
REGULATING FREE SPEECH ON SOCIAL MEDIA: RIGHT VS RESTRICTIONS

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ABSTRACT

This paper aims to explore the complex issue of regulating free speech on social media while balancing the right to express oneself against the necessity of maintaining public order and ethical communication. In recent years, social media platforms have emerged as powerful tools for expression and democratic participation but are equally vulnerable to misuse through hate speech, misinformation and cyber harassment. The paper evaluates the current legal framework in India, including Article 19(1)(a) of the Constitution, the Information Technology Act, 2000 and the Intermediary Guidelines and Digital Media Ethics Code, 2021. It discusses various challenges in regulation such as volume of content, profit motives of platforms, jurisdictional issues, and emerging technologies like deepfakes. The paper highlights significant gaps in existing laws, noting their limited scope and fragmented nature and evaluates a departure from current regulation towards a co-regulatory model that integrates platform accountability, user participation and government oversight to ensure transparency, fairness and effective moderation. Lastly, it recommends ethical and technological enhancements in regulation, such as AI-driven content moderation under public scrutiny as well as development of a unified legislation specifically tailored to the nuances of social media platforms. Essentially, the paper calls for the adoption of a balanced regulatory framework, one that safeguards free speech while curbing its misuse in the digital age.

Keywords: Social Media, Free Speech, Regulation, Challenges.

I. INTRODUCTION

Social media has become an integral part of the present-day communication infrastructure, enabling users to instantly share content, ideas and information on a global scale. From its early beginnings as a simple networking forum to the highly interactive platforms of today, social media has gained the ability to amplify voices and mobilize communities, reshaping the way people connect, express themselves and engage with society, extending beyond personal interactions, influencing socio-political discourse, economic structures and even legal frameworks.

Naturally, these social media platforms have become the primary choice of individuals looking to express their thoughts, feelings and opinions with others, thereby, becoming a conduit of self-expression, constantly expanding the avenues through which individuals exercise their right to free speech. This valuable right of free speech is considered a cornerstone of democracy¹, functioning as a guarantor for individuals participating in the democratic processes of their country, without fears of repression. It is also an internationally recognized human right, protected under instruments like the “Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights”.²

In India, this right is enshrined under the Constitution of India, which declares in its Preamble, inter alia, that it “secures to all its citizens: Liberty of thought and expression” and grants the right to “freely express their thoughts, opinions, and ideas under Article 19(1)(a). This includes the freedom to express oneself through speech, writing, printing, visual representations, or any other means”.³

Digital technologies in the form of social media platforms have facilitated considerable progress and expansion of free speech. However, these platforms have also “accelerated and amplified the spread of false information and hate speech, posing major risks to societal

¹ Tejaswini Kaushal, *A Bird's Eye View of the Right to Freedom of Speech and Expression in India*, MANUPATRA (Jun. 3, 2025), <https://articles.manupatra.com/article-details/A-Bird-s-Eye-View-of-the-Right-to-Freedom-of-Speech-and-Expression-in-India>.

² *International Standards on Freedom of Expression*, UNESCO (Jun. 3, 2025), https://www.unesco.org/sites/default/files/medias/fichiers/2024/01/international_standards_on_freedom_of_expression_eng.pdf.

³ Tejaswini, *supra* note 1.

cohesion, peace and stability”.⁴ Lately, concerns regarding rising instances of hate speech, fake news, cyber harassment and spread of indecent content has raised questions concerning the unfettered nature of social media in recent times. For instance, the latest controversy around an online show called ‘India’s Got Latent’ where objectionable remarks were made by Ranveer Allahbadia, a social media personality, leading to public outrage and legal consequences against the show and its associated people, brought the debate about social media regulations to the forefront.

While the right to free speech of individuals and its safeguards are extended to social media platforms as well, it must be exercised with great care and responsibility so as to create a healthy online ecosystem where balance between free speech and responsible communication is maintained. Striking a balance between the two is necessary to prevent the misuse of this right while also ensuring that legitimate dissent is not silenced as a democracy without free speech risks turning into authoritarian rule, where speech is suppressed and citizens lack a voice in governance.

II. SOCIAL MEDIA REGULATION IN INDIA

Social media’s various platforms have become integral parts of people’s lives, influencing opinions, behaviors and even social norms. While social media has brought about many incentives, it has also introduced significant drawbacks that affect individuals and society as a whole. It is important to note that “social media use is not inherently beneficial or harmful. These platforms offer powerful opportunities for socialization and connection, but may also have some negative effects, including misinformation and disinformation, hate speech, and cyberbullying, etc.”⁵

The rise of digital platforms and social media has made it easier to spread misinformation, leading to violence and unrest. Restrictions and regulations become necessary in such scenarios when this liberty is abused and right to free speech is weaponized on social media platforms where user anonymity strengthens impudence often leading to negative and harmful experiences. This imbalance between unrestricted exercise of online free speech and lack of

⁴ Audrey Azoulay, *Online Disinformation: UNESCO Unveils Action Plan To Regulate Social Media Platforms*, UNESCO (Jun. 2, 2025), <https://www.unesco.org/en/articles/online-disinformation-unesco-unveils-action-plan-regulate-social-media-platforms>.

⁵ *Social Media and the Internet*, APA (Jun. 3, 2025), <https://www.apa.org/topics/social-media-internet>.

accountability has highlighted the need for regulations to ensure that online media platforms remain a healthy and constructive place for the society.

Regulation of social media thus, “matters for the same reason that regulation of any communication medium matters: it shapes the free-speech ecosystem.”⁶ However, great difficulty exists in formulating regulations that do not unnecessarily stifle free speech as “overly broad regulations can lead to censorship, stifling legitimate discourse, while inadequate oversight can allow harmful content to proliferate unchecked. Thus, a nuanced approach is required to balance these competing interests”.⁷ On that note, some existing domain specific regulatory mechanism are discussed below.

REASONABLE RESTRICTIONS - Right of free speech is subject to limitations, meaning that this right cannot be exercised in an absolute fashion and must conform to the restrictions placed upon them. This is evident from the inclusion of *Reasonable Restrictions*, placed upon exercise of freedom of speech and expression under Article 19(2), which lays down grounds on which State can curtail the right of free speech of its citizens “in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence”.⁸ These restrictions ensure that speech does not incite violence, hatred, or harm national integrity as free speech can also be misused as a tool against the ideals of democracy.

THE INFORMATION TECHNOLOGY ACT, 2000 – the objective of the Act states it as an ‘Act to provide legal recognition for means of electronic communication’ and is the primary legislation dealing with computer related offences. Under S. 66A, the Act penalizes sharing of offensive messages through communication services and devices if it is grossly offensive or has menacing character, carries false information for the purpose of causing annoyance, inconvenience, danger, etc. The Government is authorized to block public access of any information in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to an offence, under S. 69A. However, under S. 79, an intermediary who provides services is

⁶ Anuj C. Desai, *Regulating Social Media In The Free-Speech Ecosystem*, Volume 73 Issue 5 HASTINGS L.J. 1481, 1508 (2022).

⁷ De Penning, *Social Media On Trial: Can The Law Keep Up With The Times?*, 23 Sept. 2024, <https://depenning.com/blog/social-media-on-trial-can-the-law-keep-up-with-the-times/>.

⁸ INDIA CONST. art. 19(2).

exempted from liability in certain cases and if they adhere to due diligence guidelines laid down in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 while discharging their duties. It must be noted that it is only a general legislation and does not talk about social media platforms specifically, leading to some regulatory lacunae as a result.

DUE DILIGENCE & MEDIA ETHICS CODE – the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 lays down do's and don'ts to be followed by intermediaries, including social media and significant social media intermediaries. The rules lays down Due Diligence parameters that are to be adhered to by the intermediaries, such as not hosting content that is “obscene, pornographic, pedophilic, encouraging money laundering or gambling, promotes enmity between different groups on the grounds of religion or caste with the intent to incite violence”⁹, etc. The intermediaries and publishers are required to classify and rate the content hosted by them as per the specifications under the rules. Self-Regulating Bodies are established to take action against publishers, such as issue warning, censure, admonishment, delete or modify the content. In addition to the due diligence requirements, intermediaries and publishers of online content are subject to Media Ethics Code that prohibits them from publishing any illegal content, information that may be harmful to the sovereignty and integrity of India, etc. It lays down guidelines for content classification and provisions to limit access to age restricted content.

CONTENT MODERATION - content moderation is the process of observing, examining and managing user-generated content on various social media platforms. Its goal is to ensure compliance with community guidelines, remove harmful or inappropriate content and create a safe online environment. However, this process is far from easy and is riddled with challenges due to the sheer volume and variety of content uploaded. Platforms are flooded with “massive amounts of content every second, requiring swift and accurate moderation, which is often challenging given the limitations of current systems”.¹⁰ Understanding contextual subtleties, including intent and cultural differences, makes content moderation more challenging, as it increases the chances of misinterpretation or unjustified content removal.

⁹ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 3(1)(b)(ii).

¹⁰ De Penning, *supra* note 8.

FACT CHECKING – online platforms often employ the process of fact checking, which involves verification of information to check its accuracy and authenticity. This adds credibility to their platform and prevents proliferation of misinformation or fake news. Despite its benefits, only a limited number of platforms conduct fact checks and recently, Facebook and Instagram have abandoned their policy of fact checking content hosted by them.¹¹ In India, Fact-Check Units were introduced under the provisions of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 with the aim of tackling misinformation. However, the amendment was held unconstitutional and struck down by the Bombay High Court in the case of *Kunal Kamra vs. UOI*.¹²

While dealing with the Ranveer Allahbadia controversy, the Supreme Court of India suggested that the Government must draft a proposal for regulating explicit online content that does not amount to censorship.¹³ The Ministry of Information and Broadcasting issued an advisory to social media platforms to follow and adhere to the existing rules such as the 'IT Rules 2021 Code of Ethics, the Indecent Representation of Women Act, the Bharatiya Nyaya Sanhita 2023, the POCSO Act and the Information Technology Act 2000',¹⁴ to ensure that platforms remained compliant with content restrictions laid down in the existing laws.

Upon analysis it is clear that there exists a legislative vacuum when it comes to social media and online content regulation in the country. Recourse have to be taken under various laws and provisions which do not specifically cater to the nuances of social media. Their scattered nature further leads to confusion and inefficiency which needs to be remedied by a unified and dedicated legislation. To this effect, the Broadcasting Services (Regulation) Bill, 2023 was introduced with the aim to regulate digital platforms, the scope of which was expanded in 2024 but not made public. The Bill was eventually withdrawn due to widespread criticism on ground of excessive restrictions placed on the content and laying down pre-censorship requirements,

¹¹ Liv McMahon, Zoe Kleinman & Courtney Subramanian, *Facebook and Instagram get rid of fact checkers*, BBC (Jun. 1, 2025), <https://www.bbc.com/news/articles/cly74mpy8klo>.

¹² *Bombay High Court officially strikes down Centre's Fact Check Unit, calls amended IT Rules 'unconstitutional'*, THE HINDU (Jun. 1, 2025), <https://www.thehindu.com/news/national/bombay-hc-formally-strikes-down-centres-fact-check-unit-calls-amended-it-rules-unconstitutional/article68684934.ece>.

¹³ *SC asks Centre to regulate online content sans censorship*, THE ECONOMIC TIMES (May 30, 2025), <https://economictimes.indiatimes.com/news/india/sc-asks-centre-to-regulate-online-content-sans-censorship/articleshow/118688626.cms?from=mdr>.

¹⁴ Injila Muslim Zaidi and Shravani Nag Lanka, *How Ranveer Allahbadia's Controversy on 'India's Got Latent' could bring in more stringent OTT regulations*, INTERNET FREEDOM FOUNDATION (May 30, 2025), <https://internetfreedom.in/how-ranveer-allahbadias-controversy-on-indias-got-latent-could-bring-in-more-stringent-ott-regulations/>.

thereby stifling free speech. However, in light of the recent issues and questions around the quality of content, a need for regulation of online content becomes relevant again by overcoming challenges associated with such regulations, albeit while maintaining a balance between restrictions and censorship while exercising the right of free speech.

III. CHALLENGES IN REGULATION

Regulation of social media is a highly difficult task as the industry keeps growing at fast pace and wields widespread dominance. While various laws govern the media, effective oversight remains essential, given its significant impact on public and national interests. The swift advancement of technology further complicates regulation. As these platforms keep evolving and introduce new features, the legal fraternity often struggle to keep pace. Emerging technologies like AI, deepfakes, and augmented reality add additional challenges, requiring frequent updates to existing laws. A major hurdle is the sheer number and variety of social media platforms, making consistent enforcement difficult. “Many advocate for regulation, aiming to balance freedom of expression with ethical standards without resorting to censorship. Despite this, there is an ongoing debate about the necessity of establishing a unified legal framework specifically for media regulation in India”.¹⁵ A dedicated law to such effect is a necessity and is possible to achieve by overcoming the associated challenges in regulation, some of which are briefly discussed below.

PROFIT MOTIVE – the companies behind social media platform ultimately function with a profit motive in mind, often overlooking the damage their platforms may cause in the society. This is due to the fact that a controversial content causes ‘sensationalization’ leading to increased traffic to the post and the media platform, translating to more revenue generation if such content is left unchecked. This makes even a well thought-out regulation ineffective in case of negligence and non-compliance from the companies, thereby ‘subverting regulatory goals to its own business goals’.¹⁶

MODE OF REGULATION – in the present mechanism, social media platforms are primarily regulated by limiting access to the content for general public, either in part or completely as

¹⁵ De Penning, *supra* note 8.

¹⁶ Meera Mathew, *Media Self- Regulation In India: A Critical Analysis*, Winter Issue ILI Law Review 24, 37 (2016).

per the set rules.¹⁷ Frequent suspension of access to such platforms often curb the right to free speech in a proportion that may amount to censorship, proving to be an ineffective mode of regulation. On the other hand, less attention is given to content regulation, which includes removal of objectionable content from the platforms¹⁸ and does not lead to arbitrary suspension of access, effectively regulating only the content that needs to be regulated.

SELF-REGULATION – the existing regulations under IT Act and Rules are self-regulatory in nature, meaning that the social media platforms are mostly left to formulate their own standards and guidelines as well as how they are to be implemented.¹⁹ This creates secrecy around content moderation, often being exercised in a disproportionate manner, leaving the platform users discontent and proves to be generally ineffective as a mode of regulation.

IMPLEMENTATION – differences in opinion about what is offensive, indecent and acceptable in a content adds to the challenge in formulation of a unified regulation. Any disagreement or confusion regarding the offending content and how to take action against it as well as the quantum of punishment makes its implementation challenging. For instance, it can at times be ‘tricky to distinguish hate speech from satire or commentary’ without understanding the full context and nuances in language.²⁰

EMERGING TECHNOLOGIES – the constant emergence of new technologies adds both convenience as well as challenge in regulation, leading to a never ending race to catchup with new technologies and how they might be misused. For instance, creation of DeepFake content and its circulation on social media has raised issues regarding authenticity of content and what measures are needed to deal with such content.

VOLUME OF CONTENT – according to reports, around 500 hours worth of content is uploaded on YouTube every minute²¹, reflecting the sheer amount of content generated and shared on a daily basis. This raises a significant challenge in terms of content regulation as

¹⁷ Information Technology (Procedure and Safeguards for Blocking of Access of Information by Public) Rules, 2009

¹⁸ Pulatsya Shukla, *Regulatory Mechanism For Social Media*, Volume V Issue III IJLLR Journal 1, 8 (2023).

¹⁹ Ashok Kumar Rai & Swatantra Kumar, *Self-Media Regulation in India: Between Constitutional Freedom and Democratic Accountability*, Volume 6 Issue 5 IJRPR 3194, 3196 (2025).

²⁰ Anshu Siripurapu & William Mellow, *Social Media and Online Speech: How Should Countries Regulate Tech Giants?*, COUNCIL ON FOREIGN RELATIONS, Social Media and Online Speech: How Should Countries Regulate Tech Giants? | Council on Foreign Relations (accessed on Jun. 1, 2025).

²¹ STATISTA, <https://www.statista.com/statistics/259477/hours-of-video-uploaded-to-youtube-every-minute/> (accessed on Jun. 1, 2025).

human effort or even use of AI powered technology to review the content becomes a herculean task where some content often gets overlooked.

JURISDICTIONAL ISSUES – the nature of internet and social media being ‘global commons’ means that there are no physical boundaries in the cyberspace and that most social media platforms provide global accessibility, connecting people from all over the world.²² Due to the borderless nature of social media, content is shared and consumed in various countries, leading to the challenge of tracing origin of content and assigning jurisdiction in case of a dispute.

IV. CO-REGULATION AS A WAY FORWARD

The majority of users agree that social media platforms have become a hotbed of harmful content, shared and consumed freely without much intervention from the platforms themselves. Consequently, in the absence of effective control over harmful content shared online, inclusive and safe online spaces for public debate are withering away²³, standing the risk of becoming ‘digital wastelands’, risking abandonment by its users.

Part of the problem lies in the type of regulation that currently governs most social media platforms i.e. self-regulation and top down regulation. In the former, platforms are given the autonomy to decide the content standards and mode of action against such content. This type of regulation acts as a challenge and proves to be ineffective in curbing the spread of harmful content as platforms prioritize their growth over the wellbeing of users. In the top down regulation, Governments resort to banning and limiting access to platforms as a whole, leading to disproportionate regulation.

A middle ground may be reached for better regulation of media platforms i.e. *Co-Regulation*, where platforms as well as users have a say and take proactive part in content regulation. This ensures participation of different stakeholders and promotes transparency in the action taken against questionable content. Democratization of regulation may prove to be more effective, thereby, enhancing the accountability of platforms in content moderation where diverse user

²² Sinan Ülgen, *Freedom Of Expression Online*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, <https://www.jstor.org/stable/pdf/resrep26924.7.pdf> (accessed on Jun. 3, 2025).

²³ Robin Mansell, *Freedom of expression on social media must come with responsibility*, THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE BLOG (May 31, 2025), <https://blogs.lse.ac.uk/euoppblog/2025/01/20/freedom-of-expression-on-social-media-must-come-with-responsibility>.

groups keep a check on arbitrary algorithm, acting as a course corrector for the platforms.

Increased community participation and introduction of mandatory fact-checking on posts that deal with sensitive issue such as health, security and finance are some of the modifications that may bring about a positive change on platforms. The Governments can play an important role in social media regulation by setting a *Content Code Rule*, along the lines of Programme Code and Advertisement Code²⁴, actively consolidating the existing restrictions as well as add new guidelines periodically.

Lastly, recourse maybe taken to technologies such Artificial Intelligence and Machine Learning to enhance content regulation under the oversight of user groups, to tackle the huge volume of data uploaded on social media platforms. These few modifications to the way platforms and content are regulated may prove to be a step in the right direction to ensure safe environments for the exercise of free speech.

V. CONCLUSION

Social media has revolutionized communication, offering a space for connectivity, expression and engagement on a global scale. However, its rapid expansion has brought significant socio-legal challenges, including the spread of misinformation, privacy breaches, fake news and concerns regarding unchecked free speech. While existing regulations such as the IT Act, 2000, the IT Intermediary Rules, 2021 and constitutional provisions like Article 19(2) provide a framework for oversight, they remain inadequate in fully addressing the evolving risks associated with digital platforms.

Effective regulation of social media requires a nuanced approach that balances the right to freedom of speech with the need for responsible content. This involves refining current legal mechanisms and introducing domain specific framework, strengthening due diligence requirements for platforms and integrating ethical guidelines that safeguard user rights while preventing misuse.

Lastly, as technology continues to evolve, regulatory frameworks must adapt accordingly to guarantees that these platforms stay a medium for social impact development instead of a

²⁴ The Cable Television Network Rules, 1994, Rule 6 & 7.

vehicle for negativity. Striking the right balance between innovation and regulation will be crucial in shaping a digital ecosystem that fosters free speech while maintaining accountability.