Free Speech – Protection and Regulation

Mains: *GS II – Constitution*

Why in News?

Recently the proceedings of The Supreme Court in Ranveer Allahbadia vs Union of India and other cases have said that self-styled bodies are insufficient for regulation of online content and suggested the creation of neutral, autonomous bodies it further suggested that the Government publish the draft regulatory guidelines and invite comments.

What are the existing laws and regulation on free speech?

- **Legal provisions** – Section 67 of the Information Technology Act and Sections 294, 295 and 296 of the Bharatiya Nyaya Sanhita (BNS) penalise obscenity.
- **Online regulation** – Sections 66 of the Information Technology Act prohibits computer-related offences such as hacking and 66E of the Act prohibits publishing personal images of others.
- **Cyber terrorism** – Section 66F of the same Act penalises cyber terrorism.
- **The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules** – It were also promulgated in 2021 though they are criticised for their overreaching interference and penal provisions.
- **Oversight mechanism** – Under these rules, there is already an oversight mechanism by the Centre.
- These rules also impose prior restraint.
- To illustrate, as per clause II (c) under the appendix of the Rules, a publisher should take “due caution and discretion” while dealing

What is the outline in the Constitution and the Courts ruling?

- **Article 19(2)** – The grounds based on which the right to free speech can be restricted are laid down by the Constitution.
- This consists of interests of sovereignty, security of the state, public order, defamation and others expressly enumerated.
- **Common Cause vs Union of India (2008)** – In this case the Court cautioned itself: “Apart from the doctrine of separation of powers, courts must realize that there are many problems before the country which courts cannot solve, however much they may like to.”
- When the Court takes on this task, it is limited by inherent institutional barriers, including that of technical expertise in the field of online media regulation.
- The Court’s obstinacy for regulations in the field also would be vitiated by the same

limitations.

- **Sahara India Real Estate Corp. Ltd.& Ors. vs Securities & Exch. Board of India & Anr., (2012)** – The court had considered in detail the question whether regulation of media content is desirable.
- Being conscious of the dangers of blanket prohibition, the Court held that pre-censorship of the media must be avoided at all costs.
- In the context of court reporting, it was held that the postponement orders directed at the media must be done only as a last resort and must satisfy a high threshold of reasonableness.
- **Kaushal Kishor case (2023)** – The Court itself, speaking through a five judge Bench held that additional restrictions beyond what is expressly laid down in Article 19(2) could not be imposed.
- It was categorically held: "The grounds lined up in Article 19(2) for restricting the right to free speech are exhaustive.
- Under the guise of invoking other fundamental rights or under the guise of two fundamental rights staking a competing claim against each other, additional restrictions not found in Article 19(2) cannot be imposed on the exercise of the right conferred by Article 19(1)(a) upon any individual."
- It is interesting to note that on previous occasions, the Court has effectively restrained itself from venturing into blanket prohibitory measures.
- **Adarsh Co-operative Housing Society Ltd. vs Union of India and Others (2018)** – When a suggestion was made by a counsel urging the court to direct the film-makers to add a disclaimer before the movie, the Court repelled it.
- It said that it is for the Censor Board and not for the Court to decide it, and even the Censor Board could decide it only after hearing the producer or the director of the movie.
- Validity of the laws are to be determined by the Court as the constitutional umpire.
- **Constituent Assembly debates** – Pandit Thakur Dass Bhargava said that "the Supreme Court should ultimately be the arbiter and should have the final say" in situations of challenging the restrictions on freedom, by saying whether "the restrictions put are reasonable" (Constituent Assembly Debates. December 1, 1948).
- This is the scheme of Article 19 of the Constitution as well.
- Therefore, constitutional propriety demands that the Court abstains not only from the process of law making but also from the deliberation on the requirement for a law touching the citizen's freedom.

What is the scenario in other countries?

- **European union** – The Digital Services Act, 2022 promulgated by the European Union prescribes content removal protocols.
- **Germany** – The Network Enforcement Act, 2017 in Germany ensures prompt action on harmful content, without adversely impacting free speech.
- **United Kingdom** – The Online Safety Act, 2023 of the United Kingdom focuses on removal of harmful content and imposing a fine in case of breach.
- **Australia** – The Online Safety Act, 2021 in Australia imposes a fine on non-compliance with regulation.
- **The case of China and Russia** – Countries such as China and Russia are invoking

draconian laws to restrict online content.
- Surveillance and pre-censorship also dominate the online content regulation in these jurisdictions.
- Sadly, even some of the democracies which transform into autocracies also follow suit.

What lies ahead?

- When the Court repeatedly asks for stringent laws to regulate Internet content and when the Centre readily agrees, it is a serious concern in terms of a citizen's freedom.
- Despite the existence of many provisions, any attempt at further regulating the right to freedom of speech and expression must be subject to critical analysis, especially when it comes from the Court.
- Author Salman Rushdie, when censored, has put it succinctly — "Free Speech is the whole thing, the whole ball game and Free speech is life itself."

Reference

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