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**THE LEGISLATIONS PERTAINING TO SOCIAL MEDIA
REGULATION AND FREEDOM OF SPEECH AND EXPRESSION**

- Rahul Gujral¹

“Free speech is the bedrock of a thriving democracy, a sacred space where ideas, opinions, and beliefs converge in a marketplace of thought.”

FREEDOM OF SPEECH AND EXPRESSION AND SOCIAL MEDIA

A few decades ago, the Internet revolutionized the information age. Currently, everyone's daily routine includes these things to some extent. The advent of the Internet has revolutionized the dissemination of knowledge and interpersonal contact. Social media platforms are among the most frequently utilized internet tools in the contemporary digital age. Consequently, each of us presently inhabits a global community. The prevalence of information overload has increased as individuals exchange knowledge globally. Most governments exert influence over citizens' ability to exchange information. Subsequently, we examine censorship.²

Censorship, in any manifestation, challenges individual liberty. Consequently, while the extent is debatable, the right to free speech is jeopardized on social media platforms. Concealing information indicates that the authorities responsible for censorship wish to keep the public uninformed. Censorship is necessitated when there is a known or suspected adverse outcome from disseminating such material or content, or when such impacts have already manifested. This form of censorship is warranted by the apprehension that public access to such content may jeopardize state security, communal tranquility, or individual safety. Consequently, either the government restricts individuals' social media usage or the corporations themselves inhibit users from disseminating offensive content, as outlined in their Terms of Service.³

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² P.K Singh, *Freedom of Speech in the Digital Era*, Bloomsbury, New Delhi, 2020.

³ *Ibid*

However, as social media is devoid of geographical constraints, such screening becomes increasingly challenging. Articulating oneself on social media enables one to traverse the world effortlessly. Furthermore, content accessible on the internet may be entirely legal in one nation while being strictly prohibited in others with even more stringent rules. The initial section of this study presents an overview of national policies regarding internet usage. We subsequently examine other instances of alleged social media misuse to assess India's current social media regulation measures.

Social media enables users to function as global publishers. The rapid dissemination of potentially libelous or offensive material on social media platforms raises significant concerns. Conventional media sources modify articles before publication to adhere to their policies, however social media content can rapidly go viral with minimal editing. Any form of communication that may be easily tailored or comprehended according to the sender's requirements will substantially impact the recipients, as the medium is accessible to both parties.⁴ Research on the legislation governing the Internet in many countries is crucial due to its prominent role in contemporary information dissemination.

In November 2015, the government of Bangladesh prohibited six prominent social media platforms: Facebook, WhatsApp, Viber, Tango, and Messenger. The Bangladesh Supreme Court upheld the death sentences for two notable opposition leaders, Salauddin Quader Chowdhury and Ali Ahsan Mohammad Mojaheed, due to their involvement in the 1971 independence movement, citing national security concerns. The limitation was lifted on December 14 after the authorities determined that the threats had diminished. Bangladesh has consistently seen illicit social media activities. In 2010, following the circulation of offensive photographs of the Prophet Mohammed, the Bangladeshi government temporarily disabled Facebook. In Bangladesh and Myanmar, internet usage is predominantly associated with Facebook due to its widespread popularity. A single year's growth in mobile and social media engagement has led to eighty percent of Bangladesh's internet users employing Facebook. Enterprises dependent on social networking platforms and news websites—such as the BBC, which regards social media as fundamental in the digital era—suffered significantly from this ban.

China possesses one of the largest communist economies globally, and for an extended duration, its traditional media channels have been subjected to totalitarian oversight. This

⁴ Abhinav Chandrachud, "Balancing Free Speech and Privacy in India," (2014) 6 NUJS L. Rev. 1.

constraint is already impacting social media. Annually, the quantity of national regulations concerning social media increases.⁵ China employs measures such as stringent surveillance, firewall systems, website shutdowns, and the incarceration of violators, including reporters and bloggers. In 2010, the Chinese government introduced the concept of "internet sovereignty," stipulating that all Internet users, including foreign businesses and individuals, must comply with the laws and regulations established by the government. The central component of China's internet surveillance and censorship apparatus is the Great Firewall of China, sometimes referred to as the Golden Shield Project.

In 2013, the State Internet Information Office instituted a stringent online content committee under the leadership of President Xi Jinping. In 2015, the government commenced regulation of VPNs, complicating access for internet users to American websites such as Facebook and Google. The prohibition of prominent global social media platforms has coincided with the rapid rise of government-supported Chinese alternatives. State-sanctioned alternatives comprise Facebook's Douban and Renren, Twitter's Sina Weibo, and YouTube's Youku and Tudou.⁶

Middle Eastern states have not been very liberal in terms of policy. The Internet is not an exception. "The 2014 Counterterrorism Law of Saudi Arabia criminalizes online expression that advocates atheism, disparages the state's reputation, disrupts public order, or jeopardizes state security." Due to the expansive nature of this phrase, the monarch in an absolute monarchy wields significant authority over all internet content. Saudi Arabians perceive online freedom of expression as an unrealistic goal due to the abundance of information regarding the incarceration of individuals for their online conduct. The Saudi authorities meticulously monitor all individuals, including bloggers and social media users. Saudi Arabia prohibits numerous websites. Furthermore, Human Rights Watch and Amnesty International have disclosed that the government used malware to target activists, aiming to undermine their operations if they articulate dissenting views regarding the government.

In 2015, the USA Freedom Act was enacted. Following the passage of the law by the US Senate, the NSA's massive surveillance capabilities were deactivated. In light of Edward Snowden's alarming revelation on the NSA's surveillance of phone and internet

⁵ Kritika Sharma, "Media Trials and the Right to Privacy: An Indian Perspective," (2021) 10(2) NLIU L. J. 45.

⁶*Ibid*

communications that previously astonished the world, this was a particularly considerate gesture.⁷

India is one of the few places on Earth where individuals can express themselves without fear of repercussions at this moment. Indians no longer perceive the image as pleasant or tranquil, despite their lives being far better than those of folks in other regions. Section 66A of the Information Technology Act, 2000, has been ineffectively enforced, thereby obstructing the freedom to free expression on social media. The essence of freedom of speech and expression lies in the ability to articulate oneself in whatever manner without interference from authorities, such as censorship, or fear of retribution, including threats or persecution. One possesses a complex right to articulate oneself freely. Free speech is not absolute and entails some responsibilities and risks; hence, legal constraints may be imposed on it. This concept is not novel; it dates back over two millennia to the era of the Greek Athenians, known as "freedom of expression."

Part III of the Indian Constitution, commonly known as the Magna Carta of India, enshrines the protected fundamental rights. The aforementioned chapter unequivocally guarantees every individual certain fundamental and inalienable rights. The widespread recognition of fundamental rights by nearly all contemporary nations, including India, underscores the essential necessity of safeguarding these rights for the populace. The Hon'ble Supreme Court's decision in the *Golak Nath v. State of Punjab*⁸ case transforms previously recognized "natural rights" into fundamental rights. The Constitution guarantees all individuals in India the right to free expression. The text presents multiple compelling justifications for the legislature to limit this privilege; it requires a persuasive rationale to proceed.

In addition to the aforementioned liberties, persons possess other fundamental rights that can be classified based on their substance or context. Citizens will benefit from specific sections of the Fundamental Rights, including Articles 15, 16, 19, 29, and 30, only if their arrangement aligns with their relevance. All individuals residing on Indian territory and subject to its jurisdiction, including citizens, foreign nationals, and non-citizens, are accountable for the requirements outlined in this Part (Article 21). Article 14(1), Article 16, Article 18(2), paragraphs 19, 20-22, and Article 31 restrict the state's capacity to act; Article

⁷ Krishnan, Madhav, "Navigating the Digital Age: Freedom of Speech and the Challenge of Regulation," (2020) 8(3) Indian J. Const. L. 67.

⁸ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643

15(2), Article 17, Article 18(1), Article 23(1), and Article 24 constrain the right of private individuals to act. Additionally, certain rights are specifically allocated to particular communities or groups (Article 26, Article 29, Article 1, and Article 30). The lack of a constitutional framework that permits the accountability of private entities for rights violations, insulated from state intervention, delineates the distinction between the two factions.⁹

Fundamental rights govern every activity undertaken by the state, both collectively and individually. Article 12 of the Constitution delineates the term "State" to aid the judiciary in adjudicating issues pertaining to the State or entities under its jurisdiction. The state comprises not just the branches of government but also the authority with legislative power. Article 12 encompasses not only the legislative and executive branches of the Union and the States but also any institution exercising statutory authority, whether governmental or non-governmental, including municipal administrations.

SCOPE OF FREEDOM OF SPEECH IN REALM OF SOCIAL MEDIA

The Indian Supreme Court's decisions have emphasized the necessity of free expression. The verdict in *Union of India v. Motion Picture Association*¹⁰ established free expression as fundamental in democracies. Ideas and knowledge ought to circulate freely within a society, and individuals should be permitted to express their viewpoints after thoroughly considering opposing perspectives. The cornerstone of any free society is the ability for independent thought and the practice of social, economic, and political rights. Intensive judicial scrutiny has concentrated on the limitations of this power. Democracy, characterized by public participation, is manifest through open discussion, as established in the case of *S. Rangarajan vs. P. Jagjivan Ram*¹¹.

A democratic government necessitates informed participation in collective activities by the populace. Democracy can only thrive when its citizens articulate their thoughts and contribute their ideas. The court determined that press freedom, free speech, and freedom of the press are not inherently valuable rights; instead, they are essential to a democratic government reliant on open discourse regarding national issues and the unrestricted exchange of ideas to address governmental challenges. The right to free expression, a cornerstone of

⁹D.D.Basu, *Introduction to the Constitution of India*, 25th edn., LexisNexis, New Delhi, 2020.

¹⁰ Union of India v. Motion Picture Association, AIR 1999 SC 2334.

¹¹ S. Rangarajan v. P. Jagjivan Ram, AIR 1989 SC 190.

personal liberty long safeguarded by the Constitution, has been reinforced. Thus, it is evident that India's supreme courts have upheld the freedom of expression.

True self-expression is unattainable without conveying one's ideas, thoughts, and emotions to others. The sole reliable method to guarantee that individuals can freely express themselves is through an unrestricted exchange of ideas, political beliefs, and debates. The state's ability to provide personal freedom constitutes the essential foundation of democracy. The principle of free speech is grounded on the widely held conviction that an individual's rightful pursuit is the actualization of his character and potential as a human being. The development of innovative concepts, the pursuit of knowledge, and self-assertion all rely on the underlying capacity for effective articulation. Free speech provides a tool to establish and maintain a proper balance between stability and societal progress. The achievements must be maintained, and the outstanding difficulties should be addressed collectively through freedom of expression. Individuals should be permitted to articulate their thoughts and engage in independent thought, so facilitating their contributions to society.¹²

The exercise of freedom of speech and expression enables individuals to cultivate independence and assert control over their own lives. The unimpeded exchange of ideas essential for self-governance relies on the principle of free speech. The citizens of the nation, as the ultimate arbiters of democracy, should independently assess all viable public policy proposals. It is occasionally presumed that additional factors in the self-governance context bolster independent arguments advocating for free expression. Individuals who possess the freedom to express themselves inevitably suppress public engagement in governance. Democracy posits that governments continuously evolve, even after their term of office, resulting in fluctuating powers contingent upon the prevailing circumstances. Finalizing this process will signify the conclusion of democracy.

Furthermore, the promotion of free expression enhances the probability of political stability. Politicians who lost the election will refrain from resorting to violence if afforded a reasonable opportunity to express their views. Free expression serves to "monitor the misuse of authority by public officials" by informing the populace of the limits within which public officials can be held accountable. Consequently, the right to freely articulate one's thoughts significantly enhances the efficacy and functionality of self-governance. Exercising free speech is one of the most essential methods for discovering the truth. Although individuals

¹² S.K Mishra, "Social Media Regulation under Indian Law: Challenges and Prospects," (2020) 12(2) IJCL 75.

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possess varying interpretations of truth, it is generally accepted that this is the prevailing belief among the majority.

The crucial inquiry is not whether truth will flourish entirely given unrestricted conditions, but rather how effectively it will progress in comparison to an alternative set of conditions. The right to free expression is fundamental for individuals who believe that truth is knowable, if not necessarily verifiable. The pursuit of truth by individuals is contingent upon their freedom of expression and communication. Moreover, allowing public officials to articulate their views is free speech, which serves to mitigate the potential for abuse of power. The abuse of power is a significant concern that necessitates the verification of values, especially given the government's capacity to wield force judiciously. Free speech is essential to limit the government's authority to employ legitimate force. Exercising First Amendment rights to articulate viewpoints aids individuals in cultivating self-restraint and tolerance. Justice Holmes once stated, "free thought for those who concur with us, but freedom for the thoughts we abhor," does not equate to "free expression."¹³

Upholding social standards within a culturally diverse group relies on these attributes. Consequently, self-governance is significantly associated with this objective. Preserving the liberty of free expression nationwide is essential for achieving these objectives. The right to free expression is explicitly referenced in numerous international treaties, conventions, and agreements due to the gravity of the issue and the necessity of free speech for community members.

Innovative technologies have precipitated several transformations within the whole communication sector. Virtual communication has emerged from the internet. Social media platforms are crucial in contemporary society. Social media is a significant form of computer-mediated communication frequently utilized in the decision-making process. Approximately fifty percent of India's population is active on social media. The general populace began to utilize social media and other digital platforms more actively during the COVID-19 pandemic. They represent themselves on social media in accordance with Article 19(1)(a) of the Indian Constitution, so protecting their rights to freedom of expression and communication. Conversely, the illicit use of it is on the rise.

¹³ P. Aggarwal, "Freedom of Expression in the Digital World," in Singh, A. (ed.), *Human Rights in India Today*, 1st edn., Springer, New Delhi, 2018.

A Facebook post by a teenager in November 2012 on the perceived deceleration in the city after the demise of Shiv Sena leader Bal Thackeray led to her detention. She stated, "With all due respect, thousands of individuals perish daily, yet the world persists in its progression." When a politician unexpectedly dies from natural causes, there is widespread turmoil. They must recognize that our resilience is primarily a consequence of necessity rather than volition. How long has it been since anyone, even briefly, acknowledged the sacrifices of Shaheed Bhagat Singh, Azad, Sukhdev, or those who contributed to our independence as Indians? Earned and granted respect holds greater value than respect that is enforced onto someone. Mumbai is closed today primarily due of fear rather than respect. Her companion, who had expressed approval of the message, accompanied her throughout detention. Subsequent to extensive deliberation on their detention, the judge resolved not to indict two of the girls.¹⁴

A further concerning instance of social media exacerbating societal instability is the sectarian conflict in Baduria, West Bengal. A "blasphemous" Facebook post by a seventeen-year-old provoked chaos in July 2017, resulting in one fatality and injuries to twenty-five individuals, including twenty-five police officers. The enraged mob vandalized multiple adjacent residences and pillaged them; they furthermore ignited approximately twelve police vehicles.¹⁵

The first instance restricts individuals' ability to express themselves freely on social media, whereas the second example illustrates the misuse of this freedom. These two poles delineate the current social media landscape. We should ultimately establish a compromise between the two parties. Legislation is urgently required to regulate social media effectively while safeguarding free expression.

Social media facilitates the sharing and discovery of ideas, content, and opinions, hence fostering a sort of community-oriented information and communication technology online. Online media enables users to rapidly acquire new information. Content encompasses photographs, essays, films, and various other media. Andreas Kaplan and Michael Haenlein characterize social media as "a compilation of web-based applications that facilitate the creation and dissemination of user-generated content, and that build upon the conceptual and technological foundations of web 2.0." Web 2.0 refers to collaborative, user-driven web

¹⁴ A Roy, "Cyber Speech and State Control in India," in Chatterjee, R. (ed.), *Freedom of Speech and Democracy in the Digital Age*, Routledge, London, 2019.

¹⁵ *Ibid*

systems. Mobile social media refers to the utilization of social media platforms via mobile devices. This is yet another form of social media. This platform dominates the global social media landscape.

Indians are prominent users of social media. On average, Indians utilize social media for 2.25 hours daily. Nearly half of India's population, approximately 624 million persons, are currently utilizing the internet.

As Thomas Friedmann observes, "The longer one resides in India, the more one recognizes that this nation is among the world's greatest wonders—a miracle with a profound message." Another aspect emphasized as essential is democracy. India is one of the largest nations in the globe that protects the fundamental rights of its citizens. All individuals possess the right to articulate their thoughts, whether through social media or alternative mediums. This image is distinctly mesmerizing or calming compared to those from other countries. Individuals globally are encountering the ramifications of social media and the proliferation of online groups that facilitate unrestricted self-expression in the twenty-first century. The COVID-19 pandemic created new potential in virtual settings. Primarily, individual liberty constitutes the paramount fundamental right. Articles 19–22 of the Indian Constitution extensively elaborate on this fundamental right. These four entities establish the basis for the section on fundamental liberties. Article 19(1)(a) fundamentally ensures the right to freedom of expression. Article 19(1) ensures every citizen's right to freely express themselves. Article 19(2) grants the State the power to impose "reasonable" restrictions on specific grounds, thereby limiting this freedom.¹⁶

The freedom of speech and expression encompasses the right to communicate one's ideas and beliefs through various mediums, including oral communication, written text, print, visual art, and performance arts. It encompasses the articulation of ideas through various visual representations, including signs, gestures, and other forms of communication. Social media serves as a platform for individuals to articulate their thoughts and feelings. Press freedom necessitates the act of publishing. When individuals are permitted to express themselves freely, they are more capable of realizing their full potential, comprehending the truth, participating in public policymaking, and achieving a balance between relative stability and rapid social change.

¹⁶ M.P Jain, *Indian Constitutional Law*, 8th edn., LexisNexis, Gurgaon, 2022.

All individuals ought to voice their opinions and behave autonomously without fear of repercussions. Article 19 of the UDHR asserts that every individual possesses the right to freely express themselves, encompassing the liberty to think and believe as they choose without interference, as well as the right to access, utilize, and disseminate information and ideas through any medium, regardless of location. Everyone has the right to express themselves as they like.

Currently, all aspects are interconnected with the internet. Uninterrupted internet connectivity is essential due to the COVID-19 pandemic. Due to the internet and social media, individuals can openly articulate their thoughts and opinions in contemporary culture. Social media was essential in numerous movements that garnered global attention, since it facilitated communication, expedited knowledge sharing, and promoted solidarity.

In his report to the Human Rights Council, the UN Special Rapporteur on the promotion and protection of the right to freedom of speech and expression asserted that the internet has become an essential instrument for individuals to exercise their freedom, thus access to the internet should be considered a human right.⁹ The paper emphasized the need of authorities ensuring uninterrupted internet connectivity during periods of political unrest. The nations reiterated their duties to ensure that all individuals have access to the internet and other tools necessary for the enjoyment of their right to free expression.

INDIAN LEGAL FRAMEWORK AND PENAL LAWS ABOUT ONLINE CONTENT REGULATION

“In the intricate web of cyberspace, India's legal framework weaves a tapestry of regulations and penal laws, fostering a digital environment that strives for accountability, safeguards against cybercrimes, and upholds the principles of justice in the evolving landscape of the online realm.”¹⁷

A robust legal framework is needed to address the advantages and disadvantages of the contemporary era of communication, commerce, and expression facilitated by the emergence of online platforms. The legal framework of India governs a wide array of matters, encompassing both criminal and legislative regulations, thereby ensuring a secure, ethical,

¹⁷Evgeny Morozov, *The Net Delusion: The Dark Side of the internet Freedom* (Allen Lane, 2015)

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and accountable atmosphere for online activities. This chapter analyzes the prominent aspects of Indian penal and internet regulation legislation, highlighting the necessity for their continual adaptation to the rapidly evolving digital landscape. Essential statutes and regulations include:

IT Act, 2000

Sections 65, 66, 66A, 66C, 66D, 66E, 66F, 67, 67A, and 67B of Chapter XI of the Information Technology Act of 2000 delineate penalties for computer-related offenses, encompassing those perpetrated using social media. This category encompasses identity theft, the electronic publication or distribution of pornographic material, the electronic depiction of minors in sexually explicit acts, cyberterrorism, and computer-related offenses specified in Section 43; it also includes offenses such as altering computer source code or transmitting offensive messages through communication services.

Section 69 of the Act empowers the Central or State Government to mandate the interception, monitoring, or decryption of any information via computer resources to protect India's sovereignty or integrity, defend the nation, maintain diplomatic relations, preserve peace, avert incitement to criminal acts, or conduct criminal investigations. Under Section 69A, the Central Government may restrict any publicly accessible material via any computer resource for the same purposes.¹⁸

Section 69B permits the Central Government to designate any agency to oversee and collect data or traffic utilizing any computer resource, thereby ensuring the security of online operations. Section 79 delineates the responsibilities of intermediaries. Under the following conditions, a third party's data, information, or communication link hosted or provided by an intermediary is exempt from the intermediary's liability:

His sole function is to provide consumers with access to a communication system that manages hosting, storage, and data transmission of this nature.

- He has no influence over the recipients of the transmitted material or its commencement.

¹⁸ R Mehta, "Regulation of Social Media Platforms: International Trends and Indian Challenges," in Gupta, A. (ed.), *Comparative Cyber Laws*, Eastern Book Company, Lucknow, 2020.

- He meticulously adheres to Central Government guidelines and regulations while executing his duties.
- The subsequent scenarios would result in intermediate responsibility:
- Through threats, promises, or other methods, he has incited, collaborated, or facilitated the unlawful action.
- He does not promptly eliminate or incapacitate the materials employed to perpetrate the unlawful activity, even upon realizing the truth or receiving formal notification.

Sanctions are imposed on any intermediary who, in violation of Sections 69, 69A, or 69B, willfully neglects to assist or comply with directives. If a body corporate has, manages, or processes sensitive personal data or information inside its owned or operated computer resources, the inability to implement and uphold adequate security standards and procedures may result in unjust loss or gain for any individual referenced in Section 43A.

Section 70B stipulates that the Central Government may appoint the Indian Computer Emergency Response Team (ICERT) as the national authority responsible for cyber security. The central government has established regulations and changes to facilitate the implementation of this Act.

The Information Technology Act was subsequently amended in 2008, 2015, 2018, and 2020 to incorporate the requisite amendments. On June 29, 2020, the Indian government prohibited 59 Chinese mobile applications, followed by an additional 43 on November 24, 2020, citing national security concerns and invoking section 69A of the IT Act. A multitude believe that the current actions of the Indian government contravene Article 19(1)(a) of the Indian Constitution and the stipulations of the World Trade Organization agreements.¹⁹ The Information Technology Rules of 2011 are subordinate law; the Indian Intermediaries Rules of 2021 supersede the 2011 rules in this context. The amalgamation of the proposed Intermediaries Rules, 2018 with the OTT Regulation and Code of Ethics for Digital Media results in the regulations for 2021. The documents originate from Section 87 of the Information Technology Act, 2000.

Section 66A of IT Act, 2000

¹⁹ K Bhardwaj, "Hate Speech and Freedom of Expression in the Internet Age," in Mathur, P. (ed.), *Law and Technology in the 21st Century*, Satyam Law International, New Delhi, 2019.

Recent discussions have primarily focused on Section 66A. Section 66A, instituted by the Information Technology (Amendment) Act of 2008, prohibits the transmission of hate speech through certain communication mediums. If an individual consistently employs a computer or other communication device to disseminate: a) overtly offensive or hazardous content; b) intentionally false information designed to incite disruption, insult, harm, criminal intimidation, animosity, or malice; or c) any form of electronic correspondence intended to irritate or inconvenience another person or to deceive them regarding the sender's identity.

In this section, any information or message generated, transferred, or received by a computer, computer system, computer resource, or communication device is designated as "electronic mail" or "electronic mail message." This encompasses any attachments—text, images, audio, video, or other electronic records. Contrasting the text of Section 66A with Article 19(1)(a) of the Constitution, which guarantees every Indian citizen's right to freedom of speech and expression, reveals a significant contradiction. Article 19(2) delineates the justifiable restrictions on the right to free expression. Section 66A has curtailed the right to free speech and expression for several reasons, including those articulated in the constitution. The clause contains multiple paradoxes that undermine the right to free expression.

Terms such as "gross offensive," "menacing character," "annoyance," "danger," "obstacle," "insult," and "injury" lack precise definitions. Moreover, there were additional documented occurrences of this clause being exploited on a nationwide scale. In November 2012, Puducherry businessman Ravi Srinivasan was jailed under Section 66A after tweeting that Karti Chidambaram, the son of the then-finance minister, was corrupt. Aseem Trivadi, a freelance cartoonist, was arrested in September 2012 under Section 66A of the IT Act, several articles of the IPC, and the Prevention of Insults to National Honour Act, 1971. His cartoons depicted systematic Indian corruption. Two Air India employees were apprehended by Mumbai Police for twelve days in the same year due to anti-trade union and anti-political remarks made on Facebook.²⁰

The public observed these isolated events. Consequently, numerous applications challenging the constitutionality of this Article were filed in various Indian courts. In November 2012, Shreya Singhal, a law student from Delhi, presented her case to India's Supreme Court under the Public Interest Litigation (PIL) process. The petition challenged the legitimacy of the clause, asserting that its unclear language contravened Articles 14 and 19(1)(a). Furthermore,

²⁰L.Nair, "Intermediary Guidelines Rules, 2021: A Judicial Analysis," (2022) 7(1) IJCL 44.

identical petitions are being made by the proprietors of MouthShut.com and Common Cause, a non-governmental organization. The Public Interest Litigation was permitted on November 29, 2012; on March 24, 2015, the Supreme Court deemed Section 66A entirely unlawful. The court stated that Article 19(1) of the Indian Constitution indicates that Section 66A "arbitrarily, excessively, and disproportionately infringes upon the right to free speech."

Bharatiya Nyaya Sanhita

Cybercrime, a persistent affliction for both India and the global community, has evolved in accordance with technological advancements. With the advancement of digitization, cyberattacks have evolved to be more sophisticated and pervasive. Cybercriminals continually seek new vulnerabilities to exploit for financial gain, including methods such as hacking, phishing, data breaches, and identity theft. According to the Indian Penal Code of 1860 ("IPC"), the Bhartiya Nyaya Sanhita, 2023 ("BNS"), will serve as the principal criminal law of India starting July 1, 2024.²¹ The new legislation recognizes the escalating menace of cybercrime and includes regulations specifically designed to combat it. As the BNS is intended for prospective application, offenses committed prior to June 30, 2024, shall remain governed by the IPC.

Section 75 of the BNS pertains to sexual harassment, defined as the exhibition of pornography without a woman's consent or the issuance of physically or electronically provocative comments. Section 354A of the Indian Penal Code. Section 77 of the BNS specifically addresses "revenge porn," also referred to as "upskirting," or the unlawful recording and distribution of intimate photographs. This currently renders it unlawful to observe or record a woman engaged in a sexual act without her consent. Section 354C of the Indian Penal Code and Section 78 of the BNS address the offense of stalking, which encompasses cyberstalking. This section specifically targets individuals who persist in monitoring a woman's online activities despite her evident lack of interest in reciprocating. This provision stipulates that individuals who employ technology to harass or threaten a woman—through incessant messaging, surveillance, or the creation of fraudulent profiles—may face charges of cyberstalking. (Section 354D of the Penal Code)

²¹ Thomas, Renjith, "Bharatiya Nyaya Sanhita, 2023: A Critical Perspective," (2024) *SSRN*

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Section 79 of the BNS criminalizes the infringement of a woman's privacy through obscene noises, indecent gestures, words, or materials. Certain cybercrimes, particularly those entailing threats or harassment online (such as deepfakes), may fall under this section despite the primary focus on offline conduct. In a digital format, the perpetrator may be disparaging the woman's modesty by "articulating words," "producing sounds or gestures," or "displaying objects." (Section 509 of the Indian Penal Code). Section 111 of the BNS defines organized crime as any continuous illicit activity conducted by multiple individuals in collaboration. The spectrum of such offenses encompasses specifically cybercrimes. This includes cyber extortion, botnet activities, phishing, ransomware, and similar offenses. (Extra Component)²²

Minor organized crime, as delineated in Section 112 of the BNS, refers to any illicit activities executed by a group or gang, encompassing stealing, snatching, fraud, and similar offenses. This provision primarily targets conventional organized crime; however, it may also encompass certain forms of cybercrime. This is particularly applicable when a gang or organization engages in internet crimes such as phishing, clickbait, or card skimming. Section 152 of the BNS pertains to offenses that jeopardize India's sovereignty, unity, or integrity. While primarily focused on offline actions, it also pertains to certain cybercrimes that threaten national security, as it employs the term "electronic communication" to incite armed rebellion, secession, subversive activities, or separatist sentiments, thereby jeopardizing India's sovereignty, unity, or integrity. Section 152 encompasses disinformation campaigns, cyberwarfare, propaganda, and espionage within the category of cybercrime. (Additional Section)

Section 196 of the BNS designates as crimes the incitement of discord or animosity among groups based on caste, religion, ethnicity, birthplace, language, or community. The statute primarily addresses offline activities but also include "electronic means" for some cybercrimes, rendering it pertinent to specific offenses. Section 196 addresses online offenses directed at individuals based on their identity, including the dissemination of false information or hate speech. Section 153A of the Indian Penal Code explicitly states. Section 292 of the BNS addresses the offense of exhibiting pornographic material. It also include offensive content accessible online, including virtual exhibits or demonstrations. This type of

²² "The Bharatiya Nyaya Sanhita Act (BNSA) 2023: Implications for Forensic Psychiatry in India," (2024) *Indian Journal of Psychiatry*

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cybercrime encompasses the distribution of pornographic, violent, or otherwise objectionable material (Section 292 of the Indian Penal Code)²³

Particularly over the internet, disseminating false information or rumors that may jeopardize public safety or order—especially those related to Section 353 of the BNS—are addressed under This clause states that disseminating false information, hoaxes, hate speech, or other conduct that jeopardizes public safety or order is banned (Section 505 of the Indian Penal Code). India's antiquated penal code, originating in 1860, required a significant revision. Recent legislative amendments have significantly enhanced the nation's criminal justice system. Cybercrimes are becoming prevalent, and these new laws aim to regulate their proliferation using criteria peculiar to the digital age. The BNS does not provide a precise definition, although "cybercrime" encompasses a broad range of offenses facilitated by technology, such as hacking, phishing, and cyberstalking.

Despite India's implementation of certain internet regulation regulations, such as the Information Technology Act of 2000, the criminal justice system urgently need reform in light of the rising incidence of cybercrimes.²⁴ The IT Act achieved its objectives; yet, it was inadequate in addressing the evolving nature of cybercrime. The BNS addressed the gaps by implementing processes to combat cybercrime vigorously. By integrating cybercrime-related offenses into the broader criminal justice framework, the BNS offers a more cohesive and comprehensive strategy for tackling digital threats.

Other legislations

The Information Technology Rules, 2011 (IT Rules)

Commonly known as the "IT Regulations" of 2011, these statutes provide guidelines for intermediaries such as ISPs, social networking platforms, and online marketplaces that host or disseminate content online. Under the IT Rules, intermediaries are required to collaborate with authorities regarding online content, conduct thorough due diligence, and adhere to specific policies. Furthermore, the IT Guidelines delineate the measures to be implemented to avert access to illicit content encountered online.

²³*Ibid*

²⁴ "The New Bharatiya Nyaya Sanhita Laws: Progress or Pitfall for India?" (2024) *National Center for Biotechnology Information*

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Section 69A permits authorities to censor internet content that incites violence or threatens public safety. It grants the government authority to enforce the restriction of specific websites or types of material.²⁵ Section 79 stipulates that intermediaries, including social media platforms, are accountable for their actions. Intermediaries must exercise due diligence and promptly disable access to any illegal content upon receiving notification from the relevant authorities. Section 505 prohibits the dissemination of material that incites prejudice, discrimination, or animosity toward any social or religious group.

Personal Data Protection (DPDP) Act, 2023

The Digital Personal Data Protection (DPDP) Act, 2023 was enacted by the Indian Parliament in early August 2023. This new law, which has been under preparation for nearly five years, is the first of its kind in India and encompasses data protection across many sectors. In comparison to its 2019 predecessor, the DPDP Act, 2023 has a more moderate stance, featuring diminished consumer protections and reduced business responsibilities. The federal governments significantly expanded discretionary powers are relinquished to establish a more streamlined legislative framework.

The DPDP Act pertains to companies that collect information on Indian people and residents. Ironically, it encompasses non-Indian nationals' resident in India whose data is managed "in connection with any activity related to the provision of goods or services" internationally. This pertains, for instance, to an American residing in India purchasing digital goods or services from a merchant situated outside of India. The 2023 legislation allows for any lawful rationale for the processing of personal data. Data processors utilize collected information solely for "legitimate purposes," as defined by law, or with the explicit consent of the subject.²⁶

The articulated objective is for consent to be "voluntary, particular, knowledgeable, unequivocal, and unmistakable, accompanied by a definitive affirmative action." One can obtain only the information necessary for the specified objective. Consumers possess the rights of the affected individual, a definitive notification encompassing this information, and a grievance resolution process. If data processing is contingent upon consent, persons possess the right to withdraw it at any time. The DPDP Act confers rights and responsibilities upon

²⁵ Commonwealth Human Rights Initiative, *Hate Speech Laws and Free Expression in India: An Analysis of Trends*, CHRI Publications, New Delhi, 2019.

²⁶ "Understanding India's New Data Protection Law" (2023) Carnegie Endowment for International Peace

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individuals. You possess the right to acquire a comprehensive list of all collected data and to be informed about who else has access to your personal information, including data processors and data fiduciaries. Individuals possess the rights to rectify, input, or eliminate personal data. Individuals possess the right to designate the destination of their data and to have their grievances addressed.²⁷

India has finally enacted a data privacy law with the passage of the 2023 act. With the exception of a few specifically stated restrictions, it mandates that authorization must be obtained prior to processing personal data. In addition to designating individuals for this purpose, consumers possess the option to delete, modify, or refresh their data. It additionally aids in enhancing the safeguarding of children's data processing. It mandates security practices, delineates objectives, and forces enterprises to inform clients upon the acquisition and management of personal information. Companies are mandated to implement grievance redress mechanisms. In addition to addressing complaints and concerns, the DPB possesses the jurisdiction to impose fines on lawbreakers.

Data protection regulations are now implemented for the first time in India. Ultimately, the regulation will compel data collection businesses to establish fundamental norms of conduct and compliance. Assessing the government's stance on law enforcement is essential; for example, it is important to determine if the regulation will be enforced across the entire industry or solely on data-intensive enterprises. In addition to the unresolved issues associated with the law's apparent protections, there are additional notable implementation-related challenges.

The consent exclusions grant the government significant power, prioritizing its requirements over those of private enterprises. Due to the statute, this is now entirely permissible in a broader array of circumstances, including emergencies and disasters. If the recipient of government services has consented to receive any other state benefit, the government can forgo the requirement of agreement under Section 7(b) of the legislation. Acquiring personal information from beneficiaries for government services would facilitate the process, although it also enables the government to establish databases. The rationale is that government institutions cannot fully leverage this rule unless they are exempt from purpose limits, which require data to be deleted after its intended use.

²⁷ "Operationalizing India's New Data Protection Law: The Challenges and Opportunities Ahead" (2023) International Association of Privacy Professionals

The compilation of state exclusions related to investigations, prosecution, and national security exemplifies this further. The Act exempts some purposes, such as the "prevention, detection, investigation, or prosecution of any offence or contravention of any law," from the requirement for notice and consent (Article 17(1)(c)). Section 17(2)(a) enables entire exemption from the legislation for any government agency designated by the government, as this is rational to prevent incitement and to uphold public order, sovereignty, security, and integrity. Given that Section 17(1)(c) is already in place, Section 17(2)(a) merely articulates Parliament's intention to ensure that some state entities are excluded from the data privacy legislation.²⁸

Specific behaviour signalled by these clauses are not encompassed by data privacy regulations. The absence of an urgent necessity to exempt the Indian state from numerous regulations governing private enterprises becomes problematic. Furthermore, the government's discretionary authority to establish regulations may undermine specific legal defenses in individual cases. The government may demonstrate this by stating, pursuant to Section 17(5), that no company or category of enterprises shall be obligated to adhere to any of the law's stipulations five years subsequent to the enactment of the measure. No schedule or instructions are specified for the execution of this clause. An optimistic interpretation of this paragraph suggests that startups or emerging sectors may extend their compliance period. Section 17(3) has incorporated provisions permitting startups and other enterprises to be informed of specific exceptions by the government. Consequently, an interpretation of Section 17(5) may undermine the law's intended significance. The statute limits the government's capacity to grant specific exemptions during the initial five years. These exclusions possess unlimited renewability.

The government have the power to implement discretionary regulations that exempt firms from some data processing responsibilities related to children, thereby alleviating their accountability. Section 9(1) to Section 9(3) delineates specific criteria, including the prohibition of profiling and the requirement for parental consent. Section 9(4) grants the government the authority to exempt any corporation or consortium of enterprises from Sections 9(1) to 9(3), "subject to conditions that may be prescribed." This clause is ambiguous regarding the criteria for granting an exemption, the requisite qualifications, and other specifics. The absence of suitable instruction renders this clause susceptible to misuse.

²⁸ "India's Digital Personal Data Protection Act 2023 vs. the GDPR: A Comparison" (2023) Global Privacy Blog.

While the government have the authority to establish criteria and formulate substantial regulations in other instances, the aforementioned situations provide less analytical depth. This raises problems regarding administrative law principles in India, which provide that laws should not confer excessive or arbitrary power to implementing bodies. The improper application of such legal criteria may lead to violations of the Indian Constitution. The design of the DPB is slightly flawed. The board will function independently under a restricted mandate; the government will establish protocols for the selection and evaluation of board members. The Act specifies the number of board members and mandates that one must be a legal expert, however the details remain ambiguous. A primary responsibility of the board is to establish standards and sanctions for noncompliance, rendering this final aspect difficult.²⁹

The National Cyber Security Policy, 2013 (NCSP)

This policy document enumerates the objectives, strategies, and concepts for enhancing India's cybersecurity. The NCSP encompasses institutional, technological, legal, and international cybersecurity aspects.³⁰ The NCSP delineates the obligations and responsibilities of various stakeholders, including the public sector, private enterprises, and civil society, to maintain cybersecurity.

Information Technology (Digital Media Ethics Code and Intermediary Guidelines) Regulations, 2021

These regulations govern digital media, encompassing news websites, over-the-top (OTT) services, and social media intermediaries. They provide standards for item removal, criteria for interim compliance, and avenues for user complaints. It provides for³¹

- Selecting a Nodal Contact Person, Officer for Grievance Redressal, and Chief Compliance Officer.
- Implementation of a comprehensive content screening system that entails the removal of prohibited content categories within 36 hours following a court order or notification from the appropriate authorities.
- Establishing a grievance redressal procedure to address consumer concerns within a specified timeframe.

²⁹ *Ibid*

³⁰ "National Cyber Security Policy 2013," Ministry of Electronics and Information Technology, Government of India

³¹ Sen, G., "Censorship and Free Speech in the Digital Age: An Indian Context," (2022) 13(1) IJLT 45.

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India has enacted criminal legislation and established a framework for regulating the internet to promote a secure and accountable online ecosystem. The legal system adapts to the constantly evolving digital landscape to address emerging challenges and ensure the protection of online users. Digital stakeholders must be well-versed in present legislation and impending modifications to adeptly navigate the intricacies of online operations within the Indian context.

CURRENT SCENARIO

The country's basic internet connectivity enabled 440 million Indians to engage with social media in January 2021. Furthermore, it was anticipated that by 2040, the nation would possess at least one billion social media users. These statistics underscore the necessity of effectively regulating the social media corporation. Social media significantly impacts the functioning of democracies globally. Social media and the internet have transcended temporal and spatial limitations. The demonstration retains its impact regardless of individual attendance. Social media movements have enhanced numerous aspects of society.³²

A recent case study exemplifying the beneficial application of free expression online is Kerala. Affected Mohammed, a 1.5-year-old child, was diagnosed with the rare condition Spinal Muscular Atrophy (SMA). Despite its cost of 18 crore rupees, the medicine Zolgensma is capable of curing this sickness. Due to an extensive social media effort initiated to save the child's life, 460 million was raised in within one week. Following natural and anthropogenic disasters, social media proved indispensable. Social media activities also help to reveal deceit and prevent its proliferation. In recent years, social media has transformed into a platform for the marginalized to voice their thoughts, enabling persons with shared perspectives to connect, and facilitating the exercise of freedom of expression with relative ease.

Recently, remarkable global movements have emerged, all originating on the internet. The "Black Lives Matter" movement garnered worldwide popularity. A singular, uncomplicated hashtag gained viral traction and initiated this entire movement. Individuals have recognized that racism is a global concern, as it impacts all individuals. Analyzing perspectives from an other viewpoint is equally essential. There is certainly an abundance of issues on which

³² , N., Tripathi "Algorithmic Bias and Freedom of Expression: The Role of Social Media Algorithms," (2021) 8(2) IJTLP

individuals can articulate their ideas on social media. Activists have united around various social issues; social media has been lauded for its role in dismantling oppressive regimes. The risk arises when information or ideas disseminated online may provoke violence and hatred, so converting the practice of free expression into a form of exploitation. In these instances, social media inflicts greater harm than benefit, rather than serving as a liberator for individuals.³³

The presence of numerous religions and languages in a nation such as India becomes a pressing concern. In the domain of social media, a small spark, if neglected, can swiftly escalate into a devastating fire. Consequently, under certain circumstances, governmental oversight of social media content may be essential to preserve public tranquility. In reference to the center's affidavit in the Tablighi case, former Chief Justice of India S. A. Bobde stated, "freedom of speech and expression is one of the most misused rights in recent times." Social media facilitates a wide array of criminal activities, including cybercrime, stalking, abuse, hacking, bullying, victim shaming, harassment, defamation, invasion of privacy, incitement to offenses, and discriminatory remarks based on race and gender, among others. A prevalent detrimental behavior on social media is the defamation of an individual's reputation through the dissemination of false information.

³³B. Sinha, "The Interplay Between Social Media Regulation and Constitutional Rights," in Bhardwaj, P. (ed.), *New Dimensions in Media Law*, Eastern Book Company, Lucknow, 2020.