



Freedom of expression in social media

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Abstract

Freedom of expression is a cornerstone of democratic society, and social media has emerged as one of the most powerful platforms for exercising this right in the digital age. Social media enables individuals to express opinions, share information, mobilize public opinion, and participate in political, social, and cultural discourse without traditional gatekeeping. However, the unregulated and instantaneous nature of online communication has also given rise to challenges such as misinformation, hate speech, cyber harassment, threats to privacy, and misuse of digital platforms. This has led to increasing legal and regulatory interventions by the State, raising concerns about censorship, surveillance, and the chilling effect on free speech. In the Indian context, freedom of expression under Article 19(1)(a) of the Constitution must be balanced against reasonable restrictions under Article 19(2), particularly in relation to public order, morality, national security, and sovereignty. This abstract examines the scope, significance, and limitations of freedom of expression on social media, analysing the tension between individual rights and regulatory controls. It also highlights the role of courts in interpreting constitutional protections in the digital sphere and emphasizes the need for a balanced legal framework that protects free speech while addressing legitimate concerns arising from social media use.

Keywords: Freedom expression, social media

Introduction

Freedom of expression is a fundamental right guaranteed by the Indian Constitution, and it extends to the digital realm, including social media. As one of the world's largest internet user bases, India's social media landscape plays a critical role in shaping public discourse and facilitating communication among its diverse population. The Indian legal framework recognizes the importance of freedom of expression while also addressing the challenges posed by the online environment, such as misinformation, hate speech, and content that may incite violence or public disorder. To strike a balance between protecting free speech and addressing these concerns, India has enacted laws and regulations that govern social media platforms and digital content intermediaries.

In this context, it is essential to explore the laws and regulations that govern freedom of expression in social media in India. This involves understanding how the Information Technology Act, 2000, and subsequent amendments, the newly introduced Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and other relevant legal provisions impact users, social media platforms, and content moderation practices.

Indian Constitution

The Indian Constitution guarantees the right to freedom of speech and expression under Article 19(1)(a). Citizens have the right to express their opinions freely through various mediums, including social media platforms. However, this right is not absolute and can be restricted under Article 19(2) for reasons mentioned above. Freedom of expression in social media is protected in India under Article 19(1)(a) of the Constitution of India. Article 19(1)(a) guarantees all citizens the right to freedom of speech and expression. This includes the right to express one's thoughts, opinions, and ideas through various forms of communication, including social media platforms.

The Indian judiciary has consistently upheld the importance of freedom of expression as a fundamental right, essential for the functioning of a democratic society. The right to freedom of speech and expression is not only vital for individuals to express themselves but also serves as a cornerstone of a vibrant democracy, fostering open debates, dialogue, and the free flow of information. However, like all fundamental rights, the right to freedom of expression is not absolute and is subject to certain reasonable restrictions. These restrictions are outlined under Article 19(2) of the Indian Constitution. The restrictions include cases where the state can impose limitations on freedom of expression in the interest of

1. Sovereignty and integrity of India
2. Security of the State
3. Friendly relations with foreign states
4. Public order
5. Decency and morality
6. Contempt of court
7. Defamation
8. Incitement to an offense

Social media platforms are subject to these restrictions when content posted on their platforms violates any of the above grounds. Additionally, the Information Technology Act, 2000, and its associated rules further govern the functioning of social media intermediaries in India and prescribe obligations on content moderation, takedown requests, and grievance redressal mechanisms. In recent years, there have been debates about the balance between free expression and content regulation on social media platforms in India. The government's attempts to regulate social media and online content have been met with concerns about potential threats to freedom of expression and user privacy. Striking the right balance between safeguarding free expression and addressing legitimate concerns related to harmful content remains an ongoing challenge in the Indian legal

framework. Freedom of expression in social media is protected under Article 19(1)(a) of the Indian Constitution. While this right is fundamental, it is not absolute and can be restricted by the state under specific circumstances mentioned in Article 19(2). The legal framework surrounding freedom of expression in social media is continually evolving to address the complexities and challenges posed by the digital age.

Information Technology Act, 2000 (IT Act)

The IT Act does contain provisions that deal with certain types of online content and communication, such as

Section 66A: This section previously criminalized the sending of offensive messages through communication services and social media platforms. However, it was struck down as unconstitutional by the Supreme Court of India in 2015 as it was found to be vague and prone to misuse. Section 66A of the Information Technology Act, 2000 was a controversial provision that dealt with the punishment for sending offensive messages through communication services, including social media platforms. However, this section was struck down by the Supreme Court of India in March 2015 as unconstitutional.

Section 66A of the IT Act before it was struck down

- 1. Punishment for Offensive Messages:** Section 66A provided for the punishment of up to three years of imprisonment and a fine for sending information that was deemed to be "grossly offensive" or had "menacing character" using a computer resource or a communication device.
- 2. Vague and Overbroad Language:** One of the main criticisms of Section 66A was that its language was vague and overbroad, leaving it open to potential misuse and abuse. The terms "grossly offensive" and "menacing character" were not clearly defined, leading to varying interpretations and potentially restricting freedom of speech.
- 3. Violation of Freedom of Expression:** The provision was widely criticized for violating the right to freedom of expression, as enshrined in Article 19(1)(a) of the Indian Constitution. Critics argued that it could be used to stifle dissent, curb criticism of the government, and chill legitimate online speech.

In response to several instances of misuse and cases filed against individuals for allegedly innocuous social media posts, civil rights activists and organizations challenged the constitutionality of Section 66A in the Supreme Court. In its landmark judgment in March 2015 (*Shreya Singhal v. Union of India*), the Supreme Court struck down Section 66A, declaring it unconstitutional and in violation of the right to freedom of speech and expression.

Since the Supreme Court's ruling, Section 66A has no legal effect, and it cannot be used to initiate any new criminal proceedings. The striking down of Section 66A marked an important moment in India's legal history, reinforcing the importance of protecting freedom of expression in the digital age. However, it is crucial to remain vigilant about potential threats to free speech and to ensure that other laws and regulations are also in line with constitutional principles.

Section 69A: This section provides the government with the power to block online content, including social media posts, if they are considered to be against the public interest, sovereignty, and integrity of India, defence of India, security of the state, friendly relations with foreign states, etc. This provision has been used to block certain websites and social media content in the past. Section 69A of the Information Technology Act, 2000 is a provision that grants the Indian government the power to block or restrict access to online content in certain situations. The primary purpose of this section is to enable the government to take measures for public order, national security, and other specified reasons. It is often used to block or remove content that is considered objectionable or poses a threat to the country's security and sovereignty.

Section 69A of the IT Act include

- 1. Grounds for Blocking:** The government can block access to any information generated, transmitted, received, stored, or hosted on any computer resource if it believes that the content is necessary or expedient in the interest of sovereignty and integrity of India, defence of India, security of the state, friendly relations with foreign states, or public order.
- 2. Blocking Procedure:** The blocking process involves the government or its designated officers issuing an order to intermediaries (such as internet service providers or social media platforms) to block access to specific content. Intermediaries are required to comply with such orders and prevent access to the content in question.
- 3. Safeguards:** The government must follow certain procedures and guidelines before issuing blocking orders. The law requires that the order should be passed by a high-ranking government official (Secretary to the Government of India or above). There is also a provision for a review committee that can examine the legality and validity of the blocking orders.
- 4. Lack of Judicial Review:** One of the criticisms of Section 69A is that it does not provide for pre-blocking judicial review. This means that the decision to block content is made by the government without prior approval from a court. However, there is a provision for post-blocking review through the review committee.
- 5. Secrecy and Non-disclosure:** The blocking orders issued by the government and the information related to the blocking process are usually kept confidential. This has also been a subject of criticism as it limits transparency and public accountability.

Section 79: This section deals with the liability of intermediaries, including social media platforms. It provides a safe harbour for intermediaries, such as social media companies, from being held liable for any third-party content posted on their platforms, as long as they comply with certain conditions, including taking down unlawful content upon receiving proper legal orders. Section 79 of the Information Technology Act, 2000 in India provides immunity to intermediaries, such as internet service providers (ISPs) and social media platforms, from certain

legal liabilities for third-party content hosted on their platforms. This section is crucial for the functioning of online services as it offers a safe harbour to intermediaries, protecting them from being held liable for user-generated content.

Section 79 of the IT Act

1. **Immunity for Third-Party Content:** Under Section 79, intermediaries are granted immunity from any liability arising from any third-party information, data, or communication link made available or hosted by them. This means that if users post content that is defamatory, obscene, or otherwise unlawful on the platform, the intermediary cannot be held responsible for the actions of its users.
2. **"Acting as an Intermediary":** To avail of the immunity provided by Section 79, the intermediary must fulfil certain conditions. One such condition is that the intermediary should not initiate, select, or modify the content transmitted by its users. In other words, the intermediary should merely act as a conduit for the transmission of user-generated content.
3. **Due Diligence:** Intermediaries must also observe due diligence while discharging their duties. This includes adopting and implementing reasonable security practices and procedures to ensure that unlawful content is not hosted or transmitted through their platforms.
4. **Takedown of Unlawful Content:** Despite the immunity provided, intermediaries are obligated to remove or disable access to content that is unlawful or in violation of the law upon receiving actual knowledge or upon being notified by appropriate authorities.
5. **Compliance with Government Orders:** Intermediaries are required to comply with orders issued by government agencies to remove or disable access to content that is considered unlawful.

Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

These rules, notified in February 2021, impose certain obligations on social media intermediaries operating in India. The rules require social media platforms to appoint grievance officers, follow due diligence measures for content moderation, and comply with takedown requests from authorities. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were introduced in India on February 25, 2021. These rules significantly impact freedom of expression in social media and digital media platforms. The rules aim to regulate social media intermediaries, digital news publishers, and over-the-top (OTT) platforms in India.

1. **Grievance Redressal Mechanism:** The rules mandate that social media intermediaries must establish a grievance redressal mechanism to address user complaints. Users can file complaints against content that they find objectionable or offensive. The intermediaries are required to respond to such complaints within a specified time and resolve them accordingly.

2. **Removal of Unlawful Content:** Social media platforms are required to take prompt action to remove or disable access to any content that is deemed unlawful, following a valid court order or government directive. The definition of unlawful content includes content that violates the law, infringes copyrights, or is defamatory, among other things.
3. **Identification of First Originator:** In certain cases, the rules require social media platforms to identify the first originator of certain messages. However, this provision can only be invoked in cases related to the sovereignty and integrity of India, public order, and national security. The platform must ensure that this power is exercised in a selective and targeted manner.
4. **Compliance Officer and Grievance Officer:** Social media intermediaries are required to appoint compliance officers and grievance officers who are responsible for ensuring compliance with the rules and addressing user complaints.
5. **Self-Regulatory Bodies for Digital News Publishers and OTT Platforms:** The rules establish a three-tier self-regulatory mechanism for digital news publishers and OTT platforms. This mechanism allows for self-regulation of content but also enables the government to intervene if necessary.

Defamation Laws

Defamation laws in India apply to social media as well. Posting defamatory content on social media platforms can lead to civil and criminal liabilities. Defamation laws play a significant role in determining the boundaries of freedom of expression in social media and other communication platforms. Defamation refers to the act of making false statements about an individual or entity that harm their reputation. It can be classified into two types

1. **Libel:** Defamatory statements that are in written or published form, such as social media posts, blogs, articles, or online comments.
2. **Slander:** Defamatory statements that are spoken or conveyed verbally, like in videos, podcasts, or live streams.

In many legal systems, including India, defamation laws are designed to strike a balance between protecting an individual's reputation and upholding the right to freedom of expression. The specifics of defamation laws may vary from country to country, but some common elements include

1. **Defamatory Statement:** For a statement to be considered defamatory, it must be false, damaging to the reputation of the person or entity, and made as a statement of fact rather than an opinion. Mere expressions of opinion, criticism, or fair comment generally do not constitute defamation.
2. **Publication:** The defamatory statement must be published or communicated to a third party, beyond the person making the statement and the subject of the statement.
3. **Falsity:** The plaintiff (the person claiming to be defamed) must demonstrate that the statement is false. Truth is generally a valid defence against defamation claims.

4. **Intent or Negligence:** In some jurisdictions, the plaintiff must also prove that the defamatory statement was made with actual malice or negligence on the part of the defendant.
5. **Damages:** In some cases, the plaintiff may need to demonstrate actual harm or damages to their reputation to succeed in a defamation claim.
6. **Defences:** Various defences can be used by the accused party, such as truth, fair comment, qualified privilege (protection for statements made in certain contexts), and innocent dissemination (if the accused party was unaware of the defamatory content).

In cases of defamation, the burden of proof lies on the complainant to establish that the statements made were false, injurious to reputation, and made with the intention of causing harm or with reckless disregard for the truth. As with any criminal offense, it is crucial to balance the protection of a person's reputation with the right to freedom of expression and the necessity to ensure that genuine criticism and public interest discussions are not stifled. Courts play a significant role in determining the merits of defamation cases and assessing whether the statements in question cross the line between legitimate expression and defamation.

Contempt of Court Act, 1971

Social media users are also subject to the Contempt of Court Act, which prohibits the publication of any matter that scandalizes or lowers the authority of the courts. The Contempt of Courts Act, 1971, is the primary legislation that deals with the law of contempt in India. It defines and regulates the law of contempt, including civil and criminal contempt. The Act provides guidelines on what constitutes contempt of court, the procedures for dealing with contempt cases, and the penalties that may be imposed for contemptuous behaviour.

In the context of social media, contempt of court can occur if individuals or entities make statements or engage in activities that undermine the dignity, authority, or functioning of the courts, or if they interfere with the administration of justice. Social media posts that criticize judges, court decisions, or on-going court cases in a manner that scandalizes the court or prejudices the minds of the public can attract contempt of court proceedings.

It's essential to understand that freedom of expression, including on social media, is subject to reasonable restrictions, and contempt of court laws are one such restriction aimed at maintaining the integrity of the judiciary and upholding the rule of law. If someone is found guilty of contempt of court, they may face penalties such as fines, imprisonment, or both. The specific punishment will depend on the nature and severity of the contemptuous behaviour.

Personal Data Protection Bill, 2021

The Personal Data Protection Bill, 2021, included

1. **Data Protection Authority:** The bill proposed the establishment of a Data Protection Authority of India (DPA) responsible for overseeing and enforcing data protection regulations.

2. **Data Localization:** The bill mandated that certain categories of personal data be stored within Indian borders. The exact categories and details were to be specified by the government.
3. **Consent and Purpose Limitation:** The bill emphasized obtaining explicit and informed consent from individuals before collecting and processing their personal data. Data could only be used for the specific purpose for which consent was given.
4. **Right to Data Portability:** Individuals would have the right to transfer their personal data from one service provider to another.
5. **Right to be forgotten:** The bill recognized the right of individuals to request the erasure of their personal data under certain circumstances.
6. **Cross-Border Data Transfers:** For certain types of data transfers outside of India, the bill required the DPA's approval or adherence to prescribed safeguards.
7. **Data Protection Officer:** Entities handling large amounts of data would be required to appoint a Data Protection Officer to ensure compliance with data protection laws.
8. **Non-Personal Data:** The bill proposed a framework for the regulation of non-personal data, which would be anonymized and aggregated data that does not identify individuals.

Content Blocking and Internet Shutdowns

Content blocking and internet shutdowns are measures employed by governments to restrict access to online content and communication platforms within a specific geographic region or the entire country. While these actions are often justified for reasons of national security, public order, or to combat misinformation, they can have significant implications for freedom of expression, access to information, and the functioning of a democratic society. Here's a closer look at content blocking and internet shutdowns

Content Blocking: Content blocking involves the restriction or removal of specific websites, web pages, or online platforms by government authorities or internet service providers (ISPs). Governments may employ content blocking for various reasons, such as

1. **National Security:** Content deemed to pose a threat to national security or incite violence may be blocked to prevent potential harm.
2. **Social Stability:** Governments may block content that they believe could lead to public disorder or unrest.
3. **Moral and Religious Grounds:** Content that is considered offensive or against religious or cultural beliefs may be subject to blocking.
4. **Intellectual Property:** Websites or platforms hosting pirated or copyrighted content may be blocked to protect intellectual property rights.

Internet Shutdowns: An internet shutdown involves the complete disruption or restriction of internet services in a specific region or across the entire country. Shutdowns can be implemented by cutting off access to the internet or specific communication platforms. They are often deployed during sensitive events, protests, or political unrest for reasons such as:

1. **Public Safety:** Shutdowns may be justified as a measure to prevent the spread of rumours or misinformation during emergencies.
2. **Security Concerns:** Governments may impose internet shutdowns to control the flow of information and communication to prevent potential threats.
3. **Censorship and Control:** Shutdowns can be used to suppress dissent, limit the dissemination of critical information, or silence opposition voices.

Implications and Challenges: Content blocking and internet shutdowns have several far-reaching implications and challenges:

1. **Violation of Freedom of Expression:** These measures can restrict individuals' right to access information, express themselves, and participate in public discourse.
2. **Economic Impact:** Internet shutdowns can severely disrupt businesses, e-commerce, and essential services that rely on internet connectivity.
3. **Social and Political Fallout:** Shutdowns may fuel public discontent, escalate tensions, and lead to unrest, exacerbating the very issues they were meant to address.
4. **Transparency and Accountability:** Often, governments implement these measures without transparent justifications or public accountability, making it challenging to assess their necessity and effectiveness.
5. **Digital Divide:** Internet shutdowns disproportionately affect marginalized communities and exacerbate the digital divide.

Content blocking and internet shutdowns are increasingly recognized as a violation of human rights, including freedom of expression, access to information, and the right to participate in public life. International human rights bodies have condemned these measures, urging governments to respect fundamental freedoms while ensuring legitimate security concerns are addressed through more targeted and proportionate means.

Conclusion

Freedom of expression in social media in India is subject to a complex legal landscape. While the country recognizes the importance of free speech, there are also laws and regulations aimed at addressing issues such as misinformation, hate speech, and content that may incite public disorder. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, introduced specific rules for social media platforms and digital media intermediaries to ensure greater accountability

and content moderation. The challenge lies in striking the right balance between preserving freedom of expression and addressing harmful content on social media. Content moderation is essential to protect users from abusive, offensive, or illegal content, but it must be done with transparency and adherence to international human rights standards. Users, platforms, and the government must work together to promote a safe and inclusive digital environment that respects diverse perspectives while addressing issues like misinformation and hate speech responsibly. Nurturing a culture of critical thinking, media literacy, and open dialogue is vital to ensure that social media continues to be a force for positive social change and democratic discourse in India. Additionally, staying informed about the evolving legal and regulatory landscape is crucial for users and platforms to navigate the challenges and uphold the principles of free expression in the digital era.

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