

Social Media Governance and Freedom of Speech in India: A Constitutional and Judicial Analysis

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ABSTRACT:

The foundation of a democratic society is the right to freedom of speech and expression, which is protected by Article 19(1)(a) of the Indian Constitution. This basic right has taken on new dimensions and obstacles due to the quick spread of social media platforms like Facebook, Twitter, and Instagram. By democratising public discourse and elevating individual voices, social media has transformed communication. However, it has also made it more difficult to distinguish between valid criticism and imagined threats to national integrity. The dual effects of social media on freedom of speech and expression in India are examined critically in this essay. These effects include the platform's potential for empowerment as well as its abuse, which can result in hate speech, cybercrimes, defamation, and privacy violations. judicial viewpoints, *Anuradha Bhasin v. Union of India* and *Secretary, Ministry of Information and Broadcasting V. Cricket Association of Bengal* are two notable instances that are examined to investigate the harmony between free speech and reasonable limitations under Article 19(2). The Information Technology Act's Section 66A was overturned, which is a major reinforcement of digital freedom, according to the report. It also addresses privacy issues and the necessity of responsible government control as opposed to censorship. The present paper investigates the difficulties that the emergence of social media, legislative restrictions, and the judiciary's role in defending the right to free speech in the current era of digital innovations provide to the constitutional requirements. In order to examine the compatibility between the freedom of speech and the existing legislative and regulatory framework, secondary research methods have been used to gather data from books, case laws, scholarly works, and legislation. This essay also explores the necessity of judicial supervision in the current digital age and how it protects the right to free speech.

Keywords: Freedom of Speech, Social Media, Article 19, Information Technology Act, Privacy, Cybercrime, Constitutional Law, Regulation Etc.

INTRODUCTION:

The introduction of social media has fundamentally changed how individuals communicate globally statements and viewpoints. This communication method has spread to every corner of the world for the previous ten years. Given that it is one of the most populous countries, India has clearly a huge number of people who utilise social media. Social media sites like YouTube, Facebook, and WhatsApp When it comes to citizens exercising their given freedom of speech and expression, Twitter has proven revolutionary by the Constitution's Article 19(1).¹

¹Constitution of India, art. 19(1)(a), 1950.

The ability to express your opinions is closely linked to the concepts of justice included in the introduction to our primary set of rules. The proliferation of online resources has facilitated the speedier and simpler exchange of vast amounts of information, showcasing the diverse perspectives, ideas, and conceptions of individuals worldwide. In our nation, internet networks have been crucial in disseminating positive views of the government and its policies as well as political acts, particularly during election seasons. Even while there are many positive aspects to this, many people, particularly those in positions of authority who frequently view criticism as a threat to the nation, view these changes negatively.²

Social media has a lasting impact on the political, legal, and socioeconomic spheres. It has altered how individuals receive and interpret information, frequently making it difficult to distinguish between accurate and false information. Following the development of digital technology and the emergence of social media, numerous difficulties have emerged. Intellectual property rights violations, privacy invasion, hate speech, rumours, false information, and digital fraud are only a few examples. It is true that the constitutional and regulatory apparatus faces difficulties in assimilating the changes brought about by social media. In such circumstances, court oversight plays an even more crucial role in striking a balance between digital and technological progress and the right to free speech.

By examining the constitutional issues and the restrictions established by laws, this essay seeks to evaluate the relationship between social media and free expression. while also emphasising the part Indian courts play in resolving the intricacies and development of judicial supervision.

REASONABLE RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION:

The freedom to publicly express one's thoughts and opinions via spoken words, written text, published materials, graphic representations, or any other form of communication is known as the liberty to speak thoughts and express oneself. These include protecting India's independence and unity, making sure the country is safe, cultivating good relations with other countries, preserving social harmony, upholding standards of propriety or ethical conduct, and dealing with issues like disrespect for the judiciary, character assassination, or inciting criminal activity.³

Therefore, it would be beneficial to examine all of India's legal frameworks and policies pertaining to freedom of expression in light of the constitutional rules rather than creating a new classification for "offensive speech." This would ensure that, as is appropriate, the distinction between content that is considered socially unacceptable and content that is considered legally unlawful is maintained. In line with the goals of its framers, this would also make it easier for the Constitution to be implemented effectively.⁴

SIGNIFICANCE OF FREEDOM OF SPEECH AND EXPRESSION:

You can communicate your ideas and thoughts in any method you desire, whether you're speaking to someone, writing, creating art, or utilising any other medium, if you have the freedom to speak and express yourself. It also enables you to publish or distribute other people's thoughts. A few justifications for

² Legislation Hub Editorial Staff, "Understanding Freedom of Speech: Rights, Limitations, and Impacts," *Legislation Hub*, Aug. 20, 2024. [Online]. Available: <https://legislationhub.com/freedom-of-speech-2/>. [Accessed: Apr. 7, 2026].

³ S. Shukla, "Freedom of speech and expression – Article 19(1)(a)," *Law Column*, Dec. 2, 2020. [Online]. Available: <https://lawcolumn.in/freedom-of-speech-and-expression-article-191a/>. [Accessed: Apr. 7, 2026].

⁴ Meta Platforms, "Mark Zuckerberg Stands for Voice and Free Expression," *Meta Newsroom*, Oct. 17, 2019. [Online]. Available: <https://about.fb.com/news/2019/10/mark-zuckerberg-stands-for-voice-and-free-expression/>. [Accessed: Apr. 7, 2026].

potential reasonable restrictions on this freedom are listed in Article 19(2). These include preserving India's freedom and unity, keeping the nation safe, upholding positive relations with other countries, maintaining social order, being decent or adhering to moral standards, not disrespecting the legal system, not damaging someone's reputation, and not inciting criminal activity.

The only content that truly qualifies as "objectionable" is that which complies with these guidelines and is permitted by law. Therefore, rather than creating a new category dubbed "objectionable speech," it would be beneficial to compare all of India's programs and regulations pertaining to freedom of expression to the criteria established by the Constitution. This would ensure that, as should be the case, we maintain a clear distinction between what is illegal and what people may find objectionable in social situations. Additionally, it would enable us to ensure that the Constitution functions as intended by its authors.⁵

INTERNET'S IMPORTANCE IN SAFEGUARDING THE RIGHT TO INFORMATION:

Regarding whether the government's internet blocking and movement restrictions in Kashmir infringed the fundamental right to free speech and expression, the top court in India rendered a crucial decision in the *Anuradha Bhasin* case. Considering the rules stated in Article 19 of the Indian Constitution, the court questioned whether the internet shutdown was lawful.

The court examined Article 19(2), which deals with "reasonable limitations" that may be placed on the freedom of speech and expression, and emphasised that one essential component of the ability to talk and express opinions is the right to obtain information. The affirmation of each person's right to free speech and expression, even to the point of total limits, was the main focus of the court's earlier decision. If the government were to completely prohibit the use of this right, it would need to make sure that it did not unjustly interfere with free speech and would need to explain why less restrictive measures were inadequate.

GOVERNMENT OVERSIGHT OF SOCIAL MEDIA:

Social media can be used to commit a wide range of online crimes, including harming reputations, violating privacy, encouraging illegal activity, making racist remarks, stalking, abuse, hacking, harassment, and many more. It is very challenging to control because of how quickly this damaging stuff spreads after it is posted. Therefore, social media regulation by the government is crucial. Regulations that aim to safeguard the interests of people or groups shouldn't be troublesome, but when they cross the line into censorship and violate basic civil rights such the freedom of speech and expression, problems can occur. Governments frequently go beyond these restrictions to varied degrees in spite of the safeguards that are in place. Even though the Information Technology Act has been in place since 2000, India's internet regulations were lax until the terrorist assault in Mumbai in 2008.

The perception of India as a selective arbiter of internet censorship stems from the country's current regulations governing online activity, which include measures intended to block access to Operating covertly to amass online intelligence through website monitoring, the practice of surreptitiously accessing or deciphering confidential data, the easy infiltration of private realms, and the imposition of accountability upon social media and related digital ecosystems for user-generated content. The Public Interest Litigations filed with the Supreme Court contend that the documentary's ban blatantly violates

⁵ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637; 2019 SCC OnLine SC 1725 (India).

fundamental rights guaranteed by Article 19 of the Constitution.⁶

In the case of Secretary, Ministry of Information and Broadcasting, Government of India and others v. Cricket Association of Bengal and others,⁷ the Supreme Court upheld that the country's citizens must have access to a wide range of viewpoints and opinions regarding all issues of public importance in order to protect their right to free speech.

Diverse perspectives, concepts, and ideologies are essential for empowering citizens to make thoughtful decisions about all matters that impact them. This cannot be accomplished through a medium under the control of a monopoly, whether that monopoly is owned by the State or by any other person, organization, or entity.

Taking into account all of the previous discussion, it seems sense to propose that instead of Social media should be regulated in a way that protects users' rights rather than outlawing and restricting it. This position is especially pertinent in light of Section 66A of the

Information Technology Act. In a recent ruling, the Supreme Court declared that Section 66A of the Information Technology Act was unconstitutional, calling it a "draconian" clause that had led to many people being arrested for publishing allegedly offensive content online.⁸ According to the panel of Justices J. Chelameswar and Rohinton F. Nariman, it is clear that the right to free speech is violated by Section 66A in an arbitrary, disproportionate, and disproportionately, upsetting the balance between this right and the appropriate restrictions that could be placed on it.

The Information Technology Act of 2000's Section 66A was added through the Information Technology (Amendment) Act of 2008 establishes fines for sending offensive communications via communication services, among other things.

RIGHT TO PRIVACY:

A person's right to manage their own personal information, including the ability to decide how it is gathered and utilised, is included in the idea of privacy. Protecting the right to privacy is essential given the sheer volume and variety of activities carried out online.

Although it isn't stated in writing, the "Right to Privacy" is acknowledged as a basic human right. The Supreme Court has determined that the right to privacy is implied in Article 21, which deals with the protection of life and individual freedom, even though the Indian Constitution does not specifically mention it. Despite the fact that India's top court has upheld the "Right to Privacy" in a number of court cases, the judiciary has not yet rendered a definitive decision about its particular applicability to online content.⁹

Facebook has introduced a new feature that asks for permission when a user logs in from a computer they don't know. The user's registered email address is notified of this login occurrence. As a result, the user is promptly notified via their registered email if an account is compromised or someone unidentified logs in. Users of LinkedIn, a professional social networking site, typically understand the need of upholding a professional manner. The platform gives users a number of options to customise how other people see

⁶ Freedom House, "India: Freedom on the Net 2024 Country Report," *Freedom House*, 2024. [Online]. Available: <https://freedomhouse.org/country/india/freedom-net/2024>. [Accessed: Apr. 7, 2026]

⁷ AIR 1995 SC 1236; (1995) 2 SCC 161

⁸ The Information Technology Act, 2000, § 66A, India.

⁹ TheLaw.Institute, "Understanding Privacy Under the Indian Constitution: A Detailed Analysis," *Law Notes by TheLaw.Institute*, Oct. 16, 2025. [Online]. Available: <https://thelaw.institute/privacy-and-data-protection/privacy-indian-constitution-analysis/>. [Accessed: Apr. 7, 2026].

them, including the ability to choose whether connections can view the full list of connections or just mutual connections.

INTERMEDIARY GUIDELINES (SECTION 79 AND IT RULES 2021):

Intermediaries (social media platforms, hosting services, and online content providers) are given legal protection under Section 79. This implies that unless they take action against unlawful content after being notified by the government or its agents, the intermediaries are not responsible for the content that users submit. The purpose of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 is to make digital news media platforms, OTT platforms, and intermediaries more accountable. It mandates that they designate grievance officers, carry out due diligence, and implement stricter content filtering guidelines. These rules have now made it mandatory for the intermediaries to respect the rights guaranteed under Articles 14,19 and 21 of the Constitution.

ROLE OF JUDICIARY:

The judiciary's involvement in monitoring laws and government initiatives aimed at restricting free expression on social media has been impressive. The courts have the duty to guarantee that any restrictions or limitations placed on the right to free speech, whether on social media or otherwise, are constitutional, clear, equitable, and lawful. The judiciary faces a number of difficulties as a result of the growth of social media. Among these difficulties are:

Balancing conflicting interests: As one of the most significant foundations of the Indian democratic system, the court has an obligation to monitor all government activities to make sure that the citizens' constitutionally given rights are not compromised. But in today's digital media, this function becomes even more crucial since courts must weigh the need to safeguard free expression with the state's efforts to maintain public order, ensure national security, and avoid harm in general. To do this, the breadth and character of the constitutionally mandated reasonable constraints must be reviewed and examined in light of how free expression is evolving in the social media era. It necessitates a progressive perspective on the digital world as well as knowledge of the subtleties of social media platforms and how they affect society.

Establishing new regulations: Existing legal frameworks frequently appear to be insufficient to handle the new issues that are constantly emerging as a result of the social media explosion. The courts must examine and interpret the current legislation in light of recent advancements in digital technology. which necessitates that they weigh the new dangers and difficulties against the constitutional rights. For example, the Supreme Court invalidated Section 66A of the Information Technology Act, which made offensive online content illegal, in the recent but historic case of *Shreya Singhal v. Union of India*.¹⁰ The Court determined that the law violated the right to free speech and was ambiguous and excessively broad.

Constitutional issues with social media speech regulation: The speed and volume of information that may be shared has significantly increased with the growth of social media. Nowadays, with practically everything accessible with a simple click, it is certain that the distinction between accurate and false information will grow hazier. In the era of social media, the Indian Constitution, which is the ultimate repository of all citizens' fundamental rights, has many difficulties, the most significant of which is striking a balance between social media and free expression. The following headings help to explain the constitutional issues that come up when controlling free expression on social media.

¹⁰ Ibid.

The Chilling Effect of Excessive Censorship: One of the main problems with social media speech regulation is the potential for over censorship, in which legitimate and free speech is frequently stifled by extremely vague and wide limits. 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 instance, platforms may remove potentially contentious content in response to public protest or government pressure. This becomes an issue when social media companies prioritize compliance over protecting user rights to free expression.

Global practices and Comparisons:

The views of several countries throughout the world regarding the regulation of free speech on platforms for digital media. Here is a quick comparison of Indian and American practices.

United States: The First Amendment to the US Constitution, which was passed in 1791, secured the country's citizens' right to free expression. It is regarded as a significant turning point in American democracy's history since it gave citizens a number of crucial civil rights. The Bill of Rights amendment has been crucial in preserving the freedom of However, it has limitations because it only protects free expression against official censorship and does not control the activities of private company-owned social media platforms. It implies that because digital media platforms have their own content moderation policies, they alone have the authority to decide what can and cannot be posted online. Because of this, the topic of free expression on social media platforms is still complicated in the US.¹¹

India: The country's legislature has been working nonstop to address the difficulties brought on by the swift and ongoing improvements in digital technology. A number of laws have been passed in the last few decades to control the usage of digital media in India. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 follows the lead set by the Information Technology Act, 2000. For the middlemen, these regulations have established comprehensive guidelines. These regulations require social media companies to monitor user-posted content and to take down anything deemed detrimental, like hate speech or information about child sexual abuse.¹² The Digital Personal Data Protection Act, 2023 is the most current piece of legislation to be added to the list. Its goal is to control how users' personal data is processed while they participate in online activities. This Act also addresses the idea of free speech in a number of significant ways, particularly with regard to striking a balance between protecting personal information and permitting unrestricted online expression.

RECOMMENDATIONS:

We provide the following suggestions in view of the difficulties mentioned above:

Clear and Explicit Guidelines: There must be explicit guidelines defining hate speech, harmful content, and what behaviours will be considered privacy violations. The general public should have easy access to these standards so that users may understand what should and shouldn't be done when interacting on social media sites. Additionally, this will clarify the platforms' responsibility in content moderation.

¹¹ Library of Congress, "U.S. Constitution – First Amendment," *Constitution Annotated*, *Congress.gov*, 1791. [Online]. Available: <https://constitution.congress.gov/constitution/amendment-1/>. [Accessed: Apr. 7, 2026].

¹² Ministry of Electronics and Information Technology, Government of India, *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* [updated as on Apr. 6, 2023]. [Online]. Available: <https://www.meity.gov.in/static/uploads/2024/02/Information-Technology-Intermediary-Guidelines-and-Digital-Media-Ethics-Code-Rules-2021-updated-06.04.2023-.pdf>

Judicial Oversight: The function of judicial oversight is crucial because social media companies and the government must be subject to judicial examination when regulating content to ensure that all free speech standards have been upheld.

Public Consultation: People who will be impacted by laws and rules pertaining to free speech on digital platforms must be consulted. These include the general population, who needs to be consulted in order to create regulations that are more just and inclusive.

Regular evaluate of Regulations: It is always important to evaluate the regulations at regular intervals due to the rapid advancements in technology and the expansion of digital media. This will guarantee that our laws are progressive and forward-thinking rather than out-of-date.

CONCLUSION:

One of the main issues facing legislators today is the control of social media free speech. Governments must strike a careful balance between protecting people from harm caused by internet interactions and maintaining public order while simultaneously preserving the values of free speech. Simultaneously, social media companies have an obligation to control the content that is posted on their platform and ensure that users' right to free expression is not violated.

To guarantee that the laws and rules pertaining to free expression on digital media are reasonable, just, and consistent with the constitutional principles protecting the right to free speech, judicial review is crucial. In order to safeguard free expression in India in the face of emerging issues brought on by ongoing technology improvements, legal examination and public discussions are also necessary.