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# **BALANCING RIGHTS IN THE DIGITAL SPHERE: FREEDOM OF EXPRESSION VERSUS ONLINE HATE SPEECH IN MULTINATIONAL PLATFORMS**

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## **ABSTRACT**

‘Freedom of expression’ is mentioned under Part III of the Constitution, which protects individuals’ rights to express their opinions. On the other hand, ‘online hate speech’ refers to the real identity factors of an individual or a group, including discrimination, gender, ethnicity, nationality, and many more. In general terms, it may be noted that online hate speech poses significant threats to individuals, communities, and public order. Moreover, it is said to be the main pillar of democratic societies, which has been imparted in many international treaties and also domestic constitutions. However, with the growth of the internet and the widespread use of digital platforms, especially multinational online platforms, individuals have deviated from the way they exercise their ‘right to expression’. The ‘regulation of online hate speech’ in the present digital era has given rise to many challenges, such as balancing the rights and regulating hate speech on online platforms. This research paper specifically discusses the relationship between the ‘freedom of expression’ and ‘the regulation of online hate speech’, examining the aspects of socio-legal rights and how these online platforms make conflicting demands. This paper analyses legal frameworks across jurisdictions and their overlapping jurisdictions. This also provides insights into the role of technology and ongoing debates on online hate speech and its regulations, with the help of case laws, such as Facebook’s involvement in Myanmar, the Shreya Singhal case, and the case of Kunal Kamra in 2023.

**Keywords:** Freedom of expression; online hate speech; digital platforms; digital era regulation; online safety.

## Introduction:

In the 21<sup>st</sup> century, we live in a society where we have access to any information through the internet at our fingertips. The rise of the internet has turned social media platforms like Facebook, Instagram and many more into a public space, which allows people to share their opinions and express their views and participate in legal global affairs. The Internet is said to be the main source of information in this era of technology, which provides a wide range of services from education to employment. But as it is said, nothing comes free of cost; everything in this world is attached to some kind of responsibility. This paper talks about how the internet impacts through social media platforms on the ‘right to freedom of speech and expression’. Hate speech, harmful online content are targeting vulnerable groups and leading to violence, discrimination, etc. Hence, this paper discusses whether the internet violates or makes the ‘right to freedom of speech and expression an absolute right without any reasonable restrictions’. These rights cannot be granted as an absolute right because an absolute right may lead to the compromise of the other individuals' rights, safety and privacy. International legal frameworks under “*Article 19 of the Universal Declaration of Human Rights (UDHR)*,”<sup>1</sup> “*Article 19 of the International Covenant on Civil and Political Rights (ICCPR)*”<sup>2</sup> Highlight the ‘freedom of expression’, and “*Article 20(2) of ICCPR*”<sup>3</sup> explains that States shall prohibit any kind of discrimination, hostility or violence.

Multinational social media platforms are connecting people across the globe and regulating the role of speech and expression, which leads to unpredictable challenges such as cyber-attacks, cybercrime. Hence, these platforms make it difficult to balance the regulating power with the protection of human rights, laws, cultural norms and approaches to freedom of expression, which vary across jurisdictions. For example, the U.S. laws strongly protect even offensive speech but whereas European countries have strict hate speech laws.

This paper helps in critically examining the relation between the ‘freedom of expression’ and online hate speech, its restrictions and legal perspectives of both.

## Research questions

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<sup>1</sup> Universal Declaration of Human Rights, art.19, U.N.G.A.Res.217 A (III) (1948).

<sup>2</sup> Int'l Covenant on Civil & Political Rights, art. 19(2), Dec.16, 1966, 999 U.N.T.S.171.

<sup>3</sup> Id at 2 art. 20(2).

1. How can the ‘Right to Freedom of Speech and Expression’ under Constitutional and International Human Rights frameworks be balanced with ‘the regulation of online hate speech on digital platforms’?
2. To what extent do online platforms such as Facebook, Twitter and YouTube regulate the right to speech on the internet, and how does it affect human rights and democratic values?

### **Research objectives**

1. To examine the constitutional and international legal frameworks governing the right to ‘freedom of expression’ and online hate speech.
2. To analyse how multinational digital platforms regulate online speech and what challenges arise from jurisdictional overlaps.
3. To assess the role of the internet as a basic human right and understand its impacts on the ‘right to speech and expression’ in this digital era.

### **Literature review**

#### **1. Article 19 and Reasonable Restrictions:**

*“In the article Freedom of Speech and Expression Scope of Article 19(1) (a) in the constitutional framework and reasonable restrictions”*<sup>4</sup> by Soumya Srivastava, 2023. It is said that speech is a divine gift to mankind, which is guaranteed under the Constitution of India. Though this right is seen in a broader sense, certain acts are not protected under the specified article, stating that this is not an absolute right and certain reasonable restrictions are imposed by the state mentioned under “article 19(2)”<sup>5</sup> the state justified these restrictions as they are necessary to maintain communal harmony. However, at the time, the vagueness or misuse of these laws led to violations of the ‘right to freedom of speech and expression’, and numerous constitutional concerns have been raised.

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<sup>4</sup>Soumya Srivastava, Freedom of Speech and Expression: Scope of Article 19(1) (a) in the Constitutional Framework and Reasonable Restrictions, 6 (6) IJLMH Page 1071 - 1082 (2023), <https://doi.org/10.10000/IJLMH.115446>.

<sup>5</sup> INDIA.CONST. art.19(2).

## 2. Information on the Technology Act and Intermediary Liability:

“In the article *Evolving Scope of Intermediary Liability in India*”<sup>6</sup> by Ishan Gupta & L. Srinivasan, 2023. I understood that with the increased use of the internet, India has enacted the “Information Technology Act, 2000 (IT Act)”<sup>7</sup> To regulate online content by blocking websites or specific content which are considered unlawful or illegal. “Section 66A of the IT Act”<sup>8</sup> Criminalises any kind of information that was sent via computer and contains ‘offensive or menacing, or causes annoyance or inconvenience, among the vague terms’. This provision was extremely prohibitive of online hate speech content. This was the most frequently used to arrest individuals making abusive social media posts, which included political criticism, too. In the benchmark judgement “*Shreya Singhal v Union of India*”<sup>9</sup> When two young women are prosecuted under “Section 66A of the IT Act”<sup>10</sup> For a Facebook post, which was declared unconstitutional, it is said that it violated the “reasonable restrictions mentioned under Article 19(2)”<sup>11</sup> Also, it was struck due to the vagueness of words like annoying and inconvenient. This case also challenged the “Section 79 intermediary liability protection of India”<sup>12</sup>. This also deals with the safe harbour provision for intermediaries like social media platforms. Provided that they will not be liable if they observe due diligence and remove the content whenever required by law. The apex Court read down “Section 79”<sup>13</sup> and said that it is not required by an intermediary to remove the content just by receiving a complaint from anyone without a court order. The court found that it went beyond “Article 19(2)<sup>14</sup>” and allowed for private censorship without a prior government order.

## 3. “*Kunal Kamra v. Union of India*”<sup>15</sup>

In this case, has talked about the ethical conduct to be followed by digital media platforms, which made the government establish a ‘fact-checking unit’ to identify and remove any sort of fake information or misleading content related to the government.

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<sup>6</sup> Ishan Gupta & L. Srinivasan, Evolving scope of intermediary liability in India, 37 Int'l Rev. L. Comput. & Tech. 294 (2023).<https://doi.org/10.1080/13600869.2022.2164838>

<sup>7</sup> The Information Technology Act, 2000 (India).

<sup>8</sup> Information Technology Act, 2000 § 66A (India).

<sup>9</sup> Shreya Singhal v. Union of India, AIR 2015 SC 1523 (India).

<sup>10</sup> Id at 8.

<sup>11</sup> Supra note at 5.

<sup>12</sup> Information Technology Act 2000, § 79, (India).

<sup>13</sup> Id at 12.

<sup>14</sup> Supra note at 5.

<sup>15</sup> Kunal Kamra v. Union of India, W.P.NO.1234/2023, S.C. (Dec. 15, 2024) (India).

#### 4. Hate speech and its regulation.

*“In the article, the challenges of regulating hate speech on social media in light of the theory of freedom of expression”*<sup>16</sup>, by Biruk Paulos and Seydi Celik, 2021. Hate speech has been analysed in various theories, and key perspectives are:

- Absolutist vs. restrictionist debate: U.S. scholar like Sunstein argues for unrestricted speech and European scholars like Jeremy Waldron protect dignity and equality.
- Harm principle and offensive principle: this literature differentiates restrictions on speech which harm directly, according to John Stuart and whereas according to Feinberg, restrictions are imposed when a serious offence is committed.
- Democratic function: Some legal theorists, such as Critical Race theorists, Delgado and Stefancic, argue that hate speech perpetuates inequalities and silences the voice of vulnerable groups.

5. In the “article *Freedom of Expression and Online Hate Speech*” by Mansi Singh (2023)”<sup>17</sup>. The author discusses about the constitutional and international frameworks of free expression and talks about how the internet transforms free expression and provides opportunities for individuals to participate in global affairs, and the risks of misusing these platforms. She argues on the point that the reasonable restrictions mentioned in the ‘Indian Constitution’ control the misuse of the internet and maintain a democratic balance approach.

### RESEARCH METHODOLOGY

This research employs a ‘mixed-methodology approach, combining doctrinal and comparative legal research methods’. Doctrinal research here focused on statutes, constitutional provisions and case laws related to the ‘right to freedom of speech and expression’. On the other hand, comparative legal research involves ‘international human rights laws’, such as the ‘Universal Declaration of Human Rights (1948)’, the ‘International Covenant on Civil and Political

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<sup>16</sup> Biruk Paulos & Seydi Celik, The Challenges of Regulating Hate Speech on Social Media in Light of Freedom of Expression Theories, 11 Suleyman Demirel U.L.Rev. (SDUHFD) 97 (2021).<https://dergipark.org.tr/en/download/article-file/1719724>.

<sup>17</sup> Mansi Singh, Freedom of Expression and Online Speech, vol. 8, Issue 7 Int 1 J. Novel Research & Dev. (IJNRD) 83 (July 2023), <https://ijnrd.org/papers/IJNRD2307083.pdf>.

*Rights*' and an analysis of the position of these laws in relation to the '*European Convention*' and the '*U.S*'.

## EXPECTED RESULTS

1. This research talks about a balanced approach between 'freedom of expression' and online hate speech. However, there are "*restrictions to freedom of expression under Article 19(2)*"<sup>18</sup> It cannot be absolute in the digital era.
2. Analyses the role of multinational digital media platforms in regulating the 'right to freedom of expression' and ensures that it must be subjected to accountability and transparency.
3. As there is a jurisdictional overlap between the countries on this aspect, there should be a balanced rights-centred approach based on three tests named legality, necessity and proportionality.

## FREEDOM OF SPEECH AND EXPRESSION: A FUNDAMENTAL RIGHT

### Definition

'Right to freedom of speech and expression is mentioned under Part III fundamental rights' under "*Article 19(1) (a) of the Constitution of India*, says this right allows the citizens to express their thoughts, opinions, and beliefs through any communicable medium, including words, writing, printing, pictures or broadcasting."<sup>19</sup> It is a basic human right that guarantees individuals the liberty to express their opinions, thoughts, and ideas without the interference of the state. It covers not only the verbal communication but also the opinions, thoughts or ideas expressed in the form of written, artistic, symbolic and digital. This 'right to freedom of speech and expression' was also subjected to reasonable restrictions under "*Article 19(2)* in relation to security of the state, public order, decency, morality, contempt of court, defamation, incitement to an offence, sovereignty and integrity of India."<sup>20</sup>

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<sup>18</sup> Supra note at 5.

<sup>19</sup> INDIA.CONST. art. 19(1)(a).

<sup>20</sup>Supra Note at 5.

## Historical evolution

The history of ‘freedom of speech and expression’ has been evolving for ages. It was first introduced by the Greeks. They used the word ‘parrhesia’, which means to speak frankly or free speech. This word was first used in the fifth century BC in countries such as England and France, at which time when more people were expected to adopt this freedom as a right. And then the ‘*English Bill of Rights, 1689*’ and the ‘*French Revolution in 1789*’ have adopted ‘the freedom of speech as a constitutional right’ and ‘the Declaration of Rights of Man’ and its citizens, respectively.

And then subsequently, the UN General Assembly of the ‘*Universal Declaration of Human Rights (UDHR)*’ recognised ‘the freedom of speech and expression’ as one of the basic human rights under “*article 19 of UDHR*” on 10 December 1948.

## International legal frameworks

### 1. “*Universal Declaration of Human Rights (UDHR), 1948*”

Under “*Article 19 of the Universal Declaration of Human Rights*”<sup>21</sup> It is declared that everyone has the right to freedom of opinion and expression, as a part of which right includes freedom to hold opinions, without interference and to seek or receive information and ideas through any media.

### 2. <sup>22</sup>“*International Covenant on Civil and Political Rights (ICCPR), 1966*”

Under “*article 19(2) right to freedom of expression*”<sup>23</sup> includes freedom to seek, impart and receive information and ideas of all kinds, which allows restrictions mentioned under “*article 19(3)*”<sup>24</sup> when it is provided by law and necessary for the protection of security, public order and health, etc.

### 3. “*European Convention on Human Rights (ECHR) 1950*”

Under “*Article 20 of the European Convention of Human Rights*”<sup>25</sup> The right is protected, but

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<sup>21</sup> Supra Note a 1.

<sup>22</sup> Supra Note at 2.

<sup>23</sup> Supra Note at 5.

<sup>24</sup> INDIA.CONST. art. 19(3).

<sup>25</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, art.20, Nov. 4, 1950, 213 U.N.T.S. 221, 470 U.N.T.S.247.

with some reasonable restrictions.

#### 4. United States

The U.S. laws strongly protect even intolerable, offensive speech or hate speech unless it constitutes incitement.

#### **Significance of the right to freedom of speech and expression**

The 'right to freedom of speech and expression' is referred to be one of the most important 'fundamental rights' as it allows individuals to think independently, express their views and share their opinions and enables citizens to participate in a meaningful democratic process and achieve an accountable and transparent democratic system. This right is said as the marketplace of ideas. This concept of a marketplace of ideas was first mentioned by Justice Oliver Wendell Holmes, who argued that truth emerges only from the free exchange of competing ideas. In this globalised world, the internet is said to be essential for cross-border communication, economic development and innovation. Hence, this right is not just said as a legal right but also a societal necessity.

### **ONLINE SPEECH**

#### **Definition**

Any form of communication or expression that takes place on the internet and digital platforms is referred to as online speech. It includes a wide range of aspects like posting texts, Images, videos, emojis, memes and audio on various social media platforms such as websites, blogs, Instagram, Facebook and other communication tools.

Online speech is different from other forms of speech mainly in the aspects of global reach, anonymity and online activism and mobilisation.

'Global reach': online speech is globally reached it allowing individuals across the globe to share their opinions, ideas, views and interact with others.

'Anonymity': users can hide their identities while expressing their opinions; they have the option of remaining anonymous while expressing their views and opinions without being judged by others.

‘Online activism and mobilisation’: The Internet plays a major role in accelerating social activism and mobilisation through social media platforms people can organise protests, awareness programmes, and make people aware of their rights. hence, it becomes an important tool in making one individual's voice heard by multiple people and getting it pushed by society and politically.

In legal terms, it is said as an extension of the ‘right to freedom of speech and expression’ in the digital Domain. And a powerful tool to participate in a democratic society's decision

making system, innovation, and social interaction, but at the same also causes harm to society, such as defamation, cyberbullying, hate speech and many more.

The word Hate speech is used and defined differently in different contexts. International bodies use the term to advocate hatred and incitement, whereas in domestic law, it is used to target defamation or insults against groups. This lacks a universally accepted definition generally used to refer to the speech that causes harm to individuals based on race, religion, gender, ethnicity, sex or disability. The ‘United Nations’ defined hate speech as any kind of communication or expression in writing, behaviour or discriminatory language used with reference to any person or group.

### **The relation between freedom of expression and online speech**

The relationship between these two is very complex and interconnected with each other. As it is defined as a basic ‘fundamental human right’, which states the freedom to seek, receive and impart information and ideas regardless of frontiers. On the other hand, online speech is considered an extension of freedom of expression, which refers to expressing opinions, thoughts and views through various social media platforms.

The internet and rise of social media platforms have made the ‘right to freedom of expression’ reach globally and become a powerful tool for individuals and marginalised groups, and activist to spread their voice across the globe and advocate for social change in society. And also helped individuals to exercise their right to share their views, opinions and participate in the democratic processes.

But as it is said, every coin has two sides. Online speech, social media platforms not only helped individuals in reaching out globally but also gave rise to many challenges, such as online

hate speech, misinformation, and online harassment. So there a need to balance between online speech and freedom of expression to protect individuals from been harmed but it is freedom of expression keep on evolving day to day it became hard for the policy makers to to address appropriate legal framewroks.so it is always required to maintain a striking balance in ensuring online speech meet the test of legality to avoid hate speech and make sure the core right of freedom of expression and online speech are protected.

### **Current academic debate on Hate speech**

The regulation of hate speech has become one of the most tense and controversial topics in the present era. Many arguments have been put before the scholars for and against the regulation of hate speech. Academics from law, political science, philosophy and media are studying how to address the harms caused by hate speech and how to regulate the same and preserve the right to freedom of expression.

#### **1. Free speech ‘absolutists vs. restrictionists’**

‘Absolutists’ argue that in the US First Amendment states said every speech, including hate speech, should be protected. But whereas liberals say this right can never become an absolute right due to its censorship.

“Restrictionists: scholars like Jeremy Waldron support hate speech regulation. His core argument is that hate speech undermines human dignity, equality, so laws are required to protect vulnerable social groups”<sup>26</sup>.

#### **2. ‘Harm principle vs. Offense principle’:**

“According to the John Stuart harm principle, some scholars argue that speech should only be restricted when it causes direct harm to the individual”<sup>27</sup>.

“Other scholars say if we refer to the offence principle by Joel Feinberg, limited restrictions

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<sup>26</sup> Apalara, Rahman, striking a Balance: Freedom of Expression and the Prohibition of Hate Speech and Offensive Remarks (September 11, 2017).<http://dx.doi.org/10.2139/ssrn.3035410>

<sup>27</sup> Supra note at 16.

are to be imposed on speech if in case it causes serious offence, such as humiliation or fear”<sup>28</sup>.

### **3. democratic function of free speech:**

Some academics argue that unrestricted speech can eventually undermine the concept of democracy by silencing the voice of vulnerable groups. In reference to “critical race theorists”<sup>29</sup>Hate speech is not just a word but also a tool that entrenches inequalities.

The debate continues on how to apply the test of legality, necessity and making it one of the most important legal and ethical questions even in this 21<sup>st</sup> century.

### **Restrictions on the right of freedom of speech and regulation**

Under “*Article 19(2) of the Constitution*”, it is mentioned that this right is not absolute and is subject to some reasonable restrictions by the state. The restrictions mentioned in this article are as follows: “security of the state, friendly relations with foreign states, morality and decency, public order, contempt of court, defamation, incitement of an offence and sovereignty and integrity of the nation”<sup>30</sup>.

#### **1. Security of the state**

Some reasonable restrictions can be applied to this right, which involves the security of the state. Security of the state refers to serious and aggravated forms of public disorder. Example restrictions are applied to speech that keeps national security at risk, such as incitement to war, rebellion, or violence.

#### **2. Friendly relations with foreign states**

This ground was added by the ‘*First Amendment Act of 1951*’. The state imposes reasonable restrictions on freedom of speech and expression if it is negatively affecting the friendly relations of India with other state or states.

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<sup>28</sup> Oraegbunam, Ikenga K. “A Critique of the Independence of the ‘Offense Principle’ in the Legal Philosophy of Joel Feinberg.” International Journal of Comparative Law and Legal Philosophy (IJOCLLEP), vol. 2, no. 3, 2020.<https://www.nigerianjournalsonline.com/index.php/IJOCLLEP/article/viewFile/976/960>

<sup>29</sup> Supra note at 16.

<sup>30</sup>Supra Note at 5.

### 3. Decency and morality

These are mentioned under “*sections 292 to 294 of the Indian Penal Code 1860*”<sup>31</sup> Restricts the right to speech and expression on the grounds of decency and morality, and then it prohibits the sale or distribution or exhibition of obscene words.

### 4. Public order

Speech inciting violence, riots or communal disharmony is restricted.

### 5. Contempt of court

The expression contempt of court was mentioned under “*section 2 of the Contempt of Courts Act 1971*”<sup>32</sup> The term contempt of court relates to ‘civil contempt or criminal contempt’ under the said act. Speech which scandalises or lowers the authority of the judiciary or interferes with judicial proceedings can be restricted.

### 6. Defamation

Protection of individual reputation is a ground for restricting speech.

### 7. Incitement to an offence

Speech that basically incites the people to commit a crime is restricted. For example, provoking others to engage in unlawful assembly, violence or terrorism.

### 8. Sovereignty and integrity of India

Speech that threatens the unity, integrity or independence of India is restricted. Example: calling for secession or armed rebellion is restricted.

## RIGHT TO THE INTERNET

Right to the internet refers to recognition of access as a basic right of an individual in this digitalised world. In this modern era internet has become a basic need of people across the

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<sup>31</sup> Indian Penal Code, 1860, §§ 292-94 (India) (repealed 2023); Bharatiya Nyaya Sanhita, 2023, §§ 167-169 (India) (in force since July 1, 2024).

<sup>32</sup> Contempt of Courts Act, § 2 (India).

globe. Providing a wide range of services from education, trade, business, employment, health care, political participation, to exercising their 'right to free speech and expression' on digital platforms. Such access to internet services can lead the users into trouble and face challenges if not handled in the right way; at the same time, denial of such access can also lead to major violations of basic 'fundamental human rights'.

Although the internet allows individuals to share their opinions, thoughts, and views, the state cannot grant it as an absolute right to express one's views and opinions freely in the virtual world, as reasonable restrictions mentioned under "*Article 19(2)*"<sup>33</sup> Are imposed on 'freedom of speech and expression'.

Courts in India as well as abroad courts said that access to the internet cannot be arbitrarily denied, but it should satisfy the restrictions based on the test of legality, necessity and proportionality.

### **Violation of the right to the internet in India**

India is considered one of the countries which have the highest number of internet shutdowns. Internet shutdowns can be imposed by the government authorities to maintain public order, to protect the security of the nation.

The internet shutdown in Jammu and Kashmir in 2019 is one of the longest internet shutdowns to have taken place in any democracy. Suspension of the internet in Jammu and Kashmir after the abrogation of "*Article 370*",<sup>34</sup> which happened for several months, is said to be a violation of the right to the internet as it violated the right to privacy and right to life under "*Article 21*"<sup>35</sup> Of the Indian Constitution. Suspension of internet services restricted the residents of Jammu and Kashmir in exercising their right under "*Article 19(1)*"<sup>36</sup>, Right to Trade, Business and Commerce under "*Article 19(1)(g)*"<sup>37</sup> Of the Constitution.

In 2021-2022, authorities suspended internet in the states of Rajasthan and Uttar Pradesh during public examinations to avoid malpractices and cheating, which gave rise to the question of

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<sup>33</sup> Supra Note at 5.

<sup>34</sup> INDIA.CONST. art. 370.

<sup>35</sup> INDIA.CONST. art. 21.

<sup>36</sup> Supra Note at 20.

<sup>37</sup> INDIA.CONST. art. 19(1)(g).

proportionality.

In Manipur, 2023 internet services have been suspended for more than four months to avoid the outspread of communal conflicts between Meitei and Kuki communities. But that prolonged suspension of the internet made individuals criticise the government as it was violating free speech, education and livelihood.

Internet access is considered one of the basic fundamental needs of every individual. Access to the internet provides a wide range of services through social media platforms, but at the same time, when such access is misused, it leads to many challenges, as it violates individuals' right to participate democratically and lacks equality.

Though there are justified by the government in the aspects of public order, national security but frequent and arbitrary shutdowns can lead to a lack of employment. So, a balanced approach is essential in order to ensure and safeguard this right to the internet for the upcoming digital era.

### **The government's stance on internet suspension**

In general, governments suspend the internet to prevent terrorism, which can be a severe risk for national security, public order. But the government justify internet shutdown under “sec 5(2) of the Indian Telegraph Act, 1885”,<sup>38</sup> Which issues orders through authorities to take control of tele-communication services in case of maintaining public safety or in situations of public emergency.

“*The Temporary Suspension of Telecommunication Services (public Emergency on Public Safety) Rules, 2017*”<sup>39</sup> Laid down the process for suspension of telecommunication or internet services.

Under “*The Information Technology Act 2000*”<sup>40</sup> It allows for blocking of some specific content or websites that are considered unlawful, or which can cause a serious threat to the sovereignty and integrity of India.

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<sup>38</sup> The Indian Telegraph Act, 1885, § 5(2) (India).

<sup>39</sup> The Temporary Suspension of Telecom Services (Public Emergency on Public Safety) Rules, 21017, G.S.R. 998(E) (India Aug.7, 2017).

<sup>40</sup> Supra Note at 8.

As well as under “*section 163 of Bhartiya Nagarik Suraksha Samhita (BNSS) 2023*<sup>41</sup>”, said that the executive authorities are to issue a written order to prohibit any kind of gathering of four or more people in public to avoid any kind of danger or nuisance that causes risk to the life of the public, or property. This order is passed against any individual or the public at large. The restrictions imposed by magistrates will last for two months, which may sometimes extend to a period of 6 months, and the magistrate can lift the restrictions at any time.

## REGULATION BY MULTINATIONAL PLARFOEMS

Multinational platforms like Meta (Facebook, Instagram, WhatsApp), Google, YouTube, Twitter, TikTok and many other social media platforms. All these private platforms have taken over the digital sphere. They serve as gatekeepers of online expression and global disclosure of information. They decide what content is to be circulated, what should be restricted and how hate speech is regulated on social media platforms. They often adopt community standards some sometimes local laws, to moderate harmful content and avoid misinformation.

The following are some categories that are restricted:

- Hate speech on the grounds of trade, religion, gender and sex
- Incitement to violence or terrorism.
- Misinformation related to health, elections, like the misinformation spread during COVID-19
- Child and sexual abuse content

### Enforcement mechanism:

- Content moderation removal of posts, videos that are harmful to society.
- ‘Meta (Facebook and Instagram): Employs an AI-driven mechanism for content moderation and human reviewers relying on partnerships with fact checkers and NGOs’<sup>42</sup>.

<sup>41</sup> Bhartiya Nagarik Suraksha Samhita, No. 45, 2023, § 163 (India).

<sup>42</sup> Meta Platforms, Inc., Privacy Policy, Meta <https://privacycenter.instagram.com/policy>

- ‘X(Twitter)’<sup>43</sup> when ownership has been changed, enforcement of rules and regulations of hate speech has fluctuated, giving rise to many concerns regarding perform governance.
- ‘YouTube’<sup>44</sup> uses content filters to punish and penalise the violators. But although every platform tried to give the best out of it in reducing hate speech, misinformation, many challenges have been faced, including a lack of transparency, accountability in decision-making, uneven enforcement across jurisdictions, over-censorship and under-regulating content.

### **Challenges faced in regulating speech on social media platforms**

- Jurisdictional conflicts: social media platforms are used across the globe, but laws are national. The content that is illegal in one country might be legal in another country, which may lead to conflicts and jurisdictional differences.
- Uncertainty in defining hate speech: Hate speech varies significantly across cultural and legal contexts, so what is considered hate speech in one country might not be the same in the other country.
- Algorithmic regulation: social media platforms are said as the easier outlets of information across the world. The most sensitive content, public opinions on controversial aspects of society, goes viral just by one click, posing a risk of violation of speech, and all these are highly reliant on AI moderation, which misinterprets cultural distinctions.
- Government overreach: the government use hate speech as a weapon to moderate laws against the political opposition. They often pressure the social media platforms to remove content which are critical of the state in the context of hate speech, ultimately

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Meta Platforms, Inc., Facebook Community Standards, Facebook Transparency Center, <https://transparency.fb.com/policies/community-standards/>

Meta Platforms, Inc., Instagram Community Guidelines, Instagram Help Center, <https://help.instagram.com/477434105621119>.

<sup>43</sup> X Corp., X Rules and Policies, X Help Center, <https://help.twitter.com/en/rules-and-policies>.

<sup>44</sup> You Tube, LLC, Community Guidelines, You Tube

<https://www.youtube.com/howyoutubeworks/our-policies/>;  
YouTube, LLC, Terms of Service, YouTube <https://www.youtube.com/t/terms>.

lacking accountability and transparency in decision-making.

- Lack of international standards: There is no single international treaty that regulates speech on social media; thus, the absence of uniform laws leads to inconsistent law enforcement.<sup>45</sup>

### **Balancing rights and regulations: Is that balance possible?**

For the purpose of regulating online speech, there should be a balance between ‘freedom of expression’ and harmful hate speech on digital platforms. Through online speech, individual can express their views, opinions on digital media platforms, but the same hate speech threatens the dignity, free expression, equality and social democracy. Because the term hate speech can be used in a way to abuse, insult, incite, cause violence or something that creates discrimination of vulnerable groups based on race, caste, sex, or religion.

A foremost writer, ‘Prof. K. Mahoney, R v Keegstra’ on the subject has stated that: “Freedom of expression should be more inclusive than exclusive, more communitarian than individualistic and more aware of the actual impact of speech on the disadvantaged members of society. Courts have advanced an equality approach using a harm-based rationale to suggest the regulation of hate propaganda as a principle of equality”<sup>46</sup>.

As it is said that freedom of expression is not an absolute right, any restrictions to the right to freedom of expression based on prohibiting hate speech and being marked as offensive and abusive should satisfy the three tests that are laid down under the international human rights law. The information that the individuals are exhibiting in the digital media should have met the standards of law, directly satisfied a legitimate aim and fulfilled the requirements of necessity and proportionality.

Courts also play an important role in striking a balance, as Courts across the globe also make use of the doctrine of proportionality to decide whether restrictions of free speech are satisfied or not, for example, in the case of “*Shreya Singhal vs. Union of India (2015)*”<sup>47</sup> The Supreme Court struck down “Section 66A of the Information Technology Act 2000”<sup>48</sup> They are acting

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<sup>45</sup> Supra note at 16.

<sup>46</sup> Idid.

<sup>47</sup> Supra note at 9.

<sup>48</sup> Supra note at 8.

vague, but at the same time, uphold the principle that only speech which is inciting violence or public disorder is to be restricted. However, the incitement to violence can be considered as the only test for determining whether the speech in digital platforms violated the right to freedom of expression or whether the matter amounts to hate speech or not, in identifying what exactly amounts to hate speech in this age of digital technology.

To answer this question, whether the balance between the right to freedom of expression and hate speech cannot be struck, as it is a shifting balance. There are many factors that determine whether the freedom of expression is overruled by online hate speech, such as non-discrimination, liberty and dignity. In order to decide one right over another right, states have imposed restrictions on the right of freedom of expression and ensured that regulation preserves democracy instead of undermining it.

## CASE STUDIES

### **Facebook's involvement in Myanmar**

Facebook said that, as one of the influential social media platforms played a crucial role in this conflict and contributed to ethnic violence. Myanmar, formerly Burma, has a majority of Buddhist people and the Rohingya Muslim minority. In the year 2017, when the majority Buddhist and minority Rohingya Muslims faced ethnic violence and conflicts, Facebook was very badly criticised for not calling for moderation of content posted on its platform. Historically, to say Myanmar has a long ethnic conflict history where the 'Rohingya community are being denied citizenship under Myanmar's 1982 citizenship law', stating they are Muslims considered as foreign invaders and terrorists. By the year 2017, Facebook had become the most dominant social media platform used in Myanmar, so it became a primary source of news and communication. Due to poor development, people mostly started on Facebook, and Facebook became their only internet access. When the clearance operations led to mass killing, rapes and destruction of homes of Rohingya, nearly 700,000 Rohingya Muslims fled to Bangladesh, leading the one of the world's largest refugee crises. Then, Buddhist people especially Buddhist nationalists used Facebook has platform to create violence and started discriminating Rohingya by saying that they are terrorists, fake stories narration of Rohingya attacks against Buddhist, creating posts and memes encouraging ethnic cleansing, face accounts to spread anti-Rohingya which ultimately led to the spread of hate speech on

Facebook so an “Independent UN Fact Finding Mission on Myanmar 2018”<sup>49</sup> stated that Facebook played a crucial role in inciting offline violence and called the platform substantial. Facebook was mainly accused because initially, it lacked content moderation capacity in the native language, Burmese. And designed algorithms to maximise engagement ended up amplifying inflammatory and sensationalist content. Then, due to lawsuits that Rohingya refugees filed in the US and UK against Meta created pressure on Facebook to remove military-linked Facebook accounts, expand Burmese language moderation skills, and prepare a transparency report and cooperate with international NGOs, .in 2021, Facebook banned the military (Tatmadaw) and its commercial entities from the platform, citing it as severe human rights abuses. And Facebook continues to face global scrutiny for its failure in Myanmar.

UN investigators and international courts said that Facebook failed to act responsibly in avoiding incitement, violence and a lack of strict moderation policies. Not only Facebook all digital platforms must be responsible enough to avoid hate speech and protect the basic ‘fundamental rights of individuals’.

#### **In the case of “*Shreya Singhal vs. Union of India*”<sup>50</sup>**

Shreya Singhal, a law student who challenged Section “66A of the IT Act”, was subjected to which the Supreme Court issued a ruling in the year 2015 on the subject of online speech and intermediary responsibility in India. In this case, the “Information Technology Act 2000 section 66A”,<sup>51</sup> which deals with restrictions on online expression, was declared illegal by ‘the Supreme Court of India’ as it violates the right to free speech provided under “Article 19(1)(a) of the Indian Constitution”<sup>52</sup>. Petitioners also challenged ‘Section 69A Blocking of Websites<sup>53</sup>, and ‘section 79 intermediary liability of the IT Act’<sup>54</sup>. Under ‘section 66A’, penalties for sending information that was offensive and had a menacing character. But it was struck down due to vagueness, its effects on free speech, and abuse. So, the ‘Supreme Court’ declared Section 66A as unconstitutional, and it also did not fall under the restrictions mentioned in ‘Article 19(2)’. The court has upheld this particular section of the it Act and subjected it to judicial review. Finally, the court provided a distinction between discussions and incitement as

<sup>49</sup> Human Rights Council, Rep. of the Independent International Fact-Finding Mission on Myanmar, U.N. Doc. A/HRC/39/64 (2018).

<sup>50</sup> Supra Note at 44.

<sup>51</sup> Supra note at 8.

<sup>52</sup> INDIA.CONST. art. 19(1)(a).

<sup>53</sup> Information Technology Act, 2000, § 69A (2000) (India).

<sup>54</sup> Information Technology Act, 2000, § 79 (2000) (India).

discussions on digital platforms are completely protected only those contents creating incitement to violence or disobey the restrictions under ‘Article 19(2)’ are restricted.

“*Kunal Kamra v. Union of India*”<sup>55</sup>

In the case of Kunal Kamra 2024 Bombay High Court has highlighted that “Section 79 of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2024, particularly Rule 3(1)(b)(v)<sup>56</sup>” which made the government establish a fact-checking unit to identify and remove fake or any kind of misleading content about the government. The court has found that this rule has violated ‘the right to freedom of expression’.

Petitioner Kunal Kamra and other media organisations filed a writ petition challenging the constitutional validity of the amendments. Particularly, the satirical, political criticism content caused a chilling effect on free speech. But the ‘right to freedom of expression’ doesn’t mean that we can speak in whatever way we like to even in this case, the court finalised that the rules violated ‘Right to Equality, Freedom of Speech and Expression’, reasonable restrictions and “Article 19(1)(g) Right to Practice any Profession or to carry on any Occupation, Trade, or Business”<sup>57</sup>.

This judgement has strengthened the protection of online speech by regulating fake news and removing the misleading information, and both these cases gave a strong demonstration that the Indian judiciary's capacity and efforts to safeguard free expression in digital media platforms against vagueness, chilling effects on free speech. And make consistent efforts to control digital media content on a clarity, necessity and proportionality basis.

## CONCLUSION

The rise of digital platforms has transformed the ‘right to freedom of speech and expression’ as a global right, enabling individuals free right to freely express themselves on social media platforms and making individuals actively engage in democratic participation and activism. However, this development of technology which expanded the risk of online hate speech, misinformation, discrimination against vulnerable groups and harassment, leading to

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<sup>55</sup> Supra note at 15.

<sup>56</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2024 (India), Part III, Rule 3(1)(b)(v).

<sup>57</sup> INDIA.CONST.art.19(1)(g).

incitement of violence and socio-legal challenges. The paper analysis will ‘freedom of expression’ remains as a cornerstone of democracy, as it cannot be treated as an absolute right, especially when exercising the aspects of dignity, safety and equality of others.

This paper talks about the complexities surrounding the online speech and strives for a balanced approach by comparing study of international frameworks such as the UDHR, ICCPR, and ECHR along with the domestic constitutional law and the landmark judgement of ‘*Shreya Singhal v. Union of India*<sup>58</sup> and *Kunal Kamra v. Union of India*<sup>59</sup>’ shows that restrictions must pass the three tests of legality, necessity and proportionality.

The Internet has a great impact on individuals in exercising their ‘right to freedom of speech and expression’, both positively and negatively. One way it is always useful to people aware

of global issues and but on the other hand, it is increasingly used for illegal acts, which ultimately led the government to apply strict restrictions on illegal content and censor social media platforms.

At the same time, the role of social media platforms such as Meta, YouTube and Instagram shows how digital media platforms act as the gatekeepers of online expression. AI moderation, lack of transparency and how inadequate regulation in the case of Facebook's involvement in Myanmar led to violence, incitement and harassment and proved that social media platforms cannot remain as neutral intermediaries and need accountability.

And although the state has justified the reasons behind the internet shutdown how the debates on internet shutdowns in India have raised tensions between state security, maintaining public order and individual freedom.

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<sup>58</sup> Supra note at 9.

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