

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 7 | Issue 6

---

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Navigating Free Speech and Citizen Rights: The Role of Media in India's Digital Democracy

---

SWAPNA GEORGE<sup>1</sup>

## ABSTRACT

*In the contemporary landscape, where information technology and electronic communication are rapidly reshaping social dynamics, it becomes imperative to prioritize a comprehensive examination of existing legal provisions safeguarding the freedom of media, including nascent social media platforms, while also delineating reasonable restrictions in the interest of individual rights and public welfare. This necessity is underscored by the absence of any inherent privilege of expression exclusively granted to the media, which shares an equal entitlement to freedom of speech and expression as every ordinary citizen of India, as enshrined in the Constitution. The legislative response to regulate the burgeoning electronic realm was initiated with the enactment of the Information Technology Act 2000, which conferred legal recognition upon electronic records for various purposes and delineated penalties for cybercrimes. Furthermore, the government of India has introduced The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, exercising its authority under specific sections of the Information Technology Act 2000. These rules extend regulatory provisions to encompass Social Media and Over-The-Top (OTT) Platforms. Against this backdrop, this paper critically evaluates the landscape of online free speech within the framework of Indian laws, analyzing the implications of legislative measures on digital media platforms and the exercise of expressive freedoms.*

**Keywords:** *Online Free Speech, Media Freedom, Social Media, Information Technology Act, Intermediary rules.*

## I. INTRODUCTION

In today's rapidly evolving landscape of information technology and electronic communication, it is imperative to evaluate and analyze the current provisions safeguarding the freedom of media individuals, including emerging platforms such as social media, while also imposing reasonable limitations in the interest of both individual rights and the public good. This is particularly important because the media does not possess exclusive rights to expression, unlike

---

<sup>1</sup> Author is a Research Scholar at Govt. Law College Ernakulam, M.G. University, Kerala, India.

ordinary citizens of India. The media's freedom of speech and expression is on par with that of any citizen as granted by the Constitution of India. Moreover, given the potential for media to have adverse societal impacts through the dissemination of influential information, there is a pressing need for oversight and balance in media operations to ensure the well-being of society. It is essential to maintain a balanced approach that considers both the rights of the media and citizens, with a mechanism in place to prioritize individual rights should the equilibrium be disrupted.

### **(A) Liberty of Expression: Pillar of Democratic Values**

The introduction of the Constitution of India affirms India as an independent, socialist, secular, democratic republic. The freedom of expression, considered a fundamental human right, is a crucial aspect of a democratic society. In nations governed by elected representatives chosen by the people themselves, the ability to voice opinions is highly valued. Recognized as the fourth pillar of governance, freedom of expression is enshrined in Article 19 of the Universal Declaration of Human Rights, which emphasizes the right to hold opinions and share information without interference. Without a fearless environment for free speech, the democratic ideals of a society would lack substance. The democratic system places significant emphasis on the right to free speech, as highlighted in the case of *Romesh Thapper v. State of Madras*<sup>2</sup>, where Chief Justice Patanjali Sastri stressed its importance in fostering public education and facilitating the proper functioning of democratic processes.

### **(B) Liberty Unbound: Exploring Free Speech and Expression within the Indian Constitution**

The act of expressing opinions, thoughts, emotions, ideas, and feelings is inherently human and normal while stifling such expression is unnatural and contrary to human nature. The acquisition and dissemination of knowledge and information among individuals are fundamental aspects of the development of a society. Reflecting the expansion of international law regarding human rights principles and the fundamental right to speech and expression, numerous countries have enshrined and safeguarded these rights within their constitutions.

Article 19(1) (a) of the Constitution of India ensures that citizens have the freedom of speech and expression. Among the six freedoms granted by Article 19, the right to freedom of speech and expression is deemed the most significant. This right is intertwined with the right to life outlined in Article 21 of the Constitution.

---

<sup>2</sup>AIR 1950 SC 124

## II. MEDIA: THE ARCHITECT OF CONSTRUCTIVE SOCIAL FABRIC

The term 'media' originates from the Latin word '*medus*,' meaning 'middle,' implying a conduit for communication. Over time, 'media' has encompassed various meanings, including the press, media personnel, established media organizations, media houses, and different forms such as print, television, and emerging social media. Its role has expanded to encompass the collection, storage, and dissemination of diverse information, spanning news, opinions, entertainment, and arguments. It has evolved into a structured institution crucial in social gatherings and information dissemination, often referred to as the fourth pillar of society alongside the legislature, executive, and judiciary, albeit without formal legal recognition, yet enjoying widespread societal acknowledgment.

### (A) Media Freedom: Empowering Expression and Speech Rights

The Constitution of India differs from that of the United States in that it doesn't explicitly mention liberty or the freedom of the press or media. However, it's well established in legal doctrine that the right to freedom of speech and expression, as outlined in Article 19(1) (a), inherently encompasses the rights of the press and media<sup>3</sup>. Notably, the terminology used is 'freedom of speech and expression', not just 'speech and expression'. This phrase is comprehensive, indicating the liberty to articulate views, opinions, and beliefs through various means such as speech, writing, printing, or imagery. Thus, while the terms may differ slightly in interpretation and scope, they represent the same fundamental right.

### (B) The era of social networking

Due to the rapid expansion of information technology, modern society finds itself immersed in the era of social media. Unlike the traditional forms of media like print and television, social media refers to a collection of internet-based interactive platforms. The rise of social media is closely associated with humanity's innate desire to connect with others. While the proliferation of social media has transformed the world into a global community, its misuse by individuals with malicious intentions presents numerous challenges to societal order, safety, and security.

### (C) Regulations and their objectives

The Information Technology Act of 2000 stands as one of the initial legislative steps in overseeing and managing the digital realm of the Internet. This legislation acknowledged the legitimacy of electronic records across multiple applications. Additionally, it established

---

<sup>3</sup> *Sakal Papers (P) Ltd v Union of India*, AIR 1962 SC 305

provisions for the prosecution and consequences of numerous cyber offenses. Within Chapter XI of the Act, encompassing Sections 65 to 78, various cybercrimes are addressed, including tampering with computer source documents, dissemination of offensive content, receipt of stolen digital assets, breaches of privacy, cyber terrorism, and instances of obscenity.

#### **(D) The concept of freedom of speech and its limitations**

The aforementioned freedom of speech and expression outlined in Article 19(1) (a) isn't unconditional; rather, it is regulated by the Constitution and Penal laws. Articles 19(2) to 19(6) of the Constitution outline reasonable limitations on the fundamental freedoms provided in Article 19. Among these, Article 19(2) specifies eight criteria upon which reasonable restrictions can be placed on the freedom of speech and expression. While the right to express oneself freely is crucial, any restrictions imposed must be justifiable and reasonable. In *Shreya Singhal v. Union of India*,<sup>4</sup> it was held by the Hon'ble Supreme Court that “*any law seeking to impose a restriction on the freedom of speech can only pass muster if it is proximately related to any of the eight subject matters set out in Article 19(2)*”. In this case, the court struck down Section 66A of the Information Technology Act<sup>5</sup> as unconstitutional because the regulation of electronic communication under the said provision was not any of the eight grounds for imposing reasonable restrictions as aforementioned. Section 66A provided severe punishment for sending electronic messages causing annoyance and inconvenience.

### **III. CONSTITUTIONAL GROUNDS FOR REASONABLE RESTRICTIONS<sup>6</sup>**

- i. Sovereignty and Integrity of India:** - This ground was added by the 16<sup>th</sup> Constitutional Amendment in the year 1963 to guard against the freedom of speech and expression from being used to attack the territorial integrity and sovereignty of the Union.
- ii. Security of the State:** - All utterances intended for overthrowing the government, waging war making rebellion against the government, external aggression, etc. Not

---

<sup>4</sup> (2015) 5 SCC1

<sup>5</sup> Sec.66A. **Punishment for sending offensive messages through communication service, etc.**--Any person who sends, by means of a computer resource or a communication device,

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device;

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine

<sup>6</sup> Article 19(2)-(6), Constitution of India

every public disorder but only those serious and aggravated forms of public disorder are within the expression of “security of the state”.

- iii. **Friendly relations with foreign states:-**The state got the power to impose restrictions in the interest of friendly relations with foreign states by way of the Constitutional First Amendment in 1951.
- iv. **Public Order: -** This ground was added by the First Constitutional Amendment as necessitated by the refusal of the Supreme Court to permit the imposition of restrictions on the right to speech in the interest of public order in the Romesh Thapper case.
- v. **Decency and Morality: -** In this ground decency is the same as lack of obscenity. Obscenity comes as a ground of reasonable restriction in the Constitution since it represents the clash between the individual right to free speech and expression on the one side and the duty of the state to safeguard the morals of the society.
- vi. **Contempt of Court:-**In *Leo Roy Frey v. R Prasad*<sup>7</sup>, it was held that *the Constitutional right to freedom of speech and expression does not prevent courts from punishing for their contempt spoken, words printed, or any other expressions having the effect of contempt of court*. Now contempt is defined under the provisions of the Contempt of Courts Act 1971.
- vii. **Defamation: -** Defamation is a ground for restriction because defamatory matter exposes one to hatred, ridicule, or contempt. In *Subramanian Swamy v Union of India*,<sup>8</sup> it was held *that every person is entitled to dignity and reputation and nobody has a right to denigrate others' right to dignity or reputation*.
- viii. **Incitement to an offence: -** The freedom of speech and expression cannot be allowed to go to the level of inciting or abetting offences. In the *State of Bihar v. Shailabala Devi*,<sup>9</sup> it was held by the Supreme Court that *incitement to murder or other violent crimes would generally endanger the security of the State*.

#### IV. RESTRICTIONS OUTLINED WITHIN THE INDIAN PENAL CODE

Based on the grounds provided for in the Constitution, the state can impose reasonable restrictions on the rights of the citizens to speak and express themselves. Such restrictions can give birth to the definition of crimes and imposition of criminal liability. Some of them have

---

<sup>7</sup> AIR 1958 Punj 377

<sup>8</sup> (2016) 7 SCC 221,344

<sup>9</sup> AIR 1952 SC 329

been provided for under the general penal law of India.

- i. **Section 124A Sedition:** - The act of sedition has not been included as a ground in the Constitution. This word has varying connotations. Bringing hatred, contempt, or disaffection in the people against the government by words, signs, or visible representation or otherwise is punishable with imprisonment or life imprisonment.
- ii. **Section 153A:-** This section punishes causing enmity, disharmony, and ill-will between different religious, racial, language, or regional groups, communities, or castes by words, signs, visible representations, or otherwise.
- iii. **Defamation – Section 499:-** Defamation of a person by imputation is punishable under this provision. Defamation as such is a ground for reasonable restrictions as covered under Article 19(2) of the Constitution.

## V. FREE MEDIA AND RIGHTS OF STATE AND CITIZENS

The presence of robust communication freedoms is essential for the flourishing of a democratic society. One might argue that the fundamental right to freedom of speech and expression is the very foundation of democracy. While institutional media are not explicitly singled out for special treatment regarding free speech, their rights are enshrined within the Constitution, on equal footing with those of individual citizens. Consequently, media organizations in India can rightfully claim and exercise the same freedoms of speech and expression as ordinary citizens. While the media has the potential to contribute positively to the safeguarding of human rights, there are instances where its freedom of expression is abused, leading to significant violations of these rights. Moreover, unethical and reckless media practices can pose risks to both social cohesion and national security.

- i. **Violation of Individual Privacy:** - One of the areas of infringement of individual rights committed by media persons is the most valued right to privacy of citizens. Their privacy is violated by the media in the name of investigative journalism. Uncontrolled publication of individual data in connection with unpleasant events and incidents without consent or authenticity causes irreparable damage to the goodwill and reputation of the people. In *K. S. Puttaswamy's* case,<sup>10</sup> it has been held that the right to privacy is a fundamental right comprised within the provisions of Article 21 of the Constitution. Fundamental rights are guaranteed vertically against

---

<sup>10</sup> *Justice K.S.Puttaswamy(Retd) v. Union Of India*, (2017) 10 SCC 1

the excess of governmental power, but now they are held to be protected horizontally also against their violation by other private persons including the media.

- ii. **Media Trial:** - Nowadays activism of media leads to media trials of cases, mainly criminal cases, which created a sensation, trampling upon cherished rights and interests of the people, both victims and the accused, causing them anguish and trauma. Unwarranted publication of unverified content without caution and care destroys the credibility of the people leaving marks of social stigma in their lives.

#### **(A) Limiting restrictions on media**

The notion that fundamental rights are not unconditional also extends to the media. It's crucial to recognize the potential harm caused by media intrusion into personal lives through privacy breaches and sensationalized trials. Therefore, there's an urgent requirement for additional regulations to hold the media accountable for their publications. Various laws such as the Press and Regulation of Books Act 1867 and, the Press Council of India Act 1956, among others, govern the operations of the media.

#### **(B) Social Media Regulation – Challenges**

Unlike traditional forms of media, social media presents unique challenges and opportunities for society. While conventional media outlets are typically associated with established businesses or organizations led by identifiable individuals, the emergence of social media has introduced a platform that operates within online social networks. Unlike other media, social media removes the veil of anonymity for users who prefer to remain hidden. Furthermore, it transcends geographical boundaries, connecting individuals across various nations. Currently, international cooperation and legislative frameworks for social media regulation are in nascent stages. Complicating matters further, establishing uniform principles or regulations is challenging due to differing moral and legal standards among countries, particularly regarding freedom of speech and expression.

#### **(C) Intermediary Rules and impact on democracy**

The Indian Government has introduced a set of regulations known as The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, exercising the authority granted under Section 87 of the Information Technology Act 2000<sup>11</sup>, specifically sub-section (1), clauses (z), and (zg) of sub-section (2).

It includes regulations for Social Media and OTT (Over The Top) Platforms. A platform

---

<sup>11</sup> Sec.87- Power of Central Government to make rules.

facilitating online interaction between users, enabling them to create, upload, share, modify, or access information is termed a social media intermediary. If such an intermediary has fifty lakh registered users, it's classified as a significant social media intermediary.

This Rule stipulates that social media intermediaries have to observe due diligence as provided for in it. As per the provisions of Rule 7, the intermediary failing to observe these rules will be deprived of immunity which could otherwise be enjoyed under Section 79 of the Act. An intermediary enjoying the said immunity will not be held liable for postings of content made by its users. Consequently, non-compliance with the rules makes the intermediary liable for the content of posts created and uploaded by its users. Among others, these rules include:-

- *Publication of rules and regulations, privacy policy and user agreement, and user agreement for access or usage of its computer resource by any person*
- *Inform the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update, or share any information that belongs to another person, or is defamatory, obscene, pornographic, invasive of another's privacy, including bodily privacy, insulting or harassing based on gender, libelous, racially or ethnically objectionable, or which is harmful to the child or threatens the unity, integrity, defense, security or sovereignty of India, friendly relations with foreign states, or public order, or causes incitement to the commission of any cognizable offence.*
- *Take all reasonable measures to secure its reasonable security practices and procedures as prescribed in the Rules*

Likewise, the Rules also state that significant social media intermediaries are bound to observe additional due diligence, including the Chief Compliance Officer's appointment to ensure compliance with the Act and Rules.

These rules are said to be enacted for the protection of social and national interests. It aims to prevent irresponsible anti-social publications and fix accountability for those misusing social media platforms. It is made to uproot cyberspace misdemeanors and offensive acts and regulate the operation of the OTT platforms as well.

Even when these rules are defended in the name of protecting the rights of individuals and public rights and the unity and integrity of the nation the same has to be tested against the touchstone of the reasonableness of the restrictions as stipulated under the provisions of Article 19(2) of the Constitution.

The state must protect and preserve the individual as well as the media's right to freedom of

speech and expression of its people. At the same time, it has to safeguard social interests and individual privacy. It has to maintain a judicious balance between media rights and individual interests.

#### **(D) Censorship by the Government through the amendment to the Intermediary Rules**

The Ministry of Electronics and Information Technology lately proposed an amendment to the IT Rules 2021 that would further harden Internet censorship. This has caused profound unease among those who value free speech and media freedom in India with the advent of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

There will be a new grouping to take down social media content and news media content concerning the amendment. The proposed amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 states that online intermediaries must take down any information identified as “false” or “misleading” by the government agency, Press Information Bureau (PIB) or “other agency authorized by the central government”<sup>12</sup>. Ironically, the PIB lacks regulatory or oversight powers and hence it cannot exercise supreme power over what independent media publishes in the name of ‘fact-checks’. The Press Information Bureau (PIB) is the nodal agency of the Government of India to disseminate information to the print and electronic media on government policies, programmes, initiatives, and achievements<sup>13</sup>.

These Rules give executives the excessive authority to bring all online news under its ambit through the imposition of a nebulous ‘Code of Ethics’ on online news media accompanying the three-tier Grievance Redressal Committees, the final tier of which is adjudicated by government nominees. The constitution of the three Grievance Appellate Committees (GAC)<sup>14</sup> and their being chaired by government functionaries under the Ministry of Home Affairs, Ministry of Information and Broadcasting and Ministry of Electronics and IT, respectively is what affects online free speech the most<sup>15</sup>.

## **VI. CONCLUSION**

As public discourse increasingly migrates to online platforms, governments worldwide are

---

<sup>12</sup> Amendment to Rule 3(1)(b)(v)

<sup>13</sup> [https://pib.gov.in/Content/205\\_5\\_AboutPIB.aspx](https://pib.gov.in/Content/205_5_AboutPIB.aspx) (last accessed 7th March 2023, 7pm)

<sup>14</sup> Rule 3A, The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

<sup>15</sup> Rule 3A. Appeal to Grievance Appellate Committee(s).—(1) The Central Government shall, by notification, establish one or more Grievance Appellate Committees within three months from the date of commencement of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022. (2) Each Grievance Appellate Committee shall consist of a chairperson and two whole time members appointed by the Central Government, of which one shall be a member ex-officio and two shall be independent members

striving to assert control over the digital sphere. In this regard, the federal government has endeavored to regulate online platforms in recent years. While some government initiatives aim to promote accountability among digital platforms, certain interventions by the Government of India are seen as encroachments on the freedom of speech enshrined in the constitution. Amendments to IT rules grant the executive branch significant authority to regulate online discourse. If implemented, these amendments would not only impact social media intermediaries but also affect providers of digital news content, potentially violating the press freedom guaranteed by Article 19 (1) (a) of the Indian constitution.

In summary, the presence of a robust media culture and an environment where media can operate without fear or interference, particularly from governmental authorities, is crucial for the thriving of a democratic society. Simultaneously, there is a need to safeguard and ensure the full enjoyment of individual rights, particularly the rights to privacy and dignity. Just as free media is essential for the success of democracy, so too is the protection and preservation of the fundamental human rights of its citizens integral to its realization.

\*\*\*\*\*

## VII. REFERENCES

- H.M.Seervai, *Constitutional Law of India*, ( Sweet & Maxwell, 1991)
- D.D. Basu, *Law of the Press* (5<sup>th</sup> Edn., LexisNexis, Butterworths Wadhwa 2010)
- P.M.Baskhi, *Press Law: An Introduction* (BTRFI Publications 1985)
- Thomas Gibbons, *Regulating the Media* (2<sup>nd</sup> Edn., Sweet & Maxwell 1998)
- Timothy Garton Ash, *Free Speech: Ten Principles for a Connected World* (Atlantic Books 2006)
- Aparamita Basu, *Media Laws- An Overview*, Legal Services India, <https://www.legalserviceindia.com/articles/media.htm> (last accessed 20th November 2023, 7pm)
- **Tanu Priya**, *Freedom Of Speech And Expression*, 2015 <https://www.lawctopus.com/academike/freedom-of-speech-and-expression/> (last accessed 19<sup>th</sup> July 2023, 4 pm)
- The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, <https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021> (last accessed 14th December 2023, 4 pm)
- Aashish Aryan, *Explained: Social media and safe harbor*, 2021, <https://indianexpress.com/article/explained/intermediary-guidelines-digital-media-ethics-code-facebook-twitter-instagram-7331820/> (last accessed 16<sup>th</sup> December 2023, 5 pm)
- Government notifies Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, <https://vikaspedia.in/news/government-notifies-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021> (last accessed 12<sup>th</sup> January 2024, 2 pm)
- <https://www.meity.gov.in/content/draft-amendments-it-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>, (last accessed 4<sup>th</sup> February 2024, 5 pm)
- I.Prateek Singh, *Cyber Law In India, IT Act, 2000*, <https://www.legalserviceindia.com/legal/article-836-cyber-law-in-india-it-act-2000.html> (last accessed 13th July 2022, 10 am)

- [https://pib.gov.in/Content/205\\_5\\_AboutPIB.aspx](https://pib.gov.in/Content/205_5_AboutPIB.aspx) (last accessed 7th April 2023, 7pm)

\*\*\*\*\*