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FREEDOM OF SPEECH AND EXPRESSION IN INDIA: A CONTEMPORARY PERSPECTIVE ON INTERNET AND FILM REGULATION

AUTHORED BY - HARSHVARDHAN¹ & DR. VIVEK KUMAR²

ABSTRACT

Freedom of speech and expression is a cornerstone of democratic societies, enshrined as a fundamental right in the Indian Constitution under Article 19(1)(a). However, in the digital age and within the realm of cinematic expression, this right encounters intricate challenges and interpretations. This abstract explores the nuanced landscape of freedom of speech and expression in India, with a specific focus on its application to the internet and films. In the context of the internet, the Information Technology Act, 2000, empowers the Indian government to regulate online content, ostensibly to safeguard national security and public order. Despite the inherent potential for free expression online, government interventions and censorship practices have raised concerns about the curtailment of individual liberties.

This abstract discloses about the evolving discourse surrounding freedom of speech and expression in India, navigating the tensions between individual liberties, social norms, and governmental oversight. It examines the delicate balance between safeguarding public interests and upholding the democratic values enshrined in the Constitution. Ultimately, it underscores the imperative of fostering a dynamic and inclusive framework that respects diverse forms of expression while addressing legitimate concerns related to public order, morality, and national security.

KEYWORDS: (CBFC, Indian Constitution, Information Technology, Article 19(1)(a), Censorship)

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INTRODUCTION

In India, freedom of speech and expression³ is guaranteed as a fundamental right under *Article 19(1)(a) of the Constitution*. However, this right is subject to certain reasonable restrictions as outlined in *Article 19(2)*. These restrictions include matters such as public order, decency, morality, contempt of court, defamation, and incitement to an offense. When it comes to the internet, the interpretation of freedom of speech and expression has evolved with the advancement of technology. The Indian government has the authority to regulate online content, especially in cases where it poses a threat to national security, public order, or social harmony. *The Information Technology Act*⁴, 2000, and its subsequent amendments empower the government to regulate online content and take action against any content that is deemed offensive, defamatory, or detrimental to the interests of the state. Similarly, the regulation of films in India falls under the purview of the *Cinematograph Act, 1952*⁵.

The Central Board of Film Certification (CBFC) is responsible for certifying films for public exhibition. While the CBFC aims to strike a balance between artistic expression and societal sensibilities, it often faces criticism for its censorship practices. The films can be censored or banned if they are found to be obscene, offensive, or against public decency. In recent years, there have been debates and legal battles regarding the scope and limitations of freedom of speech and expression, especially in the context of the internet and films. Advocates argue for a broader interpretation of these rights, emphasizing the importance of free expression in a democratic society.

However, others argue that certain restrictions are necessary to maintain social order and protect the interests of the state and its citizens. Overall, while freedom of speech and expression is a cherished right in India, it is not absolute and must be balanced with other societal interests and considerations, as enshrined in the *Constitution* and relevant laws.

⁵https://docs.manupatra.in/newsline/articles/Upload/174BBF5D-B81E-4864-B818-33E3B095D882.2-B__Media%20and%20communication.pdf.

³<https://blog.ipleaders.in/freedom-speech-expression-digital->

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⁵https://docs.manupatra.in/newsline/articles/Upload/174BBF5D-B81E-4864-B818-33E3B095D882.2-B__Media%20and%20communication.pdf.

LEGAL COMMENTARIES ON FREEDOM OF SPEECH AND EXPRESSION IN INDIA: A CONTEMPORARY PERSPECTIVE ON INTERNET AND FILM REGULATION

The legal commentaries on freedom of speech and expression in India provide valuable insights into the evolving landscape of internet and film⁶ regulation within the framework of constitutional principles and statutory provisions. These commentaries offer detailed analyses, interpretations, and critiques of relevant laws, judicial decisions, and governmental actions, shedding light on the complexities and nuances of free speech jurisprudence in the country. In the context of the internet, legal commentators often scrutinize the *Information Technology Act, 2000*, and subsequent amendments, examining their compatibility with constitutional guarantees of freedom of speech and expression. They assess the scope of government regulations, such as intermediary liability, content takedown provisions, and surveillance measures, in light of international human rights standards and principles of proportionality.

Regarding film regulation, legal commentaries delve into the *Cinematograph Act, 1952*, and its implementation by the *Central Board of Film Certification (CBFC)*. They analyze the *CBFC's* certification process, censorship practices, and the judicial review of its decisions, highlighting issues of arbitrariness, censorship overreach, and the need for transparency and accountability.

The legal commentators also explore landmark court judgments, such as the Supreme Court's decisions in case namely like *K.A. Abbas v. Union of India* and *S. Rangarajan v. P. Jagjivan Ram*, which have shaped the jurisprudence on freedom of speech and expression in the context of films and public discourse.

Moreover, these commentaries engage with contemporary challenges, such as online hate speech, misinformation, and the impact of digital platforms on democratic discourse. They offer perspectives on balancing competing interests, including individual rights, societal interests, and

governmental responsibilities, in fostering a vibrant and inclusive public sphere. Overall, legal commentaries on freedom of speech and expression in India provide essential guidance for



policymakers, legal practitioners, scholars, and civil society actors, facilitating informed debates and advocacy efforts aimed at safeguarding and enhancing fundamental freedoms in the digital age.

LEGAL PRONOUNCEMENTS ON INTERNET AND FILM REGULATION

There are several legal pronouncements⁷ that have shaped the regulation of the internet and films in India. Here are some notable cases and rulings as follows:

1. *Shreya Singhal v. Union of India (2015)*: In this landmark case, the Supreme Court of India struck down *Section 66A of the Information Technology Act, 2000*, which allowed the arrest of individuals for posting allegedly offensive content online. The Court held that the provision was vague and overbroad, violating the right to freedom of speech and expression guaranteed by the Constitution.

2. *Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal (1995)*: This case affirmed the right to commercial speech under *Article 19(1)(a) of the Constitution*. The Supreme Court held that advertisements and promotional content in films are protected forms of expression, subject to reasonable restrictions.

3. *K.A. Abbas v. Union of India (1971)*: In this case, the Supreme Court emphasized the importance of artistic freedom and expression in films. It held that censorship of films must be limited to specific grounds outlined in *Article 19(2) of the Constitution*, such as public order, decency, and morality.

4. *Anuradha Bhasin v. Union of India (2020)*: While not directly related to film regulation, this case dealt with restrictions on internet access. The Supreme Court held that indefinite internet shutdowns are unconstitutional and that any restrictions on internet access must adhere to the principles of necessity and proportionality.

⁷<https://juriscentre.com/2024/02/14/internet-censorship-freedom-of-speech/>.



5. S. Rangarajan v. P. Jagjivan Ram (1989): This case affirmed the importance of a robust public debate in a democratic society. The Supreme Court ruled that the state cannot suppress free speech merely because it is controversial or offensive to some sections of society.

These legal pronouncements⁸ provide guidance on the regulation of the internet and films in India, emphasizing the importance of upholding freedom of speech and expression while also considering legitimate restrictions in the interest of public order, morality, and decency.

FEATURES OF FREEDOM OF SPEECH AND EXPRESSION UNDER INDIAN CONSTITUTION WITH REFERENCE TO INTERNET AND FILMS

The freedom of speech and expression under the *Indian Constitution* encompasses several key features, particularly when applied to the realms of the internet and films⁹ as follows:

1. **Constitutional Guarantee:** Article 19(1)(a) of the *Indian Constitution* explicitly guarantees the right to freedom of speech and expression to all citizens. This right extends to various forms of expression, including speech, writing, printing, and visual representations, such as films and online content.
2. **Fundamental Right:** Freedom of speech and expression is recognized as a fundamental right, essential for the functioning of a democratic society. As such, any restriction on this right must meet the strict scrutiny standard and be justified under the reasonable restrictions outlined in Article 19(2) of the *Constitution*.
3. **Scope of Protection:** The protection of freedom of speech and expression extends to both traditional forms of media, such as print and broadcasting, and modern forms, including the internet and digital platforms. Individuals have the right to express their opinions, thoughts, and ideas freely, subject to the limitations prescribed by law.

⁸Ibid.

⁹<https://www.drishtias.com/to-the-points/Paper2/censorship-regime-in-india>.



4. **Reasonable Restrictions:** While freedom of speech and expression is fundamental, it is not absolute. *Article 19(2) of the Constitution* allows for the imposition of reasonable restrictions on this right in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation, or incitement to an offence.

5. **Judicial Interpretation:** The judiciary plays a crucial role in interpreting and safeguarding freedom of speech and expression. The Hon'ble Courts have consistently upheld the importance of this right in promoting democratic values and have struck down laws or government actions that unduly restrict it, such as in the case of *Section 66A of the Information Technology Act, 2000*.

6. **Film Regulation:** The *freedom of speech and expression* in the context of films is subject to certification by the *Central Board of Film Certification (CBFC)*. While the *CBFC* can impose certain restrictions on films, such as cuts or edits, these restrictions must be reasonable and within the framework of *Article 19(2) of the Constitution*.

7. **Internet Regulation:** The regulation of online content, including social media, falls under the purview of the *Information Technology Act, 2000*. While the government has the authority to regulate online content in certain circumstances, any restrictions must comply with constitutional principles and international human rights standards, as established by legal pronouncements like the *Shreya Singhal case*.

Overall, freedom of speech and expression under the Indian Constitution provides a robust framework for protecting individual liberties while also recognizing the need for reasonable restrictions in certain circumstances, particularly in the evolving contexts of the internet and films¹⁰.

¹⁰Ibid.



LEGAL FEATURES ON REALMS OF INTERNET AND FILMS

The legal features governing the realms of the internet and films in India encompass a range of laws, regulations, and practices. Here's an overview of the key legal features in each domain as follows:

REALMS OF THE INTERNET

- 1. Information Technology Act¹¹, 2000 (IT Act):** This legislation governs various aspects of the internet, including electronic commerce, data protection, and cybercrime. It provides the legal framework for regulating online activities and content in India.
- 2. Intermediary Liability:** Under the *IT Act*, intermediaries such as internet service providers and social media platforms are granted certain protections from liability for user-generated content. However, they are also required to comply with certain obligations, such as implementing measures to remove unlawful content upon receiving notice.
- 3. Content Regulation:** *The IT Act*, along with rules and guidelines issued under it, empowers the government to regulate online content deemed to be offensive, defamatory, or against public order. *Section 69A of the IT Act* allows the government to block access to online content considered to be a threat to national security or public order.
- 4. Cybersecurity:** *The IT Act* contains provisions related to cybersecurity, including offenses such as hacking, data breaches, and cyberterrorism. It establishes mechanisms for investigation and prosecution of cybercrimes.
- 5. Data Protection:** While India does not have a comprehensive data protection law, the *IT Act* contains provisions related to the protection of personal data and privacy. *The Personal Data Protection Bill, 2019*, aims to provide a comprehensive framework for data protection and privacy in India.

¹¹<https://www.legalserviceindia.com/legal/article-426-social-media-and-freedom-of-speech-and-expression.html>.



REALMS OF FILMS

1. ***Cinematograph Act¹², 1952:*** This legislation regulates the exhibition and certification of films in India. It empowers the *Central Board of Film Certification (CBFC)* to certify films for public exhibition based on content guidelines and to make cuts or edits if deemed necessary.
2. ***Central Board of Film Certification (CBFC):*** The *CBFC*, also known as the censor board, is responsible for certifying films for public exhibition. It operates under the *Ministry of Information and Broadcasting* and determines the suitability of films for different age groups based on content.
3. ***Film Certification Process:*** The films undergo certification by the *CBFC* before they can be released for public exhibition. The certification process involves screening the film and assessing its content for adherence to guidelines related to obscenity, violence, and religious sentiments.
4. ***Censorship and Freedom of Expression:*** While the *CBFC* aims to balance artistic freedom with societal sensibilities, its censorship decisions have often been a subject of debate and controversy. Legal pronouncements, such as those by the Supreme Court, emphasize the importance of upholding freedom of expression in the context of film regulation.
5. ***Legal Challenges and Judicial Review:*** Filmmakers have the right to challenge the decisions of the *CBFC* through legal avenues, including judicial review. The Hon'ble Courts have intervened in cases where censorship decisions were found to be arbitrary or unconstitutional, reaffirming the importance of upholding freedom of speech and expression in the film industry.

These legal features provide the framework for governance and regulation in the realms of the internet and films in India, balancing the interests of individuals, society, and the state.

¹²Supra Note 5.

CONCLUSION

In conclusion, freedom of speech and expression under the Indian Constitution is a fundamental right that plays a crucial role in upholding democratic values and fostering a vibrant and inclusive society. This right extends to various forms of communication, including speech, writing, printing, and visual representations, such as films and online content. However, the exercise of this right is subject to reasonable restrictions in the interest of public order, decency or morality, security of the State, and other legitimate concerns.

In the realms of the internet and films, freedom of speech and expression faces unique challenges and opportunities. The internet provides a platform for individuals to express their views and engage in public discourse on a global scale, but it also raises issues related to online harassment, hate speech, and misinformation. Similarly, films serve as a powerful medium for artistic expression and social commentary, but they are subject to censorship and regulation by authorities such as the *Central Board of Film Certification*.

The legal frameworks and practices governing the internet and films in India aim to strike a balance between protecting individual liberties and addressing societal concerns. While regulations and restrictions exist to ensure the responsible use of these mediums, it is essential to safeguard freedom of speech and expression from arbitrary censorship and undue interference. Legal pronouncements and judicial interventions have reaffirmed the importance of upholding this right, both online and in the film industry, while also recognizing the need for reasonable limitations in certain circumstances.

Overall, freedom of speech and expression under the *Indian Constitution* with reference to the internet and films provide a dynamic and evolving framework that reflects the complexities of modern communication. It is essential to uphold and protect this fundamental right while also fostering a culture of responsible and respectful expression in the digital age. Through continued dialogue, engagement, and adherence to constitutional principles, India can continue to promote a robust and inclusive environment for free speech and expression in the 21st century.

CONCLUDING SUGGESTIONS

In concluding suggestions on freedom of speech and expression under the Indian Constitution with reference to the internet and films it is therefore crucial to emphasize a few key points as follows:

1. *Promote Dialogue and Engagement:* Encourage open dialogue and constructive engagement among stakeholders, including government authorities, civil society, media organizations, and internet platforms. Collaboration and communication are essential for developing policies and practices that uphold freedom of speech while addressing legitimate concerns.

2. *Ensure Transparency and Accountability:* Enhance transparency and accountability in the regulation of the internet and films. Government agencies responsible for content regulation should operate transparently, with clear guidelines and procedures. The mechanisms for oversight and accountability should be strengthened to prevent abuse of power and ensure that decisions are made in accordance with constitutional principles.

3. *Protect Minority Voices and Diverse Perspectives:* Recognize the importance of protecting minority voices and diverse perspectives in the digital space and the film industry. Upholding freedom of speech and expression requires safeguarding the rights of marginalized communities and ensuring that all voices have the opportunity to be heard, without fear of censorship or discrimination.

4. *Foster Media Literacy and Digital Citizenship:* Promote media literacy and digital citizenship among citizens, especially young people. Education and awareness programs can empower individuals to navigate the online world responsibly, critically evaluate information, and engage in informed discourse. By fostering a culture of responsible digital citizenship, society can mitigate the negative effects of misinformation and hate speech online.

5. *Support Artistic Freedom and Creative Expression:* Protect artistic freedom and creative expression in the film industry. Recognize the role of films as vehicles for social commentary,

cultural expression, and artistic innovation. While regulations may be necessary to address certain

concerns, they should be applied judiciously, respecting the autonomy and integrity of filmmakers and artists.

6. Adapt Legal Frameworks to Technological Advancements: Continuously review and adapt legal frameworks to keep pace with technological advancements and evolving societal norms. Laws and regulations governing the internet and films should be flexible enough to accommodate innovation and changing circumstances while upholding fundamental rights and values.

By incorporating these suggestions into the conclusion on freedom of speech and expression under the Indian Constitution with reference to the internet and films, stakeholders can work together to promote a robust and inclusive environment for free expression, both online and in the creative arts.

There are some suggestions on enhancing legal protection for speech and expression and promoting the film and internet industries in India as follows:

1. Strengthen Legal Safeguards: Enhance legal protections for freedom of speech and expression by ensuring that laws and regulations are consistent with constitutional principles and international human rights standards. Any restrictions on speech should be narrowly tailored and subject to strict scrutiny. Additionally, establish robust mechanisms for judicial review to safeguard against arbitrary censorship and abuse of power.

2. Promote Media Pluralism and Diversity: Encourage media pluralism and diversity in the film and internet industries by fostering a supportive regulatory environment that promotes competition and innovation. Provide incentives for the development of independent and alternative media outlets to ensure a wide range of voices and perspectives are represented.

3. Support Independent Filmmakers and Content Creators: Provide financial and institutional support to independent filmmakers and content creators to foster a vibrant and diverse film industry. Offer grants, tax incentives, and subsidies to encourage the production of independent

films that explore diverse themes and narratives. Facilitate access to funding, distribution channels, and production resources for emerging filmmakers.

4. *Promote Film Festivals and Cultural Exchange:* Encourage the organization of film festivals and cultural exchange programs to showcase Indian cinema on the global stage and promote cross-cultural dialogue. Support initiatives that facilitate collaboration and networking among filmmakers from different countries, fostering creativity and innovation in the film industry.

5. *Invest in Digital Infrastructure and Connectivity:* Invest in digital infrastructure and connectivity to expand access to the internet and digital technologies, especially in rural and underserved areas. Improve broadband connectivity, invest in digital literacy programs, and promote the adoption of affordable internet-enabled devices to bridge the digital divide and empower individuals to participate in online discourse.

6. *Ensure Data Privacy and Cybersecurity:* Strengthen data privacy laws and cybersecurity measures to protect individuals' rights and promote trust in online platforms and services. Implement robust data protection regulations that safeguard personal information and empower users to control their data. Enhance cybersecurity infrastructure to prevent cyber threats and ensure the integrity and security of online communications.

7. *Facilitate Public-Private Partnerships:* Foster collaboration between government, industry, and civil society organizations to address common challenges and promote the growth of the film and internet sectors. Establish public-private partnerships to develop innovative solutions, share best practices, and leverage resources more effectively to achieve shared goals.

By implementing these suggestions, India can enhance legal protections for speech and expression, promote the growth of the film and internet industries, and create a more inclusive and vibrant media landscape. These efforts can contribute to fostering creativity, innovation, and cultural exchange, while also upholding fundamental rights and values in a rapidly evolving digital age.

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