
FREEDOM OF EXPRESSION ONLINE ‘THE CHILLING EFFECT OF ONLINE HARASSMENT: RECONCILING FREEDOM OF EXPRESSION WITH THE RIGHT TO DIGNITY AND SAFETY’

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ABSTRACT

Today many of our daily tasks rely on digital media, which has made our lives public and created opportunities for anonymous crimes. In India, every citizen has the right to Freedom of Speech and Expression under Article 19(1)(a). However, this right is subject to reasonable restrictions under Article 19(2) and at the same time person's Right to Dignity and Safety is protected under Article 21, a cornerstone of Indian Constitution encompassing the right to Life and Personal Liberty. With the rising number of digital media subscribers, cybercrime has become a significant issue, resulting from misuse of free speech. Online harassment is the most prevalent form of cybercrime. The United Nation Investigative Team to promote

Accountability for crimes committed by Da'esh/ISIL (UNITAD) defines it as a repeated behavior, aimed at threatening, scaring, shaming and silencing those who are targeted with digital tools. Victims often suffer severe emotional, psychological and sometimes legal consequences. The paper analyzes how Indian Legal frameworks including the Information Technology Act, the Digital Personal Data Protection Act (DPDP Act) and the courts play a crucial role in addressing the issue and balancing the right to freedom of speech and expression with the right to dignity and safety online by referencing us with the judgments including: *Shreya Singhal v. Union of India*, *Amar jain v. Union of India*, *Pragya Prasun and others v. union of India*. However, efforts at both individual and community levels, along with continuous updates and robust enforcement mechanisms are necessary to keep pace with evolving cyber threats and technological advancements.

Keywords: Right to Freedom of speech and expression, Right to dignity and safety online, online harassment, information technology Act, digital media, UNITAD

INTRODUCTION

The internet has radically transformed our communication pattern by fostering global connectivity and elevating the visibility, recognition and perspectives of underrepresented groups such as women, minorities, LGBTQ+ Individuals and others who may face structural barriers or exclusion. Every person has the right to digital access even with disabilities as held in the case of *Pragya Prasun & Ors v. Union of India & Ors.*¹ and *Amar Jain v. Union of India*².

However, the proliferation of internet use has created an environment conducive to cybercrime.

Cybercrime, as a technological scourge, is not limited to India; it is a massive issue that affects the entire world. The term cybercrime is used for any illegal activity carried out via computer, phone, digital notepad, or other electronic device with malicious intent to cause physical, financial, or mental harm or loss to individual or group of individuals for their own personal gain.

The Cambridge dictionary defines cybercrime as crimes committed with the use of computers or relating to computers, especially through the internet. Universally, cybercrime is understood as “an unlawful act wherein the computer is either a tool or a target or both”.

Online harassment is a prevalent occurrence among the many offensive activities that occur in cyberspace, affecting users of all ages whether directly or indirectly, and is one of the many objectionable acts that occur in cyberspace. Online harassment, a form of cybercrime, has become a pressing issue in today’s digital landscape which sparked intense debates about the balance between right to freedom of speech and expression and the right to dignity.

Online harassment can have a profound impact on “individuals” online free expression, which leads to self-censorship, withdrawal from online interactions due to fear of harassment and raises crucial questions about balancing freedom of speech with right to dignity and safety.

THE CHILLING EFFECT OF ONLINE HARASSMENT

The bad experiences compel women, girls, LGBTQI+ activists, and human rights defenders to withdraw from or lessen their participation in online spaces. Limiting your internet activity also

¹ *Pragya Prasun & Ors v. Union of India & Ors*, 2025 INSC 599

² *Amar Jain v. Union of India*, 2025 INSC 599

limits your activism and information access in a society where a lot of public communication and debate takes place online. Often, this silencing effect is deliberate, especially when governments or states are the perpetrators. They deploy tactics to intimidate people into remaining silent. Our interviews with many human rights defenders who have been victims of online violence mirrors what many experts call “the chilling effect”.³

SOCIOLOGICAL EFFECT

Online harassment has a detrimental impact on the society as a whole as it encourages selfharm, social isolation, and decreased civic and professional engagement, particularly women. Victims may experience a decline in self-esteem, feeling of powerlessness, reduced academic and professional performance, irregular eating and sleep pattern, despair, anxiety, panic attacks, and even suicidal thoughts or actions, while perpetrators may become more aggressive and engage in delinquent behavior. The difficulty in reporting and lack of confidence in law enforcement’s ability to address these complex issues further exacerbate the harm, making it challenging to protect victims and foster a healthier online environment.

LEGAL RECOURSE

Online harassment carries significant legal consequences in India under the Information Technology Act and the Bharatiya Sakshya Adhiniyam, leading to penalties such as fines, imprisonment, and restraining orders. The victim can initiate both criminal and civil actions to seek justice, compensation, and protection.

The Information Technology Act nevertheless has important safeguards against online wrongdoings, even after the Supreme Court ruled in 2015 that section 66A which penalized abusive online messages was unconstitutional due to its broad and vague nature. For instance, section 66-B deals with punishment for dishonestly receiving stolen computer resource or communication device, section 66-C penalizes identity theft, section 66-D provides punishment for cheating by personation by using computer resource, section 67 deals with punishment for publishing or transmitting obscene material in electronic form, section 67-A provides the punishment for publishing or transmitting of material containing sexually explicit

³ amnesty.org , <https://share.google/92fIRXJizbOC7Df2q> (last visited Oct. 09, 2025).

act, etc., in electronic form, and section 67-B provides punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.⁴

Section 78(1)(ii) of BNS defines Stalking as any man who monitors the use by a woman of the internet, email or any other form of electronic communication. This includes actions like tracking her online activities to monitor her digital presence. Section 78(2) of BNS provides the punishment of imprisonment extending to three years and fine on first conviction and imprisonment extending to five years and fine on subsequent conviction.⁵

Victims can also apply to a court for a civil harassment restraining order to legally prevent the harasser from contacting them or approaching their location.⁶

RECONCILING FREEDOM OF SPEECH WITH RIGHT TO DIGNITY

“Give me the liberty to know, to argue freely, and to utter accordingly to conscience, above all liberties” – John Milton

The essence of freedom of speech and expression is very well depicted by the quotation of John Milton above. Freedom of speech and expression is the prominent amongst the six fundamental rights in the nature of freedom guaranteed under Article 19(1)⁷ to the citizens which is one of the fundamental elements of every democratic society. It entails the ability of an individual to communicate any aspect of his opinion even criticizing the government in any way possible that may include speaking, writing, demonstrating or even choosing to remain silent. Apart from these traditional ways to express, the penetration of information and communication technology provides various platforms to express their views or opinions such as social media network, video sharing sites, and blogging platforms which connect global audience. In a democratic society, this right plays a crucial role as it ensures a free and transparent press which is the fourth pillar of democracy.

⁴ Information Technology Act, 2000, ss. 66-B, 66-C, 66-D, 67, 67-A, 67-B, No. 21, Acts of Parliament, 2000 (India).

⁵ Bharatiya Nyaya Sanhita, 2023, sec. 78, No. 45, Acts of Parliament, 2023 (India).

⁶ The Code of Civil Procedure, 1908, Order XXXIX, No. 5, Acts of Parliament, 1908 (India) And Protection of Women from Domestic Violence Act, 2005, s. 18, No. 43, Acts of Parliament, 2005 (India)

⁷ Indian Constitution, art. 19, cl. 1.

Patanjali shastri, J. in AK Gopalan's case⁸ observed, "a man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals." Article 19(2) imposes eight restrictions on the freedom of speech and expression which are as follows:

- a) Sovereignty and integrity of India
- b) Security of the state
- c) Friendly relations with foreign states
- d) Public order
- e) Decency or morality
- f) Contempt of court
- g) Defamation
- h) Incitement of an offence⁹

These restrictions are very significant to protect state's interest and for the protection of individual right. One for his own liberty must not offend the liberty of others. Article 21 provides every person the right to life and personal liberty which entails the right to live with dignity and safety.

Following Maneka Gandhi case the Supreme Court in **Francis Corolie v. Union territory of Delhi**¹⁰ stated that "the right to life is not restricted to mere animal existence. It means something more than just physical survival". Every person has the right to live with dignity and safety and not be subjected to degrading treatment, slander and hate.

Hate speech, slander, defamation or incitement to violence can degrade the dignity of individuals or groups and overly strict interpretation of dignity can be used to suppress legitimate criticism or dissent.

⁸ A.K. Gopalan v. State of Madras, AIR 1950 SC 27

⁹ Indian Constitution, art. 19, Cl. 2

¹⁰ Francis Corolie v. Union territory of Delhi, AIR 1981 SC 746

It is where it becomes necessary to balance these two rights.

The Indian judiciary has tried to balance both rights in various cases which are as following:

Wazahat khan v. Union of India¹¹

Bench: Justices B.V. Nagarathna and K.V. Vishwanathan

Justice Nagarathna emphasized that Article 19(1)(a) is a qualified right and must be interpreted in the light of the values of fraternity, unity and integrity as used in the preamble.

“If the citizens want to enjoy the right to freedom of speech and expression, it should be with reasonable restrictions also. Apart from that, there must be self-restraint and regulations to enjoy the valuable freedom not like this abuse.”

Swami Ramdev v. Facebook, Inc. & Ors.¹²

The court striking a balance between Article 19(1)(a) and Article 21 online find that the contents of videos discussion which is solely derived from the book which is banned in India since 2017 because of it's defamatory nature, is also against the dignity of swami Ramdev. The court ruled that if defamatory content is uploaded in India, an Indian court can pass an order for its global removal.

This case highlighted the jurisdictional challenges of online harassment and established a precedent for enforcing the right to dignity across border.

SMA Cure Foundation v. Union of India and Ranveer Allahbadia v. Union of India¹³

Bench: Justice Surya Kant and Joymalya Bagchi

The bench observed that the right to freedom of speech and expression cannot override the right to dignity under Article 21.¹⁴

¹¹ Wazahat khan v. Union of India, July 14, 2025, SC

¹² Swami Ramdev v. Facebook, Inc. & Ors., 2019 SCC OnLine Del 10701 (Delhi High Court)

¹³ internetfreedom.in, How Ranveer Allahbadia's Controversy on 'India's Got Latent' could bring in more stringent OTT regulations (last visited Nov. 06, 2025)

¹⁴ Indian Constitution, art. 21

Justice Surya Kant explicitly stated that Article 21 must prevail if any competition takes place. The court showed disapproval towards the online content that mocked marginalized groups and questioned.

The court has called for wider debate on formulating guidelines regarding reconciling the freedom of speech with right to dignity.

THE DATA CORROBORATES THE DEPRESSING TRUTH CYBERCRIME CASES IN INDIA

CASES REGISTERED UNDER CYBER CRIMES

YEAR	2018	2019	2020	2021	2022
NO. OF CASES	27,248	44,735	50,035	52,974	65,893

Source: Government of India, “Report of press information bureau on incidents of cybercrime targeting elderly people” (Ministry of home affairs, 22July 2025)

CATEGORIES OF CYBERCRIMES IN INDIA IN THE YEAR 2020

CATEGORY	NO. OF CASES
Total cybercrimes cases in India	50,035
Cyber stalking	1614
Cyber blackmailing	762
defamation	84

Fake profile cases	247
Fake news cases	838

Source: National Crime Records Bureau (NCRB), “Silent screams: A narrative Review of cyber bullying among Indian Adolescents (National Library of Medicine, 06 August 2024)

CYBERBULLYING STUDY COMPARISON TABLE

CATEGORY	STUDY1	STUDY2
SAMPLE SIZE	228	174
AGE GROUP/ GRADE	11-15 Years	Middle graders
VICTIMIZATION RATE	17.2%	17%
PERPETRATION RATE	Not reported	8%

Source: Indian Journal of psychiatry “Predictors, prevalence, and patterns of cyber bullying among school-going children and adolescents” (Indian Psychiatric Society, July 2023)

The spike in cyber security incidents from 10.29 lakhs in 2022 to 22.68 lakhs in 2024 is indicative of the growing scale and complexity of digital threats in India. A total of Rs. 36.45 lakh in cyber frauds were recorded on National Cybercrime Reporting Portal (NCRP) as of February 28, 2025, indicating that financial cost is becoming more pronounced. Over 9.42 lakh SIM cards and 2,63,348 International Mobile Equipment Identity (IMEI’s) linked to cyber frauds have been blocked.¹⁵

¹⁵ Government of India, Press information bureau, <https://www.pib.gov.in/PressNoteDetails.aspx?NoteId=155384&ModuleId=3#:~:text=At%20the%20same%20time%2C%20the,as%20of%2028%20February%202025>, (last visited Oct.13, 2025)

ONLINE HARASSMENT AND CYBER-VIOLENCE EXPERIENCED BY WOMEN ACROSS VARIOUS REGIONS

REGION/COUNTRY	PERCENTAGE OF WOMEN AFFECTED	NATURE OF ONLINE HARASSMENT/VIOLENCE	TIME FRAME
European Union	10%	Unwanted/ offensive sexually explicit e-mails or SMS, inappropriate advances on social media	Since age 15
Arab states	60%	Exposure to online violence	In the year 2023
Western Balkans and eastern Europe	More than 50%	Technology facilitated violence	In their violence
Uganda	49%	Online harassment	As of 2021 (ever experienced)
South Korea	85%	Hate speech online	As of 2016

Source: UN Women, “Facts and figures: Ending violence against women” (UN Women Organization 25 November 2024)

SUGGESTION

The two fundamental rights i.e., Right to freedom of speech and expression and Right to Dignity, frequently clash with one another. Both the Constitution and International conventions have acknowledged both rights as an integral part.

The following considerations can help balance these two rights in the future:

- Digital Literacy and Awareness** – Individuals who possess digital literacy and awareness are able to safely and responsibly navigate, assess, and produce information online.

2. **Self-regulation** – Citizens should practice self-restraint and take responsibility of their speech.
3. **Cultivate a culture of respect** – Exercising digital empathy, deliberate content sharing, and attentive communication are all part of developing respect online.
4. **Clear community guidelines** – The guidelines ought to be brief, outline permissible conduct (such as banning spam and hate speech), and outline the repercussions. There should be respectful communication and protection of user privacy.
5. **Reporting mechanism** – Effective reporting mechanisms for online content should be developed which include creating multiple channels for user feedback as well as systematic process for managing and responding to the input.

CONCLUSION

It is well said by Cicero, a roman politician that “The people’s good is the highest law”. This can be inferred from the Constitution of India which provides right to freedom of speech and expression along with right to Dignity and safety. The reputation of an individual is a fundamental component under Article 21 of the Constitution and balancing of fundamental rights is a constitutional necessity. A person’s right to freedom of speech and expression does not grant them the authority to disparage others. Since everyone has the right to live with dignity and to have a good reputation, citizens have a correlative duty to respect others” freedom.

The court is moving towards a value-based, relational paradigm of free expression – one that acknowledges its entwinement with dignity, fraternity, and public order – instead of considering it as an unqualified right. Though, this framework is still emerging. The court has, thus far, refrained from establishing strict guidelines. Instead, it has engaged in judicial nudging, offering advice, making insinuations and advocating for more extensive debate. In doing so, it aims to balance pragmatic caution and constitutional adherence. The court must exercise caution while navigating these issues to prevent the abuse of harmony and dignity as means of stifling reasonable dissent. The future holds a judicially overseen system of inclusive, contextual, and responsible free expression that embodies the responsibilities and rights of Indian citizenship in the digital era.

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