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MEDIA REGULATION IN THE DIGITAL AGE: CONSTITUTIONAL AND REGULATORY DIMENSIONS IN INDIA

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ABSTRACT

Over the past few years, the field of Indian media has experienced a significant transformation as a result of the fast technological changes. Social media, streaming and online news portals are replacing traditional mediums such as newspapers, radio and television. This change has enabled communication to be quicker and active so that creators and audiences can engage directly with one another. However, it has also brought serious constitutional and regulatory issues particularly in regulating digital content and accountability. To understand how the legal system of India is adjusting to these changes, this paper will discuss the constitutional, judicial and changing regulatory provisions. Article 19(1)(a) of the Constitution is central to media regulation, which provides the freedom of speech and expression, including the freedom of the press. Article 19(2) deals with reasonable restrictions such as public order, decency, and morality. The digital age has increased the difficulty of defining these boundaries with challenges such as hate speech, fake news, and the use of algorithms to produce content. The paper also examines the Information Technology Act, 2000 and the IT (Intermediary Guidelines and Digital Media Ethics Code), 2021, as they place some responsibility on the digital platform, such as due diligence, attribution of messages, and a three-level grievance redress system. Although this effort is intended to control the content of the internet and give a solution to online abuse, it has led to criticism of executive overreach and threat to free speech. The Information Technology Act, 2000 and the IT (Intermediary Guidelines and Digital Media Ethics Code), 2021 are also explored in the paper since they place some responsibility on the digital platform, such as due diligence, attribution of messages, and a three-level grievance redress system. Although this effort is intended to control the content of the internet and develop a solution to online abuse, it has led to criticism of executive overreach and a possible danger on free speech. Also, the introduction of regulatory authorities like the News Broadcasting and Digital Standards Authority (NBDSA) and Press Council of India (PCI) signify the transition to hybrid forms of self-regulation. The paper draws comparisons to

other world systems such as the European Union Digital Services Act and current debates in the United States on how to address the issues of balancing creativity, responsibility, and constitutional rights in the digital era.

Keywords: Digital media regulation, freedom of speech (Article 19(1)(a)), Intermediary Liability, Proportionality Doctrine, Privacy and Data Governance, Constitutional Safeguard.

Introduction

The current technological advancement has transformed the media in India tremendously with the advent of Internet. Social media and OTT services, as well as online news sources are no longer the main providers of information because major providers are no longer newspapers, radio, and television. This has created a more interactive and faster communication process enabling content creators and audiences to communicate instantly. Although this has democratized information access, it has raised major issues like misinformation, hate speech, online harassment and algorithmic bias. The new developments have strained constitutional restrictions and regulatory frameworks which were initially created before the digital, analog age.¹

Media regulation in India is established by Article 19(1)(a) of the Constitution which establishes the right to freedom of speech and expression and was construed by the Supreme Court to encompass freedom of the press such as in the case of *Romesh Thappar v. State of Madras*². This right is however not absolute, and is subjected to reasonable restrictions under Article 19(2) such as restrictions against the public order, decency, morality as well as national security. This balance is easier to lose in the digital realm where Internet content can easily spread over a short period of time and sometimes out of control, leading to the possibility of greater harm.

This paper examines these constitutional and regulatory challenges by analysing key judgments such as *Shreya Singhal v. Union of India*³ and *Justice K.S. Puttaswamy v. Union of India*,⁴ along with laws like the Information Technology Act, 2000 and the IT Rules, 2021. It critically

¹ Vishal Sharma, *Regulatory Mechanism for Electronic Media: Protecting Freedom of Speech from the Onslaught of Uncontrolled Media*, 2 I.L.I. L. Rev. 16 (2018)

² *Romesh Thappar v. State of Madras*, AIR 1950 SC 124 (India).

³ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

⁴ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

assesses the issue of executive overreach, including in the aspects of traceability and grievance mechanisms, and draws parallels between the practice in India and global legal frameworks such as the Digital Services Act by the EU. Overall, it highlights the necessity of rights-based reforms.

Statement of Problem

The main issue is that the regulatory framework of the media in India was initially created to control traditional media such as print and broadcasting, but nowadays the communication environment is almost entirely digital. Algorithms drive modern platforms that are decentralised, and they operate across national boundaries, being fundamentally different to older forms of media. This has resulted in a clear disparity of current constitutional principles and regulatory practices on one hand against the rapidly evolving realities of electronic communication on the other. As a result, online hate speech, harmful content, and misinformation as well as the lack of accountability of intermediaries are legitimate concerns of the government, but there is no easy way to regulate these. Any attempt for strict control could be a way of suppressing genuine freedom of expression, disheartening the opposition and extending the executive authority over online expression. Hence, the question is not whether regulation should be adhered to, but how to make it effective to reach the intended goals without infringing on the key rights such as freedom of speech, privacy, and due process.

Research Objective

To analyse whether the legal and constitutional provisions in India that govern media in the digital age adequately balance the freedom of the expression, with the necessity of digital governance accountability.

Research Questions

Whether the current regulatory framework of digital media in India constitutionally sufficient, proportional, and effective in mitigating online harms and protecting freedom of speech and privacy?

Research Methodology

This paper adheres to the doctrine research methodology that entails systematic examination of primary legal documents comprising of the constitutional provisions (Articles 19 and 21),

major statutes such as the Information Technology Act, 2000 and the IT Rules, 2021, and also significant judicial rulings such as the cases of Shreya Singhal case and Justice K.S. Puttaswamy. Besides these primary materials, the paper also uses secondary sources in the form of scholarly articles, guidelines released by organizations like the Press Council of India (PCI) and News Broadcasting & Digital Standards Authority (NBDSA), and comparative global frameworks to give the study a global view.

Constitutional Foundations

India regulates media on the basis of Article 19(1)(a) which provides freedom of speech and expression with additional provision of freedom of the press although it is not explicitly stated in Article 19(1)(a). This was upheld by the Supreme Court in *Romesh Thapar v. State of Madras*⁵ which declared pre-censorship as detrimental to democratic debates. The freedom is however not absolute and can be restricted reasonably as envisaged in Article 19(2), the sovereignty, order, and decency. These limitations are to be fair, limited, and in accordance with due process. This balance in the digital environment has been made more complex. The Court struck down, in *Shreya Singhal v. Union of India*,⁶ Section 66A of the IT Act⁷ as vague and excessively broad and, significantly, drawing a distinction between mere advocacy and actual incitement, by safeguarding legitimate online speech.⁸

Another important development is the introduction of the principle of proportionality by *Justice K.S. Puttaswamy v. Union of India*⁹ mandating that any rights restriction must pass the tests of legitimacy, suitability, necessity, and balance. In the context of digital regulation, this principle creates certain issues in relation to tools such as traceability, which can be overly intrusive and excessive. Meanwhile, Article 21 deals with the right to life and personal liberty, which now incorporates the right to privacy that provides an added layer of safeguard in the online realm. This imposes responsibilities upon the state and the digital providers to protect user information and ensure abuse. Collectively, these constitutional principles should be redefined against the backdrop of new technologies, so that digital media do not disrupt healthy democracy.

⁵ *supra* note 2.

⁶ *supra* note 3.

⁷ § 66A, Information Technology Act, No. 21 of 2000 (India).

⁸ Ajay Kumar, *Digital Media Regulations in India: Some Reflections*, in Pawandeep Kaur (ed.), *Emergent Regulatory Governance: Key to Indian Regulatory Laws* 305 (Indu Book Services Pvt. Ltd. 2022).

⁹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).

Judicial Interpretations

In India, the judiciary has been a key and changing aspect in the regulation of digital media by making significant landmark decisions. In *Shreya Singhal v. Union of India*,¹⁰ the Supreme Court quashed Section 66A of the IT Act on the basis that it was vague and expansive, since it has a chilling effect on free speech. It was also made clear during the judgment that intermediary liability had a limit as laid out in section 79 of the act where platforms would not be held liable in cases where they observed due diligence and acted in legitimacy to orders of law. The Court in *Justice K.S. Puttaswamy v. Union of India*¹¹ recognised right to privacy as a fundamental right under Article 21 and proposed the principle of proportionality, requiring any action taken by the state to encroach on personal data to be justified, necessary, and proportional. This principle subsequently had an effect on cases pertaining to surveillance and data gathering, such as *K.S. Puttaswamy (Aadhaar)*,¹² when the Aadhaar system was approved but with some conditions. Recently, in *Kaushal Kishor v. State of Uttar Pradesh*,¹³ the Court expanded on aspects of intermediary responsibility by highlighting a notice-and-takedown possible approach to intermediary responsibility instead of imposing the duty of proactive censorship on platforms. Together, these decisions highlight the importance of procedural fairness, limit excessive executive control, and uphold the primacy of free speech, although challenges like regulating algorithmic decision-making and ensuring accountability of digital platforms still remain.

Statutory Framework

The Information Technology Act, 2000 is the foundation of regulation of digital media in India, and provisions like Section 69¹⁴, which permits interception of information in the interest of providing security, Section 69A¹⁵, which permits blocking of content in the interest of sovereignty and maintenance of order, and Section 79¹⁶, the provisions of safe harbour, where intermediaries must practice due diligence. The IT (Intermediary Guidelines and Code of Ethics on Digital Media) Rules, 2021 substantively broadens this framework by imposing stricter requirements, particularly on the significant social media intermediaries, such as traceability to determine the first source of messages, and appointing compliance officers, and

¹⁰ *supra* note 3.

¹¹ *supra* note 4.

¹² *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2018) 10 SCC 73 (India).

¹³ *Kaushal Kishor v. State of U.P.*, (2023) 4 SCC 1 (India).

¹⁴ § 69, Information Technology Act, No. 21 of 2000 (India).

¹⁵ § 69A, Information Technology Act, No. 21 of 2000 (India).

¹⁶ § 79, Information Technology Act, No. 21 of 2000 (India).

a three-tier grievance redressal policy on OTT platforms and digital news publishers. Although the measures are meant to address some of the challenges faced by misinformation and harmful content, they are largely criticised to be ambiguous leading to prior restraint on free speech. Simultaneously, regulators such as the News Broadcasting and Digital Standards Authority (NBDSA) also have a self-regulating role in broadcast and OTT content by including codes that cover on hate speech and ethical considerations concerning print and online journalism through the Press Council of India (PCI). All these points to a transition to a hybrid version of regulation as opposed to pure self-regulation but a growing level of executive control, especially by the Ministry of Information and Broadcasting notifications, touches on some grave constitutional issues of proportionality and the potential conflict with Article 19(2).¹⁷

Intermediary Liability and Challenges

Section 79 of the IT Act provides conditional immunity to intermediaries, like platforms like X and YouTube, as long as they are passive conduits and they take down illegally obtained material after due notice. The IT Rules, 2021 have however put an increased burden on them, with the introduction of proactive duties, such as the appointment of grievance officers, the monthly submission of compliance reports, and the traceability to establish the source of particular messages that fall within the definition of the term grave. Such needs confuse the role of intermediaries and publishers, exposing risk of greater liability and over-regulation.¹⁸

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¹⁷ Aleena Henry & Sona Maria Anto, *Content Regulation in the Light of Constitution and Data Privacy*, 7 Int'l J. Multidisciplinary Rsch. 6 (2025).

¹⁸ Naren Patel, *Indian IT Laws and Media Regulation: Understanding Their Impact on Digital Age Freedom of Expression and Privacy*, 2 White Black Legal L.J. (Apr. 2024).

making content and the platform on which such content is hosted or transmitted.¹⁹

Regulatory Authorities and Models

PCI resolves print/digital ethics through complaints in which advisories are issued without coercive force, whereas NBDSA implements broadcast/OTT codes with fines/advisories to breaches of norms such as sensationalism. Digital publishers are co-regulated by 2021 Rules which provide inter-ministerial Grievance Appellate Committees. The move by PCI to voluntary norms to binding penalties provided by NBDSA itself is reflective of hybridity, combining industry standards with regulation, but the enforcement remains inadequate, particularly in the face of volume, leading to a need of independent bodies which are free of executive interference.²⁰

Conclusion and Suggestions

The regulation of digital media in India is about a fine line between constitutional protection of freedom of speech and real harms in the massive and fast expanding user base of more than 800 million users. Although initiatives such as the IT Rules, 2021 aim to strengthen accountability of digital platforms, other clauses such as traceability are ambiguous and are subject to censorship and overreach. Judicial protections, particularly in rulings such as in Shreya Singhal case have been critical towards safeguarding the freedom of expression, however, the gap in regulations persists through loopholes in the legislation and enforcement.²¹ In order to deal with these challenges, a better organized and balanced solution is required. First, India might pose an enacted Digital Media Act that integrates the concept of proportionality as established in Puttaswamy, saying that regulation must be just, necessary, and not excessive and establishing the principle of algorithmic transparency and independent control agencies. Second, agencies such as the NBDSA and the PCI need to be empowered, through legal support and judicial review, to enhance accountability. Third, data governance must be balanced, consisting of data localisation and encryption and privacy protection based on international data privacy standards such as the GDPR. Fourth, the government in partnership with the private sector can promote digital literacy to enable users to navigate misinformation better. Lastly, India can follow the example of a more subtle regulatory

¹⁹ *Id.*

²⁰ Yogesh Patel, *Media Regulation in Digital Era: Analyzing the Challenges and the Opportunities of Regulating Media in the Digital Age in India*, 8 Int'l J.L. Mgmt. & Human. (2025).

²¹ Tanishka Jain & Dr. Upasana Khurana, *Public Interest and the Changing Landscape of Media Laws in India*, 6 Int'l J. Rsch. Pub. & Rev. 990, 994 (2025).

approach of the EU Digital Services Act that prioritizes risk-based regulation of platforms over universal requirements such as universal traceability. These reforms can be combined to guarantee both control of democracy and the stimulation of creativity.

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