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FREEDOM OF SPEECH AND EXPRESSION IN THE SOCIAL MEDIA ERA: A COMPARATIVE STUDY

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ABSTRACT

Social media comprises mobile and internet-based platforms designed for sharing information, facilitating communication, and engaging in conversations. These technologies enable interactive communication sessions, and platforms like Facebook, Instagram, and WhatsApp exemplify this through internet-based communication. Social media, as described by Michael Heinlein and Andreas Kaplan, encompasses web-based programs rooted in Web 2.0 principles, allowing users to generate and share content. The Organisation for Economic Co-operation and Development (OECD) outlines criteria for user-generated content, emphasizing accessibility, minimal creative effort, and content existing outside professional practices. Mobile social media, utilized with mobile devices, differs from traditional social media platforms. Freedom of speech entails the unrestricted ability of individuals to express themselves without censorship or fear of reprisal, although it is subject to reasonable limitations. This concept has historical roots, notably in ancient Greek society, and is recognized by international norms and enshrined in Article 19(1) of the Indian Constitution, granting citizens the freedom to express opinions orally, in writing, or through any other means. In the contemporary context, the internet plays a pivotal role, enabling the widespread sharing of information and ideas, with social media assuming significant importance in global society. Therefore, this study will examine freedom of speech and expression in the era of social media, focusing on India and conducting comparative analyses with other nations such as France, the United States, and the United Kingdom. The study will also consider judicial perspectives on social media use and freedom of expression.

FREEDOM OF SPEECH AND EXPRESSION

Every citizen has the right to freely express their ideas and opinions on any subject, including politics, social concerns, and their own country, without fear of repercussions. Everyone interprets and analyzes circumstances in their own unique way, even if their opinions differ from those of the majority. Nobody is discouraged from voicing their thoughts and opinions considering this. Social media, TV, the internet, and newspapers are all good places to express your opinions.

Individuals from diverse backgrounds possess the opportunity to share their thoughts and opinions with the world through various media outlets. This right, commonly known as freedom of speech and expression, grants individuals the liberty to express themselves openly. This right has its roots in classical Greece. As a fundamental component of their democracy, the people there were among the first to exercise free speech. They called it "parrhesia," which translates to "open and honest speech." This idea first arose at the end of the fifth century B.C. in Greek texts. In Athens, parrhesia developed into a crucial component of democracy during the classical era. Leaders, intellectuals, and common people were all allowed to discuss politics, religion, and in certain cases, even to publicly criticize the government. When we refer to "speech," we imply voicing thoughts or opinions aloud to other people. Furthermore, "expression" refers to communicating your ideas and emotions through writing, speaking, or other means. Therefore, it is the unrestricted ability of individuals to express their opinions without fear of repercussion, whether they do so in public or in writing. According to the Oxford Dictionary, expression denotes "the act of communicating one's thoughts or emotions.". However, these liberties are subject to reasonable constraints to prevent the infringement of similar rights of others while exercising this freedom. It also entails the liberty to express personal opinions and represent the opinions of others. It extends to researching, studying, and discussing issues that impact society. Being able to express your opinions without interference from the government is very important. In several situations, the SC and the HC have rendered rulings about the meaning of this. Among the significant interpretations are:

- The liberty to openly convey personal thoughts and viewpoints through writing, drawing, printing, or any other medium is referred to as freedom of expression. This encompasses more than just freedom of the press; it also includes the opportunity to express oneself through various media such as radio, television, and movies, as well as through physical actions like displaying banners, signs, and gestures.
- This right entails more than merely expressing personal opinions. It also covers the freedom to disseminate or publish other people's opinions. For instance, this freedom safeguards the media's capacity to present opposing viewpoints.
- Expression is sharing thoughts with another person; it does not occur in a vacuum. Therefore, publication, distribution, and circulation are all intrinsic to it.
- This right includes the freedom to seek out, obtain, and disseminate information and ideas. This can be done through speaking, writing, printing, or utilizing various media such as loudspeakers, record players, radios, and films. Essentially, it grants individuals the ability to communicate their thoughts in any manner they choose.

- The ability to receive and gather information on matters of shared concern from others is encompassed by the right to freedom of speech, which goes beyond simply expressing your own opinions. Thus, it protects the right to information.
- Furthermore, this right encompasses the ability to participate in dialogues. These conversations help people share information, concepts, opinions, and beliefs with one another. It also includes the exchange of knowledge founded on individual opinions, provided that it doesn't conflict with group interests and isn't exclusively commercial in nature.

The SC has established that freedom of speech and expression, as per its rulings, encompasses freedom of the press and its distribution. Press freedom is viewed as a natural extension of every individual's fundamental right to freedom. It was upheld in the *Romesh Thappar's*¹ decision that press and speech freedoms are essential to any democracy. The opportunity to engage in free and open political discourse is essential for educating the public, and without it, popular governance cannot function properly. This right denotes the liberty to openly convey personal thoughts and viewpoints through various means such as writing, spoken language, visuals, and other forms of media. This involves expressing concepts using a variety of media or through outward manifestations like signs and gestures. Since print media was the most popular medium at first, this right was mostly applicable to it. Though not without raising concerns about the boundaries of this freedom, the emergence of electronic and social media also gave these platforms the rights. According to historian Bury's book "History of Freedom of Thought," this right is crucial to the development of our morality and intellect. The judges in *Speiser v. Randall*, an American court decision, declared that maintaining free speech is crucial to maintaining society's integrity. They claimed that everyone's rights should be upheld, regardless of how controversial they may be, and that an informed populace is essential to a free society. This implies that everyone, regardless of identity, ought to be able to express themselves freely.

In its decisions, the SC has emphasized the importance of free speech. For example, in the *UOI v. Motion Picture Association*² case, the fundamental tenet of a democratic society is free expression. This implies that there should be no limitations on the free exchange of concepts, knowledge, and information. It also entails creating one's own thoughts and debating various points of view. This freedom is crucial because it empowers individuals to form informed

¹ Romesh Thappar v. State of Madras, AIR 1950 SC 124.

² 1999 AIR SCW 2432

opinions about their rights within a society that values freedom. Courts have kept a close eye on restrictions on this right. It was determined in the *S. Rangarajan*³ case that unrestricted participation in debates is essential to democracy. Citizenship is essential for a democratic government because it fosters civic engagement and critical thinking about local issues. It is essential for people to freely express their thoughts for democracy to work. Another instance emphasized the significance of press, opinion, and expression freedoms for democracy. These liberties facilitate free discourse and the interchange of ideas, both of which are necessary for resolving issues with the government.

This right has been upheld by India's highest courts. Without sharing their ideas and thoughts with others, individuals cannot really express themselves. Everyone must engage in open dialogue, debate, and discussion of political ideas to exercise this right. Democracy may suffer if the authorities or government fail to protect this freedom. The idea that every individual should have the opportunity to realize their full potential as a human being is the foundation for free speech. Finding a balance between maintaining social stability and enacting changes in society can be achieved using free speech. That means we should uphold the existing good and endeavor to accomplish the remaining goals, and everyone should be informed about them through this right. Everyone should be allowed to publicly express their personal beliefs in society. The ability to freely speak and express one's thoughts enables individuals to govern themselves rather than being controlled by others. It is vital for facilitating the exchange of ideas, which is essential for unimpeded self-governance.

When formulating public policies, the people—who are effectively the governors—should be able to consider all viewpoints. Democracy is predicated on the notion that successive governments would eventually take control, guaranteeing a shift in power. The democratic process may collapse if this procedure is stopped. Furthermore, free speech increases political stability and increases the likelihood that it will last. This implies that politicians are less likely to resort to violence in the event of an electoral loss if they have been given a fair opportunity to voice their opinions.

This right also serves as a safeguard against public leaders abusing their authority. It provides citizens with the knowledge they need to contest choices that go beyond predetermined

³ S. Rangarajan v. P Jagjivan Ram, (1989) 2 SCC 574.

boundaries. It makes self-governance more attainable and effective. This right is essential for finding the truth, according to those who think truth can be comprehended but not always proven. It is therefore essential to humanity's search for the truth. It can also serve as a disincentive to public leaders abusing their authority. Checks must be in place because the misuse of power is a serious problem, especially given the government's right to employ lawful force.

In a society increasingly characterized by cultural diversity, these principles are vital for upholding and reinforcing social norms, which are interconnected with the goal of self-governance. Achieving these aims relies on consistently upholding freedom of speech and expression nationwide. The removal of this freedom can have significant consequences for society's members, leading to the inclusion of specific provisions addressing this right in various international agreements, conventions, and treaties. Although the rationale behind freedom of expression has faced scrutiny, the judiciary has consistently upheld freedom of the press. While the Indian Constitution and legislators have not explicitly mentioned press freedom, judicial decisions have clarified that the same rights of speech and expression granted to citizens also extend to the press and media. Like the restrictions imposed on citizens' rights by Article 19(2), the press and media are likewise subject to such limitations.⁴

EXTENT OF FREEDOM OF SPEECH AND EXPRESSION

INDIA

Articles 19 to 22 of the Constitution serve as the foundation for this crucial right, encompassing various aspects. The cornerstone of this section is the right to freedom of speech and expression, guaranteed by Article 19(1)(a). This empowers all citizens to freely express their views and beliefs. However, it's important to note that limitations exist as outlined in Article 19(2). This provision allows the government to impose reasonable restrictions under specific circumstances. This right includes spoken word, written text, printed materials, artistic creations, and even social media platforms. It also protects the freedom of the press, ensuring the public has access to a wide range of ideas and information. However, these rights are not limitless. Lawmakers can impose reasonable restrictions to protect the public interest. When evaluating these restrictions, it's essential to consider whether they promote social well-being and align with current societal values.

⁴ Mane Sachin Babruvan, "A Critical Study on Right to Freedom of Speech and Expression and Role of Media in Indian Democracy", SHODHGANGA (12th Feb, 2024, 10:00 AM)
<https://shodhganga.inflibnet.ac.in/handle/10603/203650>

The internet, with social media at its forefront, has become an inseparable part of our daily lives, a fact undeniably amplified by the COVID-19 pandemic. These online platforms act as powerful tools for individuals to express themselves freely and share information and ideas. Recent social movements worldwide have showcased the transformative power of social media in fostering instant connections and uniting people in solidarity. A UN official focused on free speech, the Special Rapporteur, highlighted the internet's importance as a tool for exercising this right. Their report to the Human Rights Council argued for recognizing internet access as a human right itself. Uninterrupted access, even during political instability, was deemed crucial. The report also reminded governments of their responsibility to promote free expression, including through facilitating internet use. Recommendations included policies ensuring the internet is widely available, accessible, and affordable for everyone. Both the UDHR and the CCPR) affirm the right, including online expression through the internet and social media.

However, this right is not absolute in India. The government can enact laws and impose limitations under specific circumstances, as outlined in the Indian Constitution. These limitations include:

- Protecting national security and territorial integrity.
- Maintaining friendly relations with other countries.
- Preserving public order.
- Upholding moral decency.
- Safeguarding the judiciary from contempt.
- Addressing defamation.
- Preventing the incitement of criminal activity.

Use of social media

Although India lacks a dedicated law solely focused on regulating online speech and its potential misuse on social media platforms, existing provisions within the Information Technology (IT) Act of 2000 can be invoked in cases of online transgressions. These provisions encompass various computer-related offenses that could encompass social media misuse, including:

- Tampering with computer codes.
- Transmitting offensive messages.
- Engaging in identity theft.
- Violating privacy rights.

- Committing cyber terrorism.
- Publishing or sharing obscene content.

The IT Act also empowers the central government to restrict information access under certain circumstances. Sections 69 and 69A grant them the authority to order interception, monitoring, or blocking of information when deemed necessary for national security, public order, or other specified reasons.

However, the Act also recognizes the role of online platforms. Section 79 shields intermediaries from legal responsibility for content posted by third-party users, as long as they adhere to specific guidelines. This protection can be revoked if they fail to comply with government directives or actively aid in unlawful activities.

Furthermore, the IT Act framework has been expanded upon by various supplementary regulations. These include rules governing interception, monitoring, information blocking, intermediary responsibilities, and safeguarding personal data.

Section 66A of the IT Act, which criminalized sending "offensive" messages, generated considerable controversy. Critics argued that its ambiguous wording could stifle free speech protected by the Indian Constitution. Numerous instances of misuse led to legal challenges, culminating in the Supreme Court's 2015 decision to declare the entire section unconstitutional. In 2021, the government introduced the Intermediary Guidelines and Digital Media Ethics Code to regulate social media companies and online platforms. These guidelines outline specific responsibilities for intermediaries, including:

- Appointing designated personnel such as a Chief Compliance Officer, Grievance Redressal Officer, and Nodal Contact Person.
- Implementing a robust content moderation system that promptly removes specific types of prohibited content within 36 hours of receiving a court order or notification from relevant authorities.
- Establishing a mechanism to address user complaints within a set timeframe.⁵

⁵ Prime Legal , *Social Media and Freedom of Speech: The Legal Boundaries in India*, (13th Feb 2024 5:00 PM) <https://primelegal.in/2023/06/17/social-media-and-freedom-of-speech-the-legal-boundaries-in-india/>

USA

One of the main tenets of democratic countries, such as the US, is the freedom of speech and expression. It encompasses the inalienable freedom of people to express their thoughts, opinions, and points of view without worrying about censorship or negative consequences from the government. This right is essential for maintaining individual liberty and self-expression, but it's also critical for fostering civic engagement, promoting the free flow of ideas, and advancing society. This means that Americans are entitled to freely express themselves through various channels. An essential principle ingrained in American society is the belief that citizens should be provided with information without restriction.

The framers of the Constitution emphasized that knowledge should not be monopolized by a select few but should be accessible to all. Fundamentally, the right protects all forms of communication, including written and spoken words, creative expression, nonverbal cues, and symbolic gestures. It encompasses both public spaces like highways, parks, and plazas as well as private areas where people converse or express themselves in different ways. This right is not unrestricted, though; there are some restrictions and limitations. Speech that actively incites violence, endangers public safety, violates intellectual property rights, is defamatory or contains obscenity or pornography is usually covered by these restrictions.

Furthermore, depending on legal and social standards, other speech categories, such as hate speech and speech that promotes discrimination or prejudice, may also be regulated, albeit to differing degrees. The first version of the Constitution gave strong, unrestricted protection to the right to free expression and the press. Nonetheless, the US SC started utilizing the "clear and present danger" standard in court proceedings when the judiciary was given more power to examine legislation. This law protected people's right to free speech as long as it did not immediately and clearly endanger other people. But as time went on, it became clear that this norm was insufficient to handle changing legal complications. As a result, the "balancing of interests" theory which involves considering the interests of all parties involved in order to assess fairness was adopted by the Supreme Court. The SC has ruled that some forms of communication are not covered by this freedom and permits governments to impose reasonable restrictions on the location, time, and mode of speech.

Notwithstanding these restrictions, a careful reading of the First Amendment demonstrates that it safeguards Americans' right to free expression in its entirety. Despite Congress being particularly

mentioned in the First Amendment, the President and the judiciary have been deemed to be included in its scope by the Supreme Court. This broad view guarantees the preservation of free expression in all governmental branches. The differences between private control and governmental censorship are a significant component of free speech. Although the First Amendment primarily protects people from government interference with their expression, private organizations, including social media companies, nonetheless have the authority to control content and uphold social norms. As a result, social media sites such as Facebook, Twitter, and YouTube have developed their own policies and guidelines to regulate content created by users. This has led to discussions about how to strike a balance between the right to free speech and platform responsibility. Furthermore, it can be difficult to draw a clear line between speech that is protected and speech that is not, especially when conflicting interests like public order, personal rights, or national security are at stake. Because of this, courts usually have to strike a balance between the importance of free speech and other communal goals, as well as the particular circumstances and implications of speech actions.

One of the most important foundations of democratic government is the freedom of speech and expression, which guarantees people the ability to express themselves and participate in public debate without interference or punishment. Although this privilege is fundamental to democratic countries, it also comes with obligations and limitations meant to protect individual liberties, maintain public safety, and promote social cohesiveness. In the end, the ongoing discussion about speech rights highlights how democratic ideals are dynamic and ever-changing in today's environment.

The relationship between freedom of speech and social media presents nuanced distinctions, particularly in the context of the United States. In the US, the First Amendment safeguards freedom of speech from government interference, protecting individuals from censorship by public authorities, except in cases involving imminent lawless action or incitement to violence. However, social media platforms operate as private entities and are not subject to the same constitutional constraints. Instead, they have their own terms of service and community guidelines governing user behavior and content moderation.

Social media platforms retain the right to moderate content based on their own policies. This includes the removal of content that violates their guidelines, such as hate speech, harassment, or misinformation. While this may lead to the removal of certain content from these platforms, it

does not infringe upon individuals' free speech rights. Rather, it simply means that specific content cannot be shared on that particular platform. Individuals remain free to express themselves elsewhere, whether on other platforms or in public spaces.

In the United States, the legal framework concerning online speech and content moderation is primarily shaped by several key factors. The First Amendment to the US Constitution guarantees freedom of speech, protecting individuals from government censorship. However, it does not grant unrestricted freedom, as reasonable restrictions can be applied in certain circumstances. Additionally, Section 230 of the Communications Decency Act shields online platforms from liability for most user-generated content, promoting the free exchange of information while also raising concerns about the dissemination of harmful content. Furthermore, each social media platform establishes its own terms of service and community guidelines, dictating acceptable user behavior and content standards. Violations of these policies can result in account suspension or content removal.

Therefore, while the United States does not have legislation analogous to India's Information Technology Act, the legal landscape surrounding online speech is influenced by the interaction between the First Amendment, the Communications Decency Act, and individual platform policies.⁶

UNITED KINGDOM

In the UK, like many democratic countries, there's a recognition of the significance of individuals freely expressing their opinions and ideas. Unlike the US with its First Amendment, the UK has a distinct approach. Rather than a single statute, the UK safeguards this right through various means. The HRA of 1998 has incorporated the European Convention on Human Rights, including Article 10, which guarantees the right to express oneself freely. Moreover, established legal principles, known as common law, further delineate the boundaries of acceptable expression. Nevertheless, this right is not absolute. This right holds a pivotal role in a democratic UK. However, this right is intertwined with other significant societal values, necessitating a continuous effort to strike a delicate balance. Understanding the legal framework, constraints, and ongoing dialogues is essential for navigating this intricate landscape and promoting responsible expression in the UK.

⁶ Dheerajendra Patanjali, *Freedom of Speech and Expression India vs. America – A study* (15th Feb 2024 11:00 AM) www.indialawjournal.org/archives/volume3/issue_4/article_by_dheerajendra.html

In various legal cases, courts have had to balance freedom of expression against other rights outlined in conventions and laws. For instance, in the *Venables v. News Group Newspapers Ltd. case*⁷, a court imposed an injunction to prevent media from disclosing the names and whereabouts of two young men who were at risk of harm if their identities were revealed. This decision prioritized their right to life over the media's freedom to report. Similarly, in the Naomi Campbell case, the House of Lords ruled in favor of protecting her privacy rights over the media's freedom to publish trivial information about her, especially regarding her health.

However, in another case, when the privacy of a young boy conflicted with the press's freedom to report on his mother's trial for murder, the court sided with the press, prioritizing freedom of expression over privacy.

These cases show that there is no automatic preference for either freedom of expression or privacy in legal decisions. Each case is evaluated based on the specific circumstances and the importance of the rights involved.

The interplay between the freedom of speech and online content in the UK is multifaceted, influenced by several key factors. Firstly, the Human Rights Act 1998, which incorporates the ECHR into UK law, plays a significant role. Article 10 safeguards freedom of expression, encompassing the right to hold opinions and to receive and impart information and ideas. However, this right is not absolute and can be subject to reasonable limitations in the interests of national security, public safety, crime prevention, health, morals, or the protection of others' reputations and rights.

In addition to the overarching principles outlined in the HRA, specific laws exist in the UK that address various aspects of online speech. For instance, the Malicious Communications Act 1988 criminalizes the transmission of "indecent or grossly offensive" messages, while the Communications Act 2003 prohibits messages that are "grossly offensive or of an indecent, obscene, or menacing character." Furthermore, the Public Order Act 1986 makes it an offense to incite hatred based on race, religion, or sexual orientation.

Like in other jurisdictions, social media platforms in the UK have their own terms of service and

⁷ [2001] EWHC 32.

community guidelines governing acceptable user behavior and content moderation. These platform policies play a crucial role in shaping online discourse and determining the boundaries of acceptable speech. Nevertheless, there remains an ongoing debate in the UK regarding the balance between freedom of expression and protecting individuals from online harms such as hate speech, misinformation, and harassment. The government has proposed various measures to address these concerns, sparking discussions about potential infringements on free speech rights. Therefore, the UK's legal framework surrounding freedom of speech and online content is complex, encompassing various laws, regulations, and platform policies. Staying informed about these evolving legal landscapes is essential, and seeking advice from legal professionals can provide clarity on specific questions related to online expression in the UK.⁸

FRANCE

France has a rich history of championing freedom of expression, dating back to the revolutionary period of 1789. The Declaration of the Rights of Man and the Citizen enshrined this principle, emphasizing individuals' rights to speak and publish freely, with accountability for any misuse of this freedom. The 1881 press law further strengthened this foundation by abolishing prior censorship and granting significant rights and protections to the press. While promoting freedom of expression, this law also established mechanisms for holding individuals accountable for the content they published. Notably, similar principles of press freedom have been extended to the online sphere.

However, the advent of the internet posed unique challenges, prompting France to continually update its approach to balancing freedom of expression with other societal needs, such as state security and individual rights. This ongoing balancing act requires careful consideration of how this right is both guaranteed and limited within the legal framework. France's commitment to this freedom is evident in its adherence to international agreements which upholds the unrestricted right to express and share information. Despite being ratified, these agreements are not legally binding within the French system.

France's distinctive approach allows for a diversity of voices, including those with unpopular or intolerant opinions, to be expressed in both public and private domains. Additionally, France actively supports international endeavors aimed at safeguarding this fundamental right.

⁸ Eric Barendt, *Freedom of Expression in the United Kingdom Under the Human Rights Act 1998* (15 Feb 2024 8:00 AM) <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1125&context=ilj>

Although officially abolished during the Revolution, censorship in France has manifested in various forms throughout history, including pre-publication censorship (at times abolished and reintroduced), post-publication censorship through court rulings, and self-censorship due to fear of repercussions.

Self-censorship poses a significant threat as it stifles both free speech and access to information. This insidious form of censorship restricts creative expression and journalistic freedoms, impacting the vibrancy of public discourse. Acknowledging the need for balance, the individuals are empowered to express themselves freely but this right is not absolute and comes with specific restrictions and responsibilities outlined in legal frameworks and international conventions. For instance, the ECHR permits restrictions on freedom of expression to safeguard national security, public order, and the rights of others, considering these essential in a democratic society.

Court cases like *Garaudi v. France*⁹ illustrate how the ECHR weighs national well-being against individual fairness. While denying the Holocaust was considered a grave offense against fundamental values, the court deemed it a valid restriction on free speech. Similarly, a 1984 newspaper ad judged as supportive of terrorism by a French court was deemed overly harsh by the European Court for a democratic society.

France's 1881 press law, while seemingly granting broad freedom of expression, also includes provisions safeguarding individuals, such as prohibiting discrimination based on race or religion. This underscores that freedom of speech in France is not without limits, with legal measures in place to protect both the nation and its citizens.

Therefore, France's approach to freedom of expression is multifaceted, striking a balance between individual liberties and societal needs. While there exists a longstanding commitment to this fundamental right, its boundaries are continuously reassessed to ensure compatibility with other fundamental rights and societal responsibilities.

France's approach to freedom of speech and online content is characterized by its unique legal framework and cultural considerations. Here are key aspects of France's approach to freedom of expression: France upholds the principles in Article 10 of the Declaration of 1789. This principle

⁹ Case no. 65831/01

protects individuals' rights to express their opinions, including religious ones, as long as they do not disrupt established law and order. Despite the commitment to freedom of expression, France recognizes limitations on speech by law. Several national laws aim to curb expression in specific contexts, including hate speech laws that punish incitement to discrimination, violence, or hatred based on race, religion, or other characteristics. Additionally, laws against defamation and insult protect individuals' reputations, while laws against the glorification of terrorism prohibit the promotion or justification of terrorist acts.

Social media platforms operating in France have the authority to moderate content based on their own terms of service, provided that these terms align with French law. Similar to other nations, France engages in ongoing discussions about maintaining a balance between freedom of expression and protecting citizens from online harms. This dialogue involves grappling with complex issues and evolving societal norms. Therefore, France's approach to freedom of speech on online platforms reflects a commitment to fundamental rights while recognizing the need for legal limitations in specific contexts. The country's unique legal provisions and cultural considerations contribute to a nuanced understanding of free expression within its borders.¹⁰

JUDICIAL APPROACH

In *Faheema Shirin R.K. case*,¹¹ the HC acknowledged the essential role of mobile phones and internet access in contemporary life. The court considered resolutions from the United Nations Human Rights Council and General Assembly emphasizing internet access as crucial for information, education, and knowledge. The court's verdict recognized internet access as implicit within the fundamental rights to life, liberty, and privacy guaranteed by Article 21 of the Constitution. Additionally, the court deemed internet access an essential element of the infrastructure supporting freedom of speech and expression.

Building upon this precedent, the Supreme Court, in *Anuradha Bhasin's case*¹² declared that freedom of speech and expression through the internet is inseparable from Article 19(1)(a) safeguarding this right. The court further ruled that any restrictions on internet access lacking clear definitions would be deemed illegal. Additionally, internet shutdowns would require

¹⁰ Xenia A. Ivanova, *Alexander A. Stepanov Restrictions of the Freedom of Speech in France in the Digital Technologies Era*, (12th Feb 2024 9 PM) file:///C:/Users/cenah/Downloads/Restrictions_of_the_freedom_of_speech_in_France_in%20(1).pdf

¹¹ *Faheema Shirin.R.K vs State of Kerala*, AIR 2020 KERALA 35

¹² *Anuradha Bhasin vs Union of India*, 2019 SCC OnLine SC 1725.

justification based on necessity and proportionality.

In *Kamlesh Vaswani v. Union of India*,¹³ the court focused on blocking websites hosting harmful content, particularly child pornography. The ruling placed a proactive responsibility on intermediaries like social media platforms to identify and block access to such content, aiming to safeguard children.

In the landmark *Shreya Singhal* case,¹⁴ the court addressed online free speech limitations imposed by Section 66A of the IT Act (2000). This section used vague terms like "offensive" and "causing annoyance" to restrict online expression. Recognizing its detrimental impact on free speech, the Supreme Court declared Section 66A unconstitutional. The court highlighted the section's ambiguity and lack of clear guidelines, leading to inconsistent enforcement and a chilling effect on free expression for both users and authorities.

Social media platforms face a constant challenge: balancing the right to free expression with the need to curb harmful content. This delicate task requires careful consideration of several key factors:

Legal Frameworks: While freedom of expression is a cornerstone principle, it's not absolute. National constitutions, human rights conventions, and local laws typically outline reasonable restrictions aimed at protecting public order, national security, individuals' rights and reputations, and preventing harm. Effectively balancing these restrictions with free speech is crucial.

Clear Definitions and Standards: Defining and interpreting "harmful content" presents a significant hurdle. Establishing clear, well-defined guidelines for what constitutes harmful speech and when intervention is warranted is essential for consistent content moderation decisions.

Contextual Evaluation: The potential harm caused by speech is heavily influenced by context. Intention, social and cultural context, and potential impact on individuals or marginalized groups all play a vital role. This evaluation helps distinguish between legitimate expressions of opinion and harmful speech that incites violence, promotes hate, or targets specific groups.

¹³ (2016) 7 SCC 592

¹⁴ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523

Proportionality and Consistency: Responses to harmful speech must be proportionate. The severity of the harm, speaker's intent, and potential societal impact should guide the chosen measures. Additionally, a consistent and uniform application of these measures helps avoid accusations of bias or unfair treatment.

The path to achieving this balance is an ongoing journey requiring continuous evaluation, refinement of policies and practices, and an acknowledgment of the dynamic nature of the digital landscape. By incorporating established legal frameworks, clear definitions, contextual evaluation, and proportionate and consistent responses, platforms can contribute to fostering a more inclusive and responsible digital environment.¹⁵

CONCLUSION AND SUGGESTIONS

The Constitution guarantees freedom of speech, but with limitations to protect the national interest and public order. Media, including news channels and social media, play a crucial role in shaping public opinion. While social media empowers individuals to express themselves freely, it also facilitates the spread of misinformation and harmful content.

Social media, a potent tool for free expression, also faces challenges related to potential misuse for illegal activities. This has led to discussions about censorship by the government. However, concerns exist regarding potential violations of civil liberties. As a result, regulating social media is considered a preferable approach compared to outright censorship. However, existing cyber laws are deemed insufficient for this purpose, highlighting the need for specific legislation tailored to effectively regulate social media platforms.

Regulating social media presents various complexities, including balancing freedom of speech with privacy rights and combating hate speech and discrimination. To address these challenges, it is recommended that the government establish a committee of technical experts. This committee can conduct a thorough investigation into both the positive and negative aspects of social media usage and propose robust regulations that safeguard civil liberties while effectively addressing concerns about misuse.

¹⁵ Prime Legal, *Social Media and Freedom of Speech: The Legal Boundaries in India* (9th Feb 2024 9:00PM) <https://primelegal.in/2023/06/17/social-media-and-freedom-of-speech-the-legal-boundaries-in-india/>