INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

ISSN: 2582-6433

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

ISSN: 2582-6433

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

ISSN: 2582-6433

EXPANSION OF FREE SPEECH ON SOCIAL MEDIA COMPANIES -

AUTHORED BY - SRIJAN KASHYAP

Article 19 (1) (a) (hereafter "free speech") grants freedom of speech and expression and on restriction, you can approach the court. During the making of Constitution, the makers decided that the Fundamental Right ("FR") of speech would be enforceable against the state, but now private social media platforms have become the stage for sharing opinions. According to a Report[1], on a daily basis, a person on average spends 2hr 26 minutes on press media, and 2hr 25 minutes on social media, and the number of user accounts is 448 million. What if whatever you're reading or sharing is controlled by someone whom you even can't question? That is the current situation of our free speech rights on social media.

In one of the instances, Twitter suspended the account of Advocate Sanjay Hedge without specifying any grounds. The government clarified that they didn't issue any direction for the suspension of the account[2], so it was Twitter acting on its whims violating the basic principle of natural justice. The Delhi High Court, in this case, observed arbitrary suspension or take-down has a chilling effect on free speech, the government should ensure FRs aren't violated by private entities[3]. When the FR isn't supposed to apply to interactions between private parties (generally), the government comes up with statutes to regulate and in this case through the Information Technology Act, 2000("IT Act"). The IT Act ignores the free speech aspect and deals mainly with legal protection to Intermediaries and specific grounds on which the government can ask these companies to take action. Social media companies only need to show the compliance with IT Act not free speech, this gives them the opportunity to escape judicial scrutiny. One of the statements always put forth is that such a big organization if so important for a public function should be declared "State" under Article 12. This idea of the functional

[1] Simon Kemp, 'DIGITAL 2021: INDIA' DATAREPPORTAL, 11 February 2021 [Digital in India: All the Statistics You Need in 2021 — DataReportal – Global Digital Insights] accessed on 7 September 2021
[2] Sanya Talwar, 'We Have Not Issued Any Direction To Suspend The Account: IT Ministry Tells HC In Sanjay Hedge Vs Twitter Matter' LiveLaw.in, 8 February 2020 ['We Have Not Issued Any Direction To Suspend The Account': IT Ministry Tells HC In Sanjay Hegde Vs Twitter Matter [Read Counter And Rejoinder] (livelaw.in)]
[3] Aditi, 'Delhi HC issues notice in Sanjay Hedge plea challenging suspension of his Twitter account' Bar and Bench,6 January 2020 [Delhi HC issues notice in Sanjay Hegde plea challenging suspension of his Twitter account (barandbench.com)]

ISSN: 2582-6433

approach was long dead in the *Zee Telefilms Ltd. and Anr. v. Union of India*[4] when BCCI wasn't declared State.

In *Raj Narain v State of U.P.*[5] it was held that the Right to Know is important to exercise Freedom of Speech. In the recent incident, twitter suspended the account of the IT Minister again without specifying any grounds and then restored it after sometime. Accounts of this type serve public good and inform us about government policies. In *Ford and The Boro v. Mount Pocono Borough*[6] it was held that the Facebook page used by the government for official communication purposes was a public record under the Right-to-Know Law. If we take the widened view of the preceding two cases it can be said that free speech has been curtailed. In a recent case the Supreme Court held[7] that political parties need to publish the details of criminal cases of their respective candidates on social media. Through this even Supreme Court has recognized the importance of social media to avail information. Despite all of this in India free speech to an individual has become the prerogative of private entities.

The censorship over free speech in this circumstance also creates conflict with the proper implementation of other FR. In *Faheema Shirin R.K. v. State of Kerala & Ors.*[8], the Court declared the Right to Access the Internet is an FR and important because it facilitates group discussion and sharing of ideas. The information following through these channels must be given the same importance because how will one exercise one's Right to Access the internet freely if some private entity decides what message should one share/view by the use of one's internet on the basis of their own rule and regulation which can't be challenged in court. It might be argued why don't you change the platform if it's just about information that you can avail on the other platform but it needs to be understood that the question is not about which platform rather it's about people's rights on that platform. One's right can be exploited by any social media platform because they all enjoy unregulated power.

It isn't that Article 19 (1)(a) application to social media companies will be something new with FR. The Chandrachud, D J.[9] while deciding the case on right to privacy acknowledged that the

[4] (2005) 4 SCC 649 (SC)
[5] (1975) AIR 865 (SC)
[6] LAW' NAUMAN SMITH SHISSLER & HALL, 3 May 2021 [How Social Media Becomes A Public Record Under Right To Know Law | Nauman Smith (nssh.com)]
[7] *Rambabu Singh Thakur v Sunil Arora and Others* (2020) SCC OnLine 178 (SC)
[8] (2020) AIR 35 (Ker)
[9] *Justice K.S. Puttuswamy and Ors. v Union of India and Ors*. (2017) 10 SCC 1 (SC)

ISSN: 2582-6433

threat to data isn't only possible from the state entity but also from the non-state actor considering their role in it. In one of the famous cases *Vishaka and Ors. v State of Rajasthan and Ors.*[10], when the state didn't come up with a law to protect women from sexual harassment at workplaces. The Court considering it as a violation of Article 19 (1)(g), 21 and 14 filled the gap by making law for both private and public workplace. Courts have looked at the basic principle behind FR and widened its scope because over time the circumstances change and rigidity to the textual reading while ignoring its basic principle would undermine the purpose behind that right.

The exercise of free speech linked with the concept of democracy and free flow of information is required for the proper working of free speech. In the current world, social media have become one of important means through which individual exercise his free speech, we connect from each other through this and avail our information. These social media companies are neither responsible to people nor to courts and the government is exercising their power not to promote free speech rather to restrict it more and also use it to gain control over the net. It gives social media platforms unlimited rights to control the access of information one avails and how one uses it on that platform. It is time to change the approach we have followed for free speech in law, we need to expand the application of Article 19 (1)(a) to bring social media companies under its scope. It is not reasonable to think the State will be the only entity that can curtail our free speech in the current world.

[10] (1997) AIR 3011 (SC)