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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RIGHT TO SPEECH AND EXPRESSION IN CYBERSPACE: THE REALITY

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Introduction:

Freedom of speech and expression is intrinsic in every person. Every person has a right to hold his expressions and to express what they want to convey to the listeners. The current era is considered as the digital era and everyone in the world uses cyberspace as a platform for various applications such as entertainment, education, communication, etc. This basically involves the freedom of speech and expression even in cyberspace as well. This is a confirmed right to every person where anyone can hold their expression freely without any borders or boundaries that will reach places in no time. This has become the current scenario which creates a fear as well in using the right in a proper way. As we all know, when there is a right, there also is the birth of misuse of such right which has the need of limiting it. The fast paced growth of internet usage among people all over the world is also threatening in various ways thus creating an urgent need to curb them by proper actions and enactment of legislations. Also, as compared to real world, cyber space is a different world which has no boundaries or discreet boundaries, making it difficult to regulate laws in such space. This makes it a difficult task to convict due to complexity of crimes, anonymity of criminals, improper implementation procedures, etc. This paper is focused on the concept of right to speech and expression in cyberspace, misuse of such right and regulations regarding the right in India.

Research Methodology:

The research methodology used in this paper is secondary research. The research methodology has been descriptive and the secondary data source has been collected through research papers, websites, books and journals. This paper also includes doctrinal research with related to the right of speech and expression in cyberspace.

Scope & Limitation:

This paper is focused especially on the right to speech and expression in cyberspace alone. This paper covers the use, misuse and criminalization and regulation of use and misuse of such right in the cyberspace and not in general.

Right to speech and expression:

Right to speech and expression is inherent in the Indian Constitution as a fundamental right under Article 19(1) (a). This is a significant right where one can freely express his ideas on a situation or express his own stand whenever he wants through any medium like words of mouth, pictures, sign and internet. Also there are reasonable restrictions given under article 19(2) which states certain conditions where such right is restricted to be used by a person.

This right is also inherent in the Universal Declaration of Human Rights (UDHR) where it identifies the right to free speech. It also identifies the right to freedom of opinion and expression in Article 19. The ICCPR also signifies the right to speech and expression.

There are various instances where the right has been signified and reiterated in our judicial decisions. In *Bennett Coleman and Co. v. Union of India*¹, the Supreme Court held about the effect of the right. In *Ramesh Thaper v. State of Madras*², the Supreme Court held the significance of the right and expanded the scope of the right by identifying the freedom of press under the said right. These judicial decisions have played a major role in interpreting the use of the right and also have held the possible restrictions in order to avoid misuse of the right. These enactments and decisions depict the substance of the right and its proper usage by the people.

Cyberspace:

Cyberspace is the notional environment in which communication over computer networks occurs³. It was coined by the science fiction writer William Gibson in the year 1982. It is a virtual space and an unreal landscape where information is transferred to and from without any limits. There is no definitive boundary for cyberspace unlike the real world. It connects the whole world where data gets spread within no time.

¹ 1973 AIR 106, 1973 SCR (2) 757

² AIR 1950 SC 124; 1950 SCR 594

³ Cyberspace, Wikipedia (Dec. 7, 2001), <https://en.wikipedia.org/wiki/Cyberspace>.

In this digital era, cyberspace has become one of the most prominent and dominating facet in every person's life. It has become as the most powerful technological invention .As of April 2023, almost 60% of the population is using internet and cyberspace.⁴ As said above, they use it for various purposes and it has become more useful in enormous ways. People even canshare opinions, read data, share information, spread news worldwide and seepictures sometimes deep truths are also leaked in the cyberspace. Thisdepicts the importance of usage of cyberspace today in this internet world.

This has not only become useful for normal persons, but has also grown to be useful for people involved in criminal activities who accomplish their intentions by making cyberspace as a medium. This marks the increase in the number of cybercrimes in the world like hacking, hate speech, piracy, identity theft, etc. Thus it's the urgent need to curb all these activities and make possible the recognition of the right to life under Article 21 of our Indian Constitution.

Challenges present to enact legislation are increasing due to the nature of cyberspace. Cyberspace is a virtual space unlike the real world thus has endless space and is also borderless. Also, the persons involved in such cybercrimes are often anonymous leaving the identity to be found and punished so difficult. These challenges make it even more complex to enact legislation and to take proper action.

Use and Misuse of Freedom of Speech and Expression in Cyberspace:

Among several other uses of cyberspace, communication and information sharing has become a significant aspect. People use cyberspace to communicate and share information and express opinions by using various intermediaries. Thus cyberspace has become the space for information sharing where users act both as listeners as well as sharers of such information. With its technology, the information is easily spread across all parts of the world. It is the only medium where a person who is restricted from speaking can speak up and open up effectively.

Cyberspace has both positive and negative sides. The latter being the side where misuse happens. Taking the positive side, the right under Article 19 isenabled effectively to all and also information

⁴ Ani Petrosyan, Internet and social media users in the world 2023, Statista (Apr. 3, 2023), <https://www.statista.com/statistics/617136/digital-population-worldwide/>.

becomes easily accessible. Then again when coming to the negative side, people start to misuse the right to express negative opinions, hate speech, intimidating words, spreading false and misleading information, using the platform for enacting cybercrime, etc. Also the instances of cyber trolling and bullying are becoming more and more prevalent.

The right to speech and expression as given under Article 19, in this internetage, is also available in the cyberspace. As in the real world, the reasonable restrictions under Article 19(2) are also applicable here.

Also the recent judgment held by Kerala High Court in the case *Faheema Shirin R.K vs. State of Kerala & Ors.*⁵, ruled that the right to access internet is a fundamental right forming part of right to privacy under Article 21 of the Constitution of India. These rights enable the users to exercise their freedom of speech and expression as they wish to reach the targeted audience.

These instances often lead to misuse of the right as there are challenges in cyberspace in enacting legislation as mentioned above. These misuses may often lead to even cybercrimes at an aggressive level whereby the people's right to life and privacy gets affected under Article 21 of our Indian Constitution. These cyber-attacks pose a great risk as listed under the 'The Global Risks Report 2018'⁶.

One of the great instances of cybercrime relating to misuse of information in India can be seen in the UIDAI Aadhaar Software where over 1.1 billion data was breached and personal information of people leaked where it led to a situation where one can obtain the information just by googling it⁷. This clearly depicts the misuse of the current freedom in a dangerous form.

Another significant of the said misuse can be seen in the case of one day ban of NDTV⁸ in India. The news channel revealed sensitive information which had the capability of planting nation's security in danger. Also media for their rating among the public misuse the rights which often affects the veracity of it.

⁵ WP(C).No.19716 OF 2019(L)

⁶ World Economic Forum, (Jan. 17, 2018), <https://www.weforum.org/reports/the-global-risks-report-2018/>

⁷ Jain, M. (2019). The Aadhaar card: Cybersecurity issues with India's biometric experiment. The Henry M. Jackson School of International Studies, University of Washington

⁸ NDTV India ordered to go off air for a day, The Hindu (Nov. 3, 2016), <https://www.thehindu.com/news/national/NDTV-India-ordered-to-go-off-air-for-a-day/article60618338.ece>.

Another famous case of tiktok ban⁹, for hosting pornographic content, which was ordered by the Supreme Court to pass an interim order on ban of tiktok to madras high court, is one of the notable cases.

Other common misuse of the right is causing a riot by intimidating through words in social media intermediaries about an existent riot in such place. These form dangerous situations.

These are to be controlled and it is the crucial demand that must be fulfilled as soon as possible so as to avoid the said misuse as well as to protect the people's fundamental rights ensured. Although there is the need of technology in the current era since it has its own positive aspects like education and communication, this must not be fulfilled at the cost of misuse of the same and by infringing people's rights which would then cause the destruction of the tune of our constitution.

Criminalising the misuse of freedom of speech and expression:

Although there is not a proper legislation on the topic, there exist several statutory provisions which penalize the misuse of the right in cyberspace. These act as a check to the misuse but only within its confined limits.

Apart from the reasonable restriction given under article 19(2) that imposes cases where the right can be curtailed, there are many provisions that punish a person upon violation of the law. Section 124 A of the IPC the misuse of the right to bring hatred and disaffection towards government and also such violator is punished for imprisonment and fine. Section 499 and 500 which states about defamation also puts a check to the misuse of the said right in the cyberspace. Also there are various provisions in IPC which puts a bar and penalises hate speech. Section 144 of CRPC also includes a check to hate speech.

Information Technology Act¹⁰ is a significant enactment with relation to cyberspace and the freedom. Section 66A of the IT act punishes a person for sending offensive messages through computer or any electronic device. But some debate over its constitutionality since according to them it violates Article 19 though the real intention is to curb such unlawful activities. Also section

⁹ TikTok App Ban Case | 04 May 2019, https://www.drishtiias.com/daily-updates/daily-news-editorials/tiktok-app-ban-case/print_manually.

¹⁰ Information Technology Act, 2000 Act of the Indian Parliament (No 21 of 2000)

69A plays an important role in this nature to fight against misuse and cybercrimes.

Although there are these many provisions, there is still a gap that needs to be filled in order for the effective enforcement of the right to speech and expression. There is the immediate need to enact an appropriate legislation to avoid misuse.

CONCLUSION:

Cyberspace is the most revolutionary aspect of technological development and is advancing worldwide. This also results in the growth of various cybercrimes. The right to speech and expression must not be misused and abused in the name of freedom. The tune of our constitution must be protected at no cost. These can be done by enactment of proper and exclusive legislation for the abatement of cybercrimes. The importance of data protection and privacy is a must and must be included significantly in such legislations. Along these lines, there is also a duty on everyone not to misuse the right and infringe fundamental rights of such other people. Thus, there must be passing of more penal provisions to safeguard the human rights and for the establishment of a legal order.