7. Digital Commercial Speech - Polity

The Karnataka High Court upheld the government's power under Section 79(3)(b) of the IT Act to order content takedowns, dismissing X Corp's challenge. This ruling affirms that an intermediary's "safe harbor" protection is conditional and that unlawful online speech is not protected under India's constitutional framework.

The Legal Challenge and the Court's Ruling

X Corp's Argument - The company contended that only Section 69A of the IT Act, along with its specific procedural rules, provided the lawful basis for content blocking. They argued that the government's use of Section 79(3)(b) was unconstitutional.

Understanding Section 79(3)(b) - This provision is crucial as it removes the "safe harbor" protection for intermediaries (like social media platforms). This protection normally shields them from liability for user-generated content. However, this immunity is lost if the platform, after receiving "actual knowledge" or a government notification, fails to expeditiously take down unlawful content.

Key Observations by the High Court -

1. The court affirmed that communication and information have always been subject to regulation, irrespective of the medium.
2. It explicitly cautioned against importing American free speech principles (like the First Amendment) into the Indian constitutional context, which has its own framework of "reasonable restrictions."
3. The judgment clearly stated that unlawful or illegal content does not enjoy the same constitutional protection as legitimate speech.

The Need for Regulating Digital and Commercial Speech

The ruling underscores the growing necessity for regulating online speech, particularly when it has commercial and public implications.

Protecting Vulnerable Groups - Regulations are needed to curb derogatory remarks and hate speech against persons with disabilities, minorities, and women, thereby ensuring their dignity and promoting an inclusive public discourse.

Accountability of Influencers - When influencers and comedians monetize their content on digital platforms, their speech transcends the private sphere and becomes a public service with commercial stakes. This necessitates guidelines that make them responsible and accountable for their content's impact.

Preventing Harm and Public Disorder - The rapid spread of fake news, hate speech, and inflammatory content can trigger real-world violence and social unrest. Reasonable legal limits are essential to prevent such escalations.

Aligning with Global Trends - Major economies are already regulating online content. The European Union's Digital Services Act and the United Kingdom's Online Safety Act are prominent examples. India cannot afford to remain an unregulated space, given the vast number of its internet users.

Freedom of Speech and Expression under the Indian Constitution

The Indian Constitution guarantees the right to freedom of speech but subjects it to certain "reasonable restrictions."

Article 19(1)(a) grants all citizens the fundamental right to freedom of speech and expression.

Article 19(2) empowers the state to impose reasonable restrictions on this right on specific grounds, including -

1. Sovereignty and integrity of India
2. Security of the State
3. Friendly relations with foreign States
4. Public order
5. Decency or morality
6. Contempt of court
7. Defamation

8. Incitement to an offense

The "Right to Take Offense" - It is important to note that Article 19(2) does not recognize "offensive speech" as a distinct category for restriction. Therefore, the idea that a person has a "right to take offense" is not a constitutionally valid reason to limit someone else's freedom of speech.

Constitutional Morality - This is a nuanced and evolving judicial concept, not a static or inherent public sentiment. It must be cultivated over time and is used by courts to interpret laws in a manner consistent with the core values of the Constitution.

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