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THE EVOLUTION OF FREE SPEECH IN THE INTERNET ERA: CONSTITUTIONAL PRINCIPLES, REGULATORY FRAMEWORKS, AND JUDICIAL INTERVENTIONS

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Abstract

The advent of the internet has fundamentally reshaped the meaning, reach, and regulation of free speech in constitutional democracies. Digital platforms have transformed individuals into active publishers, expanded participatory discourse, and dismantled traditional gatekeeping structures, thereby strengthening democratic engagement. Simultaneously, the online ecosystem has generated complex challenges involving misinformation, hate speech, intermediary liability, algorithmic amplification, and state surveillance. This paper examines the evolution of free speech jurisprudence in the internet era, focusing primarily on the Indian constitutional framework under Article 19(1)(a) and the permissible restrictions under Article 19(2). It critically analyses statutory developments under the Information Technology Act, 2000, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, alongside landmark judicial decisions. Comparative perspectives from the United States and Europe are incorporated to contextualise global regulatory trends. The study argues that while digital technologies have democratised expression, constitutional safeguards must ensure that regulatory interventions remain proportionate, transparent, and consistent with fundamental rights to sustain democratic discourse.

Keywords: Digitalization, Expression, Regulation, Intermediaries, Proportionality, Jurisprudence

Introduction

Freedom of speech and expression is the foundation of democratic government and individual freedom. Historically recognised as an inalienable right under international instruments such as the Universal Declaration of Human Rights (Article 19) and enshrined in constitutional texts around the world, free speech enables citizens to engage in public discourse, hold governments accountable, and explore individual self-realisation. In India, Article 19(1)(a) in the

constitution, guarantees the fundamental right of freedom of speech and expression for all citizens with reasonable restriction under Article 19(2) in respect of sovereignty and integrity of India, security of the state, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation, incitement to an offence.¹

The present state of free speech has radically changed with the advent of the internet in the late twentieth century. Unlike traditional media - print, broadcast, and public assembly - the internet is characterised by decentralisation, interactivity, borderlessness, speed, and scale. Social media platforms, blogs, instant messaging services, and even video-sharing sites have democratised the way people access information and allowed billions of people to become publishers and broadcasters in their own right. As the Supreme Court of India held in *Anuradha Bhasin vs. Union of India*, the internet has become "an essential medium" for the exercise of certain fundamental rights, namely, freedom of speech and expression, and the right to carry on trade or business under Article 19(1)(g).²

However, the digital revolution has also created unprecedented regulations. The capacity of the internet for instantaneous global dissemination of information has added to concerns about hate speech, defamation, misinformation, cyber harassment, privacy violations, and threats to national security.³ Governments around the world have struggled to adjust old free speech doctrines, developed in the context of physical, public forums and regulated broadcast media, to the digital environment. Central to this challenge is the role of private intermediaries: internet service providers, search engines, and social media platforms that act as gatekeepers of online expression, but also as commercial entities with low levels of public accountability.⁴

In India, the legislative response to the regulation of online speech has been the regulation of speech primarily brought in the form of the Information Technology Act, 2000 (IT Act), later amended in 2008 and supplemented by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021). These legislative instruments have sought to balance facilitating digital innovation and free expression, on the one hand, with

¹ Freedom of speech and expression in the digital era. (2021, June 8). *iPleaders Blog*. <https://blog.ipleaders.in/freedom-speech-expression-digital-era/>

² *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

³ Free speech in the age of the internet. (2019, June 25). *Harvard Law School*. <https://hls.harvard.edu/today/free-speech-in-the-age-of-the-internet/>

⁴ What does freedom of speech mean in the internet era? (2024, March). *World Economic Forum*. <https://www.weforum.org/stories/2024/03/what-does-freedom-of-speech-mean-in-the-internet-era/>

protecting the state's interests in public order, national security, and social harmony, on the other. Yet the application of these laws has been the subject of substantial constitutional litigation, leading to key judgments that will alter the contours of free speech in the internet age.⁵

Constitutional Foundations of Free Speech in the Digital Age

Article 19(1)(a) and the Extension to Cyberspace

Article 19(1)(a) of the Constitution of India provides for the right of people to "freedom of speech and expression". This right has been interpreted expansively by Indian courts to encompass not only the right to speak and to express views orally or in writing, but also the right to propagate ideas, the right to publish, the right to receive information, the right to advertise, and the freedom of the press.⁶ Significantly, the Supreme Court has found that the manner of expression is constitutionally protected, as restrictions on the medium of expression may amount to indirect restrictions on the content of speech itself.⁷

The extension of Article 19(1)(a) protections to the internet was finally made in *Shreya Singhal v. Union of India* (2015) 5 SCC 1. In that landmark judgment, the court noted that "the internet is one of the means through which the right guaranteed under Article 19(1)(a) is exercised". It struck down Section 66A of the IT Act on the ground that it imposed unconstitutional restraints on the exercise of online speech. "The judgment recognised that the internet had become "a ubiquitous means of communication" through which citizens "can reach people, share ideas, enter political discourse, access information and participate in democratic processes."⁸

In *Anuradha Bhasin v. Union of India* (2020) 3 SCC 637, a further step was taken by the Union of India in which the court stated that the right to access the internet was part of the fundamental right to freedom of speech and expression. The court said: 'the internet is one of the basic instruments of the modern age' and 'curtailment of the same would impinge upon the freedom of speech

⁵ The Evolving Landscape of Free Speech in the Digital Age: A Contemporary Perspective. (2024, February 26). *Legal Mantra*. <https://www.legalmantra.net/blog-detail/The-Evolving-Landscape-of-Free-Speech-in-the-Digital-Age-A-Contemporary-Perspective>

⁶ Freedom Of Free Speech And Expressions In Digital Era. (2024, February 7). *IJLLR*. <https://www.ijllr.com/post/freedom-of-free-speech-and-expressions-in-digital-era>

⁷ Digital Media, Freedom Of Expression, And Constitutional Limits: An Indian Legal Analysis. (2024, December 9). *IJLLR*. <https://www.ijllr.com/post/digital-media-freedom-of-expression-and-constitutional-limits-an-indian-legal-analysis>

⁸ *Shreya Singhal v. Union of India*. *Global Freedom of Expression*, Columbia University. <https://globalfreedomofexpression.columbia.edu/cases/shreya-singhal-v-union-of-india/>

and expression'. In its reason, the court underlined that in the modern era, many forms of expression, commerce, education, and social participation are mediated through digital platforms, and so restrictions on internet access amount to direct restrictions on fundamental rights.

Reasonable Restrictions under Article 19(2)

While Article 19(1)(a) confers a broad right to free speech, Article 19(2) empowers the state to impose 'reasonable restrictions' on this right by law 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
- Contempt of court
- Defamation
- Incitement to an offence

The constitutional validity of any restriction on online speech must pass two key tests: first, the restriction should pass the test of being one of the enumerated grounds within Article 19(2); and second, the restriction should pass the test of being 'reasonable' in the sense that they are proportionate and narrowly drawn, and do not so drastically infringe on the core right.⁹

In *Shreya Singhal*, the Supreme Court emphasised the point that restrictions on speech must have a 'proximate nexus' with one of the constitutionally permissible grounds. The court struck down Section 66A on the ground that it criminalised speech which was only 'annoying' or 'inconvenient' or 'insulting' or 'grossly offensive' with no need for any link to public order or incitement or harm. The court ruled that such broad and vague language gave rise to a 'chilling effect' on lawful speech and granted too much discretion to law enforcement to make the provision unconstitutionally overbroad.¹⁰ The concept of 'public order' has been especially important in online speech regulation. The Supreme Court has made a distinction between 'maintenance of law and order' restrictions and the 'maintenance of public order', and held

⁹ Reaffirming Free Speech in a Constitutional Democracy. (2024, December 26). *Drishiti IAS*. <https://www.drishitias.com/daily-updates/daily-news-editorials/reaffirming-free-speech-in-a-constitutional-democracy>

¹⁰ Constitutional Challenges To Regulating Online Hate Speech Vs. Free Expression. (2024, June 12). *Lawful Legal*. <https://lawfullegal.in/constitutional-challenges-to-regulating-online-hate-speech-vs-free-expression/>

that only the latter, which involves threats to the security of the state or to the foundation of public tranquillity, can justify curtailment of free speech. A shallow offense or a controversial expression is not enough.¹¹

The Right to Privacy and Informational Autonomy

The recognition of the right to privacy under Article 21 of the Constitution as a fundamental right in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1 has further enhanced constitutional jurisprudence regarding digital rights. The court held that privacy encompasses informational self-determination and control over personal data, with important implications for content moderation, surveillance, data retention requirements imposed on internet intermediaries, and traceability requirements imposed on them.

The tension between privacy and free speech is especially strong in discussions of encryption, anonymity, and the government's right to compel companies to reveal user information. Anonymity can often be crucial for whistleblowers, dissidents, and vulnerable populations to exercise their right to free speech without fear of reprisal. However, governments have claimed that anonymity encourages illegal actions such as hate speech, terrorism, and cybercrimes, and the need for traceability to ensure order and security for the public.¹²

Landmark Judicial Interventions: Defining Online Free Speech

Shreya Singhal v. Union of India (2015): Striking Down Section 66A

Shreya Singhal v. Union of India (2015) 5 SCC 1 is the foundational judgment on free speech in the age of the internet in India. The case had its genesis in challenges to the IT Act's Section 66A which provided that anyone who sent, through a computer resource or communication device, information which was 'grossly offensive' or that had a 'menacing character' or that caused 'annoyance', 'inconvenience', 'danger', 'obstruction', 'insult', 'injury', 'criminal intimidation', 'enmity', 'hatred', 'ill will' or that was 'harmful' would be imprisoned for a term of up to three years, and also given a fine.

¹¹ Free Speech in the Digital Age: A doctrinal analysis of four recent Supreme Court cases on Article 19(1)(a). (2024, July 20). *Citizens for Justice and Peace*. <https://cjp.org.in/free-speech-in-the-digital-age-a-doctrinal-analysis-of-four-recent-supreme-court-cases-on-article-191-a/>

¹² Praveen Arimbrathodiyil vs. Union of India: SFLC.in assists in challenging Part II of Intermediary Rules, 2021. (2023, May 16). *Software Freedom Law Centre India*. <https://sflc.in/praveen-arimbrathodiyil-vs-union-india-sflcin-assists-challenging-part-ii-intermediary-rules-2021/>

The petitioners, including law students and civil society organisations, claimed that the provision was unconstitutionally vague and overbroad, and that it had been routinely used by state authorities to arrest and prosecute people for posting critical or satirical material on the internet. High-profile cases include the arrest of two young women in Maharashtra for a post on Facebook enquiring about the shutdown of Mumbai following the death of a political leader and the arrest of a professor in West Bengal for sharing a cartoon about the Chief Minister of West Bengal.

Significantly, the court upheld the constitutional validity of Section 69A of the IT Act, enabling the Central Government or a State Government to issue directions prohibiting public access to information in the interest of sovereignty, security, public order, or other proceedings. The court noted that Section 69A provides sufficient procedural safeguards, including the requirement for a reasoned order, notice to the originator and intermediary, and a review mechanism.¹³

Shreya Singhal has been celebrated as a watershed moment for free speech in India and has set an important precedent for challenging vague and overbroad restrictions on online expression.¹⁴ The judgment's emphasis on clear definitions, narrow tailoring, and procedural safeguards continues to guide constitutional review of digital speech regulations.¹⁵

Anuradha Bhasin v. Union of India (2020): Internet Access as a Fundamental Right

Anuradha Bhasin v. In Union of India (2020) 3 SCC 637, the constitutional validity of old prolonged internet shutdowns and old restrictions on movement and communication in the union territory of Jammu and Kashmir was raised. After the abrogation of Article 370 and bifurcation of the state in August 2019, the government imposed odious restrictions, including a total internet blackout, suspension of mobile telephony, and prohibitory orders under Section 144 of the Code of Criminal Procedure, 1973.

Anuradha Bhasin, Executive Editor of The Kashmir Times, had set in motion the process

¹³ Section 69A & Section 66(A) of the IT Act. (2024, December 13). *PMF IAS*. <https://www.pmfias.com/section-69a-section-66a-of-the-it-act/>

¹⁴ Supreme Court Ruling Underscores Importance of Free Speech Online. (2024, June 30). *ACLU*. <https://www.aclu.org/press-releases/supreme-court-ruling-underscores-importance-of-free-speech-online>

¹⁵ India: Historic Supreme Court ruling upholds online freedom of expression. (2015, March). *Amnesty International*. <https://www.amnesty.org/en/latest/news/2015/03/india-supreme-court-upholds-online-freedom-of-expression/>

against these restrictions on the grounds of violation of fundamental rights under Articles 19(1)(a), 19(1)(d), 19(1)(g), and 21 of the constitution. The petitioner claimed the indefinite suspension of internet services effectively silenced the press, disrupted business and education, and denied citizens access to essential information and services.

Anuradha Bhasin is a major expansion of digital rights jurisprudence in India. The scope of the RFCs, the Hahn order clearly defined constitutional limits on the government's power to shut down internet services and reiterated the proposition that even in cases of public emergency or national security, the state shall take the least restrictive means and provide for periodic review and judicial oversight.¹⁶

Recent Developments: Kunal Kamra v. Union of India and Intermediary Liability

In October 2024, the Bombay High Court passed an important judgment in *Kunal Kamra v. Union of India*, challenging the Constitutional validity of Rule 3(1)(b)(v) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023. The impugned rule empowered the government to issue content takedown orders through a centralised portal, the 'Fact-Check Unit' (FCU), to identify and require intermediaries to remove content deemed 'fake' or 'misleading' relating to government business.¹⁷

The Bombay High Court, in a divided judgment decided by a referral bench, held that the provision in rule 3(1)(b)(v) was violative of articles 14, 19 (1) (a), and 19 (1) (g) of the Constitution. The court observed:¹⁸

- The rule was vague and overbroad, as it did not establish any definition of 'fake' or 'false' information with sufficient precision and allowed the government to exercise unbridled discretion to determine the truth or falsity of speech.
- The chilling effect of the rule was that it gave the executive branch the ability to serve as the arbiter of truth without effective procedures to safeguard against arbitrary suppression of speech, and without any independent judicial review.

¹⁶ Reaffirming Free Speech in a Constitutional Democracy. *Drishiti IAS*. <https://www.drishtias.com/daily-updates/daily-news-editorials/reaffirming-free-speech-in-a-constitutional-democracy>

¹⁷ *Kunal Kamra v. Union of India*. (2024, December 10). *Global Freedom of Expression*. <https://globalfreedomofexpression.columbia.edu/cases/kunal-kamra-v-union-of-india/>

¹⁸ Unravelling the Bombay High Court's Ruling on Freedom of Speech and Expression. (2024, November 20). *IACL-AIDC Blog*. <https://blog-iacl-aidc.org/2024-posts/2024/11/21/unravelling-the-bombay-high-courts-ruling-on-freedom-of-speech-and-expression>

- The rule went beyond the scope of the parent legislation (IT Act) and involved the illegal delegation of legislative power to the executive without clear standards or guidelines.

This judgment reinforced the tenet of Shreya Singhal that the framework of content moderation must be narrowly drawn, clearly defined, and subject to robust procedural guarantees to prevent executive overreach and the resulting squeeze on the open marketplace of ideas.¹⁹

The Regulatory Framework: Intermediary Liability and Safe Harbour Provisions

Section 79 of the IT Act: Safe Harbour for Intermediaries

A central feature of the legal framework governing online speech in India is the intermediary liability regime under Section 79 of the IT Act. Section 79 provides a 'safe harbour' or conditional immunity to intermediaries from liability for third-party content hosted or transmitted through their services. The provision is structured as follows:

- **Section 79(1):** An intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by it, subject to the conditions in sub-sections (2) and (3).
- **Section 79(2):** The immunity applies only if the intermediary's function is of a technical, automatic, and passive nature, and the intermediary does not initiate the transmission, select the receiver, or modify the information.
- **Section 79(3):** The intermediary must observe due diligence and must not knowingly host or publish unlawful content. The intermediary must expeditiously remove or restrict access to unlawful content upon receiving 'actual knowledge' or being notified by the government or a court order.

In the case of Shreya Singhal, the Supreme Court interpreted Section 79(3)(b) to make it clear that 'actual knowledge' for intermediaries' liability comes into play only when a court order or government notification specifying the unlawful content is received. The court ruled that intermediaries cannot be held liable on the basis of private notices or complaints alone, because such a regime would create a disincentive to proper removal and have a chilling effect on speech. The court's interpretation sought to balance free speech interests with the need for content moderation. Through the provisions of a court order or notification to the government,

¹⁹ Recalibrating Free Speech: The Supreme Court's constitutional turn in the digital age. (2024, July 20). *Sabrang India*. <https://sabrangindia.in/recalibrating-free-speech-the-supreme-courts-constitutional-turn-in-the-digital-age/>

the Shreya Singh framework ensures that the decision to remove content is subject to legal standards and procedural oversight, rather than the discretion of private intermediaries who respond to informal complaints.

The Information Technology (Intermediary Guidelines) Rules, 2021

In February 2021, the Government of India notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, replacing the earlier Intermediary Guidelines Rules of 2011. The 2021 Rules impose extensive obligations on intermediaries, including social media platforms, digital news publishers, and over-the-top (OTT) media services.²⁰

Key provisions of the IT Rules, 2021 include:

- **Proactive Monitoring and Removal:** Intermediaries must use automated tools to proactively identify and remove unlawful content, including child sexual abuse material, terrorism, and other specified categories. Significant social media intermediaries (those with over 5 million users) must appoint a Chief Compliance Officer, Nodal Contact Person, and Resident Grievance Officer.
- **Traceability Requirement:** Messaging services must enable identification of the 'first originator' of information, effectively requiring a weakening of end-to-end encryption for traceability purposes. This provision has been widely criticised for undermining privacy and anonymity.
- **Content Takedown Timeline:** Intermediaries must acknowledge complaints within 24 hours and take action within 15 days. For certain categories of content (such as nudity or morphed images), removal must occur within 24 hours.
- **Regulation of Digital News and OTT Platforms:** The Rules establish a three-tier grievance redressal mechanism for digital news publishers and OTT platforms, with the final tier being an inter-ministerial oversight committee under the Ministry of Information and Broadcasting. This provision has raised concerns about editorial independence and state control over journalistic content.

Since their enactment, the IT Rules, 2021 have been challenged in multiple High Courts on grounds that they are unconstitutional, ultra vires the IT Act, and violate Articles 14, 19(1)(a),

²⁰ Media Regulation and Free Speech in India: Legal Framework. (2026, January 26). *KS&A*. <https://ksandk.com/media-law/media-regulation-and-free-speech-in-india/>

19(1)(g), and 21. Petitioners have argued that the Rules impose vague and overbroad restrictions, mandate proactive censorship, undermine encryption and privacy, and grant excessive discretionary power to the executive. In 2024, the Supreme Court transferred all pending petitions challenging the IT Rules, 2021, to the Delhi High Court for consolidated adjudication, recognising the need for a uniform judicial determination of the Rules' constitutional validity.

Constitutional Challenges to the IT Rules, 2021

Critics of the IT Rules, 2021, have raised several constitutional objections:

1. **Vagueness and Overbreadth:** The Rules prohibit hosting or publishing content that is 'harmful,' 'patently false,' or 'misleading' without providing clear definitions. This vagueness creates uncertainty and incentivises over-removal to avoid regulatory penalties.
2. **Proactive Censorship:** The requirement to use automated tools for content moderation shifts the burden of speech regulation from the state to private platforms, effectively creating a system of pre-publication censorship. Automated tools are prone to false positives and lack contextual understanding, leading to wrongful removal of legitimate speech.
3. **Undermining Encryption and Privacy:** The traceability requirement compels messaging platforms to weaken end-to-end encryption, which is essential for protecting privacy, confidential communication, and the security of vulnerable populations such as journalists, whistleblowers, and human rights defenders.
4. **Executive Overreach:** The three-tier grievance mechanism for digital news and OTT content vests final adjudicatory power in an executive committee, bypassing judicial review and threatening editorial independence. This structure is inconsistent with the separation of powers and the principle of judicial accountability for restrictions on speech.
5. **Ultra Vires the IT Act:** Several provisions of the Rules exceed the scope of the parent legislation, the IT Act, 2000. The Act grants rule-making power only for 'due diligence' and procedural matters, not for substantive content regulation or proactive monitoring mandates. Delegated legislation that exceeds the authority conferred by the parent statute is ultra vires and void.

Contemporary Challenges: Hate Speech, Misinformation, and Internet Shutdowns

Online Hate Speech and Constitutional Limits

The rise of online hate speech is among the most heated topics in regulating free speech in the age of the internet. Hate speech could fuel violence, undermine social cohesion, and cause psychological harm to target communities, especially religious, ethnic, and gender minorities. At the same time, definitions of "hate speech" are often vague and disputed, and excessively broad prohibitions risk stifling legitimate criticism, satire, and political dissent. Any of the following laws forms the Indian legal framework governing the question of hate speech: India: Indian Penal Code, 1860 the Indian Penal Code, 1860 (was originally an existing law before 1860 and stopped being in force in 25% of states in India as the law has been superseded by the Golden State Bail act of 2023 which was published in India: Bharatiya Nyaya Sanhita, 2023 (this law replaces the Indian Penal Code law that was in force since 1860 and remained under force) Penal.

- **Section 196:** Promoting enmity between different groups on grounds of religion, race, language, caste, or community.
- **Section 299A:** Deliberate and malicious acts intended to outrage religious feelings.
- **Section 505:** Statements creating or promoting enmity, hatred, or ill-will between classes, or statements conducing to public mischief.

Under the IT Act, the government has the right under Section 69A to block access to content posted on online platforms that threaten sovereignty and security, or that public order or incite an offence. The IT Rules, 2021, also further require intermediaries to remove or restrict access to content that is "harmful" or promotes enmity between groups. However, the enforcement of hate speech laws in India has been inconsistent and at times politically selective. Critics have alleged that because of vaguely defined legal standards, the authorities have been able to suppress dissent and minority voices in the name of moving against hate speech, and real incitement to violence often has gone unpunished if the perpetrators are politically affiliated to someone. The absence of an explicit definition of "hate speech" in the statutes also aggravates this problem. Unlike jurisdictions such as Germany, which has implemented the Network Enforcement Act (NetzDG) with specific criteria on illegal content, in India, there are broadly worded provisions that give law enforcement and platforms wide discretion, leading to arbitrary enforcement and self-censorship.

Misinformation, Fake News, and the Fact-Check Unit Amendment

The spread of misinformation and disinformation online has emerged as a critical challenge for democratic governance, public health, and social harmony. False information can undermine electoral integrity, incite communal violence, and erode public trust in institutions. Governments worldwide have sought to regulate misinformation, but such efforts often conflict with free speech principles, particularly when the state arrogates to itself the power to determine truth and falsity.

In India, the government has enacted several measures to combat misinformation, including:

- **Press Council of India Guidelines:** The PCI, though not legally binding, provides ethical guidelines for journalism and can censure publications or journalists for spreading false information.
- **IT Rules, 2021:** Intermediaries must not host or publish "patently false" or "misleading" information and must establish grievance redressal mechanisms to address complaints.
- **Representation of the People Act, 1951:** Penalises the spread of false information during elections to influence voters.

In the year 2023, the government amended the IT Rules, 2021, to set up a "Fact-Check Unit" (FCU) within the Press Information Bureau. The FCU was empowered to identify and flag content as "fake" or "misleading" about government business, and intermediaries were required to remove flagged content. This amendment was challenged in the Bombay High Court because it violated Article 19(1)(a) by giving the executive unbridled authority to decide the veracity of speech, and demanding it to be censored. In October 2024, the Bombay High Court struck down the amendment to the FCU, saying it was unconstitutional, vague, and inconsistent with the principle of veracity determination in a democracy, which requires it to fall under judicial review, not executive fiat. The court noted that the amendment established a "dangerous precedent" because it allowed the government to be both the subject and the arbiter of speech, thereby destroying the open marketplace of ideas.

Conclusion

The development of free speech in the new world of the internet is a complex and ongoing negotiation among constitutional principles, technological capabilities, and the power of institutional structures. It has happened repeatedly that the Supreme Court has further

confirmed that Article 19 (1) (a) covers online expression and internet access is an integral medium for the shaping of fundamental rights—landmark decisions like *Shreya Singhal vs. Union of India* and *Anuradha Bhasin Vs. The Union of India* has set critical precedents, emphasising that restrictions on digital speech must be clear, narrow, limited, necessary, and proportionate.

However, the regulatory landscape is still fraught with difficulties. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, have caused considerable constitutional controversy; however, some allege that they impose overly vague and broad restrictions, require proactive censorship, undermine privacy and encryption, and concentrate more power in the executive. Judicial interventions of late include the Bombay High Court striking down the Fact-check Unit amendment, thereby indicating an increasing judicial sensitivity to executive overreach, as well as a need to protect the open marketplace of ideas.

Looking ahead, the challenge underlying judicial scrutiny of social media regulation will be devising a regulatory architecture to address genuine harms, such as hate speech, misinformation, cyberharassment, and threats to national security, without undermining the democratic vigour of the digital public sphere. Key recommendations of a rights-respecting framework are:

- Statutory provisions regulating online speech should define the types of prohibited speech as precisely as possible and limit restrictions to speech that poses a clear and present danger of infringing constitutionally permissible interests.
- Content takedown mechanisms must include procedural safeguards, such as notice to affected parties, reasoned orders, transparent criteria, and access to judicial review.
- Regulatory interventions, including Internet shutdowns and platform obligations, should be the least restrictive measures necessary to meet legitimate aims and should include periodic review and a sunset clause.
- Intermediaries and government authorities must post regular transparency reports about content removal, orders to block content, and appeals. Algorithmic content moderation systems need independent audits and accountability mechanisms.

- Traceability Mandates and requirements for weakening encryption must be critically scrutinised, as they undermine the rights to privacy and security, and the ability of vulnerable populations to exercise their right to free speech without fear of retaliation.
- Content moderation frameworks should include independent oversight bodies - rather than vesting adjudicatory power in the executive. International models, such as Ireland's Online Safety Commissioner or Germany's NetzDG framework, are useful precedents.
- Complementary measures, such as public education campaigns on media literacy, critical thinking, and responsible web conduct, may reduce harms without requiring censorship.

The internet has democratised expression and facilitated unparalleled participation in the public discourse. Preserving the vitality of this digital public sphere requires a commitment to constitutional principles, institutional accountability, and the recognition that free speech, even in its digital manifestations, remains foundational to democratic self-governance and human dignity. As technology continues to evolve, so too must the legal frameworks, guided by the fundamental principles of liberty, equality, and the rule of law.



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