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# **EXPLORING THE EFFECTS OF SOCIAL MEDIA AND CONSTITUTIONAL FREE SPEECH TENETS ON REGULATORY LEGISLATION**

AUTHORED BY - GUNJAN SHARMA

## **INTRODUCTION**

The relationship between social media and the right to free expression guaranteed by the constitution has become a crucial and hotly contested issue in today's globally linked society where information travels without hindrance across international boundaries. The importance of this subject rests in its tremendous influence on contemporary cultures, which not only shapes our communication styles but also the basic foundation of our democratic ideas. People now have a place to express their thoughts, opinions, and grievances on social media platforms, which have evolved into the primary forums for public discourse. However, the fact that these platforms are unrestricted raises difficult questions about the boundaries of free speech and the responsibility of regulatory bodies and platform providers to monitor online material.

Due to the rapid expansion of social media sites like Facebook, Twitter, Instagram, and YouTube, information may travel quickly, both good and harmful. Debatable topics include the dissemination of false information, online harassment, hate speech, and the ability of internet corporations to control content. These debates have wide-ranging effects on everything from politics to individual privacy, and they have forced authorities, regulatory agencies, and courts to consider how to regulate speech in the digital era.

The main research question that serves as the basis for our investigation in this situation is "How do social media platforms and constitutional principles of free speech interact, and what are the implications for regulatory legislation in the digital age?"

Our inquiry is built on this key question, which has compelled us to explore the many facets of this intricate relationship. In order to adequately answer this issue, we will examine how social media has evolved into a modern forum for expression, the legal basis of free speech, and the regulatory strategies used by various countries. As obstacles change, we will assess the need for flexible regulatory frameworks and examine important court rulings that have impacted the landscape of online communication.

This paper explores the complex link between social media and the principles of constitutional free speech in an effort to shed light on these important problems. It aims to present a thorough study of the legislative measures taken by many nations and the legal standards established by courts in resolving the issues raised by internet speech. Ultimately, in an era dominated by the effect of digital communication, recognizing this dynamic is crucial for developing balanced regulatory frameworks that protect both free speech and the welfare of society.

## UNDERSTANDING THE ROLE OF SOCIAL MEDIA

Social media has radically changed how we connect with the world, communicate with one another, and obtain information. Online platforms and websites created to promote user engagement, content production, sharing, and networking are all included under the umbrella term of 'social media'. Users of these platforms can post text, photos, videos, and other types of media material using the tools provided. Through direct messaging, comments, likes, and sharing, users may interact with this information. Facebook, Twitter, Instagram, LinkedIn, Snapchat, TikTok, Pinterest, and many more are popular social networking sites. Social media has a significant impact on almost all aspects of contemporary society –

- *Communication Revolution* - The way individuals interact has been reimagined by social media platforms. They provide group conversations, voice calls, video chats, and instant messaging that are not limited by distance. For instance, WhatsApp, which has more than 2 billion monthly users globally, has completely changed international communication.<sup>1</sup>
- *Information Dissemination* - A quick and decentralized centre for knowledge exchange, social networking. Users may quickly exchange information, viewpoints, and unique experiences thanks to it. As of 2023, Twitter has 450 million active monthly users and is well recognized for its trending topics and real-time news updates.<sup>2</sup>
- *Influence on Consumer Behaviour* - Social media is used by businesses for consumer involvement and marketing. Through aesthetically attractive content and influencer marketing, platforms like Instagram, which claims more than 1.30 billion monthly active users, have grown in importance in influencing customer preferences and influencing purchasing decisions.<sup>3</sup>

<sup>1</sup> "WhatsApp now has over 2 billion users globally", *Hindustan Times Tech*, Aug. 20, 2022.

<sup>2</sup> Rohit Shewale, "Twitter Statistics in 2023", available at: <https://www.demandsage.com/twitter-statistics/> (last visited on September 13, 2023).

<sup>3</sup> Alex Barinka, "Meta's Instagram Users Reach 2 Billion, Closing In on Facebook", *Bloomberg*, Oct. 27, 2022.

- *Political and Social Movement* - Global political and social movements have benefited greatly from the use of social media. For instance, during the Arab Spring uprisings in 2010–2012, social media platforms like Facebook and Twitter were vital in coordinating activists and disseminating information.

## EVOLUTION AND GROWTH OF SOCIAL MEDIA PLATFORMS

Early in the new millennium, websites like Friendster and MySpace introduced the idea of online social networking. The main goals of these platforms were to facilitate friend connections and the sharing of individual profiles and interests. Facebook first appeared in 2004 and completely changed the social media scene. It steadily increased its user base worldwide and included features like the News Feed, which showed real-time updates from pals. Launched in 2010, Instagram focuses on the sharing of visual material by allowing users to upload images and short videos. Another visual network, Pinterest, adopted a similar strategy in 2010. Twitter, which was first released in 2006 and allows users to express thoughts and information in 280 characters or fewer, popularized the microblogging format. It served as a centre for conversations and breaking news due to its real-time nature. Since its launch in 2005, YouTube has emerged as the preferred medium for those who make videos. It has more than 2.50 billion monthly users as to 2023. Short-form video material was transformed when TikTok was introduced in 2016 and immediately became famous all over the world.<sup>4</sup>

Facebook, the most popular social media site, having more monthly active users as of 2023 than either China or India combined. The user base of YouTube is significantly larger and makes up a sizable share of internet users. The worldwide accessibility of social media has facilitated cross-cultural encounters. Users from all backgrounds interact, exchange knowledge, and discover various cultures, fostering cross-cultural dialogue and comprehension. The corporate world has changed as a result of social networking. It presents new possibilities for companies, businesspeople, and content producers. On social media sites like Instagram, where users with large followings collaborate with companies for marketing, the influencer economy has flourished. Celebrities, activists, and world leaders all use social media to reach audiences throughout the world. Political campaigns, social action, and awareness campaigns have all benefited greatly from it. For instance, Donald Trump's use of Twitter throughout his time as president of the United States came to define his presidency.

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<sup>4</sup> Merrin Muhammad Ashraf, "Reimagining Regulation of Speech on Social Media Platforms in India", 7 *NUJS Journal of Regulatory Studies* 21-53 (2022).



Although social media offers many benefits, it also has certain disadvantages, such as privacy concerns, the spread of incorrect information, online harassment, and the rise of dangerous material, all of which call for ongoing regulatory and ethical considerations.

## CONSTITUTIONAL PRINCIPLES OF FREEDOM OF SPEECH

In Indian constitutional law, the right to freedom of expression has become increasingly important throughout time. In order to prevent injury or misuse, it is subject to reasonable limits. Finding a balance between preserving law and order and safeguarding this fundamental right is crucial to Indian democracy. The concept of freedom of speech and expression is enshrined in Indian constitutional legislation under Article 19 of that document. This article guarantees everyone's right to freedom of speech and expression, including the freedom to share thoughts and information in any way. This basic right is important for the operation of a strong democracy like India and is regarded as one of its pillars.

- *Article 19(1)(a)* - Every citizen has the right to freedom of speech and expression, as was indicated in this article.
- *Article 19(2)* - The freedom of expression is safeguarded by Article 19(1)(a), although Article 19(2) permits reasonable limitations on it. It grants the government the authority to impose limits where doing so would be in the interest of India's sovereignty and integrity, national security, cordial relations with foreign nations, public order, morality, or decency, as well as in situations of libel or solicitation to commit an infraction.
- *Article 19(6)* - In order to protect the interests of any designated tribe, the state is given the power to impose restrictions that limit the freedom afforded by Article 19(1)(a).

In India, the idea of free speech has a rich historical background. It draws inspiration from the liberation struggle against British colonial rule, which placed a high value on the freedom of expression. Liberation movement leaders like Mahatma Gandhi and Jawaharlal Nehru promoted the need of free speech in a democratic form of governance. Several significant turning points in Indian history may be used to chart the development of free speech rights.

Newspapers, pamphlets, and public speeches were frequently used in India's independence war to sway popular opinion. However, the colonial government established limitations on free expression with the Press Act of 1910 and the Sedition Act of 1870, among other measures.

India ratified its Constitution in 1950 after obtaining independence in 1947. The framers of the Constitution placed a high emphasis on free expression, designating it as a fundamental right in Article 19(1)(a). In understanding and preserving the right to free expression across time, the Indian judicial system has been crucial. In India's constitutional framework, significant cases established the primacy of free expression like - *Sakal Papers Ltd. v. Union of India*<sup>5</sup> and *Romesh Thappar v. State of Madras*.<sup>6</sup>

While the Indian Constitutional law provides the right to free speech and expression, it also sets some restrictions and legal restrictions to make sure that this right is not unrestricted and does not cause injury or misuse. The following facets, including Article 19(2), have the following restrictions –

- *Sovereignty and Integrity of India* - Speech that imperils the country's integrity and sovereignty can be suppressed by the state. This includes outlawing statements or actions that advocate secession.
- *Security of the State* - Speech that jeopardizes India's security may be censored. This includes terrorism advocacy or attempts to instigate violence.
- *Friendly relations with Foreign Countries* - Speech that undermines India's ties with other nations or stirs up animosity toward a foreign country is subject to restrictions.
- *Public Order* - A speech or statement may be prohibited if it has the potential to disturb the peace. The restriction must, however, be fair and required.
- *Decency and Morality* - To uphold morals and public decency, communication that is obscene or otherwise objectionable might be limited.
- *Defamation* - If someone's reputation is unjustly hurt by false comments, defamation laws empower them to seek legal redress.
- *Incitement to Offence* - Speech that directly calls on people to commit a crime or another wrongdoing may be silenced.

## THE INTERPLAY BETWEEN SOCIAL MEDIA AND FREEDOM OF SPEECH

A substantial change in how individuals communicate and use their right to free speech has occurred as a result of social media platforms becoming contemporary public arenas for

<sup>5</sup> *Sakal Papers (P) Ltd. v. Union of India*, AIR 1962 SC 305.

<sup>6</sup> *Romesh Thapar v. State of Madras*, AIR 1950 SC 124.

discourse. The following important aspects may be used to analyse this transformation –

- *Accessibility and Global Reach* - Global viewership are now more widely accessible because to social media platforms. With simply an internet connection, billions of individuals may communicate their opinions. Accessibility has made voices heard that would not have been otherwise.
- *User-generated Content* - User-generated content is the core of social media. Users are becoming content creators, putting out a variety of materials like text, photographs, videos, live streaming, and more. The ability to express oneself in many different ways is given to people by the democratization of content creation.
- *Real-Time Communication* - Instantaneous and engaging communication is made possible by social media. On a worldwide level, users may participate in real-time chats, arguments, and discussions. This real-time aspect encourages participation, encourages conversation, and permits the quick distribution of information.
- *Anonymity and Pseudonymity* - Users can choose to use a pseudonym or stay anonymous on several social networking sites. While this could promote open communication, it also raises questions about responsibility because anonymity can sometimes result in harmful behaviour and harassment.
- *Filter Bubbles and Echo Chambers* - Content is frequently personalized by social media algorithms depending on user interests and activity. Filter bubbles might result from this, where users only see data that confirms their preconceptions, but it could also enhance user experience. This issue could impede free expression and limit access to other points of view.

Online communication is currently plagued by a plethora of issues and difficulties because to the digital era. These difficulties have caused heated discussions and debates –

- *Misinformation and Disinformation* - Social media platforms have come under scrutiny for the rapid spread of misleading information, especially during crises like the COVID-19 pandemic and elections. In the real world, misinformation and disinformation may seriously harm society, endanger public health, and have an impact on elections.
- *Hate Speech and Cyber Bullying* - On social media, hate speech and cyberbullying are commonplace. Some platforms' relative anonymity might give users the confidence to engage in destructive actions that target marginalized people and groups.

- *Content Moderation Dilemmas* - Social media sites must manage material while upholding the values of free expression, which is a difficult undertaking. Both extremes of the ideological spectrum frequently criticize decisions to delete or limit information. While some contend that these platforms should be more proactive in removing dangerous information, others think that doing so would amount to censorship.
- *Censorship Concerns* - Censorship charges are being made more frequently. Social media networks are accused by critics of engaging in censorship through methods of content moderation, suppressing free speech, and reducing the range of viewpoints on their platforms. This calls into question the influence and responsibility of internet firms in directing online conversation.
- *Privacy Concerns* - Privacy and surveillance issues have been brought up by social media corporations' massive data collecting of user information. The ethical environment of online speech has become more challenging due to the possible misuse of this data for targeting and manipulation.

In order to fully comprehend how social media affects free speech, the following are the examples which demonstrated how platforms have been restricted or content have been moderated related to the difficulties involved in social media platform content control and the possible repercussions for users' freedom of speech. These episodes also serve to highlight the precarious balance that platforms must strike between promoting free expression, protecting users, and maintaining their own content limitations.

- Due to alleged violations of its laws on promotion of violence and spreading false information, Twitter has suspended the accounts of prominent political personalities, including former President Donald Trump. These actions have sparked discussions about the capacity of social media platforms to silence political actors and the role of platforms in shaping public conversation.<sup>7</sup>
- In the June 2021 quarter, Facebook took action against 31.5 million pieces of material for hate speech, and the frequency of such content on the site decreased to 5 views per 10,000 worldwide content views. Discussions concerning the platform's role in influencing public debate and the narrow line between responsible moderation and censorship have resulted from these activities.<sup>8</sup>

<sup>7</sup> "Twitter 'permanently suspends' Trump's account" *BBC News*, Jan. 09, 2021.

<sup>8</sup> "Facebook Continues Major Crackdown On Hate Content, Removes 3.15 Million Posts", *ABP Live*, Aug. 19, 2021.

- YouTube, a popular platform for content producers, demonetizes videos that break its rules, which has an impact on the income of producers. This has led to discussions about how to reconcile platform rules and free expression as well as concerns about the potential chilling effect on writers' speech.
- Reddit, a website renowned for its multicultural communities, has deleted a number of subreddits for encouraging harassment and hate speech. Discussions concerning the parameters of appropriate speech online and the platform operators' duty to uphold inclusive and safe settings have been sparked by these activities.

## **COMPARISON OF REGULATORY RESPONSES TO SOCIAL MEDIA WITH REGARDS TO DIFFERENT NATIONS**

Governments throughout the world have battled to regulate these platforms in the age of the internet and social media while upholding free speech and the greater good. Following are the main strategies used by many nations –

- *European Union (EU)* - Through the Digital Services Act (DSA) and the Digital Markets Act (DMA), the EU has taken proactive steps to regulate social media. The DSA encourages big internet platforms to adopt content moderation procedures to counter unlawful information including hate speech and terrorist propaganda by requiring them to accept responsibility for the content posted on their platforms. Platforms must provide information about their content moderation guidelines, algorithms, and data practices under the DSA. Users would have the option to challenge material deletions and have a more active part in decisions about content management. Platforms that violate the DSA may be subject to heavy fines.
- *United States* - Social media usage is controlled differently in the US, specifically under Section 230 of the Communications Decency Act, 1996. Under Section 230, online platforms are legally exempt from liability for user-generated content. This makes it possible for platforms to offer a variety of content without worrying about being held liable for it. Platforms may legitimately filter material without jeopardizing their immunity. Platforms may now design and enforce their own content restrictions thanks to this flexibility. While advocates of Section 230 contend that it has been crucial for promoting free speech and innovation, critics claim that it has allowed platforms to evade responsibility for damaging material.



- *China* - The stringent restrictions and content control that characterize China's approach to social media governance. Its Great Firewall limits access to foreign social media platforms including Facebook, Twitter, and YouTube. Platforms like WeChat and Weibo in China are extensively watched and filtered for anything that is judged to be politically sensitive or detrimental to the government. These platforms are heavily regulated by the Chinese government, which also demands that businesses follow stringent censorship rules.
- *Australia* – Australia's strategy relies on the interaction between social media websites and mainstream media organizations. According to Australia's News Media Bargaining Code, websites like Facebook and Google must pay news organizations for their content. The law tries to reduce the funding gap between internet behemoths and conventional media organizations.

## **COURT'S RULINGS CONTRASTING MEDIA REGULATION WITH FREEDOM OF SPEECH AND EXPRESSION**

In order to regulate intermediaries, publishers, and individual content producers of news and current affairs information as well as online curated content, the Indian government published the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in February 2021. These rules are subject to the 2000 Information Technology Act.

Since the Rules' introduction, several challenges challenging them have been submitted and are now pending before the High Courts of Delhi, Kerala, Karnataka, etc. Recently, two applications against the Rules were filed with the Bombay High Court, alleging that they are in violation of the IT Act, as well as Articles 14, 19(1)(a), and 19(1)(g) of the Indian Constitution.

The Leaflet, a digital news outlet that has reported on, opined on, and published articles about several social and political issues, has filed a petition in the case of *Agij Promotion of Nineteenonea Media Private Limited and Ors. v. Union of India and Anr.*<sup>9</sup> The second plea that Shri Nikhil Mangesh Wagle, a journalist since 1977, filed with the Bombay High Court was *Nikhil Mangesh Wagle v. Union of India*.<sup>10</sup>

<sup>9</sup> *Nineteenonea Media Private Limited and Ors. v. Union of India and Anr.*, Writ Petition (L.) No. 14172 of 2021.

<sup>10</sup> *Nikhil Mangesh Wagle v. Union of India*, Public Interest Litigation (L) No. 14204 of 2021.

If they have an offline presence in India, publishers of news and current affairs material as well as internet-based data curators are required to comply by the Code of Ethics specified in Rule 9(1) of the Rules. This requirement also applies to foreign publishers who routinely make their content accessible in India. Any structured or organized commercial action that has a component of planning, technique, continuity, or persistence is referred to as systematic.

Publishers of online curated content are required by the Code of Ethics to categorize content according to its type and nature, provide and display the appropriate rating for those categories based on the appropriate content, implement access control measures, make reasonable attempts to make the online developed content more readily available to people with disabilities, and ensure that the online curated content is lawful.

In accordance with Rule 9(3) of the Rules, publishers operating on Indian territory must have a three-tier dispute resolution system that consists of publisher self-regulation, self-control by self-regulatory authorities that may be established by the publishers' self-regulatory bodies, and a government oversight mechanism.

The petitioners' main argument in the aforementioned petitions is that the Rules' provisions are ex-facie harsh and arbitrary since they go beyond what is permitted by Article 19(2) of the Constitution. It was also argued that the Rules establish a system that is obviously arbitrary and unfair, which is an affront to the basic protection of people's freedom of speech, and that its application to the internet has a terrible chilling effect.

The Grievance Redressal Mechanism and the Code of Ethics were implemented, the Central Government said in response to the Bombay High Court, to level the playing field between online and offline media and to address the issue of misleading news, respectively. In addition, they asserted that, in contrast to what the petitioners alleged, Part III of the Rules did not violate the IT Act since the IT Act's scope includes the recognition of electronic records that are in the format of media content.

In addition to the Press Council Act of 1978 and the Cable TV Networks Regulation Act of 1995, which are not sections of the IT Act, producers of news and current affairs content and online curated content were designated as being subject to these laws. It was determined that no separate legislation addressing these concerns or any severe penalties for breaking them

were permitted under the Rules. The IT Act does not intend to impose any limitations on any online material other than those specified in Section 69A (in the interest of India's sovereignty and integrity, defence, security, or public order, among other things). Rule 9's obligations did not go as far as those of Section 69A. The repercussions outlined in the norms and programme code were ethical penalties rather than statutory sanctions, and they merely provided publishers with a moral code to follow, according to the Bombay High Court, which claimed that adherence to the norms and the programme code had been elevated to the level of a statutory requirement under the Rules. It appears that Rule 9's attempt to subject publishers to action under the PCA/ CTVRA, which created a separate system for handling violations of its regulations, violated the Indian Constitution's Article 19(1)(a) guarantee of freedom of speech and expression.

According to the Bombay High Court, a democracy in India could only flourish if its citizens upheld the preambular promise they made while ratifying the Constitution. The court acknowledged the value of freedom of speech. One of these defences is intellectual freedom. By making use of this flexibility, expressions are created. It will have a detrimental effect if even during the interim period, at least a section of Rule 9 of the Rules is not interdicted. Currently, there is a genuine risk of always living in fear of being looked into for breaking the Code of Ethics. If people were forced to live in the current period of internet content restriction with the Code of Ethics hanging over their heads as the Sword of Damocles, they would feel restricted in their capacity to exercise their right to freedom of speech and expression. This system would be obviously at conflict with the Constitution's principles and spirit.

### **NEED FOR EVOLVING REGULATORY FRAMEWORKS**

Technology has grown at an astounding rate in recent decades, changing the landscape of communication and, as a result, the right to free expression. As social media, streaming services, and instant messaging applications have grown in popularity, people now have unparalleled access to audiences throughout the world.

Instantaneous communication with anyone, wherever in the globe, is now possible because to technology. As a result, the effect of communication is amplified because a single tweet, post, or video may instantly reach millions of people. Users of online platforms frequently have the opportunity to remain anonymous or use aliases, allowing them to participate in debates and voice their thoughts without worrying about personal consequences. However, this anonymity

can also be abused in a negative way. The difficulty of using technology has made it easier to produce and distribute information. This has given people more freedom to produce content, but it has also made it simpler for false information, hate speech, and extremist content to spread.

It is now quite worrying how inaccurate or misleading information is getting out. Misinformation may have negative effects in the real world, including weakening institutional confidence and encouraging violence. Social media's viral nature accelerates the dissemination of misleading information. On digital platforms, hate speech which includes communication that encourages violence, prejudice, or hatred based on characteristics like race, religion, or gender is on the rise. Online hate speech violates the ideals of free speech by fostering a hostile atmosphere for oppressed groups, which can result in physical damage. 'Filter bubbles', where users only view material that supports their own beliefs and opinions, are a potential result of social networking sites' algorithmic processes. This may hinder open dialogue and exacerbate division.

If legal frameworks are to be changed to reflect the issues brought about by evolving technology and its impact on free speech, social media platforms must be upfront and truthful about their content moderation policies and procedures. Establish precise rules for material removal and make platforms responsible for their actions. Concerns about prejudice and censorship may be alleviated by doing this; To assist users in doing a critical analysis of internet material, fund media literacy initiatives. incorrect information's impact can be lessened by teaching people how to distinguish reliable sources from incorrect ones; Implement controls over the algorithms that social media sites utilize.<sup>11</sup> Since these algorithms have a big part to play in amplifying information that is polarizing, it is crucial to make sure they are open to examination; Encourage social media sites to include their user bases in decisions on content management. Having a balance between free expression and ethical content control is possible with this.

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<sup>11</sup> *Id.*

## Conclusion

Social media, which has become a key force in contemporary communication, has drastically altered the way people express themselves, share information, and engage with one another. Its effect is global and affects many facets of both public and private life. Democratic societies are built on the tenets of free speech, which are incorporated in the constitution and encourage public dialogue, political engagement, and individual expression.

The relationship between social media with freedom of expression has raised important difficulties, including the dissemination of misleading information, hate speech, and concerns over content management. These problems have sparked discussions about the restrictions on free expression in the digital age. To reduce the risks posed by social media, several countries have developed a variety of regulatory approaches. The significance of striking a proper balance between freedom of expression and responsible control cannot be overstated. A democratic society cannot exist without the right to free expression, yet this freedom is not unrestricted. Although social media is an effective tool for amplifying discourse, it also carries certain obligations.

Regulations must uphold the basic right to free speech while also shielding people from damage, harassment, and the dissemination of untrue information. Social media platforms need to be held accountable for their content moderation practices and rules. Fairness and transparency are crucial in this situation. Regulation should work to promote an environment where truthful information predominates over false and misleading information, one that is healthier and better educated. Regulations should promote creativity and the creation of new technology, such as AI-based content moderation systems, that can help solve the issues raised by social media.

Free speech and social media interact in diverse ways, necessitating flexible regulatory responses. Maintaining democratic principles while reducing the hazards associated with online expression is a complex balancing act that calls for continual study, careful policy formulation, and cooperation among stakeholders. By doing this, we may work toward creating a digital environment where the freedom of expression coexists harmoniously with the moral use of technology for the good of society.