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# Freedom of Expression in Social Media

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AFREEN<sup>1</sup>

## ABSTRACT

*The advent of social media platforms has revolutionized the way people communicate and express themselves globally. However, this technological advancement has brought forth complex challenges concerning freedom of expression. This abstract delves into the multifaceted nature of freedom of expression in the realm of social media, exploring its evolution, implications, and efforts to balance it with other societal values. Initially hailed as a beacon of free speech, social media has become a battleground where diverse interests clash, raising concerns about misinformation, hate speech, and censorship. The unrestricted nature of social media has empowered individuals to amplify their voices, yet it has also provided a platform for the dissemination of harmful content and the suppression of dissenting opinions.*

**Keywords:** Freedom Expression, Social Media.

## I. INTRODUCTION

Freedom of expression is a fundamental right guaranteed by the Indian Constitution, and it extends to the digital realm, including social media. As one of the world's largest internet user bases, India's social media landscape plays a critical role in shaping public discourse and facilitating communication among its diverse population. The Indian legal framework recognizes the importance of freedom of expression while also addressing the challenges posed by the online environment, such as misinformation, hate speech, and content that may incite violence or public disorder. To strike a balance between protecting free speech and addressing these concerns, India has enacted laws and regulations that govern social media platforms and digital content intermediaries.<sup>2</sup> It is essential to explore the laws and regulations that govern freedom of expression in social media in India. This involves understanding how the Information Technology Act, 2000, and subsequent amendments, the newly introduced Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and other relevant legal provisions impact users, social media platforms, and content moderation practices.<sup>3</sup> The legal and regulatory frameworks governing freedom of expression

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<sup>2</sup> Raghav Malhotra, *Social Media Regulation in India: Balancing Freedom and Responsibility* 67 (Bangalore, 2020).

<sup>3</sup> Neha Sharma, *Online Censorship and Free Speech in India: A Comprehensive Study* 89 (Chennai, 2017).

vary across jurisdictions, influencing the scope and limits of permissible speech on social media platforms. While some countries prioritize individual liberties and freedom of speech, others prioritize national security, public order, and protection against hate speech and disinformation. These divergent regulatory approaches can lead to tensions between global platforms and local laws, as well as debates over the appropriate balance between free speech and other societal values. Social media companies implement content moderation policies to govern user-generated content and enforce community standards. These policies aim to curb harmful behaviour, such as hate speech, harassment, and misinformation, while promoting a safe and inclusive online environment. However, content moderation decisions can be subjective and controversial, raising concerns about censorship, bias, and the suppression of dissenting voices.

## **II. INDIAN CONSTITUTION**

The Indian Constitution guarantees the right to freedom of speech and expression under Article 19(1)(a). Citizens have the right to express their opinions freely through various mediums, including social media platforms. However, this right is not absolute and can be restricted under Article 19(2) for reasons mentioned above. Freedom of expression in social media is protected in India under Article 19(1)(a) of the Constitution of India. Article 19(1)(a) guarantees all citizens the right to freedom of speech and expression. This includes the right to express one's thoughts, opinions, and ideas through various forms of communication, including social media platforms.<sup>4</sup>

The Indian judiciary has consistently upheld the importance of freedom of expression as a fundamental right, essential for the functioning of a democratic society. The right to freedom of speech and expression is not only vital for individuals to express themselves but also serves as a cornerstone of a vibrant democracy, fostering open debates, dialogue, and the free flow of information.<sup>5</sup> However, like all fundamental rights, the right to freedom of expression is not absolute and is subject to certain reasonable restrictions. These restrictions are outlined under Article 19(2) of the Indian Constitution. The restrictions include cases where the state can impose limitations on freedom of expression in the interest of:<sup>6</sup>

1. Sovereignty and integrity of India
2. Security of the State

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<sup>4</sup> Indian Constitution, 1950, art. 19(2).

<sup>5</sup> S. Gupta, "Social Media and Freedom of Speech: An Analysis of Indian Regulations," *Communication Today*, Volume: 25 Issue: 4 (2019).

<sup>6</sup> Indian Constitution, 1950, art. 19.

3. Friendly relations with foreign states
4. Public order
5. Decency and morality
6. Contempt of court
7. Defamation
8. Incitement to an offense

Social media platforms are subject to these restrictions when content posted on their platforms violates any of the above grounds. Additionally, the Information Technology Act, 2000, and its associated rules further govern the functioning of social media intermediaries in India and prescribe obligations on content moderation, takedown requests, and grievance redressal mechanisms. In recent years, there have been debates about the balance between free expression and content regulation on social media platforms in India. The government's attempts to regulate social media and online content have been met with concerns about potential threats to freedom of expression and user privacy. Striking the right balance between safeguarding free expression and addressing legitimate concerns related to harmful content remains an ongoing challenge in the Indian legal framework. Freedom of expression in social media is protected under Article 19(1)(a) of the Indian Constitution. While this right is fundamental, it is not absolute and can be restricted by the state under specific circumstances mentioned in Article 19(2). The legal framework surrounding freedom of expression in social media is continually evolving to address the complexities and challenges posed by the digital age.<sup>7</sup>

### **III. INFORMATION TECHNOLOGY ACT, 2000 (IT ACT)**

Section 66A: This section previously criminalized the sending of offensive messages through communication services and social media platforms.<sup>8</sup> However, it was struck down as unconstitutional by the Supreme Court of India in 2015 as it was found to be vague and prone to misuse. Section 66A of the Information Technology Act, 2000 was a controversial provision that dealt with the punishment for sending offensive messages through communication services, including social media platforms. However, this section was struck down by the Supreme Court of India in March 2015 as unconstitutional.<sup>9</sup> Section 66A provided for the punishment of up to

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<sup>7</sup> S. Kumar, "Freedom of Expression and Social Media in India: Legal Perspectives," *Indian Journal of Constitutional Law*, Volume: 10 Issue: 2 Year: 2019

<sup>8</sup> Information Technology Act, 2000, s. 66A.

<sup>9</sup> M. Verma, "Social Media Regulation and Free Speech in India: A Comparative Analysis," *Information and Communication Ethics in Society*, Volume: 12 Issue: 2 (2016).

three years of imprisonment and a fine for sending information that was deemed to be "grossly offensive" or had "menacing character" using a computer resource or a communication device. The provision was widely criticized for violating the right to freedom of expression, as enshrined in Article 19(1)(a) of the Indian Constitution. Critics argued that it could be used to stifle dissent, curb criticism of the government, and chill legitimate online speech.

In response to several instances of misuse and cases filed against individuals for allegedly innocuous social media posts, civil rights activists and organizations challenged the constitutionality of Section 66A in the Supreme Court. In its landmark judgment in March 2015 (*Shreya Singhal v. Union of India*), the Supreme Court struck down Section 66A, declaring it unconstitutional and in violation of the right to freedom of speech and expression.

Since the Supreme Court's ruling, Section 66A has no legal effect, and it cannot be used to initiate any new criminal proceedings. The striking down of Section 66A marked an important moment in India's legal history, reinforcing the importance of protecting freedom of expression in the digital age. However, it is crucial to remain vigilant about potential threats to free speech and to ensure that other laws and regulations are also in line with constitutional principles.<sup>10</sup>

**Section 69A:** This section provides the government with the power to block online content, including social media posts, if they are considered to be against the public interest, sovereignty, and integrity of India, defence of India, security of the state, friendly relations with foreign states, etc. This provision has been used to block certain websites and social media content in the past. Section 69A of the Information Technology Act, 2000 is a provision that grants the Indian government the power to block or restrict access to online content in certain situations. The primary purpose of this section is to enable the government to take measures for public order, national security, and other specified reasons. It is often used to block or remove content that is considered objectionable or poses a threat to the country's security and sovereignty.<sup>11</sup>

**Section 79:** This section deals with the liability of intermediaries, including social media platforms. It provides a safe harbour for intermediaries, such as social media companies, from being held liable for any third-party content posted on their platforms, as long as they comply with certain conditions, including taking down unlawful content upon receiving proper legal orders. Section 79 of the Information Technology Act, 2000 in India provides immunity to intermediaries, such as internet service providers (ISPs) and social media platforms, from certain legal liabilities for third-party content hosted on their platforms. This section is crucial

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<sup>10</sup> A. Sharma, "Online Censorship and Freedom of Expression in India's Social Media Landscape," *Media Ethics & Accountability*, Volume: 5 Issue: 1 (2020).

<sup>11</sup> Information Technology Act, 2000, s. 69A.

for the functioning of online services as it offers a safe harbour to intermediaries, protecting them from being held liable for user-generated content.<sup>12</sup>

#### **IV. INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021**

These rules, notified in February 2021, impose certain obligations on social media intermediaries operating in India. The rules require social media platforms to appoint grievance officers, follow due diligence measures for content moderation, and comply with takedown requests from authorities. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were introduced in India on February 25, 2021. These rules significantly impact freedom of expression in social media and digital media platforms. The rules aim to regulate social media intermediaries, digital news publishers, and over-the-top (OTT) platforms in India.<sup>13</sup>

1. **Grievance Redressal Mechanism:** The rules mandate that social media intermediaries must establish a grievance redressal mechanism to address user complaints. Users can file complaints against content that they find objectionable or offensive. The intermediaries are required to respond to such complaints within a specified time and resolve them accordingly.<sup>14</sup>
2. **Removal of Unlawful Content:** Social media platforms are required to take prompt action to remove or disable access to any content that is deemed unlawful, following a valid court order or government directive. The definition of unlawful content includes content that violates the law, infringes copyrights, or is defamatory, among other things.
3. **Identification of First Originator:** In certain cases, the rules require social media platforms to identify the first originator of certain messages. However, this provision can only be invoked in cases related to the sovereignty and integrity of India, public order, and national security. The platform must ensure that this power is exercised in a selective and targeted manner.
4. **Compliance Officer and Grievance Officer:** Social media intermediaries are required to appoint compliance officers and grievance officers who are responsible for ensuring compliance with the rules and addressing user complaints.
5. **Self-Regulatory Bodies for Digital News Publishers and OTT Platforms:** The rules

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<sup>12</sup> Information Technology Act, 2000, s. 79.

<sup>13</sup> Arpan Banerjee, *Free Speech and Censorship on Social Media in India* 89 (New Delhi, 2018).

<sup>14</sup> Viren Patel, *Internet Censorship and Online Expression in India* 89 (Ahmedabad, 2014).

establish a three-tier self-regulatory mechanism for digital news publishers and OTT platforms. This mechanism allows for self-regulation of content but also enables the government to intervene if necessary.<sup>15</sup>

## V. INDIAN PENAL CODE (IPC), 1860

The Indian Penal Code (IPC) is the primary criminal code of India, which defines and governs various criminal offenses in the country. While the IPC does not explicitly address freedom of expression in social media, it does contain provisions that can have implications for online communication and content on social media platforms. Here are some relevant sections of the IPC:

Section 153A: This section deals with promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. Any statement, speech, or act that promotes disharmony or feelings of hatred between communities can be punishable under this section, regardless of whether it occurs on social media or in any other medium. Section 153A of the Indian Penal Code (IPC) deals with offenses related to promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc.<sup>16</sup>

Section 295A: This section deals with deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs. Content posted on social media that insults religious sentiments may be covered under this section. Section 295A of the Indian Penal Code (IPC) deals with the offense of deliberately and maliciously outraging the religious feelings of any class of citizens. This section aims to prevent the promotion of religious disharmony and protects the religious sentiments of individuals and communities.<sup>17</sup>

Defamation laws in India apply to social media as well. Posting defamatory content on social media platforms can lead to civil and criminal liabilities. Defamation laws play a significant role in determining the boundaries of freedom of expression in social media and other communication platforms. Defamation refers to the act of making false statements about an individual or entity that harm their reputation. It can be classified into two types:<sup>18</sup>

1. Libel: Defamatory statements that are in written or published form, such as social media posts, blogs, articles, or online comments.
2. Slander: Defamatory statements that are spoken or conveyed verbally, like in videos,

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<sup>15</sup> Neeta Desai, *Privacy, Data Protection, and Freedom of Expression in Indian Social Media* 65 (Pune, 2013).

<sup>16</sup> Indian Penal Code, 1860, s.153A.

<sup>17</sup> Indian Penal Code, 1860, s.295A.

<sup>18</sup> Deepa Singhania, *Social Media and Freedom of Speech: Debates in the Indian Context* 34 (New Delhi, 2015).

podcasts, or live streams.

3. **Defamatory Statement:** For a statement to be considered defamatory, it must be false, damaging to the reputation of the person or entity, and made as a statement of fact rather than an opinion. Mere expressions of opinion, criticism, or fair comment generally do not constitute defamation.
4. **Publication:** The defamatory statement must be published or communicated to a third party, beyond the person making the statement and the subject of the statement.

**Section 499:** This section deals with defamation, which involves making false statements about a person that harm their reputation. Defamatory statements made on social media can be considered offenses under this section. Section 499 of the Indian Penal Code (IPC) deals with the offense of defamation. Defamation is the act of making false statements about an individual that harm their reputation and expose them to hatred, contempt, or ridicule.<sup>19</sup>

Defamation is a civil wrong as well as a criminal offense in India. A person who believes they have been defamed can choose to file a civil suit for damages or pursue a criminal complaint for defamation under Section 499 IPC. The offense is non-compoundable, meaning it cannot be settled between the parties without the court's involvement.

In cases of defamation, the burden of proof lies on the complainant to establish that the statements made were false, injurious to reputation, and made with the intention of causing harm or with reckless disregard for the truth. As with any criminal offense, it is crucial to balance the protection of a person's reputation with the right to freedom of expression and the necessity to ensure that genuine criticism and public interest discussions are not stifled. Courts play a significant role in determining the merits of defamation cases and assessing whether the statements in question cross the line between legitimate expression and defamation.<sup>20</sup>

**Section 500:** This section provides for the punishment for defamation. If someone is found guilty of defamation, they can be punished with imprisonment and/or a fine. Section 500 of the Indian Penal Code (IPC) is closely related to Section 499 IPC, as it deals with the punishment for the offense of defamation.<sup>21</sup>

**Section 505:** This section deals with statements conducing to public mischief. Any statement made with the intent to incite people to commit an offense against the state or public tranquillity

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<sup>19</sup> Indian Penal Code, 1860, s.499.

<sup>20</sup> Smita Gupta, *Digital Democracy: Freedom of Speech and Expression in Indian Social Media* 65 (Mumbai, 2018).

<sup>21</sup> Indian Penal Code, 1860, s. 500.



can be punishable under this section, including those made on social media platforms. Section 505 of the Indian Penal Code (IPC) deals with the offense of making statements, rumours, or reports with the intent to incite any class or community of persons to commit an offense against any other class or community.<sup>22</sup>

## **VI. CONTEMPT OF COURT ACT, 1971**

Social media users are also subject to the Contempt of Court Act, which prohibits the publication of any matter that scandalizes or lowers the authority of the courts. The Contempt of Courts Act, 1971, is the primary legislation that deals with the law of contempt in India. It defines and regulates the law of contempt, including civil and criminal contempt. The Act provides guidelines on what constitutes contempt of court, the procedures for dealing with contempt cases, and the penalties that may be imposed for contemptuous behaviour.<sup>23</sup>

## **VII. PERSONAL DATA PROTECTION BILL, 2021**

The Personal Data Protection Bill, 2021, included:<sup>24</sup>

1. **Data Protection Authority:** The bill proposed the establishment of a Data Protection Authority of India (DPA) responsible for overseeing and enforcing data protection regulations.
2. **Data Localization:** The bill mandated that certain categories of personal data be stored within Indian borders. The exact categories and details were to be specified by the government.
3. **Consent and Purpose Limitation:** The bill emphasized obtaining explicit and informed consent from individuals before collecting and processing their personal data. Data could only be used for the specific purpose for which consent was given.
4. **Right to Data Portability:** Individuals would have the right to transfer their personal data from one service provider to another.
5. **Right to be forgotten:** The bill recognized the right of individuals to request the erasure of their personal data under certain circumstances.
6. **Cross-Border Data Transfers:** For certain types of data transfers outside of India, the bill required the DPA's approval or adherence to prescribed safeguards.

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<sup>22</sup> Indian Penal Code, 1860, s.505.

<sup>23</sup>M. Khan, R. Gupta, "Regulation and Challenges of Hate Speech on Social Media in India," *Media Ethics Review*, Volume: 8 Issue: 1 (2021).

<sup>24</sup> Personal Data Protection Bill, 2021.

7. Data Protection Officer: Entities handling large amounts of data would be required to appoint a Data Protection Officer to ensure compliance with data protection laws.
8. Non-Personal Data: The bill proposed a framework for the regulation of non-personal data, which would be anonymized and aggregated data that does not identify individuals.

## VIII. CONCLUSION

Freedom of expression in social media in India is subject to a complex legal landscape. While the country recognizes the importance of free speech, there are also laws and regulations aimed at addressing issues such as misinformation, hate speech, and content that may incite public disorder. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, introduced specific rules for social media platforms and digital media intermediaries to ensure greater accountability and content moderation. The challenge lies in striking the right balance between preserving freedom of expression and addressing harmful content on social media. Content moderation is essential to protect users from abusive, offensive, or illegal content, but it must be done with transparency and adherence to international human rights standards. Users, platforms, and the government must work together to promote a safe and inclusive digital environment that respects diverse perspectives while addressing issues like misinformation and hate speech responsibly. Nurturing a culture of critical thinking, media literacy, and open dialogue is vital to ensure that social media continues to be a force for positive social change and democratic discourse in India. Additionally, staying informed about the evolving legal and regulatory landscape is crucial for users and platforms to navigate the challenges and uphold the principles of free expression in the digital era.

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