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RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN THE CYBER SPACE

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ABSTRACT

This research paper will revolve around the fundamental right to Freedom of Speech and expression that an Indian has in the cyberspace and the reasonable restrictions that are laid upon them. The paper will also aim to address the misuse and other possible complexities of this right. This right is being threatened as the digital scenario in India is rapidly improving. Mediums like various social media platforms like Twitter, Instagram, Facebook are gaining rapid popularity. Other mediums like vlogs and blogs are also becoming very popular. The views and opinions of an individual can be shared and viewed by millions of people around the world, which is why this right becomes important. In addition to that, the restrictions laid down also become important. The United Nations has established that free speech and expression in the cyberspace is a right that everyone is entitled to as it is a basic human right. The Constitution of India has guaranteed that the right to freedom of speech and expression will be given to each citizen of India, although there will be reasonable restrictions to some extent. This study will aim to cover all the aspects of this right in the cyberspace. It will also be analyzing the IT Rules 2021 and will aim to analyze if it violates the freedom of speech and privacy.

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I. INTRODUCTION

The main spirit of the freedom of speech is being able to freely think and speak one's mind out. In addition to this a person should also be able to receive information from others through any mode of communication without having to fear the government and any of its punitive actions such as restrictions and repressions. When people are able to freely express themselves without any inhibitions, they become more united and can work towards a common goal with more strength. It will also help in creating more aware and enlightened citizens.

As people become more dependent on digital platforms for the transmission of information, the right to freedom of expression and speech becomes more important. It also becomes important to ensure that the rules and regulations in place that govern the information that is being shared here are strictly enforced and followed by all the people who use the digital platform to express themselves online.

In this paper, the researcher will first, attempt to gain an understanding about the right to freedom of Speech and Expression as enshrined in the Article 19 (1)(a) of the Indian Constitution as this will lay the foundation for the paper. In the next section the Freedom of Speech and Expression in the cyberspace will be evaluated. The case of Shreya Singhal v Union of India will also be analysed in this chapter as it is an important case for this paper. In the next chapter, the IT rules 2021 will be briefly analysed. The last chapter of the paper will aim to understand if the new IT rules infringe the freedom of speech and expression in the cyberspace.

A. RESEARCH METHODOLOGY





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There are two main kinds of research methodologies, doctrinal method, and non-doctrinal method. In the doctrinal method of research, the researcher is required to base their study on pre-existing information that has been published before. For example, case-laws and statutes and other legal sources. “Non-doctrinal research, also known as social-legal research, is research that employs methods taken from other disciplines to generate empirical data that answers research questions.”¹¹

This research will be conducted in the doctrinal method, as the researcher will be referring to various legal statutes, case laws and other legal data from various legal sources.

The researcher will also be using various secondary sources for preparing this paper. For example, data from various published sources, like articles, blogs, research papers, case analyses will be evaluated and presented in this paper.

B. RESEARCH OBJECTIVES

1. To understand the freedom of speech and expression as enshrined in constitution.
2. To analyze the Shreya Singhal v. Union of India case.
3. To analyze the IT rules, 2021.
4. To understand if the IT rules, 2021 infringe the right to freedom of speech and expression.

C. RESEARCH QUESTIONS

1. What are the IT rules, 2021?
2. What are the pros and cons of the IT rules, 2021?
3. Do the IT rules, 2021 infringe the freedom of speech and expression?

D. REVIEW OF LITERATURE

1. *Freedom of speech in The Cyberspace by Akshitha Piplani*²²

¹¹ Salim Ibrahim Ali, Dr. Zuryati Mohamed Yusoff, Dr. Zainal Amin Ayub, *Legal Research of Doctrinal and Non-Doctrinal, vol 4, International Journal of Trend in Research and Development.*

²² Akshitha Piplani, Freedom of speech in cyberspace, Law Times Journal, (16/04/21, 6:30pm)





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This is a research article that has extensively evaluated the fundamental right of freedom of speech and expression in the context of the internet world and cyberspace. It evaluates the restriction that is placed on the right to freedom of speech and expression in Article 19 (2). It further briefly examines the Shreya Singhal v. Union of India case as it played a very instrumental role in reforming the laws related to freedom of speech and expression in the cyberspace. It further elaborates on the test of reasonableness when it comes to the free speech and expression in cyberspace. To substantiate this, the author has also examined the V.G. Row v. State of Madras as this case played a phenomenally important role to set a test for reasonableness. It has also examined the laws related to freedom of speech in relation to the cyber space in the United States of America.

2. *Freedom of Speech in The Cyberspace and Law of the Horse by Aradhya Sethia*³³

The main question that this paper answers is whether the Supreme Court of India in the Shreya Singhal v. Union of India case manages to establish a standard for free speech and expression in the cyberspace. The Author predicts that in the future, numerous constitutional queries related to cyberspace are bound to arise. This question is undoubtedly very important to understand the extent to which our freedom of speech and expression in the cyberspace is permitted. The author of this article has also conducted a comparative analysis of the cases related to free speech in the cyberspace between India and the U.S. “

3. *The complexities of freedom of speech and expression in the cyberspace in digital India by Anil Kumar Bakshi*⁴⁴

This research paper evaluates various different topics. It first examines the Digital India Programme that was first launched in 2015 by the Government of India, to make our country more digital. It then goes on to evaluate the fundamental right of free speech and expression as enshrined in our constitution. Lastly, it goes on to evaluate the various complexities that may arise due complete freedom of speech and expression in cyberspace. The author has referred to the Information Technology Act, 2000 on various occasions as it helped in making this research paper more comprehensive and elaborate.

4. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 by Bhumika Indulia:

In this article the author gives an extensive review of the IT rules, 2021. She talks about the rules and regulations that the intermediaries have to follow. It also evaluates the grievance redressal mechanism that was introduced. The code of ethics that was recently introduced was also studied and explained by the author.

³³ Aradhya Sethia, Freedom of Speech on Cyberspace and Law of the Horse, volume no 9, Indian Law Journal, 2016

⁴⁴] Anil Kumar Bakshi, The complexities of freedom of speech and expression in cyberspace in digital India, vol no 5, JETIR, August 2018





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II. ARTICLE 19(1)(a) OF THE INDIAN CONSTITUTION -THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

*“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties” -
John Milton*

The right to freedom of speech and expression is considered as one of the very first tests of liberty. It is also said that the freedom of speech and expression is considered as the mother of all liberties.

What is meant by freedom of speech and expression? The freedom of speech and expression can be described as an individual’s right to express his or her opinions, thoughts, and convictions freely, by either stating them verbally, or through written modes, or in any other way in which it is accepted by the recipient. In today’s day and age, the right to freedom of speech and expression is an important factor of the free and modern society and it must be safeguarded at all costs.

This aspect of liberty is so important, that the constitution is not the only book that ensures it. Several other statutes of different states and other international conventions lays a lot of importance on the concept of freedom of speech and expression. Some examples of these conventions are, the Universal Declaration of Human Rights, The International Covenant on Civil and Political rights, the European Convention on Human Rights and fundamental freedoms.

The Article 19 of the constitution states the following:

“19. Protection of certain rights regarding freedom of speech etc.

(1) All citizens shall have the right

(a) to freedom of speech and expression”⁵⁵

This article assures that all the citizens of India have the right to freely speak and express their thoughts. This expression of speech can happen through any medium, for example, verbally, in a written format, through print, through movies etc. Thus, it also includes the freedom to propagate and share their views.

⁵⁵ Art. 19 (1)(a) of the Indian Constitution.





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However, this Article also has a few reasonable restrictions that are imposed on them to ensure that this right is not misused by anyone. These are enshrined in the Article 19 (2) of the Indian constitution. It states that-

“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”⁶⁶

As previously established, this right is very important. In the Maneka Gandhi v. Union of India, Justice Bhagwati established the importance of freedom of speech and expression:

“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 rights of making a choice, free & general discussion of public matters is absolutely essential.”⁷⁷

It is rightly said that the right to freedom of speech and expression is the main essence of a democracy. This is exactly why it is important. The freedom to speak freely plays a very integral role in the public forming their opinion on various economic, political, and social issues. The scope of this right extends to the exchange of information that may have an impact on the viewpoint of the citizens on issues pertaining to public concern. Any expression that is conveyed in the spirit of patriotism, sentiment and love for the country cannot be prohibited and it would fall under the purview of this right.

III. FREEDOM OF SPEECH AND EXPRESSION IN THE CYBERSPACE - ANALYSIS OF THE SHREYA SINGHAL CASE

The internet and cyberspace are one such platform on which every individual expresses themselves. They portray their thoughts in the form of pictures, articles, paintings, videos etc. However, this right to freely express one's feelings and thoughts in cyberspace is often misused by

⁶⁶ Art. 19 (2) of the Indian Constitution.

⁷⁷ Maneka Gandhi V Union of India, AIR 1978 SC 597.





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people. One such case that took place in India which addressed the freedom of speech in the cyber space is the Shreya Singhal v Union of India case. This case will be discussed in this chapter.

A. BRIEF FACTS OF THE CASE

Two women were arrested by the police in Mumbai, in 2012, because they posted offensive and questionable comments on their Facebook. These comments were against the temporary lockdown which was imposed on the city of Mumbai on account of the death of Bal Thakrey who was a famous politician in Mumbai. The arrests made by the police were because the Section 66A of the Information Technology Act of 2000. This act states that “*Any person who sends by any means of a computer resource any information that is grossly offensive or has a menacing character; or any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult shall be punishable with imprisonment for a term which may extend to three years and with fine.*”⁸⁸

These women were eventually released by the police, but this incident created a lot of media buzz and gathered a lot of criticism and attention. Many activists claimed that the policemen exploited the power they had by arresting them under this section. The offence stated under the section 66A of the Information Technology Act is considered as a cognizable offence, and it gives the policemen the power to investigate a case without a warrant. Due to this the police made many mysterious arrests all over the country. Any person publishing an opinion or view that the govt considered as obnoxious were arrested, even though these were mostly just questioning the political opinions.

The two women, after this, filed a petition and challenged the constitutional validity of this section. They claimed this on the ground that it is a violation of the freedom of speech and expression. In the year 2013, the government suggested a condition to the arrest of a person that may be made under the section 66 A of the Information Technology Act. The central government assured that no person shall be arrested without an authorization for a superior official. There were also many innumerable petitions filed by various people to remove the unconstitutional provisions of the Information Technology Act. The apex court of India clubbed all these petitions into one single PIL under the name of Shreya Singhal v. Union of India.

B. FACTS IN ISSUE

The petitioner filed a Public Interest Litigation under Article 32 of The Indian Constitution, pleading the Supreme Court of India to declare section 66A, 69 A and 79 of the Information Technology Act as unconstitutional. According to this writ petition, the petitioners claimed that the wordings of the sections of the Information Technology Act were not just vague

⁸⁸ Information technology act, 2000, Section 66A.





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but were also ambiguous. It was also said that these sections were only in place to cause careless exploitation and hence they fall under the canopy of Article 14, Article 19(1)(a), and Article 21 of the Indian Constitution. In this act, there were terms like, offensive, obstruction, inconvenience, menacing and insult.

These terms did not have a proper definition and were vague as these words could mean different things to different people and none of these were explained in the act. Hence making it more susceptible to more uncalled abuse and harassment. Other than this, the differentiation made between the citizens and netizens was established arbitrarily. This is in contrast to the provision of freedom of speech and expression as enshrined in the Article 19 (1)(a) of the Indian Constitution. It was established that this difference gives the policemen the authority to arrest the netizens for any remarks that they make online which are also made by the usual citizens of the country. Hence this clarification infringes the fundamental right of equality.

C. ARGUMENTS MADE BY THE PETITIONER IN BRIEF

- The Section 66A of the IT Act violates the right to freedom of speech and expression as enshrined in the Article 19 (1)(a) of the Indian Constitution, and it is also not covered in the reasonable restrictions as mentioned in the Article 19 (2).
- The petitioner confirmed that the acts that cause displeasure, annoyance and anger are out of the purview of the Article 19 (2) of the Indian Constitution.
- Section 66 A was also claimed to be ambiguous and vague as various terms in it are not described and can have broad interpretations and are very subjective in nature.
- The petitioner claimed that the whole provision of Section 66A of the IT Act is arbitrary, vague and discriminatory in nature as there is no intelligible differentia in only charging the netizens under this act.

D. ARGUMENTS MADE BY THE RESPONDENTS IN BRIEF

- The respondents argued that the legislature has an obligation to attend to the needs of the people and that the judiciary will only be involved if there is an inconsistency with the part III of the Indian Constitution. Additionally, it was also brought forward by the respondents that there is an assumption of the law at hand being Intra-Vires to it.
- The interpretation of the law can be done by the court of law in such a way that would make it enforceable in a just manner. The complexities of this provision can also be understood in this manner.





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- A law cannot be pronounced as ultra-vires to the Constitution of India just because the executive authorities like the policemen misuse it.
- The law used broad terms only to safeguard the rights of the citizens for others who may violate them by using this very medium.
- A legislation cannot be pronounced as ultra-vires to the Constitution of India just because it is ambiguous. More so because it is also qualified and is just in all other aspects.

E. OVERVIEW OF THE JUDGEMENT

- Section 66 of the IT Act was revoked completely for violating Article 19 (1)(a) of the Indian constitution and it did not come under the reasonable restrictions as mentioned in article 19 (2).
- The Section 69(A) of the IT act was pronounced as intra-vires to the Constitution of India.
- Section 79 of the IT Act was confirmed to be legitimate to the understanding of section 79(3)(b) of the Information Technology Act.

Section 118 of the Kerala Police Act was also abrogated by the Supreme Court of India

This case played a very instrumental role for the freedom of speech and expression in cyberspace. This case has helped us gain a clearer picture of how the article 19 of the Constitution was upheld even when it came to the cyberspace.

IV. IT ACT, 2021- BRIEF ANALYSIS

The Information Technology Rules 2021, was released by the Ministry of Electronics and Information Technology in February 2021. These rules were mostly aimed at the OTT and social media platforms.

These new rules have been introduced under sections 69A (2), 79(2)(c) and 87 of the IT Act 2000. These rules replace the IT rules enacted in 2011. These rules are important because-

- These rules provide a rigid mechanism for complaints for all the social media users and all the other OTT platforms for redressal of grievances.





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- The rules also stress upon the protecting children and women from sexual offences that are prevalent on social media
- These rules emphasized that the content that is posted online by various publishers is subject to the Indian Constitution and other laws.
- It also provides protection for various digital media consumers.

A. PROS OF THE NEW RULES

The following are some of the positives of this rule –

- Intimate pictures which are non-consensual are mandated to be removed within the span of 24 hours.
- It is also mandated that compliance reports should be published to increase transparency.
- A mechanism for content removal and dispute resolution was set up.
- It was made compulsory that the users of social media should be made aware if the content is exclusively controlled, or if it's owned or advertised.

B. CONS OF THE NEW RULES

The following are the negatives of the rules-

- Fair recourse is deprived- if the government does not like any content posted on the internet and if it asks the intermediary to take it down, then this has to be done within 36 hours. This is not fair to the intermediary as they will have to comply with this rule even if they are disagreeing with the government.
- Issue of traceability- until now, the users of social media had immunity as they had the privilege of receiving end-to-end encryption and none of the intermediaries had any access to the messages exchanged by its users.
- These rules are Ultra-vires to the IT Act- the canopy of the IT Act, 2000 has been considerably expanded as now, the digital news is also under its ambit.
- Freedom of speech is being undermined- according to these rules, the government is the last adjudicator of any thought or opinion expressed on the internet.





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- Increased expenses for the intermediaries- unnecessary operational costs are added for the intermediaries because of these rules. This is because the rules require Indian compliance and grievance officers to be hired.

V. DO THE NEW RULES IMPACTS THE FREEDOM OF SPEECH IN THE CYBERSPACE?

From the previous chapters one can understand the detrimental role that the Fundamental Right- Right to Freedom of Speech and Expression plays in everyday life. Though there are certain restrictions placed on the exercise of this right, the IT Rules, 2021 puts further unreasonable restrictions on this Fundamental Right.

The IT Rules, 2021 attempts to place various ‘regulatory guidelines’ on the content that can be put up on social media and Over-The-Top (OTT) platforms by citizens, news websites, etc. It also demands that social media platforms should hold greater accountability for the content posted by its’ users. Moreover, this enactment also enables the government to tear down any content that it deems ‘unlawful’ posted on any social media platform with at least 5 million total users.

To make matters worse, if the platform does not act as per the government’s directive and take down the content within 36 hours of this request, it could leave the company open to criminal prosecution. With so many restrictions being put on the digital platforms, it can be deduced that the users of these platforms will not be comfortable in expressing their views and thoughts online. This itself shows that the right to freedom of speech and expression has been infringed.

The new rules had also established that the portal for digital news did neither come under the purview of the Cable television Networks regulations Act nor the press council act. As the digital media is agnostic in nature there is a difference between the news and other content published here and the content published in other traditional modes of news dispersion. Before these rules, it can be said that the field of digital news did not have any proper regulations in place that governed the news being published in the digital platform. The code of ethics which the digital news platforms have been asked to follow have been described as “draconian” it is also being said that these rules lead to people being fearful and surveillant.





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Recently, India's largest new agency, The Press Trust of India challenged the New IT rules arguing that it infringes the freedom of speech of the users, and the right to privacy. It argued that the three-tier redressal mechanism which is being headed by a committee and it has been given certain blocking powers, this will undoubtedly result in the committee tampering with the news to make it more favorable for certain parties.

Counsel Darius Khambata has also said, "These rules are seeking to effectively monitor and censor speech on the internet by giving powers to a ministerial committee. This is the most draconian law on free speech in recent times."

The step taken by the government to make cyberspace a safer place is not welcomed by most people. Some critics have also gone a step further and described it as "draconian" and "vagueness." Therefore, the IT Rules, 2021 infringe the Right to Freedom of Speech and Expression and the Freedom of Press both of which are guaranteed by the Constitution of India to its' citizens.

VI. CONCLUSION

To conclude, we understand that the fundamental right of freedom of speech and expression is very vital for the smooth functioning of the country. As we have evaluated in the paper, there are countless reasons as to which this right should be religiously upheld in not just our country but all over the world.

The cyberspace being one such place where every individual turns to these days and has a lot of impact on the minds of the people have a huge role in upkeeping the right to freedom of speech and expression in the country. The Shreya Singhal case has played a very important role in this paper as it has helped us understand the current state of the freedom of speech in the cyber space and since this was a landmark case in this field it has added a lot of value to the paper.

The IT Rules, 2021 which came into existence recently, was a topic of concern for many OTT platforms, and social media intermediaries. These rules are an infringement to the speech and expression of the users of the internet.



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