
FROM INTERMEDIARIES TO GATEKEEPERS: A CONSTITUTIONAL INQUIRY INTO CONTENT MODERATION AND FREE SPEECH ONLINE

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ABSTRACT

The dynamism of digital communication has propelled social media platforms from mere intermediaries to a powerful locus of control over online speech. In this regard, this research paper aims to explore the constitutional challenges posed by content moderation regimes of dominant tech giants, in relation to the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution, through the use of algorithmic filtration, community guidelines and arbitrary takedown regimes, thereby examining whether such private technology firms exercise quasi-regulatory power over the digital public discourse. Further, it probes the tension between platform governance and constitutional morality, and whether existing statutory framework, especially the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, addresses the issues of transparency, accountability, and arbitrariness in content moderation.

The paper will further investigate the applicability of constitutional principles to private actors who perform public functions by referring to various judicial pronouncements and comparative legal analysis. Moreover, it analyzes the issues of misinformation, hate speech and other harmful content; and the risk of over-censorship and its likely chilling effect on free expression; situated within the larger framework of constitutional governance by pointing out the need for balanced regulations which protects both the individual rights and the platform's responsibility. Hence the paper would contend for the need for a rights-based regulatory regime that embed constitutional values within the structure of digital governance in a way to bring social media platforms in sync with constitutional ethos, fairness, and free speech.

Keywords: Content Moderation, Freedom of Speech and Expression, Constitutional Morality, Social Media Platforms, Digital Governance

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Introduction

The rise of digital communication technologies in recent years has led to a fundamental shift in the way individuals communicate in the public domain. With the rise of platforms like Facebook, X (formerly Twitter), and YouTube, the internet has been turned into a public space for political discourse, social interaction, and the propagation of ideas. These private entities, originally designed as neutral conduits for user generated speech, have taken on roles as controllers of speech visibility, accessibility and circulation.² This has in turn raised serious constitutional questions. In the past, regulation of speech lay with the state under constitutional constraints, but increasingly the right is being mediated through private, non-governmental entities that control our digital spaces via content moderation. Content moderation, in the context of social media, includes processes like algorithmic filtering of posts, application of community standards, and discretionary removal of content, thereby turning social media platforms into de facto regulators.

In the Indian legal and constitutional context, Article 19(1)(a) guarantees all citizens the right to freedom of speech and expression,³ though the right is not absolute and is subject to restrictions under Article 19(2).⁴ As such, private platform control intersects with the constitutional guarantee of speech rights and raises the constitutional question of whether private entities, through controlling access and information dissemination in public spaces, can influence and, therefore restrict constitutionally guaranteed fundamental rights without being constitutionally regulated themselves?

This paper aims to assess the status of social media platforms as intermediary versus gatekeepers of speech and explore the need for a constitutional approach to address these platforms' content moderation practices, rooted in the ideals of constitutional morality, transparency, and accountability.

Research Problem

The paradigm shift of social media intermediaries from neutral information brokers to actively managing and curating online discourse through various means of content moderation, has

² Tarleton Gillespie, *Custodians of the Internet* 6–8 (Yale Univ. Press 2018).

³ INDIA CONST. art. 19, § 1, cl. (a).

⁴ INDIA CONST. art. 19, § 2.

ushered in an acute constitutional problem concerning the scope and application of freedom of speech and expression guaranteed by Article 19(1)(a) of the Indian Constitution. While it has been well-established under Indian jurisprudence that the protection under Article 19(1)(a) has thus far been invoked only against actions initiated by the State; the contemporary context, wherein privately owned technology platforms wield an unprecedented amount of control over public discourse via algorithmic curation, arbitrary and discretionary content removal, and through detailed community guidelines, creates a significant lacuna to the aforesaid notion. Thus, the research question posed herein is as to whether such private entities engaged in regulating public discourse are fulfilling a 'public function' thereby triggering a constitutional challenge. The provisions enshrined within the Information Technology Act, 2000, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021; though have attempted to mitigate intermediary liability through due diligence requirements and penalties; however, have failed to adequately address the problems of arbitrariness, lack of transparency and opacity of decisions taken under these guidelines which consequently threaten genuine expression and lead to over-censorship. This failure, coupled with the constitutional lacuna regarding the applicability of certain rights to private actors carrying out quasi-governmental functions, forms the research problem of whether the current regime is sufficient to handle the evolving dynamics of free speech in the digital age and if and to what extent are intermediary activities subject to constitutional oversight.

Research Objectives

This research seeks to analyze the change in social media platforms from being mere conduits to being active controllers of online expression, and discuss the constitutional implications of this change vis-à-vis the right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. The research aims to critically review the nature and scope of content moderation strategies employed by social media platforms like algorithm filters, community guidelines and content takedown requests in controlling online discourse

The research is further intended to critically examine the sufficiency of the current Indian legal framework namely the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in addressing issues of transparency, accountability and arbitrariness of platform decision making. Additionally, the research also aims to discuss the applicability of constitutional norms such as constitutional

morality to private actors acting in quasi-public capacities.

The research also intends to analyze the problems of misinformation, hate speech and over-censorship and the potential for these issues to lead to a chilling effect on free expression. Ultimately, the research aims to suggest a balanced, rights-based regulatory framework that makes digital governance compatible with constitutional principles and democratic ideals.

Research Questions

1. In what ways has social media evolved from neutral intermediaries to gatekeepers of speech online, and what effect does this have on the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution?
2. Is the current legal framework in the form of the IT Act 2000 and IT rules 2021 (as amended by IT rules 2021) sufficient to bring transparency, accountability and fairness to content moderation processes?
3. To what extent should constitutional values, such as constitutional morality and protection of freedom of speech, apply to private social media platforms engaged in quasi public functions?

Research Methodology

The research has adopted doctrinal and analytical methodology to study the constitutional and legal issues surrounding the functioning of the platforms in moderating content. The study largely depends on secondary sources, such as statutes, case law, books and research articles, policy papers and commentaries, concerning digital governance and free speech. Statutes such as Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 have been critically examined to understand the way in which intermediary liability and the role of the platforms in moderation is regulated.

Also, the study involves an in-depth analysis of the case law. Critical interpretation of the decisions of the apex court to understand the constitutional principles as applied in a changing dynamic of free speech in the digital era has been the part of the study. Further, a comparative study of regulations in jurisdictions such as the U.S. And the EU has been included for a

broader perspective on the functioning of the various platforms and the way of their regulation.

An analytical framework has been adopted to examine the question of transparency, accountability and arbitrariness of the platform's governance, and issues arising due to algorithmic moderation, takedown and content removal. The research has also involved analysis of the idea of constitutional morality and its applicability to private individuals carrying out functions of public nature so as to devise a comprehensive and nuanced understanding for balanced and rights-based regulation.

Evolution of Social Media Platforms: From Intermediaries to Gatekeepers

The transformation of social media sites is indicative of a paradigm shift in the structure of digital communication, from relatively passive, non-interventionist intermediaries to proactive agents of online discourse. As defined historically, "intermediaries" were mere conduits that acted as facilitators of communication between two users, lacking any editorial role in regulating content. This distinction was acknowledged in domestic statutes like the Information Technology Act, 2000, where "safe harbour" protection was provided to intermediary entities who published content provided they used due diligence in its publication, assuming the intermediary neither produced nor curated content and therefore possessed limited control over the same and cannot be expected to check the content at the time of its publication.⁵

However, the exponential increase in the scale of the Internet, as well as the proliferation of deleterious content, such as hate speech, disinformation, and extremist propaganda, required and forced platforms to adopt more stringent and interventionist approaches to content regulation. Platforms began implementing intricate content moderation systems composed of human moderators and automated technologies to remove potentially objectionable content, enforce community standards, and actively monitor user-generated content in real time. It marks a movement away from neutrality, towards proactive curation and structuring of digital spaces, both by promoting certain ideas and limiting the dissemination of others.

Algorithmic governance adds another layer of control which remains invisible to the end user. Decisions regarding content visibility are made increasingly through complex proprietary algorithms that have no external oversight or transparency. This opaqueness leads to worries about potential biases, discrimination, and manipulation of public discourse. In the absence of

⁵ Information Technology Act, 2000, § 79 (India).

objective rules and standards, arbitrariness reigns in these processes and impacts user trust.

Concentration of communicative power in few large social media companies exacerbates these issues as decisions of dominant platforms impact public discourse significantly, users of which now rely on these platforms to express themselves and gain information, yet are dependent on these platforms with few alternatives and remedies to seek redressal for arbitrary moderation and account closure. Therefore, this move from intermediary to gatekeeper is not just a functional shift but structural. This is an urgent need of re-examination of existing legal and constitutional frameworks that govern such a powerful role played by these entities.

Constitution Framework: Freedom of speech in India

- **Scope of Article 19(1)(a)**

Article 19(1)(a) of the Constitution of India declares the right to freedom of speech and expression as one of the cherished rights fundamental to democracy. This right, being very wide in amplitude, includes not only verbal utterances, but the right to publish and circulate, access information to other view points and to be a part of free flow of ideas and thoughts. The Supreme Court has been consistently adopting liberal and expansive interpretations of this right.

The Supreme Court while pronouncing judgment in *Romesh Thappar v. The State of Madras* expressed that "Freedom of speech and expression lies at the root of all democratic organizations".⁶ In *Indian Express Newspapers v. Union of India* the apex court observed that "Free speech is the bedrock of a transparent government".⁷ With the emergence of digital technology, this right to free speech and expression also includes "freedom of expression in and through the internet" thus making online platforms such as social media **sites an important area to uphold and defend constitutional freedoms.**

- **Reasonable Restrictions under Article 19(2)**

Even though this right is considered one of the fundamental rights and the bedrock of democracy, it is not absolute. Article 19(2) lays down reasonable restrictions that the State can impose on the right to freedom of speech and expression in the interest of sovereignty and

⁶ *Romesh Thappar v. State of Madras*, A.I.R. 1950 S.C. 124.

⁷ *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 S.C.C. 641 (India).

integrity of India, 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. The State can impose restrictions only on the grounds mentioned in Article 19(2). Moreover, such restrictions must meet the test of legality, necessity and proportionality.

In *Modern Dental College v. State of Madhya Pradesh* the Supreme Court clearly established the doctrine of proportionality to ensure that the restrictions imposed must not be excessively stringent and must not travel beyond the objective.⁸ This principle is crucial in an era of online speech as it prevents broadly phrased laws that could limit freedom of expression by the disproportionate application of restrictive principles.

- **Judicial Interpretation in the Digital Context**

The introduction of the internet has brought about many changes which have challenged traditional constitutional approaches and have forced re-interpretation of several rights including free speech. In *Shreya Singhal v. Union of India* the Supreme Court struck down Section 66A of the IT Act, on grounds of vagueness and overbreadth as it had the potential to curtail freedom of expression.⁹ The Court clearly pointed out that any restriction must be clear and precise. They also stated that there should be procedural safeguards. In *Anuradha Bhasin v. Union of India* the right to freedom of speech and expression via the internet was confirmed to be Constitutionally protected, expanding conventional notions of the right.¹⁰ In *Faheema Shirin v. State of Kerala* it was observed that internet access is intrinsically linked to the fundamental right of expression.¹¹

The Supreme Court's interpretation indicates the constant need for adaptation to technological developments and an imperative that all forms of State and platform regulation be made in accordance with basic constitutional values such as proportionality, transparency, and fairness.

Content Moderation and quasi-regulatory power

Social media platforms' practice of content moderation entails a set of procedures that have direct implications for the shape of free expression. Such procedures can include deletion of

⁸ *Modern Dental College & Research Ctr. v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353 (India).

⁹ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

¹⁰ *Anuradha Bhasin v. Union of India*, (2020) 3 S.C.C. 637 (India).

¹¹ *Faheema Shirin R.K. v. State of Kerala*, 2019 SCC OnLine Ker 1733.

illegal and harmful material, temporary or permanent bans from the platform, algorithmic downgrading of visibility and de-promotion of content, and fact-checking of disputed claims and labeling of information. These mechanisms, often framed as tools to combat disinformation, hate speech, and abusive conduct, do have a significant impact on user autonomy in expressing themselves, and on the access to divergent views. Indeed, decisions of moderation have the power to shape not only permitted speech, but speech visible and consequential within the digital public sphere.

The immense impact of private social media companies on public discourse and debate: "social media is now the primary forum where we carry out political and civic life... Private companies control that space and with it, the terms of our ability to speak and listen to others" has led to their classification as "modern public squares".¹² Because their control of platform access and of user content has allowed companies to delineate what speech can be published and to whom it can be distributed, concentration of such power in private entities have significant implications for the concept of democratic accountability where decisions that affect millions of people are carried out privately and without transparency or external checks.

In addition, social media platforms now take on the role of a de facto regulatory authority. With their self-devised rules governing speech (terms of service, community guidelines) and the technological and bureaucratic systems used to implement and enforce these rules, and to dispute grievances raised by users, they combine all three branches of a governmental authority—the legislative (rule-making), executive (enforcement), and judicial (dispute resolution) -- creating quasi-regulatory powers that blur the boundary between private and public power. The inherent lack of standardized, uniform decisions as well as the discretion of enforcement and of platform decisions on specific cases render the whole process opaque and prone to subjective judgment. For users seeking redress from wrongly imposed content moderation or account suspensions, available options often lack the necessary transparency and accountability necessary to provide relief and to challenge the decisions. This quasi-regulatory power requires careful constitutional scrutiny to assure that its exercise is indeed just, accountable, and protective of free speech.

¹² Jack M. Balkin, *Free Speech in the Algorithmic Society*, 51 U.C. Davis L. Rev. 1149 (2018).

Constitutional Morality and the Governance of Platforms

Constitutional morality is understood as respect for the core values that constitute our Constitution: liberty, equality, dignity, justice, and rule of law. All institutions-be they public or private-must operate in conformity with constitutional morality. Constitutional morality entails adherence not only to the spirit of the Constitution but to the spirit in which powers must be wielded. In the case of *Navtej Singh Johar v. Union of India*, the Supreme Court emphasized that constitutional morality is a standard that should be used to maintain the protection of rights against majority will and arbitrary State power¹³. The idea is gaining traction in the age of the internet, when only the State no longer wields power over speech.

The application of constitutional morality to the actions of private entities such as social media platforms is a contentious issue. Until now, fundamental rights have been enforceable against the State only. However, court jurisprudence indicates a gradual recognition of the idea that private entities performing a public function are subject to constitutional limitations. Social media platforms perform such public functions-as they provide a platform for public discourse, facilitate participation in the public sphere, and are an outlet for discussion, debate, and even political activism. Their functions, therefore, are not different from the functions of public bodies.

The functions performed by these platforms, such as regulating content or suspending accounts, directly affect users' freedom of speech and expression and can be seen as akin to performing a public function. As such, their mode of governance must be consistent with constitutional morality-that decisions of these platforms should not be arbitrary, discriminatory, or disproportionate.

However, at present, governance by social media platforms is lacking in transparency and accountability. Content moderation decisions are made in a relatively secretive manner, and even the reasons why a piece of content was taken down, or why an account was suspended are not always clearly provided to the user. The appeal process that is available to the user provides little substantive remedy against the action and is often conducted by the same body which took the initial decision. Further, due to lack of uniform standards, a range of arbitrariness and the temptation of censorship arises. A greater incorporation of constitutional

¹³ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

morality within the framework of platform governance will mandate a re-structuring of governance of these platforms through clear and consistent rule-making and application of rules governing content, transparent decision-making, and adequate redressal mechanisms.

Legal Regulation of intermediaries in India

The framework for the regulation of intermediaries in India is laid down by the Information Technology Act, 2000 which can be seen as the basis of digital governance in India. According to Section 79 of this act, intermediary receives 'safe harbour' protection and is absolved from liability for anything transmitted to or received from intermediaries which is displayed on the intermediary platform by or on behalf of any person other than intermediaries if he complies with prescribed due diligence requirements and does not himself create the content, display or modify it, This reflects the initial understanding of intermediaries being only a conduit of information flow and the changing times are responsible for modifying this passive role of intermediaries.

In this regard to cater to new issues, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 are formed that imposes several duties on intermediaries which are including having the grievance redressal officers and a time bound system for removal of content and compliance of legal directions from government.¹⁴ Additionally, enhanced due diligence for significant social media intermediaries are implemented, thus strengthening their accountability to maintain control over online content and also extending the scope of duties imposed on them.

However, such regulations have also faced criticism on various grounds. The concerns about State overreach can be perceived particularly for content removal orders and traceability mechanism of information on the platform. Imprecise language and ambiguous definitions lead to uncertainty in implementation leading to arbitrariness of intermediary's decision making. Also, strict time limits often force intermediaries to take very cautious steps leading to over-censorship of legitimate speech.

Thus, a careful balance between the above is required. The legal framework has to be strong enough to prevent the spread of harmful information while also not transgressing the right of

¹⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) (India).

speech and expression as a fundamental right and putting it as the intermediary acting as an over-censor.

Problem of Misinformation, hate speech, harmful content

The fast growth of digital space has led to increasing prevalence of misinformation, hate speech and other harmful content. Such forms of expression present substantial risks to public order, democracy and dignity as it exacerbates social divisions, erode the trust towards public institutions. Furthermore, fast scale and velocity at which speech is disseminated on social media platforms makes it harder to stop the propagation of fake or false narratives; and that is intensifying their effect on public opinion and well-being.

In this scenario, social media platforms have a decisive role to take by instituting content moderation processes to address the challenges. However, they lack coherence and standardized approaches, moderation practices on platforms are often imprecise and lack consistency. Although the restriction on harmful content is necessary; their restriction practices too often lead to suppression of legitimate speech by being unclearly applied and lacking clear policies and transparency, leading to concerns about their effects on platform governance.

Unnecessary and inappropriate moderation practices could also lead to over-censorship, where lawful dissent, minority expression or controversial opinions are being restrained, causing a chilling effect on free speech due to fear of sanctions, suspensions of accounts or content removals. This is harmful to free speech as an instrument of democracy and public debate. Moderation actions should be restricted to that necessary to prevent serious harm and should not be disproportionately broad. There must be a balance.

Problem of Misinformation, Hate Speech and Harmful Content.

The explosion of digital has exacerbated the presence of misinformation, hate speech and other harmful content. Such content presents challenges to public order, human dignity and democracy itself. The spread of misinformation can create false narratives about current issues, influence elections and destroy trust in institutions. Hate speech can exacerbate divides between social groups and harm minorities, negating principles of equality and fraternity. However, the rapid proliferation and virality of social media platforms amplify these negative impacts and make traditional approaches to content regulation largely irrelevant.

Content moderation by social media companies has emerged as a key mechanism for addressing such harms. However, such processes often suffer from a lack of uniformity, consistent standards and transparency. Moderation decisions are frequently based on ambiguously drafted terms of service and automated systems that cannot always account for context, leading to unfair results. At best, harmful content escapes moderation; at worst, legitimate expression is suppressed. Such inconsistencies may damage user trust and pose fairness concerns.

More profoundly, poor moderation can result in an overreach of power, where the overzealous suppression of certain lawful content can silence dissent, suppress minority perspectives and make debate on controversial topics impossible due to fear of repercussion, such as the removal of a post or suspension of a user's account. Such an environment is inimical to the nature of a healthy democracy that relies on free exchange and a plurality of views.

There is even greater concern about the privatizing of speech regulation where rights issues were once addressed at the governmental level. The centralizing power of a few technology firms without constitutional oversight threatens an arbitrarily and discriminatorily executed system for making decisions about such content and an equally inscrutable system for algorithmic content moderation that is likely to reflect or promote its own biases. The key would seem to be ensuring that such measures, if adopted, are proportional and meet necessary ends to reduce harm. There is, indeed, a pressing need for greater transparency, clearly established policy frameworks and robust, functioning grievance redress mechanisms to insure both procedural and substantive fairness in moderating content.

Toward a Rights-Based Regulatory Framework

The current legal regime governing digital platforms seems increasingly insufficient to deal with the constitutional issues that arise from the changing nature of social media companies. As these companies increasingly shift from mere passive intermediaries to active regulators of speech, there is a need for a new framework that is beyond traditional notions of regulation. Thus, a rights-based approach emerges as necessary. Such an approach should focus on integrating the principles that underpin constitutional rights-liberty, equality, dignity, and fairness-into the framework for governing the digital sphere, for there are serious implications for our rights when private entities wield power in the digital sphere and therefore a system of checks and balances becomes indispensable.

A comprehensive regulatory framework must address at least four distinct elements. Firstly, there should be a formal recognition of social media platforms as significant public actors in the management of public discourse. This acknowledgment would lend support to stricter obligations and accountabilities of such companies. Secondly, mandatory transparency in content moderation should be mandated and the platforms must explicitly publish their moderation policies and reasons for taking down content or suspending accounts and the rationale for such actions must be clear to users. Thirdly, an independent oversight body can prevent abuse by external oversight mechanisms and adherence to due process in moderation by private companies and that there must be an improved user-centric system for addressing grievances of the users for and against the platform's actions.

The role of judicial oversight in the framework is crucial. The courts must ensure that the platform's actions remain consistent with the Constitution through the exercise of judicial review. Judicial review can indeed be used to check the arbitrary or disproportionate actions of the platform and reinforce the rule of law even in the digital public space. Through judicial interpretation, nuanced balance between conflicting interests can be drawn.

The goal of the rights-based regulatory regime is thus to protect the democratic aspects of freedom of speech while curbing the harms that emanate from the platforms. The regulation should not serve to curb or hinder innovation or legitimate free speech but rather should create a space for both to prosper and simultaneously remain accountable. By weaving the constitutional rights into the platform's governance and functioning, it should be possible to make the digital public space both free as well as consistent with the constitution of the land.

Conclusion

The shift from social media intermediaries as passive enablers of communication to active gatekeepers of online expression represents a fundamental transformation in how speech is regulated in the digital age. These platforms now possess extraordinary power over the creation, distribution, and visibility of content and, thus, play a significant role in shaping public discourse. This evolution raises critical constitutional questions regarding the protection of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution. As has been evident throughout this paper, the distinction between State action and private power becomes blurred when we discuss digital governance.

Although content moderation has a legitimate role to play in combating misinformation, hate speech and other forms of harm, its implementation should be conducted within constitutionally defined limits that respect fairness, proportionality and transparency. Although the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 provide a legal framework for regulation, they are inadequate in dealing with the quasi-regulatory function of social media platforms. A lack of clear standards, transparency and proper grievance redressal mechanisms renders platform governance opaque and unaccountable.

This research has explored how the control that platforms exercise over digital expression, through automated moderation systems and community guidelines, goes unchallenged by constitutional scrutiny, along with its dangers. Over-censorship, and its chilling effect on free speech, becomes particularly problematic when moderation guidelines are vague or unequally enforced. At the same time, it is equally important to acknowledge the genuine necessity for content regulation to ensure public order, dignity, and democratic functioning.

Central to this study's argument is that social media platforms, by virtue of acting as quasi-public forums, must be guided by the doctrine of constitutional morality; hence their regulatory frameworks must be founded on constitutional principles of freedom, equality and procedural fairness. A rights-based framework for regulation of the internet would be crucial for ensuring that private power is never allowed to encroach on individual rights.

Moreover, the research has highlighted the need to incorporate transparency, accountability and independent oversight into the operations of platforms. The role of the judiciary and the development of legal standards will be crucial to filling the regulatory vacuum; as various comparative studies suggest, a middle way between excessive state control and entirely unfettered private power is necessary for the effective regulation of the digital space.

Ultimately, as the digital world continues to grow, the challenge lies in balancing conflicting interests: security and liberty, regulation and freedom, and private power and public accountability. Meeting this challenge would necessitate a nuanced and forward-looking approach that firmly anchors constitutional values to the forefront of digital governance and helps secure the internet as an open, inclusive space for the exchange of ideas and the robust functioning of democracy.