

Freedom of Expression National Context



General Protections to the Freedom of Expression

- Article 19(1)(a) of the Indian Constitution not only guarantees freedom of speech and expression, but also freedom of association, assembly and to practice any occupation, trade or business

“All citizens shall have the right to freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practice any profession, or to carry on any occupation, trade or business”

Limitations to Freedom of Expression

Under Article 19(2), however, the Constitution also imposes reasonable restrictions in the following interests:

- Sovereignty and integrity of India
- Security of the state
- Friendly relations with foreign states
- Public order
- Decency or morality or in relation to contempt of court
- Defamation
- Or to prevent incitement for the commission of a cognizable offense relating to the above

Indian Penal Code, 1860

- **Section 124A:** punishes for offences related to sedition
- **Section 153:** penalizes offences related to promoting enmity between different groups on grounds of religion, race , place of birth, residence, language and disturbing harmony or peace. This is also applicable to promoting disharmony or feelings, hatred or ill-will between different religious, racial, regional groups or castes or communities. The code also extends punishment to offences committed in place of religious worship
- **Section 295A:** punishes acts that are deliberate and malicious in nature and are intended to outrage religious feelings or belief, in a spoken or written manner
- **Section 500:** punishes offences related to defamation

Indian Telegraph Act, 1885

- Section 5 of the Indian Telegraph Act of 1885 authorizes the government to take possession of the telegraph to intercept messages
 - Telegraph under the act is defined as “means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means”
- Section 9 establishes the Universal Services Obligation Fund (USOF). The establishment of USOF is important in the context of providing internet access across rural and urban India in the present time.

Information Technology Act, 2000

- **Section 66A:** Governs communications that is “grossly offensive”, false or causes “annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will..”
 - The Supreme Court of India, however, on March 25th, 2015 struck down Section 66A of the IT Act deeming it “unconstitutional” in its entirety due to its “vagueness.”
- **Section 66E:** Prohibits intentionally capturing and transmitting images of private areas of individuals in a way that infringes upon personal privacy
- **Section 66F:** Punishes acts or offenses related to cyber terrorism
- **Section 67A:** Punishes acts or offenses to publish or transmit through electronic forms any material act or conduct that is sexually explicit

Information Technology Act, 2000

- **Section 67B:** Punishment for publishing or transmitting material depicting children in sexually explicit acts in electronic formats. There are certain exclusions given to books, pamphlets, paper, writing, drawing, painting and representing in an electronic form if they justify their existence for public good or in the interest of science, art, literature, learning, or used for heritage or learning purposes.
- **Section 69:** Gives the Central Government the power to issue directions to intercept or monitor communications or information in electronic format
- **Section 69A:** Gives the Central Government the power to issue orders to intermediaries to block information for public access when it deems it necessary in the interest of national security, sovereignty and integrity; to maintain friendly relations with foreign states or public order, or to prevent “incitement to the commission of any cognizable offence”

Information Technology Act, 2000

- **Section 69B:** Gives the authorized power to Central Government to monitor information and communications for cybersecurity purposes
- **Section 79:** Places certain exemptions through which intermediaries would not be liable for any content that contravenes the provisions in Section 69A and the Intermediary Guidelines. These exemptions provide respite for intermediaries against liability on content on their websites. However, these exemptions are deemed void in case an intermediary is shown to have any part to play in;
 - Ownership – initiating the transmission (of infringing content),
 - Select the receiver of the transmission and
 - Editorial acts – (selecting or modifying information in the transmission)

Information Technology Rules

- **Procedure and Safeguards for Interception, Monitoring and Decryption of Information Rules, 2009**
- **Procedure and safeguards for blocking for access of information by public Rules, 2009**
- **Intermediary Guidelines Rules, 2011**
- **Guidelines for Cyber Café Rules, 2011**
- **The Indian Computer emergency response team and manner of performing function and duties Rules, 2013**