of Truth.

Recognizing the concept of Counter-Speech as a constitutional value reaffirms the foundation of the strength of democracies. With this foundation in mind, by promoting educational programs, Media Literacy, and independent journalism, counter-speech provides citizens with long-term solutions to problems associated with misinformation. There is a glaring risk that reliance on coercive regulation will Nurture the dependency of citizens and hinder the dialog of democratic discourse.

The Constitution envisions that citizens should be Rational Participants in Society, capable of evaluating the numerous competing narratives presented to them. Therefore, Regulations should promote, instead of inhibiting, citizens' ability to engage in Demanding democratic participation through the means of Counter-Speech.

The rise of artificial intelligence (AI) generated content raises new and exciting challenges to our constitutional system. For example, deepfakes (synthetic media) and automated disinformation could make it impossible to distinguish between accuracy and deception in some cases. In many instances, the way we evaluate whether someone should be held

responsible for the use of this type of AI-driven content has become much more complicated than the traditional methods we use today.

It is essential that the legal interpretation of our constitutional protections continues to grow to respond to these AI challenges and protect our basic rights. In addition, any regulatory system created to handle these issues should clearly delineate between maliciously intended manipulation and an artist/creator/political party legitimately using AI tools to express their views. The role of the courts in establishing how digital speech is defined will have a significant impact on AI technology's continued growth and development.

In the digital age, freedom of speech is still an important constitutional right that is necessary for democracy and personal freedom. But the problems caused by false information and hate speech require careful and fair rules. The task before lawmakers, courts, and society is not to curtail free expression but to ensure that it operates within a framework that upholds dignity, equality, and public order. A balanced, constitutionally grounded approach is imperative to preserve both freedom and responsibility in the digital public sphere.