THE SPECTRE OF DIGITAL CENSORSHIP: RECALIBRATING FREE SPEECH UNDER ARTICLES 19(1)(A) AND 19(2) IN INDIA'S DIGITAL CONSTITUTIONAL ORDER

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ABSTRACT

The digital platforms have emerged as the modern public square, and have a significant impact on the nature and exercise of free speech in constitutional democracies. The social media, digital news portals, and online intermediaries are no longer just technological devices but essential and vital spaces for democratic engagement, dissent, and public dialogue in India. But this shift to the digital world has also sparked new fears of misinformation, hate speech, threats to national security, and harms from algorithms, leading to an unprecedented reach of the State into online expression regulations. It is a constitutional paradox that the same sorts of laws that are intended to protect the democratic order could be used to suppress it via censorship, overbreadth, and executive overreach through intermediary obligations, content takedown requirements, executive blocking powers, and "fake news" controls. In this article, the author reviews and critically assesses the state of digital speech regime in India, both within the constitutional framework of Article 19(1)(a) and 19(2) of the Constitution of India, and the regulatory developments under the regime that followed the landmark decision of Shreya Singhal v Union of India. It claims that constitutionally, there is no restriction on digital regulation, and it is normatively imperative, but the current model in India faces the danger of being on the wrong side of the line between legitimate regulation and unconstitutional censorship. The paper also situates this challenge by comparing the EU's and the US's approaches to regulation and outlining their contrasting constitutional approaches to digital speech governance. Constitutionally speaking, the problem is that the article concludes that it is necessary to maintain the Constitution. Democracy in the digital age is not simply a set of rules; it's a philosophy that has as its objective to improve judicial oversight, incorporate proportionality and accountability measures, institutional mechanisms, and support the principles of free and fearless in the Constitution. expression.

Keywords: Digital free speech, Article 19(1)(a) of the Constitution of India, Article 19(2) of the Constitution of India. the Constitution of India; intermediary liability; takedown orders; digital censorship; constitutional law.

Introduction

Today, the Internet serves as the public forum of democracy, political movements are organised, dissent is expressed, and public debate and discourse are improved through digital networks. Digital technologies have broken down the communication barriers and made it easier for everyone to have the freedom to speak, which is what John Stuart Mill[1] believed in the importance of free expression of ideas as a part of the freedom of the individual, also known as Mill's discovery of truth.

India has one of the largest online populations. The role of social media platforms, digital news portals and digital intermediaries is vital to democracy, including participation, political contestation and civic engagement, with a voice for those who have been missing. Traditionally, people have not been able to discuss it. But this digital democracy has posed an equally stark constitutional conundrum. Coordinated hate campaigns, online harassment, algorithmic manipulation, threats to national security and rapid proliferation of misinformation have led to the State wanting to increase its regulatory presence in cyberspace. India has evolved into a more interventionist approach to regulating information technology, with rules that give intermediaries a wide range of duties to act, including intermediary liability, intermediaries' traceability obligations, executive blocking powers, and content takedown provisions, contained in the Information Technology Act, 2000[2]and the

Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[3]. These steps, as they have been described in the context of public order and digital responsibility, are entirely valid, but also have serious concerns regarding censorship, overbreadth, vagueness, and executive overreach. As Alexander Meiklejohn pointed out, free speech is essential to democratic self-government[4]; as Ronald Dworkin later stressed, constitutional democracies must ensure the protection of speech even for speech unpopular to ensure the preservation of a political system's legitimacy.[5] The question that becomes more

[1] John Stuart Mill, On Liberty 2 (John Parker & Son, London, 1st edn., 1859)
[2] The Information Technology Act, 2000 (Act 21 of 2000).
[3] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, available at: https://www.meity.gov.in/static/uploads/2024/02/IT-Intermediary-Rules-2021-updated-on-28.10.2022-2.pdf (last visited on June 1, 2026)
[4] Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (Harper & Brothers, New York, 1948).
[5] Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Harvard University Press, Cambridge, 1996)

pressing in the context of the Constitution of India is whether such regulation is legal, necessary, proportional and fair under Article 19(1)(a) and 19(2) of the Indian Constitution[6].

This article highlights the current state of the digital speech regime in India, where the government is moving from legitimate regulation to unconstitutional censorship, thereby suggesting a right-based approach to the constitution that provides for democratic freedom and a right to digital governance.

Constitutional Framework under Article 19(1)(a) and Article 19(2)

Article 19(1)(a) of the Indian Constitution[7] protects the fundamental right of freedom of speech and expression for all citizens of India and serves as the backbone of the constitutional framework of freedom of speech in India. In a consistent and expansive interpretation of this guarantee, judicial authorities have held that the right to free speech is not limited to words, but also includes symbolic expression, artistic expression, political dissent, and the right to receive and distribute information. Such a sweeping definition follows the democratic principle that freedom of expression is not simply the right of the individual but the very nature of a constitutionally-governed society. This was stated by the Supreme Court in its early days case of Romesh Thappar v. State of Madras (1950)[8], which declared that freedom of political discussion is the very foundation of a democracy. This basic principle was later reinforced by the Court in the case of Bennett Coleman & Co. v. Union of India (1972)[9], which held that indirect restrictions on the circulation of media can also be considered unconstitutional restrictions on expression, thereby expanding the ambit of protection to include the medium of expression. But Article 19(1)(a) of the Constitution of India[10] is not an absolute right. The State is granted power to pass reasonable restrictions under Article 19(2) of the Constitution of India[11] on the narrowly drawn grounds of sovereignty and integrity, security of the State, public order, decency, morality, defamation, contempt of court and incitement to an offence. What the constitutional question is, however, is not whether restrictions can be placed, but whether they meet the test of reasonableness. The principle of proportionality has become the main yardstick for the examination of limitations on fundamental rights in modern constitutional law. The

[6] The Constitution of India, arts. 19(1)(a), 19(2).
[7] Id., art. 19(1)(a)
[8] Romesh Thappar v. State of Madras, AIR 1950 SC 124.
[9] Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788
[10] Supra note 6, art. 19(1)(a)
[11] Supra note 6, art. 19(2)

Supreme Court in the case of Modern Dental College & Research Centre v. State of Madhya Pradesh (2016)[12] finally brought the concept of proportionality into the realm of Indian constitutional law, which held that any restriction must serve a legitimate aim, rationally relate to that aim, be necessary in the least restrictive sense, and maintain an appropriate balance between competing constitutional interests.

This doctrine is very applicable to the digital environment, where a single regulatory action can impact millions of users. Maneka Gandhi v. Union of India (1978)[13] was a judgment that made the due process aspect of the protection of free speech much stronger in India and gave a new twist to constitutionalism in India by introducing the concepts of fairness, reasonableness and non-arbitrariness in all aspects of State action. The judgment established the principle of procedural fairness and has made it known that limitations on liberty, such as expressive liberty, must meet not only substantive standards, but also fair procedure. One of the other points is also the "chilling effect", which has become ingrained in the modern free speech jurisprudence. Indirect modes of repression, by ambiguity and fear brought about by vague or too general laws, may deter or discourage legitimate speech. Ambiguous definitions like "harmful content," "fake news", and "false information" often encourage self-censorship on the part of users and intermediaries, which leads to indirect, but constitutionally relevant restrictions on freedom of expression. This is because, in the digital era, constitutional interpretation demands that three basic conditions be adhered to: The three safeguards are legality, proportionality and procedural fairness. Regulatory frameworks allowing for content-based restrictions that are unclear, have excessive executive discretion, and are not subject to judicial review, and will likely erode the constitutional right to, Article 19 guarantees freedom of expression and that no one should be afraid to express.

The Continuing Relevance of Shreya Singhal: Contemporary Challenges to Digital Free Speech

Shreya Singhal vs Union of India (2015)[14] is a constitutional landmark case in India's free speech jurisprudence in the digital world. The significance of its short-term implications was due to its declaring Section 66A of the Information Technology Act, 2000[15], as

[12] Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353
[13] Maneka Gandhi v. Union of India, (1978) 1 SCC 248
[14] Shreya Singhal v. Union of India, (2015) 5 SCC 1
[15] The Information Technology Act, 2000 (Act 21 of 2000), s. 66A

unconstitutional.

It set the principles for regulating speech in the digital world, with a long-lasting and lasting impact. The decision was not only on the removal of a legislative rule, but it was on ways to make the internet a space where democracy is protected. The core of the judgment is that digital platforms are not just technological tools, but modern public spaces where citizens engage in politics, meet, disagree and voice their opinion. The Court gave the full protection of Article 19(1)(a) of the Constitution of India[16]to expression online and thus created a constitutional principle that is fundamental: free expression is not lost in the virtual world of speech. The citizen brings with him his constitutional freedoms. But the post-Shreya Singhal case[17] indicates that threats to online expression are not yet over. Digital regulation is not a matter of censorship. The term "per se" no longer applies, but the existence of several indirect mechanisms: intermediary liability, executive, new powers for takedown, algorithmic content moderation and compliance obligations for digital platforms.

These mechanisms are prone to evade express bans and have a comparable chilling effect on legitimate expression. One egregious trend is the continued use of Section 66A despite it being officially killed off. Regular surveillance and empirical evidence have always revealed that the police continue to register offences under the provision, clearly a gap where the gap between the interpretation of law by judges and the practices of administration is huge. This principle that the endurance of a constitutionally struck down “dead law” also emphasizes a broader state institution do not take care of constitutional rights, they become fragile at heart.

The judgment also continues to be relevant due to the discussion of intermediary liability. The SC wished to limit the idea of a private censor by narrowing the scope of content removal to court orders or directions by the government, which are authorised by law. In recent times, however, regulatory changes have pushed the responsibility of digital platforms to a greater extent, especially with the passage of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[18]. As a result, private entities have quasi-constitutional roles over public discourse, frequently with little democratic oversight, process safeguards or clear standards. This phenomenon is known as “collateral censorship” because of the way that intermediaries pre-emptively and over-excessively remove lawful content in

[16] Supra note 6, art. 19(1)(a)
[17] Ibid.
[18] Ibid.

order to avoid regulatory liability. The harm to the Constitution here is not so obvious, but it is so powerful that the State's encouragement of private speech suppression indirectly harms expressive freedom. This constitutional issue is further complicated by the fact that more and more automated content moderation is being used to point of view. This is alarming because it means digital speech may increasingly be subject to untransparent technologization that is based on the interests of those parties involved and machine logic.

The relevance of Shreya Singhal also extends to Justice K.S. Puttaswamy (Retd.) v. Union of India, which is upholding the constitutional right to privacy. Digital privacy and digital free speech are two interdependent freedoms. Vulnerable voices are safeguarded by anonymous speech, encrypted communication and informational autonomy, which allows for political dissent. Restrictions on encryption and/or traceability will not only compromise privacy, but also the right to express. The case also confirmed that any limitation on digital speech must meet the constitutional principle of proportionality – it should be a means towards a legitimate end, be narrowly drawn, be the least restrictive and ensure procedural fairness. The constitutional discipline is essential in an era where governments are increasingly relying on digital controls in the name of misinformation prevention and national security, and public order. Speech is not protected in constitutional democracies only when it is convenient, agreeable and popular, but when it is dissenting, uncomfortable and unpopular. In that respect, Shreya Singhal is not just a precedent, but a constitutional protection to India's digital future.

Critical Analysis of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

One of the most significant and constitutionally challenged developments in India's developing digital governance framework is the Information Technology (Intermediary

Guidelines and Digital Media Ethics Code) Rules, 2021. The Rules—delivered under the Information Technology Act 2000 (IT Act)—are intended for online intermediaries and for media companies with a wide compliance framework, addressing the needs and regulations of both digital news and social media. Their goals – improving platform accountability, combating the misuse of digital technologies, safeguarding state security and combating harmful online content – are legitimate and are issues of concern in a constitutional democracy. But the legitimacy of the government is not only based on the purpose of the government, but it also relies upon the constitutional compatibility of the means used. In this context, the core

constitutional issue is whether the regulatory provisions provided by the Rules of 2021 are consistent with the constitutional guarantees of freedom of speech and expression (Article 19(1)(a) of the Constitution of India)[19] and privacy (Article 21 of the Constitution of India)[20] and procedural fairness and limited government. In terms of structures, the Rules change the constitution of the relationship between the State, digital intermediaries and citizens. In the past, intermediaries were simply the transmitters of speech and received the benefit of the safe harbour clause contained in Section 79 of the IT Act[21]. But the Rules for 2021[22] change this model drastically to place intermediaries as active regulators of expression. Intermediaries are not a neutral platform, but instead become players in the governance of speech through the compulsory appointment of grievance officers, compliance officers, nodal contact persons, rapid content-removal mechanisms and enhanced due diligence obligations. Traceability conditions, automatic filters and more stringent compliance requirements are also applied to key social media intermediaries. This shift is not just an administrative change but a constitutional change from an "neutral" to "governing" in intermediary digital platforms, where private platforms go from being "neutral" to being "governing". more and more turning into quasi-public regulators. This action raises serious constitutional concerns. The issues of executive overreach and collateral censorship, digital surveillance, procedural opacity, and more. the lack of democratic access to constitutional decision- making. These are the issues which require careful analysis under the Constitution.

A. Executive Overreach and Democratic Legitimacy

The focus of the central constitutional critique on the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[23], is on the dramatic expansion of executive powers over India's digital public sphere. Sponsored by a regulator, the Rules actually reduce the government's role in regulating online speech to that of its main architect, interpreter and enforcer. This is a more profound constitutional issue regarding whether or not subordinate legislation may be used to change the balance of power between the citizens and the State in a way that is not properly democratised. In the Re Delhi Laws Act,1951[24] The Supreme Court set out the limits of delegated legislation by ruling that Parliament may leave

[19] Ibid.
[20] The Constitution of India, art. 21
[21] The Information Technology Act, 2000 (Act 21 of 2000), s. 79
[22] Ibid.
[23] Ibid.
[24] The Delhi Laws Act, 1951

administrative or procedural matters to the executive, but it cannot shift its legislative responsibility of defining its policy and laying down binding legal norms. The legislature may give the executive the power to 'fill in the details,'" Kania said. "Details" of the law, but doesn't decide the substance or content of a law. The Court also "Admonished against 'legislative abdication', Parliament cannot 'efface'," he said, referring to the danger of abdication as a matter of concern to the legislators. itself" by delegating large powers to the Executive, which would "impair both accountability and the separation of powers contained in the Constitution." This principle would be a key consideration in assessing the Information

Technology The rules came in the form of (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The constitutional It's not a delegation issue per se, but whether the rules enable executive ministries to do what? exceeds the obligations of the law and does substantive work on the extent of digital content standards and compliance requirements, takedown tools and speech regulation. The powers directly impact Article 19(1)(a)[25] rights and must be made clear and subject to democratic oversight. The Rules enable ministries (but not Parliament) to influence digital speech norms, which may end up making what Parliament does constitutionally, law-making, rather. The power of amending the law by regulation without a vote. In A.K. Roy v. Union of India (1982)[26]set up to test the constitutional soundness of delegating legislation under the National Security Ordinance, 1980 and the National Security Act, 1980. Once again, the Supreme Court said that Parliament can delegate powers to create rules, but such delegation cannot be a way of evading the constitutional protections. The Court reaffirmed that subordinate legislation continues to be governed by the constitution, rather than being the "legislature of the Legislature". analysis and must stay within the confines of the constitution and the parent statute. The Court expressly cautioned against lack of due process in deciding the exercise of discretion of the Executive in regard to the exercise of fundamental rights, and of the fact that "delegated regulation" is not a term that can be used to immunise it from judicial review. This principle assumes great significance when it comes to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[27]. The Rules confer quasi-judicial powers on executive ministries, as they do not have the inherent features of judicial decisions that make them a judicial act – independent adjudication, reasoned orders, meaningful hearing. But the constitutional issue is not just delegation, but the

[25] Ibid.
[26] A.K. Roy v. Union of India, (1982) 1 SCC 271
[27] Ibid.

delegation of the power to control digital speech via delegated legislation, without the safeguards institutions that typically accompany restrictions on fundamental freedoms. Furthermore, the Supreme Court in State of Tamil Nadu v. P. Krishnamurthy (2006)[28] has laid down the constitutional guidelines for the challenge to delegated legislation, which allows for the cancellation of the delegated act if it is ultra vires the constitution, violates the scope of the delegated legislation and/or if it is manifestly arbitrary or unreasonable. The Court said there was no scope for delegated legislation to go beyond or alter the policy of Parliament; nor could it impose duties beyond those specifically delegated by Parliament. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules (2021)[29] are an immediate application of this. Critics believe that not only is the Rules a codification of the Information Technology (IT) Act, 2000[30], but also an extension of the Act with new substantive requirements on content moderation, takedown procedures, provision of traceability and supervision of digital media. Such expansion will threaten the Rules to become ultra vires since executive rule-making is not the way to legislate where Parliament has not. The constitutional concern gets further exacerbated when applied in Shreya Singhal v Union of India, in which the Supreme Court declared Section 66A of the Information Technology Act, 2000, unconstitutional for its vagueness and overbreadth. The Court held that the wording of Section 66A was so broad that it would "catch" just about any opinion on any matter, thereby giving rise to an unconstitutional “chilling effect” on speech. It also said a vague and overbroad provision of law would be open to being eliminated as “arbitrary and a violation of freedom of speech and expression.” The 2021 Rules, as they will stand, may allow for further perpetuation of the same issue through granting of general discretion to the executive, and by incentivising the over-censorship of legitimate expression by intermediaries. The constitutional challenge is not simply too much regulation: The "executivization of digital constitutionalism," that is, delegating control of speech from Parliament and the courts to ministries and administrative authorities, which makes it harder to hold the government accountable and robs it of the balance of powers.

B. Traceability and the Constitutional Attack on Privacy

One of the most constitutionally challenging provisions of the digital regulatory regime in

[28] State of Tamil Nadu v. P. Krishnamurthy, (2006) 4 SCC 517
[29] Ibid.
[30] Ibid.

India is the "traceability" provision under Rule 4(2) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[31]. The Rule represents an important change in the architecture of end-to-end encryption, making key social media gatekeepers qualify as a "first originator" of information. In WhatsApp LLC v. Union of India (2021)[32], argued that traceability would inevitably result in the development of an architecture that would enable any platform to trace the source of any message, which would result in the loss of privacy of all WhatsApp users and not just suspects. This challenge is a reference to the Supreme Court's decision in Justice K.S. Puttaswamy vs Union of India (2017)[33], which has included privacy as a fundamental right in its Constitution, including the right to informational autonomy, decisional dignity and control over personal data. Encrypted communication is thus not only a technology design; it is a constitutional infrastructure.

In this context, the reasoning of the Court is reflected in PUCL v Union of India (1997)[34], where the Court held that interception of a telephone call is a serious interference with the freedom of expression and privacy of the communication and a grave offence, thus requiring a limited customisation and procedural protections. As with the rest, this is a case of "no more". It is not feasible to apply the "one size fits all" approach to traceability security. Furthermore, to be valid under the proportionality principle in Puttaswamy[35], a limitation on privacy must satisfy. the need, proportionality and lawfulness. Traceability seems to be in danger It is technologically invasive, indiscriminate and can lead to widespread damage because of it exceeding focused investigations. The consequences of its words are no less dire. In Shreya Singhal v. Union of India[36], the Court ruled that the general and blanket prohibition on sending messages in accordance with the current rule was unconstitutional. online expression is unconstitutional, and instituted a chilling effect. A likely impact of traceability is that it does not allow anonymous reporting, political dissent, or open reporting. communication, because users presume that even their private messages can be traced back to them. The issue is with more than just technical regulation; it's a constitutional attack on the digital age structure of liberty.

[31] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 4(2)
[32] WhatsApp LLC v. Union of India, W.P. (C) 3712/2021
[33] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1
[34] People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301
[35] Ibid.
[36] Shreya Singhal, supra note 14 at 6.

C. Chilling Effect and Collateral Censorship

One of the most important constitutional issues that arose in the field of Information

Technology is the issue of privacy. The issue of privacy is one of the most important constitutional issues that has arisen in the field of Information Technology. The effect of the chilling is seen in the Guidelines and Digital Media Ethics Code (2021) on free expression. A chilling effect occurs when people feel they must refrain from speaking lawfully because of a fear of legal penalties, uncertainty or retaliation. The reasoning of the Supreme Court in this judgment is directly applicable as per Shreya Singhal v. Union of India[37]. While striking down Section 66A of the Information Technology Act, 2000[38], the Court found the restriction by the state to be vague and overbroad. Self-censorship is permitted, and what is not, as the government is the one with the power to decide make unconstitutional self-censorship, as it is impractical for citizens to decide what is and is not acceptable speech. It noted that the provisions of Section 66A[39] are "cast so widely that they will vigorously impact on the freedom of expression." It established a constitutionally impermissible chilling effect. That argument is quite strong in the case of the 2021 IT Rules[40], which imposed intermediary obligations based on indeterminable categories (such as "defamatory"); this "objectionable" or otherwise harmful content would at least make people hesitate to speak.

The Rules also introduce institutionalisation of collateral censorship, placing the burden of enforcement on private intermediaries. Platforms are facing threats to safe harbour protection when faced with threats to their existence, incentivised to over-remove content instead of to make constitutional balancing, relocating from court to corporate censorship. This is the concern that is backed up by: Justice K.S. Puttaswamy v. Union of India[41], wherein the right to Privacy, Autonomy and Informational Self-determination were granted as basic constitutional values under Article 14,19 and 21, respectively. A law that inflicts the fear of their words being monitored, flagged or removed on ambiguous grounds infringes these values and distorts democratic participation.

[37] Ibid.
[38] Supra note 2, s. 66A
[39] Ibid.
[40] Ibid.
[41] Ibid.

In the same way, in PUCL v Union of India[42], the Court ruled that restrictions on surveillance are valid and are subject to strict procedural safeguards as they compromise privacy and speech. This principle is reinforced by R. Rajagopal v. State of Tamil Nadu, in which the Court held that the principle is reinforced. That there are constitutional restrictions on intrusive State actions in terms of personal autonomy and dignity. The deeper constitutional injury is not just the loss of what Rules remove, but in what Rules retain from being said at all. This creates a structural form of overbreadth in which lawful uses are not covered. The source is cooled down before the expression and led the source to be cooled down before expression.

D. Automated Monitoring and Algorithmic Governance

The IT Rules 2021 constitute a step towards algorithmic governance, beyond the traditional legal approach to regulate content, as there are increasing systems in place to take out content, detect the content and mark it. This raises serious constitutional questions because the courts or responsible human institutions begin to set the boundaries of the proper behaviour of machines voluntarily. In the case of Shreya Singhal vs the Union of India[43], the Supreme Court has made it clear that there is an issue of speech restrictions that are vague and too broad: they permit self-censorship, and they provide too much censorship power to private intermediaries due to the nature of algorithmic world and the concerns are heightened about decisions of what to moderate goes beyond the intermediaries and often to disguise software systems. The issue with the constitution is surely not that algorithms can fall into error; it is that erroneous algorithms are hidden, unchallengeable and systemic. Automated systems depend upon the contextual information that pattern recognition and predictive filtering/risk scoring do, the judgment used for balancing the constitution. "Satire can be confused with misinformation, and dissent with extremist and minority speech with harmful content, thereby imposing a burden on them."

Expression is first taken away as collateral damage without a human rights assessment process. This is substantiated by the case of Justice K.S. Puttaswamy v. Union of India[44], in which the Right to Privacy, autonomy and informational self-determination were upheld as fundamental rights. Algorithmic governance is a threat to those values as it makes rules of speech into rules of platform: people are not only ruled by laws in statutes; they are ruled by code in the platform

[42] People's Union for Civil Liberties v. Union of India, supra note 34 at 11.
[43] Ibid.
[44] Ibid.

itself. The end product is a system where the constitutional violation is not simply the removal at the end, but also the opacity and anticipation of control. This is further corroborated by K.S. Puttaswamy v. Union of India (Aadhaar Case), which demonstrates that the necessity and proportionality requirements must also be met in the design of large-scale digital systems that impact citizens, and that there must be steps taken to ensure that they are not misused. Where the State can be constrained from constructing a biometric and data-driven welfare architecture, the same must be the case with the State pushing intermediaries into automated moderation systems that impact speech on scale. People's Union for Civil Liberties v. Union of India[45] also aids in extrapolation, because it considers surveillance-type intrusions as serious constitutional challenges and imposes such upon the state, which warrants a series of procedural safeguards and restraint. To sum up: algorithmic governance under the IT Rules (2021)[46] is constitutionally problematic because it takes away the accountability of law and brings back the code. Private systems go on to fulfil public law functions without transparency, "reason-giving" and review mechanisms that the constitutional democracy requires.

E. Procedural Fairness and Due Process Deficit

One major constitutional shortcoming of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[47] is the lack of ensuring procedural justice. Any limitation on the right to freedom must not only have legitimate aims but also be conducted in a fair, transparent and accountable manner. In Maneka Gandhi v. Union of India[48], the Supreme Court interpreted the phrase procedure established by law in Article 21[49] to mean that it must be 'right, just and fair' and not 'arbitrary, fanciful or oppressive', which led to the constitutionalising of procedural due process. This principle is directly implicated by the IT Rules, which allow for actions which restrict speech and invade privacy within shortened time frames, insufficient objections, and a lack of notice. The due process deficit is compounded by A.K. Kraipak v. Union of India (1969)[50], where the Court ruled that even administrative acts that impact rights need to follow natural justice, which makes it hard to distinguish between administrative and quasi-judicial functions. Likewise, in Mohinder Singh Gill v. Chief Election

[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Maneka Gandhi, supra note 13 at 5.
[49] Ibid.
[50] A.K. Kraipak v. Union of India, (1969) 2 SCC 262.

Commissioner ([51], the Court made it clear that its judgments on rights would be reasoned, subject to review and would ensure accountability of the exercise of public power. However, under the IT Rules, takedowns are regularly granted without adequate reasons and a meaningful pre-decisional hearing, and by either a grievance officer or some intermediary or automated system. The Court in Union of India v. Tulsiram Patel (1985)[52] has stated that the exclusion of natural justice is allowed only in exceptional cases and not as a de facto model of regulation. This renders the ordinary compliance of the Rules constitutionally suspect. It is further reinforced by the case of Anuradha Bhasin v. Union of India (2020)[53], where the Court has placed the following requirements on restrictions on internet access: It must be issued through reasoned orders and be subject to judicial review. Platform-based restrictions on speech must meet the same "notice, reasons, and appeal" standard as internet shutdowns. The risk, then, is one of procedure, as a lack of fairness opens the door to administrative convenience for rights.

F. Threat to Press Freedom and Media Independence

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 represent an important constitutional change in the regulation of digital journalism in India, which, until now, has enjoyed a space largely shielded from direct executive control by the protection of freedom of press under Article 19(1)(a) of the Constitution. The Rules give a multi-layered approach to media regulation, as opposed to traditional approach grievances and oversight mechanisms culminating in executive oversight, providing the State with a strong hand in the editorial process of the media including the right to compel changes, deletion or blocking of digital content. This may be a path toward being an indirect editor.

The Supreme Court has always recognized that democratic accountability relies on the free press. In Indian Express Newspapers v. Union of India (1985)[54], the Court has said that freedom of the press is not just an important right of an industry; it is a fundamental right of democracy. In the same way, in Bennett Coleman & Co. v. Union of India (1972)[55], the Court stressed that indirect restrictions can have the same chilling effect as direct censorship on editorial freedom. This is especially important in this context: digital news organisations could face a situation of anticipatory compliance, self-censorship in order to not provoke penalties, investigations or

[51] Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405
[52] Union of India v. Tulsiram Patel, (1985) 3 SCC 398
[53] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637
[54] Indian Express Newspapers (Bombay) v. Union of India, (1985) 1 SCC 641
[55] Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788

confrontation with regulators. Recent events highlight that threats to the freedom of the press are now becoming more common in the form of extra-constitutional intimidation as well as formal censorship. Multiple journalists in India have been targeted, harassed and attacked for their critical reporting, leading to the creation of an atmosphere of fear that deters independent journalism. Rana Ayyub, a famous journalist, has been subjected to multiple instances of coordinated online rape threats, abuse and targeted digital harassment for her investigative reporting work[56]. Barkha Dutt is also a victim of continuous trolling and intimidation over her comments.[57] The killing of Gauri Lankesh is one of the most telling incidents to highlight the deadly repercussions of dissenting journalism[58]. Moreover, the extended detention of Siddique Kappan for reporting on a politically sensitive issue is an example of how the legal system itself can be punitive and dissuasive[59]. In these examples, it has been clearly shown that censorship in the modern world doesn't simply mean that someone is banned from saying certain things – it means someone is afraid of saying something, or that their actions are monitored and they are chased and threatened if they do say it. When these pressures coincide with the executive oversight model set out by the Rules of IT Act 2021[60], its anticipatory self-censorship, in which journalists don't just censor themselves, but they do so because it becomes constitutionally unfeasible to do so. In recent times, constitutional developments have also shown how digital regulation is increasingly set to be a platform governance tool to clamp down on dissenting speech in the name of regulation. The controversy over the 2023 amendment to the Information Technology Rules, which established a government-approved "Fact Check Unit" to flag allegedly "fake, false or misleading" information about the Government, was a case in point of how the executive can be used as the truth-finder in matters related to public criticism. The Bombay High Court eventually pointed out that such arbitrary executive authority was constitutionally suspect as it allowed for viewpoint-based censorship and had a chilling effect on satire, journalism and political reporting. A similar issue arises in the recent criminal contempt case against YouTuber Gulshan Pahuja in May 2026, whose

[56] Julie Posetti et al., "Rana Ayyub: Targeted online violence at the intersection of misogyny and Islamophobia", International Center for Journalists (February 2023) at p. 12, available at: https://www.icfj.org/sites/default/files/2023-04/Rana%20Ayyub_ICFJ_Case%20Study.pdf

[57] International Federation of Journalists, "Arrests made over trolling of Indian journalist", IFJ Media Centre (March 25, 2019), available at: https://www.ifj.org/media-centre/news/detail/article/arrests-made-over-trolling-of-indian-journalist.

[58] Phineas Rueckert, "In the age of false news: A journalist, a murder, and the pursuit of an unfinished investigation in India", *Forbidden Stories* (February 14, 2023), available at: https://forbiddenstories.org/gauri-lankesh-in-the-age-of-false-news/

[59] Deborah Grey, "Death of a Rationalist: Gauri Lankesh", *Citizens for Justice and Peace* (May 13, 2018), available at: https://cjp.org.in/death-of-a-rationalist-gauri-lankesh/.

[60] Ibid.

defamatory posts on the site against the judiciary led to his conviction. [61]Contempt cases show how digital expression is now governed by overlapping regimes of legal vulnerability – platform regulation, contempt law, and executive oversight – creating an environment where journalists, satirists, and commentators are more inclined to engage in anticipatory self-censorship. These developments together make it clear that the threat of the IT Rules is not limited to content takedowns, but is embedded in the wider model of a legal culture that constantly subjects digital speech to regulatory and punitive oversight, which undermines the independence of the media and limits democratic dissent.

G. Federalism and Institutional Concerns

The constitutional framework of India is based on the principle of cooperative federalism, but the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[62], show a tendency of centralisation. The administration of digital governance is now centralised through the ministries and state involvement or decentralised institutional oversight is becoming marginal. The regulation of online speech can overlap with public order, policing and local government, which are areas where states have constitutionally recognised interests, thus generating federal concerns. The Rules focus regulatory power in the hands of the Union, thereby undermining the role of state institutions and the federal balance that is part of the constitutional design. The worries deepened following the 2023 amendment introducing the Fact Check Unit (FCU) under Rule 3(1)(b)(v)[63] that provided for a central government entity to identify "fake, false or misleading" information related to the Union government. The Editors of the Guild of India and the Union executive of the Internet and Mobile Association of India (IMAI) said, " If the government is allowed to assume the role of a regulator of online content, it will be doing a disservice to its citizens."[64]If it were its duty to check the truthfulness of the content it was reporting on, then obviously, they would have an interest, and it would be a model of centrally controlled truth control in the digital era.

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[61] Malika Bhola, "Delhi High Court sentences YouTuber Gulshan Pahuja to 6 months' imprisonment for scandalising judiciary through 'Fight 4 Judicial Reforms' videos", *SCC Online Blog* (May 23, 2026), available at: https://www.scconline.com/blog/post/2026/05/23/gulshan-pahuja-contempt-case/.
[62] Ibid.
[63] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3(1)(b)(v) Amendment Rules, 2023
[64] ET Online, "IT rules: Editors Guild flag risks if government gets sole right to determine fake news", The Economic Times (January 19, 2023), available at: https://economictimes.indiatimes.com/tech/technology/amendment-to-it-rules-govt-alone-cannot-determine-fake-news-says-editors-guild/articleshow/97098800.cms.

In Kunal Kamra v. Union of India[65], the petitioners argued that the amendment to the IT Rules, 2023, enabled a government-appointed Fact Checking Unit (FCU) to identify and indicate content on government matters online, which was unconstitutional. The petitioners contended that this could not be constitutional as it would give the State veto powers over its own truth. The State, in reply, took up the defence of the rule and maintained that it was the best source to verify facts regarding its own affairs. If the digital governance mechanism avoids these principles, the constitutional accountability goes down. While Internet usage is necessary, so too is the protection of children from the dangers of the Internet. Similarly, while free speech must be upheld, the constitutional structure must also be preserved by digital governance.

H. Scholarly Critique of India's Digital Regulatory Turn

The recent digital regulatory turn in India is increasingly being recognised as a change from conventional platform governance to centralised digital constitutionalism, with executive power becoming a part of the technological system. In the context of constitutional law, platform governance, surveillance research and political theory, scholars contend that the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[66]embed the discretion of the executive in the infrastructure of digital communication.

This is explained in scholarly work as a dominant thread of digital structural authoritarianism.

In their article 'Writing on Indian Constitutional Law and Philosophy'[67], Apar Gupta and Shreya Singhal stated that the IT Rules and their amendments go much further than just controlling speech; they transform the digital public sphere and introduce administrative oversight to the day-to-day communication sphere, normalising executive authority over ordinary speech. Another critique of this model calls it "digital rule with colonial echoes," as it replicates a historically familiar governance tactic: central executive control, legitimised by a message of public order and administrative necessity. Some other scholars are interested in information control. In the same manner, Gautam Bhatia has called India's digital model "constitutionally flawed" as it has replaced "rights-based" regulation with "administrative

[65] Kunal Kamra v. Union of India, 2024 SCC OnLine Bom 3025
[66] Ibid.
[67] Rudraksh Lakra, "Digital rule, colonial echo – India's IT Rules 2021 amendments", Indian Constitutional Law and Philosophy Blog (April 15, 2026), available at: https://indconlawphil.wordpress.com/2026/04/15/guest-post-digital-rule-colonial-echo-indias-it-rules-2021-amendments/.

command-and-control". [68]A second key theme relates to algorithmic governance. In digital governance, Aman Nain and Aditya Ramesh say, the constitutional freedoms are restricted by "the ghost in the administrative machine" – that is, by hidden technology systems instead of tangible legal structures[69]. This worry is echoed in recent surveillance scholarship, which highlights how India's regulatory model has enabled the 'normalisation of platform-led surveillance', especially through traceability requirements and a mandatory compliance architecture. Notably, this scholarship is not anti-regulation. The vast majority of scholars believe that platform accountability is legitimate. Their critique is constitutional in that regulation must be rights-centric, transparent and institutionally constrained. They say that the existing model in India is becoming a model of digital administrative control instead of democratic governance, thus making the constitutional struggle more about the future of the architecture of freedom rather than individual rules.

Fake News Regulation and the Problem of Vagueness

Misinformation and disinformation are one of the biggest problems of digital governance. To counter "fake news", protect democratic integrity and maintain public order, governments around the world are increasingly providing legal justification for the regulation of online speech. The phenomenon has been exacerbated by the speed of spreading misinformation via social media, messaging services and digital news platforms in India. The real constitutional problem, however, is that while the fight against misinformation is a worthy and legitimate one, to do it without violating the spirit of Article 19(1)(a)[70]requires the definition and regulation of fake news. The term "fake news" is, in itself, constitutionally flawed due to a lack of legal specificity. It can be false information, information that is partially true but also misleading, satire and parody, political propaganda, or even just unpopular opinions. The concern with this doctrine is similar to Shreya Singhal v. Union of India[71], where the Supreme Court invalidated Section 66A of the Information Technology Act, 2000[72], on the ground that

[68] Rudraksh Lakra, "A Constitutional Critique of the Synthetically Generated Information (IT Rules Amendment), 2026", Indian Constitutional Law and Philosophy Blog (February 11, 2026), available at: https://indconlawphil.wordpress.com/2026/02/11/guest-post-a-constitutional-critique-of-the-synthetically-generated-information-it-rules-amendment-2026/.
[69] Paras Sharma, "The Ghost in the Administrative Machine: Toward a Constitutional Doctrine of Algorithmic Review in India", Law School Policy Review (March 18, 2026), available at: https://lawschoolpolicyreview.com/2026/03/18/the-ghost-in-the-administrative-machine-toward-a-constitutional-doctrine-of-algorithmic-review-in-india/.
[70] Ibid.
[71] Ibid.
[72] Ibid.

the terms 'grossly offensive' and 'annoying' did not provide any objective standards for their enforcement. The constitutional issue resurfaced with the IT Rules, 2023, amended Rule 3(1) (b) (v)[73], which introduced the Fact Check Unit (FCU), a body designated by the government, to identify content as "fake", "false" or "misleading" in relation to the "business of the Central Government". In Kunal Kamra v. Union of India[74], the Bombay High Court found this constitutional fault in the FCU provision and invalidated the same. Justice A.S. Chandurkar noted that the words "fake", "misleading" and "false" are "too vague" and "chilling" for the "freedom of the press, the freedom of satire, political criticism." Professor Gautam Bhatia has maintained that regulations on fake news become unconstitutional when the State assumes the role of the truth teller, as it becomes a form of viewpoint discrimination.[75] The worst constitutional damage is therefore not only censorship, but also self-censorship – journalists, academics, and citizens may refrain from talking about controversial subjects because their speech can be called "false" at a later time. The regulation of fake news cannot be a constitutional Trojan horse to silence dissent to democracy.

Comparative Analysis: India, the European Union, and the United States

By comparing the regulation of speech in India with its counterparts in the European Union (EU) and the United States (US), three distinct constitutional approaches to governing online expression, intermediary liability and state power on the internet come into view. These differences are not simply regulatory; they are also a reflection of different constitutional philosophies concerning the balance between freedom of speech, democracy and governmental power. In the United States, under the most speech-protective framework, the Constitution applies to online expression the same way that it applies to offline speech. The Supreme Court in Reno v. American Civil Liberties[76] upheld that the internet is entitled to the utmost constitutional protection and eliminated the broad constraints on "indecent" online communication. Likewise, in Brandenburg v. Ohio[77], speech was found to be restricted only when it is likely to cause imminent lawless action. This is what is called an anti-censorship, marketplace-of-ideas approach, in which the State is not trusted as an arbiter of truth. Another condition of law reinforces this model, however: Under Section 230 of the Communications

[73] Ibid.
[74] Ibid.
[75] Gautam Bhatia (ed.), "Category: Intermediary Liability", *Indian Constitutional Law and Philosophy Blog*, available at: https://indconlawphil.wordpress.com/category/free-speech/intermediary-liability/.
[76] Reno v. ACLU, 521 U.S. 844 (1997)
[77] Brandenburg v. Ohio, 395 U.S. 444 (1969)

Decency Act, platforms are granted broad immunity from liability for content their users create. In contrast, the EU has a rights-balancing approach, rooted in proportionality. Article 11 of the Charter of Fundamental Rights of the European Union guarantees freedom of expression, which is balanced by other values that compete with it, such as dignity, privacy, equality, and public order.

This is reflected in the requirements of the Digital Services Act for procedural accountability (notices and actions), transparency (obligations) and algorithmic risk assessments (and appeal rights of users). Other laws, such as NetzDG in Germany, had already enacted intermediary obligations, but had set out processes for their protection. The Court's judgment in Delfi AS v. Estonia[78] is the first to recognise a form of 'platform liability' for hate speech in Europe, and demonstrated Europe's willingness to impose liability on the platform where there is a danger to collective interests. In other words, in the EU model, if there is any regulation, then it can be done only through the rule of law and proportionality. In fact, Article 19(2) of the Indian

Constitution[79]gives scope for "reasonable restrictions" on speech, making India look more like Europe. However, the digital regulatory history in recent years has been increasingly influenced by a model of executive control. After the amendment in 2021, which established the Fact Check Unit, the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2023[80] went one step further by bringing regulation into the realm of platforms to centralised administrative oversight of digital speech. The USA has no speech absolutism, which is found in India, and no other safeguard of speech, independent review, transparent adjudication, or meaningful appeal, as are found in the EU. While Shreya Singhal v. Union of India[81] did invalidate overbroad and vague restrictions and reaffirm that free speech cannot be stifled based on a lack of clarity, subsequent digital laws resurrected these concerns with their vague language like "fake", "false" and "misleading". This is also evident from the judgment of the Bombay High Court in the case of Kunal Kamra vs Union of India[82], which struck down the Fact Check Unit provision as unconstitutional. So, it is clear that there is a distinct difference between the lessons. The United States are more on liberty, the European Union is more on balance and the new so-called "Indian Union" is more on administrative control. The debate

[78] Delfi AS v. Estonia, App. No. 64569/09, (Grand Chamber, 2015)
[79] Ibid.
[80] Ibid.
[81] Ibid.
[82] Ibid.

on the constitutionality of India is not whether digital regulation is needed, which is not a question that everyone would ask, and whether it will continue to be based on constitutionalism, proportionality and democratic accountability, or executive constitutionalism, where the boundaries of free expression are determined not by the courts, but by the ministries. These judgments have a significant impact on India's digital constitutional order.

Reform Proposals

The Anti-digital platforms' impugnment of the constitutional provisions in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[83] and the amendment in 2023 cannot be construed as an invitation to leave digital platforms unregulated. Rather, they make a case for a new rights-based, participatory and transparent regulatory regime, which is both democratically free and accountable to the platform.

Institutional redesign is the first step to reform. Ministries cannot play both sides of the coin – to make rules, and to adjudicate and enforce them. Instead, India ought to establish an independent regulatory authority for the digital ecosystem that is not influenced by any political party or ideology, and is under the oversight of the Parliament, judiciary and statutory requirements. This would bring a balance to the current Executive concentration of power and enable the balance of the constitution to be restored.

Second, there has to be clarity in the law, not discretion by legislative officials. Words like 'fake', 'misleading', 'harmful' and 'objectionable' need to be precisely defined by legislation in Parliament to meet the requirements of the Constitution as stated in Shreya Singhal vs Union of India[84]. Vague wording should be replaced by specific wording that is directly connected to the grounds of restriction in Article 19(2).

Third, India needs to have robust procedural safeguards in place. All content removal orders must be accompanied by written explanations, prior to the removal as much as possible, a right to be heard, and access to an independent appeal process. This would be in line with the principles of due process that were laid down in Maneka Gandhi v. Union of India[85] and Anuradha Bhasin v. Union of India.

[83] Ibid.
[84] Ibid.
[85] Maneka Gandhi, supra note 13 at 5.

Fourth, the requirement for traceability should be reviewed and rethought completely. The requirement of 'end-to-end encryption' should be respected, and deviation from it should be allowed only by judicial warrants, necessity review and proportionality as per the principles laid down in Justice K.S. Puttaswamy v. Union of India[86].

Lastly, some of the measures in the European Union's Digital Services Act, such as transparency reporting, independent audits, algorithmic accountability, and appeal rights for users, should be taken and incorporated into India's own laws while ensuring its constitutional obligations are protected. It is not the dominance of the executive in digital governance that's to be the future of India, but constitutional digitalism, where technology regulation is made a force that enhances democracy and not tears it apart. Only so can the digital public sphere continue to be a place of constitutional freedom and not administrative control.

Conclusion

Democracy is not just a method of government; it is a promise to devote constitutional protection of individual liberty to concentrated power. The pledge is most important now that we have the technology to watch us more closely than ever, algorithms to sift through billions of conversations, and an executive who can take speech away on a large scale. Digital governance that gives power to the executive, which is used to block free expression by employing vague terminology, allows mass surveillance without a warrant, helps to censor content without due process, prohibits journalism without a court order, and undermines state institutions – is not constitutional democracy, it is administrative authoritarianism in a democratic guise.

It's not the regulation per se that poses a threat; it's the regulation divorced from constitutional principle. A government that can find out the truth about itself without a court has changed the relationship between citizen and state; a government capable of tracing everything that people send, without having to get a warrant; a government capable of taking down journalism without any warrant; a government that has no meaningful check on its power has changed the relationship between citizen and state. Citizens lose their rights and behaviours that are permitted by the executive. No longer is language defended, but tolerated until it's taken off. It has no privacy; it is under administrative surveillance. Federalism is not practised anymore; it

[86] Justice K.S. Puttaswamy (Retd.) v. Union of India, supra note 33 at 11.

is observed merely in the form of Union supremacy.

Indeed, the Constitution of India, when read in the light of this digital age, calls for more and not less protection of these values. The Framers never imagined the Internet or algorithmic censorship, but they did embed in the Constitution some fundamental principles: limited government, democratic legitimacy, procedural fairness, judicial review, federalism, press freedom and privacy. Today, with the "powers of technology" so concentrated, these principles are as relevant and important as ever.

This broad-based research does not limit governance but is a cost of a legitimate digital regulation. It's the price of law, not executive order, law, not algorithm, law, not democracy, law, not administration. This price is not too steep – 24 months of legislative and institutional transformation. It is the investment that is needed to maintain democratic governance in the era of digital power. It's an expense well worth paying for a democratic future. The citizens' future in which they know the rules and can contribute to the rules' making, can question and challenge them, can rely on the court instead of the bureaucrat or the algorithm to decide their liberty, is a legitimate question. That's not radical, that's constitutional. That is a future which India has to choose.