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PLATFORM GOVERNANCE, DIGITAL IDENTITY AND INTERMEDIARY POWER IN DATA-DRIVEN SOCIETIES

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Introduction

Digital media platforms have fundamentally transformed India's information ecosystem, creating new paradigms for communication, commerce, and civic engagement while simultaneously challenging established legal frameworks governing intermediary liability and content regulation. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IT Rules**”), represent the government's most comprehensive attempt to regulate digital platforms, establishing detailed obligations for content moderation, user grievance mechanisms, and transparency reporting.¹

The constitutional implications of these regulations extend far beyond technical compliance requirements, fundamentally reshaping the relationship between state authority, private platform governance, and individual rights to free expression. Recent judicial interventions, particularly the Bombay High Court's September 2024 decision striking down the Fact Check Unit provisions of the 2023 amendments, highlight critical constitutional tensions inherent in platform regulation. This legal landscape presents unique challenges and opportunities for legal journalism, as courts increasingly serve as arbiters of digital rights disputes that affect millions of Indian users. Understanding these complex regulatory frameworks becomes essential for legal correspondents covering technology law, constitutional litigation, and administrative governance in the digital age.

¹ See Priyanka Chaudhary, Digital Communication Technologies and Regulatory Challenges in India, DIGITAL GOVERNANCE J. 45-67 (2024); see also Ministry of Electronics and Information Technology, Information Technology Rules 2021: A Comprehensive Analysis, Government of India (2021).

Legal Framework governing Digital Platform Liability

Constitutional Foundation and Fundamental Rights of the Indian Constitution provide the foundational framework for analysing digital platform regulations, particularly through Articles 19 and 21, which guarantee freedom of speech and expression alongside the right to privacy and personal liberty. Article 19(1)(a) explicitly protects the right to freedom of speech and expression, while Article 19(2) permits reasonable restrictions in the interests of sovereignty, integrity of India, security of the state, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, or incitement to an offense. The Supreme Court's interpretation in *Shreya Singhal v. Union of India* established crucial precedents for digital content regulation, emphasizing that restrictions on online speech must meet constitutional standards of necessity, proportionality, and procedural fairness. This decision limited government authority to compel content removal, requiring court orders or specific statutory provisions for takedown requests.

Digital rights jurisprudence has evolved to recognize that fundamental rights apply equally in online and offline contexts. The United Nations Human Rights Council's position, adopted by Indian courts, confirms that "the same rights that people have offline must also be protected online, in particular freedom of expression." This principle establishes the constitutional foundation for evaluating platform liability regulations against fundamental rights standards.

Constitutional Challenges and Judicial Interpretation

The 2023 amendments to IT Rules, establishing government Fact Check Units empowered to identify "fake, false, or misleading" information about government business, represented a significant expansion of state authority over digital content. These amendments required platforms to remove content identified by Fact Check Units as problematic or risk losing safe harbour protection. The Bombay High Court's landmark decision in *Kunal Kamra and Ors. v. Union of India* declared these amendments unconstitutional, finding violations of Articles 14, 19, and 19(1)(g) of the Constitution. Justice Gautam Patel's opinion emphasized that the Fact Check Units provisions created government monopoly over truth determination, stating that "anything could be said to be 'fake,' 'misleading' is entirely subjective, and as to 'truth' and 'falsity,' throughout recorded human history, there are few, if any, absolute truths.

The court's analysis highlighted constitutional deficiencies in the amendment because of lack of procedural safeguards, absence of appellate mechanisms, vague definitions of prohibited

content, and disproportionate impact on free speech rights. The decision emphasized that making the government the "sole arbiter" of truth violates constitutional principles of separation of powers and fundamental rights protection. This judicial intervention reflects broader concerns about state overreach in digital content regulation and the need to maintain constitutional balance between legitimate regulatory interests and fundamental rights protection. The decision establishes important precedents for future platform regulation initiatives, emphasizing requirements for procedural fairness, definitional clarity, and proportionate regulatory responses.²

Procedural Safeguards and Human Oversight Requirements

The IT Rules attempt to address algorithmic bias through mandatory procedural safeguards, requiring that automated tools be subject to "appropriate human oversight" and periodic review for "accuracy and fairness." These provisions mandate evaluation of automated systems to guard against "propensity of bias and discrimination" and assessment of privacy and security impacts. However, implementation of these safeguards remains problematic due to lack of specific enforcement mechanisms and absence of designated regulatory oversight. The IT Rules provide broad principles without detailed technical standards or accountability measures for ensuring compliance with anti-bias requirements. Legal challenges to algorithmic content moderation often involve questions of procedural due process under Article 21, particularly regarding transparency in automated decision-making and availability of meaningful appeal mechanisms. Courts have increasingly recognized that automated content moderation decisions affecting fundamental rights require constitutional protections similar to administrative actions.

Implications for legal practice and journalism

The evolving landscape of digital platform regulation creates significant opportunities for specialized legal journalism focusing on technology law, constitutional rights, and regulatory compliance. Legal correspondents covering this area must understand complex technical concepts, constitutional principles, and regulatory frameworks to provide accurate and insightful coverage. Key areas for legal journalism coverage include: ongoing constitutional challenges to platform regulations, development of new regulatory frameworks and amendments, judicial decisions interpreting digital rights and platform obligations,

² See Vidhi Centre for Legal Policy, The Algorithm, the Intermediary and the (Holy?) State, VIDHI LEGAL POL'Y (Sept. 16, 2025), <https://vidhilegalpolicy.in/blog/the-algorithm-the-intermediary-and-the-holy-state/>.

international comparative analysis and best practices, and impact of regulations on different stakeholder groups.

The technical complexity of platform regulation requires legal journalists to develop expertise in areas including: content moderation technologies and automated decision-making systems, data protection and privacy law compliance, constitutional law principles applicable to digital rights, comparative international regulatory approaches, and empirical research on regulation effectiveness.

Legal journalists covering digital platform regulation must develop multidisciplinary expertise combining traditional legal analysis with technical understanding and policy evaluation skills. Professional development opportunities include specialized training in technology law and digital rights, workshops on understanding algorithmic systems and Artificial Intelligence governance, continuing education in constitutional law interpretation, and networking with technology law practitioners and academics. Successful legal journalism in this area requires building relationships with diverse sources including: technology law practitioners and academics, digital rights advocates and civil society organizations, platform compliance officers and policy experts, government regulatory officials and policymakers, and affected communities and user advocates.

The rapid pace of technological and regulatory change requires continuous learning and adaptation. Legal journalists must stay current with regulatory developments, judicial decisions, technological innovations, and academic research to provide informed and accurate coverage.

Conclusion

Digital media platforms and intermediary liability regulation in India presents one of the most complex and rapidly evolving areas of contemporary legal practice, combining constitutional law, technology regulation, and democratic governance in unprecedented ways. The IT Rules 2021 represent ambitious regulatory intervention in digital spaces, but their implementation reveals significant challenges in balancing legitimate regulatory objectives with constitutional protections for freedom of expression and due process. The Bombay High Court's decision striking down the Fact Check Unit provisions demonstrates judicial commitment to maintaining constitutional constraints on government authority in digital spaces. This decision,

along with ongoing constitutional challenges to other aspects of platform regulation, establishes important precedents for future regulatory development and judicial oversight. Algorithmic content moderation presents particular challenges for constitutional compliance, as automated systems often exhibit biases that disproportionately affect marginalized communities and may lack adequate procedural safeguards. The tension between technological efficiency and constitutional requirements for fair treatment and due process will likely drive continued litigation and regulatory evolution. Transparency reporting requirements under current regulations provide valuable data about platform content moderation activities but remain insufficient for meaningful accountability without standardization and external verification. Future regulatory development should address these gaps while maintaining constitutional compliance and practical feasibility. The implications of platform regulation extend far beyond technical compliance requirements, fundamentally affecting democratic discourse, minority rights, and the constitutional balance between state authority and individual liberty in digital spaces. Legal journalists covering this area play crucial roles in public education and accountability, requiring sophisticated understanding of constitutional principles, technological systems, and regulatory frameworks. As India continues developing its approach to digital governance, the intersection of constitutional law, technology regulation, and democratic values will remain contested terrain requiring ongoing judicial oversight, legislative refinement, and public engagement. The evolution of this regulatory framework will significantly influence India's democratic future and serve as a model for other jurisdictions grappling with similar challenges.

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