



Social Media And The Right To Free Speech In India: Constitutional Challenges, Legal Boundaries, And The Role Of Judicial Oversight In The Digital Era

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Abstract

This paper focuses on the impact and the complexities arising out of the intersection between social media and the right of free speech and expression in India. It examines and explores the challenges posed to the constitutional provisions by the rise of social media, legal limitations and the role of judiciary in protecting the freedom of expression in today's era of digital advancements. Secondary method of research has been implemented to collect data from books, case laws, scholarly works, statutes to analyse the harmony between the freedom of speech and the legislative and regulatory framework in place. This paper also delves into the need of judicial oversight in today's digital era and its role in safeguarding the freedom of speech.

Keywords-Free speech, social media, digital era.

INTRODUCTION

Background

The advent of social media has completely altered the way people across the globe used to exchange ideas, expressions and opinions. This means of communication has made its way to every nook and corners of the world over the past decade. India being one of the largest nations in terms of population obviously has a humongous number of social media users. Social media platforms such as facebook, whatsapp, youtube, twitter has been pathbreaking in terms citizens exercise their freedom of speech and expression guaranteed by Article 19(1) of the Constitution. Social media has everlasting effects on socio economic, political and legal domains. It has changed the way people receive and perceive information, very often blurring the lines between information and misinformation. The challenges cropping up in the wake of digital advancements and rise of social media are manifold. Infringement of intellectual property rights, encroachment of privacy, hate speech, rumours, misinformation, and digital frauds and are few to name. The challenges faced by constitutional and regulatory machinery in absorbing the changes introduced by social media are real. In such situation the role of judicial oversight in order to strike the balance between the freedom of speech and digital and technological advancements becomes all the more important. This paper aims to analyse the relationship between social media and free speech by exploring the constitutional challenges and the boundaries that have been set up by way of regulations. While also

focusing on the role played by Indian Courts in addressing the complexities and the evolution of judicial oversight.

Problem Statement: As the influence of social media platforms grows, so does the need to balance these platforms in relation to the right of free speech in India. The question that becomes very important is how to attain reconciliation between the growing impact of social media platforms and the right to free speech while maintaining order and security in the digital space.

Research Questions:

1. What are the constitutional challenges that arise while balancing the right to free speech and regulation of social media in India?
2. What legal boundaries are currently in place for free speech on social media in India?
3. What role does judicial oversight play in ensuring free speech rights on social media?

Research Objective:

This paper aims to analyze the aforementioned issues through secondary research, focusing on the existing legal frameworks, exploring case laws and precedents, and legislative actions to understand the challenges and solutions surrounding the regulation of social media in India.

Research Methodology:

This paper adopts doctrinal method of research using secondary sources, relying primarily on analysis of the constitutional provisions, case laws such as *Shreya Singhal v. UoI*, *Puttaswamy*, study and interpretation of statutory provisions such as the Information Technology Act, 2000, the IT rules 2021, and the Digital Data Protection Act academic articles and works, to draw conclusions.

1. Constitutional Challenges of Regulating Free Speech on Social Media

- **The Right to Free Speech in the Digital Era:** How social media challenges traditional notions of free speech under Article 19(1)(a) of the Indian Constitution.
- **Limitations on Free Speech:** Examining the justifiable restrictions on free speech, particularly regarding hate speech, defamation, and threats to public order.
- **Constitutional Dilemmas:** A critique of the legislative approach to regulating social media through rules like the Intermediary Guidelines and its compatibility with fundamental rights.

Literature review:

It was important to review both foundational and landmark works as well as the contemporary literature that speak of the evolving nature and the journey of free speech in India. Various studies analyse the conflict between the rise of social media and the right of free speech in India. Below is a list of important literatures and academic works that has been considered for the review:

Statutory provisions:

Article 19¹ of the Constitution of India under Part III guarantees certain fundamental rights to the citizens of India. These rights are considered to be the very foundation of the individual liberty and democratic functioning in India. This Article allows individuals to voice out their opinions, take part in political discourse and actively contribute to the democratic functioning of the nation. However, these are

¹ **19. Protection of certain rights regarding freedom of speech, etc.**

(1) All citizens shall have the right-

(a) to freedom of speech and expression

(b) to assemble peaceably and without arms;

(c) to form associations or unions or co-operative societies;

(d) to move freely throughout the territory of India;

(f) sub-clause (f) shall be omitted;

(e) to reside and settle in any part of the territory of India; and

(g) to practise any profession, or to carry on any occupation, trade or business.

not absolute and are put into check by way of reasonable restrictions provided under Articles 19(2) to (6)², particularly concerning national security, morality and public order.

Information technology Act, 2000

The Information Technology Act, 2000 is a crucial and progressive piece of legislation which was enacted to meet the challenges that were seen to be coming after the rise of technology and digital media in India. It was also aimed at promoting and regulating the rampant use of information technology and all the other electronic transactions in general. The Act provides an outline to the legal aspects of cybercrimes, fixing the intermediary liability while playing a significant role in the regulation of online content and social media.

Different Provisions of the IT Act, 2000 Regulating Online Content & Social Media:

The IT Act regulates online content and the functioning of social media platforms, primarily through the following:

1. Section 69A - Power to Block Online Content:

- The government has the authority to block websites or online content if it poses a threat to national security, sovereignty, or public order.
- Online content including hate speech, terrorism related content or defamatory content deemed to be harmful or controversial is blocked by virtue of this section

2. Intermediary Guidelines (Section 79 and IT Rules 2021):

- **Section 79** grants legal protection to intermediaries (social media platforms, hosting services, and online content providers). This means that the intermediaries are not liable for the content posted by users unless they fail to act on illegal content after being informed by the Government or its agencies.
- The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, have been brought into force to increase the accountability of intermediaries, OTT platforms and digital news media platforms. It requires them to appoint grievance officers, exercise due diligence and have more strict content moderation policies in place. These rules have now made it mandatory for the intermediaries to respect the rights guaranteed under Articles 14, 19 and 21 of the Constitution.

Scholarly works:

- Basu and Sen (2024)³ take both historical and contemporary view of India's dissent crisis, showing how restrictions on free speech have evolved over time. They point out that while legal and regulatory frameworks are in place to protect the freedom of speech, their implementation is often tilted in favor of the state and tend to serve the interests of those in power.
- Chakraborty⁴ delves into the inter relation between human rights and digital media in today's world, drawing a comparison between the frameworks regulating free speech in India, the USA, and the UK. This study states that while India has solid constitutional provisions to protect free speech, its approach is more restrictive rather being facilitative.

²(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests 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 offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the

³ Basu, S., and S. Sen. "Silenced Voices: Unravelling India's Dissent Crisis through Historical and Contemporary Analysis of Free Speech and Suppression." Information & Communications Technology Law 33, no. 1 (2024): 1-25.

⁴ Chakraborty, N. "Human Rights and Digital Media: A Study on the Status of Free Speech in Virtual World with Respect to US, UK & Indian Outlook." Academia.edu (n.d.)

- Surani (2020)⁵ analyses the role of social media in forming public opinion, marking the increasing phenomenon of “social media trials” where online narratives often influence legal and political actions.
- Singh (2024)⁶ explores the concerns related to cyber safety, privacy, and digital free speech in India, and also the growing surveillance of the state. His study reveals that new intermediary guidelines enshrined under The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 mandating traceability of online messages raise serious privacy concerns and may have serious effects on free speech.

Case Laws

The Supreme Court of India has time and again stressed upon the importance of free speech in a democratic society and has upheld its superiority by way of various landmark judgments.

- **Romesh Thappar v. State of Madras**⁷,
In this case the Supreme Court held that the freedom of speech and expression includes the right to exchange information and ideas through any medium, including the press.
- **Shreya Singhal v. Union of India**⁸
This case is a landmark which significantly impacted the present shape of freedom of speech and expression in India. At the core of this case was the constitutional validity of Section 66A of the Information Technology Act, 2000. It was argued that the scope of Section 66A was too broad and far reaching and thus violative of the right to free speech. This case leads the way in understanding the constitutional boundaries of freedom within the digital space.
The Supreme Court found that Section 66A was ambiguous and very broad, thus declared it to be unconstitutional basis its inconsistency with Article 19(1)(a) of the Constitution, guaranteeing freedom of speech and expression. It was pointed out that criticism and dissent are crucial aspects of a successful democracy and must be protected by all means. Section 66A was held to be unconstitutional and struck down as it failed the test of “reasonable restrictions” under Article 19(2) and did not have enough safeguards which could prevent any possible misuse. Thus, this judgment upheld citizens’ rights to free speech and expression.
- **Justice K.S Puttaswamy (Retd.) v. Union of India**⁹
This case challenged the constitutional validity of Aadhar. It was argued that right to privacy is an intrinsic part of right to life and liberty guaranteed under Article 21 of the constitution. The Supreme Court vide this judgment recognised the right to privacy as a fundamental right under Article 21 and held that digital speech regulations and digital advancements must not breach upon the privacy of individuals.

Constitutional challenges of regulating free speech on social media

With the rise of social media there has been tremendous increase in the speed and the amount of information which can be disseminated. Today when almost everything is readily available at a single click, then it becomes obvious that the fine line between information and misinformation will get blurred. The constitution of India as the supreme repository of all the important rights of the citizens gets faced with numerous challenges in the age of social media, and the task of finding harmony between free speech and social media tops the list. The constitutional challenges that arise while regulating free speech on social media can be understood under following heads:

- **Government Regulation on Private Platforms**
Social media platforms are mostly owned by private companies who have their own policies relating to content moderation. The conflict arises when governments seek to regulate content to prevent harm or any possible disharmony caused by any content which can be hateful, misguiding or may incite violence while these platforms claim that they have the right to decide what speech is acceptable on their sites and also that they are capable to effectively filter out any such content. Often these platforms are very powerful and may use this power to benefit their own corporate interests or to support their political ideologies. For

⁵ Surani, T. "Social Media and Freedom of Speech and Expression: Challenges before Indian Law." *Supremo Amicus* 20 (2020).

⁶ Singh, A. "Conflict between Freedom of Expression and Religion in India—A Case Study." *Social Sciences* 7, no. 8 (2018): 1-12.

⁷ 1950 AIR 124, 1950 SCR 594.

⁸ AIR 2015 SC 1523

⁹ (2017) 10 SCC 1

example, platforms may censor certain viewpoints that are in conflict with their policies or interests, or may tactically push such content which suit their interests potentially infringing the freedom of speech. As result it is argued that whether these platforms should be treated as public forums, subject to government restrictions, or as private entities free to implement their own rules. If the governments try to control or have stricter regulations for social media platforms then there is always a risk of government overreach. It is always feared that the governments might step on to democratic principles and the right of free speech in order to regulate or censor the content on social media.

Harmful Speech

A significant challenge encountered while regulating free speech on social media is determining as to what comes under "harmful speech." This can be subjective and may have different meanings in different cultures, contexts, and nations. Content that may be offensive or controversial for one group may be acceptable or important for open debate by others. The real challenge lies in finding the perfect balance between removal of harmful content (such as content that is misleading, misinformative, hateful or which may cause or incite violence) while ensuring that free and legitimate speech, especially political dissent, is not censored in unfair or arbitrary manner.

Over-Censorship and the Chilling Effect

One of the major issues with regulating speech on social media is the possible risk of **over-censorship**, where free and legitimate speech is often suppressed due to really broad, ambiguous restrictions. This may result into chilling effect that is individuals self-censoring their content out of fear of legal action. Over-censorship can be often detrimental for free speech.

For example, platforms may succumb to government pressure or public outcry and remove content that may be controversial. This becomes an issue when social media companies prioritize compliance over protecting user rights to free expression.

The Role of the Judiciary

The role of the judiciary has been remarkable in keeping an eye on the laws and government actions which seek to regulate free speech on social media. It is the responsibility of the courts to ensure that any limitation or restriction put on the freedom of speech on social media or otherwise are constitutional, unambiguous, fair and legitimate. With the rise of social media, the judiciary is also faced with several challenges. Some of these challenges are:

- **Balancing rival interests:** The judiciary as one of the most important pillars of Indian democratic system has the duty to keep a check on all the government actions in order to ensure that the rights of the citizens guaranteed under the constitution are not undermined in any way. However, in today's digital media this role becomes more important as the Courts have got the responsibility to strike balance between the need to protect free speech and state's actions aimed at ensuring national security, maintaining public order, and preventing any harm in general. In order to do so the scope and nature of reasonable restrictions enshrined under the constitution must be revisited and analysed in relation to the changing landscape of free speech in the age of social media. It requires a progressive outlook towards the digital world and the understanding of the nuances of social media platforms and the impact these platforms have on society.
- **Defining new legal standards**

With the boom of social media, existing legal frameworks often seem to be inadequate to cope with the new challenges cropping up on regular basis. It becomes imperative for the courts to analyse and interpret the existing laws in the light of new digital developments. Which requires them to balance the constitutional rights against the new risks and challenges. For instance, in the recent yet landmark case of **Shreya Singhal v. Union of India**¹⁰ the Supreme Court struck down Section 66A of the Information Technology Act, which criminalized offensive online content. The Court held that the law was vague, overly broad and violative of the right to freedom of speech. This case went on to set a precedent for putting a check on state's actions in regulating free speech on social media.

¹⁰ Supra 8

Global practices and Comparisons

Different nations across the world have different perspectives when it comes to regulating free speech on digital media platforms. Here is a brief comparison between the practice followed in the USA and that in India.

- **United States:** in the United States the freedom of speech of the people was guaranteed by way of the **First Amendment** to the United States Constitution, which was ratified in 1791. It is considered to be a milestone in the history of American democracy, as it provided various important civil rights to the people. The amendment as part of the Bill of Rights has played a very important role in protecting freedom of speech in the USA however, it has limitations as it guards the freedom of speech only against state censorship but does not regulate the actions of social media platforms which are owned by private companies. It means that what can or cannot be posted online is controlled by the digital media platforms only as they have their own content moderation rules. That is why the issue of free speech on social media platforms remains complex in the United States.
- **India:** In India the legislature has been constantly putting in efforts to tackle the challenges coming its way as result of rapid and continuous digital advancements. In the past few decades some legislations have been passed to regulate the way digital media is used in India. The Information Technology Act, 2000 led the way and was followed by the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**. These rules have laid down extensive guidelines for the intermediaries. By virtue of these rules the social media platforms have been mandated to keep a check on the content being posted by the users and also to remove the content which is deemed to be harmful such as hate speech or materials dealing with child sexual abuse. The recent legislation to join the list is Digital Personal Data Protection Act, 2023 which aims to regulate the processing of personal data of the users who are engaging in online activities. This Act further deals with the concept of **free speech** in several important ways, especially when it comes to the balance between safeguarding personal data and enabling open expression on the internet.

Judicial oversight in Digital era

The role of judicial oversight has been getting increasingly important in the digital era. It refers to the check applied by the judiciary on the government and legislative actions which may affect free speech in the digital space. Few reasons which make judicial oversight important are:

Regulation of Digital Platforms: With the increasing popularity and role of digital platforms in our daily lives the need to regulate these platforms also become strong. The role of courts become crucial in order to check whether these platforms comply with the basic constitutional principles of free speech while dealing with content moderation. The courts have to ensure that transparency at all levels is observed and the principles of fairness are also upheld while regulating free speech on digital platforms.

- **Balancing Free Speech with Harm Prevention:** It becomes highly important for the courts to strike harmony between the right to free speech and prevention of any potential harm caused while exercising this right. Speech which incites violence or is defamatory or harmful or which may disturb the peace in any manner must be dealt with carefully so that the principles of free speech are guarded but within the ambit of reasonable restrictions.
- **Defamation and Privacy:** with social media becoming an integral part of our day to day lives our privacy is often at stake. This makes the role of courts more challenging. Judicial oversight gets important to see that the privacy of individuals is not compromised by the actions of government, or the digital media platforms or even individuals exercising their right to free speech. Further there are new forms of harm such as online harassment, doxxing or cyberbullying. In such situations the courts have to see whether free speech should be curtailed in such cases.

Recommendations:

In the light of the challenges outlined above, we make the following recommendations:

1) **Clear and Express Guidelines:** There must be express guidelines as to what constitutes harmful content, what is hate speech, what actions will be deemed to be breaching privacy. These guidelines should be easily accessible by the public at large so that what is to be done or not to be done while engaging on social media platforms is understood by the users. This will also make the role of platforms clearer while moderating content.

2) **Judicial Oversight:** The role of judicial oversight is of utmost importance as the actions of social media platforms or the government while regulating content must undergo judicial scrutiny to check that all the principles of free speech have been followed.

3) **Public Consultation:** the policies and regulations dealing with free speech on digital platforms must have inputs from those who are going to be affected by it. These include the public at large, who must be consulted in order to have fairer and more inclusive regulations.

4) **Regular Review of Regulations:** keeping in view the rapid changes in technology and the growth of digital media it is always advisable to review the regulations at regular intervals. This will ensure that our laws are forward going and progressive and not obsolete and outdated.

Conclusion:

In today's times one of the key challenges lying in front of the law makers is the regulation of free speech on social media. Governments must be careful of the balance between upholding the principles of free speech while also ensuring that public order is maintained and people are protected from any harm caused by exchanges taking place online. At the same time social media platforms are also responsible to moderate the content being posted on their platform while also taking care that the freedom of speech of the users is not compromised.

The importance of judicial oversight cannot be undermined in order to ensure that the laws and regulations dealing with free speech on digital media are reasonable, just and in line with the constitutional principles guarding the freedom of speech.

Simultaneously, there is also need of legal scrutiny and public dialogues so that the future of free speech in India is protected amidst new challenges cropping up due to constant technological advancements.

