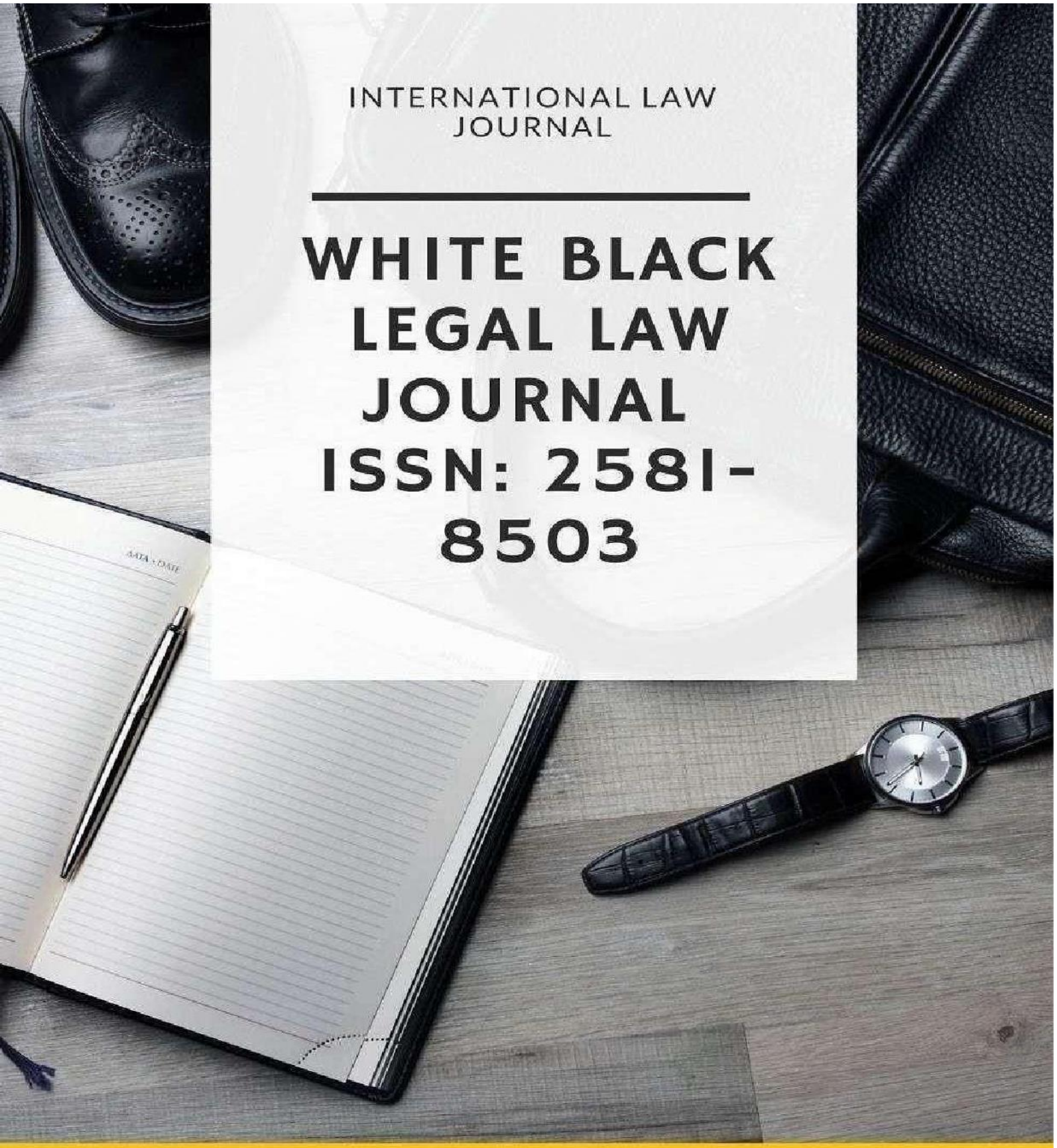


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THE CONSTITUTIONAL STATUS OF ONLINE SPEECH IN INDIA: FROM FREEDOM OF EXPRESSION TO PLATFORM GOVERNANCE

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Abstract

The right to freedom of speech and expression is one of the essential pillar's of democracy. It is enshrined under article 19(1)(a) of the Indian constitution. But this right is not absolute in nature is has reasonable restriction on it under article 19(2) of the Indian constitution. This right gives us the right to convey our ideas, beliefs, information in the society, but the digital age and modernization has enhanced the scope of right to freedom of speech and expression. The advent of technology and digital platforms has brought several complex issues that put this right to freedom and expression to the test. The issues like spread of fake and misinformation hate speech, deep fakes, government control over digital content. The role of digital platform and internet service providers has raised a critical issue about the regulation and protection of freedom of speech in the digital world. This has raised a question of law and ethics about, "how that delicate balance has to maintain while protecting freedom of expression while preventing the potential harm in the digital world.

This paper will discuss the concept of freedom of speech and expression in digital age with reference to constitutional framework and evolution of online speech. It also examines the legal and policy challenges associated with regulation of digital speech in India. It also explores the implication of the growing role of private tech platforms such as face book; twitter etc. in the content and speech moderation, about the transparency and due process. This paper also gives a comparative analysis of regulation social media speech between India, US and European Union. The research basically highlight the conflicts between digital platform and state regulation, the need for a comprehensive legal framework that safeguards our fundamental right to speech and expression while addressing the risk of unregulated online communication. The role of private platforms in governing the online speech and the legal framework of India in regulating online speech and various judicial decisions. In the era of rapid digitization, which

enhanced the scope of this freedom of speech one should maintain a delicate balance while protecting the freedom of speech and expression, that is should not lead to potential harms.

Key words: digitization, rights, delicate balance, online speech, platform governance.

Introduction

"The freedom of speech and expression is the matrix, the indispensable condition, of nearly every form of freedom".[1]

Palko v. Connecticut, 1937

Freedom of speech and expression is indispensable in a democracy. Freedom of speech lays the foundation of all democratic organizations. Freedom of speech and expression means the right to express one's own convictions and opinions freely by words of writing, mouth, printing or through any digital platform. It is one of the most essential essential that exists in democracy. In Indian constitution it is enshrined under Article 19(1)(a)[2].However this freedom is not absolute in nature it has reasonable restrictions provided under Article 19(2). the state can impose reasonable restriction for safeguarding the integrity of the nation., public order, national interest. The advent of the digital era has revolutionized the landscape of expression presenting novel changes and considerations.

The digital era has profoundly transformed how individuals communicate, express their opinions, and engage in public discourse. Social media platforms, blogs, online news portals, podcasts, and instant messaging applications have become the modern public square. In India, this explosion of online expression brings Article 19(1)(a) of the Constitution into sharp focus. This provision guarantees the fundamental right to freedom of speech and expression, a cornerstone of Indian democracy. However, digital expression also raises various legal challenges, such as hate speech, misinformation, Cyber crime, defamation and national security concerns[3]. In response, the government of India have sought to implement a legal framework to mitigate these challenges. The main aim is to create a balance between freedom to speech and expression without any potential loss to anyone. The growing role of private digital platforms in governing the online speech sometimes it leads to curtailment of an individual's right to freedom of speech and expressions.

[1]*Palko v. Connecticut*, 302 U.S. 319 (1937).
[2]The Constitution of India, 1950,Art. 19(1)(a)
[3]Legal Amenity, "Article 19(1)(a) and Digital Expression in India: Free Speech in the Age of Social Media" *Legal Amenity* (Jan. 28, 2024), *available at:* https://www.legalamenity.com/post/article-19-1-a-and-digital-expression-in-india-free-speech-in-the-age-of-social-media (last visited on Sept. 17, 2026).

In India, the regulatory framework that governs digital expression includes the Information Technology (IT) Act, 2005[4] and the Intermediary Guidelines and Digital Media Ethics Code, 2021[5]. these regulations imposes an obligations on digital platforms to monitor and control the necessary content and remove the content which is deemed to be unlawful. The state and private platforms govern the online content through these mechanisms.

The judiciary also plays a vital role in interpreting the extent of freedom of speech and expression in the digital realm. In the case of Shreya Singhal v. Union of India[6], the Supreme court struck down section 66A of the IT Act 2000 because it was vague and overboard language that leads to arrest for online posts and speech. Despite having all these legal frameworks and judicial interventions, challenges of cyberbully, spread of fake news continues to test the limits of free speech and the effectiveness of its existing rules and regulations.

The emergence of various online platforms has complicated these legal frameworks. The traditional form of speech not only governed by the state but by also by the private tech platforms also. The extent to which these private platforms can control our right to speech in India is still in question.

Hence, the constitutional status of online speech in this digital era must be acknowledged not as just from the state's perspective but also as from the perspective of platform governance and private regulation of expression.

Constitutional framework: Freedom of speech in India

The right to freedom of speech and expression is enshrined under Article 19(1)(a) the Indian Constitution, empowering individuals to express their thoughts, ideas, beliefs through various modes. However, this freedom is not absolute, it has reasonable restrictions which is imposed by state under Article19(2) of the Indian Constitution. This right is not limited to verbal communication but also extends to various modes of exchange of ideas through written words, symbols and digital communication. Freedom of expression includes the following rights –

i. Right to express opinion and ideas.
ii. Right to receive and disseminate.
iii. Freedom of artistic expression
iv. Freedom of political criticism
v. Freedom of online speech and expression.

[4]The Information Technology Act, 2000 (Act 21 of 2000)
[5]The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r. 3(1)(a).
[6] *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

The freedom of speech and expression includes liberty to propagate not one's views only but also includes the right to propagate and publish the views of other people, otherwise this freedom would not include the freedom of press.[7] Freedom of expression is an essential feature of democracy, it makes it possible to have free exchange of ideas, beliefs, ideas, to arrive at the truth and to make the state accountable for its unjust actions.

The state has the power to impose reasonable restrictions on freedom of speech and expressions for safeguarding the rights of people, maintain law and order in the society and ensuring national security. The main issue whether the state is not the abusing of power vested in it by restricting the freedom of speech and expression.

Impact of Digital Platforms on Freedom of Expression

The rise of digital platform has significantly widen the scope of freedom of expression in India. It became an essential communication tool to that enable individuals to express themselves, share information and idea with public at large. The digital age has largely impacted that how individuals express their freedom of speech. The digital platforms across the world has revolutionized the communication from one way communication system to global interaction across the world. Social media, blogs and content sharing websites have democratized communication. Social media platforms or private platforms have employ various complex algorithms for content moderation with minimal transparency regarding their policies of content moderation and decision making.

The emergence of social media does not only ave various opportunities for freedom to expression but it also came up with drastic challenges in today's world, like dissemination of misinformation and hate speech[8]. Sometimes the anonymity offered by internet can sometime leads to cyberbully, harassment, distribution of harmful information. Artificial intelligence and Algorithms plays a major role in content moderation on social media platforms, raising concern about transparency and biasness In response to theses challenges the Indian government adopted and enacted various regulatory mechanisms to reduce harmful online content, like Information Technology Act 2000, Intermediary guidelines and Digital Media Ethics Code, 2021. They

[7] *Srinivas v. State of Madras*, AIR 1931 Mad 70.
[8] Anwita Singh & Arvind Kumar Singh, "Navigating the Intersection of Free Speech and Regulation: The ChangingDynamics of Digital Expression in India", Indian Journal of Law and Legal Research, Vol. VII, Issue I (2025).

mandated that digital platforms exerciser eater diligence in content moderation and to establish a grievance mechanisms. Although these legal frameworks seeks to create online platform as a safe space for the right of individuals, but they have sparked the debates about their implications on freedom of expression and the risk of excessive censorship.[9]

The judiciary also played a vital role in balancing regulation and free speech in the digital realm. In Shreya singhal v. Union of India (2015), the Supreme Court struck down section 66A of the IT Act, deeming it to be unconstitutional because of its vague and overly broad language, which led to arbitrary arrest for online expressions. This ruling underlines the necessity for clear and precise laws governing digital communication and speech to prevent misuse and protect the constitutional rights. Recent cases highlights the growing conflicts between the state and digital platforms censorship demands.

In conclusion, the impact of digital platforms in India is multifaceted, it comes with both opportunities fir diverse voices and challenges. The digital platform increased the greater participation in public discourse, it has also highlighted the immediate need for a proper legal and ethical framework for moderation of speech. There must be a balance between safeguarding freedom of expression and addressing the dangers of unregulated digital platforms. For this it requires a collaboration among the government, judiciary, digital media platforms, civil society for establishing rules that are transparent, just and equitable should be aligned with democratic values the digital age.

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Legal framework governing online speech in India

- The Information technology Act 2000 – it is an important legal framework in India to govern the online content, provides a legal recognition for electronic transactions and tackles issues regarding Cyber crime. This act targets not only Cyber crime but various kinds of data theft, unlawful content on social media, transmission of dangerous information. An important provision under IT Act was section 66A, which criminalized the sending of offensive messages through electronic means. However this provision was struck down by Honorable Supreme Court in the case of Shreya Singhal v. Union of India(2015), as it was

[9] Ibid.

deemed to be unjust and unconstitutional due to its vague and excessive broad language that was leading to arbitrary restriction on freedom of speech.

Another key section of this Act is Section 69A, which empowers the government to limit the public access to online content for the reasons pertaining to sovereignty, security and to prevent incitement to any cognizable offense. This provision is mainly used for blocking websites and content died harmful or against national interest. Section 79 provides for "safe harboring" which protects intermediaries, such as social media platforms, shielding them from liability for third party, provided they must exercised due diligence and not knowingly host illegal material[10].

- IT(Intermediaries Guidelines and Digital Media Ethics Code) Rules 2021.

  These rules were notifies by Ministry of Electronics and Information Technology in February, 2021. These rules provide due diligence to be followed by an intermediaries while performing its functions, Grievance Reddressal Mechanism and Digital Media Code of Ethics[11]. They are designed to increase the accountability of online platforms. These rules require the intermediaries to publish their user policies and user agreements, also alerts users for posting prohibited content and to remove unlawful materials upon receiving notifications from authorities. They also mandates the formation of grievance redressal mechanism, mandating platforms to appoint grievance officer to register complaints within the specific time period. Platforms that are classified as Significant Social Media Intermediaries (SSMIG) have additional responsibilities, including the appointment of chief compliance officer, nodal contact person and resident grievance officer based in India. These regulations have sparked the debate of "chilling effects" on online discourse. Critics argues that certain provisions may grant authorities disproportionate powers to control online discourse. The judiciary plays vital role in interpreting the balance between regulation and free speech in the digital domain. In the case of India Express Newspaper (Bombay) Ltd. v. Union of India[12],exemplifies how Indian courts balance state regulation while protecting the free speech.

[10] Supra
[11] **Vajiram Content Team, "IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021," Vajiram & Ravi, June 27, 2023, available at:** https://vajiramandravi.com/current-affairs/it-intermediary-guidelines-and-digital-media-ethics-code-rules-2021/ **(last visited September 20, 2026).**
[12] *Indian Express Newspaper (Bombay) Ltd. v.Union of India,* AIR 1958 SC 578.

- Digital India Act,2023.

  The recent announcement of the Digital India Act 2023 (DIA) represents a significant step towards establishing a future ready legal framework for the country's digital ecosystem. The IT Act 2000 is an outdated legislation for a fast evolving digital landscape, India has dreafted a comprehensive Digital India Act to replace the decade old law. The DIA aims to be a "future ready" legislation for the entire online platforms. The consultations indicated that it will address the AI generated content, content moderation standards and user rights. The Act basically addresses the shortcomings of the IT Act 2000, because it was drafted when internet had very few users. However this DIA faces problems due to its cost compliance requirements, the concern about its impacts on free speech and expression as a result of assessment of the "safe harboring" concept[13]. The DIA strikes a balance between fostering innovation and safeguarding against potential harms.

- Government Requests to Social Media Platforms

The government can communicate with the digital platforms regarding unlawful content and seek removal or restriction where the statutory requirements are satisfied. This also creates a relationship between the state and private social media companies. Instead of the government directly deleting every piece of information, the digital platform becomes responsible for implementing the government's lawful direction.

- Regulation of online news and OTT Platforms.

Platform governance in India is not limited to Facebook and other social networking websites. The 2021 Rules also created a framework concerning –

- Digital news publishers
- Online curated content
- OTT Platforms.

These Rules provide a three tier grievance redressal structure for publishers of news and current affairs and online curated content.

- Regulation through criminal law.

[13] Shwetali Vijay Koli,"Balancing Act: Social Media, Free Speech and Privacy under the Indian Constitution", International Journal for Legal Research and analysis, Vol. II, Issue 7 (2024).

Digital Platforms are also controlled indirectly through criminal laws also, for the content including threats, defamation, incitement to violence, hate speech, sexual offenses, terrorism, fraud, Cybercrime violation of theses may attract legal consequences under applicable legislation. Therefore the state doesn't need to create a separate offense for every form of online speech. Existing criminal law can be operated where an online conduct satisfies the element of an offense.

- Internet Shutdown as a Method of Control.

The most extreme form of digital control is not removal of individual content but restricting access to the internet itself. Internet shutdown can prevent an individual from social media, news websites, messaging services, online education, and digital banking etc. The Supreme Court in Anuradha Bhasin v. Union of India[14], is important because it recognized that freedom of speech and expression through the internet receives constitutional protection under Article 19(1)(a).

Challenges to freedom of speech in Digital Era

Despite various benefits, the digital era has some challenges in the protection of free speech and expression.

A. Misinformation and Fake News.

In the ease of dissemination of information, the digital era has increased the spread of fake news and misinformation in the society. Misinformation and fake news have become a major constitutional problem. The speed of social media facilitated the rapid spread of false information and hateful rhetoric. It becomes a threat to democracy, in electoral process it can create a civil unrest. While considering it through the lens of the constitutional law, the regulation of fake information is an intricate matter since it requires balancing of restrictions given by article 19(1)(a), over regulation by the state can lead to censorship, while inadequate regulation can be a great threat to social peace and harmony[15].

B. Hate speech and online abuse.

The digital platform has been the center of hate speech and online abuse now a days. People are abused online for their race, religion, affiliations and

[14] *Anuradha Bhasin v. Union of India*, AIR 2020 SC 1308.

[15] **Manya Dudega, "Draw the Line: Respect Freedom of Speech and Expression," iPleaders Blog, available at (last visited Sept. 22, 2026)**

gender. This has discouraged people from engaging in online interactions. Hate speech is the greatest threat to freedom of expression in digital era. They could pose a threat to public peace, that's why the reasonable restriction were there.

C. Government Regulation and Internet Shut down.

Government or we can say the state is the major regulator of internet, in the name of protecting their citizens and maintaining the security and public peace in their respective nations. Some controls are necessary, but too much control and regulation can be detrimental to free expression in society. The intervention of state is necessary in regulating the digital platforms but on the other hand some might leads to a situation whereby the right to express dissent would become curtail by virtue of state exercising excessive control over internet spaces.

D. Algorithmic Influence

Algorithm influence is system of any social media or any software that suggests or recommendation that shapes human attention, behavior, decisions and preference without giving an explicit command. these algorithms may influence the users to extreme content. The influence of these algorithms have became an important way of affecting the freedom of speech because it's the algorithm influence only which controls that what type of online content gets visibility and popularity. The digital media platforms uses sophisticated algorithms to curate the feed of an individual and give preferences to that content which leads to more engagement and controversial one. The constitutional restriction may come here because freedom of speech might not get its fair share of expression through these filters.

E. Role of technology companies.

Technology companies that runs the various digital platforms are at the lead to influence the online speech and expression. These companies set the moderation rules and community guidelines to regulate the online platforms content. Content moderation is essential to curb the harmful content but on the other hand there are concerns over the transparency and accountability in content moderation. Various experts says that the private companies must be transparent in regulating the content of

digital platforms. These private tech companies hols a great place in developing the contemporary digital public spheres because the serve as an intermediary between the freedom of expression on a digital level. These companies set rues and guidelines according to which they moderate the content of online platforms and may remove certain type of content which does not comply with its regulations. It raises a significant issue of privatization of free speech regulation. On other hand such action are necessary to ensure the safety online but these technological companies does not fall under the jurisdiction of the constitutional laws like the state.

Judicial approach to online speech in India.

The judiciary has played a vital role in interpreting the constitutional boundaries of online speech. The rapid increase in digitization and social media platforms there is urgent need to address the issues concerning freedom of expression, government restrictions, privacy, role of intermediaries and content regulation.

- **In Shreya Singhal v. Union of India (2015).**

In this case the Supreme Court examined the constitutional validity of Section 66A of the Information Technology Act, which criminalizes certain types of online speech. In this case the court struck down Section 66A entirely because it is violating Article 19(1) (a) and held that the restrictions cannot be justified under Article 19(2)[16]. The Court held that the provision is vague and over breadth. The court held that section 69A is related to blocking of online information, section 79 concerned about intermediary liability. The judgment establishes that online speech constitutionally protected and the reasonable restriction must be there. The vague restrictions can have a chilling effect on speech and intermediary regulations must incorporate appropriate safeguards.

- **Anuradha Bhasin v. Union of India. (2020)[17].**

This case dealt with the constitutional validity of restrictions imposed in Jammu and Kashmir. The court recognized that freedom of speech and expression through internet which constitutionally protected under article 19(1) (a). the

[16] ***Shreya Singhal v. Union of India*, AIR 2015 SC 1523, available at:** https://indiankanoon.org/doc/110813550/ **(last visited September 26, 2026).**
[17] *Anuradha Bhasin v. Union of India*, (2020) 3SCC 637.

court held that the right to use internet as a medium to speech and expression is a fundamental right protected under the constitution, any restriction on internet access must satisfy the condition of reasonable restriction provided under Article 19(2). The court held that indefinite suspension of internet is not permissible under any kind of law. The court emphasized that law must evolve with technology and the internet is a critical enabler of rights and also reiterated Shreya Singhal judgment.

- **Ranveer Gutam Allahabadia v. Union of India**[18]

  This case concerns allegedly obscene and demeaning speech disseminated through internet based streaming private platforms. The Supreme Court considered issues arising from multiple criminal complaints and the conditions imposed on online content creators.

- **X Corp. v. Union of India**[19]

  This case is also known as the "Sahyog Portal" case. The court dismissed "X" Corp.'s challenge to the government's Sahyog Portal, which facilitates the communication of content removal request to intermediaries also reiterated that free speech under Article 19 (1) (a) of the Constitution was not absolute, but limited by the reasonable restrictions in Article 19(2), Justice Nagaprassana said that "Social Media, as a modern amphitheater of ideas, can not be left in a sate of anarchic freedom".

Platform governance and content moderation by Digital platforms.

Platform governance is an operating system and set of rules, policies and technical designs that online platforms or services use to manage the behavior of users, content and system interactions. It is the manner in which online platforms establish and enforce rules governing the digital platform.

It basically includes the process of -

- content moderation, formulation of community
- Formulation of community guidelines.

[18]*Ranveer Gautam Allahabadia v. Union of India*,(2026) SC.
[19]*X Corp. v. Union of India, (*2025) KARHC.

- Suspension or termination of accounts
- Removal and restriction of contents
- Grievance redressal.
- Compliance with applicable legal requirements
- Transparency mechanisms.

Hence the governance of speech and expression in digital era is no longer limited to governmental control. It is also exercised by private platforms also for its users. This also raises an important issue regarding the extent of powers of Private digital platforms in exercising the control over the principles of freedom of speech and expression in India.

Intermediaries and social media platforms.

The Information Technology Act provides the foundation for intermediary regulations. Section 79 provides an exemption from liability for intermediaries subjected to specifies conditions. The IT Rules, 2021 provides for well established obligations for intermediaries. These rules applies to intermediaries and also imposes additional obligations on social media intermediaries.

Content Moderation

Content moderation is the process by online platforms review, filters and manages user content to ensure compliance with the community guidelines, legal requirements and safety. Content moderation may involve-

- Human moderators
- Automated system
- Government or court orders
- User complaints
- combination of all these mechanisms

The IT Rules requires digital platforms to publish their rules, regulations, privacy policy, user agreements and should make reasonable efforts from sharing specified category of prohibited content.[20]

[20] **Ministry of Electronics and Information Technology, Government of India, available at: https://www.meity.gov.in/ (26 September 2026).**

Removal of online content by Digital Platforms

- The platform may initiate a removal of the content because of violation of its community standards and terms of services violation.
- The digital platform may remove an online content as may be directed by the government of that country.
- A court also can direct online platforms to remove or block of a particular content where it is legally justified.
- Through the medium of Grievance Redressal Mechanism, it is an important feature of platform governance which provides users with a mechanism to complaint against the decision which is affecting their contents or accounts. The IT Rules mandates intermediaries to form a Grievance Redressal Mechanism and also appoint a Grievance Officer. These Rules also establishes for Grievance Appellate Committee framework.
- This grievance mechanism provides notices to users, an opportunity to challenge a decision, can review of moderation decision and also provides for accountability of platforms.

Constitutional Liability of Private Digital Platforms

One of the most vital emerging issue in the constitutional regulation of online speech is whether a private digital platform scan be held liable for removing the content as violation of an individual's right to speech and expression. Traditionally. The fundamental right can only be enforced against the "state" only. The fundamental right provided under part III of the constitution of India, operate primarily as limitation upon state actions. Article 12 defines "state" for the purpose of part III, while on the other hand Article 19 confers specifies freedoms upon citizens. Therefore, a private platform or company does not automatically becomes subjected to the same constitutional obligations like the State,

just because it operates a platform on individual express themselves[21]. This position has become more complicated with the rise of the doctrine of horizontal application of fundamental rights.

In Indian law, for an action to be recognized as "constitutional violation", it must be committed by the state or its instruments, as defined under Article 12 of the Indian Constitution. Major digital platforms are private in nature, their internal enforcement of community guidelines does not directly leads to breach of the fundamental rights enshrined under the Indian Constitution

The core legal hurdle: the "State" Action Doctrine

- Platforms are not "The State": In landmark content moderation case that is X Corp v. Center (2024), platforms are intermediaries and can not be qualifies as "State" under Article 12.
- Fundamental Rights are vertical: Rights like Freedom of speech and expression Article 19(1) (a) it protects citizen from governmental restrictions not from private corporations.
- No Direct Provision for Writ Jurisdiction: during routine hearings dismiss the writ petitions filed against private tech platforms for removing individual posts or accounts and advise them to use civil or criminal remedies. The recent example of this is a Madhya Pradesh High Court, in Anmol Jain v. Union of India (2026)[22], it was held that a creator was aggrieved by deactivation of his Instagram deactivation. The court in this case said that, "don't use Instagram if you are not satisfied", highlighting its contractual nature of services.
- The Evolving legal debate over dictatorship of private power over public speech: various legal scholars and Indian courts are debating that these private platforms have acquired so much

[21] Balu Nair, 'Content Moderation by Private Platforms: Can Fundamental Rights be Invoked?', Center for Law & Policy Research, April 3, 2020.
[22] *Anmol Jain v. Union of India*, W.P. NO. 4503 of 2026 (M.P. H.C.).

control over the public speech online that constitutional ethics should apply on them[23].

- The Horizontal Precedent: the Supreme Court in *Kaushal Kishore v. State of UP,(2023)*[24], held that rights under Article 19 can be enforced horizontally against private individuals if they impact severely on someone's rights. However applying this directly to a private tech Platform's algorithms or terms of service has not became a proper law yet.
- Current Judicial Scrutiny: the High Courts are beginning to investigate the boundaries of private platforms. In September 2026, *Shaban Alam v. Google*[25] issued a notices to see whether a Digital creator can legally challenge a YouTube channel removal through a writ petition after the complaint has been rejected by the government's Grievance Appellate Committee(GAC).

If any private platform removes the content or block the account of any user arbitrarily or unjustly, it is legally framed as breach of contract that is violation of their terms of services or failure to follow the statutory due process outlined in the Information Technology Rules, 2021, rather than a constitutional violation of rights. An individual can file a complaint with platform's Grievance Officer or escalate it to the Grievance Appellate Committee.

Comparative Analysis with US and European Union

- **United States: Absolute platform Autonomy.**

While India adopts a middle ground approach that is leaning towards administrative regulation, whereas the United States strongly protects the platform's autonomy. In US, its constitution treats platform's decision to remove content as an exercise of platform's own constitutional right not as violation of aIn US, under section 230 of the Communications Decency Act, it grants immunity to private platforms

[23] Advocate Anwar M Quereshi, "Constitutional Validity of Content Moderation Policies of Global Tech Platforms Operating in India", SSRN, (2025).
[24] *Kaushal Kishore v. State of Uttar Pradesh,* (2023),4 SCC 1.
[25] *Shaban Alam v. Union of India & Ors.,* W.P. NO. 13602, Order dated September 17, 2026. (Delhi H.C.).

for content posted by users. Section 230 of the Communications Decency Act of 1996 as a mechanism for regulating platform content has also been examined in light of the unconstitutional conditions theory. According to this theory, Section 230 was a regulatory condition based on speech that deprived social media platforms of their first amendment right to regulate user-generated content[26] .

- **European Union.**

  The European Union treats online platforms differently it puts a strong approach for protecting the fundamental rights of their users within the digital space. Rather than waiting for courts to extend their fundamental rights horizontally, the EU passes a very comprehensive legislation to enforce it.

  The EU enacted Digital Services Act (DSA) of 2022, it serves as an innovative framework for regulation of social media platforms. It lays down transparency, procedural and appeal obligations for very large online platforms which ensures that users are notified for the reasons for the take down and have recourse to resolve the dispute outside the courts.

If an EU framework removes a user's content, the private platform is legally obliged under Article 17 of the Digital Services Act to provide a clear statement of reasons explaining the decision individual's right. The First Amendment Protector of the Platform, it only bars the government actions against the users of the platform and does not put any constraints on the platforms.

The European Union framework provides its users a statutory right to challenge a take down through the platform's internal system, out of court settlement of disputes. If the platform erred, then it will be forced to restore the content this remedy is completely unavailable under US constitutional law.[27]

[26] **Kolla Venkata Praneetha, "Online Censorship and Constitutional Remedies", Vintage Legal, June 17 (2026), available at:** https://www.vintagelegalvl.com/post/online-censorship-and-constitutional-remedies

[27] European Commission, "The Impact of the Digital Services Act on Digital Platforms," *Shaping Europe's Digital Future*, updated 19 May 2026, available at: https://digital-strategy.ec.europa.eu/en/policies/dsa-impact-platforms

- **India**

India lies within these two models but leans heavily towards state oversight. The US and EU, fundamental rights under Article 19(1)(a) generally apply only against state meaning direct constitutional liability for private content removals difficult to establish. However under section 79of the IT Act, a platform's "safe harbor" that is immunity is entirely conditional in nature. If a platform arbitrarily removes the content of any user violating its own rules or conversely fails to remove content flagged by the government under Section 69A, it risks losing immunity and being held directly liable for user speech.

Conclusion and Suggestions

The intersection of social media regulations and constitutional rights in India shows a dynamic challenge. While the social media democratizes information, it also raises concerns over privacy and fake information and news. The Supreme Court's ruling focuses on protecting freedom of speech and privacy. However, regulatory framework like the IT Rules, 2021 faces criticism for potential overreach. The balancing of individual rights with state interest require precise regulation, and active judicial role. Therefore there is a need for an active collaborative approach among the governmental bodies, civil societies and tech companies is essential to ensure a balanced digital future that should uphold democratic principles and protects fundamental rights of the citizens.

Suggestions

1. **Legislative suggestions –** to enact a Digital Rights and Platform Accountability. The rights of users must be codified and procedural safeguard. The establishment of clear definitions for terms like "harmful content", "misinformation" and "hate speech" that reflects Indian legal standard.

2. **Amend the IT Act or IT Rules, 2021-** it must include provisions for mandatory notice and content removal. There should be mandatory neutral arbitration for dispute between users and platform.
3. **Statutory Recognition of Digital Public Forums-** there should be the concept of "Digital Public Utilities" for platform with over a threshold number of Indian users.
4. **Judicial and Constitutional Suggestions-** the Horizontal Application of Fundamental Rights. The Supreme Court may interpret Article 19 to apply to private entities performing public functions in specific digital contexts. o Courts can evolve doctrinal tools for applying proportionality and due process to private moderation actions.
5. **Constitutional Bench Review**-A Constitution Bench should consider whether and to what extent global platforms can be held to constitutional standards, possibly extending the precedent from "Puttaswamy" and "Ajay Hasia".
6. **Judicial Oversight Mechanism:** there should be Fast-track tribunals or benches for digital rights cases and Allow for writs under Article 226 against platforms where there is prima facie public function involvement.

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