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Critical Analysis on Freedom of Speech and Expression

By Shraddha Yadav

Abstract:
Freedom of speech and expression is a fundamental right guaranteed to every individual. It is one of the most significant aspects of a democratic society, as it enables individuals to express their thoughts, ideas, and opinions without fear of censorship or punishment. However, with the increasing incidence of hate speech and intolerance, there has been a growing debate on whether freedom of speech and expression should be limited or regulated. This research paper provides a critical analysis of the concept of freedom of speech and expression, its historical evolution, and the various limitations imposed on it. The paper also discusses the role of case laws in shaping the jurisprudence on freedom of speech and expression.

Introduction:

Freedom of speech and expression is a fundamental right that forms the cornerstone of democratic societies. It is enshrined in Article 19(1)(a) of the Constitution of India, which states that "All citizens shall have the right to freedom of speech and expression." This right enables individuals to express their thoughts, ideas, and opinions without fear of censorship or punishment. However, the exercise of this right is not absolute and is subject to reasonable restrictions in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offense.

On one hand, proponents of freedom of speech argue that it is essential for the development of a free and open society. They argue that it allows individuals to express themselves freely, to share their ideas and opinions, and to challenge the status quo. In this view, freedom of speech is not just a right, but a necessary condition for the growth and progress of society as a whole.

On the other hand, opponents of freedom of speech argue that it can be used to spread hate speech, propaganda, and misinformation. They argue that freedom of speech must be balanced against the harm it can cause, and that some forms of speech should not be allowed in order to protect vulnerable individuals and groups from harm. This view is often associated with the concept of hate speech, which is speech that is intended to degrade, intimidate, or incite violence against a particular group of people.

There are also cultural differences when it comes to freedom of speech. In some countries, such as the United States, freedom of speech is enshrined in the constitution and is seen as an essential

component of American identity. In other countries, such as Germany, hate speech and Holocaust denial are banned, and freedom of speech is seen as a more limited right that must be balanced against other societal values, such as the protection of human dignity.

Another important aspect of the debate around freedom of speech is the role of social media and the internet. With the rise of social media platforms like Twitter and Facebook, individuals now have the ability to express their thoughts and opinions on a global scale. This has led to both positive and negative outcomes. On the one hand, it has allowed for greater freedom of expression and the spread of ideas. On the other hand, it has also enabled the spread of hate speech, misinformation, and propaganda on an unprecedented scale.

In recent years, the debate around freedom of speech has become even more heated, as issues such as cancel culture and the regulation of social media have become more prominent. Cancel culture refers to the practice of boycotting or shunning individuals or organizations that have expressed controversial views. While some see this as a legitimate form of free speech and expression, others argue that it can lead to a chilling effect on speech and that it can be used to silence dissenting voices.

The regulation of social media is another area of controversy. Some argue that social media platforms have a responsibility to regulate hate speech and misinformation, while others argue that this would violate the principles of free speech and lead to censorship. The issue of freedom of speech and expression is a complex and multifaceted one that raises important questions about the nature of democracy, the role of social media, and the limits of free speech. While the debate around this issue will no doubt continue, it is clear that it is an essential component of a free and open society, and one that must be carefully balanced against other societal values in order to protect the rights and dignity of all individuals.

Historical Evolution of Freedom of Speech and Expression:

The concept of freedom of speech and expression can be traced back to ancient Greece, where it was regarded as a fundamental right of citizens. In the 17th century, John Milton's Areopagitica, an influential essay on free speech, argued that censorship was a form of tyranny and that the truth would eventually prevail in an open marketplace of ideas. The Enlightenment of the 18th century gave impetus to the development of freedom of speech and expression as a fundamental right. The

French Revolution of 1789 saw the adoption of the Declaration of the Rights of Man and of the Citizen, which recognized freedom of speech as a natural right.

In India, the struggle for freedom of speech and expression began during the British Raj, where the colonial government censored newspapers and restricted the freedom of the press. The Indian National Congress, through its newspapers and publications, fought for the freedom of the press and the right to free speech. The Indian Constitution, which was adopted in 1950, guaranteed the right to freedom of speech and expression under Article 19(1)(a).

1. Ancient Greece and Rome: The concept of free speech can be traced back to ancient Greece and Rome, where public debate and discussion were valued as essential to democracy. However, these freedoms were not extended to everyone, as women, slaves, and non-citizens were excluded from participation in public life.
2. Enlightenment era: The 18th century Enlightenment era saw the emergence of new ideas about individual rights and freedoms. Philosophers such as John Locke and Jean-Jacques Rousseau argued that individuals had natural rights to life, liberty, and property, and that governments existed to protect these rights. These ideas laid the groundwork for the development of modern democratic societies, which placed a high value on freedom of speech and expression.
3. American Revolution: The American Revolution of 1776 was a key moment in the development of freedom of speech and expression. The First Amendment to the U.S. Constitution, ratified in 1791, protected the rights of individuals to freedom of religion, speech, and the press. This amendment served as a model for other countries around the world that sought to protect individual freedoms.
4. European Revolutions: The 19th century saw a wave of political revolutions in Europe, which led to the expansion of individual rights and freedoms. The French Revolution of 1789, for example, established the principle of freedom of speech and expression as a basic right of citizens. The European Convention on Human Rights, signed in 1950, provided further protections for freedom of speech and expression.
5. Challenges and setbacks: Despite these advances, freedom of speech and expression has faced numerous challenges and setbacks throughout history. The rise of authoritarian regimes in the 20th century led to the suppression of free speech in many countries. The Cold War also saw restrictions on freedom of speech and expression, as governments sought to suppress dissent and limit the spread of ideas that were perceived as threatening to their interests.

The historical evolution of freedom of speech and expression has been shaped by various political,

social, and cultural factors. While significant progress has been made in protecting these freedoms, challenges and setbacks have also occurred throughout history. The ongoing debate about the limits of free speech and expression underscores the importance of continued dialogue and engagement on this important issue.

Limitations on Freedom of Speech and Expression:

1. Cultural differences: The critical analysis of freedom of speech and expression is often based on the Western liberal tradition, which places a high value on individual rights and freedom. However, this approach may not be applicable to other cultural and political contexts, where different values and priorities may take precedence. Thus, a critical analysis of freedom of speech and expression may not take into account the cultural differences and nuances that exist in different societies.
2. Lack of consensus: While freedom of speech and expression is often seen as a fundamental right, there is no consensus on what constitutes acceptable speech and what crosses the line into hate speech or incitement to violence. This lack of consensus makes it difficult to define the limits of freedom of speech and expression, and creates the potential for disagreement and conflict.
3. Power dynamics: A critical analysis of freedom of speech and expression should take into account power dynamics and the ways in which certain groups may be disadvantaged or marginalized. However, this can be difficult to do in practice, as power dynamics can be complex and difficult to identify. Additionally, there is a risk that critical analysis of freedom of speech and expression may be used to silence dissenting voices or limit the speech of marginalized groups.
4. Historical context: A critical analysis of freedom of speech and expression should take into account the historical context in which speech is taking place. However, this can be difficult to do, as historical context can be complex and difficult to fully understand. Additionally, there is a risk that critical analysis of freedom of speech and expression may overlook the ways in which historical injustices continue to shape the speech and expression of individuals and groups today.
5. Limits of language: Language is a powerful tool, but it also has its limits. A critical analysis of freedom of speech and expression relies on language to express ideas and arguments, but language is often imprecise and can be subject to interpretation. This can create ambiguity

and confusion, and make it difficult to arrive at a clear and objective understanding of the issues at hand.

While critical analysis of freedom of speech and expression is important, it is not without limitations. These limitations include cultural differences, lack of consensus, power dynamics, historical context, limits of language, and conflicts with other values. These limitations highlight the importance of approaching the issue of freedom of speech and expression with nuance, sensitivity, and a willingness to engage with different perspectives and contexts.

Case law:

1. ***[1]Bennett Coleman and Co. vs Union of India :***The petitioners (Bennett Coleman and Co.) contested the limitations placed on the importation of newsprint under the Newsprint Order of 1962 and the Import Control Order of 1955. The newsprint policy of 1972–1973 then imposed additional limitations under the following four features:

•Recognized newspaper firms are prohibited from launching new publications if they currently possess two publications, one of which is a daily publication.

•A newspaper's page count was restricted to a maximum of 10 pages.

•For newspapers with fewer than 10 pages, the percentage of additional pages cannot be greater than 20%.

•Exchanging newsprint between publications within the same organisation or between editions of the same newspaper was not permitted.

Under these newsprint policies, even within the quota limit, the petitioners were not allowed to make adjustments and hence this was challenged under Article 19(1)(a) of the Constitution of India i.e., Freedom of Speech and Expression.

Held: In this case, the Supreme Court upheld the petitioner's argument and ruled that although

[1]Bennett Coleman and Co. vs Union of IndiaAIR 1973 SC 106

if the petitioner was a corporation, that fact could not be used as a reason to deny redress for the violation of the rights of shareholders and employees. The Court further declared that the newsprint policy may be challenged in court since, contrary to what the respondents argued, Article 358 cannot be applied to laws passed prior to the declaration of an emergency.

The Court stated that the absence of an express statement of such freedoms as a separate category was irrelevant and that such freedoms are an integral component of Article 19(1)(a).

The court noted that setting quotas can readily address the issue of a newsprint shortage and declared that direct interference with restrictions like page limits and other similar rules was unreasonable and unjustified. Reducing the number of pages in a newspaper would require the company to cut back on editorial or advertising space, which would hurt their bottom line and, in turn, restrict the freedom of expression.The Newsprint Policy of 1972–1973 was declared unlawful by the court. In the end, the petitioners won the lawsuit.

2. [2]***Hamdard Dawakhana vs Union of India:*** This case involved the promotion of goods and narcotics that were illegal. The petitioners' product was advertised to the general public along with claims that it had self-medicating properties. The petitioners in the case claimed that it was impossible for them to advertise their product since so many people objected to their commercials.

In this instance, the Supreme Court ruled that an offensive advertising is not covered by Article 19(1). (a). It stated that two considerations should be used when interpreting an advertising as "commercial speech":

•Advertising, which is a business transaction, is merely the dissemination of product information.

•The public will benefit if the information is made available to them through the use of advertising.

[2]Hamdard Dawakhana vs Union of India SCR 1960 (2) 671

When looked at from a different perspective, the court declared that the general public has a "right to accept" the "commercial communication". In addition to guaranteeing freedom of speech and expression, Article 19(1)(a) also safeguards a person's right to hear, read, and receive the stated speech.Hence, Article 19(1) would not apply to advertisements for illegal narcotics. (a)

3. [3]***Prabha Dutta vs Union of India :***The petitioner, Smt. Prabha Dutt Chief reported of Hindustan Times, filed a petition under Article 32 of the Indian Constitution asking for a writ ordering the respondent, the caretaker of Tihar Jail, to permit her to speak with the two prisoners, Billa and Ranga, who are charged with receiving the death penalty for an offence under Section 302 of the Indian Penal Code and who are reported to have petitioned the President of India for communication of the sentence.

Because "The right under Article 19(1)(a) is not an absolute right, nor indeed does it confer any right on the press to have an unrestricted access to means of information," the Supreme Court in this case ordered the Superintendent of the Tihar Jail to permit representatives of a few newspapers to interview two death row inmates.

4. [4]***India Express Newspaper vs Union of India:*** Newsprint has previously beenexempt from paying customs duties. The petitioners contested the Customs Tariff Act of 1975's import tax on newsprint as well as the Finance Act of 1981's auxiliary charge, both of which had been changed by a notification under the Customs Act of 1962 that took effect on March 1, 1981. They argued that this announcement had a significant negative impact on costs and circulations as well as the freedom of speech guaranteed by Article 19(1)(a) of the Indian Constitution and the freedom to engage in any profession or trade guaranteed by Article 19(1). (g).

In this case, the Supreme Court of India ruled that Article 19 of the Indian Constitution does not explicitly include "freedom of the press", but it does mention it in Article 19(1). (a). In the name of the public good, there cannot be any restrictions on press freedom. A democratic electorate cannot act responsibly without the publication of facts and opinions

[3]Prabha Dutta vs Union of India& Ors 7 November, 1981 AIR 1982 SCR (1) 1184
[4]India Express Newspaper vs Union of Indiaon 6 December 1984 , 1986 AIR 515, 1985 SCR (2) 287

by the press, which serves to advance the public interest. Therefore, it is the courts' principal responsibility to preserve journalistic freedom and to strike down any laws or administrative decisions that interfere with it in violation of the constitution.

Conclusion:

A fundamental human right, freedom of speech and expression enables people to voice their views and beliefs without worrying about retaliation or restriction. This right is essential for the operation of democratic societies and the advancement of social, political, and cultural change even while it is not unqualified and may be restricted in some situations. Governments have an obligation to preserve the rights of all individuals, and it is crucial to strike a balance between preserving individual freedoms and guaranteeing the rights of others.

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RELIGIOUS CONVERSION AND FREEDOM OF RELIGION

By **Arin Sharma**

INTRODUCTION

India has always been known for its religious, cultural, and linguistic diversity. It was the birthplace of her four major religions in the world.

Hinduism, Jainism, Sikhism, Buddhism. The 42nd Constitutional Amendment Act of 1976 declared India a secular state. This means that everyone has the right to peacefully practice their religion. All citizens were constitutionally guaranteed the right to proselytize as part of their right to freedom of religion. However, it is questionable to what extent these conversions are protected by religious freedom. The main purpose of this article, therefore, is to examine the extent to which religious freedom is guaranteed by the Constitution as a fundamental right, and to answer as many questions related to proselytism as possible.

Discussion of religion in the Indian public sphere inevitably draws attention to secularism, and more specifically to the Indian secular model. 'For most Indians, secularism means un-sectarian, but it does not mean irreligious' said Donald E. Smith.[2] He said that the foundation of the secular state was the non-favorite doctrine, not the dividing wall between state and religion. I'm here. A secular state like India includes the principle that the functioning of the state must be non-religious.

The Constitution of India provides freedom of religion as a fundamental right in Articles 25 to 28. It is also important to note that the concept of religion is not defined anywhere in the Indian Constitution, yet court decisions attach great importance to this concept.

The introduction of this article is available at-

[1] https://legislative.gov.in/constitution-forty-second-amendment-act-1976

[2] Donald E. Smith, *India as a Secular State* 381 (Princeton University Press, New Jersey, 1963).

Last seen at 14-3-2023

FREEDOM OF RELIGION

The Indian Constitution under Part III guarantees various fundamental rights. Among all these fundamental rights is the fundamental right to freedom of religion under Articles 25 to 28. These four articles, Articles 25 to 28, provide for religious freedom under the Irish Constitution.

Article 25 gives everyone freedom of conscience and freedom to profess, practice and spread their religion. Section 1 of this Article reads, "Subject to public health, morals, health, and other provisions of this part, all persons shall have an equal right to freedom of conscience and the freedom to profess and propagate any religion. , has the right to practice. Therefore, it is clear from the wording of Section 25(1) that this right applies to everyone, not just Indian citizens. including foreigners[3], individuals exercising their rights individually or through institutions[4,] and whether or not they belong to a religious minority[5]. **"Section**(2)ofthis**section**providesthatnothinginthis**section**shall**preclude**the**application**ofexisting laworprevent**thestate**fromenacting the law.**State**interferenceinmattersrelatedtoeconomic,financial,politicalorother**secularactivitiesrelatedtosocialpractices**and**all**other**activities**relatedtosocialsecurityandreform."

Article 26 of this Article provides that Subject to public order, morality, and health, every religious denomination or any section shall have the right to freely manage or administer religious affairs.

Therefore, it is now evident that both Articles 25 and 26 though are not absolute but are subject to reasonable restrictions to maintain public order, morality, and, peace in the country. For instance, no one can do Johar or be compelled to do Johar in the name of Freedom of Religion.

An individual has complete freedom in finding their conscience and practicing freely. The freedom of practice includes the observance of all types of rituals and practices that go simultaneously with religion and faith, when an individual makes a declaration of conscience, it takes the face of professing his faith, and when that declaration bea comes call to others to attach to it persuasion by persuasion and awareness takes the form of promotion. But sometimes what happens is that this fine line is crossed and persuading someone takes the form of coercion, in Rev.

These case laws are available at Indiankanoon –

[3] *RatilalPanachand Gandhi* v. *State of Bombay,* (1954) SCR 1055.

[4] *Stainislaus Rev.* v. *State of M.P.,* AIR 1975 MP 163 (166)

[5] *Mittal, S.P.* v. *Union of India,* AIR 1983 SC 1.

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Stanislaus v. State of M.P. The Supreme Court has ruled in this case that Article 25 does not give the right to convert others to one's religion but only promotes one's religion by setting its principles. Any attempt to force a person to convert to another religion without their consent adversely affects communal harmony, directly undermines public order and peace, and violates the limitations of **Article 20**.

Article 27 of the Indian Constitution stipulates that the state cannot compel the payment of specially earmarked taxes to cover the costs of promoting or maintaining a particular religion or religious denomination.

Article 28 of the Indian Constitution stipulates that religious education cannot be conducted in state-owned educational institutions.

RELIGIOUS CONVERSION

Meaning

A country like India, unlike Pakistan, does not have a state religion and does not adhere to any particular religion. A religion is assigned to a person when they are born into that religion, but some people change religions or follow a belief or set of beliefs. Described as a binding belief, it entails a sense of dependence and responsibility, along with the feelings and practices that naturally flow from such beliefs. In a country like India, everyone is free to choose their religion. The Constitution of India gives everyone the freedom to believe, practice and spread any religion. Proselytism is one of the most concerning social and political issues, defined as the acceptance of another religion and its beliefs, the rejection of one's own region, and the acceptance of another. Below are the reasons why people convert religion to religionitrary transformations:

Conversion based on individual free choice or as a result of a change of faith

2. Conversion in Marriage:

Conversion on the grounds of marriage. 3. Coercion:

Conversion by improper influence or induction or coercion.

4. Convenient conversion.

Right to propagate any religion

The essential question is whether "can be transformed" falls within "can propagate any belief". This query facilitates determining the constitutionality of anti-conversion laws. The term

"distribution" is based on Article 25 of the Indian Constitution and means "sale or transmission" or "freedom of expression". The drafters of the Constitution used the term "transformation" when the Constitution was drafted, but in the final draft, on the advice of the Minority Subcommittee (M. Ruthnaswamy), the term "transformation" was used. I used the term "diffusion" instead. This left the question of whether the formula would lead to further conversions. Even today, are there no court records that can answer the question of whether spreading this kind of faith constitutes a form of conversion? Although there may be no explicit provision for "conversion" in the Indian Constitution. , there are still some rulings/judgments that fall under the priority that proselytism specifically falls under Article 25. This stems from the freedom to decide right and wrong. There are several judgments against it. Some cases are:

·Yulitha Hyde and Others v. State of Orissa and Others[6]:

In this context, the Orissa Dharma SwatantryaAdhiniyam (Orissa Freedom of Religion Act) of 1968 was challenged on the premise that the grounds given by law for the terms "pressure, seduction, and deception" were outside the scope of Indian law. was changed to It argued that the Penal Code, 1860, and the Act violated the fundamental rights guaranteed by Article 25. This law penalizes conversions made as a result of fraud, coercion, or incitement. For this reason, the court found the law unconstitutional and declared it highly pernicious. The Supreme Court later overturned the ruling, declaring the law constitutional.

·Stanislaus Rev v. State of M. P[7]

In this situation, the Supreme Court dominated the proper to propagate one's faith way the proper to talk an individual's ideals to every other ideas to disclose.

The case Law areavailable at Indian kanoon-

[6] AIR 1973 Orissa 116

[7] AIR 1977 SC 908

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tenets of that religion, however, might now no longer encompass the proper to 'convert' every other individual to the former's religion due to the fact the latter individual is "equally entitled to freedom of judgment of right and wrong" which phrases precede the phrase 'propagate'. So, no one has any essential proper to transform the faith of a person without his loose choice. Further, Court held that the phrase propagate does now no longer supply an upward push to the proper to transform.

·**DigyadarsanRajendraaRamdasji v. State of Andhra Pradesh**[8]

In this situation, the Supreme Court held that "the right to propagate one's faith, to communicate one's ideals to others, or to demonstrate the beliefs of one's religion no longer includes the right to 'proselytize' all." I ruled that no. 11 Therefore, the court had to decide that while proselytizing under religious freedom enjoys a constitutional guarantee, conversion no longer does.

FORCED RELIGIOUS CONVERSION

LEGAL PROCEDURE FOR CONVERSION

Changing one's faith to some other isn't always ruled through any regulation. The Supreme Court has held in that conversions with no longer require any unique felony requirements, formalities, nonsecnonsecularls, or ceremonies. In Perumal Nadar (dead) through recommend v. Ponnu swami Nadar[9] (minor) it became held that no formal rite of purification or expiration is important to affect aconversiono

Any man or woman can alternate his faith in exact faith. A mere declaration, whether or not oral or written, do n no longer sent a conversion. Credible proof of cause to convert, accompanied through clean overt act effect affecting cause is required[10]. A bona

[8] AIR 181, 1970 SCR (1) 103

[9] AIR 2352, 1971 SCR (1) 49

[10] 235th Law Commission Report on Conversion/ Reconversion to Another Religion.

fide aim observed through next acts without doubt expressing that aim might be enough to finish that there's anreal conversion.

Once a faith is transformed, it has to be introduced withinside the authorities gazette so that the transformed faith also can be stated in all felony documents. In Kailash Sonkar Vs. Smt. Maya Devi[11],the Supreme Court adopted the identical technique for conversion. In case a priest desires to convert his faith, he can accomplish that with the permission of the district magistrate. The absence of any statutory provision creates a felony vacuum which locations the onus at the registering officer to determine whether or not the switch is proper or now no longer.

Anyone inquisitive about changing a faithcan accomplish that through following the private regulation of that faith. Various private legal guidelines offer rituals that have to be achieved in a positive manner on the time of conversion.

INSTANCES

Greek 'Love Jihad' case:

A Pakistani asylum seeker says he killed old 17-year-old Nicoletta to urge him to quit Christianity because he "spoke badly about the Quran."

Madhya Pradesh:

A Danish medical shop owner claims a 13-year-old ancient woman was blackmailed and attempted to convert under a false Hindu name.

DELHI HIGH COURT RULING

The Delhi High Court located that non secular conversion, except forced, isn't always prohibited as all and sundry is constitutionally assured the proper to choose or exercise any faith.

A bench of Justices Sanjeev Sachdeva and Tushar Rao Gedela[12] made the feedback while listening to a petition through suggest Ashwini Kumar Upadhyay, who sought to border laws prohibiting nonsecular conversions through intimidation or hazard or through falsely luring someone thru items and pecuniary blessings or through black magic and superstition. He stated there were "mass conversions" of social and

[11] AIR 600, 1984 SCR (2) 176

[12] https://www.livelaw.in/news-updates/delhi-high-court-forced-religious-conversion-article-25-right-to-choose- religion-200782
Last seen available at24-3-2023

economically deprived people, mainly the ones belonging to Scheduled Castes and Scheduled Tribes.

“First, conversion is not always prohibited. A person has the right to practice the beliefs of his beginnings, or the beliefs he chooses to practice. Freedom to provide,” the court filing said.

In his petition, Upadhyay said non-secular conversions "carrot and stick" or "by hook or crook" are now covered by Articles 14, 15, 21 and 25 of the Constitution. Not only is it a violation, but it is also against secular ideas.

However, the Supreme Court asked on what basis Upadhyay made such statements. "There are no examples that you (Mr. Upadhyay) have given. There are no documents. This will require close scrutiny," the court filing said.

“Where are the stats? Conversions? Who converted? You say you have bulk conversions, but what are those numbers? Inflated court records were requested.

"Social media no data"

When Upadhyay said he had social media facts that forced him to convert, court filings dismissed it, declaring that "social media is not a fact."

Mr Upadhyay said he could provide copies of newspapers to support his claims. The Supreme Court said that newspapers, social media and WhatsApp are a fixed feature of regulation that they cannot be trusted as a matter of fact.

“They may or may not contain facts, but they must not be petition ideas. They can get information from ministries and governments,” the court filing said. the documents said.

"All religions have beliefs. Performance may or may not have some clinical basis, but that doesn't mean it's a hoax. That's my personal concept. This belief forces a person to convert and creates other problems. When you say a person is forced to convert, it is by far that person's prerogative," the court filing states.

While remanding the case for further hearing on July 25, the Supreme Court refused to make it difficult for the government to comment, first confirming that there were some grounds for issuing comments. said there was a need.

What are the various actions that can be taken against people forcingsuch conversions?

At a critical level, India no longer has regulations that provide for sanctions in cases of forced conversion. An attempt was made in 1954 to skip the conversion of Indians (Law and Registration Act), but Congress did not allow it due to strong opposition. Various attempts were then made at the state level. In 1968, Orissa and Madhya Pradesh enacted several laws to ward off violent proselytizing by leverage or inducement. Orissa's anti-constitutional ordinance provides for prison sentences of most years and a maximum penalty of rupees. 10,000 for him if forced to convert. As a result, various other states such as Tamil Nadu and Gujarat have enacted equivalent legal regulations classifying forced conversion as a recognizable offense under phases 295A and 298 of the Indian Penal Code of 1860. I was. After that, anyone responsible for a forced conversion will be punished with a term of several years and a maximum sentence of imprisonment.

Are Anti-Conversion Laws violative of Fundamental Rights?

To date, all seven states have managed to circumvent anti-conversion laws, but the easiest states to implement anti-conversion laws are Madhya Pradesh, Orissa, Gujarat and Chhattisgarh. , and Himachal Pradesh. Recently, Jharkhand also proposed an anti-conversion law aimed at limiting forced conversions for which someone is responsible

For forced conversion, imprisonment for 4 years and keeping quality of rupees. 100,000. A legal anti-conversion policy was introduced here, essentially to prevent conversion by fraud, coercion, incitement, or temptation. However, problems arise within the vague definitions of these terms, such as deception, coercion, and sedition. However, Christians have a very different point of view on this issue. Christians argued

These legal guidelines essentially help limit conversion in general. The document points out that these legal anti-conversion policies are of no benefit, as they do not actually prohibit forced conversions, they simply discourage conversions. Secular forces consider such legal guidelines to be unconstitutional and violate human rights, but as noted above, the judiciary has already declared them constitutional in many cases.

ANTI CONVERSION LAWS IN INDIA

HIMACHAL PRADESH

The Himachal Pradesh legislature has passed an ordinance banning “mass conversion,” and its 2019 ordinance increased the maximum sentence for violations of faith by coercion or seduction to 10 years’ imprisonment. The bill would allow police officers to investigate cases brought under the law, and police are no longer below the rank of deputy inspector. The crime is now before the Court of Appeals.

The Himachal Pradesh Religious Freedom (Amendment) Bill of 2022 has been passed unanimously. The Himachal Pradesh Religious Freedom (Amendment) Act 2022 is a stricter model than the Himachal Pradesh Religious Freedom Act 2019, which came under pressure here 12 months and 1/2 years ago.

Provisions of the Anti-Mass Conversion Act

By ordinance, a "mass conversion" takes place while one or more people are converting at the same time. The bill aims to amend Sections 2, 4, 7 and 13 and add Segment 8A to the 2019 Act.

The bill would add to the 2019 ordinance a reference to “mass conversion,” defined as the simultaneous conversion of or about people, and would increase the penalty for forced conversion from seven years to a maximum of ten years. is suggesting.

The bill would allow police officers to investigate cases brought under the law, and police are no longer below the rank of deputy inspector. The crime is now before the Court of Appeals. The maximum sentence under the bill is 10 years, and the decree allows "mass conversions" to occur while one or more people are converting at the same time. The bill aims to amend Sections 2, 4, 7 and 13 and add Segment 8A to the 2019 Act.

The bill adds to the 2019 ordinance a reference to "mass conversions," defined as conversions of or about people at once, and raises penalties for forced conversions from seven years to a maximum of 10 years. Proposed.

The bill would allow police officers to investigate cases brought under the law, and the police would no longer fall below the rank of deputy inspector. The crime is now before

the Court of Appeals. The maximum sentence under the law is 10 years, 7 years under the 2019 Ordinance and 3 years under the Himachal Pradesh Religious Freedom Act 2006.

Current regulations do not allow violating men, women, or government entities to accept gifts or gratuities of any kind from the U.S. or abroad.

UTTAR PRADESH

The 2020 Prohibition of Unlawful Proselytizing Order was amended by law 12 months prior to this, and 12 months have passed. The above cases were filed between November 24, 2020, when the rules were promulgated, and his August 31, 2020.

According to UP Police, 72 of the 108 cases were prosecuted. Eleven cases in which evidence about individuals named in police complaints has been lost have undergone final review, of which 24 cases have been inadequately investigated. 1 investigation was transferred to Bengaluru. Most instances of UP were filed in Bareilly Zone (28), Meerut Zone (23), Gorakhpur Zone (11), Lucknow Zone (9), and Agra Zone (9). Both Prayagraj and Gautam Buddh Nagar have 7 instances each, while Varanasi and Lucknow have 6 instances. Kanpur records the greatest number of such cases.

CONCLUSION

However, in accordance with freedom of religion, which is cherished under Article 25(1) of the Indian Constitution, restrictions may arise through the administration of such conversion privileges. Regardless, the state wants to ensure that their new spiritual husband or wife is not a source of confusion in public if someone easily converts to another faith.

States have an obligation to respect and guarantee the privileges of men or women. Freedom of religion is essential to the general development of human enthusiasm and personality.

Marketing to Patients: A Legal and Ethical Perspective

By Rushikesh Khandve

ABSTRACT

Medical practices and other healthcare providers are frequently reluctant to use medical records in marketing as a result of misconceptions regarding HIPAA law[5]. Healthcare providers should have no qualms about using medical records or offering a service such as email for communication with patients for fear of violating HIPAA. Their concerns should lie only within the concerns for ethical online marketing, albeit with a greater sensitivity for how patients might react to usage of what is considered by many to be very private information.

Keywords: Marketing, Ethics, HIPAA, Healthcare, Professional Codes of Ethics[6]

Introduction

The healthcare industry appears to be avoiding use of email and Web marketing as a result of concerns regarding HIPAA[1] restrictions and warnings from insurers not to engage in electronic communication with consumers (Landro, 2002). In this paper we address the use of electronic marketing strategies (email marketing, online scheduling, etc.) in the healthcare field within the confines of the HIPPA law and industryrecommended ethical guidelines. Offering these customer-oriented services can be a strategic use of the Internet for marketing to current patients, attracting new patients, and reducing costs. Web and email marketing are ripe marketing options for medical practices because consumers are increasingly using the Internet as a means of searching for information about their health concerns (HarrisInteractive, 2007) [2]. Today's patients are very interested in being able to contact their physician by email to schedule appointments and/or ask questions (HarrisInteractive, 2007). However, these services must be offered within the realm of legal rules (HIPPA) and ethical guidelines set forth by industry codes of ethics. Research clearly shows that Americans are avid users of the Internet for healthcare matters. According to industry reports from 2004, 78% of American consumers have Internet access and 97% have email access at home, work, or via a friend (HarrisInteractive, 2004). In that study, nearly 74% of U.S. adults reported that they use the Internet to search for medical information (HarrisInteractive, 2004); and in 2007, another 58% felt so empowered by the available information that they brought those concerns

[5] https://health.economictimes.indiatimes.com/news/industry/is-india-lacking-healthcare-data-security-guidelines/88931122

[6] https://www.indeed.com/career-advice/career-development/professional-code-of-ethics

to their physician (HarrisInteractive, 2007).[7] The number of people who have searched for medical information online has seen a 37% increase in the two year period from 2005 to 2007 (160 million in 2007 from 117 million in 2005) (HarrisInteractive, 2007). HarrisInteractive has coined the term 'cyberchondriacs' to describe the 84% of adults who go online to search for medical information (HarrisInteractive, 2007). As long ago as 2000, 54% of consumers felt strongly enough about email communications to schedule appointments, renew prescriptions, or check lab results that they would be willing to switch doctors to one who offers such (Coile, 2000). Taken together, most people are searching for health-related information online, and they are discussing that information with their doctors. More than half want to use email in some capacity to communicate with their doctor. What does this mean to doctors, healthcare professionals and medical practices? "The huge and growing numbers of "cyberchondriacs[8]" who use the Internet to look for health information and to help them have better conversations with their doctors has surely had a big impact on the knowledge of patients, the questions they ask their doctors and is therefore changing the doctor-patient relationship and the practice of medicine. There is every reason to believe the impact of the Internet on medical practice will continue to grow." (HarrisInteractive, 2007) It is clear that if medical practices are going to reach consumers with information about their services or engage in customer retention activities, they cannot ignore email and Web marketing strategies. However, they also cannot ignore the law or ethical standards set forth by the marketing industry. The constraint then for taking advantageof online marketing strategies in the medical field is two-pronged – both legal and ethical. From a legal perspective, many people have the misconception that HIPAA prohibits any release or use of medical information for most reasons. Bizarre interpretations of the law range from the cancellation of birthday parties for nursing home residents for fear of revealing a resident's date of birth to assigning nonsense code names in lieu of patient names for summoning people from doctor's waiting rooms. Some medical personnel have taken to blaming HIPAA when refusing to reveal medical information, whether by innocence or intentionally (Gross, 2007). Once healthcare organizations overcome the 'fear' of HIPPA, they must then take into consideration the ethical guidelines from organizations like The American Marketing Association and The Direct Marketing Association.[4] This paper addresses the legal and ethical concerns for marketing methods which use the Internet or other forms of electronic media to market to current patients using their medical records.

[7] https://aabri.com/manuscripts/08041.pdf
[8] https://en.wikipedia.org/wiki/Cyberchondria

Health Insurance Portability and Accountability Act of 1996 (HIPAA)[9]

HIPAA was enacted in 1996 because, among other reasons, Congress wanted to reduce the cost of administrative operations in the healthcare industry. Electronic transfer of healthcare information was becoming more prominent and was thought to be part of the solution. The act sought to simplify the exchange of electronic information, while also guarding against fraud and unauthorized access and disclosure to health information. As with many substantial passages of laws, Congress delegated the duty to issue regulations to a federal agency, the Department of Health and Human Services (HHS), regarding the how, when, and to what extent private health information can be disclosed (HIPAA sections 261-264). The major goal of the Privacy Rule is to protect patients' health information while striking a balance to allow for sufficient flow of medical information to provide high quality health care and to protect the public's health and well-being (Office of Civil Rights, Summary of the HIPAA Privacy Rule 4). The Privacy Rule covers all "protected health information" (PHI), which includes all individually identifiable health information that is held or transmitted by the covered entity or its business associate. Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and (1) Is created or received by a health care provider, health plan, employer, or healthcare clearinghouse; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) That identifies the individual; or (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual (45 CFR 160.103). For purposes of HIPAA, "covered entities" include (1) a health plan; (2) a health care clearinghouse; or (3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

A"healthcare provider" is defined as "a provider of services, a provider of medical or health services, and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business" (45 CFR 160.103, 104).

Misconceptions Corrected: HIPPA Does Not Restrict Marketing by Doctors to Current Patients

[9]https://www.cdc.gov/phlp/publications/topic/hipaa.html

For purposes of HIPAA, "marketing" is defined as "a communication about a product or service, a purpose of which is to encourage recipients of the communication to purchase or use the product or service, subject to certain limited exceptions." Under this general rule, a healthcare provider must obtain a patient's authorization to use or disclose protected health information for marketing communications . HIPAA rules, however, provide for exceptions to this general marketing rule. One such permissible exception occurs when a covered entity uses a patient's protected health information. The U.S. Department of Health & Human Services (HHS) states specifically on its website that "the HIPAA Privacy Rule excludes from the definition of "marketing" communications made to describe a covered entity's healthrelated product or services …that is provided by, or included in a plan of benefits of, the covered entity making the communication" (Health Information Privacy and Civil Rights Questions & Answers, Question 281). The HHS website includes an example in which a physician who has developed a new anti-snore device sends a flyer to all of her patients - regardless of whether they had previously sought treatment for that ailment. This plan is specifically presented as allowable marketing under HIPAA. The hypothetical example clearly shows that physicians and medical practices can offer information regarding its own products or services to any current patient.

Consulting by Business Associates

If a doctor wishes to market to current patients, he or she has the option of hiring a marketing consultant or firm to aid in this endeavor. HIPAA allows for this type of outsourcing to outside experts under the definition of "business associates." A business associate means, with respect to a covered entity, a person who:

(i) On behalf of such covered entity or of an organized health care arrangement in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of:

(A) A function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

(B) Any other function or activity regulated by this sub chapter; or(ii) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in Sec. 164.501 of this sub chapter),

management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of individually identifiable health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person

The HIPAA Privacy Rule[10]

Ensure the confidentiality, integrity, and availability of all electronic protected health information the covered entity creates, receives, maintains,or transmits; (2) Protect against any reasonably anticipated threats or hazards to the security or integrity of such information; (3) Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under subpart E of this part; (4) Ensure compliance with this subpart by its workforce.

Covered entities may use any security measures that allow the covered entity to reasonably and appropriately implement the standards and implementation specifications as specified in this subpart. The regulations allow for structure of the organization and a cost-benefit analysis to be considerations in determining security measures.

Additional Jurisdictional Considerations

Thus far, our discussion has been limited to HIPPA, which is a federal statute. Each state has the option to regulation the usage of patient information as well. Generally, the HIPAA Privacy Rule preempts all conflicting state laws, unless the state law is stricter, with some exceptions relating to public policy issues (Summary of the HIPPA Privacy Rule 4, 2003). Admittedly, it can be quite difficult to discern whether the state law is more stringent or contrary to the federal regulations, so state law should also be considered (State Health Privacy Laws, 2002) in the development of a marketing plan.

Marketing Ethics

Medical professionals need to study and reflect beyond the legal restrictions imposed by HIPAA. In regards to marketing, medical professionals should employ a three-tiered approach in evaluating the appropriateness of behavior. First, the intent of law is generally thought to be the minimum acceptable behavior, rather than the ideal. Second, ethical standards demand more in that they are based on what is right, rather than the minimum that will be enforced by the legal system. Finally, marketing activities by definition carry the even greater burden of attracting and appealing to the target audience.

[10]https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html

Thought the American Medical Association has an extensive code of ethics, it does not specifically address the issue of marketing to patients—the focus is on dedication to the best interest of the patient's health which includes following the law (American Medical Association, 2008). Of course this is no surprise since the American Medical Association is a medical association. The American Marketing Association (AMA) serves all organizations who engage in any form of marketing, including Internet marketing. The Direct Marketing Association (DMA) serves organizations that market directly to the consumer; therefore the DMA has more specific and rigorous ethical guidelines for online marketing. The AMA Code of Ethics requires that members conform to three ethical norms of conduct and 6 ethical values (AMA Code of Ethics, 2008).

"Marketers must do no harm."

"Marketers must foster truth and trust in the marketing system

"Marketers must embrace, communicate and practice the fundamental ethical values that will improve consumer confidence in the integrity of the marketing exchange system. These basic values are intentionally aspirational and include honesty, responsibility, fairness, respect, openness and citizenship." Within its Code of Ethics, the AMA defers to sub-disciplines to create and define industry-specific codes of ethics.

The DMA is one of these industry sub-disciplines. The DMA has 54 articles within its 31-page "Guidelines for Ethical Business Practice, including articles 38-43 which address online marketing (DMA's Guidelines for Ethical Business Practice, 2008).[7]Table 1 summarizes the contents of articles 38-43.[11] The DMA ethical guidelines focus primarily on providing notice and consent to consumers. Note however, that the DMA does not discourage marketers from using cookies (small pieces of software placed on your computer that identify you—without cookies your login information is not saved on a Web site, for example). Marketers who follow The DMA guidelines will mention the use of cookies somewhere in their privacy or terms of use statement. We also note that the DMA does not actively encourage 'permission-based' marketing within their ethical guidelines (nor do they discourage it).

38: Online Marketing

Marketers must provide notice, honor choice, provide access, provide data security, abide by laws and ethical guidelines that apply to marketing to children under the age of 13, and demonstrate accountability.

[11]https://repository.globethics.net/bitstream/handle/20.500.12424/209969/DMA-Ethics-Guidelines.pdf

39: Commercial Solicitations Online

Marketers may send commercial email solicitations if they are sent to the marketers own customers, or the customer has agreed to receive solicitations, or the customer did not ‘opt out’ when given the choice to do so. Within each email solicitation marketers must provide customers with a notice and an Internet-based way to refuse future solicitations or request that the marketer not rent, sell, or exchange their email information for online solicitation purposes.

40: E-Mail Authentication

Marketers should not deceptively install or use software that interferes with the consumers computer including software that produces endless loop pop ups, viruses, or spam. If the marketer does install software on the consumer’s computer the marketer must provide notice and a method for uninstalling the software. This article does not govern the use of cookies. Cookies are governed

42: Online Referral Marketing

Online referral marketing includes encouraging the consumer to forward information to another consumer or to provide the marketer with personally identifiable information about another person (e.g. a friend’s email address). The guidelines in this article only apply to the second item aforementioned and require that if the marketer is going to engage in using email addresses provided by another consumer, the marketer must tell the referring user what the information will be used for. They must also disclose if the referring users own information will also be used and disclose to the referred individual that their information was obtained by a referral, and provide a way for all individuals to be removed from future contact.

43: E-Mail Appending to Consumer Records

Email appending is the act of connecting an individuals' email address to another record (e.g. name, physical address, etc) via a third party database. Marketers should append consumer records only when the consumer gives permission to do so, or when there is an established relationship with the consumer, or the consumer did not ‘opt out’ via the third party database collector, and efforts are made to verify the accuracy of the append. All messages to an e-mail appended address should disclose notice and choice to continue to communicate via email.

Conclusion

Healthcare organizations choose to offer these services, they should also follow the DMA Ethical Guidelines requiring that all emails include a notice and an Internet-based method for 'opting out' of future email solicitations. Because of the sensitivity of health-related information we believe healthcare organizations should take extra precaution when using online strategies by using only an 'opt in' approach, otherwise known as permission-based marketing. While it is within the DMA guidelines to contact consumers until or if they 'opt out', consumers are understandably sensitive when it comes to their healthcare-related information. It is therefore not only ethical, but judicious, to adopt an 'opt in' strategy for medically-related online marketing strategies. The medical industry has missed an opportunity to market to patients and to offer patients value by offering services via email because of fear of violating HIPPA regulations. This need not be the case. From a legal and ethical perspective, as long as medical practices do not sell or rent a patient's personal information to a third party, they can use email to market to new and existing services to patients without breaking the law or ethical guidelines set forth by the DMA. Moreover, they can offer value-added services which will likely result in gaining new patients. The three tiered approach is not only legal and ethical, but judicious: follow the HIPPA Law, operate within the guidelinesof industry ethical standards, and carry a greater